

DOG SCENT LINEUPS

A Junk Science Injustice

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Jeff Blackburn, Chief Counsel of the Innocence Project of Texas (IPOT), wrote this report. IPOT is a non-profit organization comprised of volunteer lawyers and students who find and free innocent persons wrongfully convicted of crime in Texas.

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DOG SCENT LINEUPS: *A Junk Science Injustice*

INTRODUCTION AND OVERVIEW

The use of “junk science” by police and prosecutors in Texas is an ongoing injustice. Nowhere is this more obvious than in the government’s use of “scent lineups”—a practice that is happening today throughout the state.

The purpose of this report is to summarize the results of our investigation into the use of this “scientific evidence.” For reasons that will be explained below, the use of this testimony, particularly by the State’s star expert Deputy Keith Pikett, has led to wrongful arrests, indictments and convictions. It will continue to do so unless it is stopped. Our aim in publishing this report is to help make that happen.

The following topics are covered in this report:

1. What Is “Junk Science”?
2. Junk Science in Texas
3. Dog Scent Evidence
4. Dog Scent Evidence- The Science
5. Dog Scent Evidence-The Junk
6. The Strange and Awful Career of Deputy Keith Pikett
7. What Has to Be Done

WHAT IS “JUNK SCIENCE”?

Even before the television show “CSI” became popular, juries and judges have tended to believe what “scientific experts” say in criminal cases—especially if these “experts” are police officers or prosecution witnesses. One study found that “about one quarter of jurors who were presented with scientific evidence believed that had such evidence been absent, they would have changed their verdicts—from guilty to not guilty.”¹ In the hands of a skilled prosecutor, scientific-sounding testimony from any source, no matter how fraudulent, can be played to great dramatic effect and win convictions.

Prosecutors have taken full advantage of the gullibility of jurors and the willingness of courts to allow the use of these techniques. In case after case, prosecutors have used phony “experts” with little or no training or education, false results from shoddy labs and dubious “theories” with no basis in fact to get convictions. Taken together, these abusive practices have come to be known as the use of “junk science.” The use of this “evidence” is not limited to the courtroom: law enforcement agencies have come more and more to rely on it in making arrests and getting indictments.

¹ KELLY M. PYREK, *FORENSIC SCIENCE UNDER SIEGE: THE CHALLENGES OF FORENSIC LABORATORIES AND THE MEDICO-LEGAL INVESTIGATION SYSTEM* 414 (Elsevier Academic Press) (2007).

Many people sent to prison because of junk science have been innocent: of the first 200 defendants exonerated through DNA in this country, “65% were convicted at least in part on fraudulent, unreliable, or limited forensic science.”² In nearly all of those cases the real criminal got the chance to commit more crimes while an innocent citizen was locked up. This is why the use of phony scientific evidence presents a real threat to justice and a risk to public safety for every citizen.

In 2009, the National Research Council published an exhaustive report about the use of forensic science and expert testimony in criminal cases. The book-length report, mandated by Congress, is entitled “Strengthening Forensic Science in the United States: A Path Forward.” This landmark study went so far as to state that exaggerated and inaccurate testimony by experts has “contributed to the admission of erroneous or misleading evidence.”³ The report also dedicates an entire chapter to “strengthening oversight of forensic science practice”⁴ and concludes “that every effort must be made to limit the risk of having the reliability of certain forensic science methodologies judicially certified before the techniques have been properly studied and their accuracy verified.”⁵

JUNK SCIENCE, TEXAS STYLE

Few such steps have been taken in Texas, and the situation here is especially bad. Take, for example, the case of Cameron Todd Willingham, who was executed in 2004.⁶ His conviction was based on the theories of an uneducated arson “expert” whose ideas, according to a real fire scientist, were more “characteristic of mystics or psychics” than those of a rational thinker.⁷ Government use of junk science in Texas has not been limited to bogus arson experts: everything from false autopsies⁸ to inaccurate hair and fiber evidence⁹ has been used to convict people in this state. The scandal of the Houston crime lab is stark proof of how “grossly misleading” reports in the areas of serology and DNA testing have also been used time and time again to win convictions in Texas.¹⁰

² THE INNOCENCE PROJECT, 200 EXONERATED: TOO MANY WRONGFULLY CONVICTED 22-23 (2007).

³ National Research Council of the National Academies, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD 4 (The National Academies Press) (2009).

⁴ *Id.* at 193-216.

⁵ *Id.* at 86.

⁶ David Grann, *Trial By Fire: Did Texas Execute an Innocent Man?*, THE NEW YORKER, Sept. 7, 2009.

⁷ *Id.*

⁸ See Roberto Suro, *Ripples of a Pathologist's Misconduct in Graves and Courts of West Texas*, N.Y. TIMES, Nov. 22, 1992.

⁹ See JIM FISHER, FORENSICS UNDER FIRE: ARE BAD SCIENCE AND DUELING EXPERTS CORRUPTING CRIMINAL JUSTICE? 228-29 (Rutgers University Press) (2008).

¹⁰ See INDEPENDENT INVESTIGATOR ISSUES FIFTH REPORT ON HOUSTON POLICE DEPARTMENT CRIME LAB (2006), available at <http://hpdlabinvestigation.org/pressrelease/060511pressrelease.pdf>

Today, police and prosecutors are using yet another kind of junk science to win cases. This “science” involves dog handlers who testify that a dog “told” them who was present at a crime scene or whose sent was on a piece of evidence by making signals to the handler during a “scent lineup.” The use of this “dog whispering” has become more and more common. Prosecutors have touted the “evidence” gained from this practice as being “as powerful as DNA evidence to support a conviction.”¹¹

We decided to investigate the use of this technique by Texas officials. We talked with lawyers who have handled cases in which it has been used. We interviewed citizens who have been wrongfully accused because of it. We studied the scientific literature. We analyzed dozens of transcripts from court proceedings.

What we learned is set out below.

DOG SCENT EVIDENCE AND “SCENT LINEUPS”

Virtually all dogs have a heightened sense of smell.¹² This is why they have proven to be very useful in identifying distinct odors like bombs or drugs.¹³ A dog smells a scent, barks or makes a signal that it has done so, and his handler notices it. Dogs can also be used to trail scents from one location to another.¹⁴ The “evidence” in such cases is a simple alert by the dog or the path the dog takes to get from one place to another.

Although that kind of basic identification can be affected by a host of handler and dog errors, that is not what we are examining here. What we are looking at are cases in which dog handlers claim that their dogs have distinguished between different odors among people, identified one, and matched it to evidence from a crime scene. This is what is often referred to as a “scent lineup” in the field of “criminal odorology.” It is a much more complex process than picking out a package of drugs or following a scent. Research has proven that it requires the use of qualified handlers and the observance of numerous safeguards if it is to produce even marginal results.¹⁵

A “scent lineup” starts with the dog being introduced to a scent sample that has been collected from a crime scene or a piece of evidence. After “getting” that scent, the dog is then presented with a series of containers with similar scents in them. These scents have often been taken directly from a suspect and from others matching the general description of the suspect. The idea is that the dog will then

¹¹ See *Winfrey Found Guilty*, SAN JACINTO NEWS TIMES, Dec. 2007.

¹² Bob Coote Expert Witness Report. See Appendix A.

¹³ See Sari Horwitz and Lyndsey Layton, *So Far, Dogs are Still Best Detectors of Bombs*, WASH. POST, July 19, 2005.

¹⁴ Bob Coote Expert Witness Report. See Appendix A.

¹⁵ See Mark Derr, *With Dog Detectives, Mistakes Can Happen*, N.Y. TIMES, Dec. 24, 2002.

communicate to its handler/observer if the scent that it “got” the first time matches a scent in one of the containers. The handler/observer, so the theory goes, can then testify that his dog has accurately picked out the scent of a particular person or suspect. This testimony is then presented as a “scientific identification” in Texas courts. It is called a “scent lineup” because of its similarity to an eyewitness lineup.

The use of scent lineups has become widespread in Texas. One handler in particular, Deputy Keith Pikett, has been responsible for untold arrests and convictions throughout the state.¹⁶ His work has been praised and sponsored by prosecutors and police for years. The Texas Attorney General’s office has recommended that he be used widely. As will be seen, however, Pikett’s work is seriously flawed and his testimony is highly suspect.

THE SCIENCE OF SCENT LINEUPS

Humans have been using the superior scent abilities of dogs for thousands of years.¹⁷ The fundamental problem is that dogs and their handlers are not always reliable when it comes to making complicated distinctions between human scents—too much guesswork, suggestion, and subjectivity can come into play. Although a rough guess may be good enough in some situations, it is clearly not enough to justify a conclusion that a person was at a particular location at a given time and thus committed a crime.

In recent decades, a whole body of science has evolved that deals with how and under what conditions a trained dog and handler can make such conclusions.

Police agencies in the Netherlands have led the way in developing this science. After many years of trial, error, and the application of scientific methods they have come up with a working set of rules that govern the use of scent lineups.¹⁸

These rules govern the way that the initial scent is collected and how it is stored, how the scents in the line-up are collected and stored, how the line-up scents are laid out for the dog, who can handle the dog at various junctures, what kind of reaction should be observed from the dog, and so forth.¹⁹ The rules are based on years of methodical observation and research.

¹⁶ See Transcript of Pretrial Hearing at 37 (Volume 1), *State v. Jason Smith* (2007); Leslie Wilber, *Handlers’ Credibility Questioned in Court*, VICTORIA ADVOCATE, July 12, 2009. According to a KVUE news story on Keith Pikett and his dogs, “Pikett has estimated that his pack of bloodhounds has indicted over 1,000 suspects including burglars, rapists and killers.” *Deputy Dogs Help Solve Hundreds of Murders*, KVUE.com, January 7, 2009.

¹⁷ Charles Mesloh, *Scent as Forensic Evidence and its Relationship to the Law Enforcement Canine* at 2, University of Central Florida, Nov. 2, 2000.

¹⁸ See Mark Derr, *With Dog Detectives, Mistakes Can Happen*, N.Y. TIMES, Dec. 24, 2002.

¹⁹ See *id.*

One of the purposes of these rules is to insure that the reactions of the dog are objective and not influenced in any way by the handler.²⁰ In many respects, they are similar to the body of rules that we now know should be used to prevent unfair eyewitness identifications.

Even when these rules are scrupulously followed the results can never be considered conclusive. After many years of research and hard experience, the Dutch have concluded that this sort of evidence has limited value and can only be used in conjunction with other scientific proof like DNA in a criminal case.²¹ In the U.S., various associations and experts have also begun to formulate rules and protocols for the limited use of the technique.²²

If there is a developing consensus about the use of scent lineups, it comes down to this:

1. Scientific methods have to be used;
2. Rules based on those methods have to be precisely followed;
3. Even if proper methods and rules are used the scent lineup has very limited value as “scientific evidence” and cannot be solely relied upon.

THE JUNK OF SCENT LINEUPS

Scent lineups, even if done correctly, are of only marginal value. Scent lineups done incorrectly or relied upon as conclusive proof result in disaster.

At least two other jurisdictions besides Texas have routinely relied on unscientific scent lineups.

In Florida, a dog handler named John Preston was used over and over again by police and prosecutors to gain convictions.²³ Although his work was based on guesses and exaggerations it was presented as “science” to dozens of juries.

²⁰ “Handlers can create errors by pulling their dogs away from things they are investigating, by letting them search too long in a single place or by inciting the dog through some gesture, glance or emotion, even unconscious. Trainers say the message ‘travels right down the leash.’ Mainly for that reason, the few studies of dog performance that have been done suggest that dogs perform best off their leashes.” *Id.*

²¹ See Guy Hargreaves, *Scent Lineup Article – Police Practice Detection Dog Lineup*, PoliceLink, available at <http://www.policelink.com/training/articles/1797-scent-lineup-article---police-practice-detection-dog-lineup>.

²² See Steve Tyler, *Guest column: Innocents Placed at Risk With Unreliable Scent Dogs*, VICTORIA ADVOCATE, July 18, 2009.

²³ Jeff Schweers, *16 Cases Mired in Dog Handler’s Fraud*, FLORIDATODAY.COM, Aug. 30, 2009.

Although it has taken decades, DNA evidence and proof that Preston lied under oath have now discredited his “expert” testimony. As of earlier this year, 16 cases in which Preston participated have been scrutinized, with nearly a hundred more to follow.²⁴ Three men have been exonerated so far.²⁵ Taken together, these innocent men spent more than 50 years of their lives in prison.

One other government entity is apparently relying on scent lineups: the communist regime in Cuba. There, the secret police have amassed thousands of bottles of scents taken from anti-Castro slogans painted on walls and other such “crime scenes” and are using them as “proof” against dissidents.²⁶

The leading “expert” in Texas on scent lineups is a dog-handling deputy from Fort Bend County named Keith Pikett. He has become famous by traveling throughout the state and testifying for prosecutors. He has garnered favorable publicity, awards, and opportunities for advancement for himself along the way. Because he has come to dominate this field in Texas his history and methods deserve to be carefully examined. This is done below.

THE STRANGE AND AWFUL CAREER OF KEITH PIKETT

Keith Pikett grew up in upstate New York. After graduating from high school in 1965, he enlisted in the U.S. Navy. He served six years. He then took a job at the Ingall Ship Yard in Mobile, Alabama. He went to college, graduating with a degree in chemistry from the University of South Alabama.²⁷ He later attended another Alabama institution called the United States Sports Academy, where he received a master’s degree in “Sport Science” in 1984.²⁸

At some point after that, Pikett moved to Texas. He and his wife bought a bloodhound as a pet. After playing with the dog they decided to train it to be a police dog. They did this on their own without using any known or established program.²⁹

Pikett then began volunteering himself and the dog for use by different law enforcement agencies. In 1990, the Montgomery County Sheriff’s Office began using them on search and rescue missions.³⁰

²⁴ *Id.*

²⁵ John A. Torres & Jeff Schweers, *Dog Handler Led to Bad Evidence*, FLORIDATODAY.COM, June 21, 2009.

²⁶ Juan O. Tamayo, *Cuba’s Sniffer-Dog Program Tracks Down Crooks, Dissidents*, THE MIAMI HERALD, Sept. 9, 2009.

²⁷ Keith Pikett Undergraduate Degree. See Appendix B.

²⁸ Keith Pikett Graduate Degree. See Appendix B.

²⁹ Steven Long, *Nothin’ But a HOUND DOG Trackin’ All the Time*, HOUSTON CHRONICLE, Mar. 11, 1994.

³⁰ Transcript of Pretrial Hearing at 28 (Vol. 3 of 17), Texas v. Marcus Omar Winston (2000).

In 1992, Pikett bought another bloodhound that he named “Columbo.”³¹ By 1994 he was claiming that the dog could not only do trailing and other basic tasks but could also do scent lineups.³² These claims began to attract the attention of local newspapers and make Pikett well known.

In the early 1990s, Pikett began working with the Fort Bend County Sheriff’s Office.³³ This new status enabled him to work on criminal cases and tout his expertise with dogs. One of his first big cases involved a defendant named Marcus Cotton. Pikett testified in Cotton’s first trial that he had conducted a scent lineup and that his dog had matched a scent taken from crime scene evidence to Marcus Cotton.³⁴ In an apparent effort to make himself seem important, he also testified that he had a Bachelor of Science in Chemistry degree from Syracuse University and a Master’s degree in Chemistry from the University of Houston.³⁵ This was a lie: Pikett has never received degrees from either institution.³⁶ The defense in Cotton’s case never questioned Pikett on this, and his testimony was allowed to stand. Cotton eventually received another trial. The State did not use Pikett in this second trial.

His career as a scent lineup “expert” took off after the *Cotton* case. He acquired more dogs and gave them names like “James Bond” and “Clue.” He became a full-time law enforcement officer.³⁷ He traveled across the State using the dogs to identify suspects and provide “evidence” to police and prosecutors in a host of important cases.

The testimony he gave to juries has been described as enthused, “down-home”, and charming. As he perfected his routine, he began to make wild assertions in trials.

He has testified under oath, for example, that even though he does not keep detailed records of his activities³⁸ he knows that his dogs have almost never been wrong. According to Pikett, as of 2009 his dog “Clue” had been wrong once out of 1,659 lineups.³⁹ “James Bond” had been wrong once out of 2,266 times.⁴⁰ “Quincy”

³¹ Transcript of Pretrial hearing at 21 (Volume 3), *Texas v. Marcus Omar Winston* (2000).

³² Transcript of Pretrial Hearing at 13 (Volume 2), *Texas v. Justin Alexander* (2009).

³³ Transcript of Pretrial Hearing at 28 (Volume 3), *Texas v. Marcus Omar Winston* (2000).

³⁴ Transcript of Trial Record at 461 (Volume 7), *Texas v. Marcus Cotton*, (1997).

³⁵ Transcript of Trial Record at 445 (Volume 7), *Texas v. Marcus Cotton*, (1997).

³⁶ Letters from Syracuse University and the University of Houston. Appendix B.

³⁷ Transcript of Pretrial Hearing at 12 (Volume 1), *Texas v. Justin Alexander* (2009).

³⁸ When asked about whether he tracks the success of his dogs and the outcomes of the cases they work, Pikett states “No. Everybody in the country calls me, so I guess that’s something.” See Transcript of Pretrial hearing at 129-31 (Volume 1), *Texas v. Jason Smith* (2007). Likewise, when asked about the total number of trails and scent lineups he and his dogs have conducted, Pikett admits that “[he] couldn’t keep up with it” and acknowledges that the number could be in the 4000 to 5000 range. *Id.* at 37.

³⁹ Transcript of Pretrial Hearing at 36 (Volume 2), *Texas v. Justin Alexander* (2009).

⁴⁰ Transcript of Pretrial Hearing at 35 (Volume 2), *Texas v. Justin Alexander* (2009).

had only been proven wrong three times in 2,831 lineups.⁴¹ According to the research done by the Dutch police and other experts in the field, this is absurd. Even using rigorous training methods, experts believe that the best dogs worked in perfectly controlled conditions can only be right approximately 85% of the time.⁴²

Pikett has indicated that it is not important for him to receive any formal training, that he does not need to follow any rules or protocols established by scientists in the field, and that he rejects the importance of scientific studies concerning scent lineups⁴³. Pikett has also claimed that his dogs can identify scents more than a decade old⁴⁴ and that they can follow scents left behind by cars⁴⁵—claims which have been criticized by experts in this field⁴⁶.

One case, *State v. Winston*, cemented Pikett's reputation as the leading Texas expert in scent lineups. In that case he repeated the lie that he had a master's degree in chemistry, this time from the University of South Alabama.⁴⁷ He was proclaimed an expert witness by the prosecutor, and then testified in the usual manner that his dogs had conclusively identified the defendant's scent on the crime scene evidence.⁴⁸ This testimony was not contradicted by an expert for the defense, nor was it effectively challenged through cross-examination. Winston was convicted. On March 28, 2002 the 14th Court of Appeals wrote an opinion affirming the conviction and held that Pikett was a qualified expert.⁴⁹ This decision made it official: in Texas courts Pikett would be allowed to present his lineups as "scientific evidence."

In the wake of this ill-informed decision Pikett's star rose further. He continued to testify in trials. When confronted with the issue of his reliability and the validity of scent lineups, appellate courts simply relied on the earlier decision in *Winston* and affirmed the defendants' convictions.⁵⁰ No serious scrutiny was given to Pikett's testimony.

He became immensely popular with prosecutors, who started using him routinely. The ability of his dogs to "confirm" what they wanted to know in a case, coupled with his charm with juries, made him a fixture in criminal cases all over

⁴¹ Transcript of Pretrial Hearing at 34-35 (Volume 2), *Texas v. Justin Alexander* (2009).

⁴² Charles Mesloh, *Scent as Forensic Evidence and its Relationship to the Law Enforcement Canine* at 6, University of Central Florida, Nov. 2, 2000.

⁴³ See Transcript of Keith Pikett Testimony at 88-89, *Texas v. Richard Winfrey, Jr.* (2009).

⁴⁴ Transcript of Pretrial Hearing at 46-47 (Volume 1), *Texas v. Jason Smith* (2007).

⁴⁵ K. Pikett Depo. at 74-75 & 141, *Buchanek v. City of Victoria, et. al*, 6:2008cv00008 (S.D. Tex. filed Jan. 29, 2008) - Deposition taken on Jan. 22, 2009.

⁴⁶ See Charles Mesloh, *Scent as Forensic Evidence and its Relationship to the Law Enforcement Canine* at 6, University of Central Florida, Nov. 2, 2000; Affidavit of Douglas H. Lowry at 3. Appendix A.

⁴⁷ Transcript of Pretrial Hearing at 15 & 27 (Volume 3), *Texas v. Marcus Winston* (2000).

⁴⁸ Transcript of Trial Record at 206 (Volume 10), *Texas v. Marcus Winston* (2000).

⁴⁹ *Winston v. State*, 78 SW3d 522, 529 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd).

⁵⁰ See e.g. *Robinson v. State*, 2006 WL 3438076 at *3 (Tex. App.—Beaumont); *Winfrey v. State*, 2009 WL 1636849 at *6 (Tex. App.—Eastland).

Texas. As late as April of this year, one prosecutor with the Attorney General's office said of Pikett: "He has helped us with several cases over the past few years with great results. I'm a big fan...."⁵¹ Later, reporting on a visit between an investigator and Pikett, this prosecutor exclaimed: "Woo-hoo! Just got word that Keith's dogs unanimously hit on my evidence today, just as we'd hoped" and appended a "smiley-face" symbol to her message.⁵²

Pikett also became something of a folk hero in law enforcement circles. One of his dogs was inducted into the Texas Veterinary Hall of Fame in 2002.⁵³ That same year, Pikett was named "Officer of the Year" by a police support group in Houston.⁵⁴

As Pikett handled more and more cases, however, the fraudulent and shoddy nature of his work began to be revealed.

In 2006, Pikett went to Victoria to perform a scent lineup in a notorious murder case.⁵⁵ The local authorities identified Michael Buchanek, a retired police captain, as a person of interest in the case.⁵⁶ Predictably, Pikett did a scent line up which came out the way the police wanted. Mr. Buchanek was questioned, harassed, and identified in the media as a prime suspect—almost entirely on the basis of Pikett's "expert evidence." Several months after the murder another man confessed to the crime and pled guilty.⁵⁷

In August 2007, Pikett was called in to perform one of his scent lineups in a string of Houston burglary cases. Against the judgment of the officers working the case, two detectives had a hunch about who the real suspect was. These detectives contacted Pikett, who had his dogs do a scent lineup. Predictably, Pikett told them what they wanted to hear. The detectives then made an arrest on the basis of the scent lineup. They had gotten the wrong man. The real criminal was arrested by other officers right after committing another burglary. After hearing of this, Vic Wisner, a 24-year veteran prosecutor in charge of the case, ordered the man Pikett had accused released. Mr. Wisner then sent an e-mail to all Harris County

⁵¹ Posting of Lisa Tanner to <http://tdcaa.infopop.net/2/OpenTopic?a=tpc&s=347098965&f=157098965&m=2781026881&r=3091026881#3091026881> (Apr. 1, 2009).

⁵² Posting of Lisa Tanner to <http://tdcaa.infopop.net/2/OpenTopic?a=tpc&s=347098965&f=157098965&m=2781026881&r=3091026881#3091026881> (Apr. 3, 2009).

⁵³ Texas Veterinary Medical Association: Texas Animal Hall of Fame, Quincy, http://www.tvma.org/Pet_Owners/08_hof_quincy.phtml (last visited Sept. 15, 2009).

⁵⁴ *Id.*

⁵⁵ Terri Langford, *Questions About CPS Official's Death Haunt Her Community / With No Arrests, Concerns Among Friends and Family are Growing*, HOUSTON CHRONICLE, July 3, 2006.

⁵⁶ *Id.*

⁵⁷ Testimony of Jeffrey Frank Grimsinger – Plea of Guilty at 4-5, *Texas v. Jeffrey Grimsinger* (2008).

prosecutors explaining what had happened and warning them about Pikett. This information is set out in Mr. Wisner's affidavit, which is attached to this report.⁵⁸

In late 2007, Houston police were called to the scene of a triple homicide.⁵⁹ Apparently untroubled by his previous false accusations, police asked Pikett to help them again.⁶⁰ Their hunch was that Cedric Johnson had committed the crime, but they needed concrete evidence to tie him and later another individual, Curvis Bickham, to the scene. Pikett was asked to assist them in his time-honored fashion. He did a scent lineup and duly reported that his dogs had placed the suspects' scents on pieces of evidence gathered from the crime scene. Both men were arrested for capital murder, a death penalty crime, and held in jail.⁶¹ Months later they were released and all charges against them were dropped.

In January 2009, a Yoakum County resident named Calvin Miller came under suspicion for rape and robbery. Pikett performed a scent lineup and once again provided "evidence" to back police guesswork. Months later, after DNA and a failed eyewitness identification cleared him, Yoakum police finally released Mr. Miller.⁶²

We have no way of knowing how many more cases like this have happened. We do know that each of these men were falsely accused of serious crimes because of scent lineups and were lucky enough to have other evidence that cleared them. How many people have not been so lucky? How many people are in prison because of Pikett and his scent lineups? We have no way to answer these questions.

The government does. It could have chosen at any time to stop using scent lineups as evidence. It could have chosen to investigate old cases in which they were used. It could have made an effort to insure that our criminal justice system worked. Instead, it has chosen to continue relying on this fraudulent technique. Police and prosecutors are still using Pikett and his scent lineups despite his record of perjury and false accusations.

Fortunately, a handful of private lawyers have stepped forward to challenge the use of this technique in Texas. Pikett and his scent lineups have come under increasing attack in both civil and criminal cases in the last few months.

Lawsuits have been recently filed against Pikett and the law enforcement

⁵⁸ Vic Wisner Affidavit. See Appendix C.

⁵⁹ See Jeremy Desel, *Man Claims He was Wrongly Accused of Murder*, KHOU.COM, June 16, 2009.

⁶⁰ See *id.*

⁶¹ City of Houston, 5TH UPDATE ON INCIDENT AT 6122 BELCREST (2007), available at <http://www.houstontx.gov/police/nr/2007/dec/nr122407-2.htm>; City of Houston, SECOND SUSPECT ARRESTED IN 2007 MURDER CASE (2008), available at <http://www.houstontx.gov/police/nr/2008/oct/nr100608-8.htm>.

⁶² Leslie Wilber, *Does it Pass the Smell Test?*, VICTORIA ADVOCATE, July. 12, 2009; *Miller v. City of Yoakum 2-4, et. al*, 6:2009cv00035 (S.D. Tex filed May 12, 2009).

officials who sponsored him by Rex Easley, an able lawyer from Victoria.⁶³ In the course of these pending lawsuits a great deal of information has come to light about Pikett and his work. Mr. Easley located several experts to analyze, review and evaluate Pikett's work.

Each of these professionals is a well-known leader in the field of scent lineups. They carefully reviewed documents, videos, and testimony to determine whether Pikett was using professional methods and whether his results were reliable. Each of these men submitted lengthy affidavits setting forth their findings. These affidavits are attached to this report in their entirety. A brief summary of what these experts have to say about Pikett and his lineups is set forth below.

Robert Coote, a professional scent-dog handler from the United Kingdom and the former head of an all-British canine police unit, said of Pikett's methods after watching a videotape of him performing a scent lineup: "This is the most primitive evidential police procedure I have ever witnessed. If it was not for the fact that it is a serious matter I could have been watching a comedy."⁶⁴ Mr. Coote went on to say that "in all [his] experience working dogs, [he has] never, ever heard of or seen such an operation. It goes against all the principles of tracking and trailing."⁶⁵

Douglas Lowry, a retired Maryland State Police officer and the current president of the National Police Bloodhound Association (NPBA), testified extensively about Pikett's scent lineup procedures. Although in his Motion for Summary Judgment in the Buchanek case, Pikett claimed that his practices were modeled after those of the NPBA, Mr. Lowry points out in his affidavit that the NPBA decided several years ago to do away with the training of scent lineups at their training schools and seminars because "very few bloodhound teams were found to be consistently proficient in working scent line-ups." He went on to explain that there are "too many variables involved with this type of scent work and unless a handler could show through documented training records that their bloodhound was working at a consistent 100% without a miss, it was difficult to have this scent identification method accepted by judges and the court system." Based on his review of the facts of Mr. Buchanek's case, Mr. Lowry said that the scent lineup procedures "conducted on March 15, 2006 and again on March 21, 2006 by Deputy Pikett and his bloodhounds were not consistent with the method previously described and taught by instructors of The National Police Bloodhound Association, Inc. at training schools and seminars." He went on to say of Pikett's work: "I do not believe or feel that either scent line-up exercise is credible or reliable", noting that it looked as if Pikett was cueing his dog throughout one exercise. He concluded his report by saying:

⁶³ Buchanek v. City of Victoria, et. al, 6:2008cv00008 (S.D. Tex. filed Jan. 29, 2008); Miller v. City of Yoakum, et. al, 6:2009cv00035 (S.D. Tex filed May 12, 2009).

⁶⁴ Leslie Wilber, *Does it Pass the Smell Test?*, VICTORIA ADVOCATE (July 12, 2009).

⁶⁵ See Bob Coote Expert Witness Report. Appendix A.

“It is my opinion that Deputy Keith A. Pikett is doing a disservice to police bloodhound teams throughout the country that are credible and reliable in their work ethics and habits. It is my belief that Deputy Pikett...intentionally misspoke concerning the capabilities and expertise of his scent discriminating bloodhounds in given situations.”⁶⁶

Another expert consulted by Mr. Easley was Steven Nicely, a professional police dog trainer and instructor. Mr. Nicely said, “As a professional police service dog trainer and instructor I can say with reasonable certainty Sgt. Pikett is not acting in good-faith to avoid incorrectly identifying someone as a potential suspect.” In regard to a videotape of a scent lineup he viewed he had this to say: “When the theory of odor and its transfer are reviewed, and then coupled with the claimed abilities of Sgt. Pikett’s dogs, Sgt. Pikett knowing the location of the targets in this line-up is the most logical conclusion or deduction.” After an extensive review and analysis of Pikett’s procedures and actions, Mr. Nicely concluded that: “It is my opinion Sgt. Pikett as a trainer and handler is an unprofessional charlatan....[he] is incompetent as a police service dog trainer.”⁶⁷

Pikett has now come under attack from other quarters. As the lawsuits continue to expose his scent lineups for what they are, a small group of skilled lawyers have mounted increasingly successful attacks on this junk science in individual court cases.

In San Jacinto County—home of the prosecutor who hyped scent lineups as being “as reliable as DNA”—attorneys Shirley Baccus-Lobel and Billy Ravkind tried a murder case in June of this year. The case against their client was based on a scent lineup performed by Pikett and his dogs. After an incisive and well-educated cross-examination of Pikett by Ms. Baccus-Lobel the jury returned with a verdict of “Not Guilty” in thirteen minutes.⁶⁸

Days later, on June 16, 2009, attorney Steven Gilbert succeeded in preventing Pikett from testifying in a case in his home county. After a thorough presentation by Mr. Gilbert, the Fort Bend county district judge ruled that Pikett was not qualified to testify as an expert because Pikett’s scent lineups lacked reliability.⁶⁹

Other lawyers, like Eric Sunde in Houston, have also been successful in preventing the use of scent lineup evidence in court cases.⁷⁰

An able lawyer from Fort Bend County, Derek Smith, has amassed a huge amount of information on Pikett and his “science.” Mr. Smith has carefully prepared

⁶⁶ See Affidavit of Douglas H. Lowry. Appendix A.

⁶⁷ Affidavit of Steven D. Nicely. Appendix A.

⁶⁸ Alex Wukman, *Jury Says Winfrey Not Guilty of 2004 Murder*, EASTEX ADVOCATE, June 15, 2009.

⁶⁹ Transcript of Pretrial Hearing at 163-65 (Volume 2), Texas v. Justin Alexander (2009).

⁷⁰ Affidavit of Eric Sunde (August 15, 2009).

a soon-to-published paper for defense attorneys throughout the state to use in attacking scent lineups.

SOME CONCLUSIONS ABOUT SCENT EVIDENCE

Is the evidence derived from any scent lineup reliable? Is it scientific? Should it be used in Texas criminal cases?

The answer to these questions is “no.”

In its report to Congress, the National Research Council said that:

“There are two very important questions that should underlie the law’s admission of and reliance upon forensic evidence in criminal trials: (1) the extent to which a particular forensic discipline is founded on a reliable scientific methodology that gives it the capacity to accurately analyze evidence and report findings and (2) the extent to which practitioners in a particular forensic discipline rely on human interpretation that could be tainted by error, the threat of bias, or the absence of sound operational procedures and robust performance standards. These questions are significant... So it matters a great deal whether an expert is qualified to testify about forensic evidence and whether the evidence is sufficiently reliable to merit a fact finder’s reliance on the truth that it purports to support.”⁷¹

Scent lineups fail every test set out above. They are not founded on a reliable scientific methodology. Practitioners like Pikett rely entirely on their own interpretations—interpretations that, as we have seen, are riddled with errors and by the desire to please police and prosecutors. The “science” of scent lineups in Texas has no rules, procedures or performance standards. It is being practiced by “experts” without expertise according to no rules except their own.

Answering the question of why this “science” ever came to be used in the courtrooms of this state is beyond the scope of this report. Sadly, the use of these phony techniques joins a long list of other law enforcement frauds used to convict the innocent. As usual, the government has persisted in using this junk and it has been up to a few bold lawyers to try to solve the problem.

These efforts, no matter how noble or strong in individual cases, are not enough to put an end to this practice.

Prosecutors and police are continuing to use scent lineups throughout the state. They are apparently hoping that the controversy over the use of scent lineups will somehow go away and they can get back to business as usual.

⁷¹ STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD, *supra* note 3, at 87.

Their thinking is probably right: the efforts of lawyers in a few cases will never be enough to eradicate the widespread use of scent lineups in Texas. As long as the government of this state fails to act more people will be accused and convicted on the basis of this unscientific and phony “evidence.”

WHAT HAS TO BE DONE

The appellate courts of this state have failed to prevent police and prosecutors from using junk science like scent lineups. The fact that Pikett and others of his ilk are still being used in criminal cases and given free rein to victimize the innocent is a sad comment on the quality of the Texas criminal justice system.

Action will have to be taken by the legislative and executive branches of government to prevent the further use of this “science.” We call on those branches of government to do the following:

1. We call on the Forensic Science Commission of the State of Texas to conduct a full investigation into the use of scent lineups and to prohibit them from being used;
2. We call on the Timothy Cole Advisory Panel on Wrongful Convictions to investigate the role that junk science has played in Texas’s growing number of false convictions and to report their findings to the legislature;
3. We call on the Governor’s Office to immediately suspend the giving of grant money to any police agency using scent lineups and to issue an executive order forbidding the use of this phony “science” by law enforcement;
4. We call on the prosecutors of this state to reverse their unjust course and immediately cease and desist from any further use of scent lineups in criminal cases;
5. We call on all police agencies in this state to stop using scent lineups immediately;
6. We call on the Attorney General of Texas to stop using scent lineups, to conduct a full and complete investigation into every case in which scent lineups have been used, and to aid in the release of any person convicted on such testimony;
7. Finally, we call on the legislature to pass meaningful laws prohibiting the use of junk science in the courtrooms of this state and to allow for the release of citizens who have been victimized by it.

Appendix A:
Expert Reports and Affidavits



EXPERT WITNESS REPORT-PREPARED BY-BOB COOTE.MBIPDT.

Former Head Of Major UK Police Force Dog Section

Training

- Qualified Police Search Coordinator.
- Qualified Police Search Advisor.
- Senior Police Management Course, Bramshill.
- Health & Safety Management Course.
- Scent Discrimination Course, Budapest, Hungary.
- Qualified Police Advanced Driver.
- Inspectors Management Course.
- Home Office Betting and Gaming Course.

Benchmarks & Milestones

- Qualified as a Home Office Police Search Coordinator & Advisor at HM Royal Engineers Chattenden, Kent.
- Awarded six Chief Constables Commendations for a variety of matters including the organisation of a major complex search involving a large number of police officers which resulted in the recovery of the bodies of two murdered school children who had been missing for several days.
- Awarded Police long service and Good conduct Medal.
- Responsible for the strategic Development of Merseyside Police Dog section and the development and erection of a new kennel complex.
- Invited to attend Scent Discrimination Course in Budapest, Hungary.
- Guest speaker for 5 years on Explosive Detection search dogs at Chattenden.
- Between 1992 and 1996 represented the UK as an advisor to the United Nations Drugs Control Programme. Visiting numerous countries around Europe observing various methods of dog training.
- Implemented Breeding Programme for Force Dog Section.
- Leading POLSA at Aintree Grand National 1997 responsible for decision making after Terrorist threat and eventual evacuation.

Employment Chronology

Consultancy to United Kingdom Border Control Agency. (setting up of dog Section in France to detect illegal immigrants to UK.)

- Consultancy to Singapore Army.
- Train & Supply Explosive Detection Dogs to Saudi Aramco.
- Merseyside Police.
- Retired after 33 years service.
- Dog Section Officer in charge of Major UK Police Dog Section.
- Operational Support Division Supervisory role as Inspector.
- Uniform Inspector Supervisory role.

- Promotion to Inspector 1985.
- Operational Support Group supervisory role as Sergeant Public Order, Firearms
- Sergeant Vice Squad, gaming, vice etc.
- Promotion Sergeant 1979.
- Dog Section, Police Dog Handler.
- Criminal Investigation Dept. Murders, Rapes, Crime investigation.
- Uniform Constable.

REPORT-Michael BUCHANEK

It may be useful if I first of all mention the procedure used in the United Kingdom as a comparison which governs the use of Police dogs. All police dog training has to be carried out in accordance with the A.C.P.O. police dog sub-committee. After initial training the handler and dog are tested once per year in all disciplines, the tracking and property search is included in what is known as part two. The team are either marked competent (pass) or not competent (fail) the handler and dog are licensed to perform operational duties for a further twelve months if they are competent in **all** disciplines. I have not come across any circumstances whereby a Police dog section have allowed dogs and handlers to perform operational duties unless deemed to be competent. These records are always available for any subsequent court hearings.

Selection Of Dogs- Dogs are used for Police work because their keenness of smell far surpasses that of a human being. A dog's nose is ideally adapted for the detection of the faintest of odours. It is kept moist by glandular secretions and is extremely sensitive to the slightest air currents.

The acuteness of sense of smell in animals is governed by the OLFACTORY GLAND within the nose of the animal. In humans the olfactory mucous membrane covers only a small area in the upper part of the nose, in the dog this tract is of a much greater size. This difference in the size of the sensitive area has nothing to do with the size of the animal it serves. The human and many other creatures are much bigger than the dog yet have smaller tracts this is because the facial bone structure is different causing a different current of air in respiration.

To a dog, following a line of scent which it wants to follow is as natural as eating, and it really needs no teaching, but you must induce it to follow a trail which although not necessarily of interest to the dog, is of the utmost importance to us.

All dogs have noses with olfactory systems therefore all dogs have the ability to smell and in every breed of dog you'll find animals capable of tracking. The larger breeds have less trouble with the heavily overgrown areas and seem to handle the stamina requirements better. No matter what breed is used it is important that the dog has the drive and temperament to match the handler.

Scent Strength- From the moment a person walks through an area, the strength of the airborne scent, the body odour, and the track scent begin to diminish. The first to become undetectable is the airborne scent, the second to go is the body odour and last of all to disappear is the track scent itself.

Scent- Scent is an odour, a smell it may be Pungent or Fragrant, constant or elusive, static or vagrant, lasting or fading, strong or weak. Whichever it may be, the

trails which dogs follow have one thing in common i.e. moisture. Without moisture there is no scent, scent is retained in moisture and the period of retention, the lasting quality is determined by the length of time taken for moisture to evaporate.

In this particular case we are concerned with human scent. Our bodies are continuously shedding skin and hair which is being replaced. Our bodies discharge moisture through the pores of the skin (perspiration). Armpits, feet and hands are three parts that exude most.

Track /Ground Scent- When a person, animal or object moves through an area by coming in contact with the ground the vegetation is crushed (or damaged) wherever the person, animal or object comes in contact with the ground. This 'different' scent, or odor where the area has been disturbed is what I call 'track scent'. Track scent will take a very long time to reduce to nothing and maybe increased by light rain, heavy dew or time of the day. In the early morning when the sun is rising the temperature is increasing causing evaporation, the track scent will seem to strengthen and if the weather conditions are just right for example a foggy atmosphere with no sun cool air and virtually no wind, the track may linger for days. On the other hand, heat with a good stiff breeze will cause the track scent to become undetectable in a very short period of time.

If the vegetation is lush it will help the dog if it is sparse the scent retention is not as good as the lack of shade assists the sun to reach the moisture more easily. Forestry may afford good tracking as the ground retains moisture very well.

Rock, tarmac and concrete surfaces make tracking difficult, scent may last for only a short time. There is very little moisture and very little ground disturbance when walked on. Heat evaporates any moisture very quickly and the wind disperses the rising scent.

Pedestrian or vehicular traffic will disperse a scent.

Body Odour- When a human being touches or handles an item he/she imparts his/her own scent to the article touched. Over the years many dogs have proven without question their ability to not only detect this individual body odour but have been taught to indicate or retrieve only that article which possesses the particular body odour they have been taught to indicate.

When this scent is left inside a building or a vehicle it can remain for a very long time not being exposed to the elements. On many occasions over the years I have trained dogs to search for drugs and explosive scents in buildings and we could not use the same venues for many months as the scent has remained.

When a person walks through an open area they will leave their body odour on anything they come into contact with, this body odour will combine with track scent where the person has walked leaving a scent for the dog consisting of track scent, body odour and odour of the particular footwear and clothing that has come into contact with any part of the traveled area.

Airborne Scent- When an individual is upwind of the dog, that individual can be detected easily by the dog's sense of smell through body odour that is being carried by the moving currents of air. Once an individual has passed through an area the body odour will be carried to many different areas where it may be captured by ditches, potholes, tree lines etc. Later the changes in wind may cause this trapped body odour to be released where it is then 'airborne scent'. The combination of track scent and the body odour will likewise be carried by the wind many yards off the actual track left by the individual. That scent which is carried by the airborne currents is what I call airborne scent.

Tracking Dogs- The tracking dogs follow very close to the actual track with their noses very close to the track and never track with their heads up. Their pattern of following a track seldom deviates more than a few feet off the actual track. They become so engrossed in the track scent that they become oblivious to normal distractions encountered on a track.

Trailing Dogs- The trailing dogs follow the body odour with their heads down when tracking with the wind but lift their heads when tracking into the wind. It is not unusual to see trailing dogs follow a track as much as ten to twenty yards down wind of the actual track. They are easily distracted by normal distractions and have the tendency to want to check things out by sight.

Scent Discrimination- Scent discrimination, or scent identification line ups as it is known now has been pioneered by the Dutch who have been working on it for years. It is not accepted in the United Kingdom as evidential value in the courts albeit is widely used in another form in the fight against terrorism and drugs.

Although I have not been able to ever use it for evidential value I have studied it in Holland and Hungary and basically it is the term used when a dog is allowed to smell an object and then identify that human scent on that object by indicating on a second article which contains the same scent. This second article is picked up from a line up of identical articles. Like all scent issues for evidence it is important not to have cross contamination, in other words care must be taken when obtaining samples making sure only one scent is transferred to each swab or scent pad in order not to confuse the dog.

Some countries including the Dutch see it as such a specialized field that they keep designated dogs for the procedure and do not use their tracking/trailing dogs.

Conclusion- I have read all the papers and statements in this case and I have visited the scene where the deceased was found. I base my opinions using my practical experience of more than 35 years working with police dogs.

First of all I will make mention of the dogs used in this case. I have never seen the dogs work therefore can not make any assessment, I can only comment with regards to the facts available to me. They are Bloodhounds and if trained correctly should be able to achieve results within their capabilities as with other working dogs used throughout the world for police work.

When I read the extensive experience of Mr. Pikett and the past history of the dogs 'Quincy' and 'James Bond' in relation to felony trails and scent pad line ups I am

unable to gain any information relating to this case. The information I would have required to make an assessment or comment would be how many successful felony trails had been made when the offender(s) had been driving a motor vehicle, and how many successful scent line ups when the control sample contained multi scents.

If I can now deal with the scent line ups. As I have mentioned previously this is a procedure not used in the UK but is used in the rest of Europe where I have studied and observed it's use. Single purpose dogs are preferred in Europe but I accept that in the United States it is accepted to use multi purpose dogs in other words dogs that track and trail and also perform scent line ups.

The procedure and principles however is the same all over. There should be a level playing field when conducting scent line ups, it does appear that this has not been the case with Mr. Buchanek. It was bad practice to obtain a scent sample from the will document of Mr. Buchanek it must be reasonable to assume that this document had been handled by other people, how many I do not know, all comparative scent samples should be taken from the hands if possible. In this case it has created for the dog what is known as a complex of odours (combinations of different scents) the animal is much more sensitive to a single odour than if the odour is presented as part of a complex. When odours are superimposed on each other it is usually the top one that is prominent, again it is reasonable to assume that Mr. Buchanek's odour would perhaps not be the top one on this document after he had signed it etc.

Now we have to look at the result of the scent line up on 21st March 2006 when Mr. Buchanek was a suspect. It is important that the first officers to arrive on the crime scene are aware of the possibility of scent identifications right from the beginning. This prevents the contamination of relevant material. Having spoken to the person who found the body and was present when officers arrived it may well be that this important factor has been breached and I will speak in more detail of this later.

It is an ACTUAL FACT that Mr. Buchanek was not at the scene where the body was found therefore it would not be possible for the dogs to indicate his scent on the rope or the victims body. With regards to the other items in the scent line there could be an explanation to positive identification on the purse and cell phone and perhaps personal items in the vehicle. Scent can last for quite a while indoors and the fact that Mr. Buchanek had dated the victim several weeks previously, this could be a possible explanation. I am not sure with regards to items taken from the trunk of the vehicle without knowing what they were, and I feel it unlikely his scent would be on the bedding.

Apart from the previous items mentioned I do not know why the dogs indicated Mr. Buchanek with scent from the rope and body in my opinion it was not possible.

I notice from statements that another scent line up was performed on 10th August 2006 some five months later with Mr. Grimsinger in the line up and the same articles used. This of course substantiates my previous comment that scent can last for some time but also raises the issues of multi scents because apart from the rope and the body, it is suggested that both Mr. Buchanek and Mr. Grimsinger had their scents on the remaining articles.

I will now deal with the use of dogs at the scene and surrounding area of where the body was found. The first use of a dog was on Wednesday 15th March 2006 when a bloodhound from the TDCJ was called to where the purse and cell phone was found.

The behavior of this dog is what I would expect from a trained dog working to its capabilities, it was given a scent but after a short time lost the scent and was unable to continue, the handler believing that the property was thrown from a vehicle and the dog would not be capable of trailing a moving vehicle.

I will now discuss the trail from where the body was found to the home of Mr. Buchanek.

It is my understanding that the body of the deceased was found at the scene in the late afternoon/early evening of Wednesday 15th March 2006 and the bloodhounds arrived at approximately 1830hrs.

I also believe that the body had been at the scene for approximately 24 hours. When I visited the scene I spoke with the person who first saw the body and reported the find, Royce Berger. He pointed out to me that the body was lying a few feet into a field the other side of a wire fence and he observed from the roadway. He said that numerous persons then turned up at the scene and that he Mr. Berger stayed on the roadside but most of the people at the scene were actually walking around the body on the grassed area.

If this is correct, I would suggest that this is not the correct way to preserve evidence at a murder scene and as I have previously mentioned, officers should be aware that at some future date scent identification parades may be necessary.

On arrival at the scene, Deputy Keith Pickett then took his scent pads from the victims body and also from the rope wrapped around her. He allowed the dogs to smell the pads and the scent from the surrounding area before commencing his trail.

If what Mr. Berger has stated is correct in relation to the possibility of a lot of cross contamination at the scene around the body I would suggest that the dogs could have been following anybody's scent that short distance from the field to the roadway, presumably everyone left the field at the same exit point.

Reading from the Affidavit of Detective Sam Eyre, it says that 'Quincy' and 'James Bond' trailed the scent of the rope from Blackwells body directly to the residence of Michael Buchanek. I would argue that this would be an impossible statement to make given that initially the dogs could be trailing one of a number of scents from within the field to the roadway.

Prior to me visiting Texas, I asked for a specific expert weather analysis report on and around the date of the murder and this was duly supplied for me.

It can be seen that from 0930hrs on Wednesday 15th March 2006 up until the time the dogs commenced trailing, that wind directions were EAST to SOUTH EAST 9-23mph which is medium to high with gusts 23-28mph which are high. The highest temperature during this period was 73f and the lowest 45f.

I have mentioned early on in my report that heat and wind play a great part in reducing the detection of scent and also how the scent strength starts to diminish after a period of time. I would suggest that in these circumstances, although we are unable to say how many gusts of wind had occurred during the period the body was lying there, from the weather information supplied, I would say that throughout the day scent would have been blowing at times east to south east which as can be seen from my sketch would take it across open fields on the opposite side of the roadway.

If we presume that the dogs have left the field after negotiating numerous scents and commenced a trail from the roadside of the fence they would have been trailing a scent which was blowing east to south east.

I have now completed the full trail in a vehicle, as described in the Affidavit and made my notes on sheets 1-8. I must stress I have made the notes and opinions based on trailing an offender who has made off on foot.

Albeit the trail would be approximately 24 hours old when the dogs commenced and given the wind and heat conditions, it would still be possible for trained dogs to pick up intermittent fading foot and airbourne scent along Hanselman Road as there are grass verges, telegraph poles and hedges. The fact that the wind was blowing east to south east and the dogs were trailing east would indicate a moving scent because of these wind conditions.

When the trail turned north into Burroughsville road the scent would still be blowing east to south east and again traces could still possibly be attached to poles and hedges. As soon as Burroughsville road reached the point where highway 59 crossed over it all traces of foot scent would be lost due to the traffic and open area leading on to loop 463. I understand that an average daily traffic count revealed that 13,200 vehicles per day used this section of road on the date in question. Assuming at least 24 hours had elapsed since the offending scent left the scene where the body was found and the dogs commencing a track, in excess of 20,000 vehicles could have driven along this scent area.

As mentioned, I base these opinions on trailing a suspect on foot. In this case I am told that the offender left the scene in a motor vehicle. There could have been some slight foot scent on the road but once the vehicle drove off there would not be any scent to follow, I am not aware of any dogs that can trail a moving motor vehicle.

At this point I think I should mention two American publications that I have viewed which I feel agree with my opinions and knowledge in relation to this case.

The first is the Leerburg web site produced by Ed Frawley a dog trainer with a vast experience of working dogs. His article is titled 'Bloodhounds myth and fiction' and he lists 6 points to emphasize and I quote 'Bloodhounds cannot perform super human feats that many bloodhound handlers claim they can do' and point number 4 says 'that they cannot follow people who have gotten into cars and driven down the highway'.

The second publication which I received from Mr.Rex Easley is a copy of the Victoria Police Department general orders for K-9 teams. Paragraph 2.06 deals with trailing and item 'A' says-Turn off engine as exhaust fumes hinder the dogs.

Item 'C' says -Contamination of an area can destroy suspects scent.

On 10th June 2008 I received a photograph from Mr.Rex Easley taken from 302 Navajo with a view to 402 and surrounding area. It accompanied a statement from Mr.Don Schmiely who lives at 302.

Mr Schmiely has indicated in his statement that approximately 9.30-1000pm Wednesday 15th March 2006 he was outside his house with his three small dogs when an officer was walking down the middle of the street and asked him to go inside as they had dogs coming towards him.Mr.Schmiely did so and observed that this was

some sort of lead officer and was being followed by presumably a dog handler with a dog(s), he observed the dog(s) stop and sniff around a boat on a trailer near to Mr Buchanek's house 402. Mr Schmiely was later told that the dog(s) then went to Mr. Buchanek's car and front door.

In all my experience working dogs I have never ever heard of or seen such an operation, it goes against all the principles of tracking and trailing. It is quite common to have an officer following a dog handler and dog on a trail to afford protection if needed but always a reasonable distance behind in order not to distract the dog. A dog has a natural instinct to be inquisitive and seeing the officer ahead of it would indeed provoke that action, we must presume that the lead officer started walking at the same time as the handler and dog and that is where the association would have started. The lead officer obviously asked Mr. Schmiely to go inside with his dogs to reduce any distraction but the officer was already a distraction.

In relation to sniffing the boat, this is no different to sniffing Mr. Buchanek's vehicle, again dogs are always inquisitive when they come across something that has a different smell to the surrounding environment. I would suggest that the dog(s) were just going for a walk.

I cannot see how it was possible for the dogs to arrive at this part of the track. I notice from the Affidavit of officer Sam Eyre that he states that the dogs trailed from the body directly to Mr. Buchanek's house yet the dog handler Mr. Pikett says that the dogs were re-scented around loop 463. The question of course is re-scented with what, how could there be any corresponding scent to the scent he was in possession of 24 hours and some 20,000 vehicles later and the fact that the offender who left the body drove away in a motor vehicle.

The distance of the track was over five miles and according to statements commenced between 1830-1900 hrs and according to Mr. Schmiely finished between 2130-2200 hrs. When a dog is tracking/trailing it is not a brisk walk as the dog stops and sniffs so three hours would be pretty quick but in general terms I cannot say that it could not be done. The important issue in this case once again is that the dogs could not have been tracking Mr Buchanek from the scene to his home because he had not been at the scene, which begs the question what were the dogs following if anything.

I do not have any other answers as to why it has been said that the dogs trailed from where the body was found to Mr. Buchanek's home address I am aware that it is an actual fact that he had never been at the scene which would confirm my opinions in relation to this case.

R. Coote.
MBIPDT

July 12, 2009

TO: Rex L. Easley, Jr.
Cole, Cole, and Easley, P.C.
302 W. Forrest, P.O. Box 510
Victoria, Texas 77901

FROM: Corporal (Ret.) Douglas H. Lowry
Maryland State Police
President, N.P.B.A.
341 Nottingham Road
Hagerstown, Maryland 21740

REF: Affidavit of Douglas H. Lowry

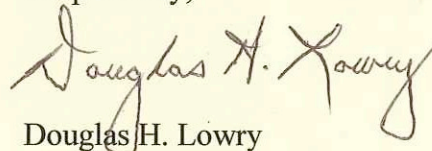
Dear Mr. Easley, "Rex"

For your information, reading, approval and records, attached you will find my affidavit in reference to Michael Buchanan vs. City of Victoria, Texas, Richard Jones, Sam Eyre, Sheriff T. Michael O'Connor, Tom Copeland, Anthony Daniel, The County of Victoria, Texas, Keith Pikett and Ford Bend County, Texas, Civil Action No. 6:08-CV-00008.

I would like to "Thank You" for the confidence you displayed in me by asking for my assistance, and the small part I was able to contribute to this investigation.

If I can be of any further assistance to you in the future, please feel free to contact me.

Respectfully,



Douglas H. Lowry

**THE NATIONAL POLICE BLOODHOUND
ASSOCIATION, INC.**

Douglas H. Lowry

President

*Field Training Coordinator, Senior Field Training Instructor
Instructor Review Committee Chairman*

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**FOR THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

MICHAEL BUCHANEK,
Plaintiff,

CIVIL ACTION NO. 6:08-CV-00008

vs.

JURY TRIAL DEMANDED

CITY OF VICTORIA TEXAS
RICHARD JONES, SAM EYRE,
SHERIFF T. MICHAEL O'CONNOR,
TOM COPELAND, ANTHONY DANIEL,
THE COUNTY OF VICTORIA, TEXAS,
KEITH PIKETT, and
FORT BEND COUNTY, TEXAS.
Defendants

AFFIDAVIT OF DOUGLAS H. LOWRY

THE STATE OF MARYLAND

COUNTY OF WASHINGTON

Before me, the undersigned authority, did personally appear Douglas H. Lowry, known by me to be the person whose name is subscribed below, and upon his oath, he did dispose and state as follows:

1. My name is Douglas H. Lowry and my address is 341 Nottingham Road, Hagerstown, Maryland 21740. I am over twenty-one (21) years of age and in all ways qualified and competent to make statements contained within this affidavit. I am of sound mind, capable of making this affidavit, and have personal knowledge of the facts and opinions I state herein. I swear everything stated herein is true and correct.

2. I am a retired Trooper with the Maryland State Police, and achieved the rank of Corporal, retiring in August of 2005 after thirty-two (32) years and seven (7) months of dedicated service, dedicating twenty-six (26) years to the Agency Canine Unit. My goals and interest during my tenure in the Canine Unit were to expand my knowledge and expertise through many years and experiences working with police dogs in their various functions. Foremost, my goals and interest as before and since retirement are to continue to promote the development and use of the purebred bloodhound in the field of law enforcement.

3. During the span of my career in the Canine Unit, I trained and handled German Shepherd patrol dogs, drug detector dogs, bomb dogs, a gun dog, a cadaver dog and man trailing bloodhounds. I was Head Trainer for the Maryland State Police Canine Unit for eight (8) years, training several dog teams for the State Police and various allied agencies to include drug detector dogs for the Bermuda Police Department. I have assisted many various local, state and federal law enforcement agencies on criminal cases and search and rescue calls. I have participated as a field training instructor for numerous trailing dog seminars throughout the country. My resume is attached hereto and made a part hereof.

4. I became a member of the National Police Bloodhound Association in 1982, served as the Association's Vice President for fourteen (14) years and have been a Field Training Instructor for twenty-six (26) years. I am Senior Field Training Instructor for the "advanced group" of man trailing bloodhound teams for the Association. I currently serve as President, Assistant Training Officer and Field Training Coordinator for the Association and as Chairman of the Instructor Review Committee.

5. At the request of Counselor Rex L. Easley, Jr., I have reviewed discovery material to include Deputy Keith A. Pikett's deposition and affidavit, Detective Sam Eyre's affidavit, police reports, maps, traffic and weather reports, and a DVD labeled "SO6-04461 Ft. Bend County Sheriff Office DVD #12", in the case of Captain Michael Buchanek filed in federal court in Victoria, Texas.

6. As a result of my review of the information I have at hand regarding the case of Michael Buchanek, and based on my training and experience in working with numerous types of police dogs in various facets of scent work, to include the man-trailing bloodhounds, I will render my observations and opinions associated with this particular case.

7. I do not believe that Michael Buchanek scent could have been present on the body of Sally Blackwell at the location where her body was discovered. It is apparent that a time lapse exists from the last occasion Michael Buchanek had physical contact with Sally Blackwell. There is also a time lapse between the time the body was discarded and the time scent pads were obtained from the body. These factors in themselves would lead me to believe Michael Buchanek's scent was not present and would negate the fact that suitable and viable scent pads could be made and obtained for any trailing dog, whether it be a bloodhound or not, to work a reliable scent trail from. Given the time lapse factors, atmospheric (weather) conditions and also the commencing and ongoing process of body decomposition occurring that certainly, in my opinion would affect and alter any type of scent.

8. It is my opinion that vehicle trails can be worked by trailing dogs, but only to the extent that the handler will be able to recognize through their the dog's body language that there is a lack of scent or the presence of no scent, that a person has entered a vehicle and depending on the circumstances and environment, that possibly a direction of travel of that particular vehicle could be given or surmised. I do not believe that a trailing dog is capable of following a vehicle trail for any distance, particularly if that trail is of the length, has the time lapse factor and transverses roads, streets and highways that are described in this particular case.

9. Another factor that may be looked at in the scent trail worked by the bloodhounds in this case, is that in training, a bloodhound, or any dog for that matter, is trained in a way that it follows the scent that the dog is given from Point A to Point B (start to finish) and is discouraged from "backtracking" on the scent trail. I would not allow a man trailer of mine to work a trail backwards for any distance other than for a few yards to check himself/herself, or to circle when losing the scent trail in an attempt to locate that trail again and proceed towards its direction of travel and end. The bloodhounds in this case are basically attempting to work a backtrack on a vehicle trail.

10. I do not agree with the fact that the bloodhounds being utilized on this scent trail are working at such a fast pace (sometimes running), given the age of the trail (apparently one to two days old), the type of trail being worked (a backtrack on a vehicle) and the environment they are working in (hard surfaced roadways, streets, highways with major intersections and heavy traffic flow).

11. I do not agree with the fact that the bloodhounds are being switched off to "check one another's reliability" on following the correct trail. It appears to me that the performance and work of the bloodhounds are being doubted by the handler. If the trail is of any length, why not stop the bloodhound for a few minutes, rest, and continue on with the trail. I have always believed in the practice of training a dog to rest, if needed, and then continuing the trail, instead of pulling the dog off the trail that you believe is being worked correctly.

12. It is my belief in reviewing this case, that scent pads obtained from Sally Blackwell's body are being carried by the handler or someone else along the scent trail as it is being worked. Every time a bloodhound is switched out for another bloodhound or is given the scent or re-scented, the scent from Sally Blackwell's body is being put and present at the location of the switch out of the bloodhounds and the re-scenting. The scent article that the dog was started from to work a trail, or a scent article associated with the person being trailed, should never be carried along by the handler or someone else on the trail being worked.

13. I do not believe that one dog should be worked overtop another dog to verify a trail. How does one know whether the second dog is following the actual scent trail just worked by the first dog or if it is just following the first dog's route of travel? This is another factor that needs to be considered.

14. Concerning the matter of Michael Buchanek's scent being present on the body of Sally Blackwell, the rope found draped around her body, her cell phone, purse and bedding, it is unbelievable to me to think that anyone would surmise or contend that the scent of Michael Buchanek would be present or remain on the body, the rope or personal belongings and items of the victim. As stated previously in this affidavit, the factors of time lapse of the last physical contact between Michael Buchanek and Sally Blackwell and the discovery of her body, the part the weather condition may have played in this time period, and the decomposition process would negate any findings or at the very least, greatly alter the scent of Michael Buchanek, or any other person for that matter, who may have been in contact with Sally Blackwell, while living, or her deceased body when found, to include the convicted killer, Jeffrey Grinsinger.

15. During the time lapse between the physical contact between Michael Buchanek and Sally Blackwell, did she not ever bathe or launder her bedding during that time? Simply by Sally Blackwell bathing or laundering her bedding during that lapsed period of time, would that not cause a reasonable person to believe that Michael Buchanek's scent or skin cells were "erased" to the point that it was not believable that a trailing dog could have possibly been able to work any type of scent trail of Michael Buchanek's?

16. Therefore and in my opinion, because of their previous physical contact with one another and due to the time lapse involved and other factors stated, the theory of Michael Buchanek's scent being transferred from Sally Blackwell's body to the rope used by her convicted killer, Jeffrey Grimsinger, is totally absurd, unjustified, and unbelievable.

17. I would like to address the matter of Michael Buchanek's affidavit designating his power of attorney while he was away in Iraq. It is my understanding that this legal paperwork, having been drawn up and completed, was signed by Michael Buchanek and witnesses. The paperwork was then given to Sheriff T. Michael O'Connor and was contained within a manila unsealed envelope. This paperwork had been placed in a safe by Sheriff O'Connor for safe keeping and had been in his possession for a year or two for safekeeping.

18. Upon Sheriff O'Connor retrieving the envelope and handing it to Deputy Pikett, the envelope was believed to be unsealed, according to Deputy Pikett; unsealed in that the envelope was not adhesively gummed or taped shut. Deputy Pikett claims to have taken a sterile gauze pad and wiped it across the page where the signature of Michael Buchanek was located in order to obtain Michael Buchanek's scent from the paper. It is my belief and opinion that again, due to the time lapse between the time the paper was handled and signed by Michael Buchanek and the time the gauze pad was wiped across the page, no scent of Michael Buchanek was available or present on the paper. In addition to this factor, other factors to be considered are that other persons, namely the Sheriff O'Connor and any witnesses also came in contact with this document. In what manner and what location had the document been stored, was it moved or did it stay in one particular location and what other articles or items had the document come in contact with that would have been absorbed by the paper in the year or to it was stored for safekeeping?

19. I have read repeatedly the description of the scent pad line-ups performed by Deputy Pikett and his bloodhounds on March 15, 2006 in the parking lot of the Victoria Police Department. I have also reviewed in detail the video of the second scent pad line-ups conducted by Deputy Pikett and his bloodhounds with the assistance of Detective Sam Eyre in Fort Bend County, Texas on March 21, 2006.

20. Scent line-up procedures conducted on March 15, 2006 and again on March 21, 2006 by Deputy Pikett and his bloodhounds were not consistent with the method previously described and taught by instructors of The National Police Bloodhound Association, Inc. at training schools and seminars. Deputy Pikett elected to use scent swabs (gauze scent pads) placed in six (6) cans placed in a line at intervals apart from one another with one scent pad per can, instead of using actual people in his line-up as prescribed by the N.P.B.A. In retrospect, by using scent pads in place of actual people, in the true sense of the word, a "scent match" exercise has been created instead of that of a scent line-up.

21. The Training Committee of The National Police Bloodhound Association, Inc. made the decision a few years ago to do away with the training of scent line-ups at their training schools and seminars. The reasons for this decision being made was that very few bloodhound teams were found to be consistently proficient in working scent line-ups, there were too many variable involved with this type of scent work and unless a handler could show through documented training records that their bloodhound was working at a consistent 100% without a "miss", it was difficult to have this scent identification method accepted by judges and the court system. A handler is always at the risk of having the dog not performing well for one reason or another on a particular day, and I, for one, would not want to be responsible for my bloodhound, no matter how experienced and well he/she performed in the past, identify an innocent subject in a line-up or identify someone else other than the suspect or "person of interest" who is a part of the line-up.

22. During my career as a police canine handler and trainer and through the years as an N.P.B.A. instructor, I have been afforded with the opportunity of working, observing and training several various types of police dogs, to include the man trailing bloodhounds in their specialized fields of scent work. I have learned to look for the particular "body language" that a dog exhibits in its own individualistic manner when working and the alerts that are given when finding their scent source. Some dogs are very animated with their body language and alerts that are obvious to the onlooker; other dogs may be less animated with their body language and alerts being less distinguishable.

23. In my review of the scent line-ups performed by Deputy Pikett and his bloodhounds, I made several observations from the video that are somewhat disturbing to me and I wish to expound on. I wonder why the scent line-ups weren't conducted using actual people with the "person of interest" or suspect being part of the line-ups? Watching the movements of Deputy Pikett while handling his dogs, I noticed that for the most part, the trailing lead is being held tight and is taut, almost vertical from the dog's harness to Deputy Pikett's hand which is positioned high overtop the dog. Why not handle the lead in a manner that it can go slack or use a longer lead enabling the dog to work with more freedom without any influence or restrictions from the handler? It was also noted that Deputy Pikett seemed to slow when approaching the can that held the scent pad containing the alleged scent of Michael Buchanek. I also was able to hear Deputy Pikett say the work "check" to the dog while slightly pulling the lead upwards at the "target can" where it was evident that Deputy Pikett would stop and plant his feet with his feet together. After the dog was taken away from the "target can", Deputy Pikett would increase his walking pace and not have the dog search any of the remaining cans in the line. On one particular occasion, Deputy Pikett requests Detective Eyre to take the scent pad containing the alleged scent of Buchanek's and move that particular scent pad from one can to another can containing a "filler scent" where the dog had twice stopped, and put the "filler" scent in the can that originally held Buchanek's scent pad.

24. Further observations I made while reviewing the scent line-up video concerns the general body language and mannerisms of Deputy Pikett's bloodhounds Jag, James Bond and Quincy. When Deputy Pikett introduced the scent article to the dogs, they were very subtle in taking the scent and seemed uninterested in what they were about to do. I am somewhat doubtful if the dogs actually took the scent when the scent article was presented to them. For the most part they are worked on the back side of the line of cans by Deputy Pikett. In the majority of scent line-up exercises, the dogs worked at a slow walking pace with their heads up, looking around at other things and never really seemed to be focused on the cans or the task at hand. It looked to me that they were just taking "a walk in the park" instead of conducting scent line-ups. I saw very little to no change at all in their body language and no alerts were evident to me in any of the fourteen (14) scent line-ups exercises conducted by the three bloodhounds of Deputy Pikett.

25. Of the fourteen (14) scent line-up exercises that I viewed over and over again, it was noted on six (6) different occasions, two bloodhound were worked in succession with the "target can" containing the scent of Michael Buchanek staying in the same can without being moved to another can in the line-up; i.e. "target cans" in the scent line-up exercises were as follows in the one (1) through fourteen (14) different line-up searches using Deputy Pikett's three bloodhounds, Jag, James Bond and Quincy. The "target can" for searches one and two was can #4; the target can for searches three and four was can #2; the "target can" for searches five and six was can #6; the "target can" for searches seven and eight was can #4; the "target can" for searches nine and ten was can #5; the "target can" for searches twelve and thirteen was can #5. It is evident that these "target cans" were of common knowledge to Deputy Pikett,

26. In viewing the video, I believe that Deputy Pikett was "cueing his dogs" during the scent line up exercise conducted on March 21, 2006. By his lead control and positioning of the lead, his jostling, pulling of, and holding back on the dog lead on several occasions, slowing his walking pace while approaching a "target can", his footwork and placement of his feet (standing flatfooted with feet together) beside the "target can" and his voice control (stating to the dog to "check") while stopped beside the "target can") all played a part in the "cueing" of the dog to give an alert on the "target can". However, I must say that I did not recognize any noticeable change of any kind in the bloodhounds' body language to convince me that an alert was given by any of the three bloodhounds in the fourteen (14) scent line-up exercises conducted.

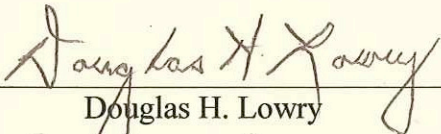
27. It is my opinion, based on my review of the scent line-ups conducted by Deputy Pikett and his bloodhounds on March 15, 2006 and March 21, 2006, the first of which was described in the case reports and the second being viewed on DVD video, I do not believe or feel that either scent line-up exercise is credible and reliable. I further base my opinion on my training and experience.

28. In summary, based on my training and experience, and my detailed and extensive review of the information made available to me and the facts at hand concerning this case, it is my opinion that Deputy Pikett and his bloodhounds could not have followed a scent trail belonging to either Sally Blackwell or Michael Buchanek from the location where Sally Blackwell's body was discovered off of Hanselman Road to her residence at 310 Laguna Drive in Victoria, Texas. I have serious reservations concerning Deputy Pikett's theory of the transfer of scent and believe this theory to be unreliable. I do not believe that Michael Buchanek's scent could be associated with the murder victim, Sally Blackwell through scent transfer, and therefore conclude from this that Michael Buchanek's scent could not have been followed by Deputy Pikett's bloodhounds from the scene of the body to the victim's home, or from the home of the victim at 310 Laguna Drive to Michael Buchanek's home at 402 Navajo Drive. Under the circumstances as I understand them, I do not believe the scent of a body being transported by motor vehicle would exist on or along the route of travel that Deputy Pikett and Detective Eyre said they took on March 15, 2006, with Deputy Pikett's bloodhounds working a backtrack on a motor vehicle trail from the location of the body to the victim's home. It is my opinion and belief that even if a scent did exist, the time lapse from the time the convicted killer, Jeffrey Grinsinger drove the deceased victim, Sally Blackwell to Hanselman Road and dumped her body, the degradation of any scent, either from Jeffrey Grinsinger or Sally Blackwell due to atmospheric (weather) conditions, the time factor, and vehicular and pedestrian traffic along the distance of 5.5 miles of area roadways, streets and highways having major intersection, would make such a trail impossible to work. No dogs that I have ever handled or trained could perform this feat as stated in this case.

29. In July of 1998, I was contacted by the Federal Bureau of Investigation to assist them with a massive manhunt in the Nantahala National Forest near Murphy, North Carolina for the fugitive, 31 year old Eric Robert Rudolph, and suspect in the bombing of a Birmingham, Alabama abortion clinic in January of 1998. More than 200 law enforcement officers from more than 15 different agencies had converged on a 30 square mile area of dense forest of rugged, mountainous terrain. While being involved in this manhunt for ten days, it was brought to my attention that Deputy Keith Pikett had been involved in this search also. He and his bloodhound had been rotated out as "fresh" bloodhound teams were arriving to provide relief to the bloodhound teams that had been working previously; my bloodhound "Jimmy and I were one of the fresh teams just arriving. During my time there, I was advised of the claims that Deputy Pickett had made in reference to the capability of his bloodhound and was questioned as to why my bloodhound could not perform at the same level that Deputy Pikett stated his bloodhound could. I was left with the impression that Deputy Pikett's credibility and reliability was being questioned by some of the federal agents involved in this manhunt.

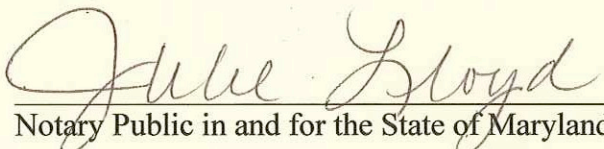
30. It is my opinion that Deputy Keith A. Pikett is doing a disservice to police bloodhound teams throughout the country that are credible and reliable in their work ethics and habits. It is my belief that Deputy Pikett has intentionally misspoke concerning the capabilities and expertise of his scent discriminating bloodhounds in given situations.

Further Affiant Sayeth Not:



Douglas H. Lowry

SWORN TO AND SUBSCRIBED before me this 13 day of July, 2009



Notary Public in and for the State of Maryland

My commission expires Oct. 13. 2012

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

MICHAEL BUCHANEK,

Plaintiff,

vs.

CITY OF VICTORIA, TEXAS,

RICHARD JONES, SAM EYRE, SHERIFF T. MICHAEL
O'CONNOR, TOM COPELAND, ANTHONY DANIEL, THE
COUNTY OF VICTORIA, TEXAS, KEITH PIKETT, and FORT
BEND COUNTY, TEXAS

Defendants

Case No.: 6:08-CV-00008

JURY TRIAL DEMANDED

AFFIDAVIT OF STEVEN D. NICELY

Before me, the undersigned authority, on this day personally appeared Steven D. Nicely,
Professional Dog Trainer, Police Dog Consultant, and proposed Expert assisting Attorney Rex Easley,
attorney for the Plaintiff, who being duly sworn on his oath deposed and said:

My name is Steven D. Nicely, I am over twenty-one (21) years of age, of sound mind, and fully
capable of making this affidavit. The facts and opinions stated herein are true and correct, and they are
within my personal and professional knowledge.

EDUCATION, TRAINING, AND EXPERIENCE IN THE POLICE SERVICE DOG FIELD

My career in the Police Service Dog field began in 1973 as a Marine Military Police K9 Handler.
After leaving the Marines in 1979, I returned to the Police Service Dog field in 1981-1985 with the city of
Leon Valley, Texas. In 1985, I resigned from the Leon Valley Police Department and went directly to
Terrell Hills Police Department, Terrell Hills, Texas. In September 1986, I left Terrell Hills PD. In August,
1989, I was employed by Global Training Academy, a private Police Service Dog company in Somerset,
Texas. I worked for them until 2006 when I resigned and started my own business.

While at Global, I trained approximately 750 Police Service Dogs, all of which had some form of
detection, drugs, explosives or land mines, accelerants, tracking, trailing, and concealed persons. During

that time, I rewrote the training manual, developed record forms, and trained hundreds of officers as handlers, trainers, or supervisors for the Police Service Dog field.

To further my understanding of how animals learn, I began to interact with behavior scientist, and studied behavioral science at the college level. Currently, I am working on my degree in behavioral science. My most recent education in this field came from attending the *International Working Dog Breeders Association* in Ieper, Belgium, May 2009. This association is a combination of behavioral scientist, working dog breeders, and trainers in a wide assortment of working dog task. The main task is Police Service Dogs. I have applied the scientific method the training of dogs since the early 1990's.

PURPOSE OF AFFIDAVIT

The purpose of this affidavit is to inform the court the areas in which I would offer testimony as it relates to the training, lack of certification, and deployment of the handler and dogs involved in this case. The findings and opinions are based on my experience and training, as well as evidence provided.

This affidavit will also help the court understand that Bloodhounds are not the only breed capable of this task (Schoon, 2002) & (People of the State of California v. Benigno Salcido, 2005). The perception that Bloodhounds are more capable than other breeds is not supported by scientific research. That is not to say a well trained Bloodhound cannot work.

Based on the evidence provided, my professional experience, and past professional assessment of Sgt. Pikett's procedures I will provide the court testimony with reasonable certainty that will support that Sgt. Pikett's methods as they apply to police service dogs are a threat to society and that Sgt. Pikett is *deliberately indifferent* to the rights of the public, and/or his knowledge in the police service dog field is extremely lacking. The procedures used by Sgt. Pikett, whether caused by *deliberate indifference* or lack of knowledge, are a threat to society because no actions are taken to reduce the possibility of an innocent person being falsely identified in scent trails or lineups.

PROFESSIONAL EXPERIENCE WITH SGT. PICKETT

I have testified on three different occasions opposing the opinions and practices of Sgt. Pikett as it relates to his dogs.

FINDINGS

1. Sgt. Pikett claims to have acted in *good-faith* as it relates to the training and deployment of his *scent identification dogs*.
2. Sgt. Pikett claims the trail was not "fictitious" and he did not lead his dogs from the location where the body was found to the house of the Plaintiff.

3. Sgt. Pikett claims his dogs are capable of following a vehicle with the target person inside.
4. Sgt. Pikett claims to have not known the location of the scent items as they were placed in any of the line-ups.
5. Sgt. Pikett claims his dog identified the scent of the Plaintiff on March 15, 2006 and March 21, 2006 from items connected to the Plaintiff and to the crime under investigation. It has been established the Plaintiff was not at the body scene nor was involved in the crime.
6. On August 10, 2006, Sgt. Pikett's dogs identified Jeffery Grimsinger as the person at the scene of the body which the Plaintiff was originally identified as being present at. Subsequently Mr. Grimsinger confessed and pleads guilty to the abduction and murder.
7. During the line-up on the video the dogs never exhibited behaviors consistent with any dog detecting something of interest.
8. The video show behaviors by Sgt. Pikett that is consistent with prompts (cues) for the dog to perform some type of behavior.
9. The video shows evidence of behaviors by the assistant that can lead to cross contamination.
10. The video and records show the targets were removed from their cans and placed in other cans.
11. The video shows Sgt. Pikett's dog walking past cans that had the target in them for several minutes and then were recently removed with no claim of identification on the previous can.
12. Page 98 of transcripts in the case of State of Texas vs. Smith, Sgt. Pikett testified that the shaking of hands or bumping of chests is sufficient for scent transfer.
13. Sgt. Pikett is quoted "It works every time. Quincy has done over . . . 1,250 of them and has been wrong twice," Pikett said. "And that was probably my fault." (Liscano, 2007)
14. Sgt. Pikett testified in State of Texas vs. Smith (page 109-110) that "...I'm not even told the outcome of the cases."
15. No records have been provided that show training or testing has been conducted for line-up purposes.
16. Dog cuts corner from Highway 463 approximately 100 yards before it reaches Airline. (Pikett's Deposition of this case Page 90)
17. Officer Eyre was close enough during the trial to provide Sgt. Pikett guidance. (Page 91 Pikett's deposition of this case)
18. "He who uses the dog without lab confirmation is a fool." (Andersson, 1997)

“OPINIONS OF FINDINGS

Many of the opinions as they relate to the findings will be intertwined. Obtaining *stimulus control* of a dog’s behavior in *scent discrimination* is difficult and complex. The complexity of a trail and scent lineup carries over into different areas.

Sgt. Pikett claims to have acted in *good-faith* as it relates to the training and deployment of his *scent identification dogs*.

As a professional police service dog trainer and instructor I can say with reasonable certainty Sgt. Pikett is not acting in *good-faith* to avoid incorrectly identifying someone as a potential suspect.

Records

Sgt. Pikett’s records are extremely lacking in data that could support the dogs’ performance. The profession of police service dogs covers many areas of the behavioral science field. It is considered unethical in the behavioral science field to not keep detailed records in such a manner that others can reproduce events that are claimed to have occurred. As a former teacher of a science, Sgt. Pikett should be driven to follow the scientific method, which he does not do.

Ethics in *behavior analysis* require that when one has reason to believe their services will go before a court they should keep records with “the kind of detail and quality that would be consistent with reasonable scrutiny in an adjudicative forum.” (Bailey, 2005, p. 67) It is important for those involved in areas of behavior modification using a *target stimulus* that cannot be sensed by humans to keep detailed records allowing for testing to insure the animal is under the *stimulus control* of the *target stimulus*. In the case of *scent identification dogs*, the *target stimulus* is the scent provided to the dog for detection and response (once the *target is perceived to have been detected*). It must be demonstrated the dog can be provided one scent, locate that scent, then be provided another scent and locate that scent. It must also be demonstrated that for example: say lineup-1 has scents A, B,C,D,E, & F and the dog is given the scent of A to identify. Then, after the dog has been given time to clear its nose, it is provided, say scent E. If the dog is truly a scent identification dog it will ignore A and only respond to E. Sgt. Pikett provides no training records or testing records in which any *scent discrimination* training for line up purposes has been conducted.

Training records must be complete and accurate to meet the behavioral science standards. Likewise, courts also have taken that position. For example, “The training records produced by the government are incomplete and inadequate. They do not give essential details regarding Oso’s performance...” (United States vs. Clarkson, 2009) “Thus, the training procedure was apparently not designed in the manner best suited to detect and, if necessary, correct any cueing problem.” (STATE OF ARIZONA VS JACQUELYN MARCY WRIGHT, 2008) The records produced in this case had no more behavioral analytical value for the task at hand than the records in Clarkson or Wright.

Certification

While certification is not required by statute, some jurisdictions will not accept a dog’s performance as valid without it. Nonetheless, certification overall is accepted as industry standard and

a requirement within the profession. Pikett's dogs are not certified by any independent third party. "Good Faith" would be certification by an independent source.

Sgt. Pikett claims the trail was not "fictitious" and he did not lead his dogs from the location where the body was found to the house of the Plaintiff.

It is possible that Sgt. Pikett did not guide his dog from the *body scene* to the *victim's* home and then on to the *Plaintiff's* home. However, it is known that the *Plaintiff* was not at the *body scene* in order for his odor to have been present. If the known fact the *Plaintiff* was not the actor of the crime and was in no way connected to the crime is briefly eliminated, and one accepts the theory of Sgt. Pikett that his dogs are capable of trailing someone that is riding inside a traveling motor vehicle, then the evidence still would not support the dogs following the trail from the *body scene* to the locations that Sgt. Pikett claims the dogs lead him to.

Wind and Air Currents Effect on Odor Travel Direction

A review of Sgt. Pikett's credentials first open the door to his understanding or perhaps his lack of understanding of how odor travels. His training does not support he has undergone any formal training that would have taught him how to use a canine in tactical settings to detect a concealed suspect. He is normally called after the suspect has been apprehended, or at a length of time the probability of the suspect(s) still being in the immediate fleeing mode (a very dangerous mode for officers) is unlikely. Although he is rarely looking for a suspect that has just fled a crime scene, odors still travel the same. Perhaps Sgt. Pikett's lack of knowledge of the importance of air currents is why they are not recorded. When air current direction is compared with some of the limited information that is provided of events that occurred during the trail, that supports Sgt. Pikett's dogs was guided by something other than an odor from the *body scene* to the locations they are claimed to have arrived. Although Sgt. Pikett says he did not know where the victim's home was located, his companion Sgt. Eyre did have that knowledge prior to the alleged trailing exercise. Someone who does not understand how their body position when following a team can influence the direction of the team can give cues the handler recognizes and will follow. Sgt. Eyre knew the location of the Plaintiff's residence who they considered a suspect.

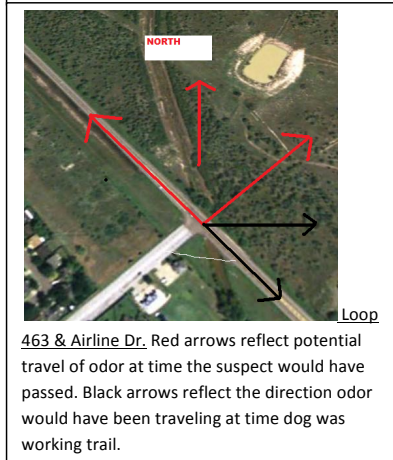
According to *Plaintiff's* original and supplemental complaints the abduction and murder occurred either on the 13th or 14th of March 2006, with the body being discovered on the 15th. According to Weather reports for those days the prevailing winds starting around 6:30 AM CST were northwest to north east. Prevailing northward winds lasted until approximately 9:30 AM CST on the 15th. Sgt. Pikett's reports state he went to the 7000 block of Hanselman at approximately 19:00hrs on March 15, 2006 and made scent pads from the body. At that time the winds would have been south to south east.

On March 13, 2006, the sky was partly to mostly cloudy through around 4:30 PM CST and mostly clear thereafter. No precipitation occurred on this day.. Winds were southeast at speeds between approximately 9-18 mph through around 6:30 AM CST. After 6:30 AM CST, winds were northwest to northeast at speeds between approximately 3-26 mph with gusts to between approximately 23-32 mph, The relative humidity ranged between approximately 12 to 87 percent.. The relative humidity at 7:00 AM CST was approximately 87 percent, while at 3:00 PM CST the

relative humidity was approximately 14 percent. The high temperature was near 80 F and the low temperature was near 53 F.

On March 14, 2006, the sky was clear. No precipitation occurred on this day. Winds were north to northeast at speeds between approximately 7-21 mph with gusts to between approximately 20-24 mph through around 7:30 PM CST. After 7:30 PM CST, winds were variable in direction at 10 mph or less. The relative humidity ranged between approximately 14 to 77 percent. The relative humidity at 7:00 AM CST was approximately 65 percent, while at 3:00 PM CST the relative humidity was approximately 14 percent. The high temperature was near 78 F and the low temperature was near 44 F.

On March 15, 2006, the sky was mostly clear through around 3:30 AM CST and partly to mostly cloudy thereafter. No precipitation occurred on this day. Winds were northeast to east at speeds between approximately 3-14 mph through around 9:30 AM CST. After 9:30 AM CST, winds were east to southeast at speeds between approximately 9-23 mph with gusts to between approximately 23-28 mph. The relative humidity ranged between approximately 55 to 97 percent. The relative humidity at 7:00 AM CST was approximately 69 percent, while at 3:00 PM CST the relative humidity was approximately 57 percent. The high temperature was near 73 F and the low temperature was near 45 F. (COMPUWEATHER FORENSIC SERVICES DIVISION)



The above picture to the left shows the most likely area of where odor would have been located based on reported wind directions when the body was placed. The odor would have been either traveling directly away from Hanselman Rd, directly toward Burroughsville Rd, or between those two points. It would be a logical assumption most of the available odor was moved away from the road.

More importantly, is where the odor of the actor would have been left as he left the scene. The above right picture shows the direction odor would have been traveling from the time the suspect passed the area to approximately 9:30 AM on the 15th of March, 2007. After 9:30 the odor traveled away from the road to straight into the dog's nose. This represented by the

black lines.

The small white line connecting Highway 463 and Airport is the perceived direction Sgt. Pikett's dog allegedly took when it cut across. According to Sgt. Pikett the dog cut across approximately 100 yards before reaching the intersection. (Page 90 of Pikett's Deposition) Due to the extremely small amount of odor that would have been present, and the direction of the wind at the time the odor would have been placed supports this action by the dog at that distance was very unlikely caused by the presence of the *target odor*.

"...because of scent moving, they will work right on the edge of the road, the grass, or in the grass, because the scent is gonna stay better in the grass than it is on the street, so they will run down the edge of the road. The grass -- it's not uncommon on a car trail, because the scent is so poor compared to a foot trail that they want a better trail..."(Pikett page 82 of Deposition)

The most logical and probable actions one would expect from the dog if it was in fact trailing the *target odor* would have seen the dog go into or even past the intersection, realized the odor has stopped and then begin to search for the odor.

Experience in working with other police service dogs trained to detect humans the average distance a dog would detect a person inside a vehicle that is not moving would be around 100 feet. This distance would greatly reduce when the vehicle is moving, if detectable at all.

Difference of Thresholds and jnd (Just Noticeable Difference)

When a dog follows an odor it follows what is known as *DT's* or *Differential Thresholds*. *DT's* are perceived by the dog's abilities to establish *jnd (just noticeable difference)* in the odor. If a dog is trailing or tracking a subject the *DT* are stronger in the direction the subject traveled, and weak toward the start point. One element that assists the dog in following the odor in the direction of travel is *threshold shift*. A good example for humans to consider when trying to understand *threshold shift* is to peel an onion. It will be difficult, if not impossible to detect, by odor, the smaller pieces of the onion, but larger pieces are much more detectable. When *threshold shifts* occur, significant amounts of the stimuli below the now new threshold cannot be detected.

Simple logic would dictate in this case if the airborne odor (from the *body scene* if it had in fact existed) was present, its threshold would have been below the current *DT's* and the probability of the dog detecting it would be very unlikely. At best, it would be adding to the current threshold making it stronger. The probability that *threshold shift* would occur based on the time the dog would have spent in the odor is very high, thus making this trail suspect.

Taking into account: 1) the wind direction at the time the person left the *body scene*, 2) the wind direction at the time Sgt. Pikett and his dog encountered this intersection, 3) the distance diminishing odor of extremely small amounts would have had to have traveled in overwhelming amounts compared to what one would expect to be on the ground, 4) the probability that *threshold shift* had occurred, and 5) nowhere in Sgt. Pikett's training records does he demonstrate any of his dogs have ever cut the corner of a subject on foot 100 yards away from the turn, makes it more probable the dog was being guided by Sgt. Pikett and not odor.

Sgt. Pikett states that shortly after making this turn he had to tie his shoe. That he gave the leash to a non dog handler and that person, Sgt. Eyre experienced the power of the dog and could not control the animal. This is a fact Sgt. Pikett uses to support his position he is not guiding the dog. However, give a race horse to skilled jockey and he can control the horse with slight body language

many do not see. Now put someone on the horse that does not know how to ride or handle the horse and the horse is in control. Sgt. Pikett's comparison between a non-dog handler and a dog handler is like comparing an apple to an orange.

Sgt. Pikett claims his dogs are capable of following a vehicle with the target person inside.

Can a dog follow the trail of someone who is riding inside a motor vehicle? That question stirs a lot of debate. The more important question even if it is possible for some dogs, is whether Sgt. Pikett's dogs are capable, and was independently tested. Exhibit C of Sgt. Pikett's affidavit provides several examples of his dogs having performed vehicle trails. Those records however, do not contain valid behavioral analytical data. For example: wind direction at the time the trail was laid, wind direction at the time it was run, distance of the trail, distance between turns, who laid the trail, evidence to support the trail was at least blind, if not double blind, and a third party witness to verify and record the occurrences.

A diagram of the trail, when it was laid and a diagram of the trail run by the dog would provide support to Sgt. Pikett's assertion the dog cut a corner at 100 yards away from Airline as he was going north on Loop 463. If the dog could have done it during the actual trail, then it would be expected to have documents in controlled settings to support the dog's alleged abilities.

To support his position, Sgt. Pikett cites "Specialized Use of Human Scent In Criminal Investigation:" (Forensic Science Communications July 2004- Volume 6 – Number 3) section **Vehicle Trails** (page 9). However, Sgt. Pikett leaves out Qualification **and Certification** which states:

"Agencies employing a dog team must ensure that the team has met appropriate casework training and preparation standards to ensure the dog's work will be admissible in court. Through and well documented training records, case records, confirmation logs, and if available, prior testimonies can be used to assess a dog team's preparedness for case work. The dog handler should provide these records to provide that the canine has performed reliably in a variety of conditions."

It is questionable that dogs can in fact perform person in a vehicle traveling trails. The following Bloodhound and or Trailing Certifications that certify dogs for police work do not have as part of their certification vehicle trailing or drop trailing:

1. California Post
2. National Police Bloodhound Association
3. Canine Training Academy LLC. Canon City, CO. 81212
4. North American Police Work Dog Association
5. United States Police Canine Association

Who was the dog actually following if it were in fact following an odor?

Sgt. Pikett claims the dog cut the corner at Loop 463 & Airline Road, approximately 100 yards before searching the intersection. It is alleged the dog was following the odor of the Plaintiff. However, it has already been established this is not a fact.

Keeping in mind if the dog was in fact following an odor believed to have been taken from the *body scene*, and the fact Sgt. Pikett claims the dog was capable of detecting an odor source (trail along Airline Drive) 100 yards away that had emitted from a vehicle then the body in which the scent was alleged to have been taken would also contain the scent of every person in a vehicle that may have passed by while the body was on the ground. According to Tx DOT, that would be 13,200 vehicles per day on the portion of roadway involving Loop 463.

Based on Sgt. Pikett's theory that odor exits a vehicle in sufficient amount for the dog to trail, and if one-percent (1%) of the 13,200 vehicles that traveled on Loop 463 had traveled from the road in which the body was located there would be at least 132 different human scents on the body. Sgt. Pikett changing dogs on a perceived trail in which thousands of odors would be present and providing the new dog with an odor that (based on Sgt. Pikett's theory) would likely have at least 100 different human odors. If the dog in fact began to trail a human scent he cannot say the new dog selected the same odor to follow the previous dog did. This fact increases the probability that Sgt. Pikett is guiding the dogs.

Considering Sgt. Pikett claims the dogs, after receiving the scent pad, eliminates those other odors present and does not follow them. The possibility that every person who passed along the road where the body laying, no more than 20 feet away, was identified and eliminated is very unlikely. As a result, if the dog was in fact following an odor, we do not know to whom the odor belonged. If one took Sgt. Pikett's statement as true the dog in fact cut across 100 yards before the intersection of Loop 463 & Airport Road then it must be taken as true the body was contaminated with other's odor that simply passed by. As a result this invalidates the use of the dog in these setting, as we do not know what odor the dog will follow.

To date, I have found no research where and an item was placed and people walked past not touching the item to determine if they would leave sufficient odor for a scent identification dog to detect. Also, no tests measuring the distance away from an item someone could walk or even drive and their scent would be present. Research has been placed on a unit used to extract odor from an item (People of the State of California v. Benigno Salcido, 2005), but little emphasis has been placed on the performance of the dog. In Salcido none of the scientists involved address the accuracy of the measuring device (scent identification dog).

Sgt. Pikett's claim of the dog being able to perform the task it did at Loop 463 & Airline Drive, if correct, invalidates the use of a scent identification dog on evidence that was exposed to other persons. If the odor that had been present for at least 24 hours that is claimed to have emitted from a vehicle and was blown away from the dog's position, then the following day was blown back then it stands to reason every item less than 100 yards from a road will collect the odors of people passing by. Should Sgt. Pikett disagree with this assessment then he is agreeing his dogs cannot trail someone that is traveling

in a vehicle, and the claimed trail was in fact a guided occurrence by him. Stated differently, items in a public place cannot accurately form the basis of valid scent evidence because the distance that odor travels. As a result we cannot establish whose odor could have landed on it, and if this premise is denied, then one must admit that odor emitting from a traveling vehicle is insufficient for discriminatory detection. To support his position that bloodhounds in fact can trail human odor emitting from a vehicle he refers to an *Unsolved Mysteries* video "the unexplained" Yogi a bloodhound. This TV show reporting an incident of May 18, 1993 in Denver, Colorado.

"the unexplained"

Actions by the handler are highly suggestive the handler was in fact guiding the dog in this TV show. The handler constantly encourages the dog. In the first 10 seconds of the dog working the handler is heard at least 4 times giving some form of encouragement. This was from one minute and thirty seconds into the movie. The bloodhound again appears at about 2 minutes and 2 seconds into the movie. The handler is heard encouraging the dog.

The movie immediately cuts and shows again some distance away at about 2 minutes and 15 seconds into the movie. In that time frame of 13 seconds and between the editor's voice the handler is heard giving command and encouragement 2 times.

From about 2 minutes 15 seconds to 2 minutes 23 seconds the handler again is heard twice giving some form of commands or encouragement. There is a break with talking from about 2 minutes and 23 seconds to about 2 minutes and 53 seconds before the handler is heard again. When the handler can be heard again he is talking in an encouraging voice to the dog. From about 2 minutes and 53 seconds to about 2 minutes and 56 seconds the handler can be heard twice giving some form of encouragement to the dog. At that point the commentator's voice overrides the handler's voice. About 3 minutes and 10 seconds into the video the handler is again encouraging the dog. The video immediately goes into comments. About 3 minutes and 14 seconds into the movie the handler can be heard again giving encouragement. From about 3 minutes 14 seconds to 3 minutes 25 seconds you can hear the handler at least on 4 occasions give encouragement.

There is a break with comments and the handler is clearly heard again at about 4 minutes and 7 seconds in the movie, again giving encouragement. From about 4 minutes and 7 seconds to about 4 minutes and 37 seconds when the team is seen at the on ramp the handler encouraged the dog at least 7 different times.

From about 4 minutes and 37 seconds into the movie to about 5 minutes and 7 seconds there are comments being made. When the handler is again heard he is encouraging the dog. From that point there are a series of drop trails conducted. It is truly amazing.

Approximately 5 minutes and 13 seconds into the movie the handler gets the dog out of the vehicle and encourages the dog hooks him to the least and the handler starts in a forward direction. About 5:38 seconds into the movie the dog is seen again exiting the vehicle and the handler is heard encouraging the dog when it get to the ground. The dog starts in a forward direction but the handler

does not follow, so the dog stops. During that time the handler is not heard giving any additional commands of encouragement. Also, the handler's body posturing is changed to a more relaxed position. The handler now claims there is no odor present.

The dog is brought out of the vehicle again at about 5 minutes and 53 seconds into the vehicle. While you cannot see the dog at that moment the handler is heard encouraging the dog and seen immediately moving forward. As they move down the road the handler can be heard encouraging the dog. The dog is last seen on that trail at about 7 minutes and 35 seconds into the movie.

About 9 minutes and 57 seconds into the movie the team is seen again and once again the handler is encouraging the dog.

While this movie is entertaining to the layman, and the title "the unexplained" certainly is true. If bloodhounds/dog are so driven or motivated to follow a trail why did this handler almost constantly have to give encouragement? This practice is not common in dogs I am familiar with used for trailing or tracking. If the act of trailing is a self reinforcing act, as claimed by many bloodhound handlers and trainers, constant encouragement is not necessary. For this handler to constantly provide encouragement reveals that: 1) the dog was being guided, or 2) the dog lacks the proper motivation/drive for the task. Sgt. Pikett providing this video to support his position supports my assertion that his knowledge is very lacking.

The dog is claimed to have gotten approximately 2 miles from the child's body and then pulled off. Because the dog was not allowed to continue, the question still remains whether the dog was really following the target scent? Notice the handler is a law enforcement officer and he would have access to where searches have and have not been conducted. Searches had been going on for (4) four days prior to this exercise. A question that must be answered is where were searches conducted before the dog began the trail and what did the handler knew before starting?

When the dog began to trail back and went back to the apartments where the child was abducted, why did it not lead the handler to some apartment or home in the area? There is no confirmation that the dog in fact, followed the odor of the little girl or that of the suspect. According to the movie the suspect is yet to have been found. While tragic that the little girl was killed, this video raises questions about the team's abilities. Even if this dog was in fact accurate it was not one of Sgt. Pikett's dogs and it does not support his dogs' abilities.

Sgt. Pikett claims to have not known the location of the scent items as they were placed in any of the line-ups.

Sgt. Pikett may have not known the location of the *scent items* when they were placed inside the can, but that does not mean he does not see the location as he walks past. When he said the dog had given its response (alert¹) to the can, and claims he is the only person who can recognize the dog's

¹ In lieu of the verb "alert" that is often used to describe the olfactory stimulation of a drug-sniffing dog, we

response, I believe it is because the dogs are not exhibiting any behaviors that are consistent with the Pavlovian *what is it reflex*, or an *orienting response*. There are no exhibits of an *operant response*.



The documents provided states that Sgt. Pikett gathers the scent items. As a result he has to label them. The picture on the left is Sgt. Pikett with his dog at can #4 on line up #1. The picture to the right is Sgt. Eyre handling a scent pad bag. He is using both hands; this action (if the odor transfer theory

Owner 7/5/09 8:31 AM

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is correct is now cross contaminating the bags. Notice that Sgt. Pikett is directly above the can. The cans are open and the items inside will be visible. In the video you can see Sgt. Pikett walks beside his dog instead of the dog being at the end of a leash and the team proceeds after the dog has reached the can. Sgt. Pikett identifies the can after he has finished the line-up. These actions support my position that the dog is not identifying the can, but Sgt. Pikett is identifying the can by seeing the item he gathered inside the can. The proper procedure for such a task would to have a cover for the cans with several small drilled holes to allow the odor to easily escape but reduce the ability for the handler to see inside.

Also, there should be rubber pads of at least 4'x4 (four feet times four feet) to reduce contamination of the ground. Because air currents cannot be controlled in this setting a sudden change in the wind could potentially contaminate all cans. Conducting this test in this environment demonstrates 1) Sgt. Pikett's lack of knowledge in performing such sensitive odor test, or 2) he has no concern about cross contamination because it is him and not the dogs identifying the target placement.

When the items to scent the dog are handed to Pikett he can see where the scent came from as well. Notice in the picture to the left he has the bag in his left hand, and in the picture to the right he is



carrying the bag as he goes to state where the dog had responded. It is for this reason someone other

use the intransitive verb "react." "Alert" is a transitive verb that, conventionally, takes an object or else must be used in the passive voice. (STATE OF TENNESSEE v. KEVON FLY, 2007)Alert means the dog is awake. You will not find alert as Sgt. Pikett and other handlers use it in the psychological literature in the context they use it. The proper term is *operant response* or *response*.

than Sgt. Pikett should be trained to gather the scent items and label them using a number or alphabet system.

Sgt. Pikett should not know how many items are of suspect scent. There should be randomly included non-target scents to demonstrate the dog is working correctly. When a handler knows how many targets are present and where they came from combined with the handler being able to see the targets, and the handler is allowed to wait until the lineup is complete before stating which 'can' is the dog allegedly responding to invalidates the claimed response because of the high possibility the handler is relying on his eyes, and not the dog's nose and exhibited response – handler bias.

Further, if Sgt. Pikett was not using sight to identify the cans with the target he would have cans with a lid and several holes drilled in the cans to allow odor to escape. This would take away his ability to look into the can and see which target was placed.

If Sgt. Pikett felt that even with drilled holes insufficient odor would escape for the dog to detect he would use a 20-30 foot leash scent the dogs and allow it to work to the end of the leash before moving, and if the dog is perceived to respond he would stop, state which can is perceived to have the target and terminate that lineup. This would take away the ability for the handler to see the target. Announcing the target after the dog has completed the lineup and being in the position to look into the cans invalidate the lineup procedure, as it is too possible the decision is based on his visual acknowledgement than the dog's scent discrimination abilities. This is not sound methodology.

Lineup with Scent Cans

Total line-up with scent cans

P0	44	19.05%
P1	6	2.60%
P2	11	4.76%
P3	62	26.84%
P4	48	20.78%
P5	41	17.75%
P6	19	8.23%

There are a total of 231 provided scent lineup-using cans. Forty-four (44) of the placements are listed as P0 (P0= Placement Zero meaning the placement was not listed) Each of Sgt. Pikett's reports state that each lineup has a suspect odor in them yet 19.05% of them are not labeled.

Records reflect the target is placed in Position #1 only 2.60% of the time. The first recorded placement of Position #1 was 7/28/2006 and that was with Jag. Based on the records Jag had conducted 54 other lineups without Position #1 ever being used. The lineup process used by Sgt. Pikett is an extension of the 4-hole-variable used the Department of Defense. Anyone who has run this process knows if the targets are not randomly placed in every position the dog will actually walk past the target because it is not expecting to find anything. This is further supported by a study on explosive dogs where

explosives were placed on one trail and not on another. After about 12 trials on the trail without explosives being placed, explosives were placed and the dogs failed to find the explosives. (Gazit, 2004) This further supports that either Sgt. Pikett knows the location of the targets or he is seeing the target in the open cans.

If Sgt. Pikett were in fact using true randomization, one would expect to see approximately 33 placements in every position. Positions #1 and #3 are extremes. Lack of true randomization supports, someone is influencing the target placements.

Review of March 21, 2006 Line-up

When the theory of odor and its transfer are reviewed, and then coupled with the claimed abilities of Sgt. Pikett's dogs, Sgt. Pikett knowing the location of the targets in this line-up is the most logical conclusion or deduction.

Based on my experience in police service dog work, I can say that a properly trained dog can easily detect the odor of someone concealed in an open environment hundreds of yards away. In the past the military used sentry dogs to detect someone in the "kill-zone" of bases in a combat environment. In addition, they used scout dogs to locate snipers, and ambushes in combat settings. Police work and search and rescue people know dogs in open areas can detect scent hundreds of yards away. Handlers that use dogs as evidence dogs, that is, dogs that find items in open areas, know it is not uncommon for the dog to detect them several feet away. Odor therefore travels.

When the video of the sniff on 03/21/2006 is reviewed, one will see the first two finds were at can # 4. Then the items (not the entire can) are switched to can # 2. After that, the items are again switched to can #6. The search of the cans use the same starting point and based on that starting point the report of 03/21/2006, it is clear that they start at position #1 each time.

Each time the dog is alleged to have responded (alerted) to the presence of the target odor. All dogs' noses were at least dog shoulder height. If the dogs were in fact detecting and responding to the odor the odor was rising approximately 2 feet or more from the source. The odor would also be spilling over into the cans. If the cans were not collecting odor then **the entire concept of scent line cannot work** because one would need to accept the proposition that odor cannot transfer from one item to another.

On lineups 5 and 6 his dogs walked past two contaminated cans (2 & 4) without responding. If these dogs were in fact capable of what Sgt. Pikett claims, they would not have passed the contaminated cans without a response. This leaves only one logical conclusion, Sgt. Pikett knew the location of the targets before either he used the dogs, or watches for the target package through the open can top.

10:03:45	TARGET ODOR PLACED IN CAN # 4
10:07:08	6 minutes and 23 seconds the items spent in the can before the first dog ran
10:11:53	Target removed from can #4 present in can 8 minutes and 8 seconds.
10:12:14	Target placed in can # 2 bag touched by both hands of assistant.
10:14:35	Sgt. Pikett seen preparing a dog.
10:14:28	Sgt. Pikett prepares to conduct another lineup
10:14:44	Sgt. Pikett stops and pulls up on leash dog stops and looks up and barks.
10:16:14	Sgt. Pikett prepares another dog.
10:16:22	As the dog approaches can # 2 you can see tension placed on the leash and harness. This is a prompt or cue for a behavior. Sgt. Pikett stops the dog stops.
10:16:36	Dog passes can #4 which is now also has the target scent no noticeable reaction and no claimed reaction.
10:20:46	Target removed from can # 2 odor in can 8 minutes and 32 seconds.
10:21:01	Odor removed from can #2 assistant again uses both hands creating cross contamination.
10:21:06	Target placed in can # 6 camera out of service gut the dogs would have passed two cans that were contaminated with the alleged target odor but no response.
10:22:27	Sgt. Pikett seen starting another run.
10:39:40	Target placed in can # 4
10:41:22	Sgt Pikett scents a dog
10:41:39	As Sgt. Pikett and his dog approaches can # 4 you can see Sgt. Pikett steps change.
10:41:40	Sgt. Pikett stops and the dog continues the dog should have stopped first. This is a prompt or cue.
10:41:52	Dog is at can #6 that is now contaminated with the target odor no response observed, and none claimed by Sgt. Pikett
10:43:33	Sgt. Pikett approaches can #4 with another dog and again his body posturing and speed change.

At no time do the dogs exhibit behaviors that are consistent with having detected a target substance. Sgt. Pikett’s explanation is much like that of Trooper Duis in UNITED STATES VS. HEIR. The evidence in Heir was dismissed because of the lack of a recognizable response by dog.

After reviewing the extensive testimony that was presented to Magistrate Judge Piester and watching the videotape of the canine sniff (Exhibit 101), I agree with his determination that dog's actions did not positively signal the presence of drugs inside the vehicle. Trooper Duis testified that in this case Robbie “alerted” to the presence of drugs by sniffing more intensely around certain areas of the car, but he acknowledged that such “alert” behavior was subtle and might only be recognized by himself or another person who was familiar with Robbie's tendencies... As further found by Magistrate Judge Piester, even if the “alert” behavior described by Trooper Duis had in fact occurred, this is too subjective a standard to establish probable cause. I agree that there must be an objectively observable “indication” by the dog of the presence of drugs. See United States v. Jacobs, 986 F.2d 1231 (8th Cir.1993) (UNITED STATES vs. Timothy W. HEIR, 2000)

Sgt. Pikett violates Contingency of Reinforcement

First, according to Sgt. Pikett in his testimony in State vs. Smith he does know the *contingency of reinforcement*.² Without following the *contingency of reinforcement* the animal becomes confused as to what stimulus or stimuli and what behaviors produce reinforcement. If the *contingency of reinforcement* is not followed, it is impossible to bring the dog under the *stimulus control of a discriminative stimulus*. For example, a well-trained dog will only reveal the presence or absence of drugs, a contraband item. (United States v. Place, 1983) This tells us that a drug detector dog must be under the *stimulus control of the discriminative stimulus* contraband drugs. If the same requirement and accuracy for a drug dog is applied to the *scent identification dog* then the dog must be under *stimulus control* and that cannot be achieved and maintained if the *reinforcement contingency* is violated.

Sgt. Pikett states in his reports “the bloodhounds are praised and given a food reward whether or not they alert on any of the positions.” In field conditions, there is no way you know the dog did not make a mistake. If you reinforce the dog and it was wrong as in this case you are leading to more incorrect responses. Reinforcing an animal on every response is known as *continuous schedule of reinforcement*. The *continuous schedule of reinforcement* is used in the early stages of training. Once the animal has mastered the behavior, knowledgeable trainers move the animal to a *variable ratio*.

“Because of the unpredictability of the reinforcers, variable ratio schedules have the power to keep the animal, whether it is human or dog, performing for a long period of time. They are random reinforcement, and we all want to keep playing to see when the next reinforcer will come.

Some things to remember about variable ratio schedules:

- 1. The animal will perform at a consistently high rate.**
- 2. If you stop giving the reinforcer, the behavior that has been reinforced on a variable ratio schedule continues for a longer period of time than with others schedules.**
- 3. Beginning trainers may find it harder to use a variable ratio schedule. In attempting to randomize reinforcement, inexperienced trainers often spread the schedule of reinforcement so thin that the dog stops responding.” (Burch, 1999, p. 39)**

The continuous reinforcement schedule used by Sgt. Pikett clearly demonstrates his lack of basic knowledge in the application of behavioral science. Research on numerous species has shown the *variable ratio* to be the most powerful schedule of reinforcement. It is imperative that detector dogs regardless of the task or breed be placed on the *variable ratio* so during deployments such as conducting actual scent line-ups the dog is not accidentally reinforced when it makes a mistake. *All animals make mistakes!*

Sgt. Pikett keeping the dogs on a *continuous schedule* is saying my dogs don’t make mistakes. “Claiming; my dog never makes a mistake disqualifies the speaker as a serious professional since everyone realizes this is impossible.” (Schoon, 2002, pp. 130-131)

² Reinforcement contingency or contingency of reinforcement state which stimuli and behaviors receive reinforcement and which ones do not.

Sgt. Pikett claims his dog identified the scent of the Plaintiff on March 15, 2006 and March 21, 2006 from items connected to the Plaintiff and to the crime under investigation. It has been established the Plaintiff was not at the body scene nor was involved in the crime.

Even if there was not a confession of the real actor to this crime, the identification of the Plaintiff using Sgt. Pikett's dogs would still be questionable. First, there are no behaviors exhibited by the dog that suggest the dog has in fact detected anything of interest. Second, the dog walks past cans contaminated with scent the dogs were alleged to have recognized and responded too. Third, assistant is handling each bag with both hands contaminating the bags making them now targets. Yet the dogs ignore all these contamination of the alleged target odors and only respond to the intended target. This strongly supports that 1) odor does not transfer as claimed, or 2) Sgt. Pikett is using prior knowledge or visualization of the target in the can to claim the dogs have located a target item.

On August 10, 2006 Sgt. Pikett's dogs identified Jeffery Grimsinger as the person at the scene of the body the Plaintiff was originally identified as being present, and subsequently Mr. Grimsinger confessed and plead guilty to the murder.

Who is being signaled?



The above left picture was extracted from the lineup on 8/10/2006; the picture to the right is Sgt. Pikett's vehicle. His vehicle is parked in such a manner he can see what is taking place during the placement of the targets.

This signal with Sgt. Pikett's vehicle parked directly behind him raises questions about the ethics of the scent line-ups. If Sgt. Pikett does not watch for signals as to where the target is being placed, then why does he park so close? Sgt. Pikett should have written instructions provided to those involved in the process stating procedures to be used. The video shows the person opening the bags putting his (ungloved) fingers inside the packages. Based on Sgt. Pikett's theory of scent transfer this should be sufficient to cause cross contamination. Sgt. Pikett's lack of concern about potential cross contamination

supports that he in fact is not relying on the dog's abilities to identify the proper target. It is more probable based on the above photos that Sgt. Pikett relies on his visual in identifying the targets.

There should be at least two persons involved in this process with them working side by side.



Sgt. Pikett in the background as targets is being placed. He could easily look over his shoulder. Extracted from Video of 8/10/2006.

One would place the target while the other recorded the placement. This would prevent the need for such actions. Again, Sgt. Pikett's failure to provide guidance that would reduce or eliminate procedures that could support unethical and unprofessional acts support the probability that Sgt. Pikett perceives his actions cannot be challenged. As a result, his unethical and unprofessional methods would go unnoticed. The person doing the pointing in the picture seems to be participating in the exercise. The procedures of Sgt. Pikett for lineups are either unethical or unprofessional, or based on incompetence propose a danger to society, and to the industry, and must be stopped.

This finding and fact and the actions of Sgt. Pikett following this discovery provides evidence that he 1) knows his dogs do not perform at the level he claims, 2) he knew the reason the dogs went to the locations they did on the trails that were claimed to have lead to the Plaintiff's house was because he guided the dogs, 3) the lineup of the Plaintiff was invalid because he either knew the location of the target cans, or he uses the open can lid to see the location of the target as he walks past them, and 4) that he is *deliberately indifferent* to the rights of others.

If a handler believed he was not guiding the dog during trails, and was intentionally trying to conduct valid *scent lineups* this should have sent *red flags flying*. Two elements should have triggered concern 1) being a professional dog trainer who is truly concerned with the performance of the dog, and 2) being a law enforcement officer sworn to uphold the *CONSTITUTION*. There have been no records provided that demonstrated that Sgt. Pikett took actions consistent with concerns as to the cause of this event. Even though it is was clear some error had occurred.

As a concerned handler or trainer he 1) should have removed the dogs from service, 2) contacted a trainer who follows the *scientific method* or someone in the behavioral science field such as an *applied behavior analyst* to assist in breaking down behavior elements involved in this task and developing tests to determine the cause. Records do not reveal that this occurred and clearly demonstrates that Sgt. Pikett was not even concerned. The question that must be answered is why did actions to determine the cause not occur and be recorded? There are two logical explanations 1) Sgt. Pikett see his dogs with the same eyes that saw the *Rosenthal Rats* and as a result even when facts are obvious an error was made he ignores them because he believes his dog's don't make mistakes, or 2) Sgt. Pikett knew the cause was because he guides his dogs on trails, and he knows the location of the targets during lineups.

Sgt. Pikett's position that he believes his dogs do not make errors or mistakes are supported by what he was quoted as saying "it works every time. Quincy has done over . . . 1,250 of them and has been wrong twice, Pikett said. And that was probably my fault." (Liscano, 2007)

Of course this is for a news paper and not the court but it clearly demonstrates Sgt. Pikett's bias (experimenter bias) toward his dogs. Rosenthal's experiment with the rats also should raise questions about the claimed abilities of the Bloodhound Breed. At this time no scientific peer reviewed studies are available that supports the Bloodhound has a superior olfactory system than any other breed. What is more concerning about Sgt. Pikett's statement about the dog (Quincy) only being wrong twice is the fact that he has testified:

Q. Now, we did not see any disposition records on the dogs, the supplements that were provided. Do you keep disposition records on the cases, of the supplements that you have collected?

A. You mean the outcomes of the case, I assume.

Q. Yes.

A. No, because I'm not even told the outcome of the cases. You mean like something like this, but there's, like, a bunch of the cases are pled out, and nobody ever tells me that they made an agreement, and I've never shown up in court. They don't contact me and say, "He pled out to four years" or whatever. I don't know. Page 109-110

Q. You don't feel that's important to determine if your dogs are reliable in determining identification in a case?

A. No. Everybody in the country calls me, so I guess that's something. (State vs. Jason Smith: Motion to Suppress: page 131)

When attempting to analyze the records of Sgt. Pikett to support or rebut his positions the outcome must be considered *confounded and skewed* in favor of the dogs. In other word the truth and validity of the records must be considered misleading.

Sgt. Pikett's testimony in State vs. Smith clearly shows he does not follow up on identifications his dogs make. He supports that he does not feel it is important to determine the reliability of his dogs. Failure to determine the reliability of the dog shows he is *deliberately indifferent* to the rights of others.

Rosenthal Rat

"To investigate the generality of these interpersonal expectancy effects in the laboratory, my colleagues and I conducted two studies employing animal subjects. Half the experimenters were told their rats had been specially bred for good maze (or Skinner box) performance, and half were told their rats had been specially bred for poor maze (or Skinner box) performance. In both experiments, when experimenters had been led to expect better learning from their rat subjects, they obtained better learning from their rat subjects (Rosenthal & Lawson, 1964)." (Rosenthal)

Sgt. Pikett's position on the dogs not making a mistake is more consistent with research conducted by Rosenthal. The position of Sgt. Pikett is not based on empirical data established by detailed records that would allow accurate testing of his position. His records and failure to conduct analysis of the dog's performance and have a third party review his performance is more consistent with the dogs falling into the same category as a *Rosenthal Rat*.

During the line-up on the video the dogs never exhibited behaviors consistent with any dog detecting something of interest.

This portion has been express in other parts of the report. The need for such behaviors in detector dogs is supported by (UNITED STATES vs. Timothy W. HEIR, 2000) Arguments that only he can tell the behaviors of the dog because they are so subtle disputes the research of famous behavioral researchers such as Pavlov and *the what is it reflex or orienting response* and the *operant response* defined by B.F. Skinner. All organisms when they detect something of interest or concern exhibit the *what is it reflex or orienting response*. These behaviors only go away after *extinction training* or *habituation* to the stimulus or stimuli that caused the behaviors. This is highly suggestive that Sgt. Pikett's methods have lead the dog's to not exhibiting these common behaviors or the dogs during the lineup are not detecting odor. Again, Sgt. Pikett can see the open can and identify the location of the intended target.

There are no lineup training records, the dog's *operant response* is not defined so as a result you cannot reinforce the dog because it does not know what behavior to exhibit in the presence of a particular stimulus. Sgt. Pikett's claimed methods are inconsistent with established core procedures that have been studied and restudied for decades using a host of species.

The video show behaviors by Sgt. Pikett that is consistent with prompts (cues) for the dog to perform some behavior.

During the video Sgt. Pikett tugs upward on the leash as are in the area of the target can. This is a cue for the dog to exhibit some behavior.

The video shows evidence of behaviors by the assistant that can lead to cross contamination.

The actions of the assistant of handling the packages with both hands, removing the targets from one can and placing them in another is dispersing the target odor to area it should not be dispersed. Likewise the fact that Sgt. Pikett's dogs then walk past these contaminated cans is evidence that 1) his dogs are not responding to scent, and 2) his theory that odor can travel from a *scented object* to another object such as the *scent pads* he uses does not occur.

It is an established fact through many forms of detection that odor does in fact travel. Drive down a road and smell the skunk that is in the road for some time before you reach it or based on wind direction after you pass it. The skunk is not in your car under your nose, odor is traveling.

With the fact that odor does travel, Sgt. Pikett's dogs walking past a contaminated can and not responding demonstrates that Sgt. Pikett's dogs do not perform at the level he claims because if the odor is not transferring to the cans then it did not transfer to the scent pads and as a result the dog cannot response. This clearly demonstrates that Sgt. Pikett knows the location of the target.

Scent Lineups a form of Forensic Evidence

Some persons involved in the training of police service dogs are not familiar with the scientific elements of behavioral science. For example; in Sgt. Pikett's testimony in State vs. Smith several questions based on very simplistic applications of behavioral science were asked of Sgt. Pikett. He could not answer even the most basic of questions.

Those used to provide some form of assessment of the dog's behavior or response to interrupt the perceived behaviors of the *scent identification* dog should be considered *forensic science examiners*. "Forensic science examiners need to understand the principles, practices, and contexts of scientific methodology, as well as the distinctive features of their specialty. Ideally, training should move beyond apprentice-like transmittal of practices to education based on scientifically valid principles. In addition to the practical experience and learning acquired during an internship, a trainee should acquire rigorously interdisciplinary education and training in the scientific areas that constitute the basis for the particular forensic discipline and instruction on how to document and report the analysis. A trainee also should have working knowledge of basic quantitative calculations, including statistics and probability, as needed for the applicable discipline. (National Research Council, 2009, pp. S-20)

In the 30 plus years I have been in the police service dog industry, other than the *International Working Dog Breeds Association*, no other seminars I attended provided behavioral scientist to discuss methods of training, selection, and breeding of working dogs. We in the police service dog industry should be following the recommendations of the National Research Council and study behavior science the science of the industry. Further, the NRC states;

"many crimes that may have gone unsolved are now being solved because forensic science is helping to identify the perpetrators...Those advances, however, also have revealed that, in some cases, substantive information and testimony based on faulty forensic science analyses may have contributed to wrongful convictions of innocent people. This fact has demonstrated the potential danger of giving undue weight to evidence and testimony derived from the imperfect testing and analysis. Moreover, imprecise or exaggerated expert testimony has sometimes contributed to the admission of erroneous or misleading evidence...often in criminal prosecutions and civil litigation, forensic evidence is offered to support conclusions about *individualization* (sometimes referred to as *matching* a specimen to a particular individual or other source) or about classification of the source of the specimen into one of the several categories. With the exception of nuclear DNA analysis, however, no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source...the simple reality is that the interpretation of forensic evidence is not always based on scientific studies to determine its validity. This is a serious problem" (National Research Council, 2009, pp. S-3,S-5,& S-6)

Evidence clearly supports that 1) Sgt. Pikett has no formal education in the area of behavioral science, and 2) he exaggerates the abilities of his dogs. In this case, the evidence provided by Sgt. Pikett was erroneous and misleading. It also shows Sgt. Pikett's interpretation of the dog's claimed behaviors are not based on scientific studies. In other words the dogs have not been taught a specific *operant response* to demonstrate in a consistent manner every time the *target stimulus* is perceived to be present.

If the dogs are in fact detecting the *target stimulus* during the lineup, Sgt. Pikett is relying on *response preference or bias* of the animal as a signal. The error of using a natural unlearned behavior for

an *operant response* is the unlearned behavior can in fact be easily triggered by something other than the *target stimulus*. In drug detector dogs for example, knowledgeable trainers will not use the *aggressive response* because aggressive behaviors of scratching, barking, biting, and clawing is a natural behavior that can be induced by an object of interest. These behaviors are examples of *responses preferences and bias*. A knowledgeable trainer will select a behavior that is incompatible with a *response preference or bias* such as the *sit or down*.

Behaviors such as perceived increased breathing, wagging of the tail, rolling of the eyes, or any other behavior perceived to be subtle should not be used as the *operant response*. These behaviors are part of *classical conditioning* and are known as an *unconditioned response*. *Unconditioned responses* are reflexive behaviors triggered by natural stimuli. It would be nearly impossible if not entirely impossible to eliminate all natural stimuli that could induce an *unconditioned response*. It is for this reason the response for detection purposes (regardless of the task) should be an unbiased operant response. Sgt. Pikett's failure to teach a consistent and non- preferred or bias response supports his knowledge in the area of behavioral science is dangerously lacking for this task.

Page 98 of transcripts in the case of State of Texas vs. Smith, Sgt. Pikett testified that the shaking of hands or bumping of chests is sufficient for scent transfer.

This statement by Sgt. Pikett (if believed to be true) clearly supports that in the cans used in the lineup, odor of the scent pad is transferred to every can in which it is placed and even after the pad is removed odor remains. Again, if this is a fact in odor then it clearly demonstrates during can lineups Sgt. Pikett knows the location of the targets because his dogs walk past cans that must contain the target odor from being in contact with the package that contained the scent pad, and that package was open to allow odor to escape.

Sgt. Pikett is quoted "It works every time. Quincy has done over . . . 1,250 of them and has been wrong twice," Pikett said. "And that was probably my fault." (Liscano, 2007)

Opinions of this finding have been addressed in other parts of the report.

Sgt. Pikett testified in State of Texas vs. Smith (page 109-110) that "...I'm not even told the outcome of the cases."

Opinions of this finding have been addressed in other parts of the report.

No records have been provided that show training or testing has been conducted for line-up purposes.

Opinions of this finding have been addressed in other parts of the report.

Dog cuts corner from Highway 463 approximately 100 yards before it reaches Airline. (Pikett's Deposition of this case Page 90)

Opinions of this finding have been addressed in other parts of the report.

**Officer Eyre was close enough during the trial to provide Sgt. Pikett guidance.
(Page 91 Pikett's deposition of this case)**

Opinions of this finding have been addressed in other parts of the report.

"He who uses the dog without lab conformation is a fool." (Andersson, 1997)

Saying, the dog is correct because it is a Bloodhound, or because I, the trainer, say so is simply unethical. You don't know if the dog was right. What a handler or trainer can say is under these circumstances the dog's responses in training has shown to be X% accurate, in testing the dog's responses are X% accurate, and in actual deployments the dog's identification of a suspect has been shown to be X% correct. These numbers are supported by testable forensic evidence, court accepted confessions, and plea agreements, X % still outstanding, and X% no support as to the accuracy of the identification. Sgt. Pikett's relying on non-lab conformation, or any other form of non-verifiable conformation makes him unreliable by Andersson's opinion, and I agree with Andersson.

"Claiming: my dog never makes a mistake disqualifies the speaker as a serious professional since everyone realizes this is impossible." (Schoon, 2002, pp. 130-131) The mere fact that Sgt. Pikett sees no need to follow up on cases to determine the outcome of the dog so *external validity*³ of his training procedures demonstrates that Sgt. Pikett is unprofessional. This unprofessional act of not verifying field outcomes does not allow for a handler to articulate the probability of an identification being correct. As a claimed professional trainer, Sgt. Pikett should prepare his dogs to meet or exceed the standards required for other detector dogs, such as the Supreme Court's definition of a well-trained dog. (United States v. Place, 1983) Likewise as a trainer or handler of a dog used for any scent detection should consider:

"State's evidence at the hearing held to consider admission of the testimony. The foundational evidence on the subject consisted of a recital of the dog's and the handler's training, background information on the use of dogs to detect chemical accelerants, and anecdotal evidence of the dog's success in tests. What was not presented was a showing "with verifiable certainty that these tests are an accurate and reliable means of ascertaining whether [an accelerant is actually present]..."

...dog alerts to accelerants have not been shown, neither at the trial of this case nor in any Georgia appellate decision, to have the scientific reliability necessary to permit their use as substantive evidence of the presence of accelerants. The trial court's ruling to the contrary was error." (CARR v. THE STATE., 1997)

As a trainer and handler we must prepare for the courts. We must take the position that every case we are involved in could lead to the dismissal of all dog responses being used as evidence. A handler or trainer truly intent on improving the standing of the dogs will attempt to keep abreast with decisions that relate to the dog, regardless of the jurisdiction.

³ External Validity occurs when training and testing events carry-over from a controlled environment into a non-controlled environment.

In the case of Sgt. Pikett's dogs there are no verifiable certainties that his dogs are accurate. His dogs are not certified, and he does not follow up on field identification to ensure his dogs are performing correctly. He relies on the fact he is called out to show his dogs are accurate. This is not scientific. Socially accepted perhaps, but not scientific.

When dealing with animals and responses to learned stimuli group studies to show overall probabilities and demonstrate the task is a feasible task to teach is acceptable. However, because one dog can perform at a certain level does not mean the next one will. Each dog must be tested individually to demonstrate the abilities of that dog. Sgt. Pikett's dogs based on the evidence provided have never undergone any scientific testing to establish their abilities.

CONCLUSIONS

It is my opinion Sgt. Pikett as a trainer and handler is an unprofessional charlatan. This opinion is based on the evidence provided and the published and cited opinions other professionals in the police service dog field describing their definitions of foolish and unprofessional acts of handlers and trainers. Further, based on testimony of Sgt. Pikett in State vs. Smith and State vs. Randolph, and the insufficient data in training and field deployment records, Sgt. Pikett, in my opinion, is incompetent as a police service dog trainer.

His failure to have an independent party test and certify him as a handler, in my opinion, demonstrates he knows his knowledge is lacking. Failure to have a recorded occurrence of independent testing when it was obvious an error was made in this case, in my opinion, further supports he was and is *deliberately indifferent* to the 4th Amendment rights of Capt. Buchanek.

Wind currents at the time of the trail from the body scene to the Plaintiff's home and wind currents at the time Sgt. Pikett ran the trail, leads me to conclude that at Highway 463 and Airline when Sgt. Pikett claimed the dog cut the corner almost 100 yards before reaching the corner the dog did not do such an act because of odor, but because Sgt. Pikett knew it was needed for the dog to turn onto Airline because that led to the now suspect's house. Sgt. Pikett in my opinion was guiding his dog.

Not having written instructions for persons setting up the scent lineups that would reduce the possibility 1) of cross contamination of scent items, and 2) the possibility that Sgt. Pikett could in some way other than the use of his dog identify the target can, in my opinion, demonstrates that Sgt. Pikett knows his dogs do not detect as he claims and if such instructions were designed that would make him have to have to rely strictly on the dogs response, and it would expose the dogs do not work.

Sgt. Pikett, in my opinion, as a professional police service dog trainer and former law enforcement officer, is *deliberately indifferent* to rights of other when it comes to the deployment of his dogs.

If the Fort Bend County had retained me as a consultant to review the performance of Sgt. Pikett based on the records provided and the actions of Sgt. Pikett it would have been my

recommendation to immediately remove Sgt. Pikett from service and immediate follow up on all cases he was involved with to determine the outcome of the case. Also, Sgt. Pikett and his dogs would have been removed from service until they were certified by an independent source using a certification process that has *internal validity*. Further, a departmental standard of confirmed performance would be set. Handlers would be required to provide monthly reports of the dog's performance to supervisors. Supervisors would be required to conduct quarterly assessments of the data to insure the handler's reports are consistent with the data. If a dog fell below the established required accuracy the team would be immediately removed from service and undergo training and testing to determine why this occurred and to correct the problem.

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STATE OF TENNESSEE v. KEVON FLY, No. E2006-01979-CCA-R3-CD (East Tennessee Court of Appeals July 26, 2007).

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UNITED STATES vs. Timothy W. HEIR, 107 F.Supp.2d 1088 (United States District Court D. Nebraska. August 1, 2000).

Further affiant sayeth not:

STEVEN D. NICELY

Sworn to and subscribed before me this _____ day of _____, 2009.

Notary Public, State of Texas

Appendix B:
Pikett Educational Background



SYRACUSE UNIVERSITY

OFFICE OF THE REGISTRAR

August 19, 2009

RE: Keith Pikett

Dear Sir and/or Madam:

This letter is to certify that the above-named individual has never attended or received a degree from Syracuse University.

If you have any questions regarding this information, please feel free to contact our office at the number listed below.

Sincerely,

Katherine Volino

Katherine Volino
Registrar Representative



U N I V E R S I T Y *of* H O U S T O N

OFFICE OF REGISTRATION AND ACADEMIC RECORDS

09/16/09

Nick Vilbas

In regards to your enquiry concerning Pikett, Keith DOB 1/27/1947. We have been unable to verify that the above student attended the University of Houston (main campus).

If you have any further questions please feel free to contact our office,

Thank you,

L.A. Aguanno

A handwritten signature in black ink, appearing to read 'L.A. Aguanno', written over the printed name.

Thank you,

University of Houston
Office of the Registrar
102 E Cullen Building
Houston, TX 77204-2027
713 743 1010

The University of South Alabama

College of Arts and Sciences

*To all persons to whom these presents shall come,
Greeting*

Be it known that

Keith Alan Pikett

having satisfied all the requirements for the degree of

Bachelor of Science

*is accordingly admitted to that degree with all the rights, honors,
and privileges thereunto appertaining*

*In Witness Whereof the seal of the University and the signatures
authorized by the Board of Trustees are hereunto affixed,
on this fifth day of June, nineteen hundred seventy-seven.*

W. W. Kempfer
Dean of the College



W. I. P. Williams
President of the University

United States Sports Academy

To whom these presents shall come,
Greetings

Be it hereby known that

Keith Nikett

having satisfied all the requirements for the degree of
Master of Sport Science

Sport Coaching
is accordingly afforded all the rights, honors and privileges therewith appertaining.

In Witness Whereof the seal of the Academy and the signatures
authorized by the Board of Trustees are hereunto affixed on
this date

28 July 1984

Albert G. Offit

Dean



[Signature]

President of the Academy

Appendix C:
Affidavit of Victor Wisner

AFFIDAVIT OF VICTOR WISNER

COUNTY OF VICTORIA §
§
THE STATE OF TEXAS §

BEFORE ME, the undersigned authority, on this day personally appeared VICTOR WIESNER, who being duly sworn on his oath deposed and said:

My name is VICTOR WISNER, I am over the age of (21) years of age, of sound mind, and fully capable of making this affidavit. The facts stated herein are true and correct, and they are within my personal knowledge.

I was an assistant District Attorney for Harris County for over 24 years. I retired as Division Chief of the Major Offenders Division and now live and maintain a private practice in Harris County, Texas. Additionally, I teach at the Houston Police Department Academy and to other law enforcement agencies.

During the last year or so of my tenure at the Harris County District Attorney's Office I had occasion to assist Houston Police Department Westside Task Force Officers who were investigating a series of approximately twelve burglaries at Walgreen's Pharmacies in Harris and Fort Bend Counties. The burglaries were all committed in a similar fashion. The perpetrator entered the Walgreens prior to closing time, hid in the ceiling, and then once the store was closed cut the power and then burglarized the store safe and ATM before fleeing with large amounts of cash.

Westside Officers, who did an excellent job in the case, were able to identify Kenny Roswurm, as the primary suspect. There were numerous clues pointing to Roswurm. These included the fact that he worked as a locksmith and worked at several of the burglarized stores.

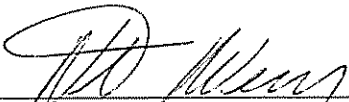
He was also identified at a burglarized store loitering before closing time and his van was detected at a parking lot adjacent to a burglarized store during the time a burglary was committed. I assisted officers by drafting a court order for a surveillance device to be placed on Roswurm's vehicle. He was followed by Westside Officers and eventually apprehended leaving the commission of a Walgreen's burglary. A search of his residence revealed evidence connecting him to the other burglaries. He was charged and eventually received a 40 year sentence.

While Westside Officers were investigating Roswurm, two detectives from Central Burglary and Theft (B&T) were also working on these cases. For reasons unknown to me they decided that an ex-convict safecracker was the primary suspect and responsible for the burglaries. Westside Officers were skeptical of this suspect and told me that this suspect was drug addled and incapable of committing such a sophisticated series of burglaries. I do not have access to my former file and cannot recall the name of the suspect. The two detectives from Central B & T used Deputy Pikett, a bloodhound handler from Fort Bend County, to do a scent identification. They received a positive identification from a known sample of the ex-convict to a scent sample taken from one of burglarized Walgreen's safes. Unbeknownst to me they filed felony charges on this suspect. I only found out about these charges when a furious Westside Officer called me a couple days after Roswurm was apprehended and charged. She stated that she had told the B & T Officers to notify the court in which they had filed their case to immediately dismiss the charges. She stated that the B & T Detectives told her that they could not since it would discredit all other cases made by Pikett. Needless to say I immediately dismissed this baseless charge and complained to these officers' supervisor. The scent evidence was ludicrous and incriminated a person who was unrelated to the offenses. I was not informed

of the handler's exact methodology for collecting scent and getting the scent hits but I remember thinking how unreliable it was. I went so far as to send out an all-prosecutor email in case any other similar cases had been filed on based on this type of unreliable evidence.

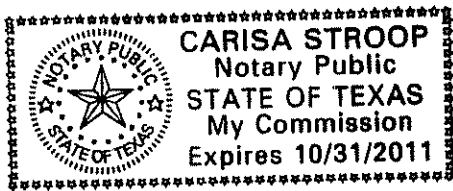
When I read in the Houston Chronicle last week that other innocent people had been charged based on faulty scent identification, I knew I needed to contact the attorney representing these people. The article implied Pikett was claiming he had never made a faulty identification. I know this was patently false and that a false scent identification was responsible for an innocent person being charged in the offense detailed above. I also know that the B & T officers he assisted had attempted to cover the incident up to protect Pikett's reputation.

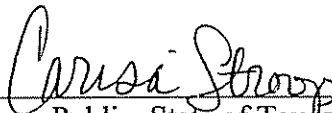
Further affiant sayeth not:



VICTOR WISNER, Affiant

Sworn to and subscribed before me this 14th day of July, 2009.





Notary Public, State of Texas