



jamesmcasey.com

Sheriff David B. Shoar
St. Johns County, Florida Sheriff's Office
4015 Lewis Speedway
St. Augustine, FL 32084

March 28, 2013

Dear Sheriff Shoar,

On March 27, 2013 you engaged my investigative and consulting firm and provided me with a report titled, "*Review of Michelle O'Connell's Death Investigation*," (hereafter, the report). You asked me to review the report and provide you with my unvarnished professional opinion and analysis concerning the facts contained in the report. That analysis is contained below:

Credential of Consultant

Prior to starting my own investigative and consulting firm in 2012, I was a law enforcement professional for 32 years. I started my career as a police officer in Arlington, Virginia, a progressive law enforcement agency that was among the first in the nation to become accredited in the early 1980s under the Commission on Accreditation of Law Enforcement Agencies, or CALEA. I was a patrol officer, full-time instructor at the police academy, and was a patrol detective/police agent, which meant I had been trained as a sworn crime scene technician who also performed patrol functions. I then served with the U.S. Department of State as a Special Agent in the Bureau of Diplomatic Security where I was responsible for security operations at U.S. Embassies abroad, counterterrorism investigations, and I provided protection for the Secretary of State, and other foreign dignitaries.

For the last twenty-five years, I have been a Special Agent with the FBI where I have served in progressively higher levels of authority, culminating in my appointment as the Special Agent in Charge of the FBI's Jacksonville Division. There, I was responsible for all FBI investigations and operations in 40 of Florida's 67 counties and I was accountable for approximately 250 special agents, analysts, and task force officers. I have significant experience investigating and supervising complex white-collar crime matters including the failure of multi-million dollar corporations related to fraud. I have investigated and supervised matters related to bank fraud, Ponzi schemes, bankruptcy fraud, health care fraud, gang and violent crime matters, and I specialized for most of my career in counterterrorism and national security investigations. In 2004 and 2005 I was assigned to the National Security Council (NSC) at the White House where, working directly for Dr. Condoleezza Rice, I provided strategic guidance concerning terrorism and intelligence matters to the George W. Bush administration.

Concerning the report; although I have received training and have experience in crime scene processing and death investigations, I do not currently consider myself an expert in either of these disciplines. I do consider myself an expert in the overall discipline of criminal and national security investigations, investigative and interviewing techniques, and the management of complex investigative matters. During the prosecution involving the explosion of Pan Am Flight 103 by a special Scottish Court in the Netherlands, it was stipulated by the defense that I was an expert witness in counterterrorism. Lastly, there are questions concerning the relevance and legality of evidence in the report for which I have an opinion, but I acknowledge that I am not an attorney.

Disclosures

There are three important facts that must be divulged in order to provide total disclosure regarding my objectivity with this analysis.

1. Since my arrival as the Special Agent in Charge (SAC) of the FBI's Jacksonville Division in early 2008, I have been professionally and personally acquainted with Sheriff David B. Shoar. I have worked closely with him and his department on several matters of local and national importance and consider him an important professional colleague. I have also worked closely with SAC Dominick Pape of the Florida Department of Law Enforcement (FDLE) and consider him a professional colleague, although I would not describe my relationship with him as personal.

2. FDLE Special Agent (SA) Rusty Rodgers, who is a major character in the report, was technically assigned as a full-time member of the FBI Jacksonville Division's Joint Terrorism Task Force (JTTF) for which I was ultimately responsible. However, SA Rodgers never worked directly for me and there were always at least two levels of supervisory responsibility between he and I. I never directly supervised him, directly observed any operational activity by him, or observed any written reports completed by him.

3. Sometime in 2011, FBI Assistant Special Agent in Charge (ASAC) Nestor Duarte, one of my second-in-commands at the Jacksonville FBI office, provide me with an approximately ten-minute oral briefing on the instant investigation. He advised me that FDLE SAC Pape had recently briefed him on the investigation, and had requested the FBI's assistance in the instant matter. After a review of the facts, I told ASAC Duarte that I did not believe there was any investigative jurisdiction for the FBI to become involved in the instant investigation and I directed him to relay that information to SAC Pape. I further advised that the FBI Laboratory Division would be available, as it is for any state or local law enforcement agency, to provide laboratory services as needed to FDLE.

Findings

Based solely on what has been described in the report, it is my professional opinion that there is some evidence Michelle O'Connell committed suicide on September 2, 2010, and there is no evidence that she was the victim of a homicide. This is not to say there is not evidence outside the report, or that it is not possible Michelle O'Connell was the victim of homicide, only that I do not believe any of the circumstances and theories proffered by FDLE and their expert constitutes evidence of the crime of homicide. It is my opinion that several of the circumstances described by FDLE and their expert are problematic from an investigative, and potentially, from an evidentiary and legal standpoint.

Specifically, the following areas were of investigative concern to me:

Section 1, page 4. *"...shortly after Investigator Hardwick (a State Attorney investigator), conducted an interview of one of the responding deputies, the deputy called Hardwick back soon after the interview and stated that she had some more information. The deputy advised Hardwick that the night of the incident, Banks smelled like, a "fresh shower." When Hardwick asked what was meant by a "fresh shower" the deputy advised that at the scene, Banks smelled like he had just taken a "fresh shower." Shortly after this call, Agent Rodgers called*

Hardwick and asked if the deputy he (Hardwick) had just interviewed had called him back.....Hardwick surmised that the deputy he had interviewed had spoken with Agent Rodgers after the interview and that the conversation resulted in the deputy calling back to offer new information about a "fresh shower." If the responding deputy thought Banks had taken a fresh shower prior to her arrival on the scene that night, it would appear to have been a significant enough fact (particularly to a trained law enforcement officer), that she would have recalled it and told Investigator Hardwick that during the initial interview of her. Thus, if SA Rodgers called the witness between the time she was interviewed by Investigator Hardwick and her making a follow-up telephone call to Hardwick, and SA Rodgers coached her on the "fresh shower" comments as is suggested, this would be extremely problematic. Any and all contact between SA Rodgers and any witness should have been documented on a report of interview form.

Section 2, page 4. *This is a timeline of verbatim text messages between Michelle O'Connell and her sister Chrissy O'Connell who was babysitting Michelle O'Connell's four-year old daughter. Based on my training and experience, the messages by Michelle O'Connell are relevant concerning her state of mind and potentially contemplative of an individual considering suicide.*

Section 2, page 16. *This is a photograph of bullet damage and fragments to an area of carpet near the body of Michelle O'Connell. Deputy Banks advised he heard two gunshots, and O'Connell had one bullet wound. This bullet damage and fragments are evidence of a second gunshot as described by Banks. If Banks "executed" O'Connell as theorized by FDLE, in my opinion it would be unlikely that as a trained law enforcement officer he would have missed hitting her with the first shot, or needed to test fire the weapon. If O'Connell fired both shots, either scenario concerning a missed shot or test fire is more probable.*

Section 2, page 18. *This is a photograph of Deputy Banks' duty weapon as found at the scene, in the "cocked" position. The SJCO report states, "Law enforcement officers are incessantly trained to "de-cock" after utilizing their firearms. I concur, and opine this is relevant but not conclusive as to who fired the weapon.*

Section 2, page 19. *This is a photograph of damage to the bedroom door consistent with Banks' statement that he kicked it twice to gain entry after hearing the two gunshots, and consistent with SJCO personnel having found the door lock in the door in a locked position. It*

is relevant but not conclusive evidence. If the FDLE theory is that Banks locked and then kicked in the door after killing O'Connell, there is not evidence of that theory.

Section 2, page 23. *This is a post-mortem photograph of O'Connell showing injuries consistent with the ME conclusion that splitting skin injuries on both sides of the mouth are consistent with having the mouth closed during discharge of the firearm. Also noted is that there is no damage to the teeth, consistent with the firearm being placed into the mouth voluntarily. I concur with both of these as evidence of a suicide.*

Section 2, page 26. *This is a photograph/illustration of a weapon with attached flashlight similar to Banks' duty weapon overlaid with a post-mortem photograph of O'Connell. The purpose is to show the attached flashlight could have caused a round wound found on O'Connell's eye if the weapon were fired upside down. Throughout this report, there is significant conflict between the SJCO/ME theory that the weapon could have been fired upside down by O'Connell, and the FDLE/Findley theory that O'Connell was shot by Banks and that the wound to her eye was caused by the barrel/sights. Further, that the FDLE/Findley theory includes both the wound being caused by the barrel before and/or during the shooting. It is my opinion that this photograph/illustration is evidence of the SJCO/ME theory as to how the eye wound occurred, and there is no evidence to support the FDLE/Findley theory.*

Section 2, page 27. This is a summary of Banks' statements and actions and includes a timeline. In my opinion, the following facts are consistent with the SJCO timeline of events:

- *At approximately 2320 hours, J. Banks calls 911 requesting assistance because M. O'Connell shot herself.*
- *At approximately 2325 hours deputies arrive on scene and discover J. Banks and M. O'Connell in the master bedroom. (Further that O'Connell was alive with a pulse).*
- *Upon initial assessment by paramedics, M. O'Connell had a pulse of 42 beats per minute (2333 hours). She was pronounced deceased several minutes later at 2348 hours.*

Several aspects of this timeline are significant. It should be noted that other areas of the report refer to the FDLE timeline as the gunshots/shooting having occurred at 2300 hours (see below). According to the FDLE theory, this would allow time for Deputy Banks to clean up himself and re-arrange the crime scene to make O'Connell's murder appear as a

suicide. A significant flaw to this theory, in my opinion, was that O'Connell's injury would have been obvious to a non-medically trained individual as substantial and highly likely to cause imminent death. It is my non-medical opinion that she would have been unlikely to survive her wound from 2300 to 2348 hours while Banks cleaned up and arranged the crime scene, prior to calling 911. This is also significant in several other areas of the report where SA Rodgers consistently referred to O'Connell as already deceased when responding deputies arrived, when in fact she was alive. Further, if Banks shot and obviously mortally wounded O'Connell, and wanted to make it appear as suicide by arranging a false crime scene, it would have been significantly beneficial for him to wait the short period of time it would have taken for her to expire prior to calling 911, to alleviate any possibility she could identify him to rescue personal as her assailant.

Section 2, page 28. *"Approximately one month after the incident, J. Banks located a spent, deformed projectile behind a desk within the master bedroom. J. Banks turned this projectile over to Sgt. Faircloth who ultimately provided it to Special Agent Rodgers."* Assuming law enforcement was still in possession of Banks' duty weapon, it would have been significantly detrimental for Banks to create this evidence/projectile utilizing another weapon for fear that it would eventually be traced by firearms/ballistics experts to the weapon it actually came from. If Banks killed O'Connell, there is no reason for him to turn this projectile over to law enforcement a month after O'Connell's death, for any reason favorable to him.

Section 2, page 31. *"C. Cerado stated when she and A. Garris arrived at the residence; J. Banks asked them to stay "in case something happens.""* If Banks intended to kill O'Connell, there would be no benefit for him to encourage Cerado and Garris to stay at his residence for any length of time.

Section 4, page 1. *"In the report, Rodgers writes, "the content of the 911 call was suspicious in nature based on Banks' obvious personality and emotional changes during the call."* In my opinion, Rodgers would not have been trained, nor would he have possessed the requisite experience to render an opinion on Banks' personality and emotional changes as reflected on the recording of a 911 call.

Section 4, page 3. *"27 January 2011 report written to document the website, "Behind the Blue Wall" utilized by anonymous persons posting information concerning the death of Michelle. (This website, along with another website contains information from unknown people characterizing an ongoing conspiracy/cover-up regarding the investigations(s) of this*

case.)” In my opinion, reviewing anonymous websites and blogs can be a valuable technique to identify individuals who may have useful information. Absent actually identifying and interviewing such individuals, the mere presence of such websites and blogs are not evidence of any facts, and information contained on such websites is irrelevant.

Section 4, page 4. *“In a FDLE case presentation PowerPoint prepared and presented by Rogers to Medical Examiner, Dr. Hobin (FDLE report #113), Rodgers writes, O’Connell would leave work early, and on occasion fail to report due to the ongoing psychological abuse by Banks.”* The SJCO report indicated that they were not aware of any witness ever using the phrase “psychological abuse.” If so, this would be a conclusion that SA Rodgers was likely not trained or qualified to proffer.

Section 4, page 4. *“02 Feb 2011 report documenting the interview with and transcript of Stacey Boswell, which took place on 01 Feb 2011. She alleged (sic) to have heard the incident between Banks and Michelle. It is unknown how Rodgers learned of Boswell and Heather Ladley, and it is not documented in any of the investigative reports.”*

There are several references to these interviews of Stacey Boswell and Heather Ladley by SA Rodgers throughout the report. These interviews were apparently a critical component of the FDLE investigation and theory, because they are the (apparent) genesis of the investigative timeline that concludes the gunshots occurred at “approximately 11:00 PM.” Having not heard the recording of these interviews, read a transcript of the interviews, or read any FDLE reports relating to the interviews, I am basing my analysis on the SJCO rendition of what the author(s) of the report said about those documents/recordings. That said, it is my professional opinion the following facts concerning these interviews are investigatively problematic:

1. Stacey Boswell’s residence at 110 Belle Chase Ct. is not on the same, or even an adjacent street to 4700 Sherlock Place, the scene of the shooting. Boswell and Ladley are apparently neighbors.

2. There is no information that SA Rodgers, or any law enforcement officer, conducted a neighborhood canvass on either Belle Chase Ct. or Sherlock Place prior to the interview of Boswell and Ladley.

3. At the beginning of the interview, SA Rodgers told Ladley that her name had been provided to Rodgers as someone who may have information regarding what she may have seen or heard on that evening. There is no documentation as to where SA Rodgers learned this information concerning Ladley.

4. Ladley estimated the incident occurred somewhere between 10:30 and 11:00 PM. All further FDLE reporting indicated the shooting occurred at 11:00 PM, which is apparently favorable to their timeline/theory.

5. Ladley said she “heard arguing and then we hear her yell, ‘Help’ and there was one gunshot and then there wasshe yelled, ‘Help’ again and there was a second gunshot and then I didn’t hear any commotion after that.”

6. Ladley estimated the distance from 110 Belle Chase to 4700 Sherlock at “not very far, I mean probably the length of two football fields.” The FDLE PowerPoint (Section 4, page 77) reads “approximately 150 yards”. The SJCO report estimates 500 feet. My review of an aerial photograph shows it to be through several treed areas. No investigation was apparently done to determine if two shouts of “help,” and/or two gunshots could have been heard from the driveway of 110 Belle Chase to inside the master bedroom at 4700 Sherlock.

7. Ladley advised she did not call the police because they routinely hear gunfire.

8. Despite reporting they routinely hear gunfire, Ladley recalled these events five months later without have been prompted by SA Rodgers as to what specific date and event he was inquiring of her. Rodgers did not inquire about the specifics of other incidents of gunfire. Later during the interview, Rodgers confirms the date with Ladley, but only after she had provided details.

9. At the time of the incident, Ladley lived at the same house with her mother, father, and husband. Rodgers never inquired if she told them about the incident, nor did he apparently attempt to interview any of them concerning what they might have heard.

10. Ladley admitted to Rodgers that between September 2, 2010 and the interview on February 1, 2011, she had read about the incident on Facebook and other blogs, and visited the Facebook pages of some of the individuals involved.

11. The SJCO Sheriffs Office author(s) who listened to the interview of Ladley strongly suspected based on the interaction between Rodgers and Ladley that there were prior, non-recorded interviews, because Rodgers often prompted her with leading questions he already knew the answers to. In my opinion, a problem with recorded interviews is that if any interviews of a witness are going to be recorded, then all of them must be recorded, and/or documentation should exist as to why certain interviews were recorded and others were not. A written report of interview should accompany every interview, whether recorded or not.

Section 4, page 9. *“During one portion of the interview Rodgers asks Morris, ‘Is that the same picture I showed to you earlier?’ and Morris agrees. This shows an interview was conducted with Morris prior to the recorded interview.”* My comments are the same as above concerning recorded interviews and interviews that do not contain a written report of interview.

Section 4, page 12. The following is a lengthy quote from the report. It is significant because it occurs in several sections of the report, and contains two extremely problematic areas of evidence:

“33. 16 Feb 2011, this report provides details of an interview of Melinda Fox (self-reported ‘best friend’ of Michelle.)

Fox describes speaking with a friend of Banks at the funeral named “Austin.” Fox stated Austin told her at the funeral that he (Austin) was present at the house when Michelle shot herself. Fox stated Austin told her he and Banks were standing in the driveway of Banks’ residence when they heard a gunshot. Austin said he and Banks ran into the residence, heard a second shot, kicked in the bedroom door and found Michelle lying on the floor. Fox said she saw Banks a few days later at Michelle’s gravesite and Banks never mentioned Austin being present at the time of Michelle’s death.

Rodgers writes on 18 Feb 2011 he again contacted Fox and showed her a photo of Austin Taylor who Fox identified as the person she saw at the funeral.

Rodgers writes he interviewed Austin Taylor who said he was not present when Michelle died but was at Banks’ residence a day earlier when he (Austin) mowed the yard for Banks. Rodgers writes Austin told him that Fox ‘got the story wrong.’

This report details the allegation made by Fox and the explanation given by Taylor.

a. During the course of this investigation, two search warrants were written by Rodgers. These two search warrants were both signed by the judge on 12 Apr 2011 (200 W. S.R. 206 and 4700 Sherlock Place).

b. In each of these search warrants, Rodgers refers to the interview of Fox. Rodgers states in each Search Warrant Affidavit that Fox described Taylor was present at the time of Michelle's death. The affidavits also state Banks has provided two interviews concerning this case and has not disclosed Taylor being present at the time of Michelle's death."

The first problem is that if Rodgers wrote the above information in a search warrant affidavit on April 12, 2011 when he had previously interviewed Austin Taylor (presumably on or about February 18, 2011), then he knew Taylor had advised him that he (Taylor) was not at Banks' residence the evening of the shooting. Presumably, Rodgers decided to include this statement in his affidavit as evidence of Banks' providing false information to him (Rodgers) during two interviews, when he failed to disclose that Taylor was present. Again, presumably the statement is intended to prejudice the judge that Banks intentionally mislead Rodgers because he is guilty of a crime (homicide).

The second related problem, and it is almost so impossible as to make me believe I am mistakenly comprehending the course of events, is that if Rodgers' contention in these affidavits is that Banks is lying to him about Taylor being present the night of the shooting, it is a fact seemingly favorable to Banks. If Taylor was in the driveway with Banks as described by Fox, when Michelle O'Connell shot herself in the master bedroom, then Austin Taylor is an eyewitness to the fact that Jeremy Banks did not shoot Michelle O'Connell, and there was no crime of homicide for which search warrants were necessary to retrieve evidence. It is impossible in this scenario as proffered by SA Rodgers, for Banks to be both a liar and a murderer.

Section 4, pages 14 and 15. *"41. 28 Feb 2011 report details a meeting between State Attorney Investigator Rob Hardwick, FDLE Agent Rodgers, and FDLE Agent Mark Brutnell with Medical Examiner Dr. Fredrick Hobin.....the report also makes mention that "Dr. Hobin confirmed traditional studies and several documented cases have indicated that, 'if the gunshot wound is on top of the tongue it is most likely a Homicide, 'And if the gunshot wound is beneath the tongue it is most likely a suicide, A-Typically.' An attorney from the SAO 5th*

Judicial Circuit related a conversation he had with Dr. Hobin concerning this issue. Hobin advised him that this subject did come up, however he (Hobin) stated that this is dated information and is no longer relied upon by medical experts. Rodgers used the 'tongue' information to support probable cause in court documents.'

As above, my problems with this are two-fold. One is that I have never heard this theory concerning the placement of a wound relative to the tongue being indicative of either homicide or suicide. Second is that if SA Rodgers was aware that Dr. Hobin advised him that this theory was no longer being considered, he should not have utilized it in future court documents.

Section 4, pages 17 and 18. 57. 10 Mar 2011 report details an interview of SJC Rescue Paramedic Crystal Cuzzort with Rodgers.....Cuzzort stated upon her arrival, Michelle had a pulse and she began treating Michelle 'aggressively.' It should be noted an opinion provided by Cuzzort during the interview with Rodgers is bolded in Rodgers' report and it states; 'Cuzzort observed that Michelle O'Connell was very healthy, attractive, and 'just didn't fit the picture of a typical suicide.' Rodgers fails to mention the significance of the fact that Michelle was still alive at the time of law enforcement and EMS arrival."

In addition to the observation by SJCO concerning O'Connell still being alive, I question the relevance of Paramedic Cuzzort's observations that O'Connell did not fit the picture of a typical suicide. While this may be true in her personal experience, I am unaware of her professional qualifications concerning the assessment of typical suicide victims. I would guess that she is not professionally qualified to render a relevant opinion.

Section 4, pages 23 and 24. *This is the first of several passages related to Rodgers inserting the word "now" into the transcript of Deputy Banks' 911 call, which was included in several reports and affidavits. During the call, the dispatcher initially refers to Banks as ma'am. Banks attempted to correct her that he was a sir (male), and then said, "Let me tell you the truth, I am Deputy Banks with the St. Johns County Sheriff's Office, I work with y'all....."*

One is left to conclude that the only reason Rodgers inserted the word "now", as in "Let me tell you the truth now," is to imply that Banks was previously telling the dispatcher an untruth, or lie. If, according to this theory, Banks were shown to be trying to correct a lie with the dispatcher, it might be easier to speculate that he had a reason to lie to the dispatcher about the events for which he was calling 911. If SA Rodgers purposely added

the word “now” to the transcript of the 911 call for the purposes of making Deputy Banks appear less than credible, that would be extremely problematic.

Section 4, page 27. This concerns a statement in a search warrant affidavit authored by Rodgers wherein he wrote, *“Your affiant interviewed Paul Gaumont who advised that Dep. Scott O’Connell (the brother of Michelle O’Connell) and Deputy Banks discussed the death of Michelle O’Connell the day after her death. At the conclusion of the meeting between Scott O’Connell and Jeremy Banks, Scott O’Connell was convinced that Jeremy Banks was responsible for her death.”*

There are several problems with this statement. First is that while the search warrant affidavit was authored on April 12, 2011, SA Rodgers had himself previously interviewed Deputy O’Connell on March 22, 2011. Presumably, if during this interview Deputy O’Connell had relayed evidence of Banks’ involvement in a crime to SA Rodgers, he would have used that information on the affidavit rather than including the hearsay statement from Gaumont that had been acquired two months earlier. Secondly, Deputy Scott O’Connell is hardly a disinterested third party because as the brother of Michelle O’Connell he would be expected to have strong feelings concerning what happened. Third, Scott O’Connell being “convinced” of Banks’ responsibility as described by Rodgers is not evidence. Lastly, the use of the word “responsible” leaves a wide degree of potential involvement, including that Banks was responsible for Michelle O’Connell’s suicide because of a strained relationship. If Gaumont used the word “responsible” during his interview with SA Rodgers, Rodgers should have followed-up with questions designed to discern exactly what Gaumont meant, and if those were his words or Scott O’Connell’s words. Rodgers could have similarly asked Scott O’Connell what the word responsible meant during his March 22, 2011 interview with him.

Section 4, page 27. This section quotes from an interview SA Rodgers conducted with Ciara Morris. Morris advised Rodgers that she saw the words to a song posted on Jeremy Banks’ Facebook page that read; *‘When did I become the things that I used to hate? I’m stranded to this ship, left to fall with the crash of the waves.’*

Despite the fact that SA Rodgers had interviewed Deputy Banks about the words to the song subsequent to his interview with Morris, wherein Banks advised Rodgers they were lyrics from a band that he and Michelle both liked, SA Rodgers utilized the statement from his interview with Ciara Morris as part of a search warrant affidavit. He also added,

“The aforementioned statement causes your Affiant to believe Banks was expressing his inner thoughts concerning the untimely death of Michelle O’Connell and the circumstances surrounding her death and his possible involvement.”

It is my professional opinion that it was misleading to the court to include information on an affidavit from a prior interview with Ciara Morris, but not include Banks’ explanation, which had subsequently been acquired. Further, I do not believe SA Rodgers possesses the requisite training and experience to render an opinion on any individual’s inner thoughts concerning song lyrics.

Section 4, pages 35 to 40. *This lengthy section related to the SJCO SO’s concern that Deputy Jeremy Banks may have been unlawfully detained by SA Rodgers and that he was not read his Miranda Rights during an in-custody interrogation, and that his cell phone was unlawfully seized. Generally, I concur with most of the Sheriff’s Office conclusions but caution that I am neither an attorney nor an expert on the Fourth and Fifth Amendments to the United States Constitution.*

Section 4, page 54. *In this section SA Rodgers and SA Mark Brutnell are interviewing a former girlfriend of Deputy Banks and they share information concerning forensic evidence that may or may not be true. There are other areas of the report where the SJCO SO expresses concern with the sharing of evidence with witnesses.*

Generally, if disclosing the existence of evidence, or potential evidence does not otherwise jeopardize an investigation, I do not think it is improper or wrong to make such a disclosure if an investigator believes that will help motivate a witness to provide truthful information. Similarly, I do not consider it wrong or illegal to knowingly tell a witness false information concerning evidence if that motivates a witness to provide truthful information concerning their knowledge. I do consider it wrong and potentially illegal to knowingly tell other (non-witness) law enforcement officers, prosecutors, expert witnesses, MEs, or court officials false information concerning evidence. (See additional information below).

Section 4, pages 54 and 55. *This section details an apparent “off the record” interview of Deputy Paul Clark and SA Rodgers. As a result of this and other possible interviews, Deputy Clark made contact with Banks, at Rodgers’ direction, in order to pass a message(s) from SA Rodgers. It is unknown if this activity was documented by SA Rodgers.*

In my professional opinion, there is no such thing as an “off the record” interview in a criminal investigation, even when a witnesses or informant’s identity is kept confidential for a valid reason. Every interview and law enforcement activity must be documented on the appropriate agency forms.

Section 4, page 56. *“102. 22 May 2011 report by Rodgers documenting two allegations of physical and mental abuse by Banks towards Michelle and her daughter. These allegations were made by Chrissy O’Connell (sister to decedent) via email to Rodgers. Rodgers had C. O’Connell complete a sworn written statement regarding her allegations.*

It is unclear in this passage if SA Rodgers later followed-up and acquired a sworn statement from Chrissy O’Connell in person. In my professional opinion it would be incorrect to acquire information and evidence via email, and for a sworn statement not to be taken in person during a criminal investigation, particularly concerning a potentially relevant fact such as is indicated here.

The following relates to **Section 4, pages 59 to 77** which includes several PowerPoint slides apparently created by SA Rodgers. The slides were presented to, among others, assistant medical examiner Dr. Hobin in an effort to convince him to change his initial conclusions from suicide to homicide. Some of these slides rely on the input and assistance of “expert Crime Scene Reconstructionist Jerry Findley”. Utilizing public source databases, I was not able to determine Mr. Findley’s credentials or bona fides, other than to note he was a homicide investigator in Chatham, GA, was a full-time instructor at the Georgia Public Safety and Training Academy, and is a forensic science instructor at Ogeechee Technical College. It would be important to know his academic credentials, his history of publishing scientific and peer-reviewed literature on forensic science, and whether he has been court certified as an expert witness in any discipline of forensic science.

Slide on page 59. The following bullet points are not supported by evidence (according to the report.)

- *No indicators, verbal or non-verbal by O’Connell would indicate any intention to commit suicide. See comments above concerning text messages with sister Chrissy O’Connell about caring for daughter Lexi.*
- *O’Connell would leave work early, and on occasion fail to report to work due to ongoing psychological abuse by Banks. See comments above concerning use of the*

phrase “psychological abuse” by non-medically trained persons such as Rodgers, when no other witnesses were known to have used the phrase.

- *Family, friends and co-workers have no knowledge of O’Connell ever attempting suicide.* Other areas of the report describe a 2010 incident where O’Connell became so intoxicated (more than twice the legal limit) she had to be transported to an area hospital for treatment. I am not medically qualified to describe this as a suicide attempt, but serious incidents of chemical abuse could be considered relevant to a future suicide event.

Slide on page 61. *This is a photograph of the deceased with the notation, “Note: Due to the position and angle of the victim’s hips and legs, the gun should be located on the right side of the victim.”* I am not aware of any science that supports hip and leg angles relative to gun location being indicative of differentiating between suicide and homicide.) Another notation states *“Gun/Tactical light on.”* I am not aware of any conclusion that could or should be drawn concerning a tactical light being on.

Slide on page 63. *This picture shows the location of two recovered shell casings.* See below for comments concerning the lack of science and shell casing location.

Slide on page 63. *This is a picture of a shirt worn by Banks on the night of O’Connell’s death. A notation reads, “small blood stains found on the underside of Deputy Jeremy Banks’ shirt. FDLE Lab confirms DNA profile match to victim Michelle O’Connell.* Since Banks was found in close proximity to O’Connell by responding deputies after he called 911, her blood on his shirt is not in my opinion conclusive to anything.

Slide on page 67. *This is a slide titled FDLE/Findley that shows a skeleton display and a rod indicating bullet trajectory. A notation reads, “Bullet trajectory indicates O’Connell was in a kneeling or seated position when shot.”* I believe there are experts in the United States concerning bullet trajectory, but I do not believe either SA Rodgers or Mr. Findley are among them. Acknowledging I am not an expert on bullet trajectory, I do not believe bullet trajectory analysis by even an expert can determine if a victim was standing, sitting or kneeling, or that any one of the three positions is more indicative than another of suicide versus homicide.

Slide on page 68. *This is a photograph of a male holding a semi-automatic handgun in a forward position. A notation reads, “Gun ejection port down/to right (left handed shooter)*

Note: The position of the shell casings at the crime scene are consistent with forensic field tests. Position of gun fired at time of Michelle O'Connell's death." I am not aware of any science that can discern what hand was used to fire a weapon. I am not aware of any science that can discern from the location of spent shell casings, where a gun was specifically located during its firing relative to the final resting place of shell casings. The report makes a valid notation that nine first responders were inside the master bedroom prior to the collection of the two shell casings, and any of them could have moved the casings inadvertently from their initial resting place.

Slide on page 69. *This is a picture of Michelle O'Connell's shirt with the notations, "High velocity blood stains extends full length of the right arm. Note: Victim's right arm extended in defensive combat posture. No high velocity bloodstains extending down left arm. Note: Did not shoot herself with left hand."* I acknowledge I am not an expert concerning blood at crime scenes. However, I am not aware of and have never heard the phrase high velocity bloodstain. I am familiar with the science of blood spatter analysis but have never seen or heard of it applied to blood that appears to be soaked in clothing, as appears in the instant investigation. I have only seen and heard of it applied to hard surfaces such as floors, walls, and ceilings. I am not aware of any science involving the clothing of a victim being indicative of combat or any other posture.

Slide on page 70. *This is a picture of Michelle O'Connell's jeans with a notation concerning a bloodstain.* My comments from above apply to this slide as well.

Slide on page 72. *This is a slide with a photo each of Banks and O'Connell. A notation states, "Note: FDLE lab results indicate Banks' hands had approximately one micron/particle of GSR. Note: The absence of GSR on Banks' hands indicate his hands were cleaned prior to testing."* These statements appear contradictory. Presumably, one micron/particle of GSR is **some amount** of GSR. The next and contradicting statement is that the absence of GSR on Banks' hands indicates his hands were cleaned prior to testing, which in my opinion is not logical. Even if one assumes the FDLE theory that includes one micron/particle is the same as "none", the absence of GSR as described in the next assertion is a negative inference, whose non-cause cannot be proven absent other evidence, (i.e. evidence of hand-cleaning.) Following the FDLE logic, it could be presumed that every person in St. Johns County who had an absence of GSR on their hands the night of September 2, 2010 was as a result of hand-cleaning, versus perhaps not having fired a weapon.

Slide on page 73. *This is a slide that recaps a lunch conversation between Michelle O'Connell and her sister Chrissy O'Connell. The phrase "psychological abuse" which apparently was not used by Chrissy O'Connell during any interview with law enforcement, is included. As noted above, if this phrase is part of SA Rodgers' analysis and he is not sufficiently trained in psychology, it would be misleading of him to use it in this presentation.*

Slide on page 74. *This is a slide that recaps text messages on the night of Michelle O'Connell's death from Michelle O'Connell to her sister Chrissy O'Connell. It is misleading for SA Rodgers to have not included Chrissy O'Connell's responses to Michelle O'Connell's text messages since they show her (Chrissy O'Connell's) concern about what Michelle O'Connell was telling her, and provide context to the text conversation. According the billing records at the beginning of the report, the last text message from Michelle O'Connell to Chrissy O'Connell was at 9:34 PM. The slide includes four additional messages from 9:55 PM to 10:58 PM. Only three of these messages are on the billing records, and they apparently took place prior to 9:34 PM. The 10:58 text message does not exist on billing records, and according to the report, only exists in a hand written note by SA Rodgers. It would be extremely problematic if SA Rodgers purposely put Michelle O'Connell's text messages out of time sequence in this slide, including after the last confirmed message at 9:34 PM, for the purpose of bolstering his theory of the timeline of events and deceiving the intended audience for this slide. It would be extremely problematic if the text message purported to have occurred at 10:58 PM could not be confirmed in any manner other than SA Rodgers' hand written note that it once existed.*

Slide on page 75. *This is a slide depicting phrases that were supposedly Googled on specific dates that were prior to September 2, 2010. The report states this information was not available on the date the slide was presented to an ME, and that Michelle O'Connell's mother admitted to law enforcement utilizing Michelle O'Connell's computer to make similar Google phrase searches after September 2, 2010. The report maintains that at the present time, it is forensically impossible to discern on what dates any of these Google searched took place. It would be extremely important to determine forensically when the phrases were Googled, particularly since Michelle O'Connell's mother admitted Googling the phrases after her death. In my (non-evidentiary) opinion, if Deputy Banks was researching how to kill Michelle O'Connell and make it appear like a suicide for as long as thirteen months as suggested by this slide, using his duty weapon in his own home to accomplish it was likely not the best scenario he would have found.*

Section 4, pages 87-90. *This is a verbatim transcription of Jerry Findley's report dated April 28, 2011. I refer to my previous comments concerning my inability to verify the professional credentials and bona fides of Jerry Findley as qualified to render expert opinions on all of the areas of this report where he renders such opinions. I make specific note of the section called "Documented Personal Actions and Plans of Ms. O'Connell, H. "Did not exhibit depression and was always upbeat according to friends, family and co-workers." I. "Did not have a history of mental illness." J. "No prior suicide attempts. Note: These are not the actions of a person in the acute state of suicide as outlined by the American Association of Suicidology." K. ".....According to the Center for Disease Control, poison to include drug overdose is the preferred method of choice for adult female suicides (sic)." I strongly doubt that Jerry Findley is academically or medically qualified to make these conclusions.*

Under the section "Conclusions" in Jerry Findley's report are fourteen sentences labeled A. through N. In my professional opinion, even if Mr. Findley were determined to be a qualified expert in each of the areas he opines about in these fourteen conclusions, I strongly suspect they would not be admissible in any criminal court as many, if not all of his conclusions are not currently accepted science to my knowledge. Particularly problematic are conclusions concerning what hand Michelle O'Connell could not have used to fire a weapon, and the final resting location of ejected shell casings.

Conclusions

I am compelled to note again that all of my conclusions and analysis are based strictly on the 152 pages of the report. I have not seen the investigative reports completed by either the St. Johns County Sheriff's Office or the FDLE, nor have I seen any of the original evidence associated with this investigation.

Presently, I do not have a professional opinion as to whether or not Michelle O'Connell committed suicide on the night of September 2, 2010, or whether she was the victim of a homicide by another person. As I stated at the beginning of this letter, I do not believe, based on the report, there is **any** evidence that Michelle O'Connell was the victim of homicide. To the contrary, I do believe there exists **some**, but not overwhelming evidence that Michelle O'Connell committed suicide.

As I have noted throughout this letter, I am concerned that some of the facts and circumstances that have been proffered by SA Rodgers (and Jerry Findley) as evidence, in fact do not constitute evidence but rather are conjecture and speculation. In my professional opinion, there is nothing wrong with conjecture and speculation during the internal deliberations between investigators within an investigation as they seek to determine what evidence actually exists, and the best methods to acquire such evidence. However, I believe it is inappropriate to promulgate conjecture and speculation as evidence outside of the investigation, including to other law enforcement agencies, medical examiners, prosecutors and the judiciary. It appears to me, based on the report, that SA Rodgers in fact promulgated conjecture and speculation as actual evidence to outside entities for the purposes of having those entities believe his theory as to what happened to Michelle O'Connell on the night of September 2, 2010. If so, this would be extremely problematic.

Sincerely,

James Casey
President
James M. Casey, LLC