# REPORT

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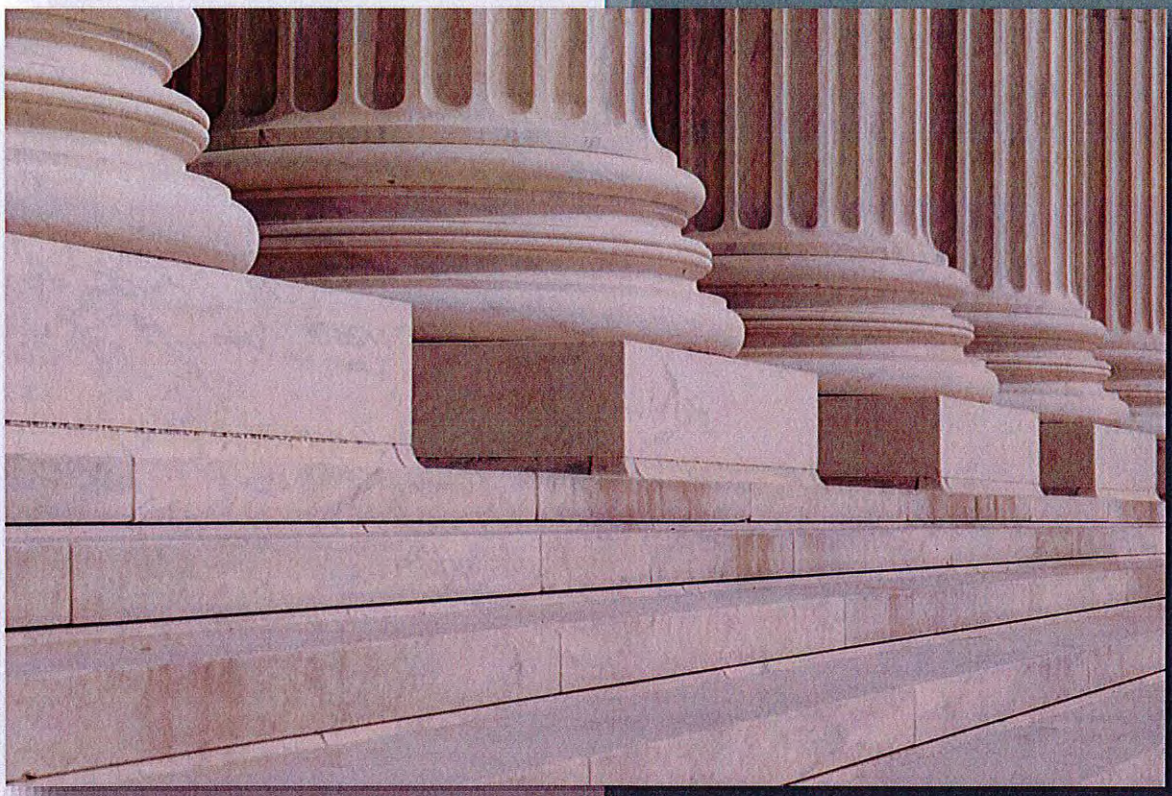
# State of Ohio vs. Jeffrey A. Wogenstahl



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# REPORT OF FINDINGS

## STATE OF OHIO VS. JEFFREY A. WOGENSTAHL

### INTRODUCTION

Please find a current copy of my curriculum vitae and a list of my courtroom and deposition testimony attached to this report in accordance with Rule 26 of Federal Rules of Civil Procedure pertinent to general provisions regarding discovery and duty of disclosure.

### QUALIFICATIONS

I, Gary A. Rini, am an independent police procedures and forensic science consultant, based in the Cleveland, Ohio area. I provide a critical case review and evaluation of police procedures in homicide and shooting incident cases which includes: critical events analysis and physical evidence correlation; shooting incident reconstruction; crime scene evidence evaluation; bloodstain pattern analysis; crime scene reconstruction; crime scene investigation and police officer performance audits and expert witness testimony for both prosecution and defense attorneys in criminal cases and plaintiff and defense attorneys in civil cases, as well as providing those services to Government and Trial Defense Service JAG Officers (Military Attorneys) in UCMJ (Uniformed Code of Military Justice) cases.

I began my professional career in 1975, serving in small, mid-size and large police agencies. During the course of my career, I served as a Patrol Officer, a police department SWAT team member, a multi-agency police SWAT team member, Police Agent, Crime Scene Investigator, Crime Laboratory Detective, PEER Support Counselor, Patrol Sergeant, Assistant Tactical Firearms Instructor, Forensic Services Manager and Police Commander of Criminal Investigations. I also served as lead forensic consultant on two Chicago-area major crime task forces. I received my graduate education from **The George Washington University** in Washington, D.C., and from **DePaul University** in Chicago, Illinois. I am a graduate of the **Police School of Staff and Command** from **Northwestern University's Public Safety Institute.**

I am a graduate of the **Ohio State Highway Patrol Basic Police Academy** (serving as class leader), **The Lakewood (CO) Police Academy** (class leadership award and commencement speaker) and the **Denver (CO) Police Department Police Academy** (commencement speaker). I received advanced specialized training from the Federal Bureau of Investigation, United States Secret Service, Smithsonian Institution, the Armed Forces Institute of Pathology, Saint Louis University Medical School, University of New Mexico Medical School, Case-Western Reserve University's Law-Medicine Center, Northwestern University's Public Safety Institute, Henry C. Lee Institute of Forensic Science, the Institute of Police Technology and Management and other nationally recognized professional organizations.

I have designed and taught college police science courses, as well as police science training courses for judges, attorneys, law enforcement officers, nursing and allied health specialists, first responders and other police agency professionals. I am a member of a number of scientific professional organizations, including the American Academy of Forensic Sciences, the International Association for Identification, the International Association of Bloodstain Pattern Analysts, the Association for Crime Scene Reconstruction, the International Homicide Investigator's Association and other professional organizations, where I have held leadership positions as Board Member, Vice-President, President, Chairman-of-the-Board, Training Conference Chairman and Regional Representative for a number of those organizations.

I served on the **National Institute of Justice's Technical Working Group** that established the national **Guidelines for Crime Scene Investigators**, and have been bestowed the designation of **Visiting Professor of Law** by the Francisco Marroquin University School of Law, Guatemala City, Guatemala. I am a **Vietnam-era Veteran** of the **United States Air Force** and **Ohio Air National Guard**, where I served as an emergency room (trauma) medical corpsman. I am a **NRA Certified Firearms Instructor** and a **NRA Certified Range Safety Officer**. I have in excess of 500 hours of dedicated firearms training, in addition to quarterly, semi-annual and/or annual range qualifications with police service firearms.

## PUBLICATIONS

A list of my previous publications is contained in my attached CV.

## COMPENSATION

The hourly rate charged for my services is three-hundred dollars ($300.00) per hour, plus expenses. The total number of hours spent on this project to date is 10 hours. Compensation as of the date of this report is $3000.00.

## TESTIMONY

As of this date, I have provided expert testimony in a deposition or trial on 124 occasions. (See attachment)

## ASSIGNMENT

I was tasked with rendering an opinion on the following issues:

- Procedures used by investigators in gathering and preserving evidence in this case,
- An evaluation of the validity of the presumptive blood tests used in this case, and what conclusions could be drawn from the results of those presumptive blood tests,
- Whether bleach, as the state argued, would have cleaned-up the blood evidence preventing forensic scientists from finding blood,
- The effect bleach would have on blood and luminol testing,
- Whether cat urine would cause a reaction with luminol,
- The likelihood that the victim was killed or transported in the car,
- The likelihood the victim was killed in Wogenstahl apartment,
- The significance of the pubic hair evidence,
- The potential value of the use of other forensic experts at the scene,
- The State's explanation of the way the victim was killed.

## MATERIALS EVALUATED

In order to perform this task, I evaluated the following materials:

**I.) Witness Testimony**

- William Dean
- Douglas Deedrick
- Dr. Robert Webster
- Dr. Michael Kenny
- Charles Lindsey
- Steve Mathews
- Edward Bettinger
- Norman Koopman
- Jeffrey Schaefer
- Donald Stone
- Brian Wraxall

**II.) Documents**

- Analysis, testing records
- Blood testing notes (Exhibit C)
- Blood testing notes (Exhibit D)
- Blood testing notes (Exhibit E)
- Canine records
- Crime lab report
- Fingerprint testing records
- Investigation records
- Luminol testing
- Autopsy report from Hamilton County Coroner's Office
- Autopsy photos
- Crime scene photos
- Crime scene video
- Affidavit of Carl J. Schmidt, M.D., M.P.H.
- Hamilton County Laboratory Reports and Bench Notes (157 pages)

## REFERENCE MATERIAL CONSULTED

I referred to the following material to support my observations and/or conclusions:


- Scientific Working Group on Bloodstain Pattern Analysis (Terminology)
- Gross AM, Karas, KA, Kaldun, GI. **The effect of luminol on presumptive tests and DNA analysis using the polymerase chain reaction**, J. of Forensic Sci 1999; 444 (4): 837-840
- Harris KA, Thacker CR, Ballard D, Syndercombe Court D. **The effects of cleaning agents on the DNA analysis of blood stains deposited on different substrates**, International Congress Series 1288 (2006) 589-591.
- Jakovich Cathy J. **STR analysis following blood detection by luminol, fluorescein and bluestar**, Journal of Forensic Identification 57 (2), 2007 \ 193.
- Gimeno Fred E, Rini Gary Alan. **Fill flash photo luminescence to photograph luminol blood stain patterns**, Journal of Forensic Identification 39 (3), 1989 \ 149.
- Gebreth, Vernon J., ***Practical Homicide Investigation***, 3rd ed. Boca Raton: CRC Press, Inc., 1996.
- Gebreth, Vernon J., ***Sex-Related Homicide and Death Investigation***, 2nd ed. Boca Raton: CRC Press. Inc. 2010.
- James, Stuart H, Kish, Paul E, Sutton, T. Paulette, ***Principles of Bloodstain Pattern Analysis***, Boca Raton: CRC Press, Inc. 2005.
- Fisher, Barry A.J., ***Techniques of Crime Scene Investigation***, 5th Ed. New York: Elsevier, 1991.
- Spitz, Werner U and Spitz, Daniel J., ***Medicolegal Investigation of Death***, 4th ed. Springfield: Charles C. Thomas Publishers, 2006.


## OPINION/CONCLUSION

Based on a review and evaluation of the above-cited materials, I offer the following opinions/conclusions:

- The procedures used by crime scene investigators did not meet the standards reflected in contemporary crime scene-related texts (see Fisher) regarding the planning, searching, documentation, protection and evidence collection of homicide-related scenes. Among these deficiencies, one finds that there was not a demonstrated plan to search the scene in a structured manner which may have resulted in the failure to

discover evidence at the scene; Failure to limit and control access to the scene to only those needed to process the scene increased the possibility of the loss, destruction or contamination of potential evidence by curious on-lookers; Failure to employ the services, or seek the advice of, forensic specialists (e.g. bloodstain pattern analysts, forensic botanists, forensic geologists or forensic entomologists) at the time of the crime, could have contributed to the potential loss of associated forensic evidence which could have been discovered through the use or consultation with those specialists; Failure to provide sufficient scene photographs in number and context (long-range, mid-range and close-up photographs) and the ground underneath the body (once the body was removed) could have resulted in the lost opportunity to discover additional evidence, or limit an objective crime scene analysis by an independent third-party expert.

- No photographic documentation of the luminol test or other presumptive tests was presented for evaluation. Therefore, one needs to rely on the written documentation of the individuals involved in the application of these testing methodologies for accuracy of test results. Many results were reported as "negative" in the documentation reviewed by this analyst. That indicates no blood was present. However, some results were presented as positive, but when tested further, no blood was found. In addition, it is not uncommon for inexperienced investigators to misinterpret the results of certain presumptive tests for blood.

  For instance, when applying luminol to an area suspected of containing occult blood, the inexperienced investigator may note a "glowing" of the area once the ***luminol*** is applied. However, in many instances, the uninformed and inexperienced investigator will misinterpret the appearance of the luminol when exposed to air (the "glowing" of the chemical) as a positive reaction to the presence of blood.

  In the case of the use of ***phenolphthalein*** as a presumptive test for blood, a positive reaction is indicated by an immediate appearance of a "pink" color on the filter paper used to collect a sample from a suspected bloodstain once the phenolphthalein chemicals are applied to the filter paper. However, if the filter paper is exposed to air, even on filter papers without immediate pink (negative for blood) reactions will eventually turn pink over time. The inexperienced investigator may interpret this as a positive test for the presence of blood when, in fact, it is not.

  In both of these examples, these errors in the interpretation of test results can be avoided by the utilization of pre-testing control samples in which the investigator applies luminol and phenolphthalein to known blood samples to observe the actual appearance of positive reactions of these tests to known blood samples.

  It should be noted that any positive test results obtained from these presumptive tests only indicate the presence of blood. These tests do not discriminate between human and non-human blood, nor are they able to identify to whom the blood belongs.

- Bleach will not prevent the scientists from locating blood. The luminol-bleach reaction is very specific, and to an experienced analyst, blood is easily recognizable. The luminol-bleach-blood reaction will

appear "wiped-up" but the luminol chemical reaction will have a unique "flash" characteristic to its appearance. Subsequent presumptive tests such as the use of phenolphthalein will still test positive in the presence of blood, after applying bleach to the blood in an attempt to "wipe the blood away.

- The application of bleach to blood as a masking agent will not necessarily preclude subsequent detection of blood through the use of luminol detection techniques, nor will it absolutely preclude the detection of DNA from a collected blood sample.

- Cat urine will not cause a reaction to the application of luminol, as the luminol reacts to a specific component contained in blood (hemoglobin) which is not present in cat urine.

- Due to the lack of the volume of blood one would expect inside a closed space (such as a vehicle) that would have been generated from the victim's injuries, and due to the lack of any transfer evidence of the murder weapon onto the interior of the vehicle, it is highly unlikely that the victim was killed or transported in the suspect's vehicle.

- The lack of detection of blood, or indications of blood clean-up, within Wogenstahl's apartment make it highly unlikely that the victim was murdered inside Wogenstahl's apartment. It appears that crime scene investigators removed the plumbing from Wogenstahl's bathroom to examine the contents of the drain pipes for evidence of blood. If blood had been present, it would have been found in the drain pipes. The lack of blood in the drain pipes indicates that no blood was present, nor was there any evidence of the use of any cleansing agents that would have removed any traces of blood.

- Hair that cannot be linked to a victim or suspect is irrelevant if a link between suspect and victim cannot be established. Any hair that may have been found may very well have been deposited as a result of cross-contamination during the handling of the evidence by the various individuals who had custody of the material during the course of the examination and/or testing of the clothing evidence. Testimonial evidence revealed that there was no accounting of the actual number of hairs collected as evidence.

- The scene investigators could have benefited from the expertise offered by forensic geologists, forensic entomologists and bloodstain pattern experts at the scene. There were not enough photographs taken of the scene around and underneath the victim's body to adequately assess the degree and expanse of the bloodstain patterns present around the body. Had these photographs been taken, it would have enabled an independent third party bloodstain pattern analyst an opportunity to assess the degree of blood loss and distribution patterns of the blood in order to support or refute the determination of the outdoor scene as the location of the physical assault that lead to the victim's death.

- The State's contention that the victim was murdered elsewhere, or in Wogenstahl's car, which was then used to transport the victim to the scene, is not supported by the physical evidence in the car, at the scene or on the victim. As was previously mentioned, there was no evidence of bloodstains and weapon transfer evidence detected in the vehicle that would support the determination of a violent confrontation inside the vehicle; there was no documentation of bloodstain transfers along the path from the roadway

to the body dump site that would support the determination that the body was transferred (dead) from another location and "dumped" at the site at which the victim was found. Other than the lack of the amount of blood that one would expect to be present after a violent confrontation,, there were no fingerprints, hairs, fibers or any other physical evidence recovered which would connect the victim to Wogenstahl's apartment or car (in which they specifically vacuumed for trace evidence that resulted in their failure to discover any trace evidence linking the victim to the car). In addition, to this lack of evidence, there was semen found on the comforter upon the bed on which the victim slept that was never identified (linked) as to its source.

- My informed opinion is that the victim was killed very close to the dump site, then dragged (as indicated by Dr. Schmidt's description of the drag marks present on the victim), and placed where she was discovered. However, due to the lack of a thorough crime scene investigation, the exact location where the victim was murdered is impossible to determine after the passage of twenty years.

- In my nearly forty years of experience in law enforcement and forensic investigation, it is my opinion that the investigation of this case was so deficient in its thoroughness and adherence to established procedures of professional competence that it rates in the top 10% of the most troublesome cases that I have reviewed, or personally have been involved with, since I began my law enforcement career in 1975.

## BASIS FOR OPINION/CONCLUSION

These opinions and conclusions are based on knowledge drawn from nearly 40 years of investigative and practical law enforcement experience, police and forensic science training and practical research, actual case evaluations and published standards. They are consistent with the standards and practices currently employed in the review and evaluation of death scene investigations.

Submitted this 13th day of March, 2015

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