

STATE OF LOUISIANA

20TH JUDICIAL DISTRICT COURT

v.

PARISH OF WEST FELICIANA

ALBERT WOODFOX

CASE NO. 15-WFLN-088, DIV. B

**MOTION TO LOCATE AND
OBTAIN ITEMS OF EVIDENCE FOR DNA TESTING**

COMES NOW the Defendant, Albert Woodfox, who respectfully moves pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Sections 2, 13 and 16 of the Louisiana Constitution to issue orders (1) directing the State, the State Crime Lab and the West Feliciana Parish Sheriff's Office to determine if they have certain items of physical evidence in their possession or control and, if so, to release them for DNA testing by the Defense, (2) to further order the release for DNA testing by the Defense of additional items of physical evidence in the possession of the Clerk of Court as part of the case file, and (3) to further order the State to disclose the results of any DNA or other physical testing it has conducted regarding the crime that is the subject of this case. In support of this motion, Mr. Woodfox states as follows:

1. In the investigation of Brent Miller's murder, law enforcement gathered numerous pieces of physical evidence. As detailed in submission to the State Police Crime Laboratory, these items included:

- 1) One film wrapper containing scrapings from Miller's right ring finger and right little finger;
- 2) One film wrapper containing hair and scraping from Miller's right left hand fingers;
- 3) Two bags containing Miller's clothing;
- 4) Four vials of Miller's blood;
- 5) One envelope containing a knife with blood stains;
- 6) One paper containing scrapings from a table at the crime scene;
- 7) One paper containing a hair;
- 8) One paper containing paint scrapings and a stain;
- 9) One pair of brown work shoes.
- 10) One bag of clothing belonging to Allen Crosby;
- 11) One bag of clothing belonging to Gilbert Montegut;
- 12) One bag of clothing belonging to Albert Woodfox;
- 13) One bag of clothing belonging to Chester Jackson.

See Exhibit A, State Police Crime Lab Report.

2. An April 27, 1972 report of the State Police Crime Lab reveals that tests were done to attempt to determine the presence and type of blood on all of these materials, and the hair was tested as well. No link was established to Albert Woodfox or anyone else.

3. In the 43 years since this analysis, the development of DNA science and other sophisticated forensic techniques dramatically expand the kinds and quality of testing and relevant information that could be ascertained from expert review of these materials. Mr. Woodfox requests that these materials be tested by a defense expert to determine if they can corroborate his longstanding insistence he did not participate in the murder of Mr. Miller.

4. A review of the materials in the possession of the Tangipahoa Parish Clerk of Court reveals that the knife (Item 5) remains stored with the evidence from Mr. Woodfox's 1998 trial there, when it was introduced as State Exhibit 4. The discussion at hearings prior to the 1998 trial suggests that Mr. Woodfox's alleged clothing (Item 12) was lost in the period between Mr. Woodfox's 1973 and 1998 trials. *See* November 4, 1998 Hearing Transcript at 43-47 (discussing unsuccessful defense and state efforts to locate the clothing). Undersigned counsel is not aware of the locations of the balance of the items. The Crime Lab had them at one time. Presumably, the Lab still has them or has returned them to the West Feliciana Parish Sheriff's Office, which was the investigating agency for this crime and which submitted the materials to the Crime Lab in the first place.

5. Additionally, a contemporaneous FBI Report concerning Mr. Miller's murder noted that "a pair of bloody tennis shoes were found in the area of the dormitory" where Miller's body was found. Exhibit B, April 19, 1972 FBI Report. Undersigned counsel is unaware of whether any testing was conducted on these bloody tennis shoes or where they are presently located. However, Mr. Woodfox requests that the Court direct the State to locate these items for independent DNA testing by the defense and to disclose the results of any tests created by or on behalf of the State or law enforcement with respect to these items.

6. The Fourteenth Amendment of the United States Constitutions provides that the State shall not "deprive any person of life, liberty, or property, without due process of law". This right encompasses the means necessary to prepare for trial and conduct a defense. "Fundamental fairness is violated when a criminal defendant on trial for his liberty is denied the opportunity to have an expert of his choosing, bound by appropriate safeguards imposed by the Court, examine

a piece of critical evidence whose nature is subject to varying expert opinion.” *Bernard v. Henderson*, 514 F. 2d 744, 746 (5th Cir. 1975). Moreover, La. C.Cr.P. art. 718 requires the State “to permit or authorize the defendant or an expert working with the defendant, to inspect, copy, examine, test scientifically, photograph, or otherwise reproduce books, papers, documents, photographs, tangible objects, buildings, places, or copies or portions thereof that are within the possession, custody, or control of the state, and that are intended for use by the state as evidence in its case in chief at trial.”

7. Further, if the State has conducted any DNA or other scientific testing related to the murder of Brent Miller, it should be ordered to disclose the results to the Defense. If the State intends to use the results at trial, La. C.Cr.P. art. 719(A) requires their disclosure. If the results of any DNA or scientific testing by the State fails to establish a link to Mr. Woodfox, that evidence is exculpatory and must be provided to Mr. Woodfox pursuant to the State and Federal Constitutions.

WHEREFORE, the defendant prays that this Court issue an order (1) directing the State, the State Crime Lab and the West Feliciana Parish Sheriff’s Office to determine if they have in their possession or control any of the items including the “bloody tennis shoes” or the items listed in the State Crime Lab report as 1-4, 6-11, and 13, (2) directing the State, the Crime Lab, and the Sheriff’s Office to release any of those materials for DNA testing by an expert designated by the Defense, (3) directing the Tangipahoa Parish Clerk of Court to release item 5 for DNA testing by an expert designated by the Defense, and (4) order the State to disclose to the Defense the results of any DNA or other scientific testing it has conducted regarding the crime that is the subject of this case.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have served a copy of the foregoing document on the 24th day of July, 2015, by email (by agreement of all counsel) upon all counsel in this case, including:

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William M. Sothern

STATE OF LOUISIANA

20TH JUDICIAL DISTRICT COURT

v.

PARISHES OF EAST AND WEST FELICIANA

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ORDER

Upon consideration of this *Motion To Locate and Obtain Items of Evidence for DNA Testing*, the Court being sufficiently advised and good grounds appearing therefore, this motion is **GRANTED**. The Court hereby orders:

(1) The State, the State Crime Lab and the West Feliciana Parish Sheriff's Office to determine if they have items 1-4, 6-11, and 13 or the "bloody tennis shoes" referred to in the FBI report in their possession or control;

Item 1 - One film wrapper containing scrapings from Miller's right ring finger and right little finger;

Item 2 - One film wrapper containing hair and scraping from Miller's right left hand fingers;

Item 3 - Two bags containing Miller's clothing;

Item 4 - Four vials of Miller's blood;

Item 6 - One paper containing scrapings from a table at the crime scene;

Item 7 - One paper containing a hair;

Item 8 - One paper containing paint scrapings and a stain;

Item 9 - One pair of brown work shoes.

Item 10 - One bag of clothing belonging to Allen Crosby;

Item 11 - One bag of clothing belonging to Gilbert Montegut;

Item 13 - One bag of clothing belonging to Chester Jackson;

(2) The State, the State Crime Lab and the West Feliciana Parish Sheriff's Office to release those items in their possession or control for DNA testing by an expert designated by the Defense;

(3) The Tangipahoa Parish Clerk of Court to release the knife (Trial Exhibit S-4) for DNA testing by an expert designated by the Defense; and

(4) The State to disclose to the Defense the results of any DNA or other scientific testing it has conducted regarding the crime that is the subject of this case.

Signed this ___ day of _____, 2015.

HONORABLE WILLIAM G. CARMICHAEL
DISTRICT COURT JUDGE, 20TH JUDICIAL DISTRICT

Please Serve:

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EXHIBITS

Exhibit A, State Police Crime Lab Report.

Exhibit B, April 19, 1972 FBI Report.