

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

FILED
FIRST JUDICIAL
DISTRICT COURT

2008 FEB 22 PM 2:52

MARY ANN McCONNELL, as personal
representative of the Estate of Elizabeth
Garcia, deceased, and as next friend of
XAVIER MENDOZA, a minor, JEROME
MENDOZA, a minor, and CENE MENDOZA,
all minors with individual claims,

Plaintiffs,

v.

No. D-0101-CV-2005 00045

ALLSUP'S CONVENIENCE STORES, INC.,
A New Mexico Corporation.

Defendant.

ORDER

THIS MATTER having come before the Court on the Plaintiff's *Daubert/Alberico*
Motion to Exclude Defense Expert Gregg McCrary and the Court having reviewed the briefing,
heard the arguments of counsel and the testimony of Mr. McCrary and Dr. Ross Zumwalt on
February 13, 2007,

FINDS, as follows:

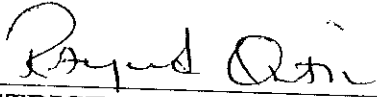
- 1.) Crime scene analysis and criminal profiling related to the motives of a killer do not meet the standards for expert testimony in *Daubert v. Merrell Dow Pharmaceuticals* or *State v. Alberico*;
- 2.) The methodology used by Mr. McCrary is:
 - a. Not able to be tested by experiments, research or otherwise;
 - b. Not based upon or is not capable of scientific analysis;
 - c. Not reproducible;
 - d. Not reviewable for any rate of error.
- 3.) The opinions of Mr. McCrary related to the motives of Paul Lovett, whether described as "victim-targeted" behavior, deterability or foreseeability, are not reliable;

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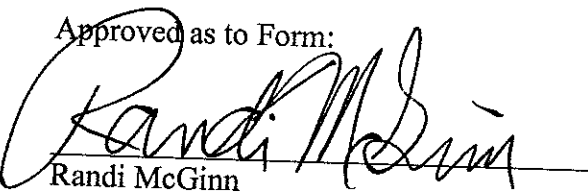
- 4.) The opinions of Mr. McCrary related to "crime scene analysis" whether described as "victim-targeted" behavior, deterability or foreseeability, do not comply with New Mexico Rule of Evidence 11-702 in that they will not materially assist the trier of fact to determine facts in issue in this case.

IT IS ORDERED:

- 1.) The testimony of Gregg McCrary on crime scene analysis and any issue related to the motives of Paul Lovett, whether described as "victim-targeted" behavior, deterability, foreseeability or some other heading, is excluded at trial;
- 2.) Based on his law enforcement background, Mr. McCrary may testify about the best practices to prevent crime and the adequacy of security at this Allsup's store, provided he does the following:
 - a. Within 10 days of the date of the hearing (by February 23, 2008), Mr. McCrary produce to the plaintiff all documents, studies, training materials, guidelines and other materials he has used or uses when providing security advice to other companies; and
 - b. Mr. McCrary makes himself available for deposition at least 20 days before trial.


DISTRICT JUDGE RAYMOND Z. ORTIZ

Approved as to Form:


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MCML, P.A.
Attorneys for the Plaintiff

Approved Telephonically 2/19/08

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