

STATE OF MARYLAND

IN THE

v.

CIRCUIT COURT FOR

ADNAN SYED

BALTIMORE CITY

Petitioner

Case No.: 199103042-046

Petition No. 10432

*** * * * ***

JOINT PETITION FOR POST CONVICTION DNA TESTING

Now comes the State of Maryland, jointly with Adnan Syed, hereinafter “Petitioner,” and moves this Court to order DNA testing on specific items of evidence currently in the possession of the Baltimore City Police Lab, pursuant to Crim. Proc. § 8-201 and Md. Rules 4-704, 4-709 and 4-710. The parties also request the court to direct the Baltimore City Police Lab to release those items for testing to a mutually agreed upon lab.

I. PETITIONER’S ARGUMENT IN SUPPORT OF PETITION AND REQUEST
A. GENERAL HISTORY

a. *Md. Rule 4-704(a)(1)(a)* - Petitioner is currently incarcerated at Patuxent Institution under inmate identification #293-908.

b. *Md. Rule 4-704(a)(1)(b)* - On February 25, 2000, following a retrial, a jury in the Circuit Court for Baltimore City (J. Heard, presiding) returned verdicts of guilty against Petitioner for first degree murder, kidnapping, robbery, and false imprisonment. On June 6, 2000, Judge Heard sentenced Petitioner to life imprisonment for first degree murder, thirty years for kidnapping (to run consecutive to the life sentence), and ten years for robbery (to run consecutive to the life sentence but concurrent to the thirty years for kidnapping). The conviction for false imprisonment was merged for sentencing purposes.

c. *Md. Rule 4-704(a)(1)(c)* - On direct appeal, the Court of Special Appeals affirmed the

convictions in an unreported opinion; and, on June 20, 2003, the Court of Appeals denied Syed's petition for writ of certiorari. *Syed v. State*, No. 923, Sept. Term 2000 (filed March 19, 2003); *cert. denied*, 376 Md. 52 (2003).

Petitioner filed a Post Conviction Petition and a hearing was held On October 11, 2012 and October 25, 2012. On January 6, 2014, the Honorable Martin P. Welch issued a Memorandum Opinion and Order ("Memorandum Opinion I") denying post-conviction relief. Petitioner filed an application for leave to appeal. After granting leave to appeal on February 6, 2015, and receiving briefs from both the State and Petitioner, the Court of Special Appeals issued an order on May 8, 2015 staying Petitioner's appeal on the issue of ineffective assistance of trial counsel for failure to pursue a plea offer.

On remand, Petitioner filed, pursuant to CP § 7–104, a Motion to Reopen Post–Conviction Proceedings ("Motion to Reopen"). On February 3, 2016, the post-conviction court (Welch, J. presiding) began a five-day hearing to consider the issues raised. On June 30, 2016, the post-conviction court issued its "Memorandum Opinion II" and the court vacated Petitioner's convictions and granted him a new trial.

On August 1, 2016, the State filed an Application for Leave to Appeal. Petitioner then filed a Conditional Application for Leave to Cross-Appeal. On January 18, 2017, the Court issued an order granting the State's Application for Leave to Appeal and Petitioner's Conditional Application for Leave to Cross-Appeal. The intermediate appellate court further lifted the stay of Petitioner's first appeal imposed by the remand order and consolidated the appeals.

The Court of Special Appeals issued its decision on March 29, 2018 and determined that Petitioner was entitled to a new trial.

The State filed a Petition for Writ of Certiorari to the Court of Appeals. Petitioner filed a

Conditional Cross-Petition for Writ of Certiorari. The Court of Appeals granted certiorari. On March 8, 2019, the Court of Appeals reversed the Court of Special Appeals.

Petitioner timely filed a Petition for Writ of Certiorari in the Supreme Court of the United States. The Petition was denied on November 25, 2019.

d. *Md. Rule 4-704(a)(1)(d)*- Petitioner, through undersigned counsel, will pay the costs of testing as well as any costs associated with transporting this evidence by overnight mail, and any other related costs.

B. REQUEST FOR DNA TESTING

Hae Min Lee (“Ms. Lee”) was last seen on the afternoon of January 13, 1999 at Woodlawn High School in Baltimore County, Maryland. Less than a month later, on February 9, 1999, Ms. Lee’s body, dressed in the same clothing in which she was last seen, was discovered in a shallow grave in Leakin Park in Baltimore City, Maryland. It was determined that Ms. Lee’s cause of death was manual strangulation. Through several interviews of a witness who ultimately became a codefendant, Baltimore City authorities came to believe that Petitioner was responsible for Lee’s death. Ms. Lee’s clothing was submitted for trace analysis, which recovered hairs and fibers. Ms. Lee’s cause of death, strangulation, and the manner in which her body was disposed of, indicate that her assailant was in close physical contact with Ms. Lee at the time of her death and burial.

Since this crime occurred, DNA testing has changed and improved drastically. For example, the lab identified by the State and Petitioner can now test for very small amounts of DNA such as “Touch DNA,” which is DNA that is left behind from skin cells when a person touches or comes into contact with an item. Ms. Lee’s clothing, shoes, and certain other evidence recovered from the scene have not been subject to DNA testing. Petitioner now seeks to perform forensic DNA testing on the aforementioned evidence to develop an autosomal STR profile or a Y-STR

profile. STR DNA testing is a well-established scientific test that is generally accepted as reliable by courts and routinely used by law enforcement officials to identify or exclude suspects as the source of DNA recovered from evidence samples. Petitioner seeks to use the most advanced DNA testing methodologies that are currently available to analyze the biological evidence collected from the scene in an effort to exculpate him.

Such intensive testing has never been done on the aforementioned evidence. This method of DNA testing has achieved general acceptance within the relevant scientific community.¹

Petitioner is advised that the Baltimore City Police Lab has custody of this evidence and that it is available for testing, and that the evidence is related to the conviction. If Petitioner's DNA is not present on this evidence, this fact would be exculpatory and could provide a basis for a factfinder to determine that Petitioner is innocent. Further, an indication of DNA that excludes Petitioner could well have persuaded the fact finder to credit Petitioner's innocence claim that he asserted at trial.

Petitioner has consistently maintained that that he had no involvement in the disappearance and murder of Ms. Lee and he now seeks an opportunity to establish, through DNA testing, pursuant to Maryland Code Ann. Crim. Proc. § 8-201, that he had no involvement in the crimes. The testing sought has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing. (Maryland Code Ann. Crim. Proc. § 8-201(d)(1)(i)).

¹ See e.g. *Raynor v. State*, 201 Md. App. 209, 224 (2011) (citing Williamson, Angela L., Ph.D., Bode Technology, January 2012, *Touch DNA: Forensic Collection and Application to Investigations*, available: <https://www.acsr.org/wp-content/uploads/2012/01/Williamson.pdf>).

The requested items to be tested are: all pieces of the victim's clothing, shoes, recovered hairs, and other evidence submitted under numbers 99004666, 9908996, 99004672 (reference sample), and 99004674 (reference sample) collected pursuant to CC# 998B005801.

II. STATE'S RESPONSE IN SUPPORT OF ORDERING DNA TESTING

The State asserts that additional now-available DNA testing in the instant case given Petitioner's contentions will assist greatly in evaluating Petitioner's post-trial claims. The State joins in the request that the court order DNA testing on all pieces of the victim's clothing, shoes, recovered hairs, and other evidence submitted under numbers 99004666, 9908996, 99004672 (reference sample), and 99004674 (reference sample) collected pursuant to CC# 998B005801.

III. JOINT PETITIONER AND STATE ARGUMENT: HEARING NOT REQUIRED IF PARTIES ARE IN AGREEMENT

Md. Rule 4-709(b)(2) provides that a court may enter an order granting the petition for DNA testing without a hearing if the State and the petitioner "enter into a written stipulation as to DNA testing or a DNA database or log search and the court is satisfied with the contents of the stipulation." Here, both parties hereby stipulate to the DNA testing to be conducted and the items of evidence to be submitted for testing.

WHEREFORE, in consideration of Petitioner's argument in Section I, the State's response in Section II, and Petitioner and State's joint argument in Section III, the State and Petitioner jointly request that this Honorable Court:

1. Order Baltimore City Police Lab to release the aforementioned evidence to Forensic Analytical Crime Lab (FACL), or another third-party, accredited lab agreed upon by the State and Petitioner, so that DNA testing and analysis may be performed pursuant to Rule 4-709(b)(2); and
2. Grant any such further relief that the interests of justice may require.

Points & Authorities:

MD CODE ANN., Crim Proc. § 8-201
MD. R. CR., 4-704, 4-709, 4-710
Arey v. State, 400 Md. 491 (2007)
Arrington v. State, 411 Md. 524 (2009)
Blake v. State, 418 Md. 445 (2011)
Edwards v. State, 453 Md. 174 (2017)
Gregg v. State, 409 Md. 698 (2009)
Horton v. State, 412 Md. 1 (2009)
Thompson v. State, 411 Md. 664 (2009)

Respectfully submitted,

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Counsel for the State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 2022, a copy of the foregoing Joint Petition for Post Conviction DNA Testing, was delivered electronically to Becky Feldman, Assistant State's Attorney.

ERICA J. SUTER

STATE OF MARYLAND

IN THE

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*** * * * ***

ORDER FOR POST CONVICTION DNA TESTING

It is hereby ORDERED on this ____ day of _____, 2022 that:

1. The Baltimore Police Department (BPD) shall, within fifteen (15) days of the entry of this order, send by overnight mail all items associated with property numbers 99004666, 9908996, 99004672, and 99004674 and collected pursuant to CC# 998B005801 to Forensic Analytical Crime Lab (FACL), 3777 Depot Rd. Ste. 403, Hayward, CA 94545-2761.
2. The State shall take all reasonable steps to preserve the chain of custody in connection with transmitting the evidence to FACL and all documentation relating to the chain of custody shall be provided to Petitioner.
3. Petitioner's counsel shall assist in the completion of the laboratory submission form, the CODIS pre-approval form, and any other documentation needed in connection with the transporting and testing of this evidence.
4. The specific DNA testing methodology to be utilized for the testing shall be determined by Petitioner's counsel in consultation with FACL after preliminary examination of the evidence. Petitioner's counsel shall consult with the State regarding testing methodology before commencing testing.
5. The DNA testing shall be done in accordance with techniques and testing that is generally accepted in the scientific community for forensic criminal identification.

6. FACL shall take all reasonable actions to preserve a sufficient portion of each enumerated sample it receives for future confirmatory testing. FACL will engage in consumptive testing only, if in the opinion of the analyst, it is necessary to do so in order to obtain a DNA profile, and only after consulting with Petitioner's counsel, who, in turn, shall consult with the State regarding presumptive testing.
7. FACL shall provide to the State of Maryland and Petitioner's counsel a full and complete copy of all reports, results, case notes, and data generated in connection with the DNA testing of all samples. The testing results shall be made available for all future use in any proceeding or investigation relating to any other individuals suspected of involvement in the offense at issue in the captioned case.
8. The costs of transporting this evidence by overnight mail and all other costs associated with the testing of the evidence shall be borne by Petitioner, Adnan Syed.

JUDGE