



Charles E. Coulson Lake County Prosecuting Attorney

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Karen L. Kowall
*Chief Assistant
Criminal Division*

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Major Felony Prosecutions

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Juvenile Division Supervisor

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*Administrative Assistant
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*Victim Assistance
Program Director*

Thomas P. Walsh
Chief Investigator

Lindsay T. Evans
Systems Administrator

August 6, 2010

The Honorable Ted Strickland
Governor of Ohio
Riffe Center, 30th Floor
77 South High Street
Columbus, OH 43215

The Honorable Richard Cordray
Attorney General of Ohio
30 East Broad Street, 17th Floor
Columbus, OH 43215-3428

RE: Your August 3, 2010 Letter Concerning
Anthony Constant

Dear Governor Strickland and Attorney General Cordray:

First, if DNA evidence existed in the Anthony Constant case, this Office would have tested it long ago. It would have been tested not because there is a concern that Anthony Constant is anything but guilty of these crimes, but because it would be the right thing to do.

Since I took Office in 1995, the Lake County Prosecuting Attorney's Office has practiced total open file discovery. This Office provides to defense counsel absolutely every piece of evidence, every police report, every witness statement – the whole file, regardless of being asked. This policy equally applies to the evidence in the Constant case. Had either of you bothered to pick up a telephone and call this Office, you would have learned of the efforts put forth by this Office in an attempt to find this evidence. Unfortunately, the evidence was released from the Common Pleas Court and returned to the Madison Township Police Department in 1989 and subsequently destroyed.

Second, I would have hoped that when it came to such an important matter, the Governor and the Attorney General of the State of Ohio would have been above political grandstanding. Your letter was neither one of inquiry to learn the facts nor was it to make a legitimate request. Your letter was for the sole purpose of obtaining political notoriety. You issued the letter and a news release simultaneously. You are evidently not interested in the facts. I will now try to briefly fill you in anyway.

• ADMINISTRATION BUILDING • 105 MAIN STREET • P.O. BOX 490 • PAINESVILLE, OHIO 44077 •

www.lakecountypProsecutor.org

(440) 350-2683 • (440) 428-4348 • (440) 918-2683 • (440) 350-2585
Painesville Madison West End Fax Number

The Honorable Ted Strickland
The Honorable Richard Cordray
RE: Anthony Constant
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It is impossible for this office to comply with your request per your letter dated August 3, 2010, because as previously documented several times by trial transcripts, court filings, a Chief of Police, the Director of the Lake County Crime Laboratory, a Lake County Common Pleas Judge and the 11th Dist. Court of Appeals, the physical evidence you seek simply does not exist. The supervisor of my Appellate Division personally went to the Madison Township police department to look for the evidence on at least three different occasions. As recently as last summer, the 11th Dist. Court of Appeals stated, "It is clear from the record that certain pieces of evidence which Constant requested, including the pubic hair found in the victim's saliva and the hair found on the victim's smock, are no longer available for testing." See *State v. Constant*, 11th Dist. No. 2008-L-100, 2009-Ohio-3936.

Mr. Constant was convicted in Lake County in 1986 of two (2) counts of Rape, one (1) count of Kidnapping and one (1) count of Aggravated Robbery. You should read the trial transcript. The evidence of Mr. Constant's guilt is overwhelming. His Rape, Kidnapping and Aggravated Robbery charges, which are of interest to you, were appealed unsuccessfully in *State v. Constant*, (April 22, 1988) Lake App No. 86-L-12-082, unreported. His request for Post Conviction Relief on that case was denied April 23, 1997.

Subsequently, numerous inquiries have been made regarding physical evidence, and on two occasions DNA Applications were filed pursuant to RC§ 2953.71-2953.81. My office has responded to all applications and inquiries and has made numerous efforts to search for the requested evidence. Those efforts and their results have been documented and acknowledged by the Lake County Court of Common Pleas and the 11th Dist. Court of Appeals. See *State v. Constant*, 11th Dist. No. 2008-L-100, 2009-Ohio-3936.

The evidence you seek in your letter, "a rape kit, head hair and pubic hair" which Mr. Constant requested in his DNA Applications has been judicially addressed (See above referenced opinion). It is obvious from the documentation we provided to the Courts that any dispositive evidence in this case is no longer available.

In your letter, you claim that information provided to you suggests that newly available DNA testing technology "may add greater certainty to the facts underlying this conviction." The issue is whether outcome determinative evidence is available for DNA testing. It is not. The only evidence that would be outcome determinative is the pubic hair taken from the throat culture of the victim during the course of her examination at the hospital after her oral rape. That examination was done in conjunction with the completion of a rape evidence kit. The Court file plainly demonstrates that the pubic hair was admitted as an exhibit at Anthony Constant's trial. Long after trial, Judge Mitrovich of the Lake County Common Pleas Court filed a Notice that all evidence in the case should be returned to the Madison Township Police Department for return to its rightful owner or other appropriate disposition. Mr. Constant's lawyer and the Prosecuting Attorney both being notified and

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without objection, an Order was issued. Further notation on the Court's Notice indicated that one of the Madison Township investigating detectives retrieved the items from the Court on April 25, 1989. The two (2) hairs that you request were part of the contents of the rape evidence kit and are included in this Order.

A letter from the then Madison Township Police Chief reveals that he believes that the Constant evidence was disposed of in 1992 when the police department moved into new quarters. Either way he contends the items requested are not in the Township's possession and have not been since at least 1992. Additionally, the Director of the Lake County Crime Laboratory performed an inventory of evidence still retained at the Lake County Crime Laboratory; the hairs requested are not among items retained at the laboratory. New technology is useless if meaningful physical evidence does not exist for testing.

While you acknowledge in your letter that the legal obligation to make the evidence available is up to the Courts, this issue has already been decided. We have explained time and time again that the evidence you seek is not available. Requests on your behalf to use "discretion" to turn over said evidence implies that we have it in our possession or know of its whereabouts. We are well aware of our professional and ethical obligations to do justice in all cases. Suggestions that we have not done that in this case are unwarranted. Despite all evidence to the contrary, you have made the insinuation that the hairs exist. If dispositive evidence was still in existence, we would have complied with the law and our professional and ethical obligation to provide it for testing.

Also in the record is a letter sent to me by Anthony Constant in which he admits to these crimes. Here are some excerpts of what Mr. Constant says about his burning down of the church and the kidnapping and rape of this young woman at knife point:

"I have for this entire time lived with what I did. I deeply and truly regret it. It has been a source of constant depression for me. This is not my history. I have never harmed another person in my life, nor will I ever again. While my record is by far not good, it is relatively (sic) non-violent with the exception of my present situation."

"I can assure this is something that will never occur at my fault again."

In speaking of the kidnapping and rape Mr. Constant says:

"I am not attempting to justify this crime, but I would like to note that it was not a bruttle (sic) crime. That is not to say it is not a very serious offense. It is to say the victim was not beaten, tortured, shot, stabbed etc..."

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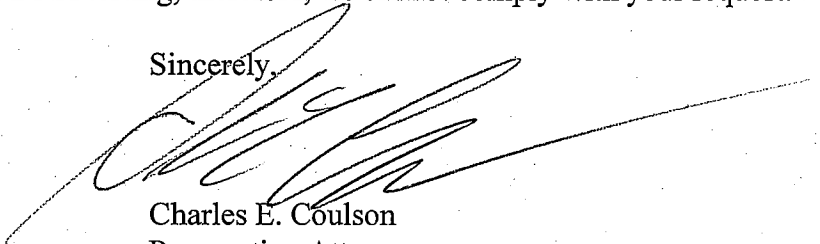
“Despite it all I am not a violent person by nature. This is the one and only time and it will not happen again.”

A full copy of the above letter is attached for your consideration along with copies of the journal entries authorizing the destruction of the evidence in question, a letter from the then Madison Township Police Chief stating that the evidence is no longer available and an inventory from the Lake County Regional Forensics Laboratory documenting all evidence which has been retained in this case. All of this is in the record, if you had simply cared to check.

Your rush for publicity was at the expense of the woman who was kidnapped and raped, the congregation whose place of worship, and the treasures within it, was burned to the ground, and the justice system that has endlessly litigated this matter in open court and which you chose to ignore.

In closing, there is not a “disagreement” as to whether this evidence exists. There is only Mr. Constant’s unsubstantiated allegation that it exists despite all evidence to the contrary. There is no dispositive evidence available for DNA testing, therefore, we cannot comply with your request.

Sincerely,



Charles E. Coulson
Prosecuting Attorney

CEC/ggm

Enc.

cc: The News Herald
The Columbus Dispatch

FILE
Nov 17 1 57 PM '88
LAKE CO. CLERK OF COURT

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO
THE STATE OF OHIO,

)
) Plaintiff,)
)
) -vs-) Case # 86 CR 228
)
) ANTHONY J. CONSTANT,)
)
) Defendant.) NOTICE

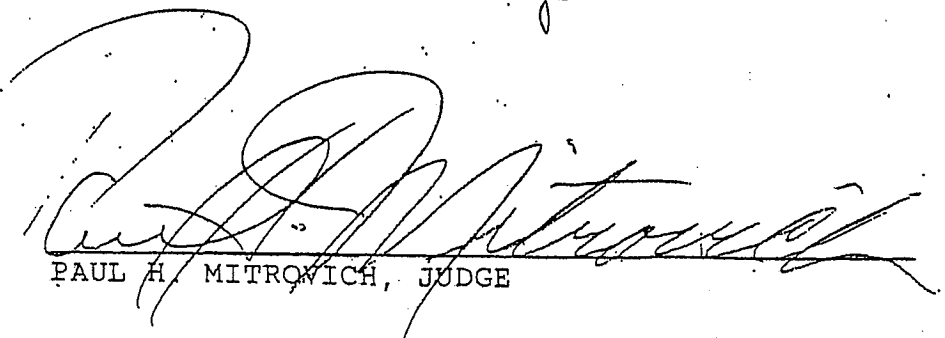
Counsel for the respective parties will take notice that the property listed herein shall be photographed for use in any further proceedings and returned to the Madison Police Department for ultimate distribution to its rightful owner, or other appropriate disposition.

Objections or request for hearing shall be filed with the Court on or before November 28, 1988.

State's Exhibits: #1-smock, #2-blue jeans, #3-right tennis shoe, #4-left tennis show, #5-underware, #19-newspaper, #20-newspaper; #23, #24, #24A, #26, #26A, #27, #28, #29, #30, #31, #32A, #32B all being contents of the Rape Evidence kit; #33, #34, #35, #36 and #37 all being slides.

4/25/89 - Det. Mangell picked up above items from Common Pleas Court.

Det Mangell



PAUL H. MITROVICH, JUDGE

cc: Lake County Prosecutor's Office
Albert L. Purola, Attorney at Law
Madison Police Department

FILED

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO
DEC 1 10 16 AM '88
LAKE CO. CLERK OF COURT

THE STATE OF OHIO

Plaintiff,

-vs-

ANTHONY J. CONSTANT,

Defendant.)

Case # 86 CR 228

ORDER

This matter came on for review upon the failure of the respective parties herein to respond to this Court's notice of intent to dispose of the following described property:

State's Exhibits: #1-smock, #2-blue jeans, #3-right tennis shoe, #4-left tennis shoe, #5-underwear, #19-newspaper, #20-newspaper; #23, #24, #24A, #26, #26A, #27, #28, #29, #30, #31, #32A, #32B, all being contents of the Rape Evidence kit; #33, #34, #35, #36 and #37, all being slides.

WHEREFORE, it is the order of this Court that said property shall be photographed and delivered to the Madison Police Department for distribution to its rightful owner, or other disposition, according to law.

It is further ordered that said photographs shall be substituted for the physical property to be used as evidence on appeal, or other proceedings.

IT IS SO ORDERED.

[Handwritten Signature]
PAUL H. MITROVICH, JUDGE

cc: Lake County Prosecutor's Office
Albert L. Purofa, Attorney at Law
Madison Police Department

NOTED & FILED ON
12-1-88
LAKE COUNTY CLERK OF COURT
ANDY J. TORRES
BY: *[Handwritten Signature]*

Det. Mongell notified 12/1/88

12, April 95

TO: Charles Coulson
Lake County Prosecutor

FROM: Anthony Constant

192-353

2500 South Avon-Belden Rd.

Grafton, Ohio 44044

Dear Mr. Coulson,

I am writing at this time to ask you if you have objections to submit to the Parole board when I see them in 2 years. I am of course hoping that you don't.

You know^{me} some what from our past relationship which is why I feel you will be honest in your response(s).

See, at present I have 9 years in and will have 10 and a half when I see the board. I will not make parole that much is certain, however depending on your input will decide on how many more years I will receive.

I have done my very best with this time, and that was to attend college I did, and I graduated. I am also on the list for the sex offenders programs.

I have for this entire time lived with what I did. I deeply and truly regret it. It has been a source of constant depression

for me. This is not my history. I have never harmed another person in my life, nor will I ever again. While my record is by far not good it is also relatively non-violent ~~and~~ with the exception of my present situation.

I can assure this is something that will never occur at my fault again. I am not attempting to justify this crime, but I would like to note that it was not a brutal crime. That is not to say it is not a very serious offense, it is to say the victim was not beaten, fractured, shot, stabbed etc.

The point I am trying to make is it should be evident that my heart was not in this. I have no excuses. There are none.

I have a life time of time and I will receive more in 2 years. What I am hoping for is that I will be free one day again.

If you recall Kelly was pregnant in 83, when we met. I now have an 11 year old daughter. Her life is passing me by. While that is nobody's fault but mine, I am asking you to please give me a chance at life again. I am asking that when asked by the parole that you recommend a parole and or remain neutral.

Despite it all I am not a violent person by nature. This is the one and only time and it will not happen again.

My plans for release do not even include the state of Ohio. I plan to be released to my brother in South Dakota. He works with the prison system in that state.

When I am released I can assure you that society has nothing to fear.

This time has been very rough on me as it should be. I can not harp on that enough.

I am no longer a young man. At present I am 35 and turning 36 in July. I have been locked down since I was 26, and will probably not see "day light" until my early Forties.

I want to have some time with my daughter. I am so very sorry for this crime. I live with it daily. I not only victimized her, but I also victimized myself.

MR. Coulson, I hope that this brief letter helps you in your recommendation to the board.

I would also like to say that if you have any questions please ask. I will answer them.

Any recommendation(s) you may give will not get me released as I said before, it will only determine the time they give me.

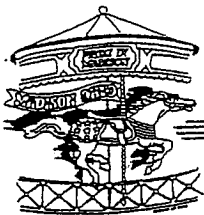
I have written to your offices in the past and never received an answer this was of course before you took office there.

Again, I don't plan to parole to Ohio at all. If there is some day we could speak in person or by telephone I would like to do that. It is much better than a letter. much more personal.

I will close now and hope to hear from you soon.

Sincerely,
Anthony Constant

P.S. excuse the crudeness of this letter. I have always had poor handwriting.



MADISON TOWNSHIP

DEPARTMENT OF POLICE

"A Dynamic Organization Devoted to Improvement and Excellence"

RICHARD R. SVAGERKO
CHIEF OF POLICE
911 Emergency
2065 Hubbard Road
Madison, Ohio 44057
ADMINISTRATION
(440) 428-2116

March 10, 2000

Kay Anderson
1833 S. Holland-Sylvania Rd.
Maumee, OH 43537

Subj: Ref. Anthony Constant

Dear Ms. Anderson:

I am enclosing the two court orders relating to the disposition of the evidence in the Constant case. These have been given to Mr. Constant's previous attorney. As noted previously, the Madison Township Police Department moved in 1992 and a great deal of evidence, authorized to be disposed of, in fact was disposed of at that time. I believe the Constant evidence was disposed of at that time. The items are not in the Township's possession now and have not been since 1992. Authorized disposal is usually handled by either crushing and burying at the Lake County Landfill or incineration.

Respectfully,

Richard R. Svagerko
Chief of Police
Madison Township

RRS/cd

Encls.

Lake County Regional Forensic Laboratory
235 Fairgrounds Road
Painesville, OH 44077
440-350-2184
DNA Section Report

Report Date: 12-5-00
Laboratory Number: 860430-0623
Case Name: Anthony Constant

Inventory of Items stored in freezer:

1. Envelope marked 86-0430-0623 containing the following items:

envelope marked: "86-0623 AC-uw stain", containing square cutting of material approximately 1cm by 1cm

envelope marked: "86-0623 #2977 B.Zelenak Saliva", containing cutting of filter paper approximately 1cm by 2.5 cm

envelope marked: "86-0623 #2977 Bonnie Zelenak Blood", containing file card with bloodstained piece of cotton material approximately 2cm by 3cm

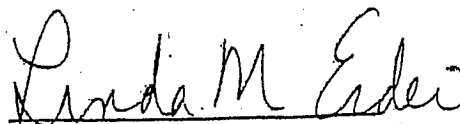
envelope marked: "86-0623 AC-uw ©", containing square cutting of material approximately 0.5cm by 0.5 cm

envelope marked: "-0623 Tissue from trunk (#2) Hair", containing folded filter paper marked "Tissue from Trunk ©" containing one hair approximately 15 cm long

envelope marked: "-0623 Smock", containing tape lift marked "Smock 86-0623"

envelope marked: "-0623 Jeans", containing tape lift marked "Jeans 86-0623"

This is an inventory of items retained at the Lake County Regional Forensic Laboratory.


Linda M. Erdei, BS, D-ABC
DNA Technical Manager