

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

STATE OF MISSOURI,)
)
 Plaintiff,)
 vs.)
 ALYSSA DAILEN BUSTAMANTE,)
)
 Defendant.)

Case No. 09AC-CR03516

FILED

AUG 12 2010

BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

State's Suggestions Regarding DNA Testing of Certain Evidence

Comes now the State of Missouri by Mark A. Richardson, Prosecuting Attorney of Cole County, and in response to Defendant's request regarding DNA testing states as follows:

1. The testing of certain items of evidence (item 13.1 knife blade, item 13.3 knife handle and item 18.1 jeans) in the opinion of the criminalist will consume the sample such that further testing by the defense will be unlikely. In cases where the testing agency finds it necessary to consume the only sample of evidence in the testing procedure, admission of the test results does not violate due process in the absence of bad faith on the part of the state. *Arizona v. Youngblood*, 488 U.S. 51, 57-58, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988). *St. v. Ferguson*, 20 S.W.3d 485 (Mo. banc. 2000).
2. Immediately after the telephone hearing on August 5, 2010, MSHP Crime Lab Director William Marbaker called and advised the undersigned that the criminalist had, upon the initial review of the items of evidence, swabbed them and placed the swabs into evidence containers. It was during this swabbing process that the criminalist formed the opinion that DNA testing would consume the samples taken from the items mentioned.
3. Director Marbaker testified at the hearing that if the Court were to grant defense counsel's request to be present for the DNA testing of these items of evidence it would put the lab and criminalist in a position to violate the MSHP Crime Laboratory's policies regarding DNA testing with regard to the presence of others in the lab at the time of the testing. The testimony of Director Marbaker and DNA supervisor Hoey, which was credible, provides ample support for denying the defense request and permitting the State to go forward with the DNA testing following the same policies and protocols they observe in every other DNA test done at the Lab.

Wherefore, the State requests the Court enter its order approving DNA testing by the Missouri State Highway Crime Laboratory of the mentioned items in the same manner all other DNA testing is done with nothing special for this defendant.

Respectfully submitted,



Mark A. Richardson #32236

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CERTIFICATE OF SERVICE

This is to certify that a copy of the above and foregoing Suggestions, was mailed to defense counsel, on 8/12/2010.



Prosecuting Attorney