

Sloppy lab work casts doubt on some Florida cases

Here are some of the Florida cases that might have been compromised by sloppy FBI lab work.

Brett Allan Bogle

Bogle, 31, is on death row for bludgeoning his ex-girlfriend's sister, Margaret Torres, with a concrete block in 1991. The nude body of the 89-pound, 4-foot-11 victim was found outside a drive-through market in Gibsonton.

The key evidence was a strand of hair that Hillsborough County detectives said they found on Bogle's white pants. FBI examiner Michael Malone testified that the hair "microscopically matched" the victim's pubic hair. "There were no dissimilarities at all," he said.



And former Hillsborough prosecutor Karen Cox told the jury that the pubic hair could not have gotten there by casual contact. It helped prove Bogle raped the woman, and if he was the rapist, he was the murderer.

New Justice Department research suggests, however, that the hair was consistent with Torres' head hair, not her pubic hair, and that there were other possible problems with Malone's work.

Terri Backhus, Bogle's attorney, says her client is innocent. She calls the case against him "a crushing combination of state deception and lies" and questions whether a hair exists.

Malone says he made a "silly clerical error" in his notes, inadvertently writing that a pubic hair was a head hair. "There's no way to confuse a head hair and a pubic hair," he says. "That's so basic, it's unbelievable. . . I wouldn't give that a second thought."

Felix Cruz Torres

Torres, a former commander of a northwest Hillsborough Veterans of Foreign Wars post, served 8½ years for the

1990 stabbing death of Gregory Carl Jenisch in Tampa. His body was found floating in a canal near Pistol Range Road.

At the trial, Malone testified that fiber found in the hatchback part of Torres' car matched fiber on a rope that was looped around Jenisch's neck and used to bind his hands and feet. Malone said he used an instrument called a microspectrophotometer to identify the dye in the fiber.



Malone's testimony sealed Torres' fate. "He would've gotten away with it if it wasn't for science," prosecutor Cass Castillo said at the time.

But an independent review by the Justice Department indicates that Malone got it wrong. He "incorrectly testified" outside his field of expertise, giving an inaccurate description of the microspectrophotometer, among other things. (The instrument can't identify dye; it registers color for dyes used in fibers). According to the review, Malone's testimony also overstated the significance of his hair and fiber exams.

Torres, now 63, was released from prison about two years ago. He maintained all along that he was framed. "They knew I didn't kill that man," he said. Living and working in North Florida, he says he is trying to find a lawyer to sue the government for wrongful arrest and incarceration.

Malone says he didn't overstep and contends that the Justice Department critique represents two views among experts. "It's their opinion against my opinion," he says. "And the only opinion that counts is the opinion of the guy in the black robe."

Robert Milford

Milford, a former fast-food worker, is serving a life sentence for stabbing 78-year-old Louette Hackney to death in March 1991, beating her husband, Mor-

ton, and setting their Vairico house on fire.

The murder and beating charges against Milford, now 37, were built on a questionable eyewitness identification and a strand of hair, broken at the root, that Hillsborough County sheriff's deputies said was embedded in the murder weapon, a lamp shade at the crime scene. Malone testified the hair was a "perfect match" to Milford's pubic hair.



"It would be highly unlikely for . . . anybody else to have hairs exactly like the hairs of Mr. Milford," he said.

But a Justice Department review says that Malone did not perform his tests in a scientifically acceptable manner. What's more, the report indicates, he overstated the evidence when he testified to statistical probabilities about hair comparisons. There is no statistical database to determine the likelihood that a specific hair comes from one person and not from someone else.

Milford, who had a lengthy arrest record, acknowledged all along that he stole the couple's van. But he denied the homicide and the beating. From Tomoka Correctional Institution in Daytona Beach, he says Malone provided "a corrupt and deceptive report against me at my trial."

He says he has received little information about the new evidence and doesn't know what to do because he has no money to hire a lawyer to get his case reopened.

Malone says Milford's public defenders should have challenged him at trial if they had a problem with his testimony. He cites his "experience" as a lab examiner to support his hair statistics. The Justice Department expert who reviewed his work, Malone adds, made "nit-picky" criticisms.

Augustine Delgado Perez

A Pasco County jury convicted Perez, now 48, of kidnapping 38-year-old Kay Devlin from a Tampa street corner in July 1990 and shooting her to death. Six days later, the prostitute's body was found staked under water in a retention pond in a Central Pasco orange grove.

In 1991, Circuit Judge Maynard Swanson went against the recommendation of a jury and sentenced Perez to death. But the Florida Supreme Court overruled the judge, citing a paperwork problem, and gave Perez a life term without parole.



Malone offered fiber evidence about a rope that authorities said was found in Perez's van. The rope was consistent, he said, in "color, construction, composition and diameter" with rope used to bind the victim. Malone also performed hair comparisons.

But a new Justice Department report says Malone's hair tests were not adequately documented in his notes. The report also says he should have used a "more specific" and "preferred" scientific method to analyze the rope.

Perez, serving his sentence at Sumter Correctional Institution, says he never received copies of any case-review reports and adds that he doesn't even have a lawyer.

His former court-appointed lawyer, T. Philip Hanson, argued at the time that Perez, a Cuban immigrant who spoke poor English, was victimized by a dubious eyewitness identification and questionable police tactics.

Malone says his exams and notes met FBI standards, adding that he preferred the type of fiber test he performed to the one suggested by the Justice Department. And he says his notes "could have been written in hieroglyphics" adding that he wrote them for himself, so he could testify in court, not for other scientists who might review his work 20 years after the fact.

George Trepal

Trepal, 52, a chemistry buff and onetime computer programmer, was sentenced to death in 1991 for killing a neighbor, Peggy Carr, by spiking her Coca Cola with thallium nitrate, a rat poison. Polk County deputies said Trepal was fed up with the Carr family's loud music and their dogs, which chased his cats. The case became known as the "Mensa murder" because Trepal was a member of the Mensa high-IQ club.

FBI lab examiner Roger Martz testified at the trial that, based on chemical tests of three Coca Cola samples, thallium nitrate had been added to the Coca Cola. But at a 1999 hearing, testimony by Martz and other scientists established that Martz had failed to label tests correctly, improperly documented



his results, misrepresented results to the jury and testified falsely about specific tests performed on one of the samples.

In a ruling last October, retired Circuit Judge E. Randolph Bentley called Martz's conduct "outrageous and shocking." The judge also said portions of testimony by two other FBI examiners were "not credible."

Bentley refused to grant Trepal a new trial, however. According to the judge, it is doubtful that information known now would have led to a different verdict or sentence because other evidence, he said, amply demonstrated Trepal's guilt.

But Bentley also acknowledged that he was disturbed by the conclusions the law led him to, saying he is "not comfortable with the outcome which the current law requires." He urged the Florida Supreme Court to "carefully review the law in this area."

— SYDNEY P. FREEBERG