

State of Minnesota
Mower County

District Court
Third Judicial District

Court File	50-CR-23-1185
Numbers:	50-CR-23-1186

Case Type: Crim/Traf Mandatory

State of Minnesota vs Cham Obang Oman
State of Minnesota vs Manamany Omot Abella

DISCOVERY MOTION ORDER

This matter came on for hearing on November 30, 2023, before the Honorable Kevin Siefken, Judge of District Court. The State appeared by and through attorneys Jason Heaser, Scott Springer, and Daniel Vlieger. Defendant in the case ending in 1185, Cham Oman appeared personally and was represented by attorney Kelsey Anderson. Defendant in the case ending in 1186, Manamany Abella appeared personally and was represented by attorney Graham Henry. State's witness Dr. Marlijn Hoogendoorn was also present.

ORDER

1. The attached Memorandum constitutes the Court's Findings and is incorporated by reference and made part of this Order.
2. All motions for a protective order are **DENIED**.
3. The Defendants may appoint a qualified expert to observe the BCA's test of the DNA sample, and the defense expert shall be allowed to observe testing of the DNA samples.

Dated: 1/4/2023

BY THE COURT

Kevin Siefken
Judge of District Court

MEMORANDUM

On June 9, 2023, an apparent drive by shooting in Mower County resulted in the death of one individual and the injury of two individuals. Upon investigation, law enforcement collected discharged cartridge casings (DCCs). These DCCs were sent to the Minnesota Bureau of Criminal Apprehension (BCA) for DNA testing.

On June 10, 2023, Defendant Cham Oman, and Defendant Manamany Abella were both charged in relation to this incident. Since they were first charged, the charges against both Defendant Oman and Defendant Abella were amended and they are each currently charged with two counts of Aiding and Abetting 2nd Degree Murder, two counts of Aiding and Abetting Attempted 2nd Degree Murder, and one count of Aiding and Abetting Felony Drive by Shooting.

On July 11, 2023, the BCA requested to consume the DNA samples collected. On July 28, each Defendant filed a Motion seeking a Protective Order prohibiting the State from destroying potential DNA evidence.

The matters were joined for a hearing, which came before the Court on November 30, 2023. At this hearing, the State produced expert witness Dr. Marlijn Hoogendoorn, Technical Leader of the DNA section at the BCA. Dr. Hoogendoorn's credentials were established, and she was accepted as an expert witness by the Court.

Dr. Hoogendoorn's testified to the following:

1. Under normal circumstances, the BCA will utilize half of a DNA sample obtained to preserve the sample.
2. The BCA has determined that DCC's typically have little to no DNA available for testing.

3. The quantitation stage of DNA testing is when the tester can determine how much DNA is present to extract from a given sample.
4. Some DNA is lost or consumed during as part of the normal course of the quantitation stage.
5. If one half of a sample is run, and then it is determined during the quantitation stage that there is not enough DNA from that half sample to obtain an interpretable result, adding the second half is not a remedy to obtain a result.
6. It is Dr. Hoogendoorn's opinion that using the entire sample is the best chance to obtain interpretable DNA results.
7. The BCA has determined that that using the entire sample is the best chance to obtain interpretable DNA results.

ANALYSIS

The district court has the inherent authority to regulate discovery in criminal cases. *See State v. Kaiser*, 486 N.W.2d 384, 386-87 (Minn. 1992); Minn. R. Crim. P. 9.03, subd. 3. In this case, the BCA is requesting to use the entirety of the DNA sample in its testing. Because the DNA sample would be unusable after being tested, this has been described as destroying this piece of evidence. Both Defendants have asked the Court to halt the BCA from utilizing the entire sample in this manner.

Dr. Hoogendoorn has testified credibly that the BCA is concerned that the DNA sample available is too small to divide in half and still obtain an interpretable result. In fact, Dr. Hoogendoorn was uncertain that the entirety of the sample would be enough to obtain an interpretable result. The reasoning behind this concern is credible and convincing. Dr.

Hoogendoorn and the BCA both believe that using the entire sample has a better chance of producing an interpretable result, as opposed to testing only half the sample.

After hearing the testimony of Dr. Hoogendoorn, this Court believes that there is a strong likelihood that an order restricting the BCA to only using half of the sample in its initial test would ultimately result in complete destruction of the DNA as a useful sample with no usable results to show for it. This be tantamount to destroying the evidence. Therefore, the Court believes that although use of the entire sample is not ideal, it is the best option available, and the BCA should be allowed to proceed. As such the Court denies any motion to for protection regarding this sample.

Dr. Hoogendoorn further testified that the BCA has the means available to allow observation of testing by a defense expert. This option would preserve the defendants rights to prepare and present a defense without rendering the entire sample useless.

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