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Sentencing postponed in Davila trial

Thomas Clouse

A Spokane County judge on Wednesday postponed the sentencing of a man convicted almost exclusively on DNA evidence after defense attorneys learned that tests identifying their client as the killer had been conducted by a crime lab technician who later was fired for incompetence.

The technician's work was so deficient that a co-worker described it as a "nightmare," and an internal report said it could not be trusted.

Superior Court Judge Kathleen O'Connor stopped short of granting a new trial for Julio J. Davila, 46, who was convicted last month of second-degree murder in the 2007 killing of a Spokane adult bookstore owner. But O'Connor called for a hearing about the DNA testing performed by Denise Olson, who was fired last year from the Washington State Patrol crime laboratory.

Defense attorney Tom Krzyminski argued that Deputy Spokane County Prosecutor Dale Nagy knew about Olson's shoddy work and did not disclose it prior to the trial.

Co-defense attorney Kevin Griffin filed a public records request seeking information about Olson's work history prior to Davila's trial. But the WSP didn't release that information until six days after a jury convicted Davila on July 13.

Olson "is a loose cannon and her work cannot be trusted," the internal WSP report states. "The risk of a wrongful conviction or the erroneous exclusion of a guilty subject because of (her) incompetence is far too great for the agency to undertake. Attempting to work around that fact would only leave (Olson) open to harsh public and legal criticism and potential lawsuits."

Nagy did not call Olson to testify during Davila's trial. Instead, he called WSP crime lab supervisor Lorraine Heath, who retested all of the evidence in the case – and used up all of the existing evidence samples in the process. Heath produced the same conclusion as Olson: that the DNA on the baseball bat used to bludgeon 74-year-old John G. "Jack" Allen to death came from Davila.

Heath "did not rely on Ms. Olson's previous work," said Nagy, who added that he didn't disclose that Olson had been fired because he thought it was "common knowledge."

"Clearly ... reading Ms. Olson's report, it causes a great deal of concern," he said. "But Ms. Heath reviewed all of Ms. Olson's testing and agreed with it all. It wouldn't have changed the fact, even if they presented it at trial."

Krzyminski, however, said that issue should have been considered by the jury.

“Ms. Olson never made it onto the state’s witness list. Why? There was a reason for that,” he said. “It would have been significant.”

Under questioning by the judge, Nagy said he was aware of the scathing report that resulted in Olson’s termination.

But, O’Connor said, “I have no evidence to find (Nagy) withheld the report or had any obligation to find out about the report.”

The judge scheduled a hearing at 2 p.m. on Sept. 14 to allow defense attorneys to explore the issue, including a deposition of Olson.

“I realize there is an issue of fairness. If we conduct this hearing now at least we will have the information and the defense can make their argument to the court,” she said.

Krzyminski also asked O’Connor to grant a new trial based on prosecutorial misconduct by Nagy. The prosecutor informed the jury in Davila’s trial that another man, 41-year-old Jeramie R. Davis, had been convicted and punished for the same killing.

A different judge, Superior Court Judge Greg Sypolt, last week granted Davis a new trial after the lead Spokane police detective questioned whether the DNA evidence linking Davila to the crime showed that Davis, who is serving a 40-year prison term, may have been telling the truth when he said he didn’t kill Allen.

Krzyminski said the WSP report of Olson’s termination calls into question the evidence linking Davila to the crime.

The report shows that Olson had been disciplined several times and had been given numerous opportunities to correct her failures. One co-worker, Lisa Turpen, was asked to review some of Olson’s work.

“I’ve worked with her so long that – I mean, she’s improved,” Turpen said. “Um, I mean, her cases were a nightmare.”

Turpen described one case where Olson took the time to screen for semen on the shirt of a female rape victim. The problem: the suspect was also female.

“Females don’t produce semen, so why are you screening for it on a suspect’s shirt?” she said. “I think that ... is not wrapping your brain around what you need to be doing.”