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Date: 03/16/02

To: Allen Goodling

Fax Number: 713-426-2255

From: Ed Hueske

Subject: State v. McGowen

Message:

Mr. Goodling:

Attached are my observations/opinions in this matter (hard copy to follow via U.S. Mail). I will be out of town in trial Monday and Tuesday of next week, but in the office Wednesday a.m. if you need to discuss anything.

Ed Hueske



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March 15, 2002

G. Allen Goodling
Cogdell & Lewis
330 T.C. Jester Blvd.
Houston, Texas 77007

Re: State of Texas v. Kent McGowan (FSA Case # 01-5671)

Introduction

Pursuant to running a felony warrant at 3407 Amber Forest in Harris County Texas on August 25, 1992, Harris County Deputy Kent McGowan fatally shot Susan White at that residence. Ms. White sustained wounds to the right arm, chest and face. According to Deputy McGowan, the shooting was precipitated by Ms. White pointing a handgun at him and refusing to drop it after he gave her several verbal commands to do so (in his walkthrough McGowan states twice, Molloy and Morong both state it was 3 times).

Ms. White was seated on her bed and McGowan was positioned in the bedroom doorway at the time of the shooting according to McGowan. A small, semi-automatic weapon was found beside Ms. White's body on the bed following the shooting. The fact that McGowan did order White to drop her weapon 3 times before he fired at her was substantiated by Deputies Molloy and Morong who were also present.

Materials Reviewed

Pursuant to a request to review the shooting incident and the subsequent investigation conducted by the Harris County Sheriff's Department, a number of documents were received as follows.

- Autopsy report on Susan White
- Various Harris County Sheriff's Office Reports
- Firearms Examination Report of Charles Anderson of the Houston Police Department
- Statement of Deputy Kent McGowan
- Statements of Deputies Molloy and Morong
- Copies of Crime Scene Photographs
- Crime Scene Sketch
- Transcripts of testimony by Steve Clappert, Charles Anderson, Daniel Rheinhardt, Katherine Mills and Dr. Parungao
- EMS Statements
- Photocopies of Previous Trial Exhibits

Observations

- All 3 fired cartridge cases from McGowan's weapon were found on the bedroom floor in the same general area. This is consistent with McGowan's weapon being fired from within the plane of the bedroom door and comports with his stated position.
- According to the autopsy report, the trajectory of the shot directly striking the chest was downward. This is consistent with White's upper torso being upright at the time of that bullet striking her.
- According to the autopsy report, the wound to the lateral aspect of the right arm showed an exit at the medial aspect and then entered the right chest. This is consistent with White's upper torso being upright at the time of that bullet striking her.
- Based upon the autopsy report description of the grazing wound to the head, the bullet reportedly found behind the headboard of the bed and the reported presence of high velocity impact blood spatter, this wound is consistent with having taken place as White was falling back on the bed after taking the 2 initial bullet strikes.
- The firing of 3 shots in rapid succession in the described circumstance is consistent with standard police training in the use of deadly force (continuing to fire until there is no further threat).
- The fact that White was struck in the right arm is consistent with McGowan's statement that she held the weapon in her right hand (firing at the source of threat).
- The fact that White's weapon ended up by her right side supports her having it in her right hand.
- The fact that White was left-handed cannot preclude her holding the gun in her right hand.
- A trace metal detection test that might have resolved the issue of which hand White held the gun with was not done by the Harris County Sheriff's Department on White's hands.
- The shot that struck the corner of the TV converter box does not appear to have necessarily been the shot that passed through White's eyeglasses, grazed White's face, fragmented, then struck/passed through the headboard and lodged in the wall. However, the face wound is described as "irregular" which would be more consistent with a destabilized bullet having first passed through the converter box.
- If it is assumed that the shot passing through the TV converter box did, in fact, pass through White's eyeglasses, produce the grazing wound to White's face, fragment, strike/pass through the headboard of the bed and come to rest in the wall, a number of considerations are in order.
 - A. Any intermediary target that a bullet strikes has the potential to destabilize the bullet and to cause the bullet to fragment.
 - B. Destabilized/fragmented bullets do not continue on in interrupted trajectories but, rather, change paths to varying degrees.
 - C. Passing through the converter box corner with an angular impact would tend to destabilize the bullet and could cause fragmentation as well.
 - D. Passing through White's eyeglasses would destabilize the bullet and apparently did produce fragmentation as evidenced by the pathologist reporting the presence of lead and copper fragments about the face wound.
 - E. Passing through the soft tissue of White's face would destabilize the bullet and the bullet did fragment (jacket and core separated prior to striking the headboard as testified to by Katherine Mills).

Thus, Steve Clappert's representation of a bullet traveling uninterrupted through the converter box, the eyeglasses, White's face, through the headboard and coming to rest in the wall (core only) is inaccurate. His conclusion that McGowan would have to be holding his handgun 5 feet 6 inches above the floor is, accordingly, wrong.

Using Clappert's measurements, one arrives at a horizontal distance from the defect in the converter box to his proposed position of McGowan's weapon of 8 feet. Although no scale diagram was prepared to allow verification, this appears from the photographs to require McGowan's weapon to be outside the plane of the bedroom door. The fact that the ejected cartridge cases were found inside the bedroom renders that weapon position impossible.

Had the Harris County Sheriff's Department examined and tested the area around the bedroom door and the TV converter box for gunshot residue, McGowan's position at the time of firing could have probably been verified.

- Chick Anderson's errant examination of White's robe and his subsequent retraction of reported results indicates a lack of proper protocol being followed in the examination of such evidence.
 - A. An examination of clothing from a shooting victim should only be done after reviewing the autopsy report since wounds to the victim must be reconciled with defects present in the clothing.

- B. All photos (crime scene and autopsy) should be reviewed prior to reporting findings concerning clothing defects.
 - C. It is a common practice for EMTs to cut through bullet holes in the clothing of shooting victims. By checking autopsy reports the area where bullet holes should be found in clothing can be ascertained.
 - D. Chemical tests such as the sodium rhodizonate test for lead and the rubeanic test for copper can be used to confirm bullet hole locations and distinguish entrance holes from exit holes.
 - E. It is standard protocol to examine both the inside and outside of clothing where bullet holes are present. This is done to help ascertain bullet directionality and to distinguish entrance holes from exit holes. In his testimony at the first trial, Mr. Anderson stated that he only examined the outer surface of the robe as received.
- According to the testimony of Katherine Mills, the crime scene was released and left unsecured prior to her returning and finding the damage to the headboard, the bullet jacket on the floor and the bullet core reportedly lodged in the wall. It would appear that there is a legal question as to the admissibility of these items. In any event, there was improper documentation of these items both in the initial scene investigation and the subsequent one Mills participated in. By her own statements there were no photographs taken to document any of the items allegedly recovered by Mills.
 - The fact that the bullet core and jacket separated prior to striking the headboard demonstrates the unreliability of trying to present the trajectory of the bullet that left McGowan's weapon and passed through all the various intermediary targets as being in a straight line.

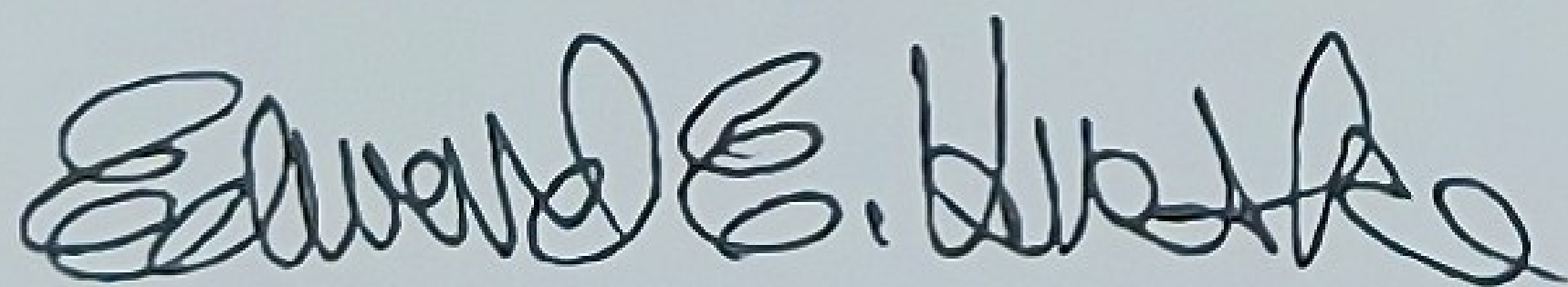
Conclusions

There was an inadequate job done in the initial investigation of this shooting incident due to the lack of following well-known and well-established crime scene protocol. An inadequate search of the scene failed to locate a bullet jacket on the floor, a bullet core in a wall and damage to the headboard. Inadequate documentation is reflected in the lack of a contemporaneously recorded videotape during the initial scene investigation, no photographic log, inadequate photographs and no scale diagram.

There was an inadequate job done in the initial examination of the decedent's robe resulting in erroneous conclusions being reported that later had to be retracted. All this could have been avoided by following proper protocol for the examination of clothing in shooting incidents.

In spite of the various shortcomings associated with this investigation, the physical evidence supports the account of the shooting given by Deputy McGowan. While unfortunate, the fatal shooting of Ms. White appears to be entirely justified.

Respectfully submitted,



Edward E. Hueske
Consulting Forensic Scientist

Note: The observations and opinions expressed herein are based upon the information that was available at the time of this writing. Should new information become available, the right to modify these observations/opinions accordingly is hereby reserved.