

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

Cameron Paul Crockett, #1464770

MOVANT

VS.

Circuit Court Case No.: CR090000999-01

Commonwealth of Virginia

RESPONDENT

MOVANT'S ANSWER TO THE COMMONWEALTH'S RESPONSE

COMES NOW Movant, Cameron Paul Crockett, *pro se*, and enters the following answer to the Commonwealth's response to his motion for preservation of certain biological evidence.

1. Movant asserts that the Court can dispose of this matter in one of two ways in light of the Commonwealth's response. Essentially, because the Commonwealth has attempted to make a dispositive issue out of the definition of "specifically identified human biological evidence" (See Commonwealth's Response, Page One, ¶ 2), an intelligent ruling on this matter will hinge on how the Court construes the meaning of that language as intended by the legislature.

1(A). The Commonwealth represents that no human biological evidence has been identified with adequate specificity to activate the application of §19.2-270.4:1—necessarily implying under these particular circumstances that there is no human biological evidence on the items of evidence clearly identified by Movant—but your Movant contends that his request *is* sufficiently specific to trigger §19.2-270.4:1. If the Court is to adopt the Commonwealth's stringent definition of "specifically identified human biological evidence"¹, then Movant maintains that this Court should order a hearing to see if the Commonwealth can actually present evidence in support of its apparent contention that there is no human biological evidence on the items at issue.

¹ Which would apparently require a definitive showing that such evidence exists on the items sought to be preserved at the time of the request, which Movant notes parenthetically to be virtually impossible for a prisoner to show without access to the evidence.

hearing in which the Court might ascertain for itself if the Commonwealth can produce some evidence to rebut Movant's stance that human biological evidence does exist on the items in question. The Commonwealth's position begs the questions: How has it determined that there is no human biological evidence on, for example, the airbag? Who made this determination? What are his forensic credentials? What scientific method was employed to arrive at this determination? Is that scientific process accepted in the scientific community and approved by the Virginia Department of Forensic Science? At bottom, if the Commonwealth wishes to have this Court adopt its position that §19.2-270.4:1 is inapplicable because Movant has not specifically identified human biological evidence, then the Court has to believe that there is no human biological evidence on the items of evidence identified by Movant; and if the Court is to consider accepting that as fact, the Commonwealth must first present evidence answering these questions before the Court can resolve the instant factual dispute and make an intelligent ruling on this matter.

3. But this factual dispute is of no consequence here if the Court believes that, on the face of Movant's initial pleading, the items identified by Movant meet the definition of "specifically identified human biological evidence".

3(A). To be clear, Movant submits that the Commonwealth has attempted to foist upon the Court a narrow and strained construction of the term in question by suggesting that your Movant has not specifically identified any human biological evidence. To require a movant, as the Commonwealth appears to propose, to somehow affirmatively prove, without access to the evidence, that human biological evidence exists in productive quantities on the items sought to be preserved at the time the preservation motion is made would constitute an "unreasonably restrictive interpretation of the statute that would subvert the legislative intent expressed therein". Armstrong v. Commonwealth, 263 Va. 573 at 581 (2002) (Internal quotations and citations omitted). Instead of construing the statute in this inflexible manner, Movant notes that, because §19.2-270.4:1 "contains no express definition of [the] term [specifically identified human biological evidence]", the Court should "infer the legislature's intent from the language used" (Hubbard v. Henrico Ltd. P'Ship, 255 Va. 335 at 340; 1998), bearing in mind that "the primary objective of statutory construction is

erased entirely. Rather, it means that the airbag, if nothing else, falls squarely into the scenario envisioned by the legislature for which the preservation statute was specifically designed. There could be no more appropriate situation in which to order preservation under the statute than where, as here, the previously collected but untested evidence, being of trace amounts, has a substantial possibility of being able to be productively tested in the future as DNA testing technologies continue to advance in the realm of low-level sample analysis. Under the operative facts of this preservation request, the legislature's purpose in enacting §19.2-270.4:1 would be offended by a refusal to recognize the evidence identified by Movant here as "specifically identified human biological evidence".

4. In conclusion, Movant resubmits for all the reasons discussed in this answer that the Court should enter an appropriate order under §19.2-270.4:1 without a hearing if it believes Movant's request is specific enough to trigger the application of the statute; however, if the Court finds the Commonwealth's interpretation of the statute persuasive, then a hearing should be ordered to determine if the Commonwealth can corroborate its bald contention that no evidence exists on the items of evidence identified by Movant here². In any event, all of the identified evidence should be preserved at least until all of Movant's post-conviction remedies have been completely exhausted, and the airbag should unquestionably be transferred to the custody of the Virginia Department of Forensic Science. Movant also renews his subsidiary requests relating to matters of evidentiary integrity made in the initial preservation motion (See Motion to Preserve, Page 8, ¶ 3; and Page 9)³. Movant sincerely thanks the Court and the Commonwealth for their attention to this detailed answer and leaves this matter to the discretion and wisdom of the Court.

Respectfully Submitted,

CAMERON CROCKETT

² Any such hearing can be accommodated via video teleconference through the "Judicial center" equipment available here at Movant's housing institution. Head Counselor Collins would be the liaison for making any such arrangements.

³ The Commonwealth did not object to the request for chain of custody documentation and property & evidence visitation logs in its response.