July 31, 2022

The Honorable

Commonwealth’s Attorney for the City of Newport News

2501 Washington Avenue, 6th Floor

Newport News, Virginia 23607

Chief

Newport News Police Department

9710 Jefferson Avenue

Newport News, Virginia 23605

***Re: Virginia Department of Forensic Science Microscopic Hair Comparison Case Review***

 ***Commonwealth v. Smith***

 ***FS Lab #T01-234***

Dear Mr. CA and Chief:

As you may be aware, the Federal Bureau of Investigation (FBI) has been reviewing its examiners’ reports and testimony in cases involving microscopic hair comparisons. The FBI has identified a number of cases where its scientists made statements that went beyond what was scientifically supported and in several FBI cases, the defendants were later exonerated by DNA evidence. In light of this, the Department of Forensic Science (DFS) has undertaken a review of its cases involving microscopic hair comparisons. The Forensic Science Board, the Department’s policy board, has developed a process for this Review by DFS.

A case will be included in the DFS Microscopic Hair Comparison Case Review if the hair examiner made a positive association to a suspect, and it is determined that the suspect was convicted of a crime in the case. A Review Team consisting of two attorneys and one forensic scientist is reviewing the hair comparison reports and any testimony provided by the examiner in eligible cases using criteria developed by the Forensic Science Board.

In reviewing the examiner’s testimony, the Review Team considers the following questions:

(1)  Did the examiner state that an evidentiary hair could be associated with a specific individual to the exclusion of all others?

(2)  Did the examiner assign a statistical weight or probability or provide a likelihood that the questioned hair originated from a particular source?

(3)  Does the testimony contain any other potentially misleading statements or inferences?

If the Review Team answers “yes” to any of these three questions in a case, affected parties will be notified if the examiner’s testimony exceeded the acceptable limits of science.

 At the request of the defendant, the case, *Commonwealth v. Jeffrey Smith*,has been included in this DFS Case Review. **The Forensic Science Board, based on a recommendation of the Review Team, has determined that the hair examiner’s testimony in this case exceeded the acceptable limits of science.** The enclosed documentation details the Review Team’s concern(s) with the testimony of the examiner.

Please note that the Review Team made no findings or observations regarding the impact that the hair examiner’s testimony had on the overall outcome in the case. Therefore, additional facts may be pertinent to the suspect’s innocence or guilt.

 If it is determined that evidence from the case is still available and that DNA testing may be agreed to by the parties or sought pursuant to court order, the Department of Forensic Science is willing to discuss testing options available and resubmission of the evidence. Please contact Department Counsel, Amy Jenkins, at amy.jenkins@dfs.virginia.gov for further assistance.

 Please note that efforts will be made to notify the defendant and his or her defense attorney, if available, of these findings by separate correspondence. If you have any questions, please contact Ms. Amy Jenkins at the email address above or at 804-786-2281.

 Sincerely,

 Chair

 Forensic Science Board

Enclosures