

Missouri Lawyers Media DNA may free Missouri man convicted in 1983

by Kelly Wiese

A St. Louis judge was just 14 when the man whose fate she's now considering was arrested in the killing of a woman and brutal assault of her young children.

Rodney Lincoln is serving a life sentence for manslaughter and assault in the death of the mother and severe injuries to her 4- and 7-year-old daughters in 1982.

Lawyers from the Kansas City-based Midwestern Innocence Project took up Lincoln's case. They recently received the results of DNA testing that they say proves their client didn't commit the crimes and should be set free.

The state doesn't quibble with the validity of the testing involved -- a technique that lacks caselaw in Missouri courts -- or with the results generated. But it says the fact that Lincoln's DNA isn't present on several pieces of crime scene evidence doesn't prove anything.

In a brief asking the court to release Lincoln from a Jefferson City prison, his attorneys lay out the case this way:

Joann Tate and her daughters were attacked in their home in April 1982. All were repeatedly stabbed. The younger child was comatose when paramedics arrived.

The 7-year-old spoke with authorities about what happened and said someone named Bill attacked them. She went through more questioning for a month, including while she was medicated after surgery to treat her injuries. Police showed her a series of photos to try to obtain a basic description of the attacker. A sketch artist used an image of a man who somewhat resembled the attacker and then worked with the child to alter the drawing to more accurately reflect her description.

Upon seeing the sketch, Tate's siblings told police the drawing looked like someone named Rod, and a phone number for a Rod was discovered in Tate's diary. The 7-year-old child later identified Lincoln from a series of photos followed by a physical lineup.

Hair analysis

The prosecution's focus at trial, Lincoln's lawyers said, was a pubic hair found on a blanket near a child's bed where an attack occurred.

Lincoln's first trial resulted in a hung jury. On retrial, prosecutors called more experts to opine on the validity of microscopic hair analysis, the man's lawyers said, and the similarity between the hair on the blanket and that of the defendant. Jurors in the second trial convicted Lincoln of manslaughter and assault, and the court sentenced him to life in prison.

The St. Louis Circuit Attorney's Office hasn't filed its response to the motion for release yet, and the judge gave the attorneys until Feb. 7.

"The DNA testing doesn't demonstrate the actual innocence of this person," Assistant Circuit Attorney Ed Postawko told Circuit Judge Robin Ransom Vannoy during a status hearing in early January.

The National Academy of Sciences issued a report in 2009 raising questions about the reliability of several forensic methods, including hair analysis. The technique, however, was more accepted in the early 1980s, when Lincoln's case proceeded.

Today, the academy said, almost any hair that could undergo microscopic hair analysis also can undergo DNA testing of some kind, so there's no reason for imprecise basic hair analysis to stand alone. The academy also cited an FBI study that found 12.5 percent of hairs determined to "match" an individual through microscopic analysis were shown through mitochondrial DNA testing to have different sources.

DNA testing is now possible, even years later, on hair found at a crime scene. Ideally, if a hair with the root attached is available, it can undergo nuclear DNA analysis, through which examiners can determine almost without question whether a hair belongs to a particular individual. But more often, hairs are naturally shed, so they have no nuclear material. Then the hair shaft can undergo mitochondrial DNA testing. That's what happened here.

Uncharted territory

No caselaw on the technique exists yet in Missouri appeals courts, but it has been upheld in other states, including by appellate courts in Illinois, Mississippi and Tennessee.

A federal judge in St. Louis in 2002 also found it valid in *United States v. Coleman*, a case where prosecutors pressed to use it and the defendant fought it.

Mitochondrial DNA comes not from the nucleus of a cell but from the material surrounding the nucleus. At the moment, such testing generally has to be sent to a private lab. The Missouri State Highway Patrol, along with government crime labs in St. Louis and Kansas City, focus on a type of testing that requires nuclear DNA. The FBI also has four regional labs that can do mitochondrial testing.

Mitochondrial DNA isn't as distinctive as nuclear DNA. For one thing, it follows maternal lines, so a grandmother, a mother and her children all share that DNA. Some types are more common than others in the general population. A lack of a match can rule out a suspect as the provider of that hair, but achieving a match only narrows the field.

There is a national mitochondrial database, but it's markedly smaller than the national nuclear DNA database.

According to Lincoln's brief, both sides agreed last year to submit evidence from the case for DNA analysis. Rape kits were tested but yielded no DNA other than the victims'. But mitochondrial testing on two hairs yielded unknown DNA that doesn't belong to Lincoln or the victims. One was a pubic hair found on a blanket, the key piece of evidence at trial and the one that experts said was microscopically consistent with Lincoln. The other hair was found between the thighs of one of the girls and before the trial had been discounted as the girl's own.

Lincoln's brief argues that, with the main hair discredited, all that remains of the prosecution's case is the shaky identification by a traumatized 7-year-old.

Lincoln's attorneys seek his release through a state law that lays out the process for DNA exoneration cases. If he ultimately wins freedom, he could seek repayment from the state for his decades spent in prison, but it's not a sure thing. First, the law requires

DNA to be the sole reason someone is determined innocent. Also, the law doesn't detail the type of DNA analysis, so it's unclear if a mitochondrial test that rules him out but doesn't precisely match someone else would suffice. Also, people who accept the payment agree not to sue the state for their incarceration. But if he meets all the requirements, Lincoln could seek payment of \$50 for each day in prison since his conviction, which amounts to \$498,600 as of today and growing.

Since fiscal 2007, the state has paid a total of \$558,750 to five people under the DNA exoneration law, the Department of Corrections said.

At the scheduling hearing in January, Lincoln's attorneys, Tiffany Murphy and Ken Blucker of the Midwestern Innocence Project, argued the evidence demonstrates that Lincoln didn't commit the crimes and it's the state's burden to show why he shouldn't be released.

Postawko, the prosecutor, said his office doesn't believe the results demonstrate Lincoln's innocence. He said it should be up to Lincoln to prove to the court that his jury conviction was wrong. Postawko argued the case hasn't reached the threshold determination required under the DNA exoneration law.

Judge Vannoy plans to review the state's response and then may set a hearing on what to make of the DNA test results.

The case is Rodney Lincoln v. State of Missouri, 22821-02021.

SIDEBAR

Below are some key dates in the legal case of Rodney Lincoln, convicted in 1983 of manslaughter and assault. Lincoln's attorneys say new DNA results show their client didn't commit the crimes for which he's serving life in prison.

April 27, 1982

Joanne Tate is killed, and her young daughters are assaulted

May 23, 1982

Rodney Lincoln is arrested

August 1983

Lincoln's first trial ends in a hung jury

October 7, 1983

Lincoln is convicted of manslaughter and assault on retrial; he gets a life sentence

2003

Lincoln's case is one of hundreds reviewed for potentially telling DNA evidence

2004

Midwestern Innocence Project takes his case

January 2010

Lincoln's attorneys and prosecutors agree to DNA testing

Nov. 10, 2010

Lincoln's attorneys file a motion seeking his release

Feb. 7, 2011

Prosecutor's response to the motion to release Lincoln is due

Sources: Court records and interviews

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