

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff,

v.

ELWOOD JONES,

Defendant.

Case No. 1998-1891

DEATH PENALTY CASE

MOTION TO SET EXECUTION DATE

Joseph T. Deters (0012084P)
Prosecuting Attorney

Ronald W. Springman (0041413P)
Chief Assistant Prosecuting Attorney

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3052
Fax No. (513) 946-3021

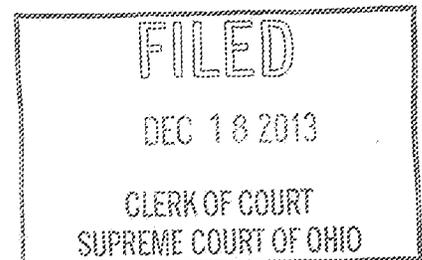
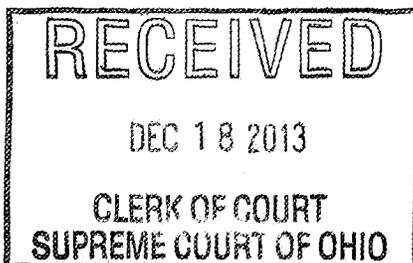
**COUNSEL FOR PLAINTIFF STATE OF
OHIO**

Erin Barnhart
Carol A. Wright
Federal Public Defender
10 W. Broad Street, Suite 1020
Columbus, Ohio 43215
(614) 469-2999

and
Gary W. Crim
943 Manhattan Avenue
Dayton, Ohio 45406

and
Michael Monta
3625 Old Salem Road
Dayton, Ohio 45415

**COUNSEL FOR DEFENDANT
ELWOOD JONES**



MOTION TO SET EXECUTION DATE

I. Procedural Summary

State Proceedings

Elwood Jones was sentenced to death for the murder of Rhoda Nathan. Jones was convicted on two counts of aggravated murder with two death penalty specifications (murder while committing aggravated robbery and aggravated burglary). Jones was also convicted of aggravated burglary and aggravated robbery. On August 28, 1998, the First District Court of Appeals affirmed Jones' convictions and sentence of death. *State v. Jones*, 1st Dist. No. C-970043, 1998 WL 542713. On December 27, 2000, this Court likewise affirmed. *State v. Jones*, 90 Ohio St.3d 403, 739 N.E.2d 300.

Jones filed a petition and amended petitions to vacate, pursuant to R.C. 2953.21, raising a total of 35 grounds for relief. On October 25, 1999, the trial court issued findings of fact, conclusions of law, and an entry dismissing Jones' petition to vacate. Jones appealed and the First Appellate District affirmed on December 29, 2000, *State v. Jones*, 1st Dist. No. C-990813, 2000 WL 1886307. This Court declined jurisdiction. *State v. Jones*, 91 Ohio St.3d 1510.

On November 27, 1998, Jones filed an Application to Reopen under Ohio Appellate Rule 26(B) where he raised claims of ineffective assistance of appellate counsel. The First Appellate District denied Jones' application on April 9, 1999. *State v. Jones*, 1st Dist. No. C-970043, unreported. This Court affirmed the denial of Jones' application on August 20, 1999. *State v. Jones*, 91 Ohio St.3d 376, 745 N.E.2d 421.

Federal Proceedings

In 2001, Jones filed a habeas petition in federal district court, which was rejected. *Jones v. Bagley*, No. C-1:01-cv-564, 2010 WL 654287. The Sixth Circuit Court of Appeals affirmed. *Jones v. Bagley*, 696 F.3d 475 (C.A. 6, Ohio) On October 7, 2013, the United States Supreme Court denied certiorari. *Jones v. Bagley*, 134 S.Ct. 62

Postconviction DNA testing

On November 18, 2010, defendant Elwood Jones filed an application for DNA testing under R.C. 2953.73. On December 28, 2010, the state, through counsel, filed a motion to reject Jones' DNA application, arguing that Jones failed to meet the criteria for postconviction DNA testing because the results of such tests were not outcome determinative. After all, Nathan's murder occurred in a hotel room where there are likely many sources of DNA not connected to the killer. On January 3, 2011, the state filed its mandatory report under R.C. 2953.75, which requires the prosecuting attorney to use reasonable diligence to determine if DNA evidence was collected at the crime scene that could be compared to a DNA sample from Jones.

The DNA application was originally assigned to the Honorable Robert Winkler. Judge Winkler, however, re-cused himself from the case apparently because his father presided over Jones' trial. The DNA application was re-assigned to Judge Ethna Cooper. Judge Cooper held a status conference wherein the parties agreed that DNA testing should be conducted on *some* of the items requested in Jones' application. Accordingly, the parties and Judge Cooper signed an order *prepared by Jones' counsel* ordering DNA testing on the following (See Exhibit A, attached): (1) the victim's teeth (marked State's Exhibits 60 and 90 at trial); (2) the victim's fingernail clippings and all fingernail scrapings and extract from those scrapings and envelopes and other containers that may have contained such extract or scrapings; (3) the pendant identified

at trial as belonging to the victim (marked State's Exhibit 3 at trial); and, (4) a piece of curtain containing a blood stain (marked State's Exhibit 62 at trial)

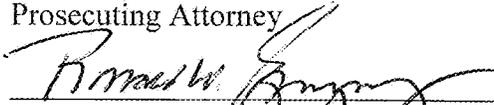
DNA testing was conducted on all the items discussed and listed in Judge Cooper's order. The test results did not implicate another suspect other than Jones. (See Exhibits B, C, and D attached)

Although Jones now seeks additional DNA testing on the items not discussed or listed in Judge Cooper's order, the State believes that any further DNA testing on items found in a *public* hotel room would not be outcome determinative.

Because Jones has exhausted his state and federal appeals rights and is not likely to prevail on his postconviction DNA testing fishing expedition, the State requests this Court to set an execution date.

Respectfully Submitted,

Joseph T. Deters (0012084P)
Prosecuting Attorney

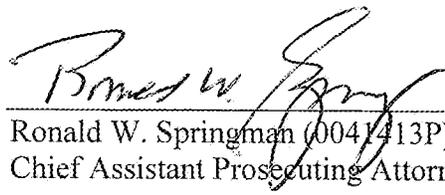


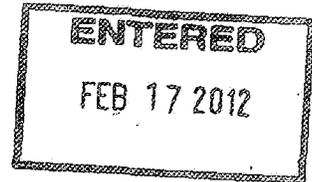
Ronald W. Springman (0041413P)
Chief Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3052

COUNSEL FOR PLAINTIFF STATE OF OHIO

CERTIFICATE OF SERVICE

On 17th December, 2013, a copy of the foregoing was sent via first class, U.S. mail to Erin Barnhardt and Carol A. Wright, Federal Public Defender's Office, 10 W. Broad Street, Suite 1020, Columbus, Ohio 43215, Gary Crim, 943 Manhattan Avenue, Dayton, Ohio 45406, and Michael Monta, 3625 Old Salem Road, Dayton, Ohio 45415


Ronald W. Springman (004/413P)
Chief Assistant Prosecuting Attorney



IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

v.

ELWOOD JONES,

Defendant.

Case No. B-958578

Judge Ethna Cooper

ORDER AND
ENTRY GRANTING IN
PART APPLICATION FOR
POST-CONVICTION
DNA TESTING

On January 9, 1997, a jury convicted Elwood Jones of aggravated murder, aggravated robbery and aggravated burglary. Jones received a death sentence for these crimes.

On November 18, 2010, Jones sought post-conviction DNA testing of numerous items taken from the crime scene or related to the crime pursuant to Rev. Code 2953.71 through 2953.81. The State opposed the DNA request, and the prosecutor's office promptly provided the report required by Rev. Code 2953.75.

On November 17, 2011, the Judge to whom this matter was originally assigned disqualified himself, and the matter was reassigned to this docket. Defendant's Application has been fully briefed and both the State and the defendant have addressed the Court. Accordingly, it is hereby ordered that:



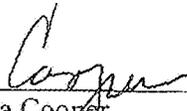
1. The defendant's Application for DNA Testing is hereby granted only as to the following items:
 - a. The victim's teeth (marked State's Exhibits 60 and 90 at trial);
 - b. The victim's fingernail clippings and all fingernail scrapings and extract from those scrapings and envelopes and other containers that may have contained such extract or scrapings;
 - c. The pendant identified at trial as belonging to the victim (marked State's Exhibit 3 at trial); and
 - d. A piece of curtain containing a blood stain (marked State's Exhibit 62 at trial).
2. The Ohio Bureau of Criminal Investigations is designated as the testing authority of the samples.
3. Within 14 business days of the entry of this order, the Hamilton County Prosecutor's Office, with any necessary assistance from Blue Ash Police Department, Hamilton County Crime Lab, and Hamilton County Clerk of Courts, shall package and deliver the following items to Dr. Elizabeth Benzinger at Bureau of Criminal Investigations, 1560 State Route 56 SW, London, Ohio 43140:
 - a. Blood sample from Rhoda Nathan;
 - b. Buccal swab from Elwood Jones;
 - c. The victim's teeth (marked State's Exhibits 60 and 90 at trial);

- d. The victim's fingernail clippings and all fingernail scrapings and extract from those scrapings and envelopes and other containers that have held such extract or scrapings;
 - e. The pendant identified at trial as belonging to the victim (marked State's Exhibit 3 at trial);
 - f. A piece of curtain containing a blood stain (marked State's Exhibit 62 at trial).
4. In order to avoid contamination of any evidence during the transportation or testing process, the chain of custody for the evidence shall be maintained and documented by any party or entity involved in the transportation and/or testing. The items must be shipped in such a manner as to prevent contamination and preserve the chain of custody. Both parties shall receive tracking information on all packages.
 5. BCI shall examine the evidence, assess suitability for DNA testing, and conduct any method(s) of DNA analysis it deems appropriate, including but not limited to Y-STR testing. If BCI determines that it is not equipped to perform appropriate testing, it shall, after consultation with both parties, recommend a state-certified lab to perform such testing.
 6. If BCI, or any state-certified lab to which both parties agree, determines that it will be necessary to consume an entire sample to perform appropriate testing, BCI, or the agreed state-certified lab, may consume such evidence to complete DNA testing.

7. Howard Hudson, an investigator with the Hamilton County Prosecutor's Office, shall collect a buccal swab from Elwood Jones referred to in item 3(b) of this entry at the facility in which he is incarcerated, and shall deliver the standard to BCI at the address listed above.
8. BCI, or the agreed state-certified lab, shall compare any full or partial profiles obtained from any items of evidence to the standard obtained from Elwood Jones.
9. After BCI, or the agreed state-certified lab, has concluded testing on all items, it shall package all items and return them to the submitting agency for preservation and storage.
10. BCI, or the agreed state-certified lab, shall provide any findings with respect to its analysis and the reasoning and rationale for those findings in a report, and specifically, any written report to this Court; Ron Springman, Assistant Prosecuting Attorney for Hamilton County, Ohio; Karla Hall, Attorney for Defendant; and Mike Dewine, Ohio Attorney General.
11. Any communications from BCI or the agreed state-certified lab (including telephone calls and electronic mail) must include both parties unless one party specifically waives that right.
12. BCI may compare any eligible profiles obtained during its testing to the combined DNA index system maintained by the Federal Bureau of Investigation, commonly known as CODIS, in accordance with Rev. Code 2953.74(E).

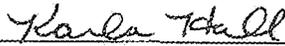
13. The Hamilton County Prosecutor's Office or the Attorney for the Defendant may submit a DNA profile or profiles for comparison to any eligible profiles obtained by BCI, or the agreed state-certified lab, during testing.
14. Defendant Elwood Jones reserves the right to request the Court to authorize DNA testing of additional items if the test results from the items discussed in this order indicate that additional testing is permitted under Ohio law.

IT IS SO ORDERED.

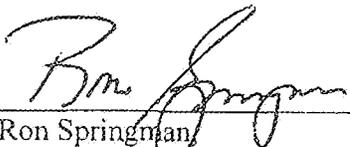


Ethna Cooper,
Judge, Court of Common Pleas

Date:



Karla M. Hall,
Attorney for Defendant



Ron Springman,
Assistant Prosecuting Attorney



MIKE DEWINE

* OHIO ATTORNEY GENERAL *

Bureau of Criminal Identification and Investigation

Laboratory Report

To: Hamilton County Prosecutor
Howard W. Hudson III
230 East 9th Street, Ste. 4000
Cincinnati OH 45248-2151

BCI&I Laboratory Number: 12-11373

Date: August 31, 2012

Agency Case Number: B958578

Offense: Homicide
Subject(s): Ellwood Jones
Victim(s): Rhoda Nathan

Submitted on February 23, 2012 by Howard W. Hudson III:

1. Plastic bag containing envelope containing blood card from Rhoda Nathan
2. Brown paper bag containing pendant belonging Rhoda Nathan
3. One manila envelope containing buccal swabs from Elwood Jones
4. One plastic container with tooth belonging to Rhoda Nathan
5. One manila envelope containing piece of curtain by front door
6. Plastic bag containing envelope containing tooth
7. One manila envelope containing fingernails from Rhoda Nathan
8. Plastic bag containing metal tin containing fingernail clippings from right hand of Rhoda Nathan
9. Brown paper bag containing piece of curtain

Results

Presumptive testing indicated the presence of blood on the piece of curtain (Item 5).

No blood was identified on the other piece of curtain (Item 9).

DNA profiling was performed using the polymerase chain reaction at the short tandem repeat loci D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, Amelogenin, D5S818, and FGA on samples from Items 2 and 5.

The partial DNA profile from the pendant (Item 2) is insufficient for comparison purposes.

No DNA profile was obtained from the curtain (Item 5).

Please address inquiries to the office indicated, using the BCI&I case number.

BCI & I-Bowling Green Office
1616 E. Wooster St.-18
Bowling Green, OH 43402
Phone:(419)353-5603

BCI & I-London Office
P.O. Box 365
London, OH 43140
Phone:(740)845-2000

BCI & I-Richfield Office
4055 Highlander Pkwy. Suite A
Richfield, OH 44286
Phone:(330)659-4600

BCI

DNA profiling was performed using the polymerase chain reaction at the male-specific short tandem repeat loci DYS456, DYS389I, DYS390, DYS389II, DYS458, DYS19, DYS385a/b, DYS393, DYS391, DYS439, DYS635, DYS392, Y_GATA_H4, DYS437, DYS438, and DYS448 on samples from Items 7 and 8.

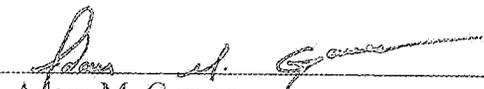
No Y-chromosome DNA profile was obtained from the fingernails (Items 7 and 8).

Remarks

The forensic DNA profile developed was not suitable for CODIS entry.

Items 1, 3, 4, and 6 were not examined.

The stain from the piece of curtain (Item 5) was consumed during analysis. Portions of the other items remain should independent analysis be requested, and additional samples may be obtained from Item 2. All remaining evidence will be returned to the submitting agency.



Adam M. Garver
Forensic Scientist
740-845-2223

adam.garver@ohioattorneygeneral.gov



Based on scientific analyses performed, this report contains opinions and interpretations by the analyst whose signature appears above. Examination documentation and any demonstrative data supporting laboratory conclusions are maintained by BCI and will be made available for review upon request.

4/5

Adam Michael Garver
Ohio Bureau of Criminal Identification and Investigation
Statement of Qualifications
London, OH 43140
(740) 845-2223
adam.garver@ohioattorneygeneral.gov

Education	Master of Science, Forensic Molecular Biology; 2006 The George Washington University, District of Columbia Bachelor of Science, Biology; 2004 <i>Magna Cum Laude</i> with Honors in the Arts and Sciences The Ohio State University, Columbus, Ohio
Professional Experience	Ohio Bureau of Criminal Identification and Investigation Forensic Scientist, DNA Section May 2006 - Present The George Washington University, Department of Forensic Science Graduate Research October 2005 – May 2006 Smithsonian National Museum of Natural History Center for Conservation and Evolutionary Genetics National Zoological Park May - August 2005 Riverside Methodist Hospital, Pharmacy Department Pharmacy Technician 2001 – 2004
Specialized Training	Freedom EVOware Operator Training and Freedom EVOware Key User Training, October 2011 BCI, Richfield Leigh Spurill Lawrence, Tecan Technical Trainer Validated AmpFISTR® Yfiler PCR Amplification Kit for Forensic Casework Use June 2010–August 2011 BCI, London Mixture Interpretation Workshop, October 2010 21 st International Symposium on Human Identification San Antonio, Texas Presenters: Butler, Coble, Cotton, Grgicak, and Word Population Statistics and Forensic DNA Analysis, February 2009 BCI, London Dr. George Carmody, Carleton University Hair Evaluation for the DNA Expert, October-December 2008 West Virginia University, Extended Learning Web Training Sessions for Forensic Analysts, December 2008 DNA.gov Ethics in Forensic Science, June 2008 West Virginia University, Extended Learning DNA Training Program, October 2006-July 2007 Ohio Bureau of Criminal Identification and Investigation

DNA Auditor Training, July 2007
Columbus Police Academy, Columbus Ohio
Heather Seubert, FBI Laboratory

Expert Witness Testimony Workshop, 2006
The Franklin County Coroner's Office
Dr. David M. Benjamin

National Incident Management System Training, 2006
FEMA

Beginning Courtroom Testimony Training, 2006
Forensic Science Institute of Ohio

Forensic Biology/DNA Training Workshop, 2006
Ohio Bureau of Criminal Identification and Investigation

Forensic Biology Training Program, 2006
Ohio Bureau of Criminal Identification and Investigation

Memberships Midwestern Association of Forensic Scientists
 American Academy of Forensic Sciences

Published Percy, Diana M., Garver, Adam M., Wagner, Warren L., James, Helen F., Cunningham, Clifford W.,
Material Miller, Scott E. and Fleischer, Robert C. Progressive island colonization and ancient origin of Hawaiian
Metrosideros (Myrtaceae), *Proceedings. Biological Sciences / The Royal Society*, 1479-1490. 2008.



MIKE DEWINE

OHIO ATTORNEY GENERAL

Bureau of Criminal Investigation

Laboratory Report

To: Hamilton County Prosecutor
Howard W. Hudson III
230 East 9th Street, Ste. 4000
Cincinnati OH 45248-2151

BCI Laboratory Number: 12-11373

Date: August 09, 2013

Agency Case Number: B958578

Offense: Homicide
Subject(s): Elwood Jones
Victim(s): Rhoda Nathan

Submitted on February 23, 2012 by Howard W. Hudson III:

- 1. Plastic bag containing envelope containing blood card from Rhoda Nathan
- 4. One plastic container with tooth belonging to Rhoda Nathan
- 6. Plastic bag containing envelope containing tooth

STR Results

DNA profiling was performed using the polymerase chain reaction at the short tandem repeat loci D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, Amelogenin, D5S818, and FGA on samples from Items 1 and 6 and compared to a previously analyzed sample from Item 4 (see report dated May 21, 2013).

The DNA profile from the teeth (Items 4 and 6) is consistent with Rhoda Nathan.

Y-STR Results

DNA profiling was performed using the polymerase chain reaction at the male-specific short tandem repeat loci DYS456, DYS389I, DYS390, DYS389II, DYS458, DYS19, DYS385a/b, DYS393, DYS391, DYS439, DYS635, DYS392, Y_GATA_H4, DYS437, DYS438, and DYS448 on a sample from Item 6 and previously performed on a sample from Item 4 (see report dated May 21, 2013).

No Y-chromosome DNA profile was obtained from the teeth (Items 4 and 6).

Conclusions

No DNA foreign to Rhoda Nathan was detected on the teeth.

Please address inquiries to the office indicated, using the BCI case number.

BCI-Bowling Green Office
1616 E. Wooster St.-18
Bowling Green, OH 43402
Phone:(419)353-5603

BCI-London Office
1560 St Rt 56 SW P.O. Box 365
London, OH 43140
Phone:(740)845-2000

BCI-Richfield Office
4055 Highlander Pkwy, Suite A
Richfield, OH 44286
Phone:(330)659-4600

Remarks

Portions of each item remain should independent analysis be requested. All remaining evidence will be returned to the submitting agency.

The DNA profiles developed were not suitable for CODIS entry.



Hallie Garofalo
Forensic Scientist
740-845-2132
hallie.garofalo@ohioattorneygeneral.gov



Based on scientific analyses performed, this report contains opinions and interpretations by the analyst whose signature appears above. Examination documentation and any demonstrative data supporting laboratory conclusions are maintained by BCI and will be made available for review upon request.



MIKE DEWINE

OHIO ATTORNEY GENERAL

Bureau of Criminal Investigation

Laboratory Report

To: Hamilton County Prosecutor
Howard W. Hudson III
230 East 9th Street, Ste: 4000
Cincinnati OH 45248-2151

BCI Laboratory Number: 12-11373
Date: May 21, 2013
Agency Case Number: B958578

Offense: Homicide
Subject(s): Elwood Jones
Victim(s): Rhoda Nathan

Submitted on February 23, 2012 by Howard W. Hudson III:

2. Brown paper bag containing pendant belonging to Rhoda Nathan
4. One plastic container with tooth belonging to Rhoda Nathan

Results

DNA profiling was performed using the polymerase chain reaction at the short tandem repeat loci D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, Amelogenin, D5S818, and FGA on a sample from Item 4.

The DNA profile from the tooth (Item 4) is from an unknown female.

DNA profiling was performed using the polymerase chain reaction at the male-specific short tandem repeat loci DYS456, DYS389I, DYS390, DYS389II, DYS458, DYS19, DYS385a/b, DYS393, DYS391, DYS439, DYS635, DYS392, Y_GATA_H4, DYS437, DYS438, and DYS448 on a sample from Item 4 and on a previously extracted sample from Item 2 (see report dated August 31, 2012).

No Y-chromosome DNA profile was obtained from the pendant (Item 2) or the tooth (Item 4).

Remarks

Portions of each item remain should independent analysis be requested. All remaining evidence will be returned to the submitting agency.

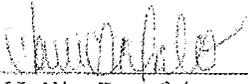
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1560 St Rt 56 SW P.O. Box 365
London, OH 43140
Phone:(740)845-2000

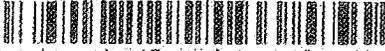
BCI -Richfield Office
4055 Highlander Pkwy, Suite A
Richfield, OH 44286
Phone:(330)659-4600

The DNA profile developed was not suitable for CODIS entry.



Hallie Garofalo
Forensic Scientist
740-845-2132

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Based on scientific analyses performed, this report contains opinions and interpretations by the analyst whose signature appears above. Examination documentation and any demonstrative data supporting laboratory conclusions are maintained by BCI and will be made available for review upon request.