

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO)	CASE NO. CR 12 564924 A
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	
)	
CHARLES HARRIS)	<u>JOURNAL ENTRY</u>
)	
Defendant.)	

John P. O'Donnell, J.:

STATEMENT OF THE CASE

Charles Harris and co-defendant Marvin Robinson were indicted on August 3, 2012. Both men are charged with five counts: two counts of aggravated murder (counts 1 and 2), one count of aggravated robbery (3), one count of murder (4), and a single count of felonious assault (5). The crimes were allegedly committed on July 16, 2012 and Michael D. Morgan is the named victim in each count.

Trial is scheduled for April 11, 2013. On January 24, the defendant filed a "motion for appointment of expert witness." The plaintiff has not opposed the motion and this entry follows.

STATEMENT OF THE FACTS

There is no evidence – or even a summary of the anticipated evidence – of record. However, a Cleveland police "case information form" attached to the indictment describes the crime as happening at 1378 West 83 Street, where Harris hit and kicked Morgan in the head. As a result, Morgan sustained a skull fracture and died. This indictment ensued. When Harris

was arraigned he claimed indigency and counsel was assigned to represent him at the state's expense.

The motion is succinct to the point of being perfunctory. Its three sentences are as follows:

Through various pre-trials Defendant has been informed that there is various DNA testing done by the Government in this case. As such, we respectfully request the opportunity to have that analysis independently scrutinized as well as to have other various items tested by Defendant's expert.

Attached is the fee schedule of DNA Diagnostics [Center] in addition to the Curriculum Vitae of Julie A. Heinig for the purpose of this Court's review.

LAW AND ANALYSIS

The United States Supreme Court recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process, and that a criminal trial is fundamentally unfair if the state proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense. *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985). But the Supreme Court has also said that the duty of the state is not to buy the same defense that a wealthy defendant may have, but only to assure the indigent defendant an adequate opportunity to present his claims fairly. *Ross v. Moffitt*, 417 U.S. 600, 616 (1974).

Therefore, in deciding an indigent defendant's claim to an entitlement to expert assistance at the state's expense a court should examine three factors: (1) the effect on the defendant's private interest in the accuracy of the trial if the requested service is not provided, (2) the burden on the government's interest if the service is provided, and (3) the probable value of the additional service and the risk of error in the proceeding if the assistance is not provided. *Ake*, supra, 78-79. However, none of these things can be meaningfully considered without

reference to evidence and the state is not required to supply an indigent defendant with an expert upon mere demand. *State v. Mason*, 82 Ohio St. 3d 144, 150 (1998). Instead, constitutional guarantees of due process require that an indigent criminal defendant be provided funds to obtain expert assistance at state expense only where the defendant has made a particularized showing (1) of a reasonable probability that the requested expert would aid in his defense, and (2) that denial of the requested expert assistance would result in an unfair trial. *Id.*, at syllabus. Undeveloped assertions that the proposed assistance would be useful to the defense are patently inadequate. *State v. Yancy*, 8th Dist. Nos. 96527 and 96528, 2011-Ohio-6274, ¶29.

By not providing any evidence, Harris has made it impossible to find either that there is a reasonable probability that the requested expert would aid in his defense or that denial of the requested expert assistance would result in an unfair trial. What biological material was collected and tested? Where was it found? Who tested it? What evidence that might have DNA was not tested? What expert witness is the state expected to call at trial? Will the testimony inculpate Harris? How much material is left that Harris's expert could test? What is the weight of the non-DNA evidence arrayed against Harris? Every question relevant to whether the proposed expert assistance would aid in Harris's defense and whether denying that assistance would result in an unfair trial is left unanswered.

CONCLUSION

Because the court cannot determine that there is a reasonable probability that DNA Diagnostics Center would aid in Harris's defense or that denial of the company's assistance would result in an unfair trial the defendant's January 24, 2013, motion is denied.

IT IS SO ORDERED:

Judge John P. O'Donnell

Date: _____

SERVICE

A copy of this journal entry was sent by email, this _____ day of February 2013, to the following:

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Judge John P. O'Donnell