

FILED
CIRCUIT CLERK'S OFFICE
2005 AUG -3 AM 10:26

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI
22ND JUDICIAL CIRCUIT

RODNEY LINCOLN, **ENTERED**

Movant/Defendant, **AUG - 9 2005**

vs. **NMW** Cause No. 821-2021 (X)

STATE OF MISSOURI,)
Division 22

Respondent.)

**AMENDED MOTION FOR DNA TESTING
WITH SUGGESTIONS IN SUPPORT THEREOF**

Comes now Rodney Lincoln, hereinafter Movant, pursuant to §547.035 *et seq.* (Supp. 2002), and moves the Court for its Order directing the State of Missouri to show cause why DNA analysis and comparison of certain biological material should not take place. In support of his motion, Movant states that:

MOTION FOR DNA TESTING

1. Rodney Lincoln is currently in the custody of the Missouri Department of Corrections at the Jefferson City Correctional Center, having been convicted of Manslaughter and Assault in the First Degree.

2. The files and records of the case establish the following facts: In the early morning hours of April 27, 1982, [REDACTED] was stabbed to death in her St. Louis apartment. Her two young daughters were also stabbed and left for dead, but survived. The homicide was discovered by [REDACTED] brother and boyfriend mid-morning. The

crime scene showed signs of a significant struggle and a great deal of blood was found throughout the apartment. There was no sign of forced entry and no sign of theft from the apartment. Several knives were found that were used as weapons by the killer. All belonged to [REDACTED] and were left at the crime scene. None of the fingerprints found at the crime scene was matched to Rod Lincoln, though the jury was permitted to hear that "a print on a knife might be incriminating." None of the blood at the scene was definitively matched to Movant, though the jury was permitted to hear that "one blood stain could have been related to Rodney Lincoln."

In several statements offered by the surviving victims, the killer was identified as "Bill." In one of the statements, the girl stated that she knew the man as "Bill." In another, she stated that she heard her mother screaming for "Bill" to stop attacking her. She did not deviate from the identification of the attacker as "Bill" until after a composite was drawn and the distributed to adult relatives of the homicide victim. Those adults, who the girl knew might be the persons taking over the care for her sister and herself, said that the sketch resembled a man that the adults knew to be "Rod." Movant's name was found in the victim's diary,

When it was determined that Movant had been romantically involved with the victim many months prior to her death (but not a part of her life in recent months) and had a criminal record which included a 13-year old conviction for second-degree

murder, he was questioned by police. He cooperated in every possible way by giving the police a statement and voluntary hair and blood samples. Although one of the young girls who survived the attack told the police that the killer was a man in his late 30's or 40's, Movant was placed in a lineup with three men more than 10 years his junior. Although the attacker was described with fairly long black hair, Movant was the only person in the lineup whose hair came close to that description. Not surprisingly, Movant was selected as the killer by one of the girls.

At trial, the inconsistencies in the testimony of the older daughter were exposed for the jury. Nevertheless, on the strength of the pubic hair "match," Movant was convicted.

Movant was convicted of these crimes in the second of two trials. The first trial ended in a mistrial when the jury could not reach a unanimous verdict. Movant believes that in the first trial there were at least five votes for acquittal.

3. Forensic DNA testing as described herein will demonstrate Rodney Lincoln's innocence of the crimes for which he is in custody.

4. There is evidence in the possession of the Circuit Attorney's Office for the City of St. Louis and/or the St. Louis Metropolitan Police Department upon which DNA extraction, profiling and comparison can be conducted including a certain pubic hair, hairs located near the perineum area of one of the victims, and rectal, vaginal and

anal smears of the youngest victim. All of these items were seized in connection with the investigation of the crimes and have not been tested for DNA extraction, profiling and comparison because the technology for DNA testing was not reasonably available to movant or any other person in 1982 and 1983 when these crimes were being investigated and the movant's trials took place. Even though the Circuit Attorney's Office of the City of St. Louis conducted a review and examination of the physical evidence in this case in 2003, it is Movant's belief that no DNA testing of any kind has taken place with respect to the evidence listed above.

5. Because Rodney Lincoln interposed a defense of alibi in his trials, identity was an issue in Movant's trials.

6. Had the biological evidence referred to above been subjected to DNA testing with the result that the specimens did not match Movant's DNA, there is a reasonable probability that the jury would not have found Rodney Lincoln guilty of the offenses in question because:

A. With respect to the pubic hair (Q 25—Exhibit 22bb), the state offered evidence that the hair in question was consistent with the pubic hair of Movant and inconsistent with the pubic hair of all other suspects tested. If mitochondrial DNA extraction, profiling and comparison of this hair demonstrated that it was not the pubic hair of Movant, there is a reasonable probability that

Movant would not have been found guilty of being the perpetrator of these offenses; and,

B. With respect to the hair located near the perineum (Q23d) of one of the young victims of the attack, if DNA extraction, profiling and comparison were performed with the result that the hair does not match Rodney Lincoln or any of the three victims, there is a reasonable probability that Movant would not have been found guilty of being the perpetrator of these offenses because the nature and location of the hair would suggest that it was contributed by someone in the process of attempting a sexual act with the victim; and,

C. With respect to the vaginal smear (Q23e), anal smear (Q23g), rectal swab (Q23a), if more complete analysis of the items were done to detect the presence of semen, and if semen were detected, and if DNA extraction, profiling and comparison were performed with the result that the semen does not match Rodney Lincoln, there is a reasonable probability that Movant would not have been found guilty of being the perpetrator of these offenses because the nature and location of the hair would suggest that it was contributed by someone in the process of attempting a sexual act with the victim

7. The circuit attorney should be ordered to show cause why the testing described above should not take place because the motion, files and records of this case do not conclusively show that Movant is not entitled to relief.

CONCLUSION

If this horrible crime were being investigated today, there is absolutely no doubt that the St. Louis Metropolitan Police Department would submit the pubic hair, hair located near the perineum, and virtually all of the blood stains to its local crime lab for purposes of DNA extraction, profiling, and comparison to standards provided by suspects and elimination suspects. No modern criminalist would opine that a certain person was the contributor of a certain pubic hair on the basis of microscopic analysis alone. No modern serologist would identify a blood stain as containing the blood of a certain individual solely on the basis of ABO typing. No modern pathologist would declare that tissue found under the fingernails of a homicide victim came from a certain individual with any combination of non-DNA tests. Certainly, all of this crucial identifying evidence would be subjected to DNA testing if the crime occurred today and just as certainly would have been subjected to DNA testing in 1982 if the technology had existed at that time. DNA testing should be ordered on these samples now to determine the identity of the contributor.

WHEREFORE, Rodney Lincoln moves this Court to enter an order to compel the state to show cause why such testing should not occur as specified in §547.035 R.S.Mo., and upon examination of that response, to order testing of the items set forth above, or in the alternative, to order a hearing to determine if testing of the items described above should occur, and to grant such further relief as the Court deems appropriate.



PHILLIP R. GIBSON, #28610
Midwestern Innocence Project
305 E. 63rd St.
Kansas City, Missouri 64113
816.363.2795 • FAX 816.363.2799

Attorney for Movant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered to the office of Ed Postawko, Assistant Circuit Attorney, 1210 Tucker, St. Louis, MO 64136, on this 3rd day of August, 2005.



Attorney for Movant