

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

3-2022

Anselmo (Michael) v. State, 138 Nev. Adv. Op. 11 (Mar. 10, 2022)

Roland Brunner

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

EXCULPATORY DNA EVIDENCE MUSE BE PRESUMED BEFORE THE DISTRICT COURT CAN ASSESS THE PETITIONER'S REEASONABLE POSSIBILITY SHOWING.

Summary

This case concerns Nevada's statutory scheme for postconviction petitions for genetic marker analysis.² This Court concludes that the district court must assume that the requested genetic analysis will produce exculpatory evidence, and then order this analysis if there is a reasonable possibility that the petitioner would not have been prosecuted or convicted had the evidence been available at trial. Here, the district court erred in denying the petition, since the DNA would show a reasonable possibility that Anselmo would not have been convicted under a felony-murder theory based on rape. Additionally, the evidence custodian's inventory here was insufficient because the inventory only described the packaging holding certain pieces of evidence rather than the contents.

Facts and Procedural History

On July 17, 1971, Anselmo discovered the body of a female victim and, a few days later, notified police where they could find the victim's jacket and keys. Police interviewed Anselmo several times, and he asserted that a John Soares killed the victim. However, he eventually confessed to the crime and was charged with first-degree murder.

At trial, the State presented a felony-murder theory and introduced evidence that the victim was likely murdered in the perpetration of rape. The evidence included that the coroner had recovered semen from the victim, and a forensic pathologist testified that there was no sperm found

¹ Roland Jay Brunner

² NEV. REV. STAT. § 176.09183(1).

in the semen. The State alternatively sought to have Anselmo convicted under a willful, deliberate, and premeditated theory of first-degree murder.

Anselmo's primary defense was that Soares was the murderer. In support, Anselmo reminded the jury that he consistently told the police that Soares was the killer and that he was not sterile. The jury returned a generic guilty verdict that did not indicate which theory of first-degree murder the jury relied on.

In 2018, Anselmo filed a postconviction petition requesting genetic marker analysis of various pieces of evidence. The district court directed the custodial agency to prepare an inventory of the evidence. Anselmo then moved for an order to show cause because the inventories only described the packaging in which the evidence was stored, not the actual evidence. The district court denied the motion, finding the inventories sufficient, and later dismissed Anselmo's petition.

Discussion

The district court abused its discretion by denying Anselmo's petition because Anselmo demonstrated a reasonable possibility that he would not have been tried or convicted if exculpatory results had been obtained from the genetic marker analysis.

This Court reviews an order denying a petition for genetic marker analysis for abuse of discretion³ and reviews questions of statutory interpretation de novo.⁴ The plain language of the statute requires the district court to assume the genetic marker evidence would be exculpatory and then consider the reasonable possibility that the petitioner would not have been prosecuted or convicted considering such evidence.

Here, even though the State argued two first-degree murder theories the jury's verdict was generic. Thus, it is possible the jury convicted Anselmo on a felony-murder theory, and DNA

³ NEV. REV. STAT. § 176.09183(1) (providing that the district court must order genetic marker analysis "if the court finds" that the enumerated requirements are satisfied).

⁴ *Washington v. State*, 132 Nev. 655, 660, 376 P.3d 802, 806 (2016).

evidence that excludes Anselmo as the supplier of the semen would create a reasonable possibility that the jury would not have convicted Anselmo for felony-murder in perpetration of rape. Further, the DNA evidence could help support Anselmo's defense theory that another attacked the victim. The existence of other evidence does not preclude a reasonable possibility finding because the district court must only ask if there is a *real possibility* that the verdict would be different.

The district court abused its discretion when it concluded that the State's inventory was sufficient.

The Court further finds that inventory describing only the evidence's packaging does not meet the statutory directive to produce an inventory of relevant evidence because the district court cannot determine what might be inside the described cannisters. The district court cannot determine if evidence should be tested based only on descriptions of the evidence's packaging.

Conclusion

The district court must assume that the DNA analysis will produce exculpatory evidence and then consider whether such evidence would show a reasonable possibility that the petitioner would not have been tried or convicted. Additionally, an evidence custodian's inventory is insufficient if it only describes the packaging. Here, the district court abused its discretion by denying Anselmo's petition for genetic marker analysis because showed a reasonable possibility that the jury would not have convicted him given such evidence. The district court further abused its discretion by concluding the inventory was sufficient. Accordingly, this Court reverses the district court's order and remands for further proceedings.