

Forensic Examination Report

To: Philip M. Brooks, Attorney, 1442-A Walnut St., #233, Berkeley, CA 94709; Ph# (510) 528-7996

From: Brent E. Turvey, MS, Forensic Solutions, LLC, P.O. Box 2175, Sitka, Alaska 99835; Office (907) 747-5121; Cell (907) 738-5121

Date: May 10, 2009

Re: *California v. Scott E. Dyleski*

The purpose of this report is to review the crime scene investigation, forensic examinations, and related expert testimony in the case of *California v. Scott E. Dyleski* (re: the homicide of Pamela Vitale on October 15, 2005).

On October 15, 2005, the body of 52-year-old Pamela Vitale was found inside of the closed doorway of her residence at 1901 Hunsaker Canyon Dr. in Lafayette, California. She and her husband were the sole occupants of this mobile being used as a temporary residence while they built a larger, permanent house elsewhere on the property. Her husband, defense attorney Daniel Horowitz, discovered her body at that location. There were no signs of forced entry.

Between October of 2008 and March of 2009, this examiner received case material related to this matter from, or at the direction of, Attorney Philip Brooks. This included, but was not limited to:

- Contra Costa County Sheriff-Coroner's "Coroner Report" re: Pamela Vitale
- Contra Costa County Sheriff's Dept. Investigative reports and interviews by Det. J. Barnes, Sgt. K. Daley, Deputy A. Frisk, Deputy Wilhelm, Deputy R. Koci, and Deputy E. Henriquez
- Contra Costa County Sheriff's Dept. Criminalistics Laboratory reports regarding field services w/ evidence logs and scene diagrams
- Contra Costa County Sheriff's Dept. Criminalistics Laboratory reports regarding physical evidence examinations
- SERI reports regarding DNA examinations and proficiencies related to this case
- Statements of Probable Cause by Contra Costa County Sheriff's Dept. Det. Cary Goldberg.
- A "case logic" CD binder containing at least 38 CD-ROMs of discovery material, including crime scene, autopsy, and evidence photos

- The Appellate Brief filed by Attorney Philip Brooks

FINDINGS

After a careful review of all of the facts and information provided, it is the opinion of this examiner that:

Conclusion #1: Many key items of potentially exculpatory physical evidence were not properly examined.

Conclusion #2: The available evidence is not consistent with a profit motivation.

Conclusion #3: The available evidence is most consistent with an anger/ revenge motivation.

Conclusion #4: The offender demonstrated a degree of care and excessive comfort and familiarity during and subsequent to the homicide.

Conclusion #5: The DNA results used to associate Scott Dyleski to this crime are problematic at best, and require an independent DNA Analyst.

Conclusion #6: The defense failed to adequately investigate or examine the physical evidence in this case.

DISCUSSION

Conclusion #1: Many key items of potentially exculpatory physical evidence were not properly examined. These are items that were likely used by, or associated with, the offender during and after the commission of the crime. This is owing to *Locard's Exchange Principle*, which states that when an offender comes into contact with a location or another person, an exchange of evidence occurs (*Saferstein, 1998; Chisum and Turvey, 2007*). As a result of this exchange, the offender both leaves something of themselves behind, and takes something of that person or place away with them when they leave. This concept is the cornerstone of crime reconstruction.

The following items of evidence, which may be exculpatory in nature by virtue of pointing to additional or alternate suspects because of the conditions of transfer, were not tested for DNA or DNA transfer:

1. Hairs found on the inside of the mask recovered from the duffel bag.
2. Blond hairs found on Vitale's body.
3. Hair-band with hair in it (did not belong to victim, according to D. Horowitz).
4. Cord with apparent hairs recovered on top of clothing in doorway.

5. Blood from the interior dead bolt; may contain a mixture if the offender injured their own fingers during the attack.
6. Blood from the exterior water bottle; may contain a mixture if the offender injured their own fingers during the attack.
7. Blood from the Lance Burton mug; may contain a mixture if the offender injured their own fingers during the attack. DNA from saliva matches D. Horowitz.
8. Bathroom towel.
9. Hair from the bathroom shower.
10. Blood on hot water knob; may contain a mixture if the offender injured their own fingers during the attack.

Conclusion #2: The available evidence is not consistent with a profit motivation.

This is based on consideration of the following facts and circumstances:

1. There is no evidence that any of the rooms in the victim's home were searched for valuables.
2. There is no evidence that valuables are missing from the victim's home.
3. The victim's jewelry is evident on her person (two rings).
4. The offender left behind a cell phone in plain view.
5. The offender left behind an open laptop in plain view on the coffee table.
6. The offender left behind another laptop alongside the couch in the area beneath the phone.
7. The offender left behind a stereo in plain view.
8. The offender left behind a stack of electronics on the large screen TV at the front door in plain view.
9. The offender left behind the victim's black purse next the couch in plain view.
10. The offender left behind the victim's brown purse on the stack of papers on the dining room table in plain view.

11. The offender left behind a digital camera in plain view.

An offender breaking into the residence with a profit motivation would have taken most if not all of these items, as they are easily converted into cash. In the case of the purse, it would be presumed to contain cash and would have been taken or at least searched. The absence of bloody transfer on this item (visible in the scene photos) indicates that it was not searched subsequent to the homicide. The facts of the case further make it unlikely that the offender would have been able to search it prior.

This finding precludes profit motivation related identity theft as well, as items containing vital personal information were not taken (including laptops, cell-phone, purse, the many assorted files and paperwork stacked around the home, and the open appointment book on the couch. Moreover, there is no evidence provided that the home (interior, exterior, mailbox, garbage) was searched for such items, as is customarily necessary to accomplish identity theft.

Conclusion #3: The available evidence is most consistent with an anger/ revenge motivation. In an anger-retaliatory crime, a primary goal of offense behavior is to service cumulative rage and aggression (*Turvey, 2008*). After reviewing the available evidence, it is the opinion of this examiner that the physical and behavioral crime scene evidence is most consistent with an anger-retaliatory motivation.

The basis for this opinion resides in the elimination of profit as a viable motive, but largely in the consideration of the following facts, taken from the crime scene and autopsy photos, and the Coroner's report:

1. The victim suffered extensive and repeated blunt force injuries (lacerations, fractures, abrasions, and contusions) to the head (all sides, including extensive injury to the face).
2. Clumps of the victim's hair were pulled out.
3. Blunt force trauma inflicted to the head was lethal; it is listed as the cause of death.
4. The victim suffered repeated blunt force injuries (abrasions, and contusions) to the torso.
5. The victim suffered multiple sharp force injuries to the torso.
6. The victim suffered extensive and repeated blunt force injuries (lacerations, fractures, abrasions, and contusions) to the upper and lower extremities. These injuries were defensive in nature, suffered while fending off a persistent attack.

This examiner concurs with Dr. Peterson that the victim was face down during part of the attack, when she received injuries to her posterior torso (back) and to the back of her head (and perhaps even the top of her head). However, it is also clear from the nature of the injuries inflicted to the victim, and her clothing (skirt up; sock ripped; underwear in tact) that she was in fact on her back with her feet in the air when receiving some of the defensive injuries to her extremities.

This finding is inconsistent with torture. As explained in Turvey (2008; p.237):

Physical torture is the intentional and repeated infliction of nonlethal injury to a victim. To satisfy the requirements of torture, the victim must remain alive and conscious during the initial infliction of the injury so that he or she can experience the pain that follows. In most cases, there is a specific aim involved, such as getting information, obtaining a particular statement such as a confession or denouncement, sexual gratification (a.k.a. sadism), or revenge.

Torture requirements are not met in this case, as there is no indication or repeated infliction of non-lethal injury (e.g. repeated shallow sharp force cuts to the same location; evidence of fingers broken one at a time; broken knees; burn injuries to hands, feet, or genitals; repeated insertions of large objects into the anus, etc.). Rather, the victim's injuries appear to have occurred as part of a succession of brutal attacks aimed at expressing rage, resulting in defensive injuries.

Conclusion #4: The offender demonstrated a degree of care and excessive comfort and familiarity during and subsequent to the homicide.

The basis for this opinion resides in the consideration of the following facts:

1. The offender either removed or allowed the victim to remove her glasses during the attack, as evidenced by the bloody glasses folded carefully on the large screen television near the body.
2. Subsequent to the attack, the offender manually engaged the dead bolt on the front door from the inside, as indicated by the blood-covered dead-bolt lock.
3. Subsequent to the attack, the offender placed a broken, bloody mug in the kitchen sink (Lance Burton mug; DNA from saliva matches D. Horowitz).
4. Subsequent to the attack, the offender had contact with a bottle of water left in the kitchen, as evidenced by the bloody water bottle pictured in the scene photos.
5. According to criminalist Tafly's report, the water bottle's "cap was not stained, indicating the water bottle may have been open prior to someone with blood on their hands handling it."

6. Subsequent to the attack, the offender had contact with a cereal bowl and placed it on the kitchen counter, as evidenced by the bloody bowl pictured in the scene photos.
7. Subsequent to the attack, the offender apparently spent time in the kitchen, as evidenced by the numerous bloody transfer/ drops in this area.
8. Subsequent to the attack, the offender apparently spent time in the area around the couch, as evidenced by the numerous bloody transfer/ drops in this area pictured in the scene photos.
9. Subsequent to the attack, someone covered with blood from their left hand up their left arm to their left shoulder region opened the front door from the outside, leaving behind a clear bloodstain pattern. This is pictured in the scene photos.
10. Subsequent to the attack, the offender entered the shower, as evidence by the bloody transfer on the shower curtain, the interior shower stall, and the hot water shower knob pictured in the scene photos. Evidence suggests that the offender took a shower as the "hairs in the [shower] drain were still moist].
11. Time spent at the scene with the body would increase the offender's exposure to the possibility of discovery in direct relation to the homicide.

These are not the actions of a stranger offender concerned about being discovered at a violent crime scene with a murder victim lying just inside the front door. These actions suggest a degree of concern for, familiarity with, and comfortableness moving around within, the residence that is beyond that of a stranger with a profit motivation. These facts become more significant when viewed in light of the anger motivation described in Conclusion #3.

Also of note are bloodstain patterns on the exterior of the door where the victim's body was found. These are mentioned in item number 9. These bloodstain patterns appear to have been transferred in a single series of movements, as though someone were opening the door while unlocking the deadbolt. This bloody transfer appears undisturbed in the crime scene photos.

If someone had opened the door subsequent to the attack and prior to the arrival of law enforcement, unaware of the body inside, these bloodstains would have been disturbed. Wet blood would have been transferred onto the left hand and shoulder of any person opening the door, smearing the stains. Dry blood would have been cracked and sloughed away by any person opening the door, causing voids in the stains (upon examination the exterior door bloodstains appear undisturbed and in tact). These issues do not appear to have been raised or investigated.

Conclusion #5: The DNA results used to associate Scott Dyleski to this crime are problematic at best, and require an independent DNA Analyst for analysis and interpretation.

While the defense apparently consulted Keith Inman of Forensic Analytical on this case, with respect to DNA, his involvement is unclear.

According to the record, DNA material obtained from the swab of Pamela Vitale's foot was only partial match, and involved unreported problems with enhancement of signal. Whatever didn't match was just removed or not reported by the DNA analyst – David Stockwell. As explained in the Appeal filed by Attorney Phil Brooks:

"In court, Stockwell acknowledged that in writing the report he was testifying from, he missed seeing the saturation, although in fact, the raw data did show saturation. (14 RT 3736.) He acknowledged that, at the preliminary hearing, he was specifically asked about saturation and mistakenly said there was none. (14 RT 3736.) In addition, Stockwell acknowledged that his lab had had some problems with contamination in the past. (14 RT 3707.) Specifically in this case, in the first test he did on the foot swab sample, he found a contaminant. In fact, in that test, he found DNA in the reagent blank, and furthermore, it was male human DNA. (14 RT 3707.) Rather than attempting to clarify where this contaminant DNA had come from, Stockwell just removed the "kit" from which he believed it had originated."

This flawed methodology and subsequent false testimony are beneath best practice, and raise the specter of potential fraud. An independent DNA Analyst must evaluate this possibility; this examiner must be without connections to Contra Costa County, SERI, or the analyst in question.

At the very least, these issues should have been raised and drawn out to their logical conclusion in court by an opposing DNA expert. The limits of the DNA results should have been established and then carefully explained to the trier of fact. This was not done.

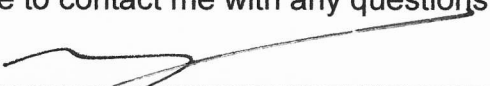
Conclusion #6: The defense failed to adequately investigate or examine the physical evidence in this case.

Along the issues raised in Conclusion #5, the defense should have done at least the following to establish the facts and circumstances in this case:

1. Hired an expert in crime reconstruction and bloodstain pattern analysis to evaluate prosecution theories, and determine the limits of associations and bloodstain evidence. This would have also been crucial for establishing alternate theories of the crime and refuting witness testimony.
2. Hired an expert in digital evidence analysis to evaluate prosecution theories, and determine the limits of interpretations made regarding the digital evidence.

3. Hired an expert in crime scene analysis to assess the physical evidence of crime related behavior and wound patterns, to help support or refute theories of motive as was done in this report.

Please do not hesitate to contact me with any questions.


Brent Turvey, MS – Forensic Science

REFERENCES

Chisum, W.J. and Turvey, B. (2007) *Crime Reconstruction*, Boston: Elsevier Science.

Edwards, H. and Gotsonis, C. (2009) *Strengthening Forensic Science in the United States: A Path Forward*, Washington DC: National Academies Press.

Saferstein, R. (1998) *Criminalistics: An Introduction to Forensic Science, 6th Ed.*, Englewood Cliffs: Prentice Hall.

Technical Working Group on Crime Scene Investigation (TWGCSI) "Crime Scene Investigation: A Guide for Law Enforcement," *National Institute of Justice*, January 2000.

Turvey, B. (2008) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis*, San Diego: Elsevier Science.