



TEXAS FORENSIC
SCIENCE COMMISSION

Justice Through Science

1700 North Congress Ave., Suite 445
Austin, Texas 78701

May 17, 2019

Via First Class Mail

Mr. Domingo Amaro-Solis
TDCJ# 2069544
Coffield Unit
2661 FM 2054
Tennessee Colony, TX 75884

Re: TFSC Complaint No. 19.13: Amaro-Solis, Domingo (Houston Forensic Science Center/Forensic Biology- DNA)

Dear Mr. Amaro-Solis,

At its May 3, 2019 meeting, commissioners dismissed the referenced case based upon the response provided by the Houston Forensic Science Center ("HFSC"), review of the analyses performed in your case, and related facts. A copy of the lab's response is enclosed for your reference.

Analyst Jisel Luttrell (formerly Bailon) is a licensed analyst whose educational background was vetted by commission staff prior to the issuance of her Texas license on December 18, 2018. For your information, "licensing" and "certification" do not mean the same thing. There are specialty organizations in existence around the country that offer certifications in specific disciplines. She was employed by HFSC at the time of the DNA analyses performed in your case. Commissioners reviewed the trial testimony in your case and believe there was likely a transcription error given the overall context of the questioning and statements.

Bode Technology is a laboratory in Virginia that is accredited by this commission to perform casework in Texas and has existed since 1995. One laboratory sending evidence out to another laboratory that performs testing that the source lab does not is not an unusual practice.

Enclosed is a list of innocence clinics operating in Texas should you wish to submit your case for consideration. Thank you.

Sincerely,

A handwritten signature in blue ink, reading "Kathryn Adams", is written over the typed name.

Kathryn Adams
Commission Coordinator

/mka
Encl.

April 23, 2019

Lynn Garcia
General Counsel
Texas Forensic Science Commission
1700 North Congress, Suite 445
Austin, Texas 78701

Via email to: lynn.garcia@fsc.texas.gov



**HOUSTON FORENSIC
SCIENCE CENTER**

500 Jefferson Street, 13th Floor
Houston, Texas 77002
(713) 929-6760

Good afternoon,

The Houston Forensic Science Center has evaluated the complaint filed by Mr. Amaro-Solis. We disagree with Mr. Amaro-Solis' complaint and have provided evidence to support our position below. We do agree that on page 85 of the testimony the use of the word "included" was notable. A discussion of this is included in *Testimony Issue #1* below. But in summary we do not believe this to be intentional nor is it consistent with the rest of the testimony or reports and while we cannot rule out the analyst mis-speaking, it appears to be a misquote in the court record.

Concern #1: The analyst falsely testified regarding her education, certification, and professional organization membership.

HFSC Response: The Houston Forensic Science Center has verified the education and certifications provided in Ms. Jisel Luttrell, nee Bailon's testimony and can provide documentation if needed. Ms. Luttrell nee Bailon was employed at the Houston Forensic Science Center from October 2012 to March 2017 and again from February 2018 to current day as a contract employee.

Concern #2: The testimony of DNA results was contradictory, misleading, and/or false.

HFSC Response: Six DNA reports were issued for HFSC FCN 2014-01892 (HPD Incident #008758714). The table below summarizes these 6 reports.

Date of Report	Testing Completed	Items Tested	Summary of Report Content	Comments
May 28, 2014	Autosomals at Bode	SAK screened; only labia minora swabs and complainant known submitted to STRs	Epithelial fraction consistent with complaint; sperm fraction consistent with a mixture of complainant and "one male contributor"	N/A
November 6, 2014	Ownership review of vendor-generated data	labia minora swabs and complainant known	Eligible profile from the sperm fraction of the labia minora tested by Bode entered into CODIS	To date, there has not been a CODIS hit on the profile entered into CODIS
April 2, 2015	Comparison of known buccal swabs from Domingo Amaro tested at HFSC	known buccal swabs for Domingo Amaro compared to sperm and epithelial fractions of	Domingo Amaro excluded from epithelial fraction of labia minora swabs tested by Bode; Domingo Amaro not excluded from minor component of sperm fraction of labia	N/A

	to DNA results generated by Bode	labia minora swabs tested by Bode	minora swabs tested by Bode (approximate frequencies reported ranged from 1 in 46 to 1 in 690; the 1 in 46 was for the Southeast Hispanic db that did not contain loci D2 or D19)	
August 12, 2015 **Amended Report**	Comparison of known buccal swabs from Domingo Amaro tested at HFSC to DNA results generated by Bode	known buccal swabs for Domingo Amaro compared to sperm and epithelial fractions of labia minora swabs tested by Bode	Domingo Amaro excluded from epithelial fraction of labia minora swabs tested by Bode; Domingo Amaro not excluded from minor component of sperm fraction of labia minora swabs tested by Bode (approximate frequencies reported ranged from 1 in 530 to 1 in 690; the Southeast Hispanic db without all tested loci no longer reported)	Report dated April 2, 2015 amended to include updated FBI allele frequencies in Popstats
September 29, 2015	Autosomals at HFSC	Labia minora swabs and complainant known retested at HFSC	Domingo Amaro excluded from epithelial fraction of labia minora swabs tested by HFSC; Domingo Amaro excluded from major component of sperm fraction of labia minora swabs tested by HFSC; no conclusions were made regarding the minor component of the sperm fraction of labia minora swabs due to insufficient data	ADA requested that items initially tested by Bode be retested by HFSC because the Bode analyst(s) was not available
June 6, 2016	YSTRs at HFS	sperm fraction of labia minora tested by Bode; fingernail swabs; sperm fraction of labia minora tested by HFSC; known buccal swabs for Domingo Amaro	No conclusions for sperm fraction of labia minora tested by Bode due to unexplained artifacts that could not be reproduced upon re-amp due to limited extract volume; no conclusions on fingernail swabs due to presence of multiple contributors; Domingo Amaro not excluded from sperm fraction of labia minora tested by HFSC (approximate frequencies ranged from 1 in 1,221 to 1 in 2,770 using the US YSTR database)	Email from ADA on May 25, 2016 indicates that YSTRs in progress cannot be presented in trial because trial has already started

Testimony Issue #1:

Her testimony is inconsistent with the reports, specifically as it relates to the minor component. As Mr. Amaro-Solis points out, on at least three occasions, Ms. Bailon testified that the minor component of the sperm fraction was insufficient to draw any conclusions. This testimony is consistent with the results of testing completed at the Houston Forensic Science Center. Mr. Amaro-Solis provided three examples of this “inconsistent” testimony in his complaint: page 83, page 85, and page 97.

The testimony on page 83 pertains to the testing completed at Bode and Ms. Bailon testified that Mr. Solis cannot be excluded from the minor component, which is consistent with the DNA report dated August 12, 2015.

On page 85, Ms. Bailon is quoted as saying that "...Domingo Amaro is included as a possible contributor to the major component of the mixture." This testimony is inconsistent with the autosomal DNA reports. However, whether Ms. Bailon mistakenly used the word "included" or was misquoted is unclear. With this exception on page 85, throughout her testimony, Ms. Bailon's phrasing was either cannot be excluded or is/was excluded when describing her comparisons. This phrasing, as opposed to "included", is consistent with Houston Forensic Science Center reporting language. If Ms. Bailon did in fact use the word "included" instead of "excluded", it would not seem intentional, as on the other two instances that specifically addressed the major component of the sperm fraction of the labia minora swabs tested at the Houston Forensic Science Center, Ms. Bailon testified that Mr. Amaro[-Solis] was excluded (page 92, page 97). Further, she did not object to defense's assertion that Mr. Amaro[-Solis] was excluded from the major component of the sperm fraction of the labia minora swabs tested at the Houston Forensic Science Center on page 100.

On page 97, the testimony pertains to testing completed at the Houston Forensic Science Center and Ms. Bailon testified, in accordance with the DNA report dated September 29, 2015, that the minor component was insufficient.

Testimony Issue #2:

Mr. Amaro-Solis points out the inconsistency in Ms. Bailon's testimony on page 85 in which she stated that "...Domingo Amaro is included...". We agree. Please see the above response. However, Mr. Amaro-Solis goes on to assert that "...NO report claims that I am included in any component minor or major." We disagree with this assertion. In DNA reports dated April 2, 2015 and August 12, 2015, when comparing Mr. Amaro[-Solis] to the DNA profiles generated by Bode for the labia minor swabs, Ms. Bailon reports that "Domingo Amaro cannot be excluded as a possible contributor to the minor component of this DNA mixture." We agree with Mr. Amaro-Solis that Ms. Bailon does exclude Mr. Amaro[-Solis] from the major component of the sperm fraction of the labia minora swabs tested at the Houston Forensic Science Center.

Concern #3: HFSC reports "follow a pattern of inconsistency, unreliability, as they are not supported by reproducible results due to the lack of information on them, that they do not comport with the HFSCs SOPs for DNA reporting and they cannot produce the reports that they supposedly are using for the analysis and reporting that has been made."

Mr. Amaro-Solis asserts that the reports to which Ms. Bailon testified do "not comport with the SOPs of the HFSC lab." The HFSC DNA SOP requires that DNA reports contain the following: case identifier, description of evidence examined, results and/or conclusions, a qualitative or quantitative interpretive statement, date issued, signature and title of the responsible person, description of DNA technology, loci analyzed, if DNA analyzed or the name of kit utilized for testing, and disposition of evidence. Each of these requirements is met in each of the DNA testing reports issued by HFSC, as well as by Bode.

Report issue #1: For each item tested, whether at Bode or at HFSC, a quantitative or qualitative interpretive statement is provided for the DNA results generated when the report contains DNA results that have not been previously reported. When only performing a comparison, for example in HFSC DNA reports dated April 2, 2015 and August 12, 2015, Ms. Bailon did not restate the interpretive statement for items previously reported, but instead only provided a qualitative or quantitative interpretive statement on items for which results had not yet been reported (eg, portion of known buccal swabs from Domingo Amaro). For items previously reported, Ms. Bailon simply provides a comparison statement. Mr. Amaro-Solis appears to be looking for information such as how much of each sample was consumed at testing or the "amount or quality of the extracted DNA that was used for testing purposes...". HFSC does not consider this type of information interpretive and does not therefore include it in all DNA reports. However, all this information is contained within the casefile, and as noted in reports dated September 29, 2015 and June 6, 2016, "The prosecutor and defense counsel may obtain additional documents related to this case by submitting a request to Triage@HoustonForensicScience.org. Requests should state the requestor's connection to the case and include full contact information."

Report issue #2: Mr. Amaro-Solis claims the DNA reports issued by HFSC do not “have a ‘description of the technology used’”. HFSC has adopted the FBI Quality Assurance Standards’ definition of technology as “...the type of forensic DNA analysis performed in the laboratory, such as RFLP, STR, YSTR, or mitochondrial DNA”. In each of the DNA reports issued by HFSC, the technology and loci tested are included in the report. For reports dated April 2, 2015 and August 12, 2015, the PCR STR loci are listed on page 1 just prior to the interpretations/comparisons for each sample. For the DNA report issued September 29, 2015, the technology (STR) and PCR STR loci tested can be found on page 2 in the notes section, note #7. For the YSTR report dated June 6, 2016, the YSTR technology and YSTR loci tested can be found on page 1 just prior to the interpretations/comparison for each sample tested.

Report issue #3: Mr. Amaro-Solis asserts that HFSC reports do not identify the computer program used to detect alleles. This is not a requirement of the HFSC SOP. Once again, however, this information is found within the DNA case file and can be requested from the laboratory.

Report issue #4: Mr. Amaro-Solis asserts that HFSC reports do not identify the extraction method used so that “any other person/analyst, who wishes to evaluate or validate the results of the report can replicate the variables.” This is not a requirement of the HFSC SOP. Once again, however, this information is found within the DNA case file and can be requested from the laboratory.

Report issue #5: Mr. Amaro-Solis objects to the fact that DNA report #5 only contains the DNA results in the form of an allele table generated from testing his known source of DNA. His known source of DNA was the only sample that was tested and being reported on for the first time. It is not HFSC practice to duplicate DNA results that have been previously reported when referenced in a comparison report. In this case, aside from the ownership report, Ms. Bailon listed the DNA reports that contain those previously reported DNA results being compared in each of her reports at the top of page 1.

Report issue #6: Mr. Amaro-Solis feels as though report #5 dated August 12, 2015 is false, incomplete, and unreliable. His evidence is that Ms. Bailon “included two previously unused loci for the new statistics.” We disagree with his assessment as the two loci in question (D2S1338 and D19S433) were previously reported for the Caucasian, African American, and Southwest Hispanic populations using the FBI database. The initial report #5 pointed out that the statistics for the Southeast Hispanic population did not include those two loci. The statistics for the Southeast Hispanic population did not include those two loci because the FBI database did not, at the time, contain frequencies for those loci for the Southeast Hispanic population. When this report was amended to use the updated FBI database, as with all reports amended to address the updated FBI allele frequencies, the laboratory only reported those races with the updated frequencies which all happen to contain frequencies for both D2S1338 and D19S433.

Report issue #7: Mr. Amaro-Solis feels as though report #9 dated September 29, 2015, fails to meet the HFSC report requirements by not including the amplification or extraction methods, a qualitative or quantitative interpretive statement, the technology, or disposition of evidence. Mr. Amaro-Solis is correct that the report does not include the extraction method. This is not a report requirement of the HFSC SOP. Once again, however, this information is found within the DNA case file and can be requested from the laboratory. However, the amplification method (PCR) is listed on page 2, in note #7. Qualitative interpretative statements are provided for each item tested on page 2 in the “DNA Results and Interpretations” section. The technology (STR), as well as the loci tested, are listed on page 2, in note #7. And finally, the disposition of the evidence is reported in page 2 in note #8.

Report issue #8: Mr. Amaro-Solis is concerned that report #9 (dated September 29, 2015) is contradictory to the previously reported DNA results. This report contains the retesting of the labia minor swabs and the complainant known that was conducted at HFSC. While these subsequent DNA results are not identical to the results reported by Bode, they are not inconsistent with the results reported by Bode. Both Bode and HFSC detected a full single-source female DNA profile for the epithelial fraction of the labia minora swabs and the

known saliva swabs for the complainant. Both Bode and HFSC detected a mixture of DNA on the sperm fraction of the labia minora swabs. For both Bode and HFSC, the major component of the mixture was consistent with the complainant. The difference between the results generated by Bode and HFSC is that the minor component detected by Bode was sufficient for interpretation, while the minor component detected by HFSC was insufficient for interpretation. The minor activity detected by HFSC is consistent with the minor activity detected by Bode. The results reported in report #9 are consistent with those reported by Bode, but not identical, and as a result, the reporting language cannot be identical. When comparing the known source of DNA for Mr. Amaro[-Solis] to the data generated by Bode, Ms. Bailon did not specifically exclude Mr. Amaro[-Solis] from the major component of the sperm fraction of the labia minora swabs. However, this is not uncommon, given Bode had previously attributed that major component to the complainant in their DNA report. However, when reporting the DNA results for the retesting completed at HFSC, Ms. Bailon did specifically exclude Mr. Amaro[-Solis] from the major component after having not excluded the complainant because these results were being issued for the first time and had not previously been attributed to any individual. Mr. Amaro-Solis notes that he is now excluded from the major component of the mixture in report #9 when he was previously not excluded from the mixture. We agree with Mr. Amaro-Solis' assessment of the DNA results. He was initially not excluded from the mixture because DNA detected in the minor component developed by Bode was consistent with his known source of DNA. In report #9, he is excluded from the major component because the DNA in the major component is not consistent with his known source of DNA. Mr. Amaro[-Solis] was not excluded nor was he included as a possible contributor to the minor component of the mixture developed by HFSC because the data was not sufficient for interpretation and/or comparison. We disagree with Mr. Amaro-Solis' assertion that these reports are contradictory.

Report issue #9: Mr. Amaro-Solis does not appreciate the new formatting of DNA reports observed in report #9 dated September 29, 2015 that includes a list of standard report notes at the end of the report. These notes include items such as limitations to certain tests that may have been employed (eg, HemaTrace), explanations for certain reporting statements that may not be clear to the non-scientist, the technology and loci used, and the disposition of the evidence. The "notes" section helps ensure compliance with HFSC SOP requirements related to DNA reports, as well as the FBI Quality Assurance Standards and ISO requirements related to DNA reports.

Report issue #10: Mr. Amaro-Solis is concerned that the YSTR report issued June 6, 2016, is problematic and evidence of fabricated and false reports. Mr. Amaro-Solis is correct in that there is no Bode report that contains YSTR testing. The reason there is no Bode report that contains YSTR testing is that no YSTR testing was completed by Bode in this case. Rather, after taking ownership of the data generated by Bode through an ownership review (see FBI QAS standard #17), HFSC used the DNA extracts created at Bode, as well as the DNA extracts created at HFSC from the retesting requested by the Assistant District Attorney, for YSTR testing at HFSC. Those YSTR results were issued in report #10 dated June 6, 2016. Mr. Amaro-Solis is also correct that the YSTR results were not presented at trial. HFSC was notified via email on May 25, 2016 from the prosecuting attorney that additional testing (eg, YSTRs) could not be used in trial because the trial had already started.

Please do not hesitate to contact me should you have any questions.



Peter R. Stout, Ph.D., F-ABFT
President & CEO



TEXAS FORENSIC
SCIENCE COMMISSION

Justice Through Science

1700 North Congress Ave., Suite 445
Austin, Texas 78701

May 13, 2019

Via First Class Mail

Mr. Domingo Amaro-Solis
TDCJ# 2069544
Coffield Unit
2661 FM 2054
Tennessee Colony, TX 75884

Re: TFSC Complaint No. 19.13: Amaro-Solis, Domingo (Houston Forensic Science Center/Forensic Biology- DNA)

Dear Mr. Amaro-Solis,

At its May 3, 2019 meeting, commissioners dismissed the referenced case based upon the detailed response provided by the Houston Forensic Science Center ("HFSC"), review of the analyses performed in your case, and other facts. A copy of the lab's response is enclosed for your reference.

Analyst Jisel Luttrell (formerly Bailon) is a licensed analyst whose educational background was thoroughly vetted by commission staff prior to the issuance of her Texas license on December 18, 2018. For your information, "licensing" and "certification" do not mean the same thing. There are specialty organizations in existence around the country that offer certifications in specific disciplines. She was employed by HFSC at the time of the DNA analyses performed in your case. Commissioners found that she either misspoke or was misquoted in the record of your trial testimony. Not only did commissioners not find any malfeasance on her part, the record indicated the prosecution cured the issue to clarify her testimony.

Bode Technology is a laboratory in Virginia that is accredited by this commission to perform casework in Texas and has existed since 1995. One laboratory sending evidence out to another laboratory that performs testing that the source lab does not is not an unusual practice.

Commissioners reviewed the trial testimony in your case and believe that any confusion regarding results was clarified by the attorneys charged with questioning the analyst.

Enclosed is a list of innocence clinics operating in Texas should you wish to submit your case for consideration. Thank you.

Sincerely,

Kathryn Adams
Commission Coordinator

/mka
Encl.

LIST OF INNOCENCE CLINICS IN TEXAS

Actual Innocence Clinic
The University of Texas at Austin
School of Law
727 E. Dean Keeton St.
Austin, Texas 78705
Contact: Charles J. Press

Texas Innocence Network
University of Houston Law Center
4604 Calhoun Rd.
Houston, Texas 77204-6060
Contact: Cassandra Jeu

The Innocence Project of Texas
300 Burnett, Suite 160
Ft. Worth, Texas 76102
Contact: Mike Ware

Texas Southern University
Thurgood Marshall School of Law
Innocence Project
3100 Cleburne Street
Houston, Texas 77004
Contact: Anthony Haughton