

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

FILED
OCT 1 2021

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI

OCT 1 2021
COURT REPORTER
RECEIVED

RODNEY LINCOLN,)
)
 Movant,)
 vs.)
 STATE OF MISSOURI,)
)
 Respondent.)

Cause No. 821-2021
Honorable Michael B. Calvin
Division No. 22

MOTION TO DISMISS MOVANT'S POST-CONVICTION MOTION FOR FORENSIC DNA TESTING

COMES NOW the State of Missouri, by and through Assistant Circuit Attorney Edmund J. Postawko, and, pursuant to Rule 29.17 of the Rules of Criminal Procedure and Rule 55.27(a)(6) of the Rules of Civil Procedure, hereby moves to dismiss movant's motion for DNA testing pursuant to section 547.035 RSMo for the reason that movant's Motion fails to state a claim for which relief can be granted. In support of its motion, the State of Missouri states as follows:

Facts

1. On April 27, 1982, at approximately 4:00 am, movant killed [REDACTED] by stabbing her in the chest with a steak knife. He also kicked her repeatedly in her chest and took a broom and shoved it into her rectum through many of her organs up to her neck.

2. Movant then took [REDACTED] seven-year-old daughter [REDACTED] into [REDACTED] bedroom. He put [REDACTED] on the bed, removed her clothing, and tried to kiss her. When she resisted, he stabbed her arms, left hand, shoulders, and chest with a steak knife. He then cut her vaginal area all the way back to her tailbone with a butcher knife. [REDACTED] pretended to play dead, hoping movant would stop cutting her. Movant took the butcher knife into the kitchen to wash it off.

3. While movant was in the kitchen, [REDACTED] snuck back into her bedroom and hid underneath her sister's bed.

4. Movant then cut four year-old [REDACTED] throat three times, severing her common carotid artery. [REDACTED] neck was cut all the way back to the vertebrae in the back of her neck.

5. [REDACTED] all suffered serious injuries, and all three lost a significant amount of blood. There was no indication that the attacker suffered any wounds during the incident.

6. The three victims were discovered at approximately 10:30 am. [REDACTED] and [REDACTED] were in their beds and covered with blankets, so their injuries were not visible. Nathaniel Tate, the brother of [REDACTED] "hollered" and "screamed" several times at [REDACTED] "Who did this?" See Transcript 402, lines 7-12. She responded by giving him the name "Bill" so that Nathaniel would stop yelling. At trial, [REDACTED] testified that she gave the name Bill because "[she] was so sick of hurting, and everybody was bugging me for a name, so I gave them a name Bill." See Tr. 355, lines 21-22. In response to the question "Are Bill and Rodney the same person?" [REDACTED] responded "Yes, sir." See Tr. 385 lines 20-21.

7. [REDACTED] description of the killer helped police draw a composite sketch that led police to movant. Melissa identified movant in a photograph and in a line-up as the man who killed her mother and who hurt her and [REDACTED]

8. Movant was convicted by a jury of one count of Manslaughter for the death of [REDACTED] and two counts of Assault in the First Degree for the attacks on [REDACTED]. Movant was received life sentences for each of the counts of Assault in the First Degree, and 15 years for the count of Manslaughter. These sentences were ordered to be run consecutively.

Argument

9. The State's Motion to Dismiss is proper because a PCR for post-conviction DNA testing under Rule 29.17 is governed by the Rules of Civil Procedure and Rule 55.27(a)(6) provides that a civil action can be dismissed for failure to state a claim upon which relief can be granted.

10. This Court should dismiss the movant's motion because he cannot establish each of the required elements as set forth under section 547.035. Section 547.035.2, RSMo, provides that a motion for post-conviction DNA testing must allege facts under oath demonstrating that

- (1) there is evidence upon which DNA testing can be conducted;
- (2) the evidence was secured in relation to the crime;
- (3) the evidence was not previously tested by the movant because (a) the technology for testing was not previously available to the movant at the time of trial, or (b) neither the movant nor his or her counsel was aware of the existence of the evidence at the time of

trial, or (c) the evidence was otherwise unavailable to both movant and movant's counsel at the time of trial;

- (4) identity was an issue in the trial; and
- (5) a reasonable probability exists that the movant would not have been convicted if the exculpatory results had been obtained through the requested DNA testing.

11. Movant's argument is that biological evidence exists and was not tested because DNA testing was not available at the time. Movant then asserts that if this evidence was now tested and did not come back with movant's DNA, then it would conclusively prove his innocence.

13. Contrary to movant's argument, DNA testing in the present case would not be relevant to establishing a claim of innocence due to several reasons.

14. In 2003, the Circuit Attorney's Office reviewed this case and determined that post-conviction DNA testing was not appropriate. As part of that investigation, all evidence located was sent to the St. Louis Metropolitan Police Department Laboratory and examined for the presence of seminal fluid or sperm. Laboratory Report #204503, dated July 23, 2003, indicates that no sperm or seminal fluid was found on any of the items, including the vaginal smears (Q-23e), anal smears (Q-23g), oral smears, and rectal swab (Q-23a) as well as various other items, including blankets, sheets, pillow cases, and clothing (see State's PCR Exhibit #1). There is no semen upon which to conduct DNA testing.

15. DNA testing of the numerous blood stains found at the scene would not prove movant's innocence as there was no evidence presented at trial that the attacker

was the source of a specific stain of blood. All three victims were severely injured and lost substantial amounts of blood. Photographs of the crime scene depict large quantities of victims' blood throughout the apartment and on numerous items. Because there is no evidence that the killer bled, there is no reason to test any particular item as no particular blood stain is attributable to the killer. The house where the attack took place was found cluttered with many items, and testimony demonstrated many people were in this house both before and after the attack. There is no possible way to date the various samples. No testimony at trial indicated that movant's blood was located at the scene. Movant has not pointed out any specific exhibit or item seized from the scene which has biological evidence attributable to the attacker. Movant is merely on a "fishing expedition" which has no hope of leading to any relevant results. Because no specific blood sample can be attributed to the attacker, DNA evidence of blood that does not match the victims' or movant's DNA does not exonerate movant, as any particular blood stain could have been preexisting at the scene.

16. A pubic hair was found on a blue blanket in the victim's apartment. Harold Messler, chief criminalist for the St. Louis Metropolitan Police Department, examined the pubic hair from the blanket along with samples from the movant and victim, and thirty-seven other samples. At trial, he testified that the only person in the sample who could not be excluded as a match was Rodney Lincoln. Mr. Messler could not, however, state the hair belonged to the movant, nor could he even state with any statistical certainty the likelihood of finding a hair with these characteristics (see Trial Transcript pages 642-654 and 717-731). DNA testing that shows this hair did not belong to movant would not exonerate him because it is not certain that this hair came

from the killer. The role this hair played at trial was to show it was consistent that the defendant was in the residence at some point in time (which was not disputed at trial), though it could not be definitively established that the hair belonged to Rodney Lincoln. There is no evidence that the killer had any contact with the blanket on which the hair was found. The blanket was found in between a bed and a closet door, and was not in the lane of traffic that the evidence indicates the killer used during the course of the crime. Mr. Messler also testified that he could not determine how long the hair was detached from its source, nor could he determine how long the hair had been at the scene. There is no evidence indicating that this hair was left by the killer, and this hair played a minor role at best in the movant's trial. DNA testing that shows this hair did not belong to movant would not be exculpatory and would not lead to a reasonable probability that he would not have been convicted.

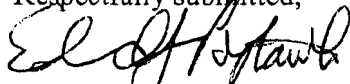
17. Movant argues that a hair located near the perineum (Q23) of [REDACTED] should also be tested, and that if this hair did not match movant it would exonerate him. The hair in question was not used at movant's trial (see State's PCR Exhibit #2). This hair was examined in 1982 and at that time it was determined it did not belong to movant. Movant argues that the "nature and location of the hair would suggest that it was contributed by someone in the process of attempting a sexual act" with [REDACTED]. No such suggestion is made by the evidence. This hair was found to be a head hair, and in fact was found to be comparable with [REDACTED] head hair. Under the circumstances it is not surprising that miniscule items from the household, including hairs from other household members, would attach to the victims in this case. Whether or not this particular hair belongs to [REDACTED] is irrelevant – there is no indication this hair came

from the attacker and DNA which excludes movant as the source of this hair would not exonerate him as the attacker. In fact, it is already known he was not the source of this hair.

18. Fingernail scrapings taken from victim [REDACTED] can't be tested for DNA because the scrapings cannot be located and were apparently destroyed many years ago. In 2003 to 2004, an extensive search was conducted to attempt to locate these fingernail scrapings. All possible locations in the St. Louis Circuit Attorney's Office and the St. Louis Metropolitan Police Department, including the police department lab, were searched. The only records found indicate that some evidence, including "one fingernail," was disposed of in either 1984 or 1987. No trace of the fingernail scrapings has ever been located. There is no reason to believe this evidence exists.

19. Because the biological evidence which still exists is of no value in establishing that the actual innocence of movant, movant cannot establish that a reasonable probability exists that movant would not have been convicted if exculpatory results had been obtained through DNA testing. Therefore movant cannot establish all the elements of his claim and his motion should be dismissed.

Respectfully submitted,

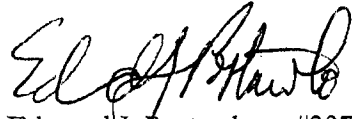


Edmund J. Postawko , #32759
Assistant Circuit Attorney

Certificate of Service

I, the undersigned, do hereby affirm that on this 25 day of October, 2005, a true and accurate copy of the foregoing was sent via U.S. mail to the following counsel of record:

Phillip R. Gibson
305 E. 63rd Street
Kansas City, Missouri 64113

A handwritten signature in black ink, appearing to read "Ed J. Postawko". The signature is written in a cursive style with a large, stylized initial "E".

Edmund J. Postawko , #32759
Assistant Circuit Attorney