

IN THE CIRCUIT COURT OF NOXUBEE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

V.

CAUSE NO.: 5999

KENNEDY BREWER

DEFENDANT

AFFIDAVIT OF CHRISTOPHER J. PLOURD

I, CHRISTOPHER J. PLOURD, declare under penalty of perjury that the following is true and correct:

1. I have been a practicing attorney for over twenty-three years and specialize in cases that involve complicated forensic issues and evidence. I am admitted to practice in the State Bar of California, the United States District Court for the Southern District of California, and the United States District Court for the District of Arizona.

2. I have considerable experience in the use of forensic DNA technologies and “bite mark” identification evidence. I frequently lecture to attorneys, judges, and law enforcement officers on the subject of forensic scientific evidence.

3. From 1998 to 2001, I served on the United States Department of Justice’s National Commission on the Future of DNA Evidence, technical working group on Crime Scene Evidence. The Commission on the Future of DNA Evidence was a national commission chaired initially by United States Attorney General Janet Reno, and subsequently John Ashcroft, to develop national policy and recommendations regarding the use of forensic DNA evidence in order to maximize its value in the American

Criminal Judicial System. As a part of the working group, I co-authored the National Institute of Justice special report, "Using DNA to Solve Cold Cases," which was published in 2002. I also co-authored "What Every Law Enforcement Officer Should Know About DNA Evidence," a United States Department of Justice publication issued in 1999. Both of these publications were intended for use by law enforcement officials throughout the country. I also co-authored two CD-ROMS: "Best Practices for Identification, Preservation, and Collection of DNA Evidence at the Crime Scene" and "DNA Evidence Collection at the Crime Scene, Advanced Level."

4. In 2003, I was appointed by the Director of the National Institute of Justice, Sarah V. Hart, to a United States Department of Justice, Office of Justice Programs working group on "Principles of Forensic DNA for Officers of the Court." Earlier this year, I was appointed to the Judicial Council of California's Science and Law Steering Committee by Ronald M. George, Chief Justice of the California Supreme Court.

5. I have been a member of the American Academy of Forensic Science jurisprudence section and the American Society of Forensic Odontology since 1992 and 1995, respectively. I am also a member of the American Association for the Advancement of Science since 1993 and the American Society of Testing (ASTM), E-30 Committee on Forensic Sciences since 2001.

6. Proficiency testing is an essential component of any quality assurance program for forensic science. Whereas some simple proficiency tests are created in-house or are conducted under ideal conditions (in contrast to what actually happens with real crime scene evidence), the more rigorous and informative proficiency tests, both in

clinical medicine and forensic science, are external and blind. “Blind” means that the subject is unaware that a test is being administered. “External” -- as opposed to “in house” -- means that the test is created and submitted by someone outside the laboratory that is the subject of the test. Hence, external blind proficiency tests replicate actual case conditions. The other advantage of an external blind proficiency test is that the person being tested – unaware that it is a test – will treat the submission the same way he would any other real case.

7. Since the community of forensic odontologists has failed to submit themselves to external blind proficiency testing, I decided, in 2001, to construct an external blind proficiency test to gather information on the reliability of board certified odontologists/bite mark identifications.

8. The bite mark evidence used in the external blind proficiency test consisted of actual crime scene photographs (which are frequently used by odontologists to make bite mark identifications); the photographs were of bite marks made on the breast of murder victim Kim Ancona. Ms. Ancona, a cocktail waitress, had been stabbed to death in 1991 at the bar where she worked in Phoenix, Arizona. In 1992, Ray Krone (whom I later represented) was convicted of capital murder and sentenced to death based solely on testimony from a forensic odontologist that bite marks left by the perpetrator -- on the victim’s breast and neck -- matched Krone’s dental pattern.¹ A decade later, however, post-conviction DNA testing demonstrated that the bite mark identification was wrong. DNA from the victim’s body and crime scene – including saliva on the tank top through which one of the bites had been inflicted – excluded Mr. Krone. A search in the

¹ The state’s odontologist stated: “the teeth of Ray Krone did cause the injuries on the body of Kimberly Ancona to a reasonable medical certainty. This represents the highest order of confidence that no other person caused the bite mark injuries.”

convicted offender DNA databanks identified the person who actually left the bite marks, the true perpetrator of Kim Ancona's murder, a man named Kenneth Phillips. Phillips had submitted his DNA profile to the state databank following his conviction for attempted child molestation. After Mr. Krone's exoneration and the DNA cold hit, Phillips was indicted for the Ancona murder and is currently awaiting trial.

9. The photographs from the Ancona murder case were selected for the external blind proficiency test because they are uncomplicated. There is no question that the marks on Ms. Ancona's body were inflicted by teeth and that they are human bite marks. A much more challenging and difficult proficiency test would have included photographs of abrasions where it was in doubt whether the abrasions were bite marks, much less of human origin.

10. Dr. Michael West was selected as the odontologist for the proficiency test because he was both certified by the American Board of Forensic Odontology ("ABFO") and, in all likelihood, unfamiliar with the Ancona case. In the mid-1990s, through my work, the bite mark evidence from the Ancona murder was widely disseminated and discussed among members of the ABFO. Since Dr. West was suspended from the ABFO during the time that the Ancona materials were disseminated, he was probably one of the few – if not the only – board certified odontologists who had not previously reviewed the Ancona bite mark evidence.

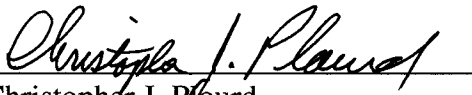
11. I selected James Rix, a businessman from Nevada who had nothing to do with the Ancona murder in Arizona, to supply his dental models so that he would become the fictitious "suspect" for the proficiency test.

12. The proficiency test was administered on Dr. West in October 2001. In any blind proficiency test, the expert is approached with what appears to be an actual case. The facts and evidence provided to the expert are designed to be as realistic as possible. Here, with the assistance of Mr. Rix, Dr. West was retained to examine bite marks from a murder case from Idaho that had gone unsolved for three years due to a lack of evidence against the prime suspect. As happens in the normal course of criminal investigations utilizing bite mark comparisons, Dr. West was provided with: (1) photographs of the bite mark evidence and (2) and the “suspect’s” dental models. Dr. West was asked to compare the suspect’s dental models with the bite mark evidence.

13. On or about December, 2001, Dr. West issued a videotaped report documenting his bite mark comparison and demonstrating how the bite marks on the victim’s breast lined up with the “suspect’s” dentition. (Dr. West’s video report is attached as Exhibit 1). Dr. West declared a match, explaining in his video report: “Notice as I flex the photograph across these teeth [referring to the right upper lateral (middle tooth), canine and first pre-molar] how it conforms to the outline very nicely. The odds of that happening if these weren’t the teeth that created this bite would be almost astronomical.” Dr. West continued: “Finding this many patterns on this injury, I believe, can only lead an odontologist to one opinion and that these teeth did create that mark.” In sum, after comparing the upper and lower dental models to the bite marks, Dr. West concluded, “I feel very confident that there are enough points of unique individual characteristics in this study model to say that these teeth inflicted this bite mark.” Dr. West’s video “match” was extremely powerful, but dead wrong. He failed the proficiency test.

14. Dr. West falsely matched dental molds that belong to James Rix (a business man from Zepher Cove, Nevada) to a bite mark on murder victim Kim Ancona's breast. The bite mark on Ms. Ancona's body was made by Kenneth Phillips. For the Court's inspection, I have attached photographs of the dentitions of James Rix and Kenneth Phillips as Exhibit 2. It is perfectly clear to a layperson that these dentitions are obviously dissimilar.

15. As noted above, the community of forensic odontologists has failed to submit themselves to external blind proficiency testing. Thus, the only rigorous proficiency test replicating casework failed completely, resulting in a false positive. Had this been a real case and had the jury heard Dr. West's compelling, albeit false, conclusions, an innocent man easily could have been convicted and sentenced to death.


Christopher J. Plourd

Sworn to before me
this 15th day of September, 2005



Notary Public
My Commission Expires:

