

**No, Your Friend Cannot Do Magic:**  
**United States v. Sandra Marie Anderson and Cadaver Dogs on Trial.**

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## **No, Your Friend Cannot Do Magic:**

### **United States v. Sandra Marie Anderson and Cadaver Dogs on Trial.**

#### **I. Introduction**

Cadaver dog handler Sandra Anderson claimed, “My friend can do magic,” when talking about her mixed breed dog, Eagle, to the television show 48 Hours.<sup>1</sup> Yet on March 11, 2004, Anderson pleaded guilty to federal charges of falsifying material facts, obstructing justice, and false representation.<sup>2</sup> The majority of the charges stemmed from incidents of Anderson planting evidence at crime scenes that law enforcement officials asked her to investigate with her dog. After planting such things as human bones, carpet fiber, and items stained with her own blood, she represented them to law enforcement as authentic evidence. Anderson then made false statements to authorities when questioned about her actions. By her deceit, Anderson has hurt more than her reputation; the repercussion is being felt throughout the law enforcement, search and rescue, and legal communities, as well as by the general public. Not only was there injustice for the past victims of Anderson who were possibly convicted based upon her false evidence, but also for present and future victims, citizens who are lost, drowned or murdered and will not be found because law enforcement will turn away from the valuable tool of the cadaver dog out of disbelief in their abilities or fear of being victimized by unscrupulous dog handlers.

This paper is an analysis of cadaver dog and handler legal issues that were raised by the case of *United States v. Sandra Marie Anderson*.<sup>3</sup> Following a discussion of the case will be a section about cadaver dogs and their handlers. These two sections provide the background

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<sup>1</sup> *48 Hours: An Eagle-Eyed Investigation*, (CBS television broadcast, March 12, 2004), available at <http://www.cbsnews.com/stories/2004/03/11/48hours/main605483.shtml> (last visited on May 30, 2004) (copy on file with author).

<sup>2</sup> Press release, Department of Justice, Sandra Marie Anderson Pleads Guilty to Falsifying Material Facts, Obstruction of Justice and False Representations in Violation of the Federal Criminal Laws (March 11, 2004) available at <http://www.usdoj.gov/usao/mie/pr/sanderson.html> (copy on file with author).

<sup>3</sup> *United States v. Anderson*, No. 03-CR-80602-All, indictment (D. Mich. Aug. 20, 2003) (copy on file with author).

information for the final section, which analyzes some of the more common legal issues facing cadaver dogs, including two current cases where evidence identified by cadaver dogs is being challenged. Cadaver dogs have been used to locate human remains since the 1970s but there is little case law available for legal reference, leading courts to rely on precedent from cases involving other types of detection dogs. This appears to be changing since the indictment of Anderson. The extent of the damage created by Anderson has yet to be fully to be identified but the lessons learned can be used to improve the training and use of cadaver dogs, ultimately making them an even more powerful tool for law enforcement.

## II. United States v. Sandra Marie Anderson

### A. Facts

#### 1. Anderson's Professional Background

Sandra Anderson seemed to be drawn to drama. Anderson was the director and training director of Great Lakes Search and Rescue of Michigan (GLSAR) during the time she was accused of planting evidence.<sup>4</sup> Even now, after pleading guilty to federal charges, she is still listed on the unit's website as holding these positions.<sup>5</sup> Anderson, a founding member of the organization, welcomed publicity. This can be seen in her GLSAR biography, which states that she has been featured in "Archeology Today" and on A&E's "Investigative Reports."<sup>6</sup> Additionally, the GLSAR links page connects to the synopsis of an episode about Anderson and Eagle that was shown on Lifetime TV's *Unsolved Mysteries* in September 2001.<sup>7</sup> A police

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<sup>4</sup> Great Lakes Search and Rescue, Meet Our Members, *available at* <http://www.glsar/meetmembers.htm> (last visited on May 22, 2004) (copy on file with author).

<sup>5</sup> Great Lakes Search and Rescue, Home Page, *available at* <http://www.glsar/meetmembers.htm> (last visited on May 22, 2004) (copy on file with author).

<sup>6</sup> *Id.*

<sup>7</sup> Synopsis: *Unexplained Cadaver Dogs* (Lifetime TV television broadcast Sept. 26, 2001) *at* <http://www.unsigned.com/0108-CadaverDogs.html> (last visited on May 22, 2004) (copy on file with author).

sergeant also reported that television cameras were waiting every time Anderson arrived at a search scene and that she boasted about airlines giving Eagle a row of first class seats to himself when they flew to searches.<sup>8</sup>

Anderson was reported to have been a dog handler for 17 years, working with Eagle since she adopted him from a pound in 1994.<sup>9</sup> Anderson was paid to teach workshops on detecting human remains, allegedly both nationally and internationally, and her curriculum included sections on cadaver detection and crime scene preservation.<sup>10</sup> As a co-founding member of Canine Solutions, Incorporated, Anderson responded to searches throughout the United States and in Panama and Bosnia.<sup>11</sup> Anderson reportedly did not charge for her services beyond gas, food, and lodging,<sup>12</sup> yet she collected nearly \$100,000 for her three visits to in Panama.<sup>13</sup>

While there is a great amount of information available describing the searches Anderson has worked with Eagle, there is no discussion of her qualifications. As will be discussed in a later section, qualifications are important to determining the reliability of cadaver dogs and their handlers.

In addition to Anderson's work with Eagle in criminal cases, she offered herself as a resource to archeologists identifying cemeteries. These ventures began in October 1999 when she identified and marked slave grave sites in Holly Spring, Mississippi.<sup>14</sup> The following month she identified the 200-year-old grave site of the first settlers of Monroe, Michigan, along with 20

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<sup>8</sup> John Flesher, Small-Town Police Hunches Led to Case Against Famed Dog Handler, Associated Press, Aug. 29, 2003.

<sup>9</sup> 48 Hours, *supra* note 1.

<sup>10</sup> United Doberman Club, Announcement, *Human Remains Detection Workshop*, 6th Annual United Doberman Club Search and Rescue Doberman Seminar (East Taunton, Mass. May 9-11, 2002) (copy on file with author).

<sup>11</sup> United Doberman Club, *supra* note at 10; Tod Robberson, *Owner of Search Dog Indicted on 10 Counts; Woman Says She Did Not Plant Bones While Hunting for Bodies*, Dallas Morning News, Sept. 14, 2003.

<sup>12</sup> Tamara Audi, *Bones of Contention: Cadaver-Sniffing Canine's Finds are Under Suspicion*, Detroit Free Press, July, 14, 2003; Robberson, *supra* note 11.

<sup>13</sup> Robberson, *supra* note 11.

<sup>14</sup> Audi, *supra* note 12.

pieces of skeletal remains, which have yet to be found by the researchers. Then, over a period of three days in September and October 2001 at the University of Nebraska, Anderson marked American-Indian gravesites she claimed Eagle had identified.<sup>15</sup> Mysteriously, the anthropologists could not find the bones, leading the executive director of the Nebraska Commission on Indian Affairs to state that, “It was done [by Anderson] to get media attention.”<sup>16</sup>

This was followed by a similar incident in 2002 when Anderson traveled to central Wisconsin to identify remains at Skunk Hill, an identified American-Indian burial ground.<sup>17</sup> Anderson marked every spot that Eagle indicated with an orange flag, and although the hill ended up covered with flags, Robert Birmingham, the state archeologist, said no human remains were ever found in the areas she marked.

## 2. Anderson’s Legal Conflicts

Anderson’s drama and media attention grew on April 18, 2002, although the nature of it changed. Now, instead of a suspect who was identified through the evidence detected by her dog being escorted to the police department in handcuffs, Anderson herself was arrested, handcuffed and removed from the search scene in a police car.<sup>18</sup> Anderson was charged with planting a human bone at the scene and claiming that it represented genuine evidence after a state crime lab technician observed Anderson pulling the bone out of her boot.<sup>19</sup>

This was not the first time suspicions were raised regarding Anderson’s finds. There were numerous occasions where Anderson and Eagle “found” a bone or bone fragment, but testing of the bone revealed that the found evidence could not have matched the victim. For example, the bones that Anderson turned up in Brooksville, Florida, in February 2002, where she

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<sup>15</sup> *Authenticity of Remains at College Questioned*, Associated Press, Aug. 10, 2003.

<sup>16</sup> *Id.*

<sup>17</sup> Audi, *supra* note 12.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

went to search for the remains of a three-year-old girl who disappeared in 1991, were determined to have belonged to an adult.<sup>20</sup>

Reports like this date back to October 2000 and include legendary searches such as the ones she completed in Panama. Anderson was invited to Panama to search for the remains of more than 100 political prisoners killed under the dictatorships of Omar Torrijos and Manuel Noriega.<sup>21</sup> Not only did testing of the bones found by Eagle prove them to be from a Caucasian, but David Martinez, an attorney/forensic anthropologist working with Anderson through the Truth Commission, saw her find a bone in soil that had already been sifted through a screen that was too fine not to have caught the bone.<sup>22</sup> He then secretly tested her up by planting a bone himself and asking her to direct Eagle to the area, but the dog never did find it. Martinez also claims that he saw her drop a bone out of her pants' leg for Eagle to find.

Investigations of the incidents where Anderson was suspected of planting evidence at search scenes led to a ten count indictment being issued against her on August 20, 2003. Because Anderson was participating with federal and local law enforcement officers, the charges were federal violations, falling under 18 U.S.C. § 1001 (a)(1) Falsifying Material Fact and (a)(2) Making False Representations and 18 U.S.C. § 1512 (b)(3) Obstruction of Justice.<sup>23</sup> These violations carried a statutory incarceration period of up to 30 years.<sup>24</sup> A chart at the end of this section summarizes the information discovered by the federal investigators.

On March 10, 2004, just five days before Anderson was scheduled to be tried on these ten counts in the United States District Court, Eastern District of Michigan, Southern Division, she

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<sup>20</sup> Jamie Jones, *Bones Are Human But Not the Little Girl's*, St. Petersburg (Fl.), Times Oct. 4, 2004.

<sup>21</sup> *Once Acclaimed, Track Record of Cadaver-Finding Team is in Doubt*, Detroit Free Press, July 14, 2003.

<sup>22</sup> Robberson, *supra* note 11.

<sup>23</sup> *Anderson*, indictment, *supra* note 3, at 1.

<sup>24</sup> *United States v. Anderson*, No. No. 03-CR-80602-All, Rule 11 Plea Agreement at 1 (D.Mich March 10, 2004) (copy on file with author).

entered into a plea agreement. By pleading guilty prior to trial, the Department of Justice (DOJ) dismissed Counts One, Three, Six, Seven, and Nine. The DOJ additionally agreed not to bring any further charges and also to advise any state or local agency considering criminal charges against Anderson that the DOJ considered the disposition in this matter to be a just resolution of all the defendant's actions at search scenes prior to the date of plea and of which the DOJ is aware.<sup>25</sup> In exchange, Anderson agreed to:

- (1) voluntarily plead guilty to Counts Two, Four, Five, Eight and Ten (with the hopes of receiving only a sentence of 18-24 months);
- (2) accept that the government will recommend five years of supervised release (including requiring her to report all searches in which she participates to her probation officer in a timely manner);
- (3) pay any fines that may be assigned to her;
- (4) assign to the DOJ for life all rights, titles and interest she may acquire from her story;
- (5) make complete restitution for (a) any loss incurred as a result of any offense charged in this case and (b) any loss incurred by the reliance of any person or agency on her purported expertise as a locator of human remains where she falsely claimed to find evidence. The government identifies the potential victims as those who were the subject of her unlawful conduct in Counts 8 and 9, and law enforcement agencies which incurred expenses as a result of her activities prior to the federal criminal investigation that resulted in her indictment.<sup>26</sup>

In signing this plea agreement, Anderson acknowledged that she understood that for each count the government would have to prove certain elements beyond a reasonable doubt. For example, to prove her guilt as to Obstruction of Justice, the government would have to prove beyond a reasonable doubt that (1) the defendant engaged in misleading conduct towards another person, (2) that the defendant acted with intent to hinder, delay or prevent the communication to a federal law enforcement officer or judge of the United States information, and (3) such

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<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.* at 2, 8-9.

information relates to the commission or possible commission of a federal offense.<sup>27</sup> The other charges contain similar elements, with each violation including an actus reus and mens rea.<sup>28</sup> A review of the five Counts that Anderson pleaded guilty to follows.

a. 18 U.S.C. § 1001 (a)(1) Falsifying Material Fact and 18 U.S.C. § 1001 (a)(2) Making False Representations (Two violations, Counts Two and Five)

Count Two occurred on April 17, 2002, in the Huron National Forest, near Oscada, Michigan, during a search for an African-American female who had disappeared in the 1980s. This was the day before Anderson was arrested, and this incident helped lead to her arrest. On this day, Anderson planted carpet fibers in a pile of debris and then falsely stated and represented the fibers as legitimate potential evidence.<sup>29</sup> Forensic testing shows that, with scientific certainty, this carpet fiber matched fiber found at Anderson's home as well as fiber found in the pocket of the jeans she was wearing at the search.<sup>30</sup>

Count Five lists ten false, fictitious, and fraudulent statements made by Anderson, one of which occurred the following day, April 18, 2002, when Anderson participated in the discovery of a human bone in mud in a stream at the same search site in the Huron National Forest. She pretended the bone was a genuine discovery of potential evidence and failed to disclose that the bone had come from her possession, had been placed there by her, and was not genuinely related to the crime scene. Anderson falsified the facts to mislead Federal Bureau of Investigation (FBI) agents into believing that the bone was an authentic find of potential evidence in this search.<sup>31</sup>

This was the bone that a state crime lab technician had observed Anderson removing from the back of her boot. Unbeknownst to Anderson, she was under surveillance at this time.

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<sup>27</sup> *Id.* at 10.

<sup>28</sup> *Id.* at 9-10.

<sup>29</sup> *Id.* at 11.

<sup>30</sup> *Id.* at 15.

<sup>31</sup> *Id.* at 12.

Suspicions developed the prior day when police officer Mark David thought he saw Anderson pull something out of her boot, just before claiming that she had found a bone in the creek. When the lab technician later showed him a 2-inch piece of carpet that Anderson claimed to have found in an area they had just searched extensively, they both agreed to watch her closely.<sup>32</sup> On the afternoon of April 18, 2002, the lab technician and Anderson were found in a creek, yelling at each other and tugging on the same bone. At this point the FBI agents on scene were notified of the officer's and technician's suspicions, leading to a federal district attorney ordering Anderson to be arrested at the scene and her car searched.<sup>33</sup> Subsequent DNA testing of the bones found by Anderson at this search site identified the bones as coming from at least two different unidentified people, neither being the victim, Cherita Thomas.<sup>34</sup>

b. 18 U.S.C. § 1512 (b)(3) Obstruction of Justice (One violation, Count Eight)

According to Anderson's Plea Agreement, the Obstruction of Justice charge came from her attempts to get one of her trainees to lie for her. It seems that to create a cover story to explain why she possessed human bones that matched human bones found at the search site where she was arrested, Anderson brought a bag of bones to the Oakland County deputies the next day and explained that they were animal bones collected from the search site and they might have some human bones mixed in with them. Three or four days later Anderson attempted to persuade the trainee, who had been on prior searches with her, to state that it was Anderson's standard practice to collect animal bones at search sites to use as training aids. It was found that Anderson had not instructed the woman to collect the bones; it was not Anderson's practice to

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<sup>32</sup> Audi, *supra* note 12.

<sup>33</sup> 48 Hours, *supra* note 1.

<sup>34</sup> Eric English and Tim Younkman, *Charges Filed in Alleged Evidence Planting*, Bay City Times, June 24, 2003.

collect bones; and animal bones were not collected at the scene.<sup>35</sup> In fact, the plea agreement states that it would be improper to remove anything from a crime scene, and also that dog handlers do not have the knowledge to distinguish between human and other animal bones.<sup>36</sup>

c. 18 U.S.C. § 1001 (a)(2) False Statements and Representations (Two violations, Counts Five and Ten)

Count Five refers to Anderson's statements to a FBI agent on April 18, 2002, when she denied planting evidence at the Huron National Forest or any other search scene. These statements and representations were found to be materially false, fictitious, and fraudulent because the evidence showed that Anderson planted carpet fiber and human bone at Huron National Forest, a human bone at Proud Lake Recreation Center, a toe in the mud in the creek at Bad Creek in Delta, Ohio, a broken saw blade in the home of a homicide suspect in Plymouth, Michigan, and a bone fragment on the grounds of Stress Con in Bay City, Michigan.<sup>37</sup>

One of Anderson's frauds was blatantly revealed in Delta, Ohio, when the body of the victim surfaced and, not only was he was wearing boots, but all of his toes and fingers were still attached.<sup>38</sup> This was the search where she found a severed toe that she claimed belonged to the search subject.

Also revealing was that the blood on the broken saw blade Anderson found in the home of a homicide suspect did not match the Nuclear DNA profile of the victim, but it did match her Nuclear DNA profile.<sup>39</sup> The Stress Con fraud was identified when three bone fragments found at Stress Con were physically matched to a bone fragment confiscated from Anderson's home.<sup>40</sup>

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<sup>35</sup> *Anderson*, Rule 11 Plea Agreement, *supra* note 23, at 13.

<sup>36</sup> *Id.* at 27.

<sup>37</sup> *Id.* at 14-18.

<sup>38</sup> *Id.* at 16.

<sup>39</sup> *Id.* at 17.

<sup>40</sup> *Id.* at 18.

Apparently these fragments together once formed a portion of the same bone. And, the tip that led authorities to search the Proud Lake Recreation Center for a body turned out to be a lie, which meant that there was no body there, thus no human bones should have been found.<sup>41</sup>

Count Ten addressed Anderson's voluntary meeting with federal officials on May 31, 2002, the purpose of which was for Anderson to provide them with full and truthful information regarding the allegations against her.<sup>42</sup> At this time Anderson was aware that she was being investigated regarding false representations concerning material facts and evidence at crime scenes; and she acknowledged that she could be criminally prosecuted for making false representations during this meeting. The investigating officials reviewed the pieces of evidence mentioned above under Count Five; and Anderson knowingly and willfully represented that all material discovered by her and Eagle was genuine and that she had never planted such material at search scenes and pretended that it was authentic.<sup>43</sup> For the same reasons as above, these representations were false.

#### B. Fallout

Defendants currently serving time in prison from investigations where Anderson was used as a resource are using Anderson's fraud as a reason to appeal their convictions. The FBI itself is examining close to 50 cases nationwide,<sup>44</sup> and at least three murder convictions have been appealed.

The three appeals to date have all been denied because other evidence in the case proved enough to convict beyond a reasonable doubt. For example, John David Smith III, of, Ohio was

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<sup>41</sup> Audi, *supra* note 12.

<sup>42</sup> Anderson, Rule 11 Plea Agreement, *supra* note 23, at 18.

<sup>43</sup> *Id.* at 19.

<sup>44</sup> Audi, *supra* note 12.

convicted in 2001 of murdering his wife in 1974.<sup>45</sup> Anderson and Eagle were used by the FBI and the Wayne County Sheriff's Department to identify a spot in Smith's garage where he stored the dismembered remains of his first wife. Smith argued that Eagle was not capable of identifying 25-year-old remains but, unfortunately for Smith, his brother was a witness against him and provided enough evidence to convict Smith. Smith's appeal to the Court of Appeals of Ohio was based upon an ineffective assistance of counsel claim: ineffective because his trial counsel failed to call an expert to rebut Anderson.<sup>46</sup> The court ruled that if there was any error in admitting testimony regarding the results of Eagle's search that it was harmless error, so they dismissed Smith's claim.<sup>47</sup>

One murder conviction has already been appealed to both the Wisconsin Supreme Court and the United States Supreme Court. After a jury trial in June 2000, Peter Kupaza was convicted in Baraboo, Wisconsin, of murdering his cousin and then dumping her dismembered body in the Wisconsin River.<sup>48</sup> Anderson and Eagle were used to search Kupaza's car and apartment in February, 2000. While Anderson testified that Eagle indicated the presence of blood in the apartment, specifically on knives, a mop and under a baseboard in the bathroom, forensic chemical testing found no evidence of blood except for the one spot in the bathroom. This quarter-inch stain of blood had actually already been discovered by the police on January, 31, 2000, and the DNA from the sample was matched the victim's DNA.<sup>49</sup> The Court of Appeals of Wisconsin found that the admission of the dog's evidence was at most a harmless

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<sup>45</sup> Kymberli Hagelberg, *Expert Accused of Faking Evidence But Wayne County Officials Believe Conviction Will Stand*, Akron Beacon Journal, June 28, 2003.

<sup>46</sup> Ohio v. Smith, No. 02CA0068, slip op. at 1 (Ohio App. 9 Dist. Aug. 13, 2003).

<sup>47</sup> *Id.* at 6.

<sup>48</sup> Brian Bridgeford, *Dismembering Case May be Appealed: Peter Kupaza Was Convicted for Murder, But Now There Are Questions About Key Testimony*, Baraboo News Republic, Sept. 5, 2003.

<sup>49</sup> *Wisconsin v. Kupaza*, Appeal No. 01-0790-CR, 2003 Wisc. App. LEXIS 419, at \*\*4 (Wis. Ct. App. April 24, 2003).

error since there was other evidence sufficient enough to sustain Kupaza's conviction.<sup>50</sup>

Subsequent appellate history shows Kupaza's review was denied by the Wisconsin Supreme Court on July 9, 2003, and his writ of certiorari was denied by the United States Supreme Court on November 10, 2003.

Also denied was an appeal from Dr. Azizul Islam.<sup>51</sup> On February 10, 2004, his defense team asked the court in Plymouth, Michigan, to throw out his murder conviction.<sup>52</sup> Islam was sentenced to life in prison in 2001 for murdering and dismembering his wife after she visited their children in his home during their divorce.<sup>53</sup> The appeal was based upon the revelation in the Anderson indictment that the broken saw blade with blood on it that was found in Islam's basement was planted by Anderson.<sup>54</sup> Although the defense had successfully argued to keep the saw blade out of evidence at the trial, the jury learned about the existence of it through the prosecution's expert witnesses, who were called to describe the teeth of the blade. On July 28, 2003, the Supreme Court of Michigan denied the application for appeal because they were not persuaded that the questions presented should be reviewed.<sup>55</sup>

In addition to the legal damage Anderson caused, families have suffered emotional damage. Patria Portugal, the daughter of one political prisoner in Panama, held a funeral based upon the bones that Eagle found which were presented to her as being her father's remains. The bones were later identified as belonging to a Caucasian woman, not her father.<sup>56</sup> The distraught Portugal said, "This is a crime. I am suing her. I want her in prison."<sup>57</sup>

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<sup>50</sup> *Id.* at \*\*1.

<sup>51</sup> Michigan v. Islam, No. SC: 123286, slip op. (Mich. July 28, 2003).

<sup>52</sup> Karen Bouffard, *Plymouth Killer Appeals*, Detroit News, Metro B, Feb. 10, 2004, available at <http://www.detnews.com/2004/wayne/0402/17/b03-60237.htm>.

<sup>53</sup> Michigan v. Islam, No. 231264, slip op. at \*1 (Mich. Ct. App. Dec. 13, 2002).

<sup>54</sup> Bouffard, *supra* note 51.

<sup>55</sup> *Islam*, *supra* note 50.

<sup>56</sup> Robberson, *supra* note 11.

<sup>57</sup> *Id.*

Families will also suffer in the future as law enforcement shuns the use of cadaver dogs to find human remains, possibly leaving victims interred in clandestine graves and the living left to suffer with the unanswered questions and grief over the disappearance. Potentially this case can be the impetus for improvements in the training of cadaver dogs and handlers, but work will also have to be done to restore the confidence of the public and legal community.

C. Sandra Marie Anderson (SMA) Timeline

Date	Facts	Forensic Outcome <sup>58</sup>	Legal Outcome
4.18.02	<p><b>INTERVIEW AT TIME OF ARREST</b></p> <p><b>SMA arrested:</b> Arrested at the search scene near Oscada, Michigan, after she was seen planting a human bone.<sup>59</sup> Her statements to law enforcement that day were later used against her when forensic evidence showed that she was lying.<sup>60</sup></p>		
5.31.02	<p><b>INDICTMENT<sup>61</sup> - 8.20.03</b></p> <p>Proffer: SMA entered agreement with the Department of Justice (DOJ) to enable her to respond to allegations that she had planted false evidence during her participation in law enforcement searches for human remains. She spoke voluntarily with attorneys of the US DOJ and agents of the FBI for several hours and was aware that she could be criminally prosecuted for false material representations intentionally made by her during the interview.</p> <p>Note: counts below are abbreviated.</p>		
	<p><b>Count One:</b> 4.17.02, Huron National Forest, near Oscada, Michigan. (Search with law enforcement for the human remains of and evidence related to a suspected victim of a possible federal crime). Planted a human bone, subsequently identified by law enforcement as L-6, under a tree stump and falsely stated and represented it as legitimate potential evidence.</p>	<p>* A police evidence technician searches an area under a tree root-ball after SMA claims her dog alerted. He finds nothing, but as they leave the area he sees her return to the space he just searched and she exclaims there is a bone there.</p>	Dismissed
	<p><b>Count Two:</b> 4.17.02, Huron National Forest, near Oscada, Michigan. Planted carpet fibers in a pile of debris and falsely stated and represented it as legitimate potential evidence.</p>	<p>* The carpet fiber matches fiber found at her home, as well as fiber found in the pocket of the jeans she was wearing at the search.</p>	Pleads Guilty
	<p><b>From Plea Agreement: Falsifying Material</b></p> <p>This search was for an African-American female who had disappeared in the 1980s. SMA acted as though the discovery was genuine and falsified facts for the purpose of misleading agents from the FBI.</p>		
	<p><b>Count Three:</b> 4.18.02, Huron National Forest, near Oscada, Michigan. Planted a human bone, subsequently identified by law enforcement as L-11, in a tree stump and falsely stated and represented it as legitimate potential evidence.</p>	<p>* An anthropologist is called to help at the search since a bone was found the day before. SMA brings him to the tree root-ball and insists that Eagle indicates there is a bone 4” below the top of the root ball. He see nothing but after lunch she insists that they return</p>	Dismissed

<sup>58</sup> *Anderson*, Rule 11 Plea Agreement, *supra* note 23.

<sup>59</sup> *Audi*, *supra* note 12.

<sup>60</sup> *Anderson*, indictment, *supra* note 3.

<sup>61</sup> *Id.*

		<p>to look again and there is now a bone conspicuously visible about 4” down.  Bay City Times: Subsequent DNA testing shows that the bones were from at least two unidentified people; neither one was the victim, Cherita Thomas.</p>	<p>to look again and there is now a bone conspicuously visible about 4” down.  Bay City Times: Subsequent DNA testing shows that the bones were from at least two unidentified people; neither one was the victim, Cherita Thomas.</p>	<p>Pleads Guilty</p>
<p><b>Count Four:</b> 4.18.02, Huron National Forest, near Oscada, Michigan. Planted a human bone, subsequently identified by law enforcement as L-12, in the muck of a drained creek and falsely stated and represented it as legitimate potential evidence.</p> <p><b>From Plea Agreement: Falsifying Material</b>  This search was for an African-American female who had disappeared in the 1980s. SMA pretended this was a genuine discovery and falsified facts for the purpose of misleading agents from the Federal Bureau of Investigation (FBI).</p>	<p><b>Count Four:</b> 4.18.02, Huron National Forest, near Oscada, Michigan. Planted a human bone, subsequently identified by law enforcement as L-12, in the muck of a drained creek and falsely stated and represented it as legitimate potential evidence.</p> <p><b>From Plea Agreement: Falsifying Material</b>  This search was for an African-American female who had disappeared in the 1980s. SMA pretended this was a genuine discovery and falsified facts for the purpose of misleading agents from the Federal Bureau of Investigation (FBI).</p>	<p>* A law enforcement scientist witnessed her place the human bone at the scene and pretend to discover it.</p>	<p>Pleads Guilty</p>	
<p><b>Count Five:</b> 4.18.02, Eastern District of Michigan. SMA knowingly and willfully made a materially false, fictitious and fraudulent statement and representation by claiming her finds were legitimate when she well knew she had planted the evidence, to wit: (a) – (d) refer, in order, to Counts One through Five above; (e) human bone found at the Proud Lake Recreation Area Center, on or about 1.4.02; (f) a human digit in the mud at bad Creek near Delta, Ohio on 4.9.02; (g) a saw blade stained with her own body fluid in the basement of a home in Monroe County, Michigan, on or about 1.27.04; (h) coins stained with her own blood in a field in Monroe County, Michigan, on or about 5.2.01; (i) a cloth piece stained with her own body fluid at a trailer in Lindsey, Michigan, on 2.27.02; (j) human bone fragments on the grounds of Stress Con, Bay City Michigan, on or about 10.24.04.</p> <p><b>From Plea Agreement: Factual Basis for Count Five</b>  SMA’s statements during the interview to FBI agent on 4.18.02 were false; she represented that she had never planted evidence and all of her finds were legitimate. Her intent was to mislead federal investigators as to the substance of their investigation. See “Forensic Outcome” marked with an asterisk for details.</p>	<p><b>Count Five:</b> 4.18.02, Eastern District of Michigan. SMA knowingly and willfully made a materially false, fictitious and fraudulent statement and representation by claiming her finds were legitimate when she well knew she had planted the evidence, to wit: (a) – (d) refer, in order, to Counts One through Five above; (e) human bone found at the Proud Lake Recreation Area Center, on or about 1.4.02; (f) a human digit in the mud at bad Creek near Delta, Ohio on 4.9.02; (g) a saw blade stained with her own body fluid in the basement of a home in Monroe County, Michigan, on or about 1.27.04; (h) coins stained with her own blood in a field in Monroe County, Michigan, on or about 5.2.01; (i) a cloth piece stained with her own body fluid at a trailer in Lindsey, Michigan, on 2.27.02; (j) human bone fragments on the grounds of Stress Con, Bay City Michigan, on or about 10.24.04.</p> <p><b>From Plea Agreement: Factual Basis for Count Five</b>  SMA’s statements during the interview to FBI agent on 4.18.02 were false; she represented that she had never planted evidence and all of her finds were legitimate. Her intent was to mislead federal investigators as to the substance of their investigation. See “Forensic Outcome” marked with an asterisk for details.</p>	<p>* (f) SMA admits that she placed the human toe at the location and her failure to reveal the truth along with intent to mislead the federal investigators.  • The Nuclear DNA profile of the toe matches that of a dissected foot, missing its toes, in a freezer at the home of a close friend, the Fire Department Captain. Note: the toe was traced to a freezer in the home of Shreveport (Louisiana) Fire Captain Kerry Foster, head of the Fire Department’s search and rescue team and originated from the Louisiana State Medical Center.<sup>62</sup></p> <p>* (g) SMA admits that she placed the saw blade stained with her own blood at the location and her failure to reveal the truth along with intent to mislead the federal investigators. The DNA profile did not match the victim, but it did match SMA.</p> <p>* (h) SMA placed coins stained with her own blood at the location in Monroe County, Michigan. The DNA profile matches SMA.</p> <p>* (i) SMA placed gauze stained with her own blood at the location in a trailer in Lindsey, Ohio. The DNA profile matches SMA.</p> <p>* (j) SMA admits that she placed the bone fragment at Stress Con and her failure to reveal the truth along with intent to mislead the federal investigators.  A bone fragment from SMA’s home and three bone fragments found</p>	<p>Pleads Guilty</p>	

<sup>62</sup> *Planted-Evidence Case Has Link to Shreveport*, (KTBS News television broadcast Jan. 28, 2004), available at <http://www.ktbs.com/news-detail.html?cityid=1&hid=23200>.  
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		at Stress Con were physically matched together; these bone fragments fitted together once formed a portion of the same bone.	
	<p><b>Count Six:</b> 1.4.02, Proud Lake Recreation Center, Oakland County, Michigan. Planted a human bone in the dirt, stated and represented that it was legitimate potential evidence, and concealed and covered up the fact that she had planted the bone.</p>	<p>* SMA admits that she placed the human bone at the location and her failure to reveal the truth along with intent to mislead the federal investigators.</p>	Dismissed
	<p><b>Count Seven:</b> 4.19.02, Oakland County Sheriff's Department, Michigan. Delivered to a detective a human bone mixed into a bag of animal bones and made false assertions about how the bones were acquired, knowing at that time that she engaged in misleading conduct that there was a federal investigation into allegations that she planted evidence at crime scenes.</p>	<p>* The conversation was audiotaped. At different times she said that she had permission to take animal bones to train her dogs with and that trainees who had accompanied her at the search had gathered them. At one point she said that the bones came from a search on a date that dog handlers (trainees) from Charlottesville were present. In fact, it would be improper to remove anything from a crime scene and dog handlers do not have the knowledge to distinguish between human and other animal bones.</p>	Dismissed
	<p><b>Count Eight:</b> 4.22.03 through 4.23.02, Eastern District of Michigan. At a time she knew that there was a federal investigation into allegations that she planted evidence at crime scenes and that she made false representations in an attempt to get a dog handler/trainee to prepare a false report for law enforcement about SMA's acquisition of the bones.</p> <p><b>From Plea Agreement: Obstruction of Justice</b> SMA attempted to persuade an individual to give false information to law enforcement to cover SMA's false statement:</p> <ul style="list-style-type: none"> <li>• On 1.4.02 SMA failed to disclose to members of the joint task force searching at Proud Lake Recreation Center that the bone she pretended was genuine evidence had actually come from her possession.</li> <li>• On 4.19.02, the day after the FBI executed a search on SMA's house, she took a bag of bones to the Oakland County deputies (who had also participated in the Proud Lake Recreation Center search) and explained that they were animal bones from the search site and that there might be some human bones mixed in with them. The purpose was to provide an explanation for why she possessed human bones similar to the human bones found at the search site.</li> <li>• On or about 4.22.02 and 4.23.02, SMA knowingly attempted to corruptly persuade an individual who had been at the search site on 1.4.02 to report that, just prior to 1.4.02, SMA had told her to gather up animal bones at the search site as was her usual practice. In fact, SMA did not instruct her to do so nor was it SMA's usual practice to do so, and animal bones were not collected at the scene.</li> </ul>		Pleads Guilty

	<p><b>Count Nine:</b> Second charge of Count Eight.</p>	<p>* SMA knowingly engaged in misleading conduct toward an individual other than then individual identified in Count Eight, instructing her to tell the same story regarding the gathering of the bones that listed in Count Eight.</p>	Dismissed
	<p><b>Count Ten:</b> 5.31.02, Eastern District of Michigan. SMA entered an agreement to provide truthful information to federal officials conducting an investigation into whether she had planted evidence. During an interview she voluntarily, knowingly, and willfully made false, fictitious, and fraudulent statements and representations. The representations were that: (1) she never placed material at a law enforcement search scene; (2) the discovery of a human toe in Ohio was legitimate evidence; (3) she had no knowledge of a saw blade being found after her dog alerted on a washer and dryer during the search of a suspect's basement in Plymouth, Michigan; (4) her discovery of human bone on the grounds of Stress Con was legitimate. Each representation was false, because the truth was that she well knew that she had placed material at law enforcement scenes, including, but not limited to those in Count Five (a)-(j).</p> <p><b>From Plea Agreement: Factual Basis for Count Ten</b> Because her statements during the interview did not match the FBI and DOJ evidence against her (see Count Five), she was found to have made false representations to mislead the federal investigators.</p>		Pleads Guilty
<b>CRIMINAL DOCKET</b> <sup>63</sup>			
6.23.03	Information against Sandra Marie Anderson (1) count(s) 1,2,3 (dp).		
8.20.03	Superseding indictment against Sandra Marie Anderson (1) count(s) 1s,2s,3s,4s,5s,6s,7s,8s,9s,10s (dp).		
9.12.03	Initial appearance; pleads not guilty to all counts. Unsecured bond \$10,000 with conditions.		
10.6.03	Trial set for 3.15.04		
11.24.03	<p>Motion by SMA: (1) for witness list with brief; (2) to compel retention and production of investigating agents' notes with brief; (3) for additional discovery and disclosures with brief;</p>		

<sup>63</sup> United States v. Anderson, Criminal Docket for Case #: 03-CR-80602-All (D. Mich. June 23, 2003).

	(4) to require notice of intent to introduce 404(b) evidence and for leave to file motions in limine following receipt of said notice with brief.	
3.5.04	Magistrate Judge Donald Scheer denies (1), (2), and (3). Grants (4) Motion for Miscellaneous Relief: Motion to Provide Evidence and Motion for Leave to File.	
	<b>PLEA AGREEMENT<sup>64</sup> – 3.10.04</b>	
3.10.04	<p><b>Offenses:</b></p> <p>(A) Two violations: 18 U.S.C. 1001 (a)(1) Falsifying Material Fact and (a)(2) Making False Representations;</p> <p>(B) One violation: 18 U.S.C. 1512 (b)(3) Obstruction of Justice;</p> <p>(C) Two violations: 18 U.S.C. 1001 (a)(2) False Statements and Representations.</p> <ul style="list-style-type: none"> <li>• Statutory Incarceration Period: Up to 30 years.</li> </ul> <p>By pleading guilty, the DOJ dismissed Counts 1,3,6,7, and 9. The DOJ additionally agreed to not bring any further charges and would advise any state or local agency considering criminal charges against SMA that the DOJ considers the disposition in this matter to be a just resolution of all the defendant's actions at search scenes prior to the date of plea and of which the DOJ is aware.</p> <p><b>SMA:</b></p> <p>(1) voluntarily agrees to plead guilty to Counts 2,4,5,8 and 10;</p> <p>(2) hopes to receive a sentence of 18-24 months;</p> <p>(3) accepts that the government will recommend five years of supervised release (including requiring her to report all searches in which she participates to her probation officer in a timely manner);</p> <p>(4) may be required to pay a fine;</p> <p>(5) SMA assigns to the DOJ for life all rights, titles and interest she may acquire from her story;</p> <p>(6) agrees to make complete restitution for (a) any loss incurred as a result of any offense charged in this case and (b) any loss incurred by the reliance of any person or agency on her purported expertise as a locator of human remains where she falsely claimed to find evidence.</p> <p>The government identifies the potential victims as those who were the subject of her unlawful conduct in Counts 8 and 9, and law enforcement agencies which incurred expenses as a result of her activities prior to the federal criminal investigation that resulted in her indictment.</p>	

<sup>64</sup> *Anderson*, Rule 11 Plea Agreement, *supra* note 23.

### III. Cadaver Dogs and Handlers

Cadaver dogs and handlers are generally either members of a law enforcement agency or a volunteer search and rescue group.<sup>65</sup> Police will use civilian cadaver dog teams to supplement their resources because training dogs for this specialized task is expensive, complex, and time consuming, an expense that many agencies cannot afford.<sup>66</sup>

There are numerous tools available for detecting clandestine graves, such as ground penetrating radar, thermal imagery, and aerial photography, each bringing its own advantages and limitations.<sup>67</sup> For example, ground penetrating radar can work over and through snow and water, but the equipment can be difficult to obtain and typically requires smooth terrain. A 1988 study in Colorado, completed by experts from the fields of crime scene and laboratory analysis, archeology, forensic anthropology and other such sciences, compared fourteen tools for clandestine grave detection. They found scent-detection dogs to be relatively non-destructive yet effective over a wide range of conditions, including over water and on remains buried 170 years. Their disadvantage was lack of proper training and the handler potentially overstating qualifications, both of which can be addressed by training. This study was limited in scope to outside graves, which overlooks the need to gather evidence and search for remains in vehicles and buildings, both of which can be effectively done by dogs.<sup>68</sup>

Below is a brief overview of the training cadaver dogs and their handlers. While not an exhaustive review of such, it is a presentation of the most common elements focused on by the courts.

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<sup>65</sup> ANDREW REBMANN, EDWARD DAVID AND MARCELLA SORG, *CADAVER DOG HANDBOOK 2* (2000).

<sup>66</sup> Candace J. Samolinski, *K-9 Noses Seek Out the Scent of Death*, *The Tampa Tribune*, Feb. 15, 2003

<sup>67</sup> D.L. France et al., *A Multidisciplinary Approach to the Detection of Clandestine Graves*, 37(6), Nov. 1992, 1445-58

<sup>68</sup> REBMANN et al., *supra* note 64, at 41, 59.

## A. Definition

A “cadaver dog” is a canine trained to use human decomposition odor to find human cadavers, body parts or body fluids.<sup>69</sup> The dog may be of any breed although those with short noses, or brachycephalic, such as Boston terriers or pugs, have restricted nostrils which can lead to respiratory difficulties, making them less promising candidates for this demanding work.<sup>70</sup> Dogs’ olfaction sensitivity is 10-100 times better than that of humans.<sup>71</sup> This variability is affected by such things as genetics (albino and some dogs with dilute coat color may have an impaired sense of smell)<sup>72</sup> and health (hypothyroidism may cause anosmia or loss of sense of smell)<sup>73</sup> as well as environmental factors.<sup>74</sup>

## B. Training

The handler and dog are partners who both need specialized training to be effective as a tool for locating human remains. While there is no federal certification or national standard for cadaver dog teams,<sup>75</sup> certain elements are central and basic requirements for any cadaver dog training program.

### 1. Handler

While every handler needs to develop and maintain skills in a number of areas, below are four of particular concern for cadaver dog handlers.

#### a. Crime Scene Preservation

This training is so important that both live find dog handlers and cadaver dog handlers need to be trained in crime scene preservation. Just as a cadaver dog handler may be called to

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<sup>69</sup> *Id.* at 1.

<sup>70</sup> WILLIAM G. SYROTUCK, SCENT AND THE SCENTING DOG 13, 1972.

<sup>71</sup> *Id.* at 12-13.

<sup>72</sup> *Id.* at 13.

<sup>73</sup> WENDY VOLHARD AND KERRY BROWN, HOLISTIC GUIDE FOR A HEALTHY DOG, 152 (2000).

<sup>74</sup> REBMANN et al., *supra* note 64, at 22.

<sup>75</sup> *Id.* at 73.

assist in the recovery of human remains from scenes where there is no criminal suspicion, a wilderness dog handler may be called to searches that end up being crime scenes.<sup>76</sup> While there are some basic rules to preserving all crimes scenes, such as retreating on the same path that you entered and not taking or adding anything to the scene,<sup>77</sup> additional training is necessary to ensure that the handler will not overlook evidence that would not seem important to the untrained eye and, more importantly, it builds the handler's credibility with law enforcement and the courts.

#### b. Training Logs

Training logs are an essential part of every handler's search career. Not only is it a reference tool for the handler to identify progress, areas that need improvement and tracking of these, but it is also a record made of regularly conducted activity. This means that the training log is a business record and is thus admissible in court as evidence, not hearsay, under Rule 803(6) of the Federal Rules of Evidence. Under Rule 803(6), a document made by a person with knowledge, that is kept in the regular course of business, and where it was the regular course of business to produce such a document, is admissible as a hearsay exception. A canine training log that is incomplete or unreliable would be excluded from this exception as it would then fall into the hearsay category. This could then be fatal to the introduction of the evidence found by the dog as the defense could well argue that there is no record on which to prove the dog's reliability, therefore any information regarding the dog's actions would be suppressed.

The training log needs to contain certain elements to be of value to the handler or the courts. In addition to identifying the dog and handler, it needs to include information about the weather, terrain, type of search, time involved, and a description of the search and the dog's

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<sup>76</sup> *Id* at 118.

<sup>77</sup> *Id.* at 120.

behavior, as well as the date and handler's signature.<sup>78</sup> To be used to establish reliability, the training log must track the dog's successes, failures, and the actions taken by the handler to correct these.<sup>79</sup>

### c. Background checks

Just as fire/arson investigators know that the fire setters are often present at the fire scene,<sup>80</sup> those in charge of missing person cases are aware that some of those offering to help search for missing people have criminal records and may be using the search as an attempt to access victims or change the direction of the search away from where the body is actually located. Volunteers need to be background checked to help protect the integrity of searches. This lesson was learned painfully by two missing persons organizations in 2003 when they were each stunned to learn that one of their volunteers had been arrested on child-related sex charges. The first was Equusearch, a mounted search and rescue team in Texas, whose many searches include those for children.<sup>81</sup> They learned in June that member Jim Carroll was jailed on child pornography charges, a second-degree felony offense. A background check would have revealed felony arrests in 1980 for burglary, 1982 for felony burglary, and 1992 for auto theft.

Also hurt was the Molly Bish Foundation, an organization created in the name of the 16-year-old lifeguard whose remains were found in 2003, three years after she disappeared from her lifeguard post.<sup>82</sup> The foundation is run by Molly's parents, who promote child safety with child identification kits that are kept by the parents and contain the child's fingerprints and

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<sup>78</sup> *Id.* at 75-76.

<sup>79</sup> *Id.* at 75.

<sup>80</sup> Timothy R. Jonas and Ernest M. Bueker, *Accelerant Detection Canines: Uses and Misuses*, (1999), at <http://www.nciaai.com/sym.htm> (last visited on May 31, 2004) (copy on file with author).

<sup>81</sup> *Search Volunteer Charged With Child Porn* (KPRC News television broadcast June 17, 2003) available at <http://www.click2houston.com/news/2276235/detail.html> (last visited on May 31, 2004) (copy on file with author).

<sup>82</sup> *Head of a Massachusetts Hospital Security Arrested on Child Sex Charge*, (WHDH-TV television broadcast July 7, 2003), available at <http://www.whdh.com/news/articles/local/A15886/> (last visited on May 31, 2004) (copy on file with author).

photograph. Volunteer James Rozema shocked the family when he was arrested in New Hampshire and charged with using the internet to lure a child to have sex. While it is not known if Rozema had a prior record, completing a background check on him may well have warned the foundation about him.

The opening sentence on the GLSAR “Meet Our Members” webpage states, “Every person requesting membership with Great Lakes Search and Rescue of Michigan must pass a basic background check.” Ironically, this is the header of the page discussing their director, Sandra Anderson, who will no longer be able to pass such a background check. Search and rescue units need be aware that stating such a requirement carries no legitimacy unless the checks are actually completed on every member and kept up-to-date. If a handler or unit is subpoenaed, or a member’s criminal record is discovered when he is arrested for another charge, and this check was not completed, then both the members’ and the unit’s credibility will be gravely damaged.

#### d. Preparation for court

All dog handlers need to be prepared to be subpoenaed to court, including cadaver dog handlers.<sup>83</sup> In addition to being expected to testify, handlers’ training records, search reports, and certifications may be requested by the defense. Handlers can be ready for such a legal summons by preparing and regularly keeping up-to-date their resume, their dog’s resume, training records, and search reports.<sup>84</sup> Search units need to develop written standards for dogs and handlers, and be prepared to present evidence that these standards are maintained through

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<sup>83</sup> Jonni Joyce, *SAR Dog Handlers in Court*, at [http://www.jonnijoyce.com/tidbits/archives/sar\\_handler\\_in\\_court.htm](http://www.jonnijoyce.com/tidbits/archives/sar_handler_in_court.htm) (last visited on May 31, 2004) (copy on file with author); REBMANN et al., *supra* note 64, at 78. *See also* SANDY BRYSON, *SEARCH DOG TRAINING*, 153-54 (1984).

<sup>84</sup> REBMANN et al., *supra* note 64, at 75-80.

periodic evaluation.<sup>85</sup>

## 2. Dog

As in all dog training disciplines, numerous methods abound for teaching a dog to locate human remains. Regardless of the method chosen, the basic elements are the same: the dog is imprinted to cadaver odor and then advanced through a variety of problems until he is able to locate human remains in various states of decomposition and hidden in myriad ways, including above ground, buried, and hanging. The dog also needs to be taught not to alert on non-human decomposition and pass a proficiency test before being deployed.

### a. Introductory Training and Scent Detection

Training begins with introducing the dog to the smell of human decomposition and rewarding the dog right at the source of the scent.<sup>86</sup> Dogs will offer their own natural reaction to this new odor.<sup>87</sup> And, even though the dog's behavior will be shaped into a trained alert, it is essential for handlers to learn their dog's natural indications as there may be instances where the dog finds human remains but does not give its full indication. Examples include the scenes of disasters, fires, and airplane crashes, where the dog may simply dip its head or even show an aversion to the remains.<sup>88</sup>

A trained alert is the distinctive behavior the dog exhibits when he locates the scent of human remains. A passive trained indication, such as sitting or lying down, rather than an aggressive alert, like digging, is preferred as it will do less damage to a crime scene.<sup>89</sup> Cadaver

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<sup>85</sup> Andrew J. Rebmann, *Expert Testimony*, SAR Dog Alert (Dec. 1996), available at [http://www.nasar.org/index.php?s=canine&p=sardog\\_Dec96#art4](http://www.nasar.org/index.php?s=canine&p=sardog_Dec96#art4) (last visited May 30, 2004) (copy on file with author).

<sup>86</sup> Marcia Koenig, *Training Principles*, in REBMANN et al., *supra* note 64, at 39.

<sup>87</sup> Jonni Joyce, *The Importance of Foundation Work in Cadaver*, available at [http://www.jonnijoyce.com/articles/archive/cadaver\\_dog.htm](http://www.jonnijoyce.com/articles/archive/cadaver_dog.htm); Marcia Koenig, *supra* note 85, at 39.

<sup>88</sup> Andrew Rebmann and Marcia Koenig, *K-9 Advanced Cadaver Search Course Training Manual*, (presented in Charleston, W.V. Oct. 1998) (copy on file with author).

<sup>89</sup> REBMANN et al., *supra* note 64, at, 42.

dogs need a trained alert because they are relied on to pinpoint evidence, and a trained alert can be articulated to the court as substantiation of the dog's find.

Since cadaver dogs are often assigned to search areas that contain no human remains, they need to also practice training in "negative areas." These are sectors that intentionally have no decomposition odor contained within them. In addition to preparing the dog and handler for real world experiences, it also allows the handler to develop "nose time."<sup>90</sup> This is the length of time that a dog can work before his reliability starts to drop; working a dog beyond this point can be the cause of missed alerts and false alerts.<sup>91</sup> A miss means that the dog failed to detect the odor that was present, while a false alert occurs when a trained dog indicates on something other than the intended target. These alerts can also be caused by environmental factors such as swamp gases.<sup>92</sup>

Dogs are able to distinguish between human and animal decomposition. As animal remains are often also present at search scenes, dogs need to be proofed from alerting on animal decomposition.<sup>93</sup>

#### b. Scent Sources

Human decomposition odor includes such things as blood, body fluids, flesh, skin cells, and gases. Cadaver dog handlers need to expose their dogs to as broad a spectrum of these as possible, while also being mindful of laws that regulate the possession of human remains. Legal sources include soil samples from sites where a body has decomposed,<sup>94</sup> and creative supplies, such as vehicles involved in fatal accidents<sup>95</sup> and the cotton lining from plaster casts worn to

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<sup>90</sup> Jonni Joyce, *Understanding "Nose Time" In the Cross Trained Wilderness-Cadaver Dog* (2003) (available by request from Jonni Joyce, <http://www.jonnijoyce.com>) (copy on file with author).

<sup>91</sup> *Id.*

<sup>92</sup> REBMANN et al., *supra* note 64, at 141.

<sup>93</sup> *Id.* at 62.

<sup>94</sup> *Id.* at 68.

<sup>95</sup> SUSAN BULANDA, *READY! THE TRAINING OF THE SEARCH AND RESCUE DOG* 93 (1994)

support broken bones during healing.

In addition to natural sources, there are synthetic chemicals that replicate the odors of various states of human decomposition. Referred to as “pseudoscent,” they can be safely, legally, and effectively used to train a dog to locate human remains.

Some cadaver dog handlers express concern that training with pseudoscent will detract from their dog’s reliability, especially in the legal setting. This anxiety is misplaced as there are no cases where a dog trained on pseudoscent was ever challenged as unreliable because of use of the synthetic odor. The only case that mentions the use of pseudoscent was *United States v. Navarro-Comacho*, and that was a drug dog case.<sup>96</sup> In that Sixth Circuit appeal, the defendant accused a highway patrolman of wiping pseudo-cocaine on his car while it was stopped for speeding so the drug dog would give a drug alert. The court did not find there to be any validity to the defense’s claim since the complete stop was recorded by the patrolman’s in-car video camera and a review of the tape did not show this to have occurred, and the officers found five kilograms of cocaine on the back seat of the defendant’s car. Of note for cadaver dog handlers is the fact that the court found this dog to be reliable, even though he had occasionally false alerted, and the justices assumed that this, a reliable dog, would be able to alert to both the real and pseudo-cocaine.

Pseudoscent does have some limitations but they can be easily overcome. For instance, the chemical spectrum of pseudo is very small compared to that found with decomposition so the dogs must be imprinted on the pseudoscent to recognize it as a target odor.<sup>97</sup> But, this does not diminish its usefulness as there are dogs trained exclusively with pseudoscent who then make

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<sup>96</sup> *United States v. Navarro-Comacho*, 186 F.3d 701,703 (1999).

<sup>97</sup> Marcia Koenig, *Do Pseudoscents Work?*, at <http://www.cadaverdog.com/articles/pseudoscents.htm> (last visited on May 31, 2004) (copy on file with author).

real finds.<sup>98</sup>

One of pseudoscent's greatest uses is to reinforce dogs during extended searches. Since carrying real cadaver material into a search area would corrupt the crime scene, handlers should consider carrying pseudoscent with them instead so they can set up finds for their dogs to reward and reinforce them.<sup>99</sup> It is also a convenient tool for handlers crossing state lines into locations that may prohibit the possession of human remains.<sup>100</sup>

### C. Certification

Before a dog is permitted to respond to a cadaver search he needs to have been evaluated, either by a certification or proficiency test. This tests not only the dog's ability to locate the scent but also the handler's ability to effectively plan and execute a search assignment and read the dog.<sup>101</sup> Most search and rescue units with cadaver dogs in their ranks have a cadaver test that dogs must pass before being deployable. This is extremely important as courts give great weight to the reliability of dogs with certification, as will be evident in the next section.

## IV. Legal Issues for Cadaver Dogs

There are few cases that address issues relating to cadaver dogs. Since cadaver dogs are detection dogs, that is, they are trained to locate a specific type of scent, precedent from other types of detection dog cases is most relevant. Narcotics, explosives, and accelerant detection dog evidence has been the focus of many motions and appeals, creating a pool of information from which the courts can draw. Below are just a few of the issues likely to be confronted by

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<sup>98</sup> *Id.*

<sup>99</sup> Joyce, *supra* note 89.

<sup>100</sup> Koenig, *supra* note 96.

<sup>101</sup> Koenig, *supra* note at 85.

cadaver dog handlers.<sup>102</sup>

#### A. Constitutional Issues

Cadaver dogs are generally called to a search scene by law enforcement after a search warrant or permission has been granted, unlike narcotics or explosive detection dogs. But this does not mean that they are never subject to Fourth Amendment search and seizure or other evidence admissibility issues.

The Fourth Amendment of the United States Constitution guarantees citizens the right to be free from unreasonable search and seizure, and that warrants issued for searches must be based upon probable cause.<sup>103</sup> The Supreme Court has decided that a canine sniff is not a search; not only is it less intrusive than most types of searches, but it also reveals only the presence or absence of contraband.<sup>104</sup> This is relevant to cadaver dog handlers because any evidence detected must have been done so legally or it will not be admissible in court.<sup>105</sup> Thus, while a canine sniff may not be a search, if it was done without a properly executed search warrant or permission, then the evidence found by the dog cannot be used at trial.

Cadaver dog evidence is generally not admissible as proof on its face that the defendant is guilty, but it can be used as probable cause for a court to issue a search warrant.<sup>106</sup> Much of this precedent came from narcotics dog detection cases, where dog alerts on packages, luggage, cars, and train compartments were held by the courts to establish probable cause for a warrantless search.<sup>107</sup> These cases differ from cadaver dog cases in that they were done under

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<sup>102</sup> See REBMANN et al., *supra* note 64 at 83-91 (for a more complete discussion of legal issues and cadaver dogs.)

<sup>103</sup> U.S. Const. amend. IV.

<sup>104</sup> United States v. Place, 462 U.S. 696, 707 (1983).

<sup>105</sup> REBMANN et al., *supra* note 64, at 85.

<sup>106</sup> *Id.*

<sup>107</sup> United States v. Cantrall, 762 F. Supp. 875, 882 (D. Kan. 1991) (narcotics dog alert on package supports finding of probable cause where dog trained, certified and had accuracy rate of at least 50%); United States v. McCranie, 703 F.2d 1213, 1218 (10th Cir. 1983) (narcotics dog signals on luggage gave police officers probable cause to seize defendant at airport); United States v. Cendano-Arellano, 332 F.3d 568, 573 (9th Cir. 2003) (narcotics dog's alert

exigent circumstances, thus the time delay that obtaining a warrant would require could have meant the evidence was destroyed.<sup>108</sup> Cadaver dog handlers are more likely to be confronted by searches where warrants or permission has already been secured by the law enforcement agency in charge of the investigation, but they do need to be aware of this Constitutional issue and the limits of their findings.

## B. Credibility and Reliability

Determining credibility and reliability of detection dogs and handlers is based largely upon training records and certifications. In assessing these documents the courts will examine a number of elements, including the accuracy rate of the dog, the dog's indication behavior, testimony of the handler, and certification.

### 1. Accuracy

A trained detection dog's reliability is based in great part upon its accuracy rate, which is the percentage of time that the dog correctly alerts on its target. This can be compared to rates of false alerts and missed alerts. The percentage rate used to define reliability varies among jurisdictions. For example, the United States District Court for the District of Kansas held that an accuracy rate over 50% was reliable enough to establish the detection ability of a dog trained and certified for narcotics detection.<sup>109</sup> This was found to be sufficient enough to support a finding of probable cause that drugs were in the package on which the dog alerted.

Other cases suggest a higher accuracy rate. For example, the Court of Appeals for the Sixth Circuit accepted the 90% standard discussed by the defense's expert, an experimental

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may be considered both reasonable suspicion and probable cause to search a vehicle). *But see* United States v. Trayer, 898 F.2d 805, 808 (D.C. Cir. 1990) (dog's behavior at door to defendant's train compartment combined with information about him from the railroad's reservation records established probable cause for a warrantless search).

<sup>108</sup> *Trayer, supra* note 106 at 808 n.1 (warrantless search permitted under the exigent exception to the warrant requirement of the fourth amendment and likelihood that train would be moved before a warrant could be obtained meets the requirement).

<sup>109</sup> *Cantrall*, 762 F. Supp. at 882.

psychiatrist and veterinarian who developed the training protocol for the United States Air Force's narcotic detection dog program.<sup>110</sup> No cases involving cadaver dogs have yet established a reliability threshold.

## 2. Alerts

Detection dog handlers in all disciplines teach their dogs to give a trained alert when the target scent is located. During training the dog is only rewarded for giving its trained alert, but searches sometimes present circumstances where the dog offers a different behavior and the courts have accepted such as valid alerts.

Both the United States Court of Appeals for the Tenth Circuit and the District of Columbia have ruled in favor of narcotics dogs who signaled a drug find with other than their trained alerts. In *United States v. Williams*, the drug dog showed interest in the luggage belonging to two suspects during a line up search of suitcases where he then bit the luggage tags off both rather than scratching and biting at the suspected piece.<sup>111</sup> The court accepted the dog's alert as valid based upon the trial record, which included testimony from the dog's handler describing how the dog worked the seam and joints of the case to get a better scent and that the dog did scratch and bite at the case after biting off the tag.

The District of Columbia court in *United States v. Trayer* upheld the alert of a golden retriever who froze and pointed, like a bird dog, at the air vent at the bottom of a door on a train compartment (the dog's trained alert involved aggressively signaling the presence of drugs).<sup>112</sup> The court commented that the idiosyncratic behavior does not diminish reliability as long as the alert is a trustworthy indicator of drugs and noted that the genetics of the golden retriever may

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<sup>110</sup> *Navarro-Comacho*, 186 F.3d at 706 (dog considered reliable as he was certified, passed recertification every two years, and had a reliability rate between ninety and ninety-seven percent despite occasionally alerting falsely, so defendant's appeal on this issue of his drug conviction denied).

<sup>111</sup> *United States v. Williams*, 726 F.2d 661, 664 (1984).

<sup>112</sup> *Trayer*, 898 F.2d at 808.

have triumphed over his training.<sup>113</sup>

Prior to both of these cases, the United States Court of Appeals for the Tenth Circuit upheld a conviction where drugs in luggage were alerted to by an explosives dog. In *United States v. McCranie* the defendant was initially identified based upon the observations of a narcotics agent at an airport.<sup>114</sup> The agent questioned the defendant and warned him that he would be met by other narcotics agents at his destination airport in Tulsa, Oklahoma. This is where the defendant's suitcase was indicated on by the explosives detection dog. The court accepted the alert because the dog's only false alerts had occurred when he sniffed hidden drugs, even though he was not trained or certified to detect narcotics.<sup>115</sup>

False alerts were again addressed by the Tenth Circuit during the appeal of *United States v. Gonzalaz-Acosta*, where the court held that, even if the narcotics dog's records showed false alerts, it did not make a difference because the dog was obviously correct.<sup>116</sup>

Courts are familiar with the fact that cadaver dogs may false alert. This can occur for a number of reasons, including water drainage carrying the decomposition scent away from the body's location, canine fatigue, the handler misreading the dog or even the handler inadvertently cueing the dog.<sup>117</sup> To prevent false alerts from negatively affecting a cadaver dog's reliability, training logs need to truthfully record the false alerts and then track corrections and improvements.<sup>118</sup>

If a handler can inadvertently cue a dog to give a false alert, then she can certainly also do so intentionally. This was most probably done by Anderson during her searches with Eagle.

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<sup>113</sup> *Id.*

<sup>114</sup> *McCranie*, 703 F.2d at 1214.

<sup>115</sup> *Id.* at 1215-16.

<sup>116</sup> *US v. Gonzalez-Acosta*, 989 F.2d 384, 386 (1993).

<sup>117</sup> *Clark v. Maryland*, 781 A.2d 913, 932-33 (2001).

<sup>118</sup> Andrew Rebmann and Marcia Koenig, *K-9 Basic Cadaver Search Course Training*, classroom instruction (Snydersville, PA, April 14, 2002).

Anderson was frequently observed while working Eagle, so she needed to have him express an alert behavior at the spots where she planted evidence. Her manipulation of Eagle's behavior can be seen clearly during her courtroom demonstration of Eagle's abilities that was given to the jury in *Ohio v. Kupaza*. In later reviewing Kupaza's claims, the Court of Appeals of Wisconsin noted that during the in-court demonstration, "the dog indicated that a cloth placed in a paper bag contained human blood and did not go near two similarly concealed samples of animal blood."<sup>119</sup> The sleight of hand the jurors did not see was how the demonstration was set up so that Eagle could only alert on the human blood. Courtroom video shows Eagle carrying Anderson's hat in his mouth as they enter the courtroom and pass the two bags holding cloths soaked with animal blood, which also happen to be inaccessible to Eagle as he passes by them.<sup>120</sup> Anderson can then be seen removing the hat from the dog's mouth before he passes the one remaining bag, the one with human blood inside. Well-trained dogs can readily discriminate between animal and human blood, an important fact for courts and juries to know; but this information should be presented in an impartial and professional manner, not as a carnival side show.

### 3. Production of Training Records

Federal circuit courts have recognized defense motions to compel production of a canine's training records. These motions are not automatically granted and are decided on a case-by-case basis.

In 1993 the Court of Appeals for the Tenth Circuit received a claim from a defendant after she was convicted for possession with intent to distribute marijuana (the United States Border Patrol agents found her transporting approximately twenty-five pounds of the drug in her

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<sup>119</sup> *Wisconsin v. Kupaza*, Appeal No. 01-0790-CR, slip op. at 24 (Wis. Ct. App. April, 24, 2003).

<sup>120</sup> *Investigative Reports: Cold Case File #1 Reconstructing Murder* (A&E Channel television broadcast Jan. 9, 2001).

gas tank when she crossed from Mexico into New Mexico).<sup>121</sup> One of her questions reviewed by the court was whether the trial court erred in denying her motion for pretrial production of canine records. The defendant argued that the dog was recovering from a serious injury and had falsely alerted upon initial contact with her vehicle.<sup>122</sup> The court found that the defendant did not make the requisite showing for pretrial production, specifically finding that the documents would not be relevant because the dog was certified on the day in question and he correctly alerted to the presence of the drugs.<sup>123</sup> This was the case where the court had commented that, even if the dog's records showed false alerts, it would not make a difference because the dog was obviously correct, thus the defendant's cross examination was not impaired.

More recently, the Court of Appeals for the Ninth Circuit found that the trial court was in error when it denied a motion from the defense counsel for discovery of a narcotics dog's training records and certifications.<sup>124</sup> The defense's claim was that the documents were needed to assess the dog's reliability. The court believed they should be disclosed because of Federal Rule of Criminal Procedure 16, which requires the government to disclose documents and objects to the defendant that are material to preparation of the defense or that the government intends to use for the prosecution of the defendant.<sup>125</sup> Since the production of the records was requested, and the handler testified about them, it was held that the trial court erred in denying the motion; but the Court of Appeals then ruled that this was a harmless error because they are not Jencks Act material. The Jencks Act requires the government to turn over pretrial statements made by prosecution witnesses that are related to the subject matter of their trial testimony.<sup>126</sup>

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<sup>121</sup> *Gonzalez-Acosta*, 989 F.2d at 386.

<sup>122</sup> *Id.* at 388.

<sup>123</sup> *Id.* at 389.

<sup>124</sup> *Cendano-Arellano*, 332 F.3d at 571.

<sup>125</sup> *Id.* at 571.

<sup>126</sup> *Id.* at 572.

The district court held that the notes taken in canine training logs did not constitute "statements" under the Jencks Act as training logs were not intended to form the basis for evidence at a trial.

### C. Providing Testimony

Under the Confrontation Clause of the United States Constitution, a defendant has the right to confront and cross-examine those who are witnesses against him.<sup>127</sup> Canine evidence can be used to help convict a defendant yet the defendant is unable to confront the dog. To circumvent the hearsay issue that this situation produces, the dog's handler gives the evidence and is then examined and cross-examined.<sup>128</sup>

Cadaver dog handlers may be qualified as expert witnesses.<sup>129</sup> This will be based upon their training and experience.<sup>130</sup> To qualify the handler, the prosecutor will likely inquire into the handler's professional background, dog handling and training experience, schools and seminars attended, training with the dog in question, alert behavior, certifications, records maintained, participation in actual searches and details about the search that led to the trial at hand.<sup>131</sup>

Testimony by experts is permitted by Rule 702 of the Federal Rules of Evidence.<sup>132</sup> Rule 702 permits a witness qualified as an expert to testify in the form of an opinion if the testimony is (1) based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods to the facts of the case.

### D. Current Cases

Trainers have been long warned cadaver dog handlers to be prepared to be subpoenaed to

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<sup>127</sup> U.S. Const. amend VI.

<sup>128</sup> *Terrell v. Maryland*, 3 Md. App. 340, 355-56, 239 A.2d 128, 136-37 (1968).

<sup>129</sup> *New York v. Lifrieri*, 646 N.Y.S.2d 172, N.Y.A.D. 2 Dept. (1996); *Clark*, 781 A.2d at 932-33.

<sup>130</sup> *REBMANN et al.*, *supra* note 64, at 80.

<sup>131</sup> *Id.* at 80-81.

<sup>132</sup> Fed. R. Evid. 702.

court regarding searches they have worked.<sup>133</sup> This prophecy has proved true more often since Sandra Anderson was indicted. The two cases discussed below were taken from recent news media and are used for illustrative purposes rather than legal argument. While newspaper reports do not carry any legal authority, they show some of the arguments being made against cadaver dogs and serve as a caution to cadaver dog handlers that there is a growing trend of defense attorneys demanding their training records and presence in court for cross examination.

#### 1. Robert James Petrick

Robert James Petrick was indicted on June 2, 2003, for murdering his wife, Janine Sutphen, after her body was found by fishermen in Falls Lake, Durham, North Carolina.<sup>134</sup> He had reported her missing on January 22, 2003. Five days later volunteer handlers and dogs from the North Carolina Search and Rescue Dog Association were dispatched to the home to search for evidence. There they alerted on a bed as well as on the trunk of Petrick's car. When her body was recovered, Sutphen had no visible wounds; and the medical examiner determined that she was asphyxiated.<sup>135</sup> Speculation is that she was killed in bed and taken to the lake in the trunk of the car.<sup>136</sup>

Petrick's attorney, Mark Edwards, filed a motion requesting all records relating to the dogs and their handlers, including training records, certifications, and evidence of false alerts and reliability. The prosecutor believes that the defense is entitled to such and plans to comply<sup>137</sup> but also notes that the dog alerts are not the only evidence that connects Petrick to the death of his wife.<sup>138</sup>

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<sup>133</sup> REBMANN et al., *supra* note 64, at 83; Joyce, *supra* note 82.

<sup>134</sup> John Stevenson, *Petrick Lawyer Questions the Reliability of Dogs*, Herald-Sun, Dec. 18, 2003.

<sup>135</sup> Benjamin Noilet and Samiha Khanna, *Dog's Skill an Issue in Case*, News & Observer, Jan. 23, 2004.

<sup>136</sup> Stevenson, *supra* note 133.

<sup>137</sup> *Id.*

<sup>138</sup> Noilet and Khanna, *supra* note 134.

Edwards seems to be of a different opinion as he believes the dog reactions are being introduced as substantive evidence, ostensibly to prove the charge that Petrick asphyxiated Sutphen in their home. In addition to alerting on the trunk of Petrick's Mazda Miata, a cadaver dog also alerted on the only uncovered pillow on the bed and in the bathroom.<sup>139</sup> By attacking the dogs' records, Edwards may be planning to argue that these canines were not reliable or certified at the time of the search.

Canine evidence is most often entered as corroborating evidence. For example, a drug dog alert to the presence of narcotics is considered probable cause for a warrantless search,<sup>140</sup> and, in some jurisdictions, enough for an arrest.<sup>141</sup> Here Edwards seems to be claiming that the dog alerts will be used as the proof that Petrick used a pillow to suffocate his wife and then transported her in the trunk of his car. This vision seems to be a misplaced smoke screen as there is additional evidence available to the prosecution. For instance, when police searched the home six days after Petrick reported his wife missing, they ended up arresting and charging him with six felony charges related to fraudulent checks,<sup>142</sup> a fact that could be used to show motive for killing his wife. Also, the lawyers are awaiting the results of the analysis of computer hard drives taken from the home of Petrick and Phaedra Oorbeck, whose former husband claims the three of them were united in a neo-pagan wedding ceremony in 1995.<sup>143</sup> This analysis could reveal motive, corroboration, or other such damaging information. Additionally, Petrick tried to take out a \$48,000 loan with his wife named as guarantor in the days after what has been determined to be her time of death, which, combined with the felony check fraud, can be used to support an

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<sup>139</sup> Benjamin Niolet, *Details Offered in Cellist's Death*, News & Observer, March 4, 2004.

<sup>140</sup> Gonzalez-Acosta, 989 F.2d at 388, citing to *United States v. Pinedo-Montoya*, 966 F.2d 591, 594 (10th Cir. 1992).

<sup>141</sup> *United States v. Waltzer*, 682 F.2d 370, 372, C.A.N.Y., 1982.

<sup>142</sup> Benjamin Niolet and Samiha Khanna, *Dog's Skill an Issue in Case*, News & Observer, Jan. 23, 2004.

<sup>143</sup> Niolet and Khanna, *supra* note 134.

argument towards his motive. As well, Sutphen's sons identified the sleeping bags that her body was wrapped in as belonging to her and missing from the house.<sup>144</sup> This indicates that the murderer had access to the house. Petrick never reported a break-in at the home on the day Sutphen went missing, which can weigh against him since it means that the murder began within the Petrick-Sutphen home, with the victim either being killed there or the murderer taking the sleeping bags with him to a different location to kill her and then wrap her in them.

One weak link for the prosecution could be the dog's alert in the bathroom if no secondary verification was completed. Bathrooms typically harbor skin cells and hair trapped in brushes, drains and towels, and even blood from shaving nicks, used feminine hygiene, or accidental injury. Since Sutphen was asphyxiated there would not have been a large amount of fluid lost from her body left behind as residual scent for the dogs to detect. The defense may try to show that the dog was trained using human hair and blood so the alert was false, but in this case the dog would not be in error; the dog was alerting to what it was trained to find, but the handler and forensic investigators failed to recognize and identify it as such.

## 2. Scott Peterson

Scott Peterson was arrested for allegedly murdering his pregnant wife, Laci, in their California home on December 23, 2002.<sup>145</sup> Four days later, Eloise Anderson, a volunteer dog handler with the Contra Costa County Sheriff's Search and Rescue Team, was brought to search inside Peterson's storage warehouse and boat with her cadaver dog, Twist.<sup>146</sup> She testified that her dog had "interest" in the warehouse but was unable to pinpoint the source of the scent,

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<sup>144</sup> *Id.*

<sup>145</sup> Jason Dearen, *Expert Says Dog Tracked Laci's Scent to Pier's End*, Alameda Times Star, Feb. 26, 2004.

<sup>146</sup> Dearen, *supra* note 144; *Dog Handler: Laci Peterson's scent tracked to Boat, Pier*, USA Today, Feb. 26, 2004, available at [http://www.usatoday.com/news/nation/2004-02-26-peterson-case\\_x.htm](http://www.usatoday.com/news/nation/2004-02-26-peterson-case_x.htm) (last visited on May 31, 2004) (copy on file with author).

possibly due to the heavy chemical smells present from the fertilizers stored there by Peterson.<sup>147</sup> The defense would like to keep the canine's evidence out of the upcoming jury trial because they believe that the lack of physical evidence, combined with this cadaver dog's response, offers nothing of probative value. The judge decided that it would be allowed in, with the jury ultimately deciding how much weight to give it.

As discussed, handlers train for the full alert, but there are situations in which the dog will offer a different indication. Such things as sulfur dioxide will impair the dog's sense of smell, leading to missed alerts.<sup>148</sup> But, based upon lessons learned from the other Anderson case and the new trend in accelerant detection dog cases, which hold unconfirmed canine alerts as inadmissible evidence, the defense could well attack the credibility of this evidence. The Office of the Sheriff of Contra Costa County, which called out and oversees the cadaver dog handler in this case, has a forensic services division dedicated to examining crime scenes.<sup>149</sup> Credibility for Twist could be won or lost if crime scene investigators had attempted to confirm his interest. If they found no evidence, then there Twist's interest may carry little or no weight.

Additionally, the media reports that Twist picked up traces of "Laci's scent" along the boat's rim and on a tarp stored in a shed in the Peterson's backyard. This could be problematic for the prosecution as cadaver dogs are trained to respond to the generic smells of human decomposition, not the smell of an individual. If this handler had given Twist an article known to have been worn or handled by Laci to smell and then asked her dog to locate any scents that matched that article, the defense could argue that this was improper use of the cadaver dog.

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<sup>147</sup> Bill Hewitt, Vickie Bane, Johnny Dodd and Lyndon Stambler, *The Case Against Scott*, People, Nov. 10, 2003.

<sup>148</sup> Andy Rebmann and Marcia Koenig, *K-9 Advanced Cadaver Search Course Training*, classroom instruction, (Charleston, WV, October 10-14, 1998).

<sup>149</sup> The Office of the Sheriff of Contra Costa County, California, Forensic Services Division, at <http://www.cocosherriff.org/support/forensic.htm#Central%20Identification%20Services>. (last visited on May 29, 2004).

While many dogs are cross-trained to find live humans (including by scent specific identification) and human remains, using a cadaver dog to indicate the locations where a specified individual had been present is beyond any legally recognized capability of dogs.<sup>150</sup>

## V. Conclusion

Sandra Anderson's sleights of hand did much to damage the reputation of cadaver dogs. Fortunately the American courts already have extensive experience with detection dogs and precedent supports the use of dogs in law enforcement. While cadaver dogs have had little presence in the courts until recently, precedent from other detection dog cases can be extrapolated to guide courts as they rule on such matters as reliability and admissibility of cadaver dog evidence. Consequently, this precedent can be used to direct dog handlers as they become involved with human remains detection. The "Anderson effects" will have to be battled against by civilian and law enforcement dog handlers, forensic experts, and attorneys as they struggle to reestablish credibility in a legal world now skeptical of the dogs' abilities and the handler's ethics. The positive effect, though not likely to be appreciated for a long time, will be the elevation of all cadaver dogs and handlers to a greater and more standardized level of training and certification as the legal community's expectations have been elevated.

Addendum: On September 28, 2004, Sandra Marie Anderson was sentenced to 21 months in

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<sup>150</sup> See John P. Ludington, Dog Scent Discrimination Line Ups, 63 A.L.R. 4th 143 (2004); Canine Sniffs, Am.Jur. §85 (2003); Andrew E. Taslitz, *Does the Cold Nose Know? The Unscientific Myth of Dog Scent Lineup*, 42 Hastings L.J. 17 (Nov. 1990).

prison and ordered to pay over \$14,500 in restitution<sup>151</sup> to several law enforcement agencies.<sup>152</sup>

She will begin serving her sentence, which includes three years on probation, in mid-November.<sup>153</sup> It was reported that Anderson apologized to the court and law enforcement officials before sentencing, stating, “I lost track of why I was offering my services.”<sup>154</sup>

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<sup>151</sup> Press release, Department of Justice, Sandra Marie Anderson Sentenced for Falsifying Material Facts, Obstruction of Justice and False Representations (Sept. 28, 2004) *available at* [http://www.usdoj.gov/opa/pr/2004/September/04\\_crt\\_652.htm](http://www.usdoj.gov/opa/pr/2004/September/04_crt_652.htm) (copy on file with author).

<sup>152</sup> David Runk, *Michigan dog-handler sentenced to 21 months for planting evidence*, Associated Press, Sept. 28, 2004, *available at* <http://www.detnews.com/2004/metro/0409/28/metro-287194.htm> (last visited on May 31, 2004) (copy on file with author).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*