

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-1046-2015</b>
v.	:	
	:	
<b>TERRANCE XAVIER PEREZ,</b>	:	<b>PRETRIAL MOTION DNA</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

On June 9, 2016, the Court heard a motion for independent DNA testing. Specifically, the Public Defender motioned to “retest DNA of Defendant to verify findings of the Pennsylvania State Police” and to “test the DNA of Rory Herbert and Brandon Love”. At the hearing, Defense Counsel agreed to accept the raw data of the DNA test that was already performed on Defendant by the Pennsylvania State Police Bureau of Forensic Services rather than obtain independent DNA testing. Defense Counsel indicated it has not yet received the raw data, and as such, the Court will order the Commonwealth to produce the raw data of Terrance Perez’s DNA test results to Defense Counsel as soon as it is received.

In Count II, of its motion for independent DNA testing, the Public Defender requests that Brandon Love and Rory Herbert’s DNA be tested. The Commonwealth indicated during the hearing that Brandon Love’s DNA has since been obtained but not tested. The Commonwealth indicates that (1) it has not obtained the DNA of Rory Hebert, (2) Rory Herbert has agreed to give a sample of its DNA (3) it believes the Court does not have the authority to order testing of DNA for purposes of identification of an individual. Neither the Defense nor Commonwealth cite any statutory authority or case law for their positions.

Defense Counsel stated in its motion:

Paragraph 13. Rory Herbert was alleged to have an ongoing fight with the victim, Jamil Bryant, the entire day of the incident.

Paragraph 14. Rory Herbert has a motive.

The Commonwealth also argued that the Court has neither authority to order nor probable cause to test the DNA of Rory Herbert; although it conceded that Mr. Herbert had no objection to having his DNA tested but cited the cost to the Commonwealth in its objection to such testing take place. The Commonwealth provided the Williamsport Bureau of Supplemental Police Report #8 from 6/08/2015, Case # 15-04137, to the Court to determine whether probable cause exists to test Mr. Herbert's DNA i.e. whether as an objective matter, the facts and circumstances within the Court's knowledge, are sufficient to warrant believing that Mr. Herbert committed the offense of which Mr. Perez is accused. The Commonwealth drew the Court's attention specifically to pages 24-31 of the report, which detailed an interview with Defendant Perez that took place at City Hall on 6/1/2015. The interview was video recorded. The bullets with a clear circle at the left margin indicate what the police officer says he asked. The indented bullets of filled in squares indicate what Perez allegedly said. Neither a police report of the interview with the other co-defendants, Love and Berrones, nor any other police reports were provided to decide this motion. The police report establishes that the altercation among the co-defendants and the Victim arose out of an argument Victim had with Mr. Herbert. Supplemental Police Report #8 begins after Perez was picked up by Williamsport Police in South Carolina. It contains the Interview with Terrance Perez at J. Reuben Long Correctional Facility, South Carolina, 5/31/2015 @ approximately 9:42 AM:

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- Do you know Rory?
  - Yeah....I know Rory.

- Was he in a fight that day?
  - I heard he was so I will say yeah but I don't know for sure because I wasn't there.
- What was the fight Rory in about?
  - I don't know.

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- Do you know "MILL?"
  - The one who died? We were close friends. I know his brother EVAN. We were in the Susquehanna house together when we were younger.

(Showed picture of JAMIL BRYANT)

- That's JAMIL.
- Did you have beef with him?
  - No, we were close friends.
- Did BRANDON have a beef with him?
  - No, not that I know of.
- You've been out and communicating with your MOM and stuff, since this happened. When did you know about the fight between MILL and RORY?
  - Only know what was in the news and what was on FaceBook.
- Did you know RORY?
  - Yes
- Did you talk to RORY that day?
  - No, not since two days prior to the shooting and the cookout. We were friends, no beefs with him or BRANDON. PEREZ said COSME was friends with RORY and BRANDON. So he had no beef with him either.
  - PEREZ admits to knowing where RORY's Grandmother lives, near Madsen's Car Wash.
- With all the communication that goes on after the fight at 230, did you think, correct did you talk to anyone at that time about the fight or MILL pulling a gun on RORY.
  - No, I didn't know he pulled a gun on RORY.

[The next portion of the Police report is from an interview of Defendant after he has been returned to Williamsport by the Williamsport Borough of Police and after Defendant has admitted that he was at co-defendant's Berrones house on the day of the shooting].

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- Here is the problem we have Steve [Officer Sorage] and I have been talking about this for the last few days, "B-Love" who is your buddy and you two are really close...
  - Right, right.
- He is the odd man out, no one pointing finger at him or said that he did anything or that he had the gun.

- Obviously he was trying to protect RORY during all of the arguing and threats and he had some disagreement with MILL during all of this.
- I'm not sure why "B-Love" story, the one he told us, is same as COSME. He says you got out of the car and you had the gun with you.
  - (No reaction, he says nothing)
- SORAGE: He says he is looking for you to man up and get you out of this because he says you are the one who had the gun.
  - When did they get picked up?
- A few days afterwards.
  - So they had two or three days after to formulate a story.
  - PEREZ says they could have set up the whole story together so they were on the same page.
- But "B-Love" is your guy, why would he point the finger at you instead of COSME?
  - Same reason I tried to give a fake alibi, to get out of trouble.

The Court may order any evidence specifically identified by the Defendant, provided the Defendant can additionally establish that its disclosure would be in the interests of justice. Pa.R.Crim.P. 573. Pursuant to the Title 44 Pa.C.S. § 2301 *et seq.* the Commonwealth does keep a DNA database of convicted felons; however, Brandon Love and Rory Herbert are not convicted felons so their DNA information would not already be on file. The Court cannot order a test of DNA based upon the DNA Detection of Sexual and Violent Offenders Act as Love and Herbert are not convicted felons nor do they have any other conviction enumerated under the Act. But as Defense Counsel has requested the evidence be produced, the Court does have the power to order the production of evidence, the DNA Analysis already performed in the case indicates that there is a fourth male implicated in the matter, and as Herbert has no objection, the Court will order the analysis of Love and Herbert's DNA.

The May 11, 2015, DNA Analysis report from the Pennsylvania State Police Bureau of Forensic Services, that tested the DNA of the Victim, Mr. Perez and Mr. Berrones as well as nine items of additional physical evidence states

11. A Y chromosome DNA profile, consistent with a mixture of at least four (4) individuals, was obtained from the swab from the Bushmaster magazine (Item Q5). A Y chromosome DNA haplotype from an unidentified individual was obtained from the major component of this DNA mixture. If a direct Y chromosome DNA comparison to an individual is desired, please submit a blood sample in a lavender top tube of a buccal collector from the individual to the laboratory.

As there is a fourth male individual's DNA on the murder weapon; one of the males who is a co-defendant in this case has not yet had his DNA analyzed; another male who is the alleged reason for the shooting in the first place i.e. the Victim "pulled a gun" on him is willing to give a DNA sample, and the Defense requests this DNA evidence in a pretrial motion, the Court will order the DNA analysis.

The Commonwealth argues that it is clear from the police report submitted that Defendant Perez admits in the interview that he had not seen Mr. Herbert since two days before the shooting (see above); however, the report also establishes that Mr. Perez was not being truthful from pages 1-17 of the report and on page 19 after the interviewing officer explained to him that his mother could be charged criminally if found to be lying regarding his alibi, Perez then started to tell the truth. The police officer explained this to Mr. Perez while the recording stopped and the police officer started the recording again at 12:24 pm:

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- You wanted to talk and clear some things up
  - "Yes"
- I'm going to let you say what is that you want to say and clear up now
  - That Monday I did go to COSME house [prior to this Defendant Perez had been denying he was ever at co-defendants home on the day of the shooting; text in brackets Court's own]
  - They were mad over a fight that happened earlier between Rory and "Mill"

- They were still sending text messages and threats to each other about shooting each other and stuff

Perez made many conflicting statements to the police in Supplemental Police Report #8. The Court finds him no more credible in any one statement as in any other; so it cannot say Defendant was telling the truth at this point and not at this point in order to be consistent with the Commonwealth's narrative regarding how events unfolded that day. As Defendant faces Criminal Homicide charges, it is within his rights to seek evidence that could be exculpatory. And as a criminal justice agency<sup>1</sup>, the Court has a duty in its administration of criminal justice to ensure the truth is determined regarding the death of Jamil Bryant. As such it will order the DNA Analysis of the two individuals Defendant requests.

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<sup>1</sup> "Criminal justice agency." --Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, the facilities and administrative offices of the Department of Public Welfare that provide care, guidance and control to adjudicated delinquents, and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions or both. 18 Pa.C.S. § 9102

**AND NOW**, this 11<sup>th</sup> day of July 2016, based upon the motion of the above named Defendant and this Opinion, the motion is GRANTED. It is ORDERED and DIRECTED that:

1. The Commonwealth provides to Defendant's counsel the raw data of the DNA analysis of Defendant Terrance Perez.
2. The already obtained DNA sample of Brandon Love is analyzed by the Pennsylvania State Police Bureau of Forensic Services, as it has done in the other two co-defendants, Incident No. 15-04137. As Defendant is indigent, the testing shall be conducted by the Pennsylvania State Police or, at the Pennsylvania State Police's sole discretion, by a laboratory designated by the Pennsylvania State Police. The costs of the test shall be paid by the Commonwealth of Pennsylvania.
3. A DNA sample is obtained from Mr. Rory Herbert and analyzed as indicated above.

BY THE COURT,

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Nancy L. Butts, President Judge

cc: PD (NS, JB, WM)  
DA (KO)  
Christian Lovecchio, Counsel to Brandon Love  
Rory Herbert  
314 Grove St.  
Williamsport, PA 17701  
Pennsylvania State Police  
Bureau of Forensic Services  
801 N. Westmoreland Ave.  
Greensburg, PA 15601