

ORIGINAL

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO	:	NO. 2014-0338
Plaintiff-Appellee	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District
vs.	:	
ROBERT HUNTER	:	Court of Appeals Case Number C-130061
Defendant-Appellant	:	

MEMORANDUM IN RESPONSE

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Explanation of why this case is not a case of public or great general interest and does not involve a substantial constitutional question

There was but one issue in this case that would have merited this Court's attention. That issue was whether the admission of a DNA report prepared by an expert that was not taking the stand could be admitted as a business record.

This Court recently answered that question in *State v. Maxwell*, Slip Opinion No. 2014-Ohio-1019. In *Maxwell*, this Court ruled that the admission of such a business record was constitutional. Because the only noteworthy issue raised in this appeal has been addressed by this Court, jurisdiction should be declined.

Statement of the case and facts

A jury found Robert Hunter guilty of having weapons while under disability and carrying concealed weapons.

DNA evidence was used to tie Hunter to the gun the police recovered in this case. While a new sample was taken from Hunter, the DNA analyst found a 2009 DNA profile of a Robert Hunter that matched Hunter's name, date of birth, sex, and race.¹ Because she found data from previous testing, the expert used the 2009 DNA profile data instead of analyzing the swab taken from Hunter at the time he was arrested.²

Hunter objected to the use of the 2009 DNA profile. He argued that it was testimonial evidence and, since the state's expert did not generate the data found in the 2009 DNA profile data, it was inadmissible hearsay evidence.³ After the state showed that the 2009 DNA profile data was a business record, the trial court allowed the expert to testify as to her interpretation of the 2009 DNA profile data and the DNA profile data obtained from the gun.⁴

¹ T.p. 407; State's Exhibits 14 & 15.

² T.p. 396.

³ T.p. 382-386.

⁴ T.p. 415-428.

Argument in support of proposition of law

Proposition of Law No. 1: A DNA report that is neither prepared for the primary purpose of accusing a targeted individual nor prepared for the primary purpose of providing evidence in a criminal trial is nontestimonial, and its admission into evidence at trial under Evid. R. 803(6) as a business record does not violate a defendant's Sixth Amendment confrontation rights.

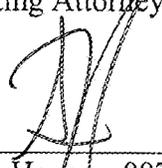
The issue presented in this case is, for all practical purposes, the exact issue that this Court just addressed in *State v. Maxwell*, Slip Opinion No. 2014-Ohio-1019. The only difference is that *Maxwell* dealt with an autopsy report, whereas this case deals with a DNA report. That is a distinction without a difference. As such, this Court has already addressed the only noteworthy issue presented in this case. In turn, this Court should decline jurisdiction over this appeal.

Conclusion

The only issue that was once worthy of this Court's attention in this case was resolved via the *State v. Maxwell* decision. As such, this Court should decline jurisdiction over this matter.

Respectfully,

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Proof of Service

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Josh Thompson, 210 E. 9th St, 3rd Floor, Cincinnati, Ohio 45202, counsel of record, this 20 day of March, 2014.



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