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State v. Seka, 137 Nev. Adv. Op. 30 (July 8, 2021)

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Motion for a New Trial – DNA Test Result Favorability

Summary:

The Nevada Supreme Court considered whether new DNA evidence warranted a new trial. NRS 176.09187(1) allows a defendant to move for a new trial at any time where DNA test results are “favorable” to the defendant.² The Court clarified that under *Sanborn v. State* new DNA test results are “favorable” if it could create a different result that is reasonably probable.³ The Court held that the new DNA evidence failed to meet the requirement and reversed the district court’s order to grant a new trial.

Facts and Procedural History:

In 2001, John “Jack” Seka was convicted of two counts of murder and two counts of robbery for the 1998 killings of Peter Limanni and Eric Hamilton. The State built their case on circumstantial evidence. Fingerprints on a board covering Hamilton’s body were the only physical evidence connecting Seka to the locations where the bodies were discovered. At the time of trial, DNA testing excluded Seka from only a few pieces of evidence. However, DNA testing performed in 2018 and 2019 both excluded Seka from several pieces of evidence and discovered other DNA profiles. Based on the new DNA results, Seka moved for a new trial. In 2020, the district court held that the unknown DNA profiles from the new DNA testing was considered favorable evidence and granted a new trial. The State filed an appeal arguing that the new DNA evidence does not warrant a new trial.

Discussion

I.

In *Sanborn v. State*, the Court held that for new DNA evidence to be favorable, it must be material to either the prosecution or defense or be so important to the trial that a different result would be reasonably probable.⁴ The Court explained that new DNA evidence is not favorable if it does not undermine the jury’s verdict,⁵ if it is cumulative under the facts of the case,⁶ if it has no relevance to the circumstances of the crime,⁷ if it impeaches a witness without contradicting or

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² NEV. REV. STAT. § 176.09187 (2014)

³ *Sanborn v. State*, 107 Nev. 399, 406, 812 P. 2d 1279, 1284-85 (1991).

⁴ *Id.*

⁵ Cf. *Cutler v. State*, 95 Nev. 427, 429, 596 P. 2d 216, 217 (1979).

⁶ *Id.*

⁷ Cf. *Mortensen v. State*, 115 Nev. 273, 287, 986 P. 2d 1105, 1114 (1999).

refuting any of the trial testimony supporting the verdict,⁸ if it merely goes to an issue that was fully explored at trial,⁹ and is not sufficiently material to make a different verdict probable.¹⁰

II.

The State charged Seka with two counts of murder with use of a deadly weapon, two counts of robbery with use of a deadly weapon and filed notice to seek the death penalty. The State's theory was that Seka killed Limanni after learning Limanni was abandoning the business and leaving. State argued that Hamilton either helped Seka or was an innocent bystander.

Defense counsel argued that no evidence implicated Seka in the murders, that Seka had no motive to kill the victims, and that the State's case against Seka was not believable.

The jury found Seka guilty of first-degree murder with use of a deadly weapon and robbery in regard to Hamilton, and of second-degree murder with use of deadly weapon and robbery as to Limanni. The jury was deadlocked in regards to the penalty.

Seka stipulated to life imprisonment without the possibility of parole to avoid the death penalty

III.

Seka filed an appeal in May 2001. The NV Supreme Court affirmed the conviction. Seka then petitioned for a writ of habeas corpus. The district court denied the petition and the NV Supreme Court affirmed the denial.

In 2017, Seka requested that a DNA test of evidence be collected at Hamilton's remote desert crime scene and the surrounding areas. Seka argued that had items collected by detectives yielded exculpatory evidence at trial, then he would not have been convicted. The district court granted Seka's request.

In late 2018 and early 2019, the following items were tested for DNA: 1) two cigarette butts found near Hamilton's body, 2) Hamilton's fingernail clippings, 3) hairs found underneath Hamilton's fingernails, 4) a Skoal tobacco container found near Hamilton's body, 5) a beer bottle found off the road in the desert in the vicinity of Hamilton's body, 6) a baseball hat.

DNA results from testing in 2018 and early 2019: 1) Cigarette butts: DNA testing failed to obtain DNA from one cigarette butt, but a partial profile from the second cigarette butt did not match either Hamilton or Seka, and both were excluded as contributors. 2) Fingernail clippings: testing in 1998 excluded Seka as a contributor to the DNA from the clippings on one hand. The 2018 DNA testing likewise excluded Seka as a contributor to the DNA from the clippings on both hands but found possible DNA from another person. However, the DNA from the other person was so small that it could have been transferred from something as benign as a handshake or DNA may not have actually existed. 3) Hairs found underneath Hamilton's fingernails: In 1998, the DNA profile included Hamilton and excluded Seka. The 2018 testing likewise found

⁸ *Id.* at 288, 986 P. 2d at 1114

⁹ Cf. *D'Agostino v. State*, 112 Nev. 417, 423-24, 915 P. 2d 264, 267-68 (1996).

¹⁰ *Id.*

only Hamilton's DNA on the hairs. 4) Skoal tobacco container: The 2019 testing showed two contributors, but Hamilton and Seka were excluded. The forensic scientists explained that old techniques used to find latent fingerprints might have contaminated the DNA profile. 5) Beer bottles: The 2019 DNA testing excluded Hamilton and Seka but included a female contributor. The forensic scientist testified that outdated procedures may have contributed to the unknown DNA found on the item. 6) Baseball hat: The 2019 DNA testing showed three contributors, including Hamilton, but the results were inconclusive as to Seka. the forensic scientist testified that it was impossible to know whether the hat had been contaminated during trial.

Based on these DNA results, Seka moved for a new trial, arguing that the new DNA results both exculpated Seka and implicated an unknown person in the crimes. The District Court found that “the multiple unknown DNA profiles are favorable evidence” and granted the motion.

The State on appeal argues that the new DNA evidence does not warrant a new trial.

IV.

The Court held that the new DNA evidence was not favorable to the defense to warrant a new trial under NRS 176.09187(1). The Court explained that although the new DNA testing resulted in unknown profiles, none of it exculpated Seka of the murders, implicated another suspect, materially supported Seka’s defense, or contradicted or refuted the totality of the evidence that supported the verdict. More importantly, the Court held that none of the new evidence affects the evidence supporting the guilty verdict because at trial no physical evidence of DNA tied Seka to the crimes. Rather, the State’s case used circumstantial evidence. The Court held that the new DNA results with unknown DNA profiles did not undermine the other evidence against Seka.

V.

The Court found that the new evidence failed to meet the standard under NRS 176.09187(1) and consistent with *Sanborn v. State*. Therefore, the Court reverses the district courts order granting a new trial.

Conclusion:

The Nevada Supreme Court found that the district court abused its discretion by granting Seka a new trial based on new DNA evidence under NRS 176.09187(1). The Court found that the new DNA evidence did not make a different outcome reasonably probable and was not “favorable” to the defense to warrant a new trial. Accordingly, the Court reversed the district court’s decision.