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Why judge in Molly Conley case is leery of defense expert

A Snohomish County Superior Court judge has placed tight restrictions on a forensic scientist hired by the defense, in order to protect physical evidence in the largely circumstantial case against a Marysville man accused of randomly shooting Seattle teenager Molly Conley in June.

By Sara Jean Green

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With trial still months away for a man accused of killing Seattle teenager Molly Conley in June, a Snohomish County judge has placed tight restrictions on a forensic expert hired by the defense, in order to protect physical evidence in the largely circumstantial case.

That's because the forensic expert, 74-year-old Kay Sweeney, the owner of a private forensics lab in Kirkland, has a history of failing to comply with court orders, altering evidence and delaying the return of evidence, according to court records.

In a 2006 murder case in King County, for instance, Sweeney allegedly rendered a gun inoperable, and in another murder case in Clallam County, sawed through a bullet and scored it with a scalpel, the records say.

In one high-profile death-penalty case in King County, a senior deputy prosecutor sought strict restrictions on Sweeney after getting signed affidavits from police detectives and other prosecutors who accused Sweeney of mishandling evidence, ignoring court orders and unnecessarily delaying the return of evidence. The Superior Court judge in that case opined that Sweeney had taken on "more work than he can handle."

In the Conley case, a Snohomish County judge ruled in November that Sweeney can only examine evidence in three batches, must limit his examinations to visual and microscopic viewing, and must not alter any evidence.

Sweeney has been hired by Mark Mestel, the defense attorney for Erick Walker, who is accused of killing 15-year-old Conley in Lake Stevens during a drive-by shooting spree.

Sweeney, for his part, said he's never been sanctioned by a judge and that placing restrictions on evidence is commonplace. He said the claims made against him in court records are unjustified, unproven allegations, but he has no recourse short of filing a lawsuit, something he doesn't think is worth the time or money to pursue.

"It's not uncommon for the prosecutor to try and smear somebody working for the defense. Why would that be a surprise to anybody?" asked Sweeney, owner of KMS Forensics.

Sweeney, one of the state's first forensic scientists, went into private practice after retiring from the Washington State Patrol Crime Laboratory in Seattle in 1995. He said he typically has a workload of 20-plus homicide cases across the Northwest and charges \$150 to \$200 an hour.

Protection order

The court order to protect evidence in the case against Walker is largely modeled on a protection order a King County senior deputy prosecutor was granted after Sweeney was retained as a defense expert for Conner Schierman, who was sentenced to death for killing two women and two young boys and then torching their Kirkland home in July 2006.

King County Senior Deputy Prosecutor Scott O'Toole wrote a motion opposing Sweeney's unrestricted access to a knife found at the crime scene:

"... Mr. Sweeney is unlike other experts," O'Toole wrote. "He has brought the necessity for strict regulation of discovery upon himself by his record of delay in returning evidence, mishandling evidence and ignoring court orders."

Schierman's defense team didn't offer any rebuttal to the allegations, the records show.

The voluminous court record in the Schierman case shows the growing exasperation of King County Superior Court Judge Greg Canova over "the delays in processing of evidence by the defense expert," which he determined was not because of any delays or attempts by the state "to impede Mr. Sweeney's access to the items of evidence."

Instead, Canova concluded, "There is, in the court's view, no excuse other than the fact that Mr. Sweeney has taken on more work than he can handle," the records say.

Canova also said prior court orders in other cases showed judges had placed very specific time limits on Sweeney's access to evidence — and "they were observed more often in the breach than in the compliance."

Schierman's trial began in January 2010, and according to a transcript of Sweeney's testimony, he charged Schierman's public defenders more than \$112,000 for his forensic work. He never wrote a report — even though Canova had ordered one — detailing his theories and opinions based on his analysis of dozens of pieces of evidence.

Bullet lost in woods

Conley and five girlfriends from Seattle had gone to Lake Stevens, where one girl's parents had moved, to celebrate Conley's 15th birthday. The girls were walking along South Lake Stevens Road around 11 p.m. June 1 when the girls heard a loud bang and saw Conley drop to her knees.

She died moments later.

The bullet that killed Conley passed through her neck and, despite a lengthy search by police, was lost in the woods, charging papers say.

None of Conley's friends or motorists who stopped to help got a good look at the shooter's vehicle, the papers say.

Two hours after Conley was killed, someone shot out the front window of a Lake Stevens home two miles from where she was killed, charging papers say. It was the first of several shootings police in Lake Stevens and Marysville responded to in a 45-minute span as bullets struck vehicles and houses, the papers say.

Around 2 a.m. June 2, a Marysville woman ran outside her house after hearing five gunshots, followed by the sound of a vehicle smashing into her parked sedan, according to the papers.

Black paint chips and pieces of a busted headlight were left behind at the crash scene, the papers say.

Police also recovered .30-caliber carbine slugs from at least three houses and five cars that were among those randomly shot up, according to charging papers.

Detectives focused their investigation on the type of weapon used and the type of vehicle involved in the collision in Marysville, say the papers.

Not only had Walker purchased a Ruger Blackhawk revolver capable of firing the ammunition earlier in the year, but he also owned a 2006 Pontiac G6, a car that is among the 31 models with the same kind of paint detectives were looking for, according to the charges.

Two Ruger revolvers were among the items police found inside Walker's house, and each of the guns was matched to four of the recovered bullets — eight total — by a forensic scientist at the State Patrol's crime lab in Seattle, the papers say.

The guns and bullets are a "critical part of the state's case" — and are among the items Walker's defense wants Sweeney to test, according to a Nov. 1 motion filed by Snohomish County Senior Deputy Prosecutor Ed Stemler, who asked that Sweeney be closely monitored by the court.

Integrity of evidence

In criminal cases, defendants have the right to call witnesses and to independently examine and test physical evidence — but it is the state that bears the burden of proof and is responsible for maintaining the integrity of evidence.

In his motion seeking restrictions on Sweeney's access to evidence in the Walker case, Stemler wrote that Sweeney "has a lengthy history of failing to comply with court orders" — and included affidavits used in the Schierman case showing Sweeney had failed to return evidence for weeks or months at a time, violating deadlines set by various courts.

Two other affidavits deal with the 2006 King County murder case in which a 9mm Luger pistol was submitted to the State Patrol Crime Lab for testing and was found to be operable, according to the records. In June 2007, the gun was delivered "fully operable and functioning" to Sweeney, who had it in his possession for 10 days.

When the gun was retested by the crime lab that October, a scientist "discovered that the weapon was received inoperable with a shifted hammer pin and missing retainer cap," the records say.

In a Clallam County double-homicide case, Sweeney was retained as a defense expert for Darold Stenson, who was convicted of the 1993 slayings of his wife and business partner before the state Supreme Court ordered a retrial and Stenson was found guilty a second time.

In that case, Sweeney in 2009 offered to remove a primer cap that had gotten stuck in a bullet to allow for additional DNA testing after the crime lab said it was too dangerous to remove the cap, the records say. Sweeney "claimed that he could remove the cap safely by using the same amount of pressure" that had been used to put the primer cap on, according to the records.

Instead, Sweeney placed the bullet in a vise and used a cutting wheel to saw the bullet, then used a scalpel to score it, the records say. Though the judge in the case had ruled that crime-lab personnel were to inspect Sweeney's lab and tools before his examination of the bullet, "Sweeney ultimately sliced open the state's evidence in an uninspected location, using unexamined tools, and in the presence of evidence from unrelated cases," say the records.

"Sweeney provided no advance notice of his intention to saw open the state's exhibit, rather than pulling the primer cap out through the back."

In his filing, Stemler, the Snohomish County prosecutor, said he requested information about anything Sweeney "would do that would even potentially change, damage, or in any way alter the evidence in the Conley case, either through the use of tools, chemicals or any other implement" in a Sept. 9 letter to Mestel, Walker's defense attorney.

Nearly two months later, "No information has been provided to the state about what Mr. Sweeney wants to do with the evidence in this case once it (is) released to him," Stemler wrote.

Stemler declined to be interviewed for this story because the case against Walker is pending.

Mestel said he has known Sweeney for years and recently used him to reconstruct a fatality hit-and-run collision scene. In the Walker case, Sweeney is acting as the defense's ballistics expert, while another expert has been retained to analyze the paint chips, Mestel said.

"I've had no problems with him," he said of Sweeney.

The Walker case is the first Mestel has been involved in where a judge has imposed restrictions on Sweeney's access to evidence, but Mestel thinks that is because of the "high-profile nature" of the case.

Plus, the case "is almost entirely based on forensics," rather than eyewitness accounts, "so the state is far more concerned about the integrity of the physical evidence," Mestel said.

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