

**IN THE CIRCUIT COURT OF STONE COUNTY, MISSOURI
DIVISION ONE**

STATE OF MISSOURI)	Case No. CR695-1441FX
Plaintiff,)	
)	
vs.)	
)	
TIMOTHY CHANEY)	
Defendant.)	

MOTION REQUESTING ORDER TO SHOW CAUSE

Movant Timothy Chaney, by and through his undersigned attorneys, respectfully requests that this Court order the State to show cause why post-conviction DNA testing of physical evidence secured in relation to the murder of Michelle Winter should not be tested pursuant to Section 547.035, Mo. Rev. Stat. Mr. Chaney filed a motion for DNA testing on January 11, 2016, asserting that DNA analysis on previously untested evidence would provide exculpatory evidence substantiating his innocence and identify the actual perpetrator of the crime.

Section 547.035(4) states:

The court shall issue to the prosecutor an order to show cause why the motion should not be granted unless:

- (1) It appears from the motion that the movant is not entitled to relief; or
- (2) The court finds that the files and records of the case conclusively show that the movant is not entitled to relief.

Neither section is applicable here. In his motion, Mr. Chaney outlines the ways in which he meets the statutory requirements entitling him to relief. Evidence was collected and secured in

relation to the crime. § 547.035.1(2); Motion at 14-15. This evidence could be tested for DNA, § 547.035.1(1); Motion at 13-14, and was not previously tested. § 547.035.1(3); Motion at 15-24. The identity of the perpetrator was an issue at trial; Mr. Chaney has always maintained his innocence and argued that an unknown perpetrator must have committed the crime. Indeed, significant evidence suggested that the real perpetrator was, in fact, Wing Cheong Leong. § 547.035.1(4); Motion at 5-7, 25. And were there exculpatory results from DNA testing, there is a reasonable probability that Mr. Chaney would not have been convicted. § 547.035.1(5); Motion at 25-31.

Further, the Missouri Supreme Court itself recognized that the facts presented at trial do little, if anything, to tie Mr. Chaney to the crime, let alone prove his guilt. Three justices of the Missouri Supreme Court would have reversed his conviction. *State v. Chaney*, 967 S.W.2d 47, 62 (Mo. 1998) (White, J. dissenting). As Judge White stated, convicting Mr. Chaney of Michelle Winter's murder requires "conjecture, stacking overlapping probabilities until [the State] can link Timothy Chaney with the hand that inflicted the fatal stab wounds." *Id.* at 61. The dissent concluded, "the State's case against Chaney is missing an essential element" and there is "no evidence [that] ties [Chaney] to the crime either directly or by first generation inference." *Id.* at 62. Thus, "the files and records of the case" *do not* "conclusively show that the movant is not entitled to relief." The record only further supports that exculpatory DNA testing would result in Mr. Chaney's release, as there is "no evidence" connecting him to this crime.

WHEREFORE, for the foregoing reasons, counsel for Mr. Chaney respectfully moves this Court to:

1. Compel the State to show cause as to why DNA testing should not occur pursuant to Mo. Stat. § 547.035;

2. Order the State to search for the requested evidence;
3. Order DNA testing of the items set forth above; and
4. Order that DNA profiles obtained from the above listed items be uploaded into CODIS.

Respectfully Submitted,

MIDWEST INNOCENCE PROJECT

/s/ Rachel K. Wester

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CERTIFICATE REGARDING SERVICE

I hereby certify that it is my belief and understanding that counsel(s) for plaintiff in this matter are participants in the Court's e-filing program and that separate service of the foregoing document is not required beyond the Notification of Electronic Filing to be forwarded on April 27, 2016 upon the filing of the foregoing document.

/s/ Rachel K. Wester

RACHEL K. WESTER