

PRELIMINARY HEARING MEMORANDUM

July 30, 1993

TO: File

FROM: Mark Cichoski

CASE: State v. Curtis Downing PD# F-93-3477

CHARGE: BU, SADW(3), RODW

JC# 93F04990X J.P. \_\_\_\_\_ DEPT. 4

DATE: HTA 7/29/93 WPH \_\_\_\_\_ DISMISSED \_\_\_\_\_

EVALUATION OR PROCEEDINGS:

Preliminary hearing was held July 29, 1993. Testifying at the preliminary hearing was the victim, Christy Chiles. Also testifying were Officer Spore, the person who lifted the palm print from the window seal; Officer Vetroni, the person who originally took fingerprints from the defendant at CCDC; and Officer Moser, a latent print examiner, who compared the print from the window sill and the prints from CCDC and decided that this is our man.

Preliminary hearing transcript will contain numerous interesting tidbits which are too many to name here. Suffice it to say that the only thing that ties the defendant to the apartment right now is this very small palm print from the right hand, just below the pinkie finger. It also appears that an Officer Miller requested that Officer Moser run the print against two people to see if either one of those came out as a match and it just so happened that one of them did come back as a match. We will need to contact Officer Miller and find out why he decided that these two were the men he was after.

Also I objected to the defendant being bound over on Count III, where he was accused of Sexual Assault with a Deadly Weapon by committing cunnilingus with his tongue. Since there was no evidence that there was any penetration by the tongue whatsoever, I told the Judge there was no sexual assault. The Judge disagreed with me and bound it over. It may be the subject of a writ. We need to check with Ralph Baker to see what research he's gained in that area.

I spoke with my team chief, Robert Thompson, as well as Kevin Williams about the case. They both agree that we ought to talk to the family and see if the family can come up with the funds to provide another examination of the latent prints to see if another examiner would draw the same conclusion that these prints did, in fact, come from Mr. Downing. We also discussed whether we thought the State had actually proved the act of cunnilingus.

*Not done*

(EXHIBIT "A")

Present at the preliminary hearing were the defendant's brother and the defendant's girlfriend. Neither one of them spoke to me except to ask me what my name was and I gave them my card.

The defendant's story of what happened that night is vacillated somewhere between I wasn't there to we were having wine coolers that night and had consensual sex. I don't know what the defendant's true story is or whether he's waiting for the blood test to come back to see whether it comes back positive because a match with the semen which was found in the victim at the time she was examined at UMC with the sexual assault kit.

I believe it would be in the defendant's best interest to waive his right to a speedy trial as his trial in Dept. 12 would probably be some time in October or November. This would give us enough time to check out all possible leads in the case.

/lld