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Attorneys for State of Montana



MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

STATE OF MONTANA,)	
)	Cause No. CDC-2015-132
- vs -)	
)	STATE'S BRIEF IN OPPOSITION
JAMES GEORGE STIFFLER,)	TO DEFENDANT'S MOTION TO
)	DISMISS
Defendant.)	

The State of Montana submits the following brief in opposition to the defense motion to dismiss based on alleged pre-accusation delay.

I. FACTS

At the hearing presently scheduled for July 31, 2015, the State believes the evidence will show the following:

May 22, 2013 (Wednesday):

At approximately 2:40 p.m. on May 22, 2013, the defendant called 911 to report he'd shot an intruder at his residence at 4276 Canyon Ferry Drive, in Helena, Lewis and Clark County, Montana. The intruder was later identified as Henry Thomas Johnson.

The first officers arrived on scene approximately 12 – 15 minutes after the 911 call. Once the outside of the defendant's residence was secured, officers entered the house after obtaining the defendant's consent to search. The first entry was made to clear the residence

ORIGINAL

1 and make sure there weren't other intruders. Later, detectives walked through the entire house
2 to try and determine what, if anything, was missing. The defendant accompanied them on this
3 walk through. Detectives then searched the residence for evidence. They located a spent shell
4 casing from a 9 mm round in the computer room, on the right hand side of the door between the
5 computer room and the sewing room. Detectives found a pillowcase by the back door. The
6 pillowcase contained items belonging to the defendant and his wife.

7 The defendant gave a statement to Detective Dan O'Malley indicating he shot at
8 Johnson from east to west while standing in the doorway between the kitchen and the computer
9 room. The defendant shot Johnson with a 9 mm Interarms pistol that ejected shell casings to
10 the right. When Det. Olson processed the pistol, he determined there was a round in the
11 chamber and four live rounds in the magazine.

12 Montana Highway Patrol Sgt. Jay Nelson and Troopers Conner Smith and Dave
13 Oliverson completed Total Station mapping of the outside of the defendant's residence.

14 Once Johnson was declared dead, the St. Peter's Hospital ambulance crew transported
15 Johnson's body to the county morgue where Lewis and Clark County Coroner Mickey Nelson
16 arranged to have the body x-rayed. As a result of the x-ray, Coroner Nelson determined there
17 was a bullet fragment either in Johnson's body or in the body bag. Detectives realized the
18 remainder of the bullet should be at the crime scene. Sgt. Dave Peterson and Detective Cory
19 Olson searched the computer room twice trying to locate the remainder of the bullet without
20 any success.

21 **May 23, 2013 (Thursday):**

22 At 10:00 a.m., Det. Olson attended the autopsy of Johnson performed by then-State
23 Medical Examiner Dr. Gary Dale at the State Crime Lab in Missoula. Dr. Dale determined
24 Johnson was shot in the back by a bullet travelling in a downward, right to left direction. At
25 approximately noon, Det. Olson conveyed the autopsy findings to Sgt. Peterson. The two

1 officers realized the defendant's story was not consistent with the autopsy findings or evidence
2 of the spent shell casing found at the crime scene.

3 Sgt. Peterson and other officers returned to 4276 Canyon Ferry to continue searching
4 for the bullet. The defendant and his wife were present when officers arrived and agreed they
5 could continue the search for evidence. The defendant told Sgt. Peterson he and his wife were
6 leaving for the Memorial Day weekend and there would be a house sitter at the residence. The
7 defendant gave Sgt. Peterson contact information for the house sitter so officers could continue
8 to access the house. The defendant also gave Sgt. Peterson the only key to the door between
9 the kitchen and the computer room so that area could be secured. The defendant and his wife
10 then left. Officers moved all the furniture in the computer room and the sewing room in an
11 exhaustive search for the bullet and other evidence supporting the defendant's version of
12 events.

13 When officers were unable to locate the bullet or any evidence Johnson had been shot
14 while he was in the computer room, the search moved outside. At approximately 2:40 p.m.,
15 Capt. Jason Grimmis located a bullet in the driveway, in front of the house. On May 22, 2013,
16 the defendant's pickup truck was parked over the area where the bullet was found. Sgt.
17 Peterson concluded that a bullet fired from inside the computer room at Johnson as Johnson
18 was trying to get out the sewing room window could have passed through Johnson's body on
19 an upward, right to left trajectory, and landed in the driveway.

20 LCSO Evidence Technician Chad Day weighed the bullet and consulted with Travis
21 Spinder, a scientist in the Firearm and Toolmark section at the Crime Lab. The two concluded
22 that based on the weight of the bullet, it was similar to the ammunition in the chamber and
23 magazine of the Interarms pistol. Day also swabbed the bullet for DNA.
24
25

1 **May 24, 2013 (Friday):**

2 Sgt. Peterson, Det. Olson and detectives from the Helena Police Department went to
3 4276 Canyon Ferry Road to complete Total Station mapping of the inside of the defendant's
4 residence.

5 **May 30, 2013 (Thursday):**

6 The defendant went to the Law Enforcement Center with his attorney, Royal Davis, at
7 the request of Sgt. Peterson and Det. Olson. The detectives explained to the defendant and
8 Davis they wanted to ask the defendant some questions, because the physical evidence gathered
9 both at the scene and during the autopsy did not support the defendant's story of the shooting.
10 The detectives explained where the bullet was located and the findings from the autopsy. The
11 detectives indicated that based on the physical evidence, County Attorney Leo Gallagher was
12 considering charging the defendant with mitigated deliberate homicide.

13 Davis did not allow the defendant to speak during the meeting. Davis explained his
14 extensive law enforcement experience to the detectives and indicated he'd processed many
15 crime scenes during his career. Davis told detectives he expected the defendant to be sued
16 because "even bastards have brothers." According to Davis, the defendant could not remember
17 shooting Johnson. Davis said he had visited the crime scene and spoken with his client, taking
18 extensive notes that he brought with him to the meeting. Davis asked the detectives a number
19 of questions about the investigation and agreed to further investigate their concerns about
20 inconsistencies between the defendant's story and the physical evidence.

21 **June 4, 2013 (Tuesday):**

22 Davis e-mailed County Attorney Leo to say he intended to interview a witness who had
23 seen the defendant pulling into his driveway on the afternoon of May 22, 2013. Exhibit 1,
24 6/4/2013 e-mail from Davis to Gallagher. LCSO Deputy Chris Cornish had interviewed this
25 witness on May 22.

1 **June 13 – 17, 2013:**

2 On June 13 Gallagher and Davis began a series of e-mails concerning the vehicle
3 Johnson was driving on May 22 and DNA from the bullet. Gallagher wanted to release the
4 vehicle to the owner as detectives had finished processing the vehicle. Gallagher also wanted
5 Davis's consent to consume the swabs from the bullet for DNA analysis. Ex. 2, 6/13 – 17/2013
6 e-mails.

7 **June 19, 2013:**

8 Davis sent an e-mail to Gallagher as an introduction to Mr. Rhoades. In the e-mail
9 Davis states "He (Rhoades) will be co-counsel in the event of criminal charges. . . Mr.
10 Rhoades and I have agreed upon an investigator and evidence technician who we want to
11 examine the Ford Taurus. It is my understanding that this gentleman will not be available
12 before the end of this week, or the first of next week. Additionally, both I and Mr. Rhoades
13 will wish to view the vehicle." Ex. 3, 6/19/2013 e-mail.

14 **June 21, 2013:**

15 Davis sent an e-mail to Sgt. Peterson confirming that he would "have everyone
16 available to look at the Ford Taurus next week from Tuesday on." The e-mail is copied to
17 Gallagher, Rhoades and buzzellassociates@yahoo.com. Ex. 4, 6/21/2013 e-mail.

18 **September 12, 2013:**

19 Det. Olson received the Serology/DNA report from the swab taken from the bullet
20 located in the driveway. DNA Analyst Joe Pasternak concluded the DNA on the bullet
21 matched Johnson's DNA profile.

22 **September 18, 2013:**

23 Gallagher e-mailed Davis and Rhoades with the DNA results and indicated the bullet
24 would next go to the Firearms and Toolmark section for analysis unless the defense wanted to
25 have the bullet swabbed for DNA first. Gallagher explained the defense could have the bullet

1 swabbed at the lab by the defense expert. Rhoades responded "Thank you for the information,
2 and offer. We accept your offer to collect the evidence." Ex. 5, 9/18/2013 e-mail.

3 **November 27, 2013 – December 3, 2013:**

4 Beginning on November 27, 2013, Gallagher and Ms. Siefert exchange a series of e-
5 mails regarding the bullet that was at the Crime Lab in the Firearms section awaiting analysis.
6 On December 3, 2013, Siefert informed Gallagher the defense wished to have the bullet
7 swabbed by their expert witness. Lynette Lancon in the Firearms section agreed to send the
8 bullet back to LCSO. Ex. 6, 11/27/2013 – 12/3/2013 e-mails.

9 **December 5, 2013:**

10 Chad Day e-mailed Siefert and Gallagher notifying the attorneys LCSO received the
11 bullet. Ex. 7, 12/5/2013 e-mail.

12 **December 9, 2013:**

13 Siefert e-mailed Day to say she had spoken with Det. Mike Hayes and arranged to have
14 the bullet sent to the defense expert. Ex. 8, 12/9/2013 e-mail.

15 **December 18, 2013:**

16 Siefert e-mailed the defense expert address to Det. Hayes. Ex. 9, 12/18/2013 e-mail.

17 **January 10, 2014:**

18 Lynette Lancon notified Gallagher the bullet was returned to the Crime Lab and was
19 available for further testing in the Firearms section. Ex. 10, 1/20/2014 e-mail.

20 **January 28, 2014:**

21 Det. Olson received the Firearm and Toolmark report stating the bullet found in the
22 defendant's driveway with Johnson's DNA on it was fired from the Interarms 9 mm pistol.
23 Lancon examined the shirt Johnson was wearing when he was shot and found no gunshot
24 residue (GSR) or stippling. She further determined the 9 mm stopped depositing GSR within 4
25 to 6 feet.

1 Shortly after receiving this report, LCSO and the County Attorney's Office determined
2 it would be appropriate to hire a forensic and crime scene expert to examine the 4276 Canyon
3 Ferry Road crime scene as well as the crime scene in another Lewis and Clark County case
4 being prosecuted by the Montana Attorney General's Office. Det. Olson contacted William
5 Schneck of Microvision Northwest Forensic Consulting and provided Schneck with copies of
6 the police reports, TS diagrams and other documentation of the crime scene. On October 3,
7 2014, Det. Olson, along with other officers, served a search warrant at 4276 Canyon Ferry
8 Road, permitting Schneck to enter onto the property for purposes of completing his analysis.

9 On January 6, 2015, Det. Olson received Schneck's report concluding the defendant
10 shot Johnson in the back as Johnson was trying to get out the sewing room window. A
11 complaint was filed charging the defendant with deliberate homicide on March 11, 2015.

12 **II. LAW**

13 The Due Process Clauses of the U.S. and Montana Constitution protect a criminal
14 defendant against "oppressive" preaccusation delay. *State v. Passmore*, 2010 MT 34, ¶ 27; 355
15 Mont. 187; 225 P.3d 1229 (*quoting United States v. Lovasco*, 431 U.S. 783, 789, 97 S.Ct. 2044,
16 2048, 52 L. Ed. 2d 752 (1977)).

17 Specifically, the *Due Process Clause* requires dismissal of the prosecution where
18 compelling the defendant to stand trial. (even though the statute of limitations has not
19 yet run) would violate "those fundamental conceptions of justice which lie at the base of
20 our civil and political institutions and which define the community's sense of fair play
and decency."

21 *Id.* (citations omitted).

22 In order to obtain dismissal based pre-accusation delay, a defendant must first establish
23 prejudice – "actual, substantial prejudice." The prejudice must rise to the level of preventing a
24 fair trial. Loss of evidence or witnesses are the most common forms or prejudice claimed as a
25 result of pre-accusation delay. "But the defendant has a 'heavy burden' to show that
preaccusation delay caused actual prejudice. The proof must be definite and not speculative or

1 presumed.” *Id.* at ¶ 28. Once a defendant establishes that pre-accusation prejudiced his ability
2 to obtain a fair trial, the burden shifts to the state to advance reason for the delay. The trial
3 court must then weigh the prejudice suffered by the defendant against the reasons underlying
4 the delay and determine whether the defendant’s due process rights would be violated by
5 requiring him to go to trial. *Id.* at 29.

6 [D]espite the degree of actual prejudice, there must be some culpability on the
7 government’s part before a dismissal may be granted. For example, although the
8 government has a good deal of leeway in its decisions as to the timing of arrests and
9 filing charges, dismissal would be required if the State delayed the prosecution
10 intentionally in order to gain a tactical advantage over the defendant and the defendant
11 suffered substantial prejudice as a result. Likewise, delay is weighed heavily against the
12 State if it was incurred in reckless disregard of circumstances indicating an appreciable
13 risk that delay would impair the defendant’s ability to mount an effective defense.
14 Finally, negligent conduct may be considered, though it is weighed less heavily than
15 deliberate delays.

16 *Id.*

17 “[T]he standard for pre-indictment delay is nearly insurmountable.” *United States v.*
18 *Rogers*, 1118 F.3d 466, 477 n. 10 (6th Cir. 1997).

19 Despite the fact the defendant claims self-defense, the State’s burden to investigate and
20 provide discovery is not greater or less than in any other criminal case. *State v. Cooksey*, 2012
21 MT 226, ¶ 37; 366 Mont. 346; 286 P.3d 1174. The police have no affirmative duty to gather or
22 preserve exculpatory evidence so long as they do not frustrate or hamper a defendant’s right to
23 obtain exculpatory evidence. *State v. Heth*, 230 Mont. 268, 272, 750 P.2d 103, 105 (1988). In
24 *Heth* the police failed to tape-record the audio portion of a recording depicting the defendant’s
25 physical characteristics after his drunk driving arrest. Heth argued the state violated his right to
due process by failing to preserve his audio statements because they would have demonstrated
he was not slurring his words. The court noted the police had no obligation to record Heth’s
statements even if they were exculpatory.

1 Similarly, *State v. Lawrence*, 285 Mont. 140, 948 P.2d 186 (1997), held investigators
2 did not violate the defendant's constitutional rights by failing to tape-record several hours of a
3 custodial interrogation during a homicide investigation that preceded the defendant's taped
4 interview during which he made incriminating statements. The defendant testified he was
5 coerced and tricked into making the recorded statement while the investigators testified
6 otherwise. The Supreme Court agreed with the district court's determination that the
7 investigator's failure to preserve the lengthy interrogation preceding the taped statement did not
8 violate the defendant's rights.

9 **III. ANALYSIS**

10 The defendant maintains he has suffered prejudice because any gunshot residue
11 deposited on May 22, 2013, was degraded by the time charges were filed in March 2015.
12 Furthermore, he criticizes law enforcement for not taking the pillowcase located by his back
13 door on May 22, 2013. As noted above, the State has no duty to gather or preserve exculpatory
14 evidence. Its only obligation is not to destroy such evidence or interfere with the defendant's
15 ability to gather it.

16 As the attached exhibits make clear, within eight days of the homicide, the defendant
17 was represented by Davis who by his own account has extensive experience in investigations in
18 general and crime scene processing specifically. The defendant and Davis were put on notice
19 as of May 30, 2013, that detectives did not believe the physical evidence supported the version
20 of events the defendant gave on May 22, 2013. For that reason, the detectives advised the
21 defendant and Davis that Gallagher was considering filing criminal charges against the
22 defendant for Johnson's homicide.

23 Within less than a month of the homicide, the defendant had retained Rhoades and an
24 "investigator and evidence technician." It is apparent that individual was Mr. Buzzell, as Ex. 7
25 (dated June 21, 2013) was copied to "buzzellassociates@yahoo.com." The attached e-mails

1 make clear the defense team was interviewing witnesses and examining evidence as early as
2 June 2013, with Mr. Buzzell as part of that team.

3 The defendant and his defense team, including Buzzell, had the ability to gather any
4 evidence they wished in the 665 days between the homicide and the date charges were filed in
5 Justice Court. The State did not impede those efforts in any way. The defendant cannot
6 overcome his "nearly insurmountable burden" to establish prejudice.

7 Contrary to the defendant's assertions in his supporting brief, the State continued to
8 investigate this case and evaluate the evidence from May 22, 2013, until March 26, 2015, the
9 date the complaint was filed. The State made painstaking efforts to ensure the defense had
10 access to all the evidence, for example, the residence, the silver Ford Taurus and the bullet.
11 The State kept the defendant and his attorneys apprised of the significance of the physical
12 evidence gathered at the scene and the results of the scientific testing. Because of the nature of
13 this case, the State went to the length of hiring an independent consultant to evaluate the
14 evidence and reconstruct the crime scene. Charges were only filed after that report was
15 received, confirming the detectives' assessment from May 22, 2013. Even if this Court were to
16 conclude the defendant suffered prejudice, the defense cannot and has not established the State
17 purposely or negligently delayed filing charges in order to gain a tactical advantage.

18 **IV. CONCLUSION**

19 The Court set an evidentiary hearing for July 31, 2015. The State respectfully requests
20 the opportunity to brief this issue more fully following the evidentiary hearing.

21 Dated this 17th day of June, 2015.

22 

23 _____
24 MELISSA BROCH, Deputy County Attorney
25 Lewis and Clark County

1 *CERTIFICATE OF SERVICE*

2 I hereby certify that on the 19th day of June, 2015, a copy of the foregoing was served
3 upon the defendant's attorneys of record by placing a copy in the U.S. Mail – first class,
4 postage prepaid – addressed as follows:
5

6 Quentin M. Rhoades
7 Nicole L. Siefert
8 Rhoades & Siefert, P.L.L.C.
9 430 North Ryman, Second Floor
10 Missoula MT 59802

11 DATED this 17th day of June, 2015.

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Leo Gallagher - Stiffler

From: <Zadacha@aol.com>
To: <countyattorney@lccountymt.gov>
Date: 6/4/2013 11:37 AM
Subject: Stiffler

Leo:

I intend to interview Ms. Leslie Brewer Nelson in the near future. If you or your staff would like to be present, please let me know.

Roy

Royal Aubrey Davis
P.O. Box 1364
East Helena, Montana 59635
406-442-4909

Attention: this email is an attorney-client communication or constitutes attorney work product. If you have received this email in error, delete and contact the sender.



Leo Gallagher - Re: Stiffler

From: <Zadacha@aol.com>
To: <lgallagher@lccountymt.gov>
Date: 6/17/2013 11:33 AM
Subject: Re: Stiffler

Thank you, I cannot get their email addresses to work from here.

RAD

In a message dated 6/17/2013 11:31:08 A.M. Mountain Daylight Time, lgallagher@lccountymt.gov writes:

I am copying this to them so they can run it down for you.

>>> <Zadacha@aol.com> 6/17/2013 11:29 AM >>>

Leo, I will have to get in touch with my client and see what he want's me to do. I will let you know by tomorrow.

On a further note, would you please release a copy of the interview that we had with the detectives. I will pay the costs of the copy.

RAD

In a message dated 6/17/2013 11:05:19 A.M. Mountain Daylight Time, lqallagher@lccountymt.gov writes:

We've taken pictures of the vehicle and collected what is needed from it. If you want to have a private investigator do something, then please have the investigator contact the Detectives right away. There is no reason to hang on to the vehicle. The person who owns it is entitled to its return.

The DNA samples are not going to the FBI. The FBI is for federal cases and exceptional state cases. The State crime laboratory is capable of doing this work. The DNA sample will be tested at the State Crime Laboratory unless you arrange to have them tested at a private laboratory that is acceptable to the State. Once again, if you want it tested at a private laboratory, please let me know right away.

>>> <Zadacha@aol.com> 6/17/2013 10:47 AM >>>

Leo,

1. I want the vehicle preserved.
2. I also want to examine the vehicle.
3. I will consider any disposition of the vehicle at this early date, to be a despoliation of evidence in the event of prosecution.
4. I consent to the consumption of DNA evidence but only if you send the samples to the FBI lab in DC.

Sincerely

Royal Aubrey Davis
P.O. Box 1364
East Helena, Montana 59635
406-442-4909



In a message dated 6/17/2013 9:05:47 A.M. Mountain Daylight Time, lgallagher@lccountymt.gov writes:

Your questions go to the investigation which is confidential. There were no fingerprints taken, because there is no reason to believe any thing of evidentiary value would be obtained by fingerprints.

Suffice it to say that the vehicle was searched with the owner's permission and there is no reason for LCSO to hang on to it.

If you want to take a quick look at it, please let the Detectives know today, otherwise, it is going back to the owner.

On another note, LCSO asked the crime laboratory to test for DNA that may, or may not, have been on the bullet recovered from the driveway. Before going through with testing the laboratory wants a letter from LCSO or me that it has permission to "consume" the evidence. That means that the sample size is so small that testing may prevent another independent analysis of the evidence.

I intend to send the consumption letter to the laboratory unless you have some other laboratory in mind to do the testing. The Montana Laboratory is certified and one of the best in the nation and free to the State so I trust its work.

If you object to the "consumption" of the evidence, please let me know in the next few days. If you have another laboratory that you want to test the evidence, please let me know who it is so I can vet it and we can work out the terms of how the evidence gets there and for the dissemination of its findings to LCSO. I don't have a budget for testing at outside laboratories, so the cost of the independent testing would be paid by your client.

Thanks.

>>> <Zadacha@aol.com> 6/13/2013 5:49 PM >>>
Thank you Leo, for your kind consideration.

Yes, I would like to inspect the vehicle. I also have questions regarding it:

1. What was the year, make and model of the car.
2. Who was the registered owner?
3. Was Mr. Johnson legally in possession of the vehicle?
4. What was the relationship between Mr. Johnson and the owner, if any?
5. Has the vehicle been dusted for prints? and if so,
6. Are all the prints obtained thereby, consistent with only Mr. Johnson and the owner?
7. Did your detectives or evidence technician remove any part from the

vehicle?

8. If yes, then what part(s)?

9. Is there a possibility that the owner was present at the scene of the burglary at any time?

In a message dated 6/13/2013 1:36:28 P.M Mountain Daylight Time, lgallagher@lccountymt.gov writes:

The owner of the vehicle that was taken from your client's property on 5/22 that Mr. Johnson was driving at the time of his death would like the vehicle returned to her.

I hear from investigators that their search of it did not reveal evidence that it or its tires had been struck by a bullet.

The vehicle has no evidentiary value to the state because there are numerous photographs depicting any evidence associated with the vehicle.

I am copying this to the Detectives involved with the case. If you would like to look at the vehicle, please contact them this week to make arraignments to look at it, otherwise, I have instructed them to return it to the owner next week. She gave her permission to its seizure and search and she is entitled to its return.

Should you wish to look at the vehicle, you can contact them at their email address or through the Sheriff's Office.

Thanks.

Leo Gallagher - Stiffler

From: <Zadacha@aol.com>
To: <lgallagher@lccountymt.gov>
Date: 6/19/2013 11:37 AM
Subject: Stiffler
CC: <qmr@montanalawyer.com>, <jstiffler69@gmail.com>

Leo,

This will introduce to you Mr. Quentin Rhoades, Esq., of Sullivan, Tabaracci and Rhoades, P.C., in Missoula. Mr. Rhoades was a classmate of mine at the U of M Law School, and I have known him to be a good student and a fine attorney. He will be co-counsel in the event of criminal charges, and for the likely possibility of a civil action stemming from the death of Henry Johnson on or about May 22, 2013.

Mr. Rhoades and I have agreed upon an investigator and evidence technician who we want to examine the Ford Taurus. It is my understanding that this gentleman will not be available before the end of this week, or the first of next week. Additionally both I and Mr. Rhoades will wish to view the vehicle.

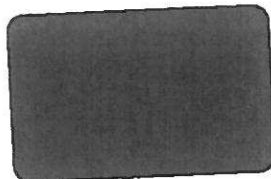
Thank you and deputies, Dave Patterson and Corey Olson for your kind forbearance in the matter of this vehicle.

Sincerely,

Roy

Royal Aubrey Davis
P.O. Box 1364
East Helena, Montana 59635
406-442-4909

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Royal Aubrey Davis



Leo Gallagher - Re: Vehicle from Stiffler incident

From: <Zadacha@aol.com>
To: <dpeterson@lccountymt.gov>, <lgallagher@lccountymt.gov>
Date: 6/21/2013 2:51 PM
Subject: Re: Vehicle from Stiffler incident
CC: <buzzellassociates@yahoo.com>, <qmr@montanalawyer.com>

Sgt Peterson,

I will have everyone available to look at the Ford Taurus next week from Tuesday on. Please let me know when it would be convenient for you to make it available to us.

Thanks.

Roy Davis
406-442-4909

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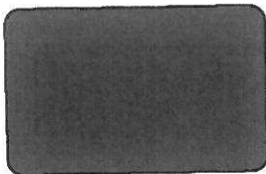
Royal Aubrey Davis

In a message dated 6/20/2013 9:11:57 A.M. Mountain Daylight Time, dpeterson@lccountymt.gov writes:

Mr Davis, The next couple of weeks are going to be busy for my office. If you want we can take a look at it with you tomorrow. If not tomorrow it may be a few days and the owner would like it back now.

Thank You

Sergeant Dave Peterson
Lewis and Clark County Sheriff's Office
221 Breckenridge
Helena Mt 59601
P- 406-447-8244



From: Quentin Rhoades <qmr@montanalawyer.com>
To: Leo Gallagher <lgallagher@lccountymt.gov>
CC: "Zadacha@aol.com" <Zadacha@aol.com>, Rachel Rhoades <Rachel@montanalawyer.com>
Date: 9/18/2013 11:29 AM
Subject: RE: Stiffler bullet and DNA

Mr. Gallagher,

Thank you for the information, and offer. We accept your offer to collect the evidence.

Sincerely,

Quentin M. Rhoades, Esq.
SULLIVAN, TABARACCI & RHOADES, P.C.
(406)721-9700
qmr@montanalawyer.com
www.montanalawyer.com

CONFIDENTIALITY NOTICE: The contents of this communication are confidential and subject to attorney/client privilege. If the reader is not the intended recipient or its agent, be advised that any dissemination, distribution or copying of the contents of this communication is prohibited. If you have received this communication in error, please notify the sender immediately and destroy all copies (electronic or otherwise) of this communication which you have received.

-----Original Message-----

From: Leo Gallagher [mailto:lgallagher@lccountymt.gov]
Sent: Wednesday, September 18, 2013 10:59 AM
To: Zadacha@aol.com; Quentin Rhoades
Cc: Chad Day; Cory Olson; Dave Peterson
Subject: Stiffler bullet and DNA

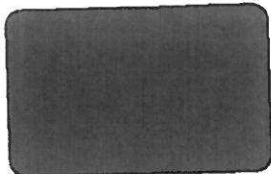
The crime lab's analysis of the swab taken from the bullet recovered your client's driveway match the deceased. (1 in 9,107,000,000,000,000). The swab was consumed during testing.

At this point the bullet will go to Firearms to determine if it was fired by the same weapon used by your client.

Please let me know within one week if you want an expert from the defense swab the bullet for testing as you may wish. If you would like to have your expert collect the swab, please contact the LCSO Detectives or Evidence Technician to arrange the swab. If the bullet is at the lab in Missoula, then we can arrange for the collection of the evidence to take place at the lab.

If either I or the Detectives have not heard from you or your expert by the end of business on September 25, 2013, we will assume that testing of the bullet by Firearms can go forward.

Thanks.



From: Nicole Siefert <Nicole@montanalawyer.com>
To: Leo Gallagher <lgallagher@lccountymt.gov>
CC: Chad Day <CDay@lccountymt.gov>, Cory Olson <colson@lccountymt.gov>, Dave
Date: 12/3/2013 10:32 AM
Subject: RE: Stiffler Bullet Testing

Mr. Gallagher:

Thank you for the clarification. We are going to have an expert swab the bullet and see if there is any DNA left on the bullet. The expert we have contacted does not live in Montana. Please let me know who I need to connect with to get the bullet to our expert.

Nicole L. Siefert

Sullivan, Tabaracci & Rhoades, P.C.
1821 South Avenue West
Missoula MT 59801
406-721-9700

www.montanalawyer.com

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-----Original Message-----

From: Leo Gallagher [mailto:lgallagher@lccountymt.gov]
Sent: Wednesday, November 27, 2013 1:53 PM
To: Nicole Siefert
Cc: Chad Day; Cory Olson; Dave Peterson; Quentin Rhoades; llancon@mt.gov
Subject: Re: Stiffler Bullet Testing

Thanks for responding.

I don't know if there is DNA on the bullet or not. The DNA profile obtained at the lab was developed from testing a swab of the bullet which was consumed during testing and this information is reflected in the 9/18 email which I attach. The bullet was not consumed by testing. I suppose there could be some DNA remaining on the bullet that was not collected during the swabbing that might come onto a swabbing by your expert. There most certainly won't be DNA on it once it goes through testing by the Firearms/Toolemarks section.

And so, if you want an expert to swab the bullet so your swab can be sent on to a lab of your choice, please let us know as soon as possible so whatever expert you select can swab the evidence. We'll need a few days lead time to get the bullet from the lab to Helena if you wish this to occur.

I am copying this response to those on the State end of the bullet to keep them in loop. Please respond "to all" so we make sure whatever request you may have goes forward should I be away from my computer.

Thanks again.

>>> Nicole Siefert <Nicole@montanalawyer.com> 11/27/2013 1:05 PM >>>
Mr. Gallagher

I'm Nicole Siefert, a new associate at ST&R. I wanted to introduce myself and clear up some confusion.

Based on the email sent to Q. Rhoades and others on September 18, 2013, we were under the impression that all DNA on the bullet was consumed. Therefore, we decided that it was not worth the time and expense to have the bullet tested for DNA by our own expert. If there is still some DNA on the bullet then we may advise our client that DNA testing should be done. Can you clear up the confusion for us? Is there any DNA left on the bullet? Possibly we misread your email and only the swab was consumed, not the DNA on the bullet itself.

Thank you for your attention to this matter.

Nicole L. Siefert

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Leo Gallagher - RE: Stiffler Bullet Testing

From: Chad Day
To: Leo Gallagher; Nicole Siefert
Date: 12/5/2013 1:31 PM
Subject: RE: Stiffler Bullet Testing
CC: Cory Olson; Dave Peterson; Michael Hayes; Quentin Rhoades; llancon@m...

The bullet is now at the Lewis and Clark County Sheriff's Office. Please contact me at 406-447-8250 to arrange for your expert to examine the item. I will be out of town on training the week of Dec. 9th-13th. If you need to have access to the item during that time please contact Mike Hayes at 406-457-8834.

Thanks,
Chad

>>> Nicole Siefert <Nicole@montanalawyer.com> 12/3/2013 10:31 AM >>>
Mr. Gallagher:

Thank you for the clarification. We are going to have an expert swab the bullet and see if there is any DNA left on the bullet. The expert we have contacted does not live in Montana. Please let me know who I need to connect with to get the bullet to our expert.

Nicole L. Siefert

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-----Original Message-----

From: Leo Gallagher [lgallagher@lccountymt.gov]
Sent: Wednesday, November 27, 2013 1:53 PM
To: Nicole Siefert
Cc: Chad Day; Cory Olson; Dave Peterson; Quentin Rhoades; llancon@mt.gov
Subject: Re: Stiffler Bullet Testing

Thanks for responding.

I don't know if there is DNA on the bullet or not. The DNA profile obtained at the lab was developed from testing a swab of the bullet which was consumed during testing and this information is reflected in the 9/18 email which I attach. The bullet was not consumed by testing. I suppose there could be some DNA remaining on the bullet that was not collected during the swabbing that might come onto a swabbing by your expert. There most certainly won't be DNA on it once it goes through testing by the Firearms/Toolemarks section.

And so, if you want an expert to swab the bullet so your swab can be sent on to a lab of your choice, please let

Leo Gallagher - RE: Stiffler Bullet Testing

From: Nicole Siefert <Nicole@montanalawyer.com>
To: Chad Day <CDay@lccountymt.gov>, Leo Gallagher <lgallagher@lccountymt.gov>
Date: 12/9/2013 12:12 PM
Subject: RE: Stiffler Bullet Testing
CC: Cory Olson <colson@lccountymt.gov>, Dave Peterson <dpeterson@lccountymt.gov>

Chad:

Thank you. I contacted Mike Hayes. I will be getting him our expert's address and he will mail the bullet directly to the expert. We will pay for the mailing and utilize FedEx or UPS so we can track delivery. Our expert intends on doing a "DNA digest buffer." He takes the bullet and puts it in a solution to get whatever DNA is left on the bullet (if any). He will not damage the integrity of the bullet in any way.

Nicole L. Siefert

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Missoula MT 59801
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WWW.MONTANALAWYER.COM

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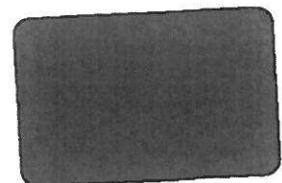
From: Chad Day [CDay@lccountymt.gov]
Sent: Thursday, December 05, 2013 1:31 PM
To: Leo Gallagher; Nicole Siefert
Cc: Cory Olson; Dave Peterson; Michael Hayes; Quentin Rhoades; llancon@mt.gov
Subject: RE: Stiffler Bullet Testing

The bullet is now at the Lewis and Clark County Sheriff's Office. Please contact me at 406-447-8250 to arrange for your expert to examine the item. I will be out of town on training the week of Dec. 9th-13th. If you need to have access to the item during that time please contact Mike Hayes at 406-457-8834.

Thanks,

Chad

>>> Nicole Siefert <Nicole@montanalawyer.com> 12/3/2013 10:31 AM >>>
Mr. Gallagher:



From: Nicole Siefert <Nicole@montanalawyer.com>
To: Michael Hayes <MHayes@lccountymt.gov>
CC: Cory Olson <colson@lccountymt.gov>, Dave Peterson <dpeterson@lccountymt.gov>
Date: 12/18/2013 2:43 PM
Subject: RE: Stiffler Bullet Testing

Mike:

Per our discussion, please send the Stiffler bullet to our expert at the address below.

George Schiro, MS, F-ABC
Forensic Scientist
Scales Biological Laboratory, Inc.
220 Woodgate Dr. S
Brandon, MS 39042

Please use our account at FedEx or UPS (whichever is easier for you). Our FedEx account number is 1229-1978-1. Our UPS account number is 943-AV8.

Let me know when you send the bullet and which provider you use so we can track shipping. Thank you for your attention to this matter.

Nicole L. Siefert

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1821 South Avenue West
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-----Original Message-----

From: Leo Gallagher [mailto:lgallagher@lccountymt.gov]
Sent: Monday, December 09, 2013 2:37 PM
To: Chad Day; Nicole Siefert
Cc: Cory Olson; Dave Peterson; Michael Hayes; Quentin Rhoades; llancon@mt.gov
Subject: RE: Stiffler Bullet Testing

Thanks for arranging this.

Please let me know a reasonable time when you expect the bullet to be ready for further analysis at the Lab in Missoula.

Unless I hear an objection from the lab, I would suggest that when the bullet is ready for return, that it be sent directly to the crime laboratory to avoid any further hands in the chain of custody.

>>> Nicole Siefert <Nicole@montanalawyer.com> 12/9/2013 12:09 PM >>>
Chad:

Thank you. I contacted Mike Hayes. I will be getting him our expert's address and he will mail the bullet directly to the expert. We will pay for the mailing and utilize FedEx or UPS so we can track delivery. Our

Leo Gallagher - Stiffler Bullet

From: "Lancon, Lynette" <LLancon@mt.gov>
To: Leo Gallagher <lgallagher@lccountymt.gov>
Date: 1/10/2014 3:11 PM
Subject: Stiffler Bullet
CC: Cory Olson <colson@lccountymt.gov>, Nicole Siefert <Nicole@montanalawyer...>

Hi Leo,

I just wanted to let you know that the bullet was returned from George to the lab today. I will analyze it next week.

Let me know if you need anything else.

Have a great weekend!

Lynette

Lynette C. Lancon

Firearm and Toolmark Examiner
Montana State Crime Laboratory
2679 Palmer St.
Missoula, MT 59808
Phone (406) 728-4970
Fax (406) 549-1067

