

5.0-630 Order on Motion for Scientific Analysis

ORDER

Upon motion of the defendant for the scientific investigation of human biological evidence pursuant to the provisions of subsections A and B of Virginia Code § 19.2-327.1 and following a hearing held pursuant to the provisions of subsection D of Virginia Code § 19.2-327.1, the Court FINDS

1. That *[the evidence sought to be tested *(was) *(was not) *(known) *(available) at the time the conviction became final in the circuit court] *[the evidence *(was) *(was not) previously subjected to testing because the testing procedure was not available at the Division of Forensic Science at the time the conviction became final in the circuit court]. **[INSERT FACTS TO SUPPORT THE FINDING, IF APPLICABLE]**

2. That the evidence *(is) *(is not) subject to a chain of custody sufficient to establish that the evidence has not been altered, tampered with, or substituted in any way. **[INSERT FACTS TO SUPPORT THE FINDING, IF APPLICABLE]**

3. That the testing *(is) *(is not) materially relevant, noncumulative, and necessary and *(may) *(may not) prove the defendant-petitioner's actual innocence. **[INSERT FACTS TO SUPPORT THE FINDING, IF APPLICABLE]**

4. That the testing requested *(does not involve) *(involves) a scientific method employed by the Division of Forensic Science. **[INSERT FACTS TO SUPPORT THE FINDING, IF APPLICABLE]**

5. That the defendant-petitioner *(has not) *(has) unreasonably delayed the filing of the petition after *(the evidence) *(the test for the evidence) became available to the Division of Forensic Science. **[INSERT FACTS TO SUPPORT THE FINDING, IF APPLICABLE]**

6. That the defendant-petitioner *(has) *(has not) asserted categorically and under oath (i) the crime for which the defendant-petitioner was convicted, (ii) the reason or reasons the evidence was not known or tested by the time the conviction became final in the circuit court, and (iii) the reason or reasons that the newly

discovered or untested evidence may prove the actual innocence of the defendant-petitioner. **INSERT FACTS TO SUPPORT THE FINDINGS, IF APPLICABLE**

Therefore, the Court ORDERS *(the motion dismissed for failure to comply with the requirements of § 19.2-327.1) *(the motion dismissed for failure to state a claim upon which relief can be granted) *(that testing be done by the Division of Forensic Science, based on a finding of clear and convincing evidence that the requirements of subsection A of § 19.2-327.1 have been met).

*[The Court ORDERS *[custodian(s) of the evidence] to deliver the below-identified human biological evidence to the Division of Forensic Science, in accordance with the Guidelines for the Scientific Analysis of Newly Discovered or Untested Scientific Evidence developed by the Division of Forensic Science.]

*[The Court ORDERS that the following human biological evidence be delivered to the Division of Forensic Science:

*[Insert the Division of Forensic Science Laboratory number (FS number), if available, a description of the human biological evidence, and indicate who has custody of the human biological evidence]]

*[The Court ORDERS the Division of Forensic Science to furnish the results of the testing to the Court, to **[name of defendant-petitioner], defendant-petitioner], to **[name of counsel of record for defendant-petitioner], counsel of record for defendant-petitioner], and to **[name of attorney for the Commonwealth], attorney for the Commonwealth]. The Court ORDERS the Division of Forensic Science to return the human biological evidence to *[the custodian(s) of the evidence].

* [Date Order Entered]

Signature of Judge