

Buffey's Lawyers File More Motions in Bid to Block Statement, Contest Hearsay Testimony

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The Exponent Telegram - Buffey's lawyers file more motions in bid to block statement, contest hearsay testimony

by Matt Harvey, Assistant Managing Editor CLARKSBURG – A statement that a Clarksburg man gave police almost 15 years ago shouldn't be admitted at his trial because he had only slept 2 to 3 hours in two days, hadn't eaten in nearly 16 hours, and was coerced by law enforcement, his lawyers contend.

The defense filing on behalf of Joseph A. Buffey also contends he should have been presented to a magistrate well before he gave the Dec. 8, 2001, statement police used to implicate him in the home invasion, rape and robbery victimizing a Clarksburg police officer's mother.

And, they note that Buffey's version of events given to officers in that long-ago interview didn't match with what the victim said happened.

Buffey, 33, remains charged with sexual assault, burglary and robbery in a Nov. 30, 2001, attack on an 83-year-old Clarksburg woman. He pleaded guilty in 2002 and was sentenced to 70 years in prison. After years of court battles and about 15 years behind bars, however, he was given the green light to withdraw his guilty pleas last year by the state Supreme Court, which found the state had withheld potentially exculpatory DNA evidence prior to sentencing and possibly even prior to the plea.

Innocence Project attorneys Nina Morrison and Barry Scheck, and Morgantown attorneys Allan Karlin and Sarah Montoro, also developed DNA evidence that pointed to another man, Adam Derek Bowers, 30, as the culprit, and he was convicted recently and sentenced to the same 70 years as Buffey had been serving. Bowers won't be eligible for parole until Aug. 16, 2053.

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Buffey is set for trial the week of Oct. 11. Harrison Circuit Judge John Lewis Marks Jr. had scheduled a pretrial conference Friday to take up major issues in the case, but has rescheduled it to 9 a.m. July 29.

Prosecutors are moving forward with the case, apparently under the theory that Buffey and Bowers both were involved in the home invasion.

The state's attorneys have asked Marks to allow jurors to learn about the statement in which Buffey implicates himself. Buffey was given proper Miranda warnings by police, and his statement was voluntary, they insist. And they flatly reject allegations that Buffey was coerced into the admission.

With the DNA evidence pointing to Bowers, Buffey's statement appears critical to any case the state would present.

Buffey's lawyers also are sparring with the prosecution over another key issue: Whether testimony should be permitted at this trial that normally wouldn't be allowed due to a defendant's constitutional right to confront his accuser.

This is important because the accuser is now in her late 90s, and not expected to be available to testify.

One piece of evidence is a recorded statement given by the accuser to police following the attack. The rest involves recent testimony by a relative of the accuser who recounted she told him multiple times following the attack that "they raped me."

The defense contends these statements don't meet an exception to the rules on hearsay evidence, because they weren't excited utterances given after a startling event. The defense attorneys say too much time had passed before statements were given. Additionally, the statements have discrepancies, which brings their reliability into question, the defense attorneys contend.

Buffey is represented by Benjamin Bailey of Bailey and Glasser LLP in Charleston; Karlin; and Morrison and Scheck.

The state's attorneys are David Romano and James Armstrong.