

ORIGINAL



FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAY 25 2017
MICHAEL S. RICHIE
CLERK

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

DANIEL K. HOLTZCLAW,)	Case No. F-2016-62
<i>Appellant,</i>)	
)	District Court of Oklahoma County
v.)	Case No. CF-2014-5869
)	
THE STATE OF OKLAHOMA,)	
<i>Appellee.</i>)	

**MOTION OF FORENSIC SCIENTISTS AND ACADEMICS
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF on DNA-RELATED ISSUES**

Amici Curiae Peter Gill, Jane Goodman-Delahunty, Suzanna Ryan, Moses S. Schanfield, George Schiro, and Brent E. Turvey, by and through the undersigned counsel and pursuant to Rule 3.4(F)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2011), respectfully file this motion seeking leave to submit an *Amicus Curiae* brief to further discuss important issues implicating DNA evidence and other scientific issues in this appeal. In support of their motion, *Amici* state:

1. Appellant Daniel K. Holtzclaw was convicted by an Oklahoma County District Court jury of 18 of 36 sex-related charges, and sentenced to 263 years in prison. Through his appointed appellate counsel, Holtzclaw timely filed his brief on appeal on Feb. 1, 2017, and raised seven issues. DNA evidence figured prominently in Holtzclaw's trial and conviction, and several issues raised in his brief on appeal (including Propositions IV, V, and VII) implicate that evidence. See Brief-in-Chief at 36-37, 41-45, and 49-50.

2. *Amici curiae* are six forensic scientists and academics who are experienced with proper use of the scientific method and the analysis of forensic DNA and serology evidence.

They include scholarly researchers and members of the American Academy of Forensic Sciences

who have provided expert forensic science testimony in court. The *Amici* are:

- **Peter Gill**, Ph.D. in Genetics and Zoology, is Professor of Forensic Genetics at the University of Oslo Hospital. He worked at the Forensic Science Service from 1982-2008 and co-authored the first demonstration of the forensic application of DNA profiling. Other contributions include development of STR multiplexes, national DNA databases, and the theory and practice of complex mixtures using probabilistic methods. He has published more than 200 peer-reviewed papers and a book entitled *MISLEADING DNA EVIDENCE: REASONS FOR MISCARRIAGES OF JUSTICE*.
- **Jane Goodman-Delahunty**, J.D., Ph.D. in Psychology and Law, is a Research Professor at Charles Sturt University in Australia. She is an international expert on jury bias, jury reasoning and decision making. For over 30 years she has conducted original research both with real juries and mock jurors in controlled experimental trial simulations on the comprehension of complex scientific evidence. She has authored numerous scholarly books and articles about jury misperceptions of expert scientific evidence and the weight accorded to DNA evidence in cases with circumstantial evidence. She has trained lawyers and judges in several countries on the strengths and weaknesses of DNA evidence.
- **Suzanna Ryan**, M.S. in Forensic Science, is a Forensic Serology and DNA expert and an independent forensic DNA consultant who has processed several thousand cases and has been accepted as an expert witness in forensic serology and DNA analysis over 100 times, for both the prosecution and the defense.
- **Moses S. Schanfield**, Ph.D. in Human Genetics, is a professor in the Department of Forensic Sciences and Anthropology at George Washington University. He directed the Monroe County Public Safety Laboratory in New York. Prior to that, he directed the Analytical Genetic Testing Center that did early development on PCR based testing and discovered the in-lane size ladder, the backbone of modern forensic DNA typing. He has testified more than 115 times, for both the prosecution and the defense.
- **George Schiro**, M.S. in Forensic Science, is the Laboratory Director of Scales Biological Laboratory (SBL), an ANAB accredited, private DNA testing facility in Brandon, Mississippi, and during his career has worked over 3,900 cases and has testified as an expert for the prosecution or defense in over 195 trials.
- **Brent E. Turvey**, Ph.D. in Criminology, M.S. in Forensic Science, and

B.S. in Psychology, has performed casework as a Forensic Scientist, Crime Reconstructionist, and/or Criminal Profiler for law enforcement agencies and attorney clients all over the world. He has authored multiple peer-reviewed textbooks on subjects relating to criminal profiling, forensic criminology, forensic science, criminal investigation, and miscarriages of justice, and was an adjunct professor in the Department of Sociology and Criminal Justice at Oklahoma City University between 2003 and 2015.

3. *Amici* assert a unique interest of their own, distinct from that of Holtzclaw, because they have a professional interest in ensuring that forensic scientists' DNA analyses and testimony are scientifically valid. As highly regarded forensic scientists and academics, they are concerned that the possible misuse of DNA evidence at Holtzclaw's trial—and defense counsel's failure to challenge it—has broad implications, potentially affecting numerous other defendants in Oklahoma and across the nation in this age of DNA testing, should this case be used as precedent. None of the *Amici* know Holtzclaw or has ever met him or any member of his family.

4. The proposed *amicus* brief will provide helpful background to the Court in the complex areas of DNA evidence and serology, including accepted scientific methods for its collection, testing, and analysis, beyond the material advanced in the parties' briefs. *Amici* will provide a scientific discussion of research on non-intimate DNA transfer, and illuminate the prejudicial effect of DNA analysis errors and prosecutorial misconduct concerning DNA evidence. They will explain why the DNA evidence from the fly of Holtzclaw's pants was pivotal in his trial, and thus, its mischaracterization was especially harmful. *Amici* will demonstrate that jurors often place enormous and excessive faith in DNA evidence even when it lacks probative value and especially in circumstantial cases. And *Amici* will explain how the forensic science errors were not harmless in light of all the evidence, since the State obtained most of its evidence against Holtzclaw via a biased investigation improperly based on its own forensic analyst's flawed conclusion that sexual contact best explained the DNA evidence.

5. The proposed brief also shows that the DNA evidence from the fly of Holtzclaw's uniform pants was highly prejudicial but had little probative value because it was consistent with non-intimate DNA transfer, and the State failed to take crucial and accepted forensic science steps during evidence collection and testing, including the following: contrary to forensic best practices, the detectives only collected Holtzclaw's uniform pants and belt, not his underwear, nor did they collect penile swabs that could have offered more data to form hypotheses; the State's forensic analyst completed no tests for body fluids, not even use of an Alternate Light Source; the State did not investigate the source of unknown female and male DNA that could have supported the hypothesis of non-intimate DNA indirect transfer. *Amici's* proposed brief demonstrates that the State erred in handling the evidence such that contamination may have transferred DNA from an accuser and others to the fly of the uniform pants.

6. The proposed *amicus* brief harnesses the broad and deep expertise of *Amici* to educate the Court on proper and improper collection and analysis of the DNA evidence; proper and improper interpretation of the presence of DNA and DNA mixtures; and the significance of the presence of non-semen DNA from at least one unidentified male in the referenced mixtures. *Amici* provide the Court with an overview of the relevant peer-reviewed literature, citing more than 35 studies, textbooks, and government agency reports on the above-referenced issues.

7. Given the foregoing discussion in ¶¶ 3-6, *Amici* believe their proposed brief will improve the Court's understanding of the forensic science issues at the heart of this matter, and will be of assistance to the Court in deciding the issue presented.

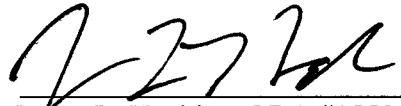
UPON THE FOREGOING and for just cause, *Amici Curiae* petition the Court to enter an Order granting this motion and allowing them to file their proposed brief in this matter.

DATED this 25th day of May, 2017.

Respectfully submitted,

PETER GILL, JANE GOODMAN-DELAHUNTY,
SUZANNA RYAN, MOSES S. SCHANFIELD
GEORGE SCHIRO and BRENT E. TURVEY

By:



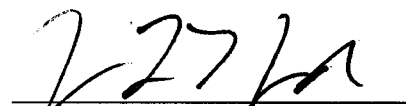
James L. Hankins, OBA #15506
TIMBERBROOKE BUSINESS CENTER
929 N.W. 164th St.
Edmond, Oklahoma 73013
Phone: 405.753.4050
Fax: 405.445.4956
E-mail: jameshankins@ocdw.com

COUNSEL FOR *AMICI CURIAE*
PETER GILL, JANE GOODMAN-DELAHUNTY,
SUZANNA RYAN, MOSES S. SCHANFIELD,
GEORGE SCHIRO and BRENT E. TURVEY

CERTIFICATE OF SERVICE

This is to certify that on May 25, 2017, a true and correct copy of the foregoing Motion for Leave to file *Amicus Curiae* Brief was served upon the Attorney General by leaving a copy with the Clerk of the Court of Criminal Appeals for submission to the Attorney General pursuant to the Clerk's instructions and protocol, and served via United States Postal Service, first-class postage prepaid, to appellate defense counsel at the following address:

James H. Lockard, Deputy Division Chief
Michael D. Morehead, Appellate Defense Counsel
Homicide Direct Appeals Division
P.O. Box 926
Norman, Oklahoma 73070-0926



James L. Hankins