

IN THE SUPREME COURT OF OHIO

07-2155

State of Ohio
Plaintiff-Appellee,

vs.

Robert G. Hayden
Defendant-Appellant.

On Appeal from the
Montgomery County Court
of Appeals, Second
District.

Case No. 21764
T.C. 90-CR-308

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT ROBERT C. HAYDEN

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PKC,SF

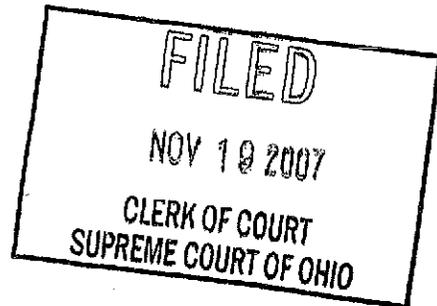


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EXPLANATION OF WHY THIS CASE OF
PUBLIC OR GREAT GENERAL INTEREST AND
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case involves a " fundamental miscarriage of justice" because Robert O. Hayden Appellant herein is actual innocent of the crime. Schlup v. Delo 513 U.S. 298, 315 S.Ct. 851, 130 L.E. 2d 808 (1995). To show a fundamental miscarriage of justice based upon a actual innocent, Appellant must come forward with " new facts" that raise doubt about his guilt sufficient to undermine confidence in the result of the trial without the assurance that the trial was tainted by constitutional errors, see *id* at 317, 115 S.Ct. 851. In making that showing of actual innocent sufficient to undermine confidence in the result of the trial, Appellant Hayden may rely on the DNA evidence. see *id* 327-28, 115 S.Ct. 851.

The court must make determination concerning innocence in light of all the evidence, including evidence that became available only after trial.

Appellant herein may rely on the narrow exception implicating a fundamental miscarriage to have his case heard. Watkins v. Miller 92 F.Supp. 824 (S.D. Ind.2000).

The question before this court, is whether DNA undermines the case, when it was determined that Appellant's DNA did not match the semen found in the alleged victim.

STATEMENT OF THE CASE AND FACTS

Appellant herein was convicted of one count of Rape in Montgomery County, Ohio in 1990, during the course of trial it was determine that Appellant's blood type was not found and at a latter date it was determine that the pubic hairs found did not belong to Appellant herein.

It is a fact that Appellant and the alleged victim knew and lived together at one time however, Appellant has always maintained his innocence in this matter.

During the course of years, appellant has filed many proceedings concerning the case. In December of 2007 the Second District Court of Appeals granted Appellant a hearing concerning the pubic hairs. Before the hearing, the trial court order DNA to be conducted, the test was done by Cellmark. Upon the results of the test, this evidence was "supplemented" to Appellant's Post-Conviction Petition. (Filed May 19, 1998). Which supported petitioner's innocence to the charged of rape.

This appeal is from the denial of Appellant's Post-Conviction under 2953.23(2)(A) of the Ohio Revised Code. The State Court have refused to accept and fully develop facts concerning the DNA, it is clear that DNA was found that did not belong to Appellant or the alleged victim herein as such, this is new evidence that was not presented at Appellant's trial.

Also, the trial judge who order the DNA and then failed to fully reach the facts concerning this critical evidence "cannot" hear the case on appeal, this judge should remove herself so appellant could have a fair appellant review concerning this critical and material evidence.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Fundamental Miscarriage of Justice;

To show a fundamental miscarriage of justice based on actual innocence, and receive review of his case, Appellant must come forward with "new facts" that raise doubt about his guilt sufficient to undermine confidence in the results of the trial without the assurance that the trial was tainted by constitutional errors sufficient to undermine confidence in the results of the trial. Appellant Hayden may rely on the DNA evidence. see *Id.* 327-28115 S.Ct. 851.

The court must make a determination concerning innocence in light of all the evidence, including evidence that became available only after trial Watkins v. Miller 92 F.Supp. 824 (s.d. Ind 2000), Schlup v. Delo 513 U.S. 298, 315 S.Ct. 851 130 L.E. 2d 808 (1995).

In Watkins v. Miller, the court explained the DNA (DQ ALPHA PCR) which is the same tested in Appellant's case. The DQ Alpha testing looks at a part of the HLA gene on the sixth pair of human chromosomes. There are six different genotypes known as 1.1, 1.2,1.3,2,3,and 4. Each person has two DQ Alpha portions of that gene, one on each of the two chromosomes in the sixth pair, so there are 21 possible combinations of genotypes. Watkins was convicted of rape and murder. After conducting DNA testing it was determined that (1) DNA did not match Watkins and DNA was found that did not match Watkins or the victim. Watkins DNA was 4/4, the victim Peggy Atles DNA 1.2/3, however the test also found 1.1 DNA that could not be attributed to Jerry Watkins or to Peggy Sue Atles.

The court further stated that the importance of this evidence cannot be overstated. The 1.1 results means that semen from someone other than Watkins was deposited in Peggy Sue Altes' at the time of her death.

Here, in Appellant's case the DNA did not match and DNA was found that could not be attributed to Appellant Hayden or the alleged Victim Bethany Jordan.

Bethany Jordan DNA 4.1

Appellant Hayden 1.1,4.2/3

Upon understanding the DNA it is very clear that DNA was found that did not belong to Appellant herein or Bethany Jordan, which explains why the DNA was supplemented with Appellant's Post-Conviction May 19,1998. Also, the prosecutor argued to the court: There is no indication there was another man there within the last couple of days and that the semen is that of Appellant. (T.265).

We now have evidence that DNA was found that did not belong to Appellant herein.

As such, Appellant is entitled to a new trial based upon this new evidence that was not presented at Appellant's trial.

Proposition of law No. II. Appellant was denied a fair Appeal in the Second District Court because Judge Donovan should have removed herself pursuant to §2701.11 and 2701.12 of the Ohio Revised Code.

Appellant was denied a fair review of the issue concerning the DNA, when in fact Judge Donovan ordered the DNA in 1998 and also failed to fully seek the facts of the DNA. The record will show that, there is no testimony concerning the DNA, only that the results were supplemented to Appellant's Post-Conviction in 1998. Under the 14TH Amendment of the Constitution Appellant is entitled to equal protection and due process of the law.

Proposition of Law No. III: The trial court erred when it granted Summary Judgment:

The trial court granted Summary Judgment when there is a genuine issue of material facts concerning the DNA in this case. Appellant express the facts concerning the DNA with case laws in supports. However, the trial courts have refused to address and fully seek the facts of the DNA herein.

Under Criminal Law 675, evidence that converts an arguable, hotly contested possibility into a certain facts cannot fairly and reasonable be described as cumulative. Watkins v. Miller 92 F.Supp. 2d 824 (S.D. Ind 2000).

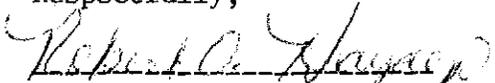
Here, Appellant presented a genuine issue before the trial court as such, the trial court error when it granted the Summary Judgment.

CONCLUSION

Appellant states he is innocence of the charge and that a Miscarriage of Justice has occured. Appellant was deined a fair Appellant review concerning the DNA, due to Judge Donovan being the trial judge and now the Appellant judge concerning the same issue, and the trial court granting Summary Judgment to the State of Ohio was an error when there is a genuine and material issue.

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant request that this court accepts jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully,



Robert O. Hayden

CERTIFICATION OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by regular U.S. mail to counsel for appellee's to Carley J. Ingram Prosecutor Atty at 301 West Third Street, 5th Floor P.O. Box 972 Dayton, Ohio 45422 on this ~~15th~~ day November 2007.

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A P P E N D I X

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

ROBERT O. HAYDEN

Defendant-Appellant

Appellate Case No. 21764

Trial Court Case No. 90-CR-308

(Criminal Appeal from
Common Pleas Court)

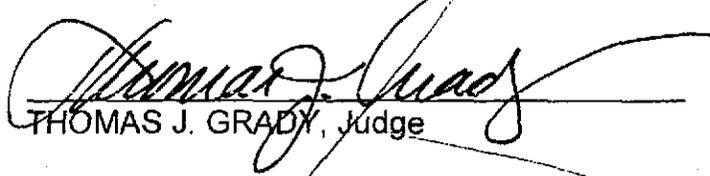
FINAL ENTRY

Pursuant to the opinion of this court rendered on the 12th day
of October, 2007, the judgment of the trial court is **Affirmed**.

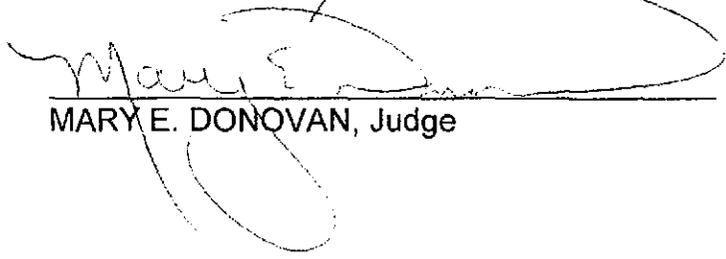
Costs to be paid as stated in App.R. 24.



JAMES A. BROGAN, Judge



THOMAS J. GRADY, Judge



MARY E. DONOVAN, Judge

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Hayden was convicted in 1990 of rape and a prior aggravated felony specification. The complaint alleged that Hayden forced the woman with whom he was living at that time to have sexual intercourse after she refused to watch a pornographic movie with him. This Court subsequently affirmed his conviction. See *State v. Hayden* (Sept. 27, 1991), Montgomery App. No. 12220, 1991 WL 215065. In our opinion, we noted that the medical evidence was inconclusive because of a similarity of blood types. *Id.* at *2. We also pointed out that the credibility of the witnesses was the critical question before the trial court, where the only direct evidence of the rape came from the victim, and the contrary evidence was hearsay from those who merely heard Hayden deny the offense. *Id.*

Thereafter, Hayden filed a petition for writ of habeas corpus, which was rejected by the Fourth District Court of Appeals. See *Hayden v. Morris* (Mar. 16, 1994), Ross App. No. 93CA1974, 1994 WL 88940. He then filed a petition for postconviction relief, alleging that his trial counsel was ineffective for failing to discover evidence demonstrating his innocence. According to Hayden, a forensic report prepared by the Miami Valley Regional Crime Lab was available at the time of trial, but undiscovered by his trial counsel, which showed that Caucasian pubic hairs were found on the victim. This fact was significant because Hayden is African American. The lab report also indicated, however, that DNA testing of the rape victim's vaginal aspirate could exclude Hayden as the source of DNA obtained from the non-sperm portion of the aspirate, but it could not exclude him as the source of the DNA obtained from the sperm portion. The trial court subsequently denied Hayden's petition, and he appealed. On appeal, we held that there was sufficient evidence to warrant a hearing on this claim. See *State v. Hayden* (Dec. 5, 1997), Montgomery App. No. 16497, 1997 WL 752614. However, following the evidentiary hearings, the trial court

rejected Hayden's claim. We affirmed that decision on the basis that contrary evidence at the hearing permitted a finding that the victim herself could have been the source of the pubic hairs, in addition to that fact that Hayden could not be excluded as a source of the DNA obtained from the sperm portion of the vaginal aspirate. *State v. Hayden* (July 16, 1999), Montgomery App. No. 17649, 1999 WL 960968, at *2. Therefore, the evidence failed to support the asserted inference that the perpetrator was a Caucasian, and not Hayden. *Id.*

On June 29, 2001, Hayden filed a motion with the trial court for relief from judgment under Civ.R. 60(B). In denying his claim, the trial court recognized that this motion must be construed as the second petition for postconviction relief Hayden had filed. See *State v. Hayden* (Mar. 20, 2002), Montgomery C.P. No. 90-CR-308. Consequently, the petition was required to show that Hayden had been unavoidably prevented from discovering the facts upon which he relied to present his claim pursuant to R.C. 2953.23(A). According to the court, Hayden's reliance on a pubic hair combing did not warrant relief, for this evidence had been in Hayden's possession for some time, and he had referred to it in his 1996 petition for postconviction relief. *Id.* No appeal followed.

Approximately three years later, Hayden filed a "motion for rehearing," requesting that the trial court re-open the hearings from his first petition for postconviction relief. Hayden alleged that he had been denied the opportunity to cross-examine witnesses about DNA testing performed by Cellmark Diagnostics. The trial court denied the motion, finding that Hayden should have raised this issue during his 1999 appeal in Montgomery App. No. 17649. We affirmed the trial court's decision. See *State v. Hayden*, Montgomery App. No. 20657, 2005-Ohio-4024. In our opinion, we held that Hayden failed to satisfy the alternate

ground in R.C. 2953.23(A)(1)(a) that grants jurisdiction to trial courts to entertain successive petitions for postconviction relief if “subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner’s situation, and the petitioner asserts a claim based on that right.” *Id.* at ¶19. Specifically, Hayden contended that he was afforded a new constitutional right to cross-examine witnesses by *Crawford v. Washington* (2004), 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177, which held that “where testimonial statements are concerned, confrontation is the only indicia of reliability that can satisfy constitutional standards.” *Id.* at ¶16, citing *Crawford*, 541 U.S. at 68-69. In rejecting his argument, however, this Court found that because Hayden’s conviction was final and not pending direct review, no new constitutional right could be applied retroactively to his claims. *Id.* at ¶17. Additionally, we noted that the Sixth Amendment right of confrontation does not apply to postconviction relief proceedings. *Id.* at ¶18 (citations omitted).

At nearly the same time Hayden filed his “motion for rehearing,” he also filed an application with the trial court requesting DNA testing of the pubic hairs, semen and fibers that were collected from the victim. The trial court rejected Hayden’s application on the grounds that a forensic scientist had testified at both the trial and the first postconviction hearing that DNA tests were performed, but their results were inconclusive as to excluding Hayden as the perpetrator. *State v. Hayden* (Sept. 29, 2004), Montgomery C.P. No. 1990-CR-0308. On appeal, Hayden did not challenge the trial court’s decision to reject DNA testing of the semen; instead, he argued that the court should have allowed testing of the pubic hairs. *State v. Hayden*, Montgomery App. No. 20747, 2005-Ohio-4025, at ¶18.

Again we rejected Hayden's argument, finding that an exclusion result from DNA testing of the pubic hairs would not be outcome determinative of Hayden's guilt. *Id.* at ¶25. In discussing the irrelevancy of the origin of the pubic hairs, we provided the following:

“As a final matter, we should also point out that Hayden's focus on the origin of the pubic hairs – or for that matter, even the semen, makes little sense in the context of this case. This was not a situation where the victim was attacked by a stranger or where the identity of the rapist was at issue. Hayden and the victim lived together, and she claimed that he had sexually assaulted her after she refused to watch a pornographic movie. Therefore, the issue would have been whether the victim consented to sex. When we originally reviewed this case on appeal, we stated that the crucial issue was the credibility of witnesses. We stressed that the only direct evidence of the rape came from the victim, and that the contrary evidence was hearsay produced by those who had heard Hayden simply deny the offense. Furthermore, the conflict was ‘created by a self-serving statement made to others, with virtually no factual information.’ ” *Id.* at ¶30 (citations omitted).

On March 1, 2006, Hayden filed his fourth petition for postconviction relief, requesting a hearing on the basis that genetic testing conducted in 2005 to determine paternity contradicts the test results performed by Orchid Cellmark as part of the 1998 evidentiary hearings. The trial court simultaneously denied the petition and granted summary judgment upon motion by the State.

Hayden filed a timely notice of appeal from the trial court's order. He presents the following two assignments of error for our review:

I. “The trial court committed plain error of law when it granted Summary Judgment to the State of Ohio.”

II. "The trial court committed plain error when it dismiss [sic] petitioner's Post Conviction [sic] pursuant to §2953.23 of the Ohio Revised Code."

Whether to entertain a second or successive petition for postconviction relief lies within the sound discretion of the trial court, and that ruling will not be disturbed on appeal absent a clear showing of abuse of discretion. *State v. Perdue* (1981), 2 Ohio App.3d 285, 286, 2 OBR 315, 441 N.E.2d 827. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 5 OBR 481, 450 N.E.2d 1140 (citations omitted).

Upon review of the record, we find that the trial court did not abuse its discretion in denying Hayden's motion for postconviction relief. Pursuant to R.C. 2953.23(A), the record does not demonstrate that Hayden was unavoidably prevented from discovering the facts upon which his claim for relief lies. Furthermore, Hayden has not shown by clear and convincing evidence that no reasonable factfinder would have found him guilty of rape but for constitutional error at trial. Thus, the judgment of the trial court will be affirmed.

To facilitate the disposition of this appeal, we will address Hayden's assignments of error together. Hayden contends that he has satisfied the requirements of R.C. 2953.23 because he was unavoidably prevented from discovering the facts upon which his claim for relief depends until he received the 2005 genetic test report from Orchid Cellmark. According to Hayden, the report reveals that the DNA identified in connection with the vaginal aspirate from the 1998 evidentiary hearing does not match the DNA from the 2005 test excluding Hayden as the biological father of the subject child.

Successive postconviction petitions are prohibited by R.C. 2953.23(A) unless division (1) or (2) of that section applies. Division (2) does not apply to the present matter, for the 2005 test submitted in conjunction with Hayden's petition was performed pursuant to Chapter 3111 of the Ohio Revised Code to determine if a paternal relationship existed.¹ Division (1) of R.C. 2953.23(A) provides that successive petitions for postconviction relief will be allowed if both of the following conditions are satisfied:

"(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petitioner asserts a claim based on that right.

"(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted * * * ."

Here, we do not find that Hayden has sufficiently demonstrated that he was unavoidably prevented from discovering the facts contained in the 2005 genetic test. As the State correctly points out, the 2005 test simply indicates that Hayden does not share the necessary paternal markers to be the biological father of the subject child. It does not

¹ R.C. 2953.23(A)(2) states that "[t]he petitioner was convicted of a felony, the petitioner is an inmate for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section R.C. 2953.74 of the Revised Code, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense * * * ."

reveal when these results could have become available, or, more importantly, how the results relate to the victim or the crime for which Hayden was convicted. Essentially, Hayden is asking this Court to accept his scientific conclusions and find that the results of the paternity test are sufficient to distinguish his DNA from the sample introduced at trial. Cloaked in this argument is the contention that the trial court erred in denying his application for DNA testing in September 2004. We have already addressed this issue, affirming the trial court's decision on the basis that the DNA tests performed by the Miami Valley Regional Crime Lab "did not and could not exclude Hayden as the perpetrator." *State v. Hayden*, Montgomery App. No. 20747, 2005-Ohio-4025, at ¶12. We further found that an exclusion result from DNA testing of Hayden's biological material would not be outcome determinative of his guilt. *Id.* Thus, we find no merit in Hayden's argument that the 2005 genetic test constitutes a relevant basis upon which relief should be granted.

Furthermore, we do not find that Hayden has shown by clear and convincing evidence that no reasonable factfinder would have found him guilty of rape but for constitutional error at trial. Again, we refer to this Court's prior decisions reasserting the trial court's basis for the conviction. Because the medical evidence at trial was inconclusive as to Hayden's perpetrating the rape, the critical question before the trial court was the credibility of the witnesses, not the origin of the semen or other biological material from which DNA evidence was extracted. See *State v. Hayden* (Sept. 27, 1991), Montgomery App. No. 12220, 1991 WL 215065. We are, therefore, not persuaded that had the results of the 2005 genetic test been introduced, a different result would have occurred.

“ ‘Upon a motion by the prosecuting attorney for summary judgment, a petition for post-conviction relief shall be dismissed where the pleadings, affidavits, files and other records show that there is no genuine issue as to any material fact, and there is no substantial constitutional issue established.’ ” *State v. Brown*, Montgomery App. No. 19776, 2003-Ohio-5738, at ¶18, quoting *State v. Milanovich* (1975), 42 Ohio St.2d 46, 325 N.E.2d 540, paragraph two of the syllabus. We are not convinced that Hayden has satisfactorily presented a genuine issue of material fact or substantive grounds for relief in his argument. Accordingly, we conclude that the trial court appropriately exercised its discretion in dismissing Hayden's petition for postconviction relief and in rendering summary judgment in favor of the State. Hayden's first and second assignments of error are overruled, and the judgment of the trial court is affirmed.

.....

GRADY and DONOVAN, JJ., concur.

Copies mailed to:

- Mathias H. Heck, Jr.
- Carley J. Ingram
- Robert O. Hayden
- Hon. Frances McGee

REPORT OF LABORATORY EXAMINATION

May 12, 1998

Ms. Laura J. Kiddon
Forensic Scientist
Miami Valley Regional Crime Laboratory
361 West Third Street
Dayton, OH 45162

Re: Cellmark Case No. F981219
MVRCL Case No. 90-0043
Your Case No. 90-CR-308
Suspect: Robert O. Hayden

EXHIBITS:

Polymerase chain reaction (PCR) testing was performed on the following items which were received for analysis on April 14, 1998:

Item #	Description
X 1a	Liquid in tube in envelope labelled "...vaginal aspirate..."
1c	One swab labelled "...vaginal swab..."
X 1i	One blood swatch labelled "...Bethany Jordan..."
X 2	One blood swatch labelled "...Robert Hayden..."

RESULTS:

DNA isolated from the liquid labelled vaginal aspirate (item 1a), the blood swatch labelled Bethany Jordan (item 1i), and the blood swatch labelled Robert Hayden (item 2) was amplified using the PCR and typed for HLA DQA1, the LDL receptor (LDLR), glycoporphin A (GYPA), hemoglobin G gammaglobin (HBGG), D7S8, and group specific component (GC) using the AmpliType® PM+DQA1 PCR Amplification and Typing Kit. The types detected for each sample are listed below:

ALLELES DETECTED						
SAMPLE	DQA1	LDLR	GYP A	HBGG	D7S8	GC
vaginal aspirate (non-sperm fraction)	4.1	AB	A	A	AB	A
vaginal aspirate (sperm fraction)	1.1,4.1,4.2/3*	AB	AB	AC	AB	ABC
Bethany Jordan	4.1	AB	A	A	AB	A
Robert Hayden	1.1,4.2/3	AB	AB	C	A	BC

*This sample contains DNA from at least two sources; the 1.2 HLA DQA1 type, if present, may not be detected by this testing.

The results listed above in bold print are darker than the other results observed at that locus.

Testing on the vaginal swab (item 1c) was discontinued since no human DNA was detected in the sperm fraction of the vaginal swab using a probe specific for human DNA and no spermatozoa were identified in the sperm fraction of the vaginal swab.

CONCLUSIONS:

No conclusion can be made regarding the vaginal swab.

Robert Hayden is excluded as the source of the DNA obtained from the non-sperm fraction of the vaginal aspirate. Bethany Jordan cannot be excluded as the source of the DNA obtained from the non-sperm fraction of the vaginal aspirate.

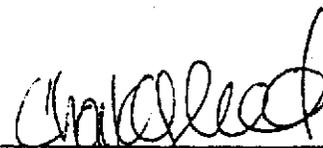
The data indicate that DNA from more than one individual was obtained from the sperm fraction of the vaginal aspirate. Neither Bethany Jordan nor Robert Hayden can be excluded as a source of the DNA obtained from the sperm fraction of the vaginal aspirate. If the DNA originated from only two sources, the data are consistent with the DNA obtained from the sperm fraction of the

Report for Cellmark Case No. F981219
May 12, 1998
Page Three

vaginal aspirate being a mixture of the types obtained from the blood swatch labelled Bethany Jordan and the types obtained from the blood swatch labelled Robert Hayden.



Lisa L. Grossweiler
Senior DNA Analyst



Charlotte J. Word, Ph.D.
Deputy Laboratory Director

cc: Victor A. Hodge, Esq.
130 West Second Street, Suite 810
Dayton, OH 45402

Ms. Christine Burke
Montgomery County Prosecutor's Office
301 West Third Street
Dayton, OH 45422

A detailed laboratory report was obtained in 1997. The study covers the results are reported here. The following PCR results are the actual DQ α types that laboratories found on evidence and blood samples. DQ α (pronounced DQ alpha) is one of several polymarkers that are compared in PCR testing. Each DQ α type is similar to blood type (e.g., O, A, B). One can see that many times the victim's DQ α matches the nonsperm fraction in a semen stain. One also can see that the sperm fraction of the semen stain does not match the type of the defendant (except Chalmers, where the difference occurred in polymarkers other than DQ α).

Kirk Bloodworth

Sample	DQ α Type
Victim's blood sample	1.3, 4
Panties—semen stain (nonsperm fraction)	1.1, 3 (Trace 1.3, 4)
Panties—semen stain (sperm fraction)	1.1, 3
Bloodworth's blood sample	1.2, 4

Ronnie Bullock

Sample	DQ α Type
Panties (nonsperm cell fraction)	1.1, 2, 3
Panties (sperm fraction)	3
Victim's blood sample	1.1, 2
Bullock's blood sample	4

Terry Leon Chalmers

Sample	DQ α Type
Victim's blood sample	1.1, 3
Chalmers' blood sample	1.2, 4

Vaginal swab—sperm cell 1.2, 4

Cervical swab—sperm cell 1.2, 4

Note: The epithelial cells from the two swabs were too weak to get accurate readings. Although the DQa of Chalmers and the semen matched, three other polymarkers did not match.

Frederick Daye

Sample	DQ α Type
Blue jeans—left knee (nonsperm fraction)	1.2, 4
Blue jeans—left knee (sperm fraction)	1.2, 4
Daye's blood sample	4, 4

Edward Honaker (results of three tests)

Sample	DQ α Type
Victim's oral swab	3, 3
Vaginal swab (nonsperm fraction)	3, 3
Vaginal swab (sperm fraction)	3, 4
Shorts (nonsperm fraction)	3, 3
Shorts (sperm fraction)	1.2, 4
Honaker's blood sample	1.2, 3
Boyfriend's blood sample	1.2, 4
Secret lover's blood sample	4, 4

Joe Jones

Sample	DQ α Type
Victim's blood sample	3, 4
Jones' blood sample	1, 2, 3
Vaginal swab (sperm fraction)	1, 1, 4
Vaginal swab (nonsperm fraction)	3, 4

Kerry Kotler

Sample	DQ α Type
Underpants (sperm fraction)	1, 1, 4
Victim's blood sample	4, 4
Kotler's blood sample	4, 4
Husband's blood sample	2, 3

Steven Linscott

Sample	DQ α Type
Vaginal swab (sperm fraction)	3, 4
Vaginal swab (nonsperm fraction)	1, 1, 3
Victim's blood sample	1, 1, 3
Linscott's blood sample	4

Brian Piszczek

Sample	DQ α Type
Nightgown (sperm fraction)	1, 2, 4
Nightgown (nonsperm fraction)	2, 3
Vaginal swab (sperm fraction)	1, 2, 4

Vaginal swab (nonsperm fraction)	2, 3
Victim's blood sample	2, 3
Piszczek's blood sample	4, 4

Dwayne Scruggs

Sample	DQα Type
Vaginal swab (nonsperm cell fraction)	2, 4
Vaginal swab (sperm fraction)	1.1, 4
Bloodstain	2, 4
Scruggs' blood sample	4, 4

Walter Snyder

Sample	DQα Type
Vaginal swab (sperm fraction)	1.2, 1.3
Vaginal swab (nonsperm fraction)	2, 4
Victim's blood sample	2, 4
Snyder's blood sample	1.2, 4

Glen Woodall

Sample	DQα Type
Underpants of victim 2 (sperm fraction)	3, 4
Underpants of victim 2 (nonsperm fraction)	1.2, 3
Denim skirt of victim 1 (sperm fraction)	3, 4
Denim skirt of victim 2 (nonsperm fraction)	1.2, 4
Victim 1's blood sample	1.2, 4
Victim 2's blood sample	1.2, 3
Woodall's blood sample	2, 3

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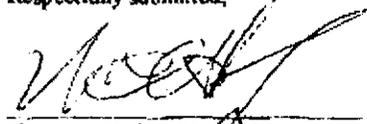
IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CRIMINAL DIVISION

VICTOR A. HODGE • 130 WEST SECOND ST • SUITE 810 • DAYTON, OHIO 45402 • (937) 461-0009

STATE OF OHIO	:	CASE NO. 90-CR-308
Plaintiff	:	Judge Mary Donovan
-v-	:	
ROBERT O. HAYDEN	:	<u>SUPPLEMENT TO PETITION FOR</u>
Defendant	:	<u>POST CONVICTION RELIEF</u>

Now comes Defendant, by and through counsel, and hereby submits to the court as a supplement to the hearing Joint Exhibit I, a copy of the DNA report. By stipulation of the parties, it is agreed that this report is admissible in evidence in lieu of the testimony of the analyst.

Respectfully submitted,

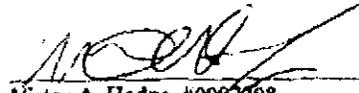


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(937)461-0009
Attorney for Defendant

STATE'S EXHIBIT
29
PENICILLIN, N. J.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the Christine Burke, Prosecuting Attorney, 301 W. Third St., 5th Floor, Dayton, OH 45422 by leaving a copy with the Clerk of Courts on the date of filing.



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