FILED
FEB 2 2023
Eric Carbonaut Weinstein
CIRCUIT CLERK

IN THE CIRCUIT COURT OF LAKE COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
vs.	)	Case No. 00 CF 1920
MARVIN WILLIFORD,	)	Hon. Judge Daniel Shanes, presiding
Defendants.	)	

NOTICE OF FILING

TO: Lake County State's Attorney Office
18 N. County Street
Waukegan, IL 60085

Please take notice that on February 2, 2023, I caused to be filed the attached **REPLY IN SUPPORT OF MOTION FOR LEAVE TO CONDUCT LIMITED DISCOVERY** in the above-entitled cause to the Clerk of Circuit Court of the Circuit Court of Lake County, Criminal Division and delivered a copy to the State's Attorney of Lake County.

Dated: February 2, 2023

Respectfully submitted,

/s/ David B. Owens
Attorney for Petitioner

David B. Owens

THE EXONERATION PROJECT
311 N. Aberdeen Street, 3rd Floor
Chicago, IL 60607
(312) 789-4955
david@exonerationproject.org Atty No. 44407
Attorneys for Petitioner

Jennifer Blagg
1333 W. Devon Ave, Suite 267
Chicago, IL 60660

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February 2023, I caused a copy of the foregoing Notice of Filing for the Reply in Support of Motion for Leave to Conduct Limited Discovry to be served upon listed counsel by electronic mail as follows:

TO: Lake County State's Attorney Office
18 N. County Street
Waukegan, IL 60085

Dated: February 2, 2023

/s/ David B. Owens
Attorney for Petitioner

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1333 W. Devon Ave, Suite 267
Chicago, IL 60660

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IN THE CIRCUIT COURT OF LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, v. MARVIN WILLIFORD, Defendant	)	Case No. 00 CF 1920 Hon. Daniel Shanes, Presiding

REPLY IN SUPPORT OF MOTION FOR LEAVE TO CONDUCT LIMITED DISCOVERY

Now comes Defendant, Marvin Williford, by his attorneys, in REPLY and support of his motion seeking leave to conduct additional post-conviction discovery, and states:

Reply

1. Williford's motion should be granted. At the outset, it is important to emphasize that there is **no dispute** about a number of things:

   (1) this Court has the authority to permit the requested discovery;

   (2) the requested discovery pertains to agreed DNA testing conducted on one of the "murder weapons" from the Foxworth home invasion and mixed with Foxworth's own blood on samples collected before the original criminal trial;

   (3) the State has spent significant time in the last several years trying to identify and potentially locate the person whose DNA was found on one of the murder weapons to the Foxworth homicide;

   (4) the State's investigation into the identity of the person whose DNA was found on one of the murder weapons in the Foxworth home invasion has

included (a) working with an outside DNA-consulting company[1]; (b) investigation by the Waukegan Police Department; (c) communication with the Northern Illinois Regional Crime Lab; and (d) some prior involvement by the Lake County Major Crimes Task Force.

(5) the requested discovery pertains to DNA analysis *requested by the State* to attempt to identify and potentially locate the person whose DNA was found on one of the murder weapons to the Foxworth homicide; and

(6) that the standard for whether to grant post-conviction discovery is "good cause."

2. There is no reasonable dispute that the identity of the person whose DNA was found on one of the murder weapons in the Foxworth home invasion is relevant to and would support Williford's claims of innocence. Williford has steadfastly maintained he was not the perpetrator and that he was misidentified. His DNA is **not** on the murder weapons.

3. There state introduced the 2x4 as one of the murder weapons in the trial against Williford. At that trial

4. The State has an incorrect view of the governing law. To obtain discovery under the good cause standard, Williford need not conclusively prove what that discovery will show or that it "exonerates" him in some absolute way. Instead, Courts consider things like "the issues presented in the petition, the scope of the requested discovery, the length of time between the conviction and the post-conviction proceeding, the burden of discovery on the State and on any witnesses, and the availability of the evidence through other sources." People v. Johnson, 205 Ill. 2d

[1] Though Williford believes the State's new position seeking not to even mention the name of this company is absurd, Williford will not name it here.

381, 408 (2002) (citing People ex rel. Daley v. Fitzgerald, 123 Ill.2d 175, 183, 121 (1988), and People v. Fair, 193 Ill.2d 256, 264-65 (2000). The State has not even attempted to address these issues, forfeiting the argument.

5. There is no reasonable dispute that, under the correct legal lens, Williford is entitled to discovery because "good cause" has been shown. The discovery relates to Williford's longstanding claims of actual innocence, and this is a case where DNA evidence undermines the State's key evidence—a witness misidentification made years after the crime and following gratuitously suggestive procedures. The scope of the requested discovery is narrow, as it concerns efforts to find information related to the person whose DNA was found on the murder weapon mixed with the victim's blood. Williford "is entitled to an opportunity to find and present whatever evidence there may be which connects" the person whose DNA was found on a murder weapon to the case.

6. As it relates to the timing of the request—and any potential lack of diligence—there is no contention that Williford has been dilatory. And, none could be made: Williford is seeking documents that he has only recently learned existed and that undisputedly only recently came into existence. For example, the last DNA report that Williford has been given was issued just a couple of months before the motion for discovery was filed and is based upon seeking the underlying information that led to that report.

7. As it relates the burden of discovery on the State and on any witnesses, any burden is, at most, *de minimus*. The State has not claimed an undue burden and the things sought—police reports, DNA reports, communications about those reports—are the things that are regularly produced in every single criminal case.

8. In fact, as it relates to the information about the DNA and subsequent

investigation, the materials sought here are analogous to those the State must produce under Illinois Supreme Court Rule 417. That rule requires the production of things like (i) "Copies of the case file including all reports, memoranda, notes, phone logs, contamination records, and data relating to the testing performed in the case; (ii) "Copies of any autoradiographs, lumigraphs, DQ Alpha Polymarker strips, PCR gel photographs and electropherogams, tabular data, electronic files and other data needed for full evaluation of DNA profiles produced and an opportunity to examine the originals, if requested; and (iv) Copies of DNA laboratory procedure manuals, DNA testing protocols, DNA quality assurance guidelines or standards, and DNA validation studies"; (viii) A statement by the testing laboratory setting forth the method used to calculate the statistical probabilities in the case"; and (x) A list of all commercial or in-house software programs used in the DNA testing, including the name of the software program, manufacturer and version used in the case." ILL. S.CT. R. 417 (emphasis added).

9. As it relates to other sources, there are none.

10. Good cause has amply been shown above.

11. Despite all of that, the State argues that the requested evidence would be too speculative to raise an "alternative suspect" claim, citing People v. Beaman, 229 Ill.2d 56, 75 (2008), which affirmed. The State's citation to Beaman is both curious and confirms that the State has utilized the wrong legal lens for the current motion. For one, the DNA issue involved here relates to Williford's actual innocence claim, which was not at issue in Beaman. The question, at this juncture, is not whether the alternative suspect information is *admissible*, or whether it independently states a Brady claim (at issue in that case) but a separate question of whether Mr. Williford is entitled to *discovery* that might later support such a claim. And, under the actual

innocence framework, Williford's burden is not to prove that someone else committed the crime. Instead, he must merely show that new evidence "places the trial evidence in a different light and undermines confidence in the judgement of guilt. People v. Robinson, 2020 IL 123849, ¶48 (citing People v. Coleman, 2013 IL 113307, ¶97). Under this standard, new evidence "need not be entirely dispositive to be likely to alter the result on retrial." *Id.* Instead, the Illinois Supreme Court has emphasized, "[p]robability, rather than certainty, is the key inconsidering whether the fact finder would reach a different result after considering the prior evidence along with the new evidence." *Id.*

12. The State's position, then, runs contrary to established law concerning good cause in post-conviction discovery (which only requires good cause) as well as established law concerning actual innocence claims.

13. The State's position also runs contrary to its own cited authority in Beaman. There, under a Brady lens, the Illinois Supreme Court recognized the question is whether the "undisclosed evidence . . . would have *assisted him* in presenting Doe as an alternative suspect." 229 Ill.2d at 75. And, in Beaman the court reversed a finding that evidence was too speculative that was certainly more equivocal than the DNA evidence here that includes an unknown person's DNA being found on one of the murder weapons. Regardless, and at minimum, the requested discovery—some of which the State has already agreed must be provided to Williford—would undoubtedly *assist* him in illustrating his actual innocence and is in no sense a "fishing expedition."

WHEREFORE, for all the reasons stated above, Mr. Williford respectfully requests that this Court permit Williford to conduct limited post-conviction discovery, as described above.

Dated: February 2, 2022

Respectfully Submitted,

David B. Owens
THE EXONERATION PROJECT
311 North Aberdeen Street, Ste. 2E Chicago,
Illinois 60607
(312) 789-4955
ID: 44407