

Post-Conviction DNA Testing—Latest Cases
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State v. Briggs, ___ N.C. App. ___, 812 S.E.2d 174 (Jan. 16, 2018)

The trial court lacked subject matter jurisdiction to enter an order denying the defendant’s motion for post-conviction DNA testing pursuant to G.S. 15A-269 while the defendant’s appeal from the original judgment of conviction was pending. The defendant was convicted of an attempted sexual offense and sentenced on 10 November 2014. The defendant gave notice of appeal that day. On 6 April 2016, while his appeal was pending in the court of appeals, the defendant filed a pro se motion for post-conviction DNA testing pursuant to G.S. 15A-269. The trial court denied the defendant’s motion. The defendant timely filed notice of appeal from this denial. Then, on 16 August 2016, the court of appeals issued an opinion in defendant’s original appeal, vacating his sentence and remanding the case to the trial court for re-sentencing. The mandate issued on 6 September 2016. The court noted that once a notice of appeal has been filed, the trial court retains jurisdiction only over matters that are ancillary to the appeal. The trial court’s order on the defendant’s post-conviction motion was not such a matter. The court concluded:

In the instant case, the trial court was divested of jurisdiction when defendant filed notice of appeal from the judgment entered on his conviction . . . on 10 November 2014. Because defendant’s motion for post-conviction DNA testing opened an inquiry into a case that this Court was already reviewing, the trial court lacked jurisdiction to rule on it until after the case was returned to the trial court by way of mandate, which issued on 6 September 2016. We therefore must vacate the trial court’s order denying defendant’s motion for post-conviction DNA testing.

State v. Byers, ___ N.C. App. ___, 822 S.E.2d 746 (Dec. 18, 2018), *temp. stay allowed*, ___ N.C. ___, 822 S.E.2d 41 (Jan. 15, 2019)

In this murder and burglary case, the court held—over a dissent—that the trial court erred by denying defendant Terraine Byers’s motion for post-conviction DNA testing without appointing counsel; it further held that the trial court did not err by ruling on the motion before obtaining and reviewing an inventory of evidence. The defendant’s ex-girlfriend, Ms. Burke, was stabbed to death inside of her apartment. Officers previously had been called to Burke’s apartment multiple times because of her fear of the defendant. On the date in question, Mr. Williams was with Burke when they heard a crash at the apartment’s back door. Williams testified that he heard Burke yell “Terraine, stop,” before Williams fled. When officers arrived, they saw the defendant leaving the apartment through a broken door window. After telling officers that Burke was inside and injured, the defendant attempted to flee. He was apprehended and found to have a laceration on his left hand. Burke was dead inside. Inside the apartment, officers found a knife with a broken blade. Investigators analyzed fingernail scrapings from the defendant’s hand, a bloodstain from a couch cushion, the knife handle and blade, and various bloodstains throughout the apartment. The DNA from several samples all matched either the defendant or Burke. The defendant stipulated that the blood on his shirt was Burke’s. After a conviction and appeal, the defendant filed a pro se motion for post-conviction DNA testing. He asserted that he was on the other side of town waiting for a bus at the time of the murder. He alleged that one of the State’s witnesses testified that she saw the defendant getting on the 9 PM city bus on the night in

question and that a private investigator's affidavit stated that it would have been impossible for the defendant to arrive at the apartment prior to the police call related to the incident. He further stated that when he arrived at the apartment the back door was smashed in and that when he entered to investigate he was attacked by a man. The two struggled, which the defendant argues explains the presence of his DNA in the apartment. The defendant stated that the assailant escaped. He argues that because both he and Burke struggled with the unknown assailant, DNA testing of his and Burke's previously untested clothing would reveal the identity of the true perpetrator. He noted that the State's DNA expert reported the presence of human blood in various locations throughout the apartment that did not match either the defendant or Burke and that this information was not introduced at trial. He further requested that the items of clothing be preserved and that an inventory of the evidence be prepared. The trial court denied the defendant's motion, finding that he failed to show how the requested DNA testing would be material to his defense.

The court began by rejecting the defendant's argument that the trial court erred by denying his motion for testing before obtaining and reviewing the requested inventory of physical and biological evidence. Because the record "is devoid of any evidence indicating Defendant ever made a request to a custodial agency" for the inventory, he was not entitled to an inventory under G.S. 15A-268(a7). The court further found that nothing in G.S. 15A-269 requires the trial court to obtain and review the results of a custodial agency's inventory before ruling on a motion for post-conviction DNA testing.

The court went on to hold that the trial court erred by denying the defendant's motion without the appointment of counsel. Under G.S. 15A-269, a defendant is entitled to counsel in connection with a post-conviction DNA testing motion if the defendant is indigent and the DNA testing may be material to a claim of wrongful conviction. The burden of proof to show materiality is on the defendant, and the defendant fails to meet that burden when the defendant provides only conclusory statements. Here, the defendant provided specific reasons that the requested DNA test would be significantly more probative of the perpetrator's identity including: a comprehensive statement of his version of the events, stating that he was on a bus at the time of the murder, arrived at the scene after the victim was attacked, and was attacked by an unknown assailant; his version was consistent with his statements at the scene, his trial defense, and the testimony of at least one eyewitness; he specifically identified items to be DNA tested; he explained how DNA testing of the various items would corroborate his version of events and why the DNA evidence presented at trial offered an incomplete picture of events. His motion avoids many of the issues prior courts have highlighted in finding insufficient allegations of materiality: he did not plead guilty and has maintained his innocence; there was additional evidence supporting his allegation of a different perpetrator, including his statements to officers at the scene and eyewitness testimony regarding his location at the time of the crime; the defendant is hoping to show the presence of an alternative perpetrator's DNA, rather than the lack of his own DNA; the items he moved to have tested were identified and preserved soon after the murder; the results of the testing could corroborate his defense at trial, and could directly contradict the State's argument that the defendant was the sole perpetrator. The court continued, concluding that although there was substantial evidence at trial tending to show the defendant's guilt, "evidence indicating guilt cannot be dispositive of the issue." The court determined that the weight of the evidence indicating guilt must be weighed against the probative value of the possible DNA evidence. Here, the defendant established materiality.

State v. Shaw, ___ N.C. App. ___, 816 S.E.2d 248 (May. 15, 2018)

The trial court erred by denying the defendant's motion for post-conviction DNA testing and discovery pursuant to G.S. 15A-269. The defendant was tried for burglary, kidnapping, assault by strangulation, rape, sex offense, and attaining habitual felon status. Evidence at trial included, among other things, testimony from the State's expert in forensic DNA analysis concerning DNA evidence recovered from the victim. The DNA analyst concluded that defendant's DNA "cannot be excluded as a contributor to the DNA mixture" that was recovered, and that "the chance of selecting an individual at random that would be expected to be included for the observed DNA mixture profile" was approximately, "for the North Carolina black population, 1 in 14.5 million[.]" The defendant was convicted and his conviction was affirmed on direct appeal. He then filed a pro se motion with the trial court under G.S. 15A-269 and included a sworn affidavit maintaining his innocence. The trial court treated the motion as a Motion for Appropriate Relief (MAR) and denied the motion. It determined that the defendant had not complied with the service and filing requirements for MARs, did not allege newly discovered evidence or other genuine issues that would require a hearing, and that the claims were procedurally barred under the MAR statute. The Court of Appeals granted the defendant's petition for writ of certiorari and reversed. The court noted that the procedures for post-conviction DNA testing pursuant to G.S. 15A-269 are distinct from those that apply to MARs. Thus, when a defendant brings a motion for post-conviction DNA testing pursuant to G.S. 15A-269, the trial court must rule on the motion in accordance with the statutes that apply to that type of motion. The trial court may not supplant those procedures with procedures applicable to MARs. The court vacated and remanded for the trial court's review consistent with the relevant statutes.

State v. Sayre, ___ N.C. ___, 818 S.E.2d 101 (per curiam) (Sept. 21, 2018)

On appeal from the unpublished decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 803 S.E.2d 699 (2017), the court affirmed per curiam. In the opinion below, the Court of Appeals affirmed the trial court's order denying the defendant's pro se motion to locate and preserve evidence and motion for post-conviction DNA testing. The defendant pleaded guilty to multiple counts of indecent liberties, 2 counts of second-degree sexual offense and 2 counts of felony child abuse. He did not appeal. Nearly 2 years later he filed a pro se motion to locate and preserve evidence and motion for post-conviction DNA testing. The motion listed 12 pieces of physical evidence that the defendant alleged needed to be tested and preserved because they would prove that he was not the perpetrator. The trial court denied the defendant's motion concluding that he had not made a showing that DNA testing may be material to his claim of wrongful conviction. As a result, the trial court declined to either appoint counsel or conduct an evidentiary hearing on the motion. The defendant appealed. The Court of Appeals concluded that the defendant's burden of showing materiality under the post-conviction DNA statute requires more than a conclusory statement that the ability to conduct the testing is material to the defense. Rather, the defendant must provide specific reasons why the requested test would be significantly more accurate or probative of the identity of the perpetrator or accomplice or that there is a reasonable probability of contradicting previous test results. Here, the defendant's bare assertion that the DNA testing would prove he is not the perpetrator is not sufficiently specific to establish that the requested DNA testing would be material to his defense. Accordingly, the trial court did not err by summarily denying his request for post-conviction DNA testing and court-appointed counsel to prosecute the motion.

State v. Tilghman, ___ N.C. App. ___, 821 S.E.2d 253 (Oct. 2, 2018)

(1) The trial court did not err by denying the defendant’s motion for post-conviction DNA testing without appointing counsel. The statute requires appointment of counsel only on a showing that the DNA testing may be material to the defendant’s claim of wrongful conviction. The burden of establishing materiality is on the defendant. To meet this burden, the defendant must do more than make a conclusory statement that the ability to conduct the requested testing is material to the defense. Where—as here--the case involves a guilty plea, the defendant has a heightened burden to show materiality. Here, the defendant’s justifications for DNA testing are merely conclusory statements. In a footnote, the court noted that the trial court did not address materiality and that “a specific finding or conclusion of materiality” by the trial court “would be helpful to our appellate review.”

(2) The court rejected the defendant’s argument that the trial court erred by summarily denying his motion for a complete inventory of evidence under G.S. 15A-268. That statute provides that upon written request by the defendant the custodial agency shall prepare an inventory of biological evidence relevant to the case that is in the custodial agency’s custody. However, a request for location and preservation of evidence, as occurred here, is not a request for an inventory of evidence. Thus, the trial court did not err by denying the defendant’s motion for post-conviction DNA testing prior to obtaining an inventory of biological evidence which the defendant never requested. Even if the defendant had requested an inventory of biological evidence from the trial court, it would have been improper for the trial court to grant such a request where there was no evidence that the defendant had requested the inventory from the custodial agency.

(3) The court rejected the defendant’s argument that the trial court erred by summarily denying his motion for an inventory of evidence under G.S. 15A-269. That statute provides that upon receipt of a motion for post-conviction DNA testing the custodial agency shall inventory the evidence and provide an inventory list to, among others, the defendant. Under the statute, a defendant need not make a request for an inventory of physical evidence. Instead, the custodial agency’s obligation to do the inventory is triggered upon receipt of a motion for post-conviction DNA testing. Here, the record lacks proof that either the defendant or the trial court served the custodial agency with the motion for inventory. Assuming arguendo that the trial court had the burden to do so, any error that occurred is harmless because the defendant failed to meet his burden of showing materiality.

State v. Cox, 245 N.C. App. 307 (Feb. 2, 2016)

In this child sexual assault case, the trial court did not err by refusing to appoint counsel to litigate the defendant’s pro se motion for post-conviction DNA testing. Under G.S. 15A-269(c), to be entitled to counsel, the defendant must establish that the DNA testing may be material to his wrongful conviction claim. The defendant’s burden to show materiality requires more than a conclusory statement. Here, the defendant’s conclusory contention that testing was material was insufficient to carry his burden. Additionally, the defendant failed to include the lab report that he claims shows that certain biological evidence was never analyzed. The court noted that the record does not indicate whether this evidence still exists and that after entering a guilty plea, evidence need only be preserved until the earlier of 3 years from the date of conviction or until the defendant is released.

State v. Randall, ___ N.C. App. ___, 817 S.E.2d 219 (June 5, 2018)

(1) The trial court properly denied the defendant’s motion for post-conviction DNA testing. The defendant, who pleaded guilty to multiple sexual assaults, filed a pro se motion seeking DNA testing of evidence he alleged was collected by law enforcement, including vials of blood and saliva, a bag of clothes, and a rape kit. The court found that the post-conviction DNA testing statute was not intended to “completely forestall” the filing of such a motion when the defendant enters a guilty plea. It continued, noting that when such a motion is filed “[t]he trial court is obligated to consider the facts surrounding a defendant’s decision to plead guilty in addition to other evidence, in the context of the entire record of the case, in order to determine whether the evidence is ‘material’” within the meaning of the post-conviction DNA testing statute. A defendant’s burden to show materiality requires more than a conclusory statement that the ability to conduct the requested testing is material to the defense. Here, the defendant’s assertion in his motion that his DNA would not be found in the rape kit essentially amounts to a statement that testing would show he was not the perpetrator. The court noted that it has previously held that such a statement is insufficient to establish materiality. The court thus found that the defendant failed to show the DNA testing would have been material to his defense. Specifically, the record indicates that the defendant was convicted of multiple counts of statutory rape for encounters with a single victim which took place over many months; the defendant confessed to the crimes; and the victim reported that the defendant had sexually abused her. The defendant’s motion requested that DNA testing be performed on certain items recovered from the victim over a month after the defendant’s last alleged contact with the victim. The lack of DNA on those items, recovered well after the alleged crimes, would not conclusively prove that the defendant was not involved in the conduct at issue. Additionally, the Sheriff’s office indicated that the only relevant evidence it had—or ever had—was a computer that an officer searched for child pornography with the defendant’s consent.

(2) The court found that the defendant’s challenge to the trial court’s denial of his request for an inventory of biological evidence pursuant to G.S. 15A-268 was not properly before it. The defendant asserted that he requested an inventory from a hospital and DSS, whom he alleged had clothing, hair and blood samples, and other items. However, there was no evidence of these requests in the record. Without any evidence that the defendant made a proper request pursuant to the statute and without any indication that the trial court considered this issue, the court found that there was no ruling for it to review.

State v. Doisey, 240 N.C. App. 441 (Apr. 7, 2015)

(1) The court dismissed the defendant’s argument that the trial court erred by failing to order an inventory of biological evidence under G.S. 15A-269(f). Under the statute, a request for post-conviction DNA testing triggers an obligation for the custodial agency to inventory relevant biological evidence. Thus, a defendant who requests DNA testing under G.S. 15A-269 need not make any additional written request for an inventory of biological evidence. However, the required inventory under section 15A-269 is merely an ancillary procedure to an underlying request for DNA testing. Where, as here, the defendant has abandoned his right to appellate review of the denial of his request for DNA testing, there is no need for the inventory required by G.S. 15A-269(f). (2) The court rejected the defendant’s argument that the trial court erred by failing to order preparation of an inventory of biological evidence under G.S. 15A-268 where the defendant failed to make a written request as required by G.S. 15A-268(a7). The defendant’s

motion asked only that certain “physical evidence obtained during the investigation of his criminal case be located and preserved.”

State v. Lane, 370 N.C. 508 (Mar. 2, 2018)

In this capital case, the court held that the defendant failed to prove materiality in connection with his request for post-conviction DNA testing of hair samples. The hair samples were found in a trash bag in which the victim’s body had been placed. Before the trial court the defendant argued that the requested testing was material for two reasons. First, the evidence at trial showed two separate crimes, a rape and murder; acknowledging that DNA evidence implicated him in the rape, the defendant asserted that the hairs could relate to another perpetrator, and potentially the only perpetrator of the murder. Second, the defendant argued that the State’s closing argument relied in part on the forensic analysis of hairs recovered from the defendant’s residence that were found to be microscopically consistent with the victim’s hair; the defendant asserted that if those hairs were material to the State, the hairs found in the bag were material to the defense. The trial court denied the testing motion, finding that the defendant failed to establish materiality. The trial court considered, among other things, the evidence presented at trial and prior post-conviction DNA testing that was done on vaginal and rectal swabs from the victim’s body that ultimately implicated the defendant. The court began by adopting the following standard of review of the denial of the motion for post-conviction DNA testing: findings of fact are binding if supported by competent evidence and may not be disturbed absent an abuse of discretion; conclusions of law are reviewed de novo. The court further determined that the post-conviction DNA statute adopted the *Brady* materiality standard. It went on to conclude that taken together, the overwhelming evidence of guilt at trial, the dearth of trial evidence pointing to a second perpetrator, and “the inability of forensic testing to determine whether the hair samples at issue are relevant to establish a third party was involved”, created an “insurmountable hurdle” to the defendant’s materiality argument with respect to either the conviction or sentence. Finally, the court denied the defendant’s request that the court exercise its constitutional supervisory or inherent authority to order testing.