

APPENDIX F

FILED
CLALLAM COUNTY
NOV 17 2008
BARBARA CHRISTENSEN, Clerk

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

STATE OF WASHINGTON,
Respondent,
vs.
DAROLD J. STENSON,
Petitioner.

NO. 94-1-00039-1

AFFIDAVIT OF DEBORAH S.
KELLY

(MTADPC)

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1 - AFFIDAVIT OF DEBORAH S. KELLY

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469

CERTIFICATION

2
3 I, Deborah S. Kelly, am the elected Prosecuting Attorney for Clallam County. On
4 Thursday, November 6, I went to the Supreme Court to examine evidence marked at the trial of
5 Darold J. Stenson. I was accompanied by Pamela Loginsky, a staff attorney for the Washington
6 Association of Prosecuting Attorneys who assisted me in reviewing the exhibits.

7
8 That in the course of and following this visit, I learned the following procedures that
9 have been utilized for handling evidence by the Supreme Court in this case. The evidence is
10 kept in a locked vault accessible to authorized court staff. By informal policy, only counsel of
11 record are permitted to examine the evidence; however, I was informed prior to the visit that I
12 could have a law enforcement officer review the evidence for me if I provided the officer with a
13 letter on official letterhead. We were not required to log in or out nor were our belongings
14 inspected when we left to ensure we had not removed items. Prior to our arrival, the evidence
15 had been taken to a small closet/room used for storage where Ms. Loginsky and I were left
16 alone. There were approximately five "banker" boxes containing the evidence. No one
17 observed our examination and we were not provided gloves until we requested them shortly
18 after opening the first box. The only items of evidence we handled without gloves were some
19 paper exhibits and photographs and outer packaging. (Apparently, normally a box of gloves is
20 maintained in the room but the last box had been exhausted and not replaced.) With few
21 exceptions, the Stenson evidence was unsealed and had clearly been opened and handled at
22 trial. With respect to some of the evidence which had been previously tested by the FBI, it was
23 impossible to determine whether the evidence had been opened as the evidence tape was not
24 broken but was old and curling up off the envelope such that the envelope was open (the tape

itself appeared to be of a type that could have allowed opening of a package without breaking).

Other exhibits were merely contained in ziplock bags without any sealant tape which could have been opened and resealed; it was simply impossible to tell if that had occurred.

As in this type of case, nothing is taken for granted, I wish to assure the Court and counsel, that Ms. Loginsky and I opened nothing that remained sealed and removed no items of evidence.

Additionally, on November 14, 2008, I spoke with counsel for Petitioner who informed me that his co-counsel, Ms. McCloud, has previously examined at least some of these items of evidence at the Supreme Court although he was not present when that occurred.

I CERTIFY under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED AND DATED this 17th day of November, 2008, at

Port Angeles, Washington.

DEBORAH S. KELLY, Prosecuting Attorney



WBA #8582

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P. 002

CERTIFICATION

I, Michael Croteau, am a Supervising Forensic Scientist with the Washington State Patrol Crime Laboratory in Marysville, Washington. I supervise the DNA section in the Marysville Laboratory and have been with the Washington State Patrol Crime Laboratory for nineteen years. I have previously provided an affidavit to the State to explain the capabilities of our lab with respect to DNA testing. In speaking with Deborah Kelly, Prosecuting Attorney for Clallam County, after the court's last hearing, it is apparent that she misunderstood some things outlined in my previous affidavit. This affidavit is provided to clarify and to attempt to answer other questions to which I am informed the court wishes answers.

The Washington State Patrol Crime Laboratory currently performs neither mitochondrial nor mini-STR testing. While both are suitable for testing low quantity DNA, each has limitations. If a low-quantity sample is known to have come from a single person, mitochondrial DNA is superior for obtaining a useful result; however, if a low quantity sample is known to likely be a mixture, mini-STR testing is superior at sorting out the mixture of a limited number of contributors. Limitations for the application of these technologies in a case such as this include:

1. Currently, private laboratories are not allowed to submit profiles into the Washington State Patrol Combined DNA Index System (CODIS) databank and the National DNA Index System (NDIS) of CODIS. Only public crime laboratories are allowed to enter profiles at this time. Therefore, any profile developed from the evidence by a private laboratory (unless under contract to a public laboratory which is supervising the private laboratory's work) could not be used to search against convicted offenders in the databank.
2. No miniSTR kit has yet been approved to enter profiles into the databank, whether done by a public or private laboratory.
3. Both the mitochondrial and miniSTR techniques are likely to be worthless in providing useful information if the item has been handled by a large number of persons, such as a jury. A large number of potential handlers greatly raises the possibility that DNA from several different people will be extracted and copied together, resulting in a DNA typing profile that reflects the combination of several individuals. Such a mixture profile of multiple contributors is unlikely to yield a statistically significant association when compared against a known person's profile (should a potential alternate perpetrator be identified by other means).

If it is not required to compare the DNA obtained from evidence to the databank, such as if a potential alternative perpetrator is known and a reference sample can be obtained from this person, and the evidence doesn't yield a mixture unsuitable for comparison, an attempt can be made to compare the evidence profile to the reference profile. Of course, it remains important to be as certain as possible that the particular item is actually related to the crime, ideally handled solely by the perpetrator of the crime.

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In summation, testing evidence in a post-conviction case by a private lab using a mini-STR technique may be useful if:

1. There is no need to search any developed profile against the convicted offender databank.
2. There exists evidence, related to the crime, handled by an alternative perpetrator - but by few to zero other individuals.
3. A reference sample from the alternative perpetrator is available.

I CERTIFY under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED AND DATED this 7th day of November, 2008, at
Twilip, Washington.

Michael Croteau

Michael Croteau

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P. 002/003

SENT ON OCTOBER 17, 2008 VIA FAX FOR FILING IN CLALLAM COUNTY
SUPERIOR COURT

CERTIFICATION

I, Michael Croteau, am a supervising forensic scientist with the Washington State Patrol Crime Laboratory in Marysville, Washington.

I supervise the DNA section in the Marysville Laboratory. I have been with the Washington State Patrol Crime Laboratory for nineteen years.

The DNA typing technology currently validated in this laboratory system is called STR, for short tandem repeat. Other types of DNA typing technologies are also used in the forensic community, commonly as a special circumstances service when the STR technique is unlikely to yield results. Among these types of technologies are the mini-STR technology and the mitochondrial DNA technology. Mini-STR technology is particularly useful for degraded DNA, and may have some utility for low quantity DNA. Mitochondrial DNA is particularly useful for low quantity DNA. The limitation of mitochondrial DNA typing as compared to mini-STR typing is that it has less utility for discrimination and is not useful for searching against the convicted offender DNA databases. Mitochondrial DNA is inherited matrilineally, so an individual would have the same mitochondrial DNA types as his brothers and sisters who share the same mother, and the same types as his mother and her brothers and sisters who share the same grandmother, etc. assuming no mutations. Practically speaking, a match between an individual and a full mini-STR profile would (assuming the individual doesn't have an identical twin sibling) would show identity. Typically, a mitochondrial DNA profile can reduce the number of unrelated potential contributors to one person in a few thousand. At some time in the future, this laboratory system may validate a mini-STR technique.

Spent cartridges from firearms generally yield such low quantities of DNA that the STR technique is not useful in most cases. Mitochondrial DNA would give the highest chance of a typing profile, but would not be searchable in the convicted felon databases. A mini-STR technique would give perhaps a slightly greater chance of a result than the STR technique used in this laboratory system. Please keep in mind that if a spent cartridge casing has been

OCT-17-2008 FRI 02:09 PM MARYSVILLE CRIME LAB

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P. 003/003

significantly handled after the cartridge being fired, such as being collected by an ungloved individual or having been examined by a firearms examiner, unless special precautions were taken you would expect not to find the DNA of the individual who loaded the weapon.

I CERTIFY under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED AND DATED this 17th day of October, 2008, at Tielalip, Washington.

Michael Croteau
Michael Croteau

Attachment A

SENT ON OCTOBER 17, 2008 VIA FAX FOR FILING IN CLALLAM COUNTY
SUPERIOR COURT

CERTIFICATION

I, Michael Croteau, am a supervising forensic scientist with the Washington State Patrol Crime Laboratory in Marysville, Washington.

I supervise the DNA section in the Marysville Laboratory. I have been with the Washington State Patrol Crime Laboratory for nineteen years.

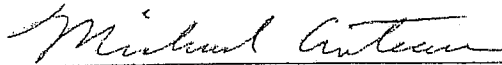
The DNA typing technology currently validated in this laboratory system is called STR, for short tandem repeat. Other types of DNA typing technologies are also used in the forensic community, commonly as a special circumstances service when the STR technique is unlikely to yield results. Among these types of technologies are the mini-STR technology and the mitochondrial DNA technology. Mini-STR technology is particularly useful for degraded DNA, and may have some utility for low quantity DNA. Mitochondrial DNA is particularly useful for low quantity DNA. The limitation of mitochondrial DNA typing as compared to mini-STR typing is that it has less utility for discrimination and is not useful for searching against the convicted offender DNA databases. Mitochondrial DNA is inherited matrilineally, so an individual would have the same mitochondrial DNA types as his brothers and sisters who share the same mother, and the same types as his mother and her brothers and sisters who share the same grandmother, etc. assuming no mutations. Practically speaking, a match between an individual and a full mini-STR profile would (assuming the individual doesn't have an identical twin sibling) would show identity. Typically, a mitochondrial DNA profile can reduce the number of unrelated potential contributors to one person in a few thousand. At some time in the future, this laboratory system may validate a mini-STR technique.

Spent cartridges from firearms generally yield such low quantities of DNA that the STR technique is not useful in most cases. Mitochondrial DNA would give the highest chance of a typing profile, but would not be searchable in the convicted felon databases. A mini-STR technique would give perhaps a slightly greater chance of a result than the STR technique used in this laboratory system. Please keep in mind that if a spent cartridge casing has been

significantly handled after the cartridge being fired, such as being collected by an ungloved individual or having been examined by a firearms examiner, unless special precautions were you would expect not to find the DNA of the individual who loaded the weapon.

I CERTIFY under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED AND DATED this 17th day of October, 2008, at
Tulalip, Washington.



Michael Croteau

Attachment B

SENT ON OCTOBER 17, 2008 VIA FAX FOR FILING IN CLALLAM COUNTY
SUPERIOR COURT

CERTIFICATION

I, Darrell Spidell, am a former deputy sheriff with the Clallam County Sheriff's Department. I was employed from March 19, 1979 through December 31, 2003. Since December 2003 I have owned and operated Hi-Caliber Guns at 2720 E. Hwy 101, Port Angeles, WA 98342. Additionally I retired from the U.S Coast Guard & US NAVY with 26 years military service.

During the course of these three careers I have owned and operated firearms of various calibers & manufacturers.

As a business owner, dealing in firearms and ammunition sales, I have ordered, handled and sold over \$50,000⁰⁰ worth of assorted brands, calibers, and sizes of ammunition. When ammunition is delivered to my store, it is sealed in cardboard shipping boxes. After opening, individual boxes are removed, priced and placed on shelves for retail sale. I often open the unsealed ammunition boxes and inspect them for damage or discoloring. Additionally, customers frequently open the unsealed boxes, looking for a particular style of bullet. Bullets are handled on an almost daily basis.

During my law enforcement and military careers, I purchase ammunition from retail stores. To the best of my knowledge, ammunition is contained in unsealed boxes, with few exceptions.

I CERTIFY under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED AND DATED this 17th day of October, 2008, at
Port Angeles, Clallam Washington.

Darrell Spidell
Darrell Spidell