

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

2006 MAY 23 PM 3:14

RODNEY LINCOLN,)	
)	
Movant/Defendant,)	
)	
vs.)	Cause No. 821-2021
)	
STATE OF MISSOURI,)	Division 22
)	
Respondent.)	

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

Comes now Movant Rodney Lincoln (hereinafter "Mr. Lincoln"), 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:

History

Mr. 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.

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, seven-year-old [REDACTED] and four-year-old [REDACTED] were also stabbed and left for dead, but survived. Substantial evidence suggested that at least one of the girls, and possibly both, were sexually assaulted by the same man who killed their mother. 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 Mr. 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 Mr. Lincoln.

In several statements offered by [REDACTED] the killer was identified as "Bill." In one of the statements, [REDACTED] stated that she knew the man as Bill. In another, she stated that she heard her mother screaming for Bill to stop attacking her. [REDACTED] did not deviate from the identification of the attacker as Bill until after a composite from [REDACTED] description (Tr. p. 929) was drawn and then distributed to adult relatives of the homicide victim. Those adults, whom [REDACTED] 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 Mr. Lincoln 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 [REDACTED] told the police that the killer was a man in his late 30s or 40s, Mr. Lincoln was placed in a lineup with three men more than 10 years his junior. Although the attacker was described by [REDACTED] as having fairly long black hair, Mr. Lincoln was the only person in the lineup whose hair came close to that description. Not surprisingly, Mr. Lincoln was selected as the killer by [REDACTED]

At trial, the prosecution also relied on the results of microscopic hair comparison, a now-discredited technique of forensic analysis, to corroborate ██████ eyewitness testimony. Based on the eyewitness testimony and a so-called hair “match,” Lincoln was convicted.

Mr. Lincoln 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.

The Statutory Requirements for DNA Testing Have Been Met

If ordered by this Court, forensic DNA testing will demonstrate Rodney Lincoln’s innocence of the crimes for which he is in custody.

- (a) **Identity was an issue at trial and forensic evidence exists for DNA testing which was secured in relation to the crime; this technology was not available at time of trial.**

Rodney Lincoln raised a defense of alibi in his trials and, therefore, identity was and is an issue.

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 that the state’s attorney argued “matched” the hair of Rodney Lincoln (Q-25)¹, hairs located near the perineum area of four-year-old ██████ one of the sexual assault victims (Q-23d); as well as rectal, vaginal, oral and anal smears from ██████ (Q-23e; Q-23c). In addition, a rape kit for ██████ (Tr. Ex. 66) and a rape kit of ██████ exist (Q-21), each of which can be tested. 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 Mr. Lincoln or any other person in 1982 and 1983 when these

¹ All “Q” references are from the St. Louis Metropolitan Police Department Laboratory Report dated 7/23/03 and the Messler report attached to the State’s Motion to Dismiss.

crimes were being investigated and Mr. Lincoln's trial 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, the results and conclusions in the Laboratory Report do not state that DNA testing of any kind has taken place with respect to the evidence listed above. Although there is a possibility that physical evidence will not yield the presence of sperm, it is possible, with today's DNA technology, to sometimes obtain results without sperm being present. Therefore, the items listed above should be examined to determine if DNA results can be obtained.

(b) There is a reasonable probability that Movant would not have been convicted with DNA testing now being requested.

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

A. With respect to the pubic hair (Q25 – State's Exhibit 22b), the State offered evidence that the hair in question was comparable in microscopic appearance with the pubic hair of Mr. Lincoln (State's Exhibit 22c) and inconsistent with the pubic hair of thirty-seven other suspects tested. (Tr. 642-652) This evidence was used as corroboration for [REDACTED] eyewitness testimony. During the State's closing argument, the prosecutor stated:

And I think Mr. Hampe has mischaracterized the pubic hair in this case. Mr. Crow told you that he was looking for hairs different from [REDACTED] Now, we're talking about a pubic hair. [REDACTED] had pubic hair. [REDACTED] does not. [REDACTED] does not.

He separated out the pubic hairs that were not [REDACTED] There was one of them that matches that man's pubic hair. That was compared to thirty-seven others in addition to [REDACTED] That's thirty-nine people. One out of thirty-nine people.

None, no hair that that other hair was compared with other than Rodney Lincoln's matched.

Mr. Messler told you that in two hundred cases, he's never had more than two – more than one match. He's never had two people match one hair found at a scene. And yet he tells you there's absolutely no corroboration.

(Tr. p. 957) (Emphasis supplied.)

This argument was made even though the St. Louis Metropolitan Police Department's investigation file includes a report from Harold Messler, Chief Criminologist, that the hair sample from the blanket and Rodney Lincoln's were dissimilar. (p. 88096) At trial, there was no reference to this report. (Tr. pp. 642-655) If mitochondrial DNA extraction, profiling and comparison of the pubic hair demonstrated that it did not belong to Mr. Lincoln, then the corroborating evidence which the State emphasized would no longer be available to shore up [REDACTED] testimony, and there is reasonable probability that Mr. Lincoln would not have been found guilty of being the perpetrator of these offenses.

B. With respect to the hair located near the perineum (Q23d) of [REDACTED] 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 Mr. Lincoln 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 four-year-old victim, [REDACTED]. There was testimony that an examination of [REDACTED] indicated that she could have been the victim of sexual abuse. (Tr. 493)

C. With respect to other evidence from the daughters, including the vaginal smear (Q23e), anal smear (Q23g), rectal swab (Q-23a), Rape Kit 66 ([REDACTED]), and Rape Kit 67

██████████, if more complete analysis of the items were done using current technology to detect the presence of semen, or other biological material, and if DNA extraction, profiling and comparison were performed with the result that such evidence does not match Rodney Lincoln, there is a reasonable probability that Mr. Lincoln would not have been found guilty of being the perpetrator of these offenses. A result excluding Mr. Lincoln would suggest that the biological evidence was contributed by someone in the process of attempting a sexual act with ██████████

██████████ There is evidence of sexual abuse. A photograph of a perineal area around the rectum and vagina of Renee showed evidence of reddening around the rectum, which could indicate sexual abuse. (Tr. 493) ██████████ testified that the assailant had no clothes on when she observed him, took her into her mother's room, took ██████████ clothes off, put her legs around his hips and started hurting her. (Tr. 318-320)

(c) **Additional DNA testing is requested.**

Mr. Lincoln also requests that additional DNA testing be conducted on fingernail scrapings. There was evidence of a significant struggle. Fingernail scrapings from the murder victim, ██████████ were obtained during the investigation of the crime (Q-32). These scrapings were listed as State's Exhibit 79. The prosecutor now states that these scrapings cannot be located. It is probable that these fingernail scrapings were the result of the murder victim's struggle during the attack. (Tr. p. 946) Mr. Lincoln seeks to have a further search conducted for this physical evidence (Exhibit 79) and to have DNA testing done, if and when it is located. Also, Mr. Lincoln requests that any lab report analyzing these fingernail scrapings be produced.

In addition, Mr. Lincoln also seeks an order that pubic hair samples taken from Thomas Schultz (State's Tr. Ex. 111) be tested using current DNA technology. There was information that ██████████ the murder victim, was afraid of Schultz, a former boyfriend. (Deposition of

Abigail Wallace, sister of victim, dated June 20, 1983; Deposition of Nathaniel Clenney, brother of victim, dated June 20, 1983; St. Louis Metropolitan Police Department's Investigation File.) Clearly, Mr. Schultz is a possible suspect.

CONCLUSION

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 Mr. Lincoln is not entitled to relief.

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 other biological evidence to its local lab for purposes of DNA extraction, profiling and comparison to reference samples provided by suspects and others. No modern criminalist would opine that a certain person was the contributor of a certain pubic hair on the basis of microscopic analysis. 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 as described above 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.

Cheryl Pilate

Cheryl Pilate

MO Bar No.

42266

Wyrsh Hobbs & Mirakian, P.C.

1000 Walnut, Suite 1600

Kansas City, MO 64106

Telephone: (816) 221-0080

Fax: (816) 221-3280

Richard H. Sindel

Richard H. Sindel

MO Bar No.

23401

Sindel, Sindel & Noble, P.C.

8008 Carondelet, Suite 301

St. Louis, MO 63105

Telephone: (314) 721-6040

Fax: (314) 721-8545

Attorneys 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 25th day of May, 2006.

Cheryl Pilate

Attorney for Movant