

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

STATE OF OHIO,

Plaintiff, **FILED**
COURT OF COMMON PLEAS

CASE NO.: 1995 CR 00220

vs.

JUN 27 2014

JUDGE JOHN A. ENLOW

TYRONE LEE NOLING,

LINDA K. FANKHAUSER, CLERK,
PORTAGE COUNTY, OHIO

JUDGMENT ORDER

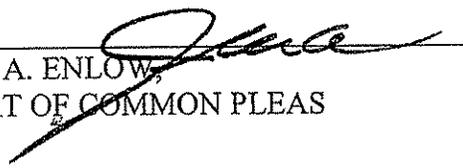
Defendant.

This matter is before the Court on remand from the Supreme Court to determine whether or not the cigarette butt was to be tested. The Court did allow the Defendant to amend his request to include State's Exhibits 2, 3, 4, 5, 6, 7, 13, 14, 16 and 17. The Court then ordered the Ohio Bureau of Criminal Identification, pursuant to Ohio Revised Code section 2953.73, to determine the quantity and quality of the parent sample of biological material found at the crime scene in this case; whether there is a scientifically sufficient quantity of the parent sample to test; whether the parent sample is so minute or fragile that there's a substantial risk that the parent sample could be destroyed; and whether the parent sample has been degraded or contaminated to the extent that it has become scientifically unsuitable for testing.

The Court finds that B.C.I. has filed a report indicating that all of these items are contaminated to the extent that they are scientifically unsuitable for testing; therefore, the Court would find that those exhibits do not comply with Ohio Revised Code section 2953.74(C)(2)(c); therefore, the amended application cannot be accepted and is therefore dismissed.

A copy of the report is attached and marked as Exhibit A.

IT IS SO ORDERED.


JOHN A. ENLOW,
COURT OF COMMON PLEAS

cc: File
Prosecutor Victor Viglucci
Attorney Carrie Wood
BCI Richfield
Mike DeWine, Ohio Attorney General
PCSO

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This matter came on for hearing on Defendant's motion for a copy of complete DNA test results, and the State's response to said motion.

The Court, upon considering briefs, finds the motion is not well taken and is, therefore, overruled.

IT IS SO ORDERED.



JOHN A. ENLOW,
COURT OF COMMON PLEAS

cc: File
Prosecutor Victor Vigluicci
Attorney Carrie Wood
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PCSO

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

STATE OF OHIO,

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COURT OF COMMON PLEAS

CASE NO.: 1995 CR 00220

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NOV 25 2013

JUDGE JOHN A. ENLOW

TYRONE LEE NOLING,

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JUDGMENT ORDER

Defendant.

On December 28, 2010, Defendant filed a second application for DNA testing on a cigarette butt. The Court denied the petition, and Defendant appealed to the Supreme Court. The Supreme Court reversed and remanded to this trial Court "to consider whether prior definitive DNA testing precludes appellant Tyrone Noling's second application for post-conviction DNA testing. If not, the trial Court should consider whether new DNA testing would be 'outcome determinative'."

The Defendant has filed a motion for leave to amend his application for DNA testing to include shell casings and ring boxes found at the scene of the homicide.

The Court, upon considering the Defendant's motion to amend his application for DNA testing pursuant to Revised Code 2953.71 to 2953.81, finds those statutes indicate that the rules of criminal procedure apply unless the statutes provide a different procedure or that they would be clearly inapplicable. The criminal rules of procedure do not allow for amendments.

The Court would find the criminal rules of procedure further state, in Rule 57(B), "If no procedure is specifically prescribed by rule, the Court may proceed in any lawful manner not inconsistent with these rules of criminal procedure and shall look to the rules of civil procedure."

The Court would further find that Civil Rule 15(A) Amendments states that, "Leave of Court shall be freely given when justice so requires."

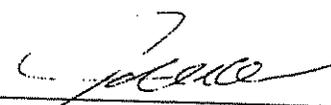
The Court would further find that, for judicial economy, and in the interest of justice, it is

to everyone's benefit to grant the motion for leave to amend; therefore, Defendant's application for DNA testing is amended to include the shell casings in State's Exhibits 2, 3, 4, 5, 6, 7, 13, 14 and 17, and the ring boxes in State's Exhibit 16, as described in their motion.

The Court would further find that there has been no definitive DNA testing on either the shell casings or the ring boxes

The Court would further find that there is no Ohio statutory procedure to submit the shell casings to NIBIN for comparison; therefore, the Defendant's motion is overruled.

IT IS SO ORDERED.



JOHN A. ENLOW,
COURT OF COMMON PLEAS

cc: File
Prosecutor Victor Vigluicci
Attorney Carrie Wood