

[Cite as *State v. Foster*, 2010-Ohio-5155.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-317
Walter L. Foster,	:	(C.P.C. No. 81CR-2862)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on October 21, 2010

Ron O'Brien, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶1} Walter L. Foster is appealing from the refusal of the trial court to order DNA testing in his cases which resulted in his 1982 conviction for murder and attempted murder. He assigns a single error for our consideration:

The trial court erred in overruling Appellant's application for DNA testing because the outcome of such testing would be "outcome determinative" within the meaning of R.C. 2953.71.

{¶2} Foster was accused of stabbing Linda Stevenson, who died as a result of her wounds. He also was accused of stabbing Rosa Northrup, who survived. Northrup testified in the trial in 1982 that Foster stabbed her.

{¶3} Robert Young lived in the same apartment building as Foster, Northrup and Linda Stevenson. Young saw Foster with blood on his hands and on a screwdriver he was holding. Young testified that Foster said something like "White people are the Devil." Northrup and Stevenson were the only Caucasians in the apartment building.

{¶4} Standard A-B-O testing was done on the screwdriver. Stevenson's blood type O was found on the screwdriver. Northrup's blood type B was also found on the screwdriver. Stevenson's blood type was also found on Foster's sweatshirt and sweatpants.

{¶5} Philette Woods, who also lived in the apartment building, testified that she saw Foster stabbing Stevenson.

{¶6} Given the testimony of Northrup, Young and Woods, DNA testing could not possibly result in a different set of verdicts for Foster.

{¶7} R.C. 2953.71(L) defines "outcome determinative" as follows:

"Outcome determinative" means that had the results of DNA testing of the subject inmate been presented at the trial of the subject inmate requesting DNA testing and been found relevant and admissible with respect to the felony offense for which the inmate is an eligible inmate and is requesting the DNA testing or for which the inmate is requesting the DNA testing under section 2953.82 of the Revised Code, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, there is strong probability that no reasonable factfinder would have found the inmate guilty of that offense or, if the inmate was sentenced to death relative to that offense, would have found the inmate guilty of

the aggravating circumstance or circumstances the inmate was found guilty of committing and that is or are the basis of that sentence of death.

{¶8} DNA testing would not provide evidence which was outcome determinative.

{¶9} The sole assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and FRENCH, JJ., concur.
