

DNA fight now center of David Johnston death-row case



David Eugene Johnston, a transient, was convicted of the stabbing and strangulation of 84-year-old Mary Hammond at her Ridgewood Street apartment in Orlando. (RICARDO RAMIREZ BUXEDA, ORLANDO SENTINEL / April 24, 2009)

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The execution of David Johnston is proving to be a complicated task.

Carrying out Johnston's death sentence — delivered 25 years ago — hinges on the outcome of DNA testing. And that process now features a new fight between Johnston's defense attorney and the state.

The Florida Supreme Court delayed Johnston's execution in May so authorities could examine blood on Johnston's clothing and the victim's nail clippings for DNA.

Now both sides are questioning each other's testing decisions. There's also an issue of missing samples.

And Johnston's attorney, Todd Doss, says the samples are large enough for the defense to test but not large enough for the state to use.

Orange Circuit Court Judge Bob Wattles must figure out what's next.

Doss has asked for an evidentiary hearing to hash out the problems and come up with a "durable testing plan."

No date is set.

Johnston, 49, was convicted for the 1983 murder of Mary Hammond of Orlando. She was stabbed several times and strangled in her home.

Johnston, a transient who had been working at a demolition site in the area, had met Hammond days earlier. He was convicted a year later.

In the past two decades, DNA has played a crucial role in exonerating many wrongly convicted people. The Innocence Project, an organization dedicated to helping the accused by using DNA testing, has exonerated 240 people, including 17 death-row inmates, since 1989.

Although the group is not involved in Johnston's case, Eric Ferrero, a spokesman for the project, said haggling over the testing process usually takes place when prosecutors initially resist examining the DNA.

"If they are being dragged into the testing, sometimes we see that they continue that fight afterward," Ferrero said.

The process has devolved into messy finger-pointing.

Doss said in an e-mail Monday that he thinks the state's "histrionics are overblown" on the matter because prosecutors argued they could convict Johnston of the crime no matter the outcome of the DNA tests.

Issues in Johnston's case arose in June when the Florida Department of Law Enforcement initially tested the DNA. FDLE's lab report recommended additional testing with newer technology that focuses on male [chromosomes](#) — a move the defense had requested earlier.

Both the state and the defense preferred their own labs to conduct that specialized testing. Wattles allowed both sides to select a lab and conduct their own examinations.

The defense's lab, DNA Diagnostic Center in Fairfield, Ohio, was to go first, followed by the state's choice of labs, Bode Technology Group Inc., in Lorton, Va.

There were enough samples for both sides to test.

Now, however, the defense argues that the amount of sample material sent to the Ohio lab is so small that it would be used up by the testing there, leaving nothing for the Virginia lab to test.

The state contends this is an attempt to prevent it from doing its own testing, Kenneth Nunnelley, senior assistant attorney general, argued in a filing with the court.

In turn, the defense accuses the state of not sending all the DNA samples that exist.

"It is not unjust in any sense of the word for us to test the whole sample if we have to at this point due to their mishandling of the evidence," Doss said in his e-mail.

No so, argues the state: FDLE sent everything it had.

Wattles will serve as the legal referee because the Supreme Court awaits the outcome.

So does Johnston. His life may depend on it.

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