

FILED

IN THE CIRCUIT COURT OF LAKE COUNTY
CRIMINAL DIVISION

FEB 2 2023

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)

vs.)

MARVIN WILLIFORD,)

Defendants.)

Case No. 00 CF 1920

Hon. Judge Daniel Shanes,
presiding

Eric Cantagut Weinstein
CIRCUIT CLERK

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 TO COMPEL** 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

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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 to Compel 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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REPLY IN SUPPORT OF MOTION TO COMPEL

Now comes Defendant, Marvin Williford, by his attorneys, in REPLY and support of his motion to compel the state to produce discovery, and states:

Reply

1. Williford's motion to compel should be granted. The State filed a combined motion in opposition to two separate motions filed by Williford—a motion to compel and a motion for leave to conduct discovery. But, the legal lens for each motion is not identical, and the State's conflation of the separate bases for relief renders their opposition meaningless.
2. The State's "factual analysis" also ignores the undisputed, and dispositive facts that govern the motion to compel. In particular, DNA testing was conducted on the "murder weapons" used in the home invasion of Delwin Foxowrth in North Chicago, the crime for which Williford was wrongfully convicted. That DNA testing revealed a mixture of Foxworth's blood and another person—"Unidentified Male #1"—who the State has taken efforts to identify and locate. That person is also linked to another horrific crime in Lake County investigated by the Waukegan Police Department. After the DNA "hit" the Lake County Major Crimes Task Force conducted some investigation to find Unidentified Male #1.

3. Much of this was previously litigated before this Court.
4. Unbeknownst to Williford, and before the prior post-conviction proceedings became “final,” the State’s ongoing efforts to identify and locate Unidentified Male #1 included doing DNA analysis at an outside company. Once those results were given to the State, the Waukegan Police Department began taking steps to identify the perpetrator.
5. After Williford found out about those efforts, and despite being furious about these developments being secreted from the defense, the State and the Defense reached an agreement about the ongoing investigation, both related to the DNA analysis and Waukegan’s investigation. In summary, Williford agreed to not take steps to speak with people who might be or know Unidentified Male #1 so long as the State provided Williford with both DNA testing reports and reports and updates related to the investigation of the person whose DNA was found on one of the murder weapons in the Foxworth homicide.
6. The State has produced 4 DNA reports.
7. But, the State has refused to provide Waukegan’s actual reports about their work over the past two years.
8. Instead, the State provided the defense with a one-page, unsigned “summary” that excludes significant investigative steps taken over the last year.
9. Williford has complied with the agreement with the State. But, the State has not. And, so, Williford seeks an order compelling the State to provide the actual investigative reports and communications that have been generated by the Waukegan Police Department as well as communications between WPD and the Lake County State’s Attorney’s Office. Williford also seeks basic DNA related evidence between the State and the private DNA company.
10. **There is no dispute that the State was required to provide this material to**

Williford. But, circumstances has changed, and the State does not want to abide by the agreement.

11. Why? While this motion does not address any constitutional issues related to the State's new, troubling position to withhold exculpatory information from the defense, the Court must understand the State's basis for refusing to comply with the agreement: a new prosecutor personally decided he does not believe that Unidentified Male #1's DNA was deposited on the murder weapon and mixed with Foxworth's blood during the commission of the offense. In other words, echoing claims already made about this same DNA evidence, a prosecutor has personally decided that the DNA evidence is unimportant based upon speculation that the perpetrator deposited it there before the crime.
12. Summarizing, the motion to compel is anchored to the undisputed agreement between the State and the Defense that the State would produce to Williford not only DNA testing reports but also provide the defense with the reports of the ongoing investigation. It cannot be doubted:

The prosecution must honor the terms of agreements it makes with defendants. To dispute the validity of this precept would surely result in the total nullification of the bargaining system between the prosecution and the defense.

People v. Starks, 106 Ill. 2d 441, 449 (1985) (emphasis added).

13. The same is true here. The State should not be permitted to back out of this agreement just because one prosecutor has decided that they do not believe that the person whose DNA was found on one of the murder weapons at the Foxworth home invasion was not put there during the offense. If that is really the State's position, then Williford is still entitled to a new trial, where the State can explain why the DNA evidence linking to a heinous criminal does not exculpate Williford. It is not a basis to permit the State to refuse to honor its agreements.

14. In short, Williford has worked in good faith with the State to obtain evidence that will assist his counsel in investigating and presenting his actual innocence claims. The State has evidence that Williford believes supports his claims. The State previously agreed to provide that evidence to Williford. The State should be required to stand by its word and not permitted to “back out” at this juncture. Cf. People v. Talavera, 2021 IL App (4th) 190200, ¶ 22 (state required to honor its promises and cannot renege on agreements with the defense).

15. Respectfully, the motion should be granted.

WHEREFORE, for all the reasons stated above, Mr. Williford respectfully requests that this Court grant Williford’s motion to compel, and order the state to produce:

- (1) Any document, field note, report, transcription, photograph, witness interview, “lead” sheet, communication, or any other tangible document related to the ongoing investigation of either the murder of Holly Staker and/or the home invasion of Delwin Foxworth
- (2) Any and all communications to or from any member of the State’s Attorney’s Office and any employee, agent, or affiliate of [REDACTED] between July 24, 2017 and the present;
- (3) Any and all reports, “lead” sheets, suspect queries, analysis of DNA, etc. to or from [REDACTED] conducted by the State in regards to any evidence derived from the murder of Holly Staker and/or the home invasion of Delwin Foxworth;
- (4) Any other relief this Court believes is appropriate, including but not limited to sanctions and costs for Williford having been required to file this motion, to present it to this Court, and to demand discovery from the State informally for more than seven months.

Dated: February 2, 2022

Respectfully Submitted,



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