

FORSYTH COUNTY GEORGIA
FILED IN THIS OFFICE

JUN 12 2006

Stephan Barrella
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

STATE OF GEORGIA`

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VS.

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Indictment 06CR-0126

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JULIA LYNN WOMACK TURNER

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STATE'S SECOND SUPPLEMENTAL BRIEF
IN OPPOSITION TO DEFENDANT'S MOTION #70

COMES NOW THE STATE OF GEORGIA, by and through the District Attorney and presents the following in opposition to defendant's motion aforesaid:

Defendant has filed her motion attacking the testing done in this case, complaining of the use of "gas chromatography" in testing for drugs, especially ethylene glycol levels as not being calibrated, the quantitative level, no standards, different results from each test done, and no blind studies.

The burden is upon defendant to prove the allegations of her motion. In doing so, counsel for defendant chose to make oral argument (as opposed to presenting evidence) pointing to various deficiencies in the testing, further informing the Court that the testing for ethylene glycol of the liver of Glenn Turner by the independent laboratory, National Medical Services, was repeated with negative findings. Counsel for defendant further asks the Court to consider in support thereof the testimony from the trial of the Cobb County case by reviewing certain transcripts to be presented by the parties. Defendant's brief contains no citation of legal or scientific authority as supporting her motion.

The State responded with an extensive brief in opposition to this motion with citations of law and peer review scientific studies and publications within the scientific community, showing that for decades the use of gas chromatography for detection and quantitation, has been used in testing for ethylene glycol, each such publication themselves referencing many other authorities. Further, affidavit of Dr. H. Horton McCurdy, Ph.D.DABTF, GBI forensic toxicologist since 1972, establishes that the use of gas chromatography/mass spectrometry is readily accepted in the scientific community as the standard for highly accurate determination and quantification of substances within unknown samples, is the most common scientifically accepted method for the determination of the presence of ethylene glycol ..., and is the standard among most forensic laboratories for such testing .. and has been so used for at least the past 20 years within the GBI Crime Laboratory for the determination and quantification of substances within unknown samples, to include the presence of ethylene glycol.

The State is further responding by furnishing certain transcripts from the Cobb County trial involving the testing done in the Cobb and Forsyth county cases. At a pretrial hearing upon this same motion in Cobb County, defendant called two (2) witnesses, Chris Tilson, toxicologist, and Dr. Mark "Capponin" [Koponen], GBI medical examiner, both of whom later testified in the Cobb County trial, and whose trial testimony is among that furnished the Court.

The transcripts of testimony by such witnesses during the trial fully explored the use of the methodology and instrumentation in these cases, but the state will point to certain particular complained of references.

As to there being no calibration of instruments, standards/controls, for ethylene glycol, see testimony of Chris Tilson, Vol. 14, pgs 74; 77; 79-84; 98-105, calibrations/procedures discussed on cross-examination, Vol. 14, pgs. 116-120 (calibrations' range are adjusted to account for different types of specimen; levels below which will not be reported); Caroline Burke, Vol. 13, pgs. 84-88; William Dunn, Vol. 13, pgs. 54-55, 73-75, Vol. 14, pgs. 18-20. Standard Instrumentality used – Gas Chromatograph Mass Spectrometer, Vol. 14, pg. 211 (special machine that will turn out a signature of a drug or chemical) by Dr. Kris Sperry; testimony of Chris Tilson, Vol. 14, pgs. 53-4, instruments used for testing of blood, urine and tissue samples, peer reviewed to scientific community for ethylene glycol by gas chromatography. Fatal or lethal dose was discussed, [Chris Tilson], Vol. 14, pgs. 134-140, pgs. 137-8 (range is not the absolute fatal range, but reported cases tested; fatalities reported between 5 mg/dl – 12.6 mg/dl; pgs. 167-172 (concentration changes by elimination from body, and dosage ingested), Vol. 14, pgs. 196-7; 201-2. Measurements [Chris Tilson], Vol. 14, pgs. 91-93; 94-95, Vol. 14, p. 130; variations in testing results [Wm. Dunn], Vol. 14, pgs. 61-63, [Chris Tilson], Vol. 14, pgs. 87-88.

Finally, in response to counsel for defendant's assertion that upon re-testing Glenn Turner's liver was negative for ethylene glycol, a reference to the record of the trial will clearly disprove that representation from the testimony of William Dunn, National Medical Services lab, and show that the retest was done for oxalic acid – not for ethylene glycol, as represented. There was no error involved. The testing for oxalic acid was negative. The testing for ethylene glycol was positive.

Vol. 13, p. 70 – Cross-Exam. by Mr. Berry:

Q. But you did not find oxalate acid?

A. We could not demonstrate the presence of oxalic acid.

.....

Vol. 14, p. 8 – continued cross-examination:

Q. Now, on 9/17/01, you indicate that there was a repeat with a blank and spike. Was the test repeated?

A. Yes, it was.

Vol. 14, p. 13 – Redirect by Mr. Lumpkin:

Q. And Mr. Berry asked you about having repeated a test.. The test that you repeated, was that the Oxalate test?

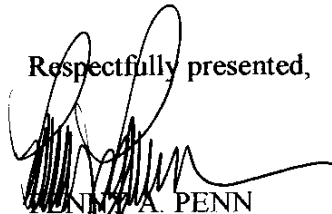
A. Yes, it was.

Q. Did you have to repeat the ethylene glycol test at all?

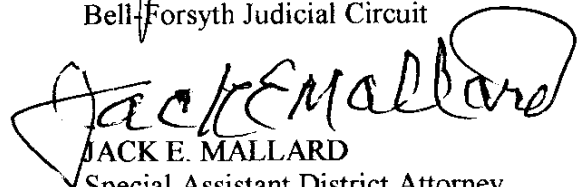
A. No, we did not.

For all the foregoing reasons and the failure of defendant to present any evidence invalidating such testing done in these cases, it is requested that the Court deny this motion.

Respectfully presented,



JENNIFER A. PENN
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Bell-Forsyth Judicial Circuit



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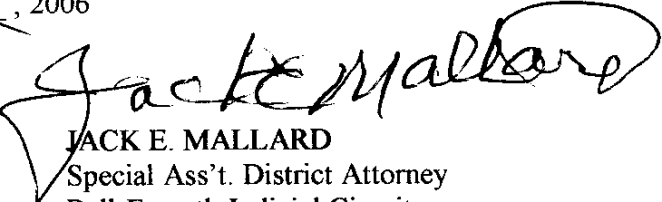
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within document, entitled: STATE'S SECOND SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANT'S MOTION #70 upon MR. JIMMY BERRY, Attorney at Law, 236 Washington Avenue, Marietta, GA 30060, counsel for the defendant, by:

personal service; or by

placing a copy in the United States mail in a properly addressed envelope with adequate postage thereon.

This 12 day of June, 2006


JACK E. MALLARD
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