

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR PINELLAS COUNTY
CRIMINAL DIVISION

STATE OF FLORIDA,

REF: CRC 89-11425CFANO-B

v.

UCN: 521989CF011425XXXXNO

KEVIN RICHARD HERRICK,
SPN:00362912, Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR POSTCONVICTION DNA TESTING

THIS MATTER came before this court on the Defendant's Motion for Postconviction DNA Testing, filed on October 3, 2006, pursuant to Fla. R. Crim. P. 3.853. On September 5, 2007, this court issued an order directing the State to respond to the Defendant's claim. On September 13, 2007, the State issued its response. Now, upon review of the motion, the record and applicable law, this court finds as follows:

The Defendant was convicted of armed burglary, sexual battery and aggravated battery on October 3, 1990. *Exhibit A: Judgment and Sentence*. The mandate affirming his convictions and sentences was filed on August 6, 1992. The Defendant now alleges that there is evidence consisting of debris samples, clothing, hair samples, blood samples, and a knife that was not tested for DNA at the time of trial that would exonerate him.

The State in its response has provided the court with copies of Florida Department of Law Enforcement reports that demonstrate that the evidence listed by the Defendant in his motion has already been tested. *See Exhibits B1-B3: FDLE Lab Reports*. The Defendant alleged that no DNA testing had been performed on the knife. However, the FDLE report dated January 9, 1990, indicates that a knife was submitted and tested and failed to show the presence of blood stains. Moreover, the Defendant claims that bed linens/sheets removed from the victim's bed, hair samples and clothing were not tested. Again, the FDLE report dated January 9, 1990, reveals that bed sheets were tested and failed to demonstrate the presence of semen. The FDLE report dated June 29, 1990, shows that debris recovered from bed sheets, known hair samples from Kevin Herrick, debris

FDLE performed microanalysis testing of hair fibers in 1990.

DNA testing was not available at that time, so the courts' response that the hair fibers had already been tested does not make sense.

recovered from Herrick's pants and shirts, known samples collected from the victim [REDACTED] and known samples from victim [REDACTED] were all submitted and tested.


Furthermore, a third report was generated on July 2, 1990, in which there was a submission made of blood represented as being from [REDACTED] a beige satin sheet that had previously been submitted, a red shirt, blue jeans and the knife that had previously been submitted. The results of the testing of the sheets, the shirt and the jeans failed to demonstrate the presence of blood and the knife was not re-examined as it had already been examined and failed to demonstrate the presence of blood.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Defendant's Motion for Postconviction DNA Testing is **DENIED**.

Defendant is notified of his right to appeal within 30 days from the date of this order.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this 10th day of October, 2007. A true and correct copy of the foregoing has been furnished to the parties listed below.



Jack Day, Circuit Judge

cc: State Attorney

Robert A. Norgard, Esq.
P.O. Box 811
Bartow, Florida 33831