

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

Commonwealth of Virginia

v.

Case No.: CR09-999

Cameron Crockett, Defendant

Postconviction Order

The defendant has filed a pro se post-conviction motion pursuant to § 19.2-270.4:1. The defendant seeks storage, preservation and retention of the following: (Item 1) the 1998 Honda Accord (the “accident vehicle”) as well as all of the contents of the vehicle; (Item 2) the entire driver’s side airbag from the accident vehicle; and (Item 3) all components of the driver’s side seatbelt assembly from the accident vehicle.

The attorney for the Commonwealth has filed a response. The defendant has filed an answer to the Commonwealth’s response.

Analysis and Ruling

Final judgment in this case was affirmed by the Court of Appeals of Virginia. On April 7, 2015, the Supreme Court of Virginia refused the appeal.

Code § 19.2-270.4:1 provides for the retention of evidence containing “human biological evidence” or DNA.

The requested items were not received into evidence during the course of the trial.

Whether these items may potentially have DNA evidence of exculpatory value sometime in the future is no more than mere possibility and entirely speculative. Neither the constitutional standard of materiality nor the statute require a mandatory preservation order. *Lovitt v. Warden*, 266 Va. 216, 241 (2003); *Orbe v. True*, 201 F. Supp. 2d 671 (E.D. Va. 2002).

This motion is denied as to the 1998 Honda Accord vehicle (Item 1) and as to the components of the driver’s side seatbelt assembly (Item 3). The motion is granted as to the driver’s side airbag (Item 2).¹

The Court orders that the driver side airbag (Virginia Beach Police Department Property & Evidence Voucher #A120318, Item Description: Driver Air Bag) in the possession of the Virginia

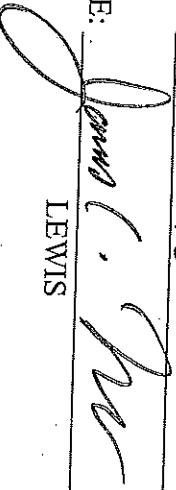
¹ Court has inherent discretionary power to enter a preservation order.


Beach Police Department be stored, preserved and retained for a period of 10 years from the entry date of this Order pursuant to standards and guidelines established by the Department of Forensic Science. The Virginia Beach Police Department shall transfer such item to the Department of Forensic Science. The Department of Forensic Science and the local law-enforcement agency shall take all necessary steps to preserve, store, and retain such item and its chain of custody for the period of time specified.

The Court further orders that the defendant's request for appointment of a guardian *ad litem* and entry of an order directing the police department to disclose a chain of custody document are denied.

The Clerk shall provide a copy of this Order to the Commonwealth's Attorney of the City of Virginia Beach; to the Department of Forensic Science, Post Office Box 999, Richmond, Virginia 23218; to the Virginia Beach Police Department; and to the defendant.

ENTER: 5-20-15

JUDGE: 
LEWIS

CERTIFIED TO BE A TRUE COPY
OF RECORD IN MY CUSTODY
TINA E. SIMMEN, CLERK
CIRCUIT COURT, VIRGINIA BEACH, VA
BY 
DEPUTY CLERK