



U.S. Department of Justice

950 Pennsylvania Ave., NW
Washington, DC 20530

August 20, 2013

Bernard de la Rionda
Office of the State Attorney
Duval County Courthouse Annex
220 East Bay Street
Jacksonville, Florida 32202

Re: Florida v. Gerald Murray, 62D-JK-35619

Dear Mr. Rionda:

We write to advise you of the results of a review by the United States Department of Justice (the "Department") and the Federal Bureau of Investigation ("FBI" and collectively with the Department "DOJ") of laboratory reports and testimony by FBI Laboratory examiners in cases involving microscopic hair comparison analysis. Through this review, we have determined that a report or testimony regarding microscopic hair comparison analysis containing erroneous statements was used in this case. This error and the process through which it was identified are explained in more detail below. We ask that you determine the actions your office should take in light of this error.

I. Background

DOJ has been engaged in a review of microscopic hair comparison reports and testimony presented by the FBI Laboratory before December 31, 1999, after which mitochondrial DNA testing became routine. The science underlying microscopic hair comparison is not the subject of this review. However, in some cases, FBI Laboratory examiners exceeded the limits of science by overstating the conclusions that may appropriately be drawn from a positive association between evidentiary hair and a known hair sample. This is in contrast to cases in which the FBI Laboratory report and examiner testimony presented conclusions that may appropriately be drawn from a positive association. Thus, the purpose of this review is to ensure that FBI Laboratory reports and examiner testimony regarding microscopic hair comparison analysis met accepted scientific standards and to identify those cases in which those standards were not met so that any appropriate remedial action may be taken.

II. Error Identified in this Matter

We have determined that the microscopic hair comparison analysis testimony or laboratory report presented in this case included statements that exceeded the limits of science and were, therefore, invalid: (1) the examiner stated or implied that the evidentiary hair could be associated with a specific individual to the exclusion of all others—this type of testimony exceeded the limits of the science; (2) the examiner assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of the positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association—this type of testimony exceeded the limits of the science; and (3) the examiner cites the number of cases or hair analyses worked in the laboratory and the number of samples from different individuals that could not be distinguished from one another as a predictive value to bolster the conclusion that a hair belongs to a specific individual this type of testimony exceeded the limits of the science. (A copy of the documents upon which our determination is based is enclosed.) We take no position regarding the materiality of the error in this case.

III. Potential Victim Notification

We recommend that you promptly advise the appropriate victim advocate in your office of this error, so that he/she may determine how and when to inform the victim or the victim's family that this matter may be the subject of further litigation and that they may be contacted by the defense.

IV. Potential DNA Testing

In the event that your office determines that further testing is appropriate or necessary or the court orders such testing, the FBI is available to provide mitochondrial DNA testing of the relevant hair evidence or STR testing of related biological evidence if testing of hair evidence is no longer possible, if (1) the evidence to be tested is in the government's possession or control, and (2) the chain of custody for the evidence can be established.

V. Potential Waiver of Procedural Defenses

In the event that the defendant seeks post-conviction relief based on the Department's disclosure that microscopic hair comparison laboratory reports or testimony used in this case contained statements that exceeded the limits of science, we provide the following information to make you aware of how we are handling such situations in federal cases. In such cases under 28 U.S.C. § 2255, in the interest of justice, the United States is waiving reliance on the statute of limitations under Section 2255(f) and any procedural-default defense in order to permit the

resolution of legal claims arising from the erroneous presentation of microscopic hair examination laboratory reports or testimony.

VI. Report of Action Taken

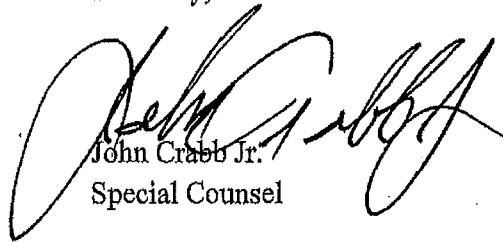
To assist us in monitoring the status of cases involving microscopic hair analysis comparisons, we ask that you please advise us by September 30, 2013, if you intend to take any action based on the information that we are providing to you. Please send this information to USAEO.HairReview@usdoj.gov, and let us know if we can be of any assistance.

VII. Additional Notifications

You should be aware that we are also notifying the defense, as well as the Innocence Project and the National Association of Criminal Defense Lawyers of the error. These organizations have expressed an interest in determining whether improper reports or testimony affected any convictions and, if so, to ensure appropriate remedial actions are taken. To assist them in their evaluation, we will provide them with information from our files, including copies of FBI Laboratory examiners' reports and testimony, as well as our assessment of those reports and testimony.

If you have any questions regarding this matter please contact us at the email address provided above.

Sincerely,



John Crabb Jr.
Special Counsel

Encl.

Response Sheet

Please send completed form within 14 days to:

FBI POC

FBI Laboratory

Quantico, VA 22135

Fax: 703-632-7714

Email: FBICaseReview2@ic.fbi.gov (please include in the subject line "IP and NACDL response" and the name of the defendant)

Referenced FBI Case Number: **62D-JK-35619**

Court Docket Number:

Subject(s)/Defendant(s): **Gerald Murray**

Findings of the Innocence Project (IP) and National Association of Criminal Defense Lawyers (NACDL):

The FBI has determined that Error Type 1 X , Error Type 2 X , and/or Error Type 3 X are contained in the materials reviewed.

X The IP and NACDL agree with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review that the materials reviewed contain the Error Types identified by the FBI in the Results of Review.

The IP and NACDL disagree with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review because, contrary to that conclusion, the IP and NACDL have found that the materials reviewed contain the following error types:

Error 1

Error 2

Error 3

The IP and NACDL would like to meet with the FBI (in person or by phone) to discuss the differing opinions regarding the appropriateness of FBI testimony and/or lab reports.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C., 20535-0001

**MICROSCOPIC HAIR COMPARISON ANALYSIS
RESULT OF REVIEW**

Date: June 19, 2013

To: Innocence Project
Microscopic Hair Comparison Analysis Review Team

From: Federal Bureau of Investigation
Microscopic Hair Comparison Analysis Review Team
Laboratory Division

FBI File Number: 62D-JK-35619

Criminal Docket Number: 16-CF-1992-003708-AXXX-MA / CR-F

Defendant: Gerald Murray

Victim: Vest, Alice

Trial Plea Stipulation

Transcript enclosed

Lab Report enclosed

Pursuant to the Letter of Agreement between our organizations, this letter serves to provide your office with the results from the Federal Bureau of Investigation (FBI) Microscopic Hair Comparison Analysis Review regarding the analysis of testimony and lab reports provided in the above-referenced case. Please notify the FBI, within 14 days of receipt of this letter, as to whether or not the Innocence Project (IP) agrees with the FBI's conclusions.

The FBI has conducted its review of the report issued in this case and found it to contain:

Appropriate Statements

Inappropriate Statements

The FBI has conducted its review of the FBI testimony transcript and/or stipulation in accordance with the November 9, 2012 agreed upon scientific standards between the IP and FBI with the following results:

Error Type 1: The examiner stated or implied that the evidentiary hair could be associated with a specific individual to the exclusion of all others. This type of testimony exceeds the limits of the science.

Error Type 2: The examiner assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of the positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association. This type of testimony exceeds the limits of the science.

Error Type 3: The examiner cites the number of cases or hair analyses worked in the lab and the number of samples from different individuals that could not be distinguished from one another as a predictive value to bolster the conclusion that a hair belongs to a specific individual. This type of testimony exceeds the limits of the science.

Appropriate

Response Sheet

Please send completed form within 14 days to:

Cherise B. Dreyfus

FBI Laboratory
2501 Forensic Way
Quantico, VA 22135

Fax: 703-632-7714

Email: FBICaseReview2@ic.fbi.gov (please include in the subject line "IP response" and the name of the defendant)

Referenced FBI Case Number: 62D-IK-35619

Court Docket Number: 16-CF-1992-003708-AXXX-MA / CR-F

Subject(s)/ Defendant(s): Murray, Gerald

Findings of the Innocence Project (IP):

- The IP concurs with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review, or
- The IP disagrees with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review for the following reasons:
 - Error 1
 - Error 2
 - Error 3
 - Appropriate
- The IP would like to meet with the FBI (in person or by phone) to discuss the differing opinions regarding the appropriateness of FBI testimony and/or lab reports.

**FBI Microscopic Hair Comparison Analysis Review
Evaluation Form
AMENDED RESULTS**

Defendant: Gerald Murray	Case File Number: 62D-HQ-35619
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Review of Testimony:	
Date of Testimony:	2/25/1998
Testifying Examiner:	DiZinno
Name of Prosecutor:	Bernard de la Rionda
Name of Defense:	Thomas Fallis
Testimony Results (mark as appropriate):	
Inappropriate Statements :	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Limitating Language Included in Testimony?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Identify by Page and Line Number(s):	pg 23, ln 19-20; pg 27, ln 13-19; pg 32, ln 1-7
If testimony contained Inappropriate Statements, cite each by Error type, page(s) and line number(s):	
pg 23, ln 17-18 - Error 2;	
pg 24, ln 5-6 - Error 2;	
pg 25, ln 3-5 - Error 1;	
pg 28, ln 2-4 - Error 2/3 (additional error type);	
pg 28, ln 12-18 - Error 1 and 3;	
pg 36, ln 4-6 - Error 2/3 (additional error type)	

Review of Testimony:	
Date of Testimony:	2/5/1999
Testifying Examiner:	DiZinno
Name of Prosecutor:	Bernard de la Rionda
Name of Defense:	Janis Warren
Testimony Results (mark as appropriate):	
Inappropriate Statements :	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Limitating Language Included in Testimony?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Identify by Page and Line Number(s):	pg 25, ln 15-18; pg 29, ln 7-17; pg 29, ln 21-23
If testimony contained Inappropriate Statements, cite each by Error type, page(s) and line number(s):	
pg 25, ln 10-11 - Error 2;	
pg 27, ln 7-15 - Error 1 and 2;	
pg 29, ln 18-21 - Error 2/3 (additional error type);	
pg 29-30, ln 24 (29) to ln 3 (30) - Error 2	

FBI Microscopic Hair Comparison Analysis Review
Evaluation Form
AMENDED RESULTS

Defendant: Gerald Murray Case File Number: 62D-HQ-35619

Review of Testimony:	
Date of Testimony:	5/21/2003
Testifying Examiner:	DiZinno
Name of Prosecutor:	Bernard de la Rionda
Name of Defense:	Kuritz
Testimony Results (mark as appropriate):	
Inappropriate Statements :	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Limitating Language Included in Testimony?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Identify by Page and Line Number(s):	pg 42, ln 6, ln 12-21; pg 79, ln 2-7; pg 87, ln 10-13
If testimony contained Inappropriate Statements, cite each by Error type, page(s) and line number(s):	
pg 42, ln 7-10 - Error 2/3 - outside of jury (additional error type);	
pg 42-43, ln 24 (42) - ln 4 (43) - Error 2/3 - outside of jury (additional error type);	
pg 62, ln 22-24 - Error 2;	
pg 93, ln 10-14 - Error 2	

Approved By: *Marc Curcio*

Date: 8/8/14

**FBI Microscopic Hair Comparison Analysis Review
Evaluation Form
AMENDED RESULTS**

Case Information:	
Case Number:	62D-JK-35619
Defendant(s):	Gerald Murray
Date of Review:	N/A – Predates joint meetings
Standard Applied:	MHCA Standards dated 11/9/2012

Review of Laboratory Report(s):	
Date of Laboratory Report:	10/4/1991
Examiner Issuing Report:	DiZinno
Lab Report Results (mark as appropriate):	
Positive Association:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Inappropriate Statements :	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Limitations Language Included in Report?	<input checked="" type="checkbox"/> Yes (page #) 3 <input type="checkbox"/> No
If Laboratory report contained an Inappropriate Statement, cite statement by Error type(s) and page number(s) (quote if necessary): “Several Caucasian pubic hairs found in specimen Q20 and a Caucasian pubic hair found in specimen Q42 exhibit the same microscopic characteristics as hairs from GERALD MURRAY and are consistent with having come from MURRAY.” (Page 3) – Error 2	

Review of Testimony:	
Date of Testimony:	3/2/1994
Testifying Examiner:	DiZinno
Name of Prosecutor:	Bernard de la Rionda
Name of Defense:	Roberto Arias
Testimony Results (mark as appropriate):	
Inappropriate Statements :	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Limiting Language Included in Testimony?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Identify by Page and Line Number(s):	Pg 46, ln 5-6
If testimony contained Inappropriate Statements, cite each by Error type, page(s) and line number(s): pg 36, ln 4-5 - Error 2; pg 36, ln 11-12 - Error 2; pg 37, ln 10-11 - Error 2/3 (additional error type); pg 51-52, ln 25 (51) to ln 1 (52) - Error 2/3 (additional error type); pg 53, lines 13-15 – Errors 2 and 3; pg 53, ln 13-15 - Error 2/3 (additional error type)	