ORIGINAL

IN THE SUPREME COURT OF OHIO

14-1298

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
-vs-	:	Case No. 07-CR-04216
DAVID A. FARMER,	:	2nd Dist. No. 25956
Defendant-Appellant.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION

FOR APPELLANT:

David A. Farmer, #A585-458
London Corr. Inst.
P.O. Box 69
London, Ohio 43140-0069

Appellant, in pro se

FOR APPELLEE:

Kirsten A. Brandt (#0070162)
301 W. 3rd St.
Dayton, Ohio 45422

Assistant Montgomery County
Prosecuting Attorney

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Where a defendant in a criminal case discovers exculpatory material withheld by the prosecution beyond the 120 day period set forth in Criminal Rule 33 for the filing of a timely Motion for New Trial, leave to proceed with a delayed Motion for New Trial, when properly sought, must be granted.

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State v Farmer, 2nd Distr. No. 25956, 6/27/14 (9 pp)

JURISDICTIONAL STATEMENT

This case presents substantial constitutional questions regarding due process of law and the discovery, subsequent to 120 days after the verdict, of exculpatory "Brady" information withheld by the prosecution in a criminal case, and the determination of whether to grant leave to file a delayed Motion for New Trial under Ohio Criminal Rule 33.

The question before this court is whether the unpublished local decisions asserting that a defendant must show that he presented his request for such leave within a "reasonable time" after the expiration of the initial 120 day period, as controlling so as to uphold the denial of the ability to present the exculpatory evidence.

In this particular case, the "Brady" material is impeachment evidence regarding the state's expert witness who testified regarding asserted DNA evidence which was instrumental in obtaining the verdict in this case. The prosecution withheld the information, the defendant discovered it years later and the court disallowed it because, although the defendant established that he could not have discovered it within 120 days of the verdict, he did not specify the exact date upon which it was discovered.

Appellant asserts that the rule does not require a minute by minute explanation, but rather only requires a showing that he was "unavoidably prevented" from discovering the evidence within 120 days of the verdict. The Court of Appeals' ruling seeks to change the plain language of the Rule and this Court should accept jurisdiction not only to correct the error, but also to

regularize the application of the Rule throughout Ohio courts.

STATEMENT OF THE CASE

Appellant was convicted of two counts of rape and one count of gross sexual imposition in 2008 in Montgomery County Common Pleas Case No. 07-CR-4216. The verdict was obtained largely through the testimony of the state's DNA "expert" Amy Rismiller, which resulted in the guilty verdicts and the resultant sentence of twenty years to life.

In 2013, Appellant discovered that Ms. Rismiller had, prior to trial, been disciplined for mishandling DNA evidence and providing false testimony relating thereto. This was discovered only through the fortuitious chance of discovering a case in the prison law library, **State v Scott**, Mont. App. No. 22745 (Citation unavailable). Notably, the prosecutor knew about the information, which was devasstating to the credibility of this primary state witness and, in direct violation of due process, failed to disclose it.

On May 23, 2014, Appellant filed a Motion for Leave to file Delayed Motion for New Trial. The trial court arbitrarily denied the motion.

On timely direct appeal, the Court of Appeals, on June 27, 2014, held that Appellant failed to show that he filed the "Leave" Motion within a reasonable time because he failed to give a specific accounting for the time after the initial 120 day period elapsed.

This timely appeal follows.

STATEMENT OF FACTS

State witness Amy Rismiller testified at trial that alleged DNA samples swabbed from his penis contained a mixture from which the complaining witness and he could not be excluded. This, of course, was translated to the jury as a "match", which resulted in the conviction of Appellant in this case.

Amy Rismiller has a history of mishandling DNA evidence and of providing false testimony about it, as reflected in State v Scott and other subsequent cases. Appellant was not advised of this credibility information by the prosecution prior to trial and had no way to even know to look for it within 120 days of the verdict.

When the DNA "match" testimony is removed from the equation at trial, the only thing remaining is the inconsistent and contradictory testimony of the complaining witness and her friend which is both internally individually inconsistent and inconsistent with each other.

Appellant's chancing upon the fact that Amy Rismiller's credibility was nonexistent with regards to testing procedures and testimony relating thereto occurred beyond the 120 day period set forth in Crim. R. 33, as he demonstrated in his "Leave" Motion.

Appellant found nothing in Crim. R. 33 which requires him to provide a minute by minute explanation from the date of discovery through the date of the filing of the "leave" motion, yet this is the reason the Court of Appeals upheld the denial of the "Leave" Motion.

PROPOSITION OF LAW NO. I:

WHERE A DEFENDANT IN A CRIMINAL CASE DISCOVERS EXCULPATORY EVIDENCE WITHHELD BY THE PROSECUTION BEYOND THE 120 DAY PERIOD SET FORTH IN CRIMINAL RULE 33 FOR THE FILING OF A TIMELY MOTION FOR NEW TRIAL, LEAVE TO PROCEED WITH A DELAYED MOTION FOR NEW TRIAL, WHEN PROPERLY SOUGHT, MUST BE GRANTED.

LAW AND ARGUMENT

Ohio Criminal Rule 33(B) states, in pertinent part:

> "Motions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered or the decision of the court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from discovering the evidence within the one hundred twenty day period." (id)

Notably, there is no specific provision in the rule as to the time line for filing the Motion for "leave" upon the actual discovery of the extant evidence, but merely that, once the 120 day period has elapsed, a showing that the defendant was unavoidably prevented from discovering the evidence <u>within that 120 day period</u> is all that is required.

The Court of Appeal sin this case made much of the fact that Appellant did not cite a specific date that he did discover the evidence in this case, overlooking the fact that the pleadings were in compliance with the rule in admitting that it was beyond the 120 day period.

Notably, the State v Scott decision in which the evidence destroying the credibility of the state's DNA 'expert', Amy Rismiller, was not published until beyond 120 days past the verdict in this case. Appellant submits that this fact, in and of

itself, is "clear and convincing evidence" that he was not able to discover the facts, which were withheld by the prosecution, demonstrating Amy Rismiller's prior pattern of mishandling DNA evidence and presenting false testimony relating thereto.

Appellant submits that, once the "clear and convincing evidence" that the mode and manner of discovery were unavailable to him within 120 days of the verdict was presented, the trial court was obligated to grant leave to proceed with the Motion for New Trial. The rule presents no additional hurdles.

The Court of Appeals expanded upon the trial court's denial, stating that, since Appellant did not cite a specific date that he inadvertantly and fortuitously discovered this withheld evidence, then he could not demonstrate that he filed the "Leave" motion within a "reasonable time" of the discovery, citing unpublished cases including **State v McConnell**, 2d Dist. Montgomery No. 24315, 2011-Ohio-5555; **State v Davis**, 9th Dist. Lorain CNo. 12CA10256, 2013-Ohio-846 and **State v Caulley**, 10th Dist. Franklin No. 12AP-100, 2012-Ohio-2649 (Decision at 8) none of which are either published or controlling, and none of which demonstrate any foundation in any of the legislatively enacted language of Crim. R. 33.

Appellant notes that he was never placed on notice by the plain and mandatory language of the Rule that he would be required to make any additional showing beyond that he was "unavoidably prevented from discovering the evidence upon which he must rely within 120 days of the verdict" as set forth by rule and, to alter the standard is to deprive him of procedural due

process of law and susbtantive due process of law where he was not provided notice. See, e.g. **LaChance v Erickson** (1998) 522 U.S. 262 (Notice and opportunity to be heard are the two fundamental ingredients of Due Process of Law).

Appellant further notes that some courts take into consideration issues such as length of sentence when determining whether a "leave" motion is filed within a "reasonable time", see e.g. **State v Burke**, 2005-Ohio-891. Appellant is serving a life sentence in this case for crimes which not only he did not commit, but actually never occurred at all.

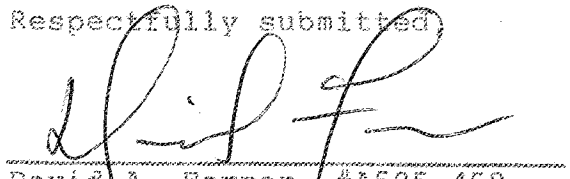
The false testimony of Amy Rismiller, who was known to have zero credibility and to have been professionally reprimanded for it by the prosecution prior to trial, yet the information was actively withheld from Appellant, was instrumental in obtaining the wrongful conviction in this case.

Appellant submits that altering the standards for granting leave to proceed with a delayed Motion for New Trial was both erroneous and violative of due process of law, and reversal is warranted.

CONCLUSION

For the foregoing reasons, this Court should accept jurisdiction, conduct full briefing and, ultimately, reverse the lower courts, and Appellant so prays.

Respectfully submitted,



David A. Farmer, #A585-458
London Corr. Inst.
P.O. Box 69
London, Ohio 43140-0069
Appellant, in pro se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent to the office of the Montgomery County Prosecutor, 301 W. 3rd St., Dayton, Ohio 45422, via regular U.S. Mail, on this 15 day of July, 2014.

David A. Farmer
Appellant, in pro se

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

STATE OF OHIO	:	
Plaintiff-Appellee	:	Appellate Case No. 25956
v.	:	Trial Court Case No. 07-CR-4216
DAVID A. FARMER	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

. . . . . .

OPINION

Rendered on the 27th day of June, 2014.

. . . . . .

MATHIAS H. HECK, JR., by KIRSTEN A. BRANDT, Atty. Reg. #0070162, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45402
Attorney for Plaintiff-Appellee

DAVID A. FARMER, #A585-458, London Correctional Institution, Post Office Box 69, London, Ohio 43140-0069
Defendant-Appellant, *pro se*

. . . . . .

HALL, J.,

{¶ 1} David Farmer appeals pro se from the trial court's decision and entry overruling his motion for leave to file a delayed motion for a new trial.

{¶ 2} In his sole assignment of error, Farmer challenges the trial court's finding that he was not unavoidably prevented from discovering a witness's history of mishandling evidence and that this allegedly withheld information was not material.

{¶ 3} The record reflects that Farmer was arrested in 2007 on two counts of rape and one count of gross sexual imposition involving a young child. Thereafter, the trial court partially sustained a motion to suppress evidence. It denied the motion, however, with respect to DNA test results. At trial, the victim testified about what had happened. The State also presented eyewitness testimony from the victim's cousin. In addition, DNA expert Amy Rismiller testified that saliva found on Farmer's penis contained a mixture of his and the victim's DNA. A jury found him guilty on all counts in 2008, and the trial court imposed an aggregate sentence of twenty years to life in prison. This court affirmed on direct appeal on November 13, 2009. *See State v. Farmer*, 2d Dist. Montgomery No. 22852, 2009-Ohio-6013. Three and one-half years later, on May 23, 2013, Farmer filed a motion for leave to file a delayed motion for a new trial. Accompanying the motion for leave was a copy of the proposed new-trial motion. (Doc. #2-3). The trial court denied Farmer leave to file his motion. (Doc. #10). This appeal followed.

{¶ 4} Under Crim.R. 33(A)(6), a convicted defendant may move for a new trial "when new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial." Pursuant to Crim.R. 33(B), such a motion must be filed within 120 days after the verdict unless the trial court finds by clear and convincing evidence that the defendant was unavoidably prevented from discovering the evidence sooner. A defendant is unavoidably prevented from moving for a new trial if he had no knowledge of the ground supporting the motion and with reasonable

diligence could not have learned of that ground within the time prescribed for filing the motion. *State v. Isa*, 2d Dist. Champaign No. 2013CA20, 2014-Ohio-139, ¶ 8. We review the denial of a motion for leave to file a delayed new-trial motion for an abuse of discretion. *State v. Portis*, 2d Dist. Clark No. 2012-CA-76, 2013-Ohio-1822, ¶ 2.

{¶ 5} In his motion for leave, Farmer cited two pieces of newly discovered evidence: (1) the fact that Rismiller previously had been disciplined for contaminating DNA samples and (2) the fact that the trial court did not hold a competency hearing for the complaining witness, who was under ten years of age. Farmer claimed he fortuitously discovered the first fact while performing legal research in prison and coming across the case of *State v. Scott*, 2d Dist. Montgomery No. 22745, 2010-Ohio-1919, which we note was filed and publicly released April 30, 2010. He argued that Rismiller's disciplinary history was impeachment evidence that the State had failed to disclose even though the discipline had preceded his trial.[1] Neither Farmer's motion nor his accompanying affidavit specified when he had found the *Scott* case. With regard to the second fact, the lack of a competency hearing, Farmer claimed his trial attorney falsely told him a hearing had been held. According to Farmer, he did not learn otherwise until he received a copy of the full docket

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[1]In *Scott*, the defendant unsuccessfully "sought to question Rismiller about a memorandum from her technical leader at the Miami Valley Regional Crime Lab to a supervisor about prior, unrelated contamination of DNA evidence during analysis, a matter for which she had apparently been disciplined in the past." *Scott* at ¶ 41. The nature, extent or time frame of the purported discipline, or whether it had any impact on 2008 forms of DNA analysis was not part of the record. Upon review, this court opined that "the defense, in an attempt to impeach an expert opinion, should have been permitted to cross-examine Rismiller about any documented issues concerning her handling of specimens, even if her specific role in the prior case were different from the her role in Scott's case (*i.e., the collection v. the analysis of DNA evidence*)." *Id.* at ¶ 42. This court ultimately found the denial of cross examination to be harmless error, however, in light of the substantial evidence against Scott. *Id.* at ¶ 43.

sometime in 2011.

{¶ 6} In denying Farmer's motion for leave, the trial court first noted that the record belied his claim about the lack of a competency hearing. The trial court cited a June 17, 2008 entry in which it found the child victim competent to testify following an in camera hearing. Farmer has conceded that issue on appeal. With regard to Rismiller's disciplinary history, the trial court made three findings: (1) that her name and contact information were provided in discovery and defense counsel could have questioned her about her DNA handling practices before trial; (2) that the *Scott* decision was issued on April 30, 2010 and Farmer had failed to explain why he waited until May 23, 2013 to seek leave to file a delayed new-trial motion; and (3) that the non-disclosure of Rismiller's past discipline did not materially affect his substantial rights or deny him a fair trial in any event.

{¶ 7} For present purposes, we will focus on the trial court's first two findings, which are dispositive of Farmer's motion for leave. In support of the first finding, the trial court reasoned:

> In the case at bar, on June 12, 2008, the prosecution filed the *State of Ohio's Written List of Witnesses*. Among the witness[es] listed: "AMY RISMILLER, Miami Valley Regional Crime Laboratory, 361 West Third Street, Dayton, Ohio 45402." *Id.* Thus, at least eleven days prior to the commencement of the trial, the defense was placed on notice that Ms. Rismiller would be a State's witness. As in *State v. Portis*, supra, there is no reason why Mr. Farmer's attorney could not have spoken to Ms. Rismiller prior to trial. In cases involving forensic evidence, "chain of custody" is always a potential trial issue. A reasonably diligent interview would have included

> questioning Rismiller regarding the policy and practice of the Miami Valley Regional Crime Laboratory in the handling of DNA specimens—and whether she has been in compliance with that policy and practice. Therefore, this Court finds Mr. Farmer failed to present clear and convincing evidence that he was unavoidably prevented from discovering this evidence within the time set forth in Crim.R. 33(B). For this reason, his motion is untimely.

(Doc. #10 at 4).

{¶ 8} On appeal, Farmer contends his knowledge of Rismiller's name on a witness list does not mean that with reasonable diligence he should have discovered her prior discipline within the time required by Crim.R. 33(B). In our view, the issue is a close one. Based on our review of the record, however, we cannot say the trial court's resolution of the issue was unreasonable. Therefore, we find no abuse of discretion.

{¶ 9} In *State v. Schiebel*, 55 Ohio St.3d 71, 564 N.E.2d 54 (1990), the Ohio Supreme Court held that two defendants had failed to show by clear and convincing evidence that they were unavoidably prevented from discovering juror misconduct. In reaching this conclusion, the court noted that defense counsel could have interviewed jurors about any potential misconduct but did not. The court reasoned: "It cannot be said with any degree of probability, let alone conclusively, that [the defendant] was unavoidably prevented from discovering any alleged misconduct * * * since none of his attorneys asked about juror misconduct, outside influence, tampering or other improper conduct which could have been identified and proved by means of outside sources." *Id.* at 75.

{¶ 10} In the *Portis* case cited by the trial court below, the defendant was convicted of complicity in the commission of a robbery. He later sought leave to file a delayed motion

for a new trial based on newly discovered evidence. Specifically, he claimed that he recently had discovered previously undisclosed police interviews of two witnesses who allegedly possessed exculpatory information. The trial court denied the motion. This court affirmed, reasoning:

> * * * In the case before us, Portis was not unavoidably prevented from discovering the existence of the witnesses, or the content of their testimony, because their names were disclosed on the police report furnished to Portis's attorney.
>
> Specifically, the documents attached to Portis's motion indicate that the State provided defense counsel with a discovery packet on January 3, 2008. The packet included law enforcement reports. A copy of the police report, which is also attached to Portis's motion, lists Buck and Schoneberger as other persons who were arrested in connection with the offense. In addition, the report contains their birth dates and telephone numbers. Because the identities of Buck and Schoneberger, and their contact information, were disclosed in January 2007, there is no reason why either Portis or his attorney could not have spoken to these individuals prior to the trial, which was held more than two months later.

Portis at ¶ 20-22.

{¶ 11} Similarly, the trial court here reasonably concluded that Farmer had not shown, by clear and convincing evidence, that he was *unavoidably prevented* from discovering information about Rismiller's prior discipline. As the trial court correctly noted, Farmer knew Rismiller's name and contact information. The record does not demonstrate

that his attorney made any effort to speak with her. Under these circumstances, we cannot say the trial court abused its discretion in denying Farmer's motion for leave.

{¶ 12} But even if we were to accept Farmer's claim that he could not have been expected to discover Rismiller's prior discipline with reasonable diligence because his attorney had no reason to inquire about it, we still would find no abuse of discretion in the trial court's ruling. As an independent basis for denying Farmer's motion, the trial court noted that the *Scott* decision, which allegedly put him on notice of the disciplinary issue, was decided more than three years before he sought leave. The trial court reasoned:

> Mr. Farmer states that "It was not until I happened to be reading some cases on LEXIS at the prison library that I happened to see the State v. Scott case in which it discussed her [Rismiller] having been subjected to professional discipline for botching previous work." *Affidavit of Defendant.*
>
> The decision of *State v. Scott*, Montgomery App. No. 22745, was issued on April 30, 2010. Notably, this decision was rendered by the same appellate court that considered Mr. Farmer's own appeal (Montgomery App. No. 22852). It is not until three years after the *Scott* decision was issued that Mr. Farmer—in reliance upon *Scott*—has filed his *Motion for Leave to File Delayed Motion for New Trial*. Stated differently, nine 120-day time periods have elapsed since the issuance of [the] *Scott* decision and Mr. Farmer filing his *Motion*.
>
> This Court finds the following: Through the exercise of due diligence, the *Scott* decision—upon which Mr. Farmer relies—could have been discovered much earlier than three years after that decision was issued.

> Therefore, this Court finds Mr. Farmer has not sought leave to file a motion for new trial within a reasonable time[;] through the exercise of due diligence, he could have discovered the evidence—reported in the *Scott* decision—pertaining to Ms. Rismiller's disciplinary action.

(Doc. #`10 at 5-6).

{¶ 13} Assuming that Farmer reasonably could not have filed a new-trial motion within 120 days after the jury's verdict because *Scott* was not decided until April 2010, he still was required to seek leave within a *reasonable time* after discovering *Scott*. *State v. McConnell*, 2d Dist. Montgomery No. 24315, 2011-Ohio-5555, ¶ 20 ("After the 120 days have elapsed the party seeking leave to file a motion for new trial must prove he or she was unavoidably prevented from discovering the new evidence and filing his or her motion within the prescribed period. Once the evidence is known to the defendant, caselaw dictates that it is incumbent upon him to act within a reasonable time period."); *State v. Davis*, 9th Dist. Lorain No. 12CA010256, 2013-Ohio-846, ¶ 10 ("In the present matter, Mr. Davis' motion and affidavit fail to provide clear and convincing proof as to why he was unavoidably prevented from discovering the telephone records in a timely manner. Also, Mr. Davis provides no explanation as to why it was reasonable for him to wait an additional eight months to file his motion for leave after obtaining the telephone records."); *State v. Caulley*, 10th Dist. Franklin No. 12AP-100, 2012-Ohio-2649, ¶ 12 ("In addition to demonstrating that he was unavoidably prevented from discovering the evidence relied upon to support the motion for new trial, a defendant seeking leave to file a delayed motion for new trial also must show that the motion for leave was filed within a reasonable time after discovering the evidence relied upon to support the motion for new trial.").

{¶ 14} Notably absent from Farmer's motion for leave and the accompanying affidavit is any indication *when* he saw the *Scott* decision. He professed to have found it while reading case law in the prison law library but did not specify when that event occurred. In light of the unexplained three-year delay between the issuance of *Scott* and the filing of Farmer's motion for leave, we believe he failed to demonstrate that he filed the motion within a reasonable time after discovering *Scott*. For this additional reason, the trial court did not err in denying his motion for leave to file a delayed new-trial motion.

{¶ 15} The sole assignment of error is overruled, and the judgment of the Montgomery County Common Pleas Court is affirmed.

. . . . . .

FAIN, and WELBAUM, JJ., concur.

Copies mailed to:

Mathias H. Heck
Kirsten Brandt
David Farmer
Hon. Dennis J. Langer

Miami Valley Regional Crime Laboratory
361 West Third Street, Dayton, Ohio 45402
Phone (937) 225-4990 FAX (937) 496-7916
Kenneth M. Betz, Director

RECEIVED
JUN 21 2011
BY

FILE COPY

TO: Investigations Division
Dayton Police Department

February 20, 2008

SUBJECT: Laboratory Case 07-014868 - Sexual Assault occurring at 815 Conners on October 12, 2007 (Agency Case # 07-10120166)

Complainant: Render, Morisha
Subject: Farmer, David

The following evidence was received by the Laboratory for analysis:

Submission 002: One Sexual Assault Evidence Collection Kit labeled "Render, Morisha" containing:

Vaginal swabs and smear
Rectal swabs and smear
Oral swabs and smear
[Blood standard]
Nail Scrapings
[Head Hair Standard]

Submission 004: One large manila envelope tagged 307331 containing:

004a: One plastic bag labeled "...R thumb..." containing one swab
004b: One plastic bag labeled "...L thumb..." containing one swab
004c: One plastic bag labeled "...L ring..." containing one swab
004d: One plastic bag labeled "...L little..." containing one swab
004e: One plastic bag labeled "...R Index..." containing one swab
004f: One plastic bag labeled "...R Ring..." containing one swab
004g: One plastic bag labeled "...R little..." containing one swab
004h: One plastic bag labeled "...L index..." containing one swab
004i: One plastic bag labeled "...L middle..." containing one swab
004j: One plastic bag labeled "...R Middle..." containing one swab
004k: One manila envelope labeled "...Penis Swab..." containing one swab packet labeled "...David A. Farmer..." containing two swabs
004l: One plastic bag labeled "...Mouth... " containing two swabs

RESULTS AND CONCLUSIONS

Serological analysis of the vaginal swabs, rectal swabs and oral swabs failed to indicate the presence of semen.

No examinations were performed on the vaginal smear, rectal smear and oral smear.

The victim's blood standard has been retained at the Laboratory.

Submissions 4a-l have been retained at the Laboratory.

DNA analysis was performed on the swabbings from right hand (4a, e-f, g and j), left hand (4b-d, h and i), penis

(4k) along with the standards from Morisha Render (2) and David Farmer (41). These samples were subjected to the polymerase chain reaction (PCR) at the following short tandem repeat (STR) loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, D5S818 and FGA in addition to Amelogenin, the gender marker.

No DNA foreign to the suspect was detected on the swabbings from the left hand (4b-d, h and i) and the right hand (4a, e-f, g and j).

A mixed DNA profile was obtained from the penis swabs (4k) and the major component is consistent with David Farmer. Morisha Render (2) cannot be excluded as a possible contributor to this mixed DNA profile at D8S1179, D21S11, TH01, D13S317 and D5S818. The probability of an unrelated individual contributing to this mixed DNA profile at the loci listed above is approximately:

1 in 206 African-Americans
1 in 528 Caucasians
1 in 1,408 Southwestern Hispanics

The profile obtained from David Farmer (41) will be entered into SDIS, the state DNA database.

The sexual assault kit (2) was forwarded to the Trace Evidence Section.

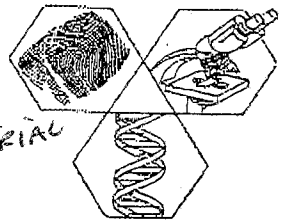
Submission 4 has been returned to the submitting agency.

Respectfully,

Amy Rismiller

Amy Rismiller
Forensic Scientist

DID NOT RECEIVE UNTIL A WEEK BEFOR TRIAL



Miami Valley Regional Crime Laboratory

361 West Third Street, Dayton, Ohio 45402
Phone (937) 225-4990 FAX (937) 496-7916
Kenneth M. Betz, Director

TO: Detective J. Vandiver
Dayton Police Department

February 21, 2008

SUBJECT: Laboratory Case 07-018177 - Sexual Assault occurring at 815 Conners St. on October 12, 2007 (Agency Case # 07-10120164)

Complainant: Render, Monisha
Subject: Farmer, David A.

The following evidence was received by the Laboratory for analysis:

Submission 001: One brown paper package tagged 307263 containing one brown paper bag containing:
- **001a:** One white paper bag labeled "...Sweat Pants..." containing one pair purple sweat pants
- **001b:** One white paper bag labeled "...Shirt..." containing one green thermal shirt
- **001c:** One white paper bag labeled "...underpants..." containing one pair coral underwear

Submission 002: One brown paper bag tagged 307196 containing one maroon fleece blanket

NO D.N.A. OF DAVID FARMER

NO DNA OF MONISHA

RESULTS AND CONCLUSIONS

Serological analysis of the sweat pants (1a), shirt (1b), underwear (1c) and the blanket (2) failed to indicate the presence of semen. OR DNA of MONISHA!

Submission 2 was forwarded to the Trace Evidence Section.

Submission 1 is available for pickup. NOTHING FOUND!

Respectfully,

Amy Rismiller

Amy Rismiller
Forensic Scientist

THE CHILDREN'S MEDICAL CENTER
EMERGENCY SERVICES

NAME: RENDER, MORISHA MARIE
815 CONNERS STREET
DAYTON, OH 45408
DATE OF BIRTH: 10/16/1998
ACCOUNT NUMBER: 1779074
MEDICAL RECORD: 515407
DATE OF SERVICE: 10/12/2007
FAMILY PHYSICIAN:

ATTENDING PHYSICIAN: William Matre, MD
RESIDENT:

UNLESS A PHYSICIAN ELECTRONIC SIGNATURE APPEARS BELOW, THIS CHART IS A PRELIMINARY COPY ONLY THAT HAS NOT BEEN REVIEWED OR SIGNED BY THE EMERGENCY SERVICE ATTENDING PHYSICIAN. IT HAS BEEN PRINTED FOR IMMEDIATE PATIENT CARE NEEDS ONLY AND IS NOT THE FINAL, PERMANENT RECORD.

CHIEF COMPLAINT AND HISTORY OF PRESENT ILLNESS: This is an 8-year-old black female brought in by police and CSB for evaluation of sexual abuse. The young lady was discovered while being abused by aunt's boyfriend. By history, the man had his penis in her mouth. Please see Social Services note for more complete history.

REVIEW OF SYSTEMS:

PHYSICAL EXAM: This is an alert, cooperative young lady whose mouth and throat are within normal limits. Mucus membranes are moist. Neck is supple. Tympanic membranes are within normal limits bilaterally. Lungs are clear with a respiratory rate of 20. Heart has a regular sinus rhythm without murmur. Abdomen is soft and nontender without organomegaly or palpable masses. No significant rashes or petechial rashes were seen. There are no signs of trauma to the face, trunk, or extremities. There are no signs of trauma to the inner thighs; it is Wood's lamp negative. Her mouth is Wood's lamp negative. On examination of her genitalia, the hymenal opening appears within normal limits and there are no signs of lacerations to the hymen; there is no notching of the hymen. There is localized mild redness just inferior to the clitoris. There is no bruising, there is no bleeding, there are no lacerations. There are no posterior fourchette lacerations. The anus is within normal limits with no signs of trauma.

MEDICAL DECISION MAKING: Treatment: A rape kit was done and cultures were sent to our lab for GC and Chlamydia. A wet mount was done, which was negative. We also did a throat swab for GC. HIV testing was also done. The exam results were explained to the family. The child will go home to follow up with CSB and the police.

DISCHARGE: She was discharged to home.

IMPRESSIONS: Sexual abuse.

\: hs /: 3350 ID: 001309185
ACCT: 1779074 MR: 515407 DD: 10/12/2007 DT: 10/16/2007
ED

John M. Ruffolo, Bar Counsel
William B. Wheeler, Executive Director

March 14, 2013

PERSONAL & CONFIDENTIAL

David A. Farmer #585458
London Correctional Institution
P.O. Box 69
London, OH 43149

Re: Grievance Complaint against Attorney Marc Greenberg

Dear Mr. Farmer:

I have received and reviewed your letter dated February 8, 2013 directed to the Dayton Bar Association (DBA) in my capacity as Bar Counsel for the Association. I am very sorry that you have had an unpleasant experience with the legal system. The Dayton Bar Association, through its Certified Grievance Committee, is responsible for the investigation of violations of Ohio Rules of Professional Conduct by attorneys for matters that occurred after February 1, 2007.

However, before the Certified Grievance Committee reviews your grievance, it is my responsibility to determine if you have a grievance that appears to violate the Rules.

Your complaint concerns the representation of Attorney Marc Greenberg on your behalf in Case No. 07 CR 4216 in Montgomery County Common Pleas Court. Mr. Greenberg was representing you on your appeal. Apparently, before Mr. Greenberg completed your appeal his law license was suspended. However, it appears from your letter that he had his former firm file the appeal. Further, the appeal was unsuccessful and you have been attempting to file your own appeal. You have requested the assistance of the DBA in obtaining new appointed counsel for you. Be advised that the DBA Certified Grievance Committee is without jurisdiction to appoint counsel. You need to obtain appointed counsel from the Court.

Therefore, without in any way attempting to minimize your complaint, I do not find that you have stated any violation of the Ohio Rules of Professional Conduct. Accordingly, I am dismissing your grievance.

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