

STATE OF OHIO)	IN THE COURT OF COMMON PLEAS
) SS:	
CUYAHOGA COUNTY)	C.P. CASE NOS. CR-231670
		CR-229934
STATE OF OHIO,)	CR-231206
)	
Plaintiff,)	
)	
vs.)	OPINION
)	
DARRYL DURR,)	
)	
Defendant.)	
)	

SHIRLEY STRICKLAND SAFFOLD, JUDGE:

This Evidentiary Hearing arose from the Application for Post-Conviction DNA Testing filed by Defendant, Darryl Durr (hereinafter “Defendant”), in August 2009.

In 1988, Defendant was indicted by the Grand Jury for the kidnapping, rape, aggravated robbery, and aggravated murder of Angel Vincent. A jury later convicted Defendant and recommended the death penalty, which was accepted by the trial court. The Eighth District Court of Appeals affirmed the conviction and death sentence on December 7, 1989. Likewise, on March 20, 1991 the Ohio Supreme Court also affirmed Defendant’s conviction and sentence.

In his Memorandum in Support of Application for Post-Conviction DNA Testing, Defendant requested this Honorable Court to issue an order for a thorough search of biological material collected during the investigation and prosecution of the underlying case, an order instructing the State to produce all chain-of custody documents and business records from all business agencies that possessed the material at issue, an order requiring the testing of relevant biomaterial that was found, and to conduct an evidentiary hearing on Defendant’s application.

Said evidentiary hearing was held via videoconferencing before this Honorable Court on October 5, 2009. Appearing on behalf of the Defendant were Kim Rigby, Esq. and Dennis Sikes, Esq. Appearing on behalf of the State was Prosecutor Matthew Meyer, Esq.

At issue at the hearing was the testing of slides, a lab coat, and a necklace. The Defendant and the State agreed to the admissibility of the slides and coat. However, the parties disagreed as to the admissibility for testing of the necklace.

Pursuant to the Ohio Revised Code (hereinafter "RC"), § 2353.76(C):

The court shall determine, from the chain of custody of the parent sample of the biological material to be tested and of any test sample extracted from the parent sample and from the totality of circumstances involved, whether the parent sample and the extracted test sample are the same sample as collected and whether there is any reason to believe that they have been out of the state custody or have been tampered with or contaminated since they were collected. Upon making its determination under this division, the court shall prepare and retain a written document that contains its determination and the reasoning and rationale for that determination.

The main objection of the State to testing the necklace was the lack of an established chain of custody and the high likelihood of contamination of the evidence. Deputy Clerk and Evidence Custodian, Frank Kost (hereinafter "Kost"), testified as to the condition of the trial exhibits, including the necklace. Kost testified that the evidence in Defendant's case was easily accessible to the public. He further testified that the process for accessing the evidence would be to go to the Dead Files room, sign a general log book, and then one would be granted unsupervised access to the evidence and file.

Kost stated that on more than one occasion evidence has gone missing from a case file during one of the aforementioned unsupervised reviews of a file. Finally, Kost was asked to show the Court the necklace in question. Kost showed the Court that the necklace had been stored in an unsealed, opened manila envelope in the Dead Files room.

Elizabeth Bedinger, Ph.D., (hereinafter “Bedinger”), a DNA Quality Assurance Administrator for the Ohio Bureau of Criminal Identification and representative of the testing authority, then testified. Under the applicable Ohio law, when an inmate submits an application for DNA testing under RC § 2953.73, “The testing authority shall determine whether the parent sample has degraded or been contaminated to the extent that it has become scientifically unsuitable for testing and whether the parent sample otherwise has been preserved, and remains, in a condition that is suitable for testing.” RC § 2953.76(B).

Bedinger defined “parent sample” as the original item from which DNA is taken and tested. She continued on to testify that the necklace in question in this matter could contain the DNA of anyone who had recently come into contact with it, including anyone who examined the necklace by checking the file out of the Dead Files room. She further testified that even if the necklace were to be tested, it would not qualify for CODIS, the Combined DNA Index System.

Finally, Bedinger testified that in her expert opinion, she believed to a reasonable degree of medical certainty that the necklace in question would be an unreliable parent sample due to the high likelihood of contamination and the lack of an established chain of custody.

It is therefore the finding of this Honorable Court, based upon the testimony presented at the evidentiary hearing, that there is reason to believe that the evidence has been out of the State’s custody and/or been contaminated since its collection and during its storage in Dead Files.

Therefore, based upon this conclusion and pursuant to RC § 2953.76(C), Defendant’s, Darryl Durr, Application for Post-Conviction DNA Testing is hereby granted in part and denied in part. The Application is granted in part in regards to the testing of the slides and lab coat that the parties have stipulated to. The Application is denied in regards to the necklace.

IT IS SO ORDERED.

Date

Judge Shirley Strickland Saffold

NOTICE OF SERVICE

A copy of the foregoing OPINION was forwarded this _____ day of October, 2009

by regular United States mail to:

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