

Defense Targets Missing Blood

Toxicologist says no independent probe done in loss of Russell evidence

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COLFAX – No independent investigation was conducted into the loss of blood samples that authorities say prove Fred Russell was drunk when he caused a fiery 2001 crash that left three dead near Pullman.

That disclosure came Monday during a hearing in preparation for Russell's vehicular homicide trial, as defense attorney Francisco Duarte challenged state toxicologist Barry Logan about his office's handling of two vials of blood taken from Russell the night of the accident.

Russell wants results of the state's blood test, which showed he was legally drunk, ruled inadmissible at trial because he's unable to perform his own tests.

He faces three charges of vehicular homicide and vehicular assault for allegedly causing a four-car accident on the Moscow-Pullman highway in June 2001.

Duarte is also asking Judge David Frazier to move the trial out of Whitman County, where he argues that media coverage has been so intense and unfair that Russell can't receive a fair trial. Arguments on that matter will resume this morning in Whitman County Superior Court.

Prosecutors say Russell had a blood-alcohol content of 0.12 the night of the crash. Russell fled the country before his trial in October 2001, and in 2004 Whitman County prosecutors asked the state crime lab to save his blood samples. But the sample was destroyed along with a batch of outdated samples before Russell was caught in Ireland and returned.

At Monday's hearing, Duarte questioned Logan about his efforts to investigate what happened with the vials at the Seattle crime lab. He also asked why the problem wasn't discovered in an audit by the lab's quality assurance manager, performed after the loss of the blood but before officials say they knew about it.

Duarte – who referred to his client repeatedly Monday as "FDR" – has argued in court filings that the state has mismanaged the case through its handling of the blood.

Logan testified that the state crime labs receive roughly 20,000 pieces of evidence a year, and the Russell case was only the second case he knew in which evidence was inadvertently destroyed. He said he learned of the destruction of the sample from lab manager Ann Marie Gordon, who said she'd apparently destroyed the sample accidentally though it was properly marked to be saved.

Lab officials believe the samples were destroyed in July 2004 and say they discovered them missing in February 2005.

Logan prepared his own report on the loss, relying on Gordon to answer questions and provide a written

description. He said he did not conduct or order an independent review of events, though he said Gordon and another lab employee conducted a "systematic investigation."

Logan said he had no reason to doubt Gordon when she took responsibility for losing the blood vials.

"I don't believe it was a deliberate act," Logan said.

Duarte replied, "Because you're relying on Ann Marie Gordon?"

Logan said, "Yes."

Gordon did not testify Monday, and Frazier allowed the possibility that attorneys could introduce more evidence and witnesses on the matter at a later hearing, which means no immediate decision on the question is expected.

Logan said his labs have changed their procedures for handling samples meant to be preserved, though Frazier did not allow him to discuss those changes in detail after the testimony was challenged on its relevance.

Duarte also presented two witnesses to support his efforts to have the trial moved because of media coverage that he has described in court documents as "inflammatory, prejudicial, pervasive, unrelenting and uncompromising."

Duane Regehr, a former Spokane TV reporter who runs a company that monitors TV news coverage for clients, said that he'd reviewed five years of closed-caption transcripts for Spokane area TV coverage for "mentions" of Russell. He said he found 1,241 mentions in the most recent five years – which is as far back as his database goes – and Duarte said that doesn't include newspaper and radio coverage.

"In my 23 years of gathering news, this is one of the most extensive, longer-running stories I've been around," Regehr said.

He compared it to the Kevin Coe case – something that prosecutor Melanie Tratnik, an assistant attorney general, jumped on during her cross-examination.

"Kevin Coe committed his crimes in Spokane, correct?" she asked.

"Yes," Regehr said.

"He was tried and retried in Spokane, is that correct?" she asked.

"Yes," he said.

Jeanne Wintz, the executive vice president of the Gilmore Research Group in Seattle, testified about her survey of Whitman County residents and their familiarity with the case. She said that in a survey of 400 residents, conducted over 10 days, 91 percent of county residents were aware of the case, and of those, 71 percent had an opinion.

Of those with an opinion, she testified, 92 percent believe Russell is guilty. Only 17 percent of all those surveyed said they had an open mind about the case, she said.