

**IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR GLADES COUNTY, FLORIDA**

**STATE OF FLORIDA,
Plaintiff,**

vs.

CASE NO: 83-CF-12

**CARY MICHAEL LAMBRIX,
Defendant.**

ORDER DENYING DEFENDANT'S SECOND 3.853 MOTION

THIS CAUSE comes before the Court on Defendant's "Motion For Postconviction DNA Testing," pursuant to Fla. R. Crim. P. 3.853, filed by counsel on December 15, 2015. Having reviewed the motion, the State's response to the motion, the record, and the applicable law, the Court finds as follows:

1. Defendant requests DNA testing of the female victim's clothing, the tire iron, and the t-shirt wrapped around the tire iron. The motion indicates that Defendant believes the latter two items are in the custody of the Glades Clerk, but that he has been unable to locate the female victim's clothing. Defendant believes that had DNA evidence that did not match Defendant been presented to the jury, it would have been "more likely" to present a reasonable doubt to the jury, leading to an acquittal.

2. Rule 3.853 requires that a motion for DNA testing must demonstrate (1) a statement of the facts relied upon in support of the motion, including a description of the physical evidence containing DNA to be tested and, if known, the present location or last known location of the evidence and how it originally was obtained; (2) a statement that the evidence was not previously

tested for DNA, or a statement that the results of previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques likely would produce a definitive result establishing that the movant is not the person who committed the crime; (3) a statement that the movant is innocent and how the DNA testing requested by the motion will exonerate the movant of the crime for which the movant was sentenced, or a statement how the DNA testing will mitigate the sentence received by the movant for that crime; and (4) a statement that identification of the movant is a genuinely disputed issue in the case and why it is an issue or an explanation of how the DNA evidence would either exonerate the defendant or mitigate the sentence that the movant received.

3. Defendant has failed to make facially or legally sufficient allegations. While Defendant asserts his innocence, he has failed to demonstrate how testing these items would exonerate him or mitigate his sentence. Further, Defendant's identity is not a genuinely disputed issue in this case, since Defendant admits he was present, and asserts the defense of self defense. Defendant filed a prior 3.853 motion in conjunction with his fourth successive 3.851 motion, seeking testing of the hairs found on the t-shirt, which were both denied on the merits. Defendant concedes that the female victim's clothing is missing. Apparently, inquiries to the Lee, Hendry and Glades Clerks, and the Hendry and Lee County Sheriff's Offices resulted in responses that those locations did not have that evidence. The agencies deny having any physical evidence. Letters between defense counsel and the Glades County Sheriff's Office indicate that a hurricane damaged the storage facility, and the evidence in this case was likely destroyed with the files. Copies are attached. Thus, it appears that the victim's clothing is unavailable, through no fault of the State.

4. In this case, even if the items were available to be tested, it is unlikely that, after three

decades, there would be any viable DNA remaining to test, especially since the tire iron and t-shirt were found submerged in a stream, which would have washed away any blood evidence. Indeed, Defendant concedes that the FDLE report indicated no blood was found on those two items. Where a defendant cannot show that DNA will prove or negate a material fact, a request for testing should be denied. Scott v. State, 46 So.3d 529 (Fla. 2009). Since the female victim was strangled, and Defendant admits he was involved in an altercation with the male victim, he cannot reasonably show how DNA testing of these items would give rise to a reasonable probability that he did not commit the crimes, or would result in a lesser sentence. Even if testing of the evidence found DNA and demonstrated that the DNA did not match Defendant, it would not prove that Defendant was not present at the crime scene or the perpetrator of the crime. This kind of speculation has been held as a basis for denying a Rule 3.853 motion. See Overton v. State, 976 So. 2d 536, 568-570 (Fla. 2007). As such, the evidence would not prove or negate a material fact, and would likely be inadmissible and irrelevant at trial or any future hearings.

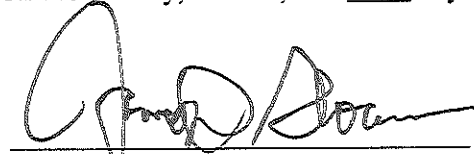
5. Defendant has not established that the evidence would exonerate him, or result in a lesser sentence. The Court finds there is no reasonable probability that Defendant would have been acquitted or received a lesser sentence if the DNA results had been admitted at trial, especially in light of the other overwhelming evidence adduced at trial, including the testimony of witnesses that the Defendant admitted to killing the victims. DNA testing will not be permitted if the requested DNA testing would shed no light on the defendant's guilt or innocence. Consalvo v. State, 3 So.3d 1014, 1016 (Fla. 2009). The Court notes that, while Rule 3.853 allows for a motion to be filed at any time, Defendant had three decades to bring such a motion, and instead waited to file this motion until the death warrant had been signed. It appears that the motion was

filed solely for the purposes of delaying the execution.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's second 3.853 motion is DENIED.

DONE AND ORDERED in Chambers at LaBelle, Glades County, Florida, this 21 day
of Dec, 2015.



James D. Sloan
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Order has been furnished to: **William M. Hennis, III**, Capital Collateral Regional Counsel, Southern Region, 1 East Broward Blvd., Suite 444, Fort Lauderdale, FL 33301; **Cynthia A. Ross**, Assistant State Attorney, P.O. Box 399, Fort Myers, FL 33901-0399; **Capital Appeals Intake Box**, capapp@myfloridalegal.com ; **Scott Browne**, Assistant Attorney General, Department of Legal Affairs, 3507 E. Frontage Road, 2nd Floor, Suite 200, Tampa, FL 33607; and **Administrative Office of the Courts (XIX)**, 1700 Monroe Street, Fort Myers, FL 33901; this _____ day of _____, 2015.

SANDRA BROWN
Clerk of Court

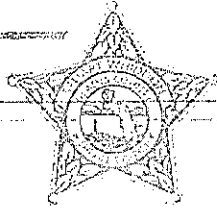
By: _____
Deputy Clerk

Sheriff

Glades County

(863) 946-1600

Fax: 946-0845



STUART WHIDDON

P.O. BOX 39
MOORE HAVEN, FLORIDA 33471-11004

December 11, 2015

Law Office of The
Capital Collateral Regional Counsel-South
1 East Broward Blvd., Suite 444
Ft. Lauderdale, FL. 33301

RE: State of Florida v. Cary Michael Lambrix, Case No. 83-12-CF

To Whom It May Concern:

Please be advised that after a diligent search there were not any records located on Cary Michael Lambrix, here at the Glades County Sheriff's Office. Also, please be advised that the 2004 hurricanes destroyed the storage building and some of the records that were stored in it. If I can be of any further assistance please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Delores Dionne".

Delores Dionne
Records

"Protect and Serve"

LAW OFFICE OF THE
CAPITAL COLLATERAL REGIONAL COUNSEL-SOUTH

State of Florida



Neal A. Dupree
Capital Collateral Regional Counsel

1 East Broward Blvd., Suite 444
Ft. Lauderdale, FL 33301
(954) 713-1284
(SC) 453-1284
FAX (954) 713-1299
FAX (SC) 453-1299

December 16, 2015

Sheriff Stuart Whiddon
Glades County Sheriff's Office
ATTN: Delores Dionne, Records Custodian
ATTN: Chief Deputy Duane Pottorff
P.O. Box 39
Moore Haven, FL 33471

Re: State of Florida v. Cary Michael Lambrix, Case No. 83-12-CF

Chief Deputy Pottorff,

The Capital Collateral Regional Counsel – South is in receipt of a letter dated December 11, 2015 in which Records Custodian Delores Dionne certifies that no records exist on Cary Michael Lambrix at the Glades County Sheriff's Office. Ms. Dionne also advised CCRC – South that the 2004 hurricanes destroyed the storage building that housed some records at the Sheriff's Office.

CCRC – South spoke with Ms. Dionne on the phone this morning in an attempt to clarify if Mr. Lambrix's records were in fact in the storage building that was destroyed in the 2004 hurricanes. Ms. Dionne stated that she is unaware of where his records were located before the hurricanes, but since no records exist on Mr. Lambrix it may be because they were located in the storage building. Ms. Dionne also advised that paper records and physical evidence would have been housed together on any given case.

The Capital Collateral Regional Counsel – South is requesting verification as to where Mr. Lambrix's records were prior to 2004, and clarity as to why they are no longer in possession of the Glades County Sheriff's Department.

Sincerely,

William M. Hennis, III
Litigation Director
Lead Counsel for Mr. Lambrix