

STATE OF LOUISIANA

20TH JUDICIAL DISTRICT COURT

v.

PARISH OF WEST FELICIANA

ALBERT WOODFOX

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

**MOTION TO RELEASE FINGERPRINTS FOR TESTING AND TO COMPEL AN AFIS
DATABASE SEARCH TO DETERMINE WHO LEFT THE PRINTS LOCATED AT
THE CRIME SCENE**

COMES NOW the Defendant, Albert Woodfox, who respectfully moves this Court (1) to order the release of the fingerprint evidence and the fingerprint records of all prisoners at Angola on April 17, 1972 for testing by an expert designated by the Defense, and (2) to compel the State to have the unknown fingerprints located at the crime scene run through the automated fingerprint identification system (AFIS), to which only law enforcement has access. In support of this motion, Mr. Woodfox states as follows:

1. Following Brent Miller's murder, Stephen Ledell and Alton Baxter of the Louisiana State Police processed the crime scene which included taking photographs of the scene and dusting for fingerprints. 1973 Tr. at 54; 1998 Tr. at 605. While identifiable fingerprints were located at the crime scene, none of these prints were matched – at the time of the first trial or subsequently – to Mr. Woodfox.¹ 1973 Tr. at 59. One of these prints was a “blood fingerprint” on the “entrance door in the dormitory”. 1973 Tr. at 60; 1998 Tr. at 605 (“ . . . I don't remember which finger, but one finger was on a door facing there at that Pine One dormitory that was a bloody fingerprint.”) This blood fingerprint was photographed and lifted onto a glassine tape. 1998 Tr. at 605. The bloody print had adequate comparison points that it could have been matched had the matching fingerprint been compared to it. 1998 Tr. at 618. The bloody fingerprint was compared with Mr. Woodfox and the others charged and a limited number of other “suspects”. 1973 Tr. at 96; 1998 Tr. at 620-21. Ledell and Baxter also located prints of four of five fingerprints from an individual's hand from the wall behind the water cooler near where Mr. Miller's body was located by “dusting” the scene. 1998 Tr. at 616. These were also compared to Mr. Woodfox and other suspects and came back without any matches. The State Police had the fingerprints of every inmate at Angola at that time but neither the bloody fingerprint nor the four latent prints were ever compared against this broader set of prints. 1998 Tr. at 615.

¹ Ten photographs of these prints were introduced into evidence at the 1973 trial as State's Exhibit 11 en globo. 1973 Trial Transcript at 64.

2. At the 1998 trial, Carol Richard of the State Police Bureau of Criminal Identification testified that, as of 1997, the State Police continued to have a file on their analysis which included “four latent prints that were in the file; there were two photographs of latents; there were several photographs and negatives of different crime scene pictures that were taken from this particular crime scene.” 1998 Tr. at 1061. The four latent prints as well as photographs of those prints were introduced into evidence at the 1998 trial as State’s Exhibits 24 and 25. 1998 Tr. at 1062. A photograph of the bloody fingerprint was introduced into evidence as State’s Exhibit 26. 1998 Tr. at 1065. Ms. Richard testified that the prints were compared against and determined not to match approximately 20 inmates including Mr. Woodfox and his co-defendants. State’s Exhibit 27, 1998 Tr. at 1066-67. Ms. Richard testified that that State Police has fingerprints for all the inmates who were at Angola on the day of Mr. Miller’s murder but that comparisons with these other prints had not been conducted despite the fact that it easily could have been. 1998 Tr. at 1083. She also testified that the fingerprints were compared against nine members of law enforcement and prison staff that were present at the crime scene after Mr. Miller’s murder and that no match was identified. 1998 Tr. at 1080.

3. During her testimony, Ms. Richard suggested that the bloody fingerprint could have been a palm print. 1998 Tr. at 1069-70. However, at the time the print had not been compared against any palm prints of Mr. Woodfox or any other individuals. 1998 Tr. at 1070.

4. Ms. Richard also testified that, as part of her analysis, that she entered the latent prints into the State Police’s automated fingerprint identification system (AFIS). 1998 Tr. at 1076. The bloody print was not entered into AFIS because, according to Ms. Richard, it was “not good enough in nature.” 1998 Tr. at 1079. Moreover, the State Police’s AFIS system did not, at that time, include all of the prints from the individuals that would have been at Angola at the time of Mr. Miller’s death. 1998 Tr. at 1082-83.

5. In 2002, the fingerprint evidence was reviewed by a crime scene and fingerprint expert named James Werring in support of Mr. Woodfox’s state post-conviction application. Mr. Werring compared the latent prints against fingerprint cards of more than 20 inmates and law enforcement officers that were present at Angola at the time of Mr. Miller’s death including Mr. Woodfox. *See* Exhibit A, Affidavit of James Werring. Mr. Werring’s analysis did not yield any matches. *Id.* Moreover, Mr. Werring’s analysis “eliminated the possibility that the print is a palm” and he instead concluded that it was a thumbprint. *Id.* at 3. Mr. Werring recommended

that all of the prints be run through AFIS. *Id.* at 6. Regarding this recommendation, he noted, first, that the AFIS database available to local law enforcement agencies is far more expansive than the State Police AFIS database available to Ms. Richard in advance of Mr. Woodfox's 1998 trial and, at the time of his affidavit, included the full FBI AFIS database which incorporated "fingerprint records from all correctional institutions throughout the country, including the Louisiana State Penitentiary" *Id.* at 6. Second, he explained that the four latent prints found near Mr. Miller's body were "overwhelmingly" suitable for an AFIS search and that the likelihood of a "match or hit" would be "high". *Id.* at 7. Third, he explained that, contrary to Ms. Richard's 1998 testimony, the bloody fingerprint "also meets the AFIS criteria and can be entered into the system for a search" and that it "may return probable matches." *Id.* at 7.

6. Although the State of Louisiana has spent an enormous amount of time and money in an effort to blame this crime on Albert Woodfox and keep him in Closed Cell Restriction for the past 43 years, it has not bothered to conduct a thorough investigation to determine the real killer by comparing the fingerprints left at the scene with the prints of all prisoners at Angola at the time. In a 1998 media report, Attorney General Buddy Caldwell, whose office is part of the prosecution team in this case, acknowledged that while the print does not match any of the officers or the inmates who moved the body and that Angola retains identification cards bearing the fingerprints of every inmate housed at the prison in 1972, that "the state will never test the print." Laura Sullivan, "Why Did Key Angola Witness Go To 'Dog Pen,'" All Things Considered, National Public Radio, October 29, 2008. He explained further, "A fingerprint can come from anywhere . . . We're not going to be fooled by that." *Id.* While the State may refuse to conduct this necessary testing, the Defense is interested in comparing these fingerprints. Accordingly, the fingerprint evidence and the fingerprint records of all prisoners at Angola at the time should be provided to an expert designated by the Defense for comparison and testing.

7. The Fourteenth Amendment of the United States Constitution 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.” Consequently, Mr. Woodfox has a right to the release of any and all fingerprint evidence – evidence which was used by the State at the past two trials.

8. To insure a thorough testing process with no stone unturned, the prints left at the scene should also be compared against the AFIS database, which could lead to exculpatory evidence.² *Cf. Brady v. Maryland*, 373 U.S. 83 (1963).

9. None of the physical evidence in this case, including the fingerprint evidence, is linked to Albert Woodfox. The State’s case against him is based largely on the dubious testimony of Hezekiah Brown. However, the identity of the person who left the bloody fingerprint at the crime scene, or the latent prints close to Mr. Miller’s body, could establish the identity of Mr. Miller’s true assailant. Accordingly, the testing requested here is likely to produce evidence favorable to the Mr. Woodfox and is required by the Fourteenth Amendment.

WHEREFORE, the defendant prays that this Court issue an order (1) permitting an expert selected by him to examine all fingerprints and identifications of fingerprints obtained by law enforcement officers in connection with the crime underlying this case, and to compare those fingerprints with the fingerprints of all prisoners at Angola on April 17, 1972, and (2) compelling the State to search the AFIS database to identify any matches or hits to the unknown prints found at the crime scene in this case and to disclose those results to Mr. Woodfox.

Respectfully submitted,

/s/ William M. Sothern

William Sothern, La. Bar No. 27884

² Mr. Woodfox has identified numerous instances in which other courts have directed the State to conduct such a search. *See e.g., State v. Kent*, Maricopa County Superior Court CR2006-180256, Order (2/25/2008)(Ordering Department of Public Safety to run additional analysis on a DNA sample); *Illinois v. Johnson*, Circuit Court of Cook County, No. 96 CR 497-04, Order Requiring the Illinois State Police to Submit Open Suitable Latent Fingerprint Impressions to IAFIS for Comparison (12/21/2009); *Illinois v. Johnson*, Circuit Court of Cook County, No. 96 CR 497-04, Order Requiring the Illinois State Police to Submit Open Suitable Latent Fingerprint Impressions to CPD AFIS, ISP AFIS, and FBI IAFIS for Comparison (5/10/2010); *Coleman v. Bradshaw*, U.S. District Court for the Southern District of Ohio, No. 3:03cv299, Dkt. 144 (1/3/08) (Ordering that a DNA sample “be searched in the CODIS database to attempt to find a match,” where DNA sample may belong to “a material witness or an alternate suspect.”)

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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

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ORDER

Upon consideration of this *Motion To Release Fingerprints For Testing And To Compel An AFIS Database Search To Determine Who Left The Prints Located At The Crime Scene*, the Court being sufficiently advised and good grounds appearing therefore, this motion is **GRANTED**. The State is hereby ordered to:

1. Permit an expert selected by Albert Woodfox to examine all fingerprints and identifications of fingerprints obtained by law enforcement officers in connection with the crime underlying this case, and to compare those fingerprints with the fingerprints of all prisoners at Angola on April 17, 1972 and;
2. Enter all prints found at the crime scene into the AFIS database to identify any matches or hits to the prints and to disclose those results to Mr. Woodfox.

Signed this ___ day of _____, 2015.

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

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EXHIBITS

Exhibit A - Affidavit of James Werring.