

1
2 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
3 CRIMINAL DIVISION MISDEMEANOR BRANCH

4 UNITED STATES

JUDGE CUSHENBERRY

5 v.

6 KEVIN SUTTON

Case No. F-8615-98.

7
8 Defendant.

9 DECLARATION OF JOSEPH P. BONO

10 I, JOSEPH P. BONO, declare and say:

11 1. I am the Laboratory Director of the Drug Enforcement Administration (DEA) Mid-
12 Atlantic Laboratory located at 460 New York Avenue, N.W., Washington, D.C. I have held
13 this position since February 1, 1999. Prior to that time, I served in the following positions
14 within DEA, and with other federal and state agencies: Program Manager, DEA Office of
15 Forensic Sciences, DEA Headquarters, Arlington, Virginia (1996-1999); Supervisory
16 Chemist, DEA Special Testing and Research Laboratory, McLean, Virginia (1991-1996);
17 Senior Forensic Chemist, DEA Mid-Atlantic Laboratory, Washington, D.C. (1988-1991);
18 Senior Forensic Chemist, Naval Investigative Service Regional Forensic Laboratory, San
19 Diego, California (1986-1988); Forensic Chemist, Naval Investigative Service Regional
20 Forensic Laboratory, Pearl Harbor, Hawaii (1984-1986); Supervisory Forensic Chemist,
21 Naval Investigative Service Regional Forensic Laboratory, Naples Italy (1981-1984);
22 Laboratory Director/Senior Criminalist, St. Louis County Police Department Laboratory, St.
23 Louis, Missouri (1974-1981).

24 I have inspected all eight DEA laboratories to ensure compliance with DEA standards.
25 As part of my official duties, I have also inspected forensic science laboratories in New York
26 and California. I have been asked, as a representative of DEA and the United States
27 Department of State, to inspect laboratories in Caracas, Venezuela, Quito and Guayaquil,
28 Ecuador, Georgetown, Guyana.



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4 I have visited forensic science laboratories in the states and countries named above,
5 plus other forensic science laboratories throughout the United States and Europe. I have
6 been qualified in court as an expert witness in forensic chemistry hundreds of times. I have
7 testified in Federal, state, municipal, and military courts in the District of Columbia, Virginia,
8 Maryland, Missouri, California, Washington State, Arizona, Hawaii, and Italy.

9 2. My duties and responsibilities as the Laboratory Director include the supervision of
10 all technical and administrative functions of the DEA Mid-Atlantic Laboratory. This
11 includes ensuring the accuracy, maintenance, and reliability of all instruments, tests, and data
12 generated at the DEA Mid-Atlantic Laboratory. In that regard, I am fully familiar with how
13 these machines and instruments are used and operated. I am also familiar with the general
14 qualifications for the forensic chemists who work in the DEA Mid-Atlantic Laboratory, all of
15 whom have at least met the minimum required training of DEA forensic chemists.

16 3. The DEA Mid-Atlantic Laboratory is accredited in controlled substance
17 examinations by The American Society of Crime Laboratory Directors/Laboratory
18 Accreditation Board.

19 4. When a DEA forensic chemist analyzes an unknown substance for the presence of
20 a controlled substance, such as cocaine, tests performed by the DEA forensic chemist
21 include, but are not limited to: color screening tests, thin layer chromatography, high
22 performance liquid chromatography, gas chromatography, microcrystal tests, infrared
23 spectrophotometry, gas chromatography/mass spectrometry, and nuclear magnetic resonance
24 spectroscopy. The instrumental tests and analyses are performed by the following
25 instruments: high performance liquid chromatograph (HPLC), gas chromatograph (GC),
26 infrared spectrophotometer (IR), gas chromatograph/mass spectrometer (GC/MS), and a
27 nuclear magnetic resonance spectrometer (NMR). Based on my experience as a forensic
28 chemist, it is irrefutable that the use of these instruments has been accepted in the scientific

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4 community as producing relevant and reliable data in the testing and identification of
5 unknown materials for the presence of controlled substances.

6 5. Using the tests and instruments described in paragraph four above, a DEA forensic
7 chemist can determine whether the test results were inaccurate and/or whether the
8 instruments were in proper working order. The identification scheme for a measurable
9 amount of a controlled substance, such as cocaine, is accomplished by using at least three
10 independent tests. One of these tests will involve an instrumental analysis, the results of
11 which are based on a "structural elucidation", which is a confirmation of the unique chemical
12 structure specific to the controlled substance being identified. For instance, the IR, GC/MS,
13 and NMR spectra for cocaine are specific for cocaine, and cannot be produced by any other
14 substances. The identification is accomplished by comparing and evaluating the spectra of
15 the known substance, in this case, cocaine, with the spectra generated by the evidence, *i.e.*
16 the unknown substance in the submitted exhibit. In order for a controlled substance to be
17 identified and reported, all tests must lead to the same conclusion regarding the
18 identification. If any one of these tests leads to a different conclusion, an identification
19 cannot be confirmed.

20 6. Based upon my training and years of experience in the forensic identification of
21 controlled substances, my discussions with other experts in the field, peer review of the
22 literature, and the numerous professional training conferences which I have attended, when
23 the tests and instruments described in paragraph four above are used properly and in
24 conjunction with one another by a qualified forensic chemist, the analyses are incapable of
25 producing a false positive. In other words, even if the test results are inaccurate, the results
26 will not indicate the presence of a controlled substance when none is present in the unknown
27 sample. In that regard, the GC/MS, the IR, and the NMR produce spectra characteristic of a
28 specific substance only when that substance is present. With the instruments described
above, one of two conditions must exist: either the instruments are functioning properly, or

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4 they are not functioning at all. Even if the instruments used in the testing are not properly
5 calibrated, if no controlled substance is present in the exhibit, then no controlled substance
6 will be identified. If scientific instruments are not functioning, they are taken out of service.

7 7. It would be unduly burdensome for the DEA Mid-Atlantic Laboratory to produce
8 the maintenance records on each machine used for extended periods before and after each
9 test for each and every drug case prosecuted in the District of Columbia (D.C.) Superior
10 Court. The DEA Mid-Atlantic Laboratory is responsible for the analysis of thousands of
11 exhibits in criminal cases pending in D.C. Superior Courts, in addition to the Federal
12 jurisdictions in Virginia, Maryland, and West Virginia. Most of these analyses involve the
13 use of at least two instrumental methods of analysis. This laboratory analyzes approximately
14 6,500 exhibits per year for trial in the D.C. Superior Court. Of these 6,500 exhibits, over
15 4,000 require instrumental analyses. On average, two instruments are used per case, which
16 means that the laboratory would be required to produce approximately an additional 8,000-
17 16,000 pieces of paper per year to satisfy the documentation requirement for drug cases in
18 the D.C. Superior Court.

19 Additionally, because the laboratory maintains multiples of each type of instrument or
20 machine, to provide the maintenance and calibration records on the machines and
21 instruments used in a specific case, the forensic chemist would be required to: a) identify the
22 specific instrument he or she used to conduct a particular analysis; b) retrieve the binder
23 which stores the desired records, locate the section on that specific instrument, and identify
24 and remove the pages for the desired time period; c) photocopy the pages; d) return the
25 original pages to the binder; e) fax/mail/transmit those copies to the United States Attorney's
26 Office; and f) file confirmation of transmission/ mailing with the copies in the forensic
27 chemist's case file.

28 Because two instruments are used in most cases, it would take at least one hour to
complete the process. Based on 4,000 instrumental cases per year, the majority of which

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3 requiring two instruments, this process would conservatively require 4,000 workhours.
4 Divided by 52 weeks, this process would require 77 workhours per week; the functional
5 equivalent of two full-time employees. This would involve the expenditure of resources that
6 are simply not available. If forced to produce this documentation, manpower would have to
7 be diverted from present assignments, resulting in a further increase in the backlog of
8 analyses and additional delay.

9 8. The maintenance records maintained at the DEA Mid-Atlantic Laboratory
10 document all preventive maintenance activity. Although these records may document the
11 rare instance when a machine has been found to be inoperable, such a machine would never
12 be used to conduct an analysis of suspected controlled substances. When such a situation
13 occurs, the machine is taken out of service, and not used again until all necessary
14 maintenance and recalibrations have been completed. However, even when an instrument is
15 not functioning properly, it will not identify cocaine, or any other controlled substance, as
16 being present in a sample, unless that controlled substance is actually present.

17 I declare under penalty of perjury that the foregoing statements are true and accurate
18 to the best of my knowledge and belief.

19
20 Dated: April 9, 1999

Joseph P. Bono
Joseph P. Bono
Laboratory Director
DEA Mid-Atlantic Laboratory

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24 Subscribed to and sworn/affirmed before me this 9 day of April, 1999.

Susan M. Carr
Notary Public

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27 My commission expires May 31, 2002

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