

**Texas Forensic Science Commission
Minutes from August 17, 2017 Complaint Screening Committee Meeting
in Austin, Texas**

The Texas Forensic Science Commission's Complaint Screening Committee ("CSC") met at 3:30 p.m. on Thursday, August 17, 2017 at the Stephen F. Austin Building, 1700 N. Congress Avenue, Room 172, Austin, Texas 78701.

Members of the Commission and CSC were present as follows:

Members Present: Budowle, Daniel, Johnson, Drake

Members Absent: None

Staff Present: Lynn Garcia, General Counsel
Kathryn Adams, Commission Coordinator

Discuss factual information, allegations and potential recommendations for complaints and laboratory self-disclosures received through August 2, 2017, the Commission's 15-day deadline for receipt of complaints and self-disclosures this quarter, or left pending from the Commission's May 25, 2017 quarterly meeting.

Complaints Pending from May 25, 2017

1. No. 16.54; Gulley, Britney (SWIFS; Firearms/Toolmarks)

Defendant Britney Gulley filed this complaint alleging a Southwestern Institute of Forensic Sciences ("SWIFS") firearms analyst misidentified a firearm and bullets that led to her wrongful conviction for murder. The lab agreed to reanalyze the evidence in this case pursuant to an agreement between the Dallas County Public Defender's Office (Gulley's attorney) and the Dallas County District Attorney's office.

MOTION AND VOTE: *Johnson moved to recommend the full Commission dismiss the complaint and draft letters to SWIFS, the Dallas County DA's office and the Dallas County Public Defender's Office notifying of the dismissal and requesting an update if reanalysis of the evidence yields different results than those previously concluded. Drake seconded the motion. The CSC unanimously adopted motion.*

2. No. 17.04; Gefrides, Lisa (Houston Forensic Science Center ("HFSC"); Biology/DNA)

Forensic biology consultant Lisa Gefrides filed this complaint alleging the HFSC's biology section is not adequately identifying and controlling errors during testing of biological evidence. Garcia related the contents of her telephone conference with Budowle and the complainant who submitted additional material. She has not had a chance to review the new material as it is voluminous.

MOTION AND VOTE: *Johnson moved to recommend the full Commission table the complaint until TFSC's quarterly meeting pending Garcia's review of new responsive material provided by HFSC as well as information from the complainant. Daniel seconded the motion. The CSC unanimously adopted the motion.*

3. No. 17.05; Innocence Project of Texas (DPS Austin; DNA-CODIS)

The Innocence Project of Texas filed this complaint alleging the DPS Austin CODIS Laboratory failed to comply with National DNA Index System ("NDIS") procedures when uploading a DNA search profile into the Combined DNA Index System ("CODIS") such that one of the obligate alleles would have excluded the particular defendant being compared had the profile been properly uploaded. IPOT filed an amendment to its complaint alleging problems with the mixture interpretation performed by Orchid Cellmark.

Budowle was asked to review the analysis performed in the case. He presented his conclusions that he disagreed with Orchid Cellmark about some locus calls, but those interpretive issues were not sufficient to raise concerns regarding the ultimate strength of the association between the evidentiary profile and Millages's known profile. Additionally, DPS followed the appropriate protocols for CODIS upload at the time.

MOTION AND VOTE: *Drake moved to recommend the full Commission dismiss the complaint based upon Budowle's review of the evidence and his subsequent conclusions, and to issue a letter to Mr. Ware explaining same. Daniel seconded the motion. The CSC adopted the motion.*

*Commissioner Pat Johnson recused himself from discussion and vote on this complaint.

4. No. 17.13; Hill, Anthony (Max Courtney; Crime Scene Reconstruction)

Defendant Anthony D. Hill filed this complaint alleging crime scene reconstructionist Max Courtney gave scientifically insupportable analysis and testimony that led to Hill's wrongful conviction for capital murder. Members discussed filing a request with the Tarrant County District Attorney's Office to review/assess the merit of the complaint.

Boswell related she sent Mr. Hill a Conviction Integrity Unit form in April, 2017 to return to her in order to have his case reviewed. She has not yet received the completed form.

MOTION AND VOTE: *Daniel moved to recommend the full Commission table the complaint, send another form from the Tarrant County Conviction Integrity Unit to Mr. Hill with a letter explaining he must return the form within 30 days to have his case reviewed. Drake seconded the motion. The CSC unanimously adopted the motion.*

5. No. 17.23; Ghant, Travis (Scott & White – Temple Sexual Assault Nurse Examiner Alice Lindner; S.A.N.E)

Defendant Travis Ghant filed this complaint alleging S.A.N.E. Alice Linder from Scott & White Temple gave scientifically insupportable testimony related to a “V-shaped” tear in the victim’s hymen that led to his wrongful conviction for sexual assault of a child.

MOTION AND VOTE: *Daniel moved to defer to the full Commission on the disposition of this case based upon Commissioner Nancy Downing’s case review and update to be reported at the main meeting. Drake seconded the motion. The CSC unanimously adopted the motion.*

6. No. 17.24; Smithwick, Roy (Bexar County Criminal Investigation Lab; Serology and Ballistic)

Defendant Roy Louis Smithwick, Jr. filed this complaint alleging Bexar County Criminal Investigation Lab former analysts Ron Dodson and Fred Zain gave false and misleading ballistic and serology testimony that led to his wrongful conviction for murder.

Garcia related her communications with Fallon in Bexar County and his report that no additional records on the Smithwick case were located.

MOTION AND VOTE: *Daniel moved to recommend the full Commission table the complaint, send Mr. Smithwick a letter requesting more case information, attempt to locate Zain case files and check with the Webb Co DA’s office to inquire if they have any case files in their possession. Drake seconded the motion. The CSC unanimously adopted the motion.*

Complaints Received as of August 2, 2017

7. No. 13.06; Mireles, Gustavo (DPS McAllen; DNA/Blood Spatter/Crime Scene)

Defendant Gustavo Lopez Mireles filed this complaint alleging fundamental flaws in DNA interpretation by DPS as well as flaws in crime scene reconstruction with a particular focus on blood spatter analysis.

Budowle agreed to review genetic evidence in the case. Garcia mentioned the possibility of asking Bob Henderson to review the blood spatter evidence depending on Budowle’s conclusions.

MOTION AND VOTE: *Daniel moved to defer recommendation of disposition of this complaint to the full Commission after presentation of Budowle’s review of the case data. Drake seconded the motion. The CSC unanimously adopted the motion.*

*Commissioner Pat Johnson recused himself from discussion and vote on this complaint.

8. No. 17.34; Radke, Christopher (SWIFS; DNA/Serology)

A complaint by Jane Caldwell made on behalf of inmate Christopher Radke alleging SWIFS serologist, Kathy Long, was negligent and committed misconduct by providing Tom Bevel (out-of-state bloodstain pattern expert) access to physical evidence in the case for the purpose of performing bloodstain pattern analysis. According to the complaint, Mr. Bevel identified twelve high velocity blood stains on the evidence (left leg of a pair of pants), and this conclusion contradicted a diagram drawn by former SWIFS analyst John Planz.

MOTION AND VOTE: *Johnson moved to recommend to the Commission dismissal of the complaint because the allegations had no merit. Daniel seconded the motion. The CSC unanimously adopted the motion.*

9. No. 17.36; Whitlock, Tarrance (SWIFS; GSR)

Defendant Tarrance Whitlock filed this complaint alleging SWIFS trace analysts used a “frivolous or false forensic analysis (flameless atomic absorption analysis)” to convict him of aggravated assault of a public servant. The analytical procedure was used to detect gunshot residue.

MOTION AND VOTE: *Drake moved to recommend dismissal of the complaint in light of the explanation provided by Dr. Tim Sliter and the fact that the analysis used at the time was common practice. Johnson seconded the motion. The CSC unanimously adopted the motion.*

10. No. 17.46; Tran, Quang (SWIFS; Firearms/Tool Marks)

Defendant Quang Tran filed this complaint alleging the firearm/tool mark analysis performed by SWIFS was flawed due to the fact that the work was performed by SWIFS analyst Heather Thomas who misidentified a firearm in an unrelated Grimes County case for which the Commission issued an investigative report.

MOTION AND VOTE: *Daniel moved to recommend to the Commission dismissal of the complaint with referral to the Dallas Co DA’s Office and the Dallas Co Public Defender’s Office for a determination on whether the case merits re-analysis and under what terms. Drake seconded the motion. The CSC unanimously adopted the motion.*

11. No. 17.49; Isenhower, David Wayne (Harris Co Sheriff’s Office; Blood Spatter)

Defendant David Wayne Isenhower filed this complaint alleging a Harris County Sheriff’s Officer exceeded his expertise as a crime scene examiner by testifying about blood spatter, bullet trajectory and other issues.

MOTION AND VOTE: *Daniel moved to recommend the Commission refer the complaint to the Harris County Conviction Integrity Unit for review. Drake seconded the motion. The CSC unanimously adopted the motion.*

Disclosure Pending from May 25, 2017

1. No. 17.26; DPS El Paso (Lost DNA Evidence)

DPS El Paso self-disclosed an incident in its DNA section where an analyst was unable to locate an envelope containing three cuttings for DNA testing which were believed to have been returned to the evidence section.

MOTION AND VOTE: *Daniel moved to recommend taking no further action on the complaint in light of supplemental Corrective Action material received. Drake seconded the motion. The CSC adopted the motion*

*Commissioner Pat Johnson recused himself from discussion and vote of this self-disclosure.

Disclosures Received as of August 2, 2017

2. No. 17.38; Jefferson County Regional Crime Laboratory (Seized Drugs)

Jefferson County Regional Crime Laboratory self-disclosed an issue in its drug chemistry section wherein the value for the balance resolution of the high capacity floor balance was entered incorrectly as .02 instead of .01 on the uncertainty calculation. The value was used in all subsequent uncertainty calculations until 1/24/17, which affected the combined rounded and expanded uncertainty amount for pounds only, resulting in incorrect values reported in 34 cases from 4/23/13-1/24/17, and one additional case from 1/24/17-5/31/17, when the error was identified.

Drake provided an explanation of how this incident most likely would have occurred.

MOTION AND VOTE: *Johnson moved to recommend taking no further action on the complaint. Drake seconded the motion. The CSC adopted the motion*

3. No. 17.44; DPS Tyler (Seized Drugs)

DPS Tyler disclosed an incident in which a technician receiving four items of evidence from the Canton Texas Highway Patrol Office treated the request as if all items had been submitted for destruction when the officer had actually requested analysis be performed on two of the items. All four items were destroyed without any analysis performed.

MOTION AND VOTE: *Daniel moved to defer to the full Commission as to disposition after Hilbig reports on the case tomorrow at the main meeting. Drake seconded the motion. The CSC adopted the motion.*

*Commissioner Pat Johnson recused himself from discussion and vote of this self-disclosure.

4. No. 17.45; DPS Tyler (Seized Drugs/LIMS)

DPS Tyler disclosed an incident wherein a controlled substance report was issued on May 17, 2017 as “Contains Methamphetamine” when test results and supporting documentation indicated the substance to be cocaine. The error was not caught during technical review.

MOTION AND VOTE: *Daniel moved to recommend a follow-up inquiry to the lab as to why the error was not caught upon technical review. Drake seconded the motion. The CSC adopted the motion.*

*Commissioner Pat Johnson recused himself from discussion and vote of this self-disclosure.

5. No. 17.47; Houston Forensic Science Center (Toxicology)

Houston Forensic Science Center disclosed a deviation from SOP in its Toxicology Section wherein d/l-methamphetamine was used in ELISA blood and urine validations instead of pure d-methamphetamine.

MOTION AND VOTE: *Daniel moved to recommend no further action on the case in light of a thorough root cause analysis and no impact on the outcome of cases involved. Drake seconded the motion. The CSC adopted the motion.*

6. No. 17.48; Houston Forensic Science Center (DNA Evidence Handling)

Houston Forensic Science Center disclosed an incident involving the discovery of biological evidence among items removed from a former employee’s office.

MOTION AND VOTE: *Johnson moved to recommend no further action on the case in light of appropriate notifications made by the lab, the age of the case and the fact that the employee involved is no longer with the lab. Drake seconded the motion. The CSC adopted the motion.*

7. No. 17.50; Houston Forensic Science Center (CODIS)

Houston Forensic Science Center disclosed an incident in its Forensic Biology section wherein local CODIS (LDIS) case-to-case hits occurred and no notification letters were generated as required by the National DNA Index System (NDIS) and HFSC policy until an investigator inquired as to why the lab did not get a hit for the two cases.

MOTION AND VOTE: *Johnson moved to recommend no further action on the case in light of root cause analysis and implementation of a new system to track the workloads of analysts. Drake seconded the motion. The CSC adopted the motion.*

Hear public comment.

Committee members heard public comment from meeting attendees as noted throughout the agenda above.

Adjourn.