

Noling  
Motion hearing 2/18/11  
JAE/rp

**FILED**  
**COURT OF COMMON PLEAS**

**MAR 02 2011**

**LINDA K. FANKHAUSER, CLERK,**  
**PORTAGE COUNTY, OHIO**

**IN THE COURT OF COMMON PLEAS**  
**PORTAGE COUNTY, OHIO**

**STATE OF OHIO**

**Plaintiff**

**CASE NO. 95 CR 220**

**-v-**

**JUDGE ENLOW**

**TYRONE LEE NOLING**

**JUDGMENT ENTRY/ORDER**

**Defendant**

This matter came on for hearing on February 18, 2011 before the Honorable John A. Enlow on the Defendant's motion for leave to file a motion for new trial.

The defense filed a request for public records on August 13, 2009; the motion for leave to file for a new trial was subsequently filed on June 21, 2010, almost a year later.

The parties stipulated that Exhibits 2, 3, 4 and 5 were discovered in a public records request for Sheriff's records as to codefendants

Exhibit 2 is a handwritten statement of Nathan Chesley indicating his brother committed the crime.

Exhibit 3 is a blood test conducted by Dale Laux of BCI.

Exhibits 4 and 5 are statements by Marlene Van Steenberg.

In the Tyrone Noling case the State of Ohio conducted open file discovery. Attorneys George Keith and Peter Cahoon testified they had no recollection of seeing

State's Exhibits 2, 3, 4 and 5. Attorney Cahoon testified he did not know whether or not he saw State's Exhibits 2, 3, 4 and 5.

Assistant Prosecuting Attorney Eugene Muldowney testified he gave full discovery of everything in his possession and further that he met with defense counsel at the Sheriff's Office to allow them to examine the file. Assistant Prosecutor Muldowney also testified that the Sheriff's Office only had one file for all of the co-defendants.

The defendant has the burden of proving by clear and convincing evidence that he was unavoidably prevented from discovering the exculpatory evidence.

Based upon the evidence presented at the hearing as to this motion and the briefs in the file, the Court finds that the defendant failed to establish that he was unavoidably prevented from discovering the exculpatory evidence, therefore, the Court finds the motion is not well taken.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the motion for new trial be and is hereby not well taken and is, therefore, **DENIED**.

**IT IS SO ORDERED.**



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JOHN A. ENLOW, JUDGE

cc:

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