IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

CASE NO. 15AC-CC00597

RODNEY L. LINCOLN

Petitioner,

v.

JAY CASSADY,

Respondent.

RESPONSE TO SHOW CAUSE ORDER

CHRIS KOSTER
Attorney General

MICHAEL J. SPILLANE
Assistant Attorney General
Missouri Bar No. 40704
P.O. Box 899
Jefferson City, MO 65102
(573) 751-1307
(573) 751-2096 Fax
mike.spillane@ago.mo.gov
Attorneys for Respondent

Table of Contents

Case Summary 1

Statement of Exhibits 3

I. Lincoln does not meet the extremely high standard required to excuse a procedural bar or obtain relief based on actual innocence. 4

II. Lincoln's substantive claims are procedurally barred because he did not raise the claims in the ordinary course of review, and he cannot establish the cause and actual prejudice required to excuse his defaults. ... 8

III. Lincoln's claim, that the State's presentation of an expert opinion that a hair found on a blanket at the crime scene was consistent with Lincoln's hair was a Due Process Clause violation, is without legal merit. 11

IV. Lincoln's claim, that the State's alleged failure to timely turn over all Department of Family Services reports about the victim was *Brady* violation is without legal merit. 15

V. Lincoln's claim that trial defense counsel was ineffective for not sufficiently highlighting that the testifying victim said the attacker's name was Bill, that the testifying victim was fragile, and that the testifying victim was allegedly coached is without legal merit. 17

Conclusion 19

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

Rodney L. Lincoln,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 15AC-CC00597
	)	
Jay Cassady,	)	
	)	
Respondent.	)	

Response to Show Cause Order

Case Summary

Following a jury trial the Circuit Court of St. Louis City, Missouri convicted Rodney Lincoln, of manslaughter and two counts of first-degree assault (Resp. Ex. 15). The manslaughter conviction was for a lesser-included offense of the charged crime of capital murder for a crime that Lincoln committed on April 27, 1982 (Resp. Ex. 14). The court found Lincoln to be a prior, persistent, and dangerous offender and sentenced Lincoln to fifteen years' imprisonment for manslaughter to run consecutive to two consecutive life sentences for the first-degree assault convictions (Tr. 6). The Missouri Court of Appeals affirmed the convictions and sentences on direct appeal (Resp. Ex.15). The Rule 27.26 court denied relief, and the Missouri Court of Appeals affirmed (Resp. Exs. 12, 13). Lincoln sought and received DNA

testing under Mo. Rev. Stat. §547.035. The Circuit of St. Louis City found the results of the DNA testing did not entitle Lincoln to release, and the Missouri Court of Appeals affirmed (Resp. Ex. 12).

The State of Missouri confines Lincoln in the Jefferson City Correctional Center in Cole County, Missouri. Warden Jay Cassady, is the proper respondent, and Cole County is the proper venue for a Rule 91 habeas action challenging confinement in the Jefferson City Correctional Center.

Lincoln now claims that he is actually innocent based on a recantation the surviving victim made more than three decades after trial, blaming the killing on a notorious, now executed serial killer whom a television show she watched blamed for the murder. The recantation is not reliable and does not establish that no reasonable juror would convict. Lincoln also claims that the presentation of expert testimony that a hair at the crime scene was consistent with his hair was a due process violation. It was not, and the claim is procedurally barred. Lincoln claims the prosecutor committed a *Brady* violation by failing to turn over "DFS" reports documenting two pretrial familiarization sessions the prosecutor conducted with the victim in the court room. The claim is procedurally barred and without merit. Finally, Lincoln claims that trial counsel was ineffective for not sufficiently highlighting that the victim initially stated that the attacker's name was Bill, not sufficiently highlighting the fragility of the victim, and not sufficiently highlighting

alleged coaching by the prosecutor. The claims are all procedurally barred and are without legal merit. Defense counsel was highly effective, particularly in cross-examining the victim.

Statement of Exhibits

Respondent's Exhibit 1 is the Tommy Sells Book Excerpt – A Prolific Killer.

Respondent's Exhibit 2 is the Tommy Sells DOC Photo, Sept. '84.

Respondent's Exhibit 3 is the Tommy Sells Little Rock Arrest Info March 27, '82.

Respondent's Exhibit 4 is the Jonesboro/Paragould Arrest Information, Apr. 3, '82, and information on the judgment and two month sentence imposed on April 14, 1982.

Respondent's Exhibit 5 is Lincoln's identifying marks.

Respondent's Exhibit 6 is Tommy Sells' identifying marks.

Respondent's Exhibit 7 is the Timmy Sells Transcript 1-11-16.

Respondent's Exhibit 8 is the Timmy Sells Transcript 1-14-16.

Respondent's Exhibit 9 is the Mary Flotron Transcript 1-14-16.

Respondent's Exhibit 10 is the Joseph Bauer Transcript 1-14-16.

Respondent's Exhibit 11 is the DNA Memo/Opinion.

Respondent's Exhibit 12 is the Post-Conviction Order.

Respondent's Exhibit 13 is the Post-Conviction Findings of Fact & Conclusions of Law.

Respondent's Exhibit 14 is the Direct Appeal Opinion.

Respondent's Exhibit 15 is the Witness Recantation Video (this exhibit is in electronic form and will be emailed to chambers and to opposing counsel).

Respondent's Exhibit 16 is the Ed Postawko Affidavit.

I. Lincoln does not meet the extremely high standard required to excuse a procedural bar or obtain relief based on actual innocence.

In order to prove a claim of actual innocence, entitling a petitioner to review of defaulted claims, a petitioner must prove it is more likely than not that no reasonable juror would convict in light of newly discovered evidence of innocence. *Clay v. Dormire*, 37 S.W.3d 214, 217 (Mo. 2000). "New" evidence in this sense means evidence that was unknown or unavailable at the time of trial. *See McKim v. Cassady*, 457 S.W.3d 831, 846 (Mo. App. W.D. 2015). When a petitioner does not meet the standard for gateway actual innocence, he necessarily also does not meet the higher standard for showing a claim of freestanding actual innocence that entitles him to discharge from confinement. *Id.* at 847.

Lincoln alleges that he is actually innocent based on the victim's statement that she now remembers, *after seeing a television show on the subject*, that the "real killer" was the notorious serial killer, Tommy Lynn Sells, who was executed in Texas in 2014. Recantations are generally to be regarded with suspicion. *See State v. Harris*, 428 S.W.2d 497, 501 (Mo. Div. 1 1968). Here the passage of time makes the recantation of less reliable. Further, providing the witness with information blaming the crime on someone else invites the creation of new false memories. *See* Morgan, Southwick, Steffian, Hazlett and Loftus, "*Misinformation Can Influence Memory For Recently Experienced Highly Stressful Events*", 36 International Journal of Law and Psychiatry 11-17 (2013) (noting that providing misleading information resulted in modification of memories to conform to the information in over 50 percent of cases in the study). The victim is clear that her "recantation" is based on the fact that she now remembers Sells was the killer after watching the television show (Resp. Ex. 15), and Lincoln supports this with recantation with a statement from an interview with Timmy Sells, Tommy Lynn Sells' brother, allegedly indicating that Tommy Lynn Sells had moved to St. Louis, Missouri in late 1981 and lived there at the time of the April 27, 1982 murder and assaults.

But Tommy Lynn Sells' book (Resp. Ex. 1) and Arkansas records indicate he had returned to Arkansas before the murder and he was in fact in

custody there at the time of the murder. Sells recounts in his book that he arrived in St. Louis during "the snowstorm from hell", when he was 17 (presumably the snow storm of January 31 to February 4, 1982 that dropped 20" of snow when he was 17), but that he returned to Arkansas because his girlfriend gave birth. She was not glad to see him, they fought, and he left, stole a car, and was arrested and jailed (Resp. Ex. 1). An arrest report from Little Rock Arkansas shows that Sells was arrested there for public intoxication at his girlfriend's home on March 27, 1982, and that he had an Arkansas address at the time (Resp. Ex. 3). Arrest and conviction reports show that Sells was arrested in Paragould, Green County, Arkansas on April 3, 1982, for stealing a car (Resp. Ex. 4). On April 14, 1982, the Circuit Court of Green County, Arkansas found Tommy Lynn Sells guilty of auto theft, and gave him two months in an Arkansas Department of Youth Services facility, backed up by a suspended five-year sentence (Rep. Ex. 4). Therefore, Arkansas records and Sells' book appear to indicate Tommy Lynn Sells left Missouri, and was in Arkansas at the time of the murder. Thus, he could not have committed the murder in St. Louis Missouri on April 27, 1982, as the victim alleges in her recantation.

Further, the evidence suggests that the killer was missing part of a finger; Tommy Lynn Sells did not have a missing or damaged finger (Resp. Ex. 6) but Rodney Lincoln is missing part of the little finger on his right hand

(Resp. Ex. 5). A victim's advocate indicates the child witness told her before trial that the killer had a funny finger, but the victim's advocate did not pass this on to the police or the prosecutor because she did not view that as her role (Resp. Ex. 9). The victim's advocate, years after trial, told a detective about the victim mentioning the killer's finger, and was surprised the police and prosecutor were not aware that the victim had commented on the killer's finger (Resp. Ex. 9). Mr. Postawko, the Assistant Circuit Attorney who handled the DNA litigation, has attached an affidavit indicating that years after trial, the victim told him she recalled from the night of the murder that the killer is missing part of a finger (Resp. Ex. 16).

Also the victim alleges she now remembers the killer had a beard of the type she has seen in pictures of Sells (Resp. Ex. 15 at 45:00 minutes to 47:00 minutes). But a Department of Corrections photograph from 1984 does not show Sells with a beard (Resp. Ex. 2). And Sells' brother remembers Sells as not having a beard in 1982, but having one later, in the 1990s (Resp. Ex. 8).

The victim's recantation made three decades after the murder, after viewing a television show blaming the murder on a notorious serial killer, is not new reliable evidence that can prove by a preponderance of the evidence that no reasonable juror would vote to convict. In light of all the evidence, including the victim's trial testimony and new evidence showing the killer, like Rodney Lincoln, had a damaged or missing finger, one cannot say no

reasonable juror would vote to convict in light of the recantation. *See McKim*, 457 S.W.3d at 849 (new evidence of innocence must be considered in the context of "all the evidence, old, new incriminating, and exculpatory"). The recantation is inextricably linked to a recovered memory that Tommy Lynn Sells is the killer, but that cannot be so as the evidence indicates he was in custody in Arkansas at the time of the crime. Lincoln cannot show gateway actual innocence that would remove the procedural default of his other claims, and therefore necessarily cannot meet the standard for a free-standing claim of innocence that would entitle him to relief.

II. Lincoln's substantive claims are procedurally barred because he did not raise the claims in the ordinary course of review, and he cannot establish the cause and actual prejudice required to excuse his defaults.

"[H]abeas review does not provide duplicative and unending challenges to the finality of a judgment so it is not appropriate to review claims already raised on direct appeal or during post-conviction proceedings." *State ex rel. Strong v. Griffith*, 462 S.W. 3d 732, 734 (Mo. 2015) (internal quotation marks omitted). Insofar as Lincoln has already received a merits ruling on particular claims in the ordinary course of review, he may not litigate those claims again through habeas corpus. *Id*. But Lincolns' claims II, III, and IV all appear to be new claims that he did not raise in the ordinary course of review (Resp. Exs. 15 and 16). Those claims are barred from habeas review

unless Lincoln can show cause and actual prejudice excusing his failure to raise the claims in the ordinary course of review.

Lincoln does not meet his burden of showing cause and prejudice to excuse his defaults. Cause and prejudice are conjunctive criteria, thus, a petitioner must satisfy both criteria to obtain relief. *Murray v. Carrier,* 477 U.S. 478, 488 (1986). Cause occurs when "some objective factor external to the defense impeded counsel's [or the petitioner's] efforts to comply with the State's procedural rule." *State ex rel. Nixon v. Jaynes*, 63 S.W.3d, 210, 215 (Mo. 2001) (adopting federal cause and prejudice review, as it then existed, into Missouri law) *quoting Murray v. Carrier,* 477 U.S. 478, 488 (1986). To establish the "prejudice" necessary to overcome procedural default, a petitioner seeking to vacate, set aside, or correct a conviction or sentence in habeas bears the burden of showing, not merely that errors at his trial created the possibility of prejudice, but that they "worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." *Id.* at 215-16.

Lincoln cannot assert ineffective assistance of direct appeal counsel as cause to excuse the default of his current trial error or prosecutorial misconduct claims because claims of ineffective assistance of direct appeal counsel must be themselves pressed or the claim of cause is also defaulted. *Edwards v. Carpenter*, 529 U.S. 446 (2000) (claim of ineffective assistance of

direct appeal counsel asserted as cause to excuse a default can itself be defaulted when the habeas petitioner did not exhaust an independent Sixth Amendment claim challenging the effectiveness of direct appeal counsel). Claims that direct appeal counsel was ineffective, whether now raised as cause to excuse the default of current trial error claims, or as independent Sixth Amendment claims, are therefore defaulted by the failure to raise them in the ordinary course of review.

The United States Supreme Court has recognized that in *federal* habeas corpus review, ineffective assistance of post-conviction counsel may be cause to excuse a defaulted underlying claim of ineffective assistance of *trial* counsel *Martinez v. Ryan,* 132 S. Ct. 1309 (2012). But *Martinez* applies only to *federal* habeas review. *Martinez* applies in federal habeas corpus actions only where the underlying claim is ineffective assistance of trial counsel, as opposed to direct appeal counsel. *Dansby v. Hobbs*, 766 F.3d 809, 833 (8th Cir. 2014). And *Martinez* applies only where the alleged cause is alleged ineffectiveness at the first post-conviction level where the effectiveness of trial counsel may be challenged. *See Arnold v. Dormire*, 675 F.3d 1082, 1097 (8th Cir. 2012) (ineffective assistance of post-conviction *appellate* counsel cannot be cause to excuse a default). *Martinez* was decided after Missouri courts adopted *then existing* federal cause and prejudice analysis in *Jaynes* in 2001. Missouri appellate courts have not applied *Martinez* to Missouri habeas

cases where ineffective assistance of post-conviction counsel is categorically unreviewable. *See Ewing v. Denney*, 360 S.W.3d 325, 331 n.11 (Mo. App. W.D. 2012) (ineffective assistance of post-conviction counsel is not cause that excuses a default and the only relief available is in cases of total abandonment that justifies reopening the post-conviction motion); *see also Linder v. State*, 404 S.W.3d 926, 929 n.5 (Mo. App. W.D. 2013); *Martin v. State*, 386 S.W.3d 179, 185-86 (Mo. App. E.D. 2012) (*Martinez* speaks only to *federal* habeas corpus procedure).

Lincoln cannot show cause and prejudice to excuse his failure to timely present his current grounds II, III, and IV. And he cannot establish actual innocence. Therefore, the claims are barred from review. But as discussed below, the claims are also without legal merit.

III. Lincoln's claim, that the State's presentation of an expert opinion that a hair found on a blanket at the crime scene was consistent with Lincoln's hair was a Due Process Clause violation, is without legal merit.

Lincoln alleges that expert testimony about a pubic hair found on a blanket at the crime scene matching Lincoln constituted a Due Process Clause violation. It did not. But Lincoln did not raise the claim on direct appeal. And if he blames the prosecutor and expert for presenting "false" testimony under then existing scientific understanding, which they did not,

then there would be no excuse for not raising the claim on direct appeal, and it is barred from review.

Criminalist Joseph Crow examined the blanket for hairs (Tr. 634). He found one hair that did not look like a hair from the deceased victim, Joanne Tate (Tr. 634). Crow believed that it was a pubic hair (Tr. 635). There easily could have been 50 hairs on the blanket (Tr. 635). Only the single pubic hair was examined, and it was compared to 37 other pubic hairs, in addition to appellant's and the victim's (Tr. 650). The state's expert, Harold Messler, initially did not express an opinion as to the hair (Tr. 650-651). Messler was subsequently recalled and testified as follows:

> Q. And totally you compared the hair found on the blanket to thirty-nine other people: the thirty-seven submitted to you, Rodney Lincoln's hair and Joanne Tate's hair; is that right?
>
> A. That's correct.
>
> Q. And one out of those, which is Rodney Lincoln's hair, matched.
>
> A. That's correct.
>
> Q. And in the other two hundred cases that you have dealt with, concerning yourself with the Caucasian [sic] hairs that you've dealt with in the past, have you ever run across a

circumstance where you had a hair from a scene that was matched to more than one person?

A. No, sir.

(Tr. 717-718). On cross-examination, Mr. Messler said that when he said a hair matched, he meant that "it compared favorably and had more or less the same characteristics." (Tr. 718). When asked if he could tell that a particular hair came from a particular person, Mr. Messler said, "Not usually, no. If a hair had very many individual characteristics, you could. But it's not very common at all." (Tr. 718).

Subsequent mitochondrial DNA testing revealed that the hair was not Lincoln's, nor did it belong to any of the victims. But this evidence does not demonstrate that Lincoln was innocent of the charged crimes. Hairs subjected to DNA analysis that are found to be hairs of someone other than appellant do not exonerate Lincoln, as hairs are easily transferable. *See, e.g., Haddox v. State*, 2004 WL 2544668 (Tenn. Crim. App., 2004) (finding that petitioner would not be exonerated if DNA proved that hairs on cap were not his because hairs are easily transferable). The mere fact that the one hair out of numerous available hairs was not Lincoln's does not establish that Lincoln was not in that apartment that night and did not commit the killing and the assaults.

Without the hair, the State had a strong case. The state presented the eyewitness testimony of the victim, who never wavered in her identification of Lincoln as the perpetrator and only identified him after looking at over 40 pictures (Tr. 774). The victim's testimony was corroborated, as well, by her young sister's reaction upon seeing Lincoln's picture; when RT saw Lincoln's picture, she threw it on the table, covered her hands with her face, and started crying (Tr. 756-757). Her testimony was corroborated by Lincoln's statement and Lincoln's mother's testimony; they both acknowledged that Lincoln knew Joanne Tate and her girls and that Joanne Tate and her girls had spent the night once at Lincoln's house (Tr. 750, 860-861). In addition, a package of cigarettes similar to those smoked by Lincoln was found at the victim's house; the victim did not smoke (Tr. 854-855, 909-910).

Mr. Messler testified based on the available science at the time. The defense did not put on any expert at the time to suggest that Mr. Messler's conclusions were wrong or his methodology incorrect. And Lincoln did not raise the matter on appeal. Further, two of the things Lincoln relies on in attacking the testimony in habeas are a 1984 FBI statement casting doubt on the usefulness of crime scene hair comparisons, and the 1996 decision of the FBI to stop declaring hair matches based on visual comparisons (Habeas Petition 32). But Lincoln cannot plausibly explain

how the prosecutor or expert violated due process by not being aware of things that had not yet happened.

In any event, Mr. Messler's testimony was not as conclusive as Lincoln now tries to make it appear to be. To begin, Mr. Messler initially said that he could not form an opinion at all regarding the hair (Tr. 650-651). When he was recalled to the stand, he agreed with the state's assertion that the hair was a "match," (Tr. 717-718), but on cross-examination he explained that by "a match," he meant only that "it compared favorably and had more or less the same characteristics." (Tr. 718). When asked if he could tell that a particular hair came from a particular person, Mr. Messler said, "Not usually, no. If a hair had very many individual characteristics, you could. But it's not very common at all." (Tr. 718).

There was no Due Process Clause violation here. The expert gave an opinion based on his existing scientific knowledge and experience. That is not a violation of the constitution.

IV. Lincoln's claim, that the State's alleged failure to timely turn over all Department of Family Services reports about the victim was *Brady* violation is without legal merit.

Lincoln alleges that a Due Process Clause "*Brady*" violation occurred when the prosecutor did not turn over Department of Family Services (DFS) reports on the child victims that referenced pretrial preparation sessions meant to familiarize the child victims with the court room and testifying.

This claim is procedurally barred from review. Lincoln alleges he obtained the reports in connection with his DNA litigation (Habeas Petition 42). He does not explain a good reason why he could not have, through similar efforts, obtained the records in connection with his direct appeal or Rule 27.26 litigation. *See State v. Wise*, 879 S.W.2d 494, 509 (Mo. 1994) (Missouri Supreme Court remanded case for consideration by the post-conviction review court of a *Brady* claim discovered after trial). Lincoln has no cause to excuse the default. *See O'Neal v. Bowersox*, 73 F.3d 169 (8th Cir. 1995) (habeas petitioner did not have cause to excuse default of a *Brady* claim where co-defendant was able to obtain the factual basis of the claim in time to present it in a timely manner).

The claim is also without legal merit. In this case the DFS was involved as the victims' mother had been murdered and they had a role in the care of the children. The prosecutor was not aware that DFS personnel had prepared reports about his two pretrial preparation sessions with the witnesses or that they had prepared other reports about the crime (Resp. Ex. 10). Under the facts of this case it is a stretch to argue that the DFS was part of the prosecutorial team from whom the prosecutor was responsible for discovering and turning over material exculpatory evidence. *See Engel v. Dormire*, 304 S.W.3d 120, 127 (Mo. 2010) (federal agents were part of the prosecutorial team as they acted as his agents during the investigation). Reading the DFS

records as a whole, the DFS role in this case seems to have been providing care and comfort for victims who had lost a parent, not assisting the prosecutor in the investigation.

But more basically, evidence "is material under *Brady* if there is a reasonable probability its disclosure to the defense would have caused a different result in the proceeding." *Engel*, 304 S.W.3d at 128. The citations Lincoln references in his petition do not come close to materiality under that standard (Habeas Petition 43-44). They at most support the unsurprising proposition that that the prosecutor familiarized the child victims with the court room before trial and went over their proposed testimony, and that the victim's may have on occasion made comments relating to the crime to DFS workers. There is nothing exculpatory here. There is no reasonable probability the passages Lincoln cites would have changed the outcome of the proceeding if disclosed. This is particularly true as defense counsel did an excellent cross-examination of the victim, probing inconsistencies very effectively (Tr. 336-74).

V. Lincoln's claim that trial defense counsel was ineffective for not sufficiently highlighting that the testifying victim said the attacker's name was Bill, that the testifying victim was fragile, and that the testifying victim was allegedly coached is without legal merit.

Lincoln alleges counsel was ineffective for not sufficiently emphasizing that the testifying victim initially said the attacker's name was Bill, that she

was fragile, and that she was allegedly coached by the prosecutor. There is no good reason Lincoln could not have placed his current attacks on counsel in the Rule 27.26 motion. But he did not. The claims are therefore barred from review.

The claims are also without merit. Counsel did an outstanding job cross-examining the victim. Counsel extensively pointed out that she had named the attacker as "Bill", and pointed out numerous inconsistencies between her pretrial statements and trial testimony about where "Bill" lived, the appearance and characteristics of his mother, the number of his pets, the vehicle he drove, and when and where she met him among other things (Tr. 366-374). He also questioned her about individuals from victim's services driving her around all the time and talking about the case (Tr. 374).

Defense counsel also cleverly asked the victim what the most distinguishing characteristic of the killer was, to which the victim replied that he was mean (Tr. 366). Then, in his own defense case, he put on Rodney Lincoln's mother and brother who testified Rodney Lincoln was missing a finger (Tr. 122, 167) In closing argument, defense counsel argued the victim was unreliable because she had not mentioned the killer had a missing finger as his most distinctive characteristic (Tr. 944-45). Now, we know from the statement of Ms. Flotron that the victim had mentioned the finger to her before trial, but Ms. Flotron did not pass that that information on to the

prosecutor (Resp. Ex. 9). So defense counsel actually impeached the victim with information that, handled less artfully, could have helped prove his client's guilt. Counsel did not act outside the wide range of professional competence, and his allegedly improper actions did not create a reasonable probability the outcome of the proceeding was changed. Lincoln would have to prove both those thing to show ineffectiveness. *Strickland v. Washington*, 466 U.S. 668 (1984). He can prove neither. His ineffectiveness claim is without merit.

Conclusion

This Court should deny the petition for habeas corpus with prejudice without further proceedings.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Michael Spillane
MICHAEL SPILLANE
Assistant Attorney General
Missouri Bar # 40704
P.O. Box 899
Jefferson City, MO 65102
(573) 751-1307
(573) 751-2096 Fax
mike.spillane@ago.mo.gov
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed by using the Missouri e-filing system and thereby served to counsel for Petitioner, this 22 day of January, 2016.

/s/ Michael Spillane
MICHAEL SPILLANE
Assistant Attorney General