

Supreme Court of Florida

THURSDAY, NOVEMBER 10, 2011

CASE NO.: SC10-1082

PAUL CHRISTOPHER HILDWIN vs. STATE OF FLORIDA
Petitioner(s) Respondent(s)

Paul Christopher Hildwin, a prisoner under sentence of death, filed an all writs petition, seeking an order from this Court directing the Florida Department of Law Enforcement (FDLE) to upload the DNA profile from semen and saliva found on items at the crime scene into the National DNA Index System (NDIS) so that it may be compared in CODIS (the Combined DNA Index System) with forensic profiles obtained from other crime scenes and the profiles of known offenders. Hildwin alternatively requests that the profile be uploaded in Florida's State DNA Index System (SDIS) or that a one-time manual "keyboard" search be performed in NDIS or Florida's SDIS. We have jurisdiction. See art. V, § 3(b)(7), Fla. Const.

The State responded that the petition is procedurally barred; the State also contended that the profile may not be eligible to upload and that factual development as to the profile's eligibility may be appropriate. After determining that this petition is not procedurally barred, the Court relinquished jurisdiction to the circuit court for fact-finding as to the profile's eligibility to be uploaded and manually searched in the databases.

Prior to the evidentiary hearing, all impediments to the profile's upload were resolved with the exception of NDIS Procedure 6.4.2, which provides:

A laboratory submitting a DNA profile to the Forensic Index at NDIS that is derived from forensic evidence, shall only offer those alleles that are attributed to the putative perpetrator(s). Alleles derived from forensic profiles that are unambiguously attributed to a victim or individuals other than the perpetrator(s), such as, but not limited to a husband or boyfriend, shall not be offered to NDIS.

After conducting an evidentiary hearing, the circuit court entered an order finding that the profile was from "an unknown source derived from forensic evidence which has some nexus to the crime scene, crime investigation, and 'evidence' at trial, and which cannot unambiguously . . . be attributed to an identifiable individual not a perpetrator in the homicide of Vronzettie Cox." The

circuit court found that NDIS Procedure 6.4.2 did not preclude uploading the profile into NDIS. The circuit court therefore found that the profile was eligible to be uploaded into, as well as manually searched in, both NDIS and Florida's SDIS. The circuit court further suggested that the DNA profile should be compared in the DNA databases.

Having reviewed the record and the facts of this case, we conclude that competent, substantial evidence supports the circuit court's finding that the profile is eligible to be uploaded into NDIS. We conclude that the profile at issue is probative and meets the requirements of NDIS Procedure 6.4.2. Accordingly, we hereby grant Hildwin's all writs petition and order the State to ensure that the profile is promptly uploaded into the forensic index in NDIS so that it may be included in that database and searched in CODIS.

In light of our order that the profile be uploaded into NDIS, it is unnecessary to decide whether the profile is eligible for upload into Florida's SDIS or eligible for a manual keyboard search in NDIS or Florida's SDIS.

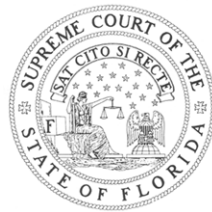
It is so ordered.

PARIENTE, LEWIS, QUINCE, LABARGA, and PERRY, JJ., concur.
CANADY, C.J., concurs in result.
POLSTON, J., concurs in result only.

A True Copy
Test:



Thomas D. Hall
Clerk, Supreme Court



jn

Served:

ROCK E. HOOKER
KENNETH SLOAN NUNNELLEY
STEPHEN F. HANLON
HON. KAREN NICOLAI, CLERK
HON. RICHARD TOMBRINK, JR., JUDGE

NINA R. MORRISON
MARTIN J. MCCLAIN
GIGI ROLLINI
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