

IN THE CIRCUIT COURT OF OKTIBBEHA COUNTY, MISSISSIPPI

WILLIE JEROME MANNING

PETITIONER

versus

Cause No. 2001-0144-CV

STATE OF MISSISSIPPI

RESPONDENT

**SUPPLEMENTAL MOTION FOR LEAVE TO
INVOKE DISCOVERY AND FOR TESTING OF EVIDENCE**

Comes now petitioner, Willie Jerome Manning, through undersigned counsel, to seek leave to invoke discovery and DNA testing of forensic evidence gathered at the crime scenes. Specifically, he requests DNA testing of the scrapings taken from beneath the nails of both Jon Steckler and Tiffany Miller, hair found in Ms. Miller's right hand, hair found in Mr. Steckler's left hand, any hair found in the sexual assault kit, and the hair fragments found in Ms. Miller's car that supposedly came from an African-American. In addition, petitioner requests that the Oktibbeha County Sheriff's Department disclose the occupants of cells M3 - M9 of the county detention facilities between July and December 1993. Finally, petitioner requests any and all information pertaining to a Mirage leather jacket that was submitted to the Mississippi Crime Lab on December 30, 1992. Petitioner makes this motion pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 3, Sections 14, 23, 24, 25, 26 and 28, Miss. Code Ann. § 99-39-101 *et seq.*, M.R.A.P. 22, and other applicable state and federal law. In support of the motion, petitioner apprises the Court of the following:

RELEVANT BACKGROUND AND LEGAL PRINCIPLES

1. Willie Jerome Manning was convicted of four counts of first-degree murder in the Circuit



Court of Oktibbeha County, in two separate causes. Mr. Manning was sentenced to death for each of his four convictions.

2. Under the authority of Miss. Code Ann. § 99-39-1 *et seq.*, and Rule 22 of the Mississippi Rules of Appellate Procedure, Mr. Manning is now engaged in post-conviction procedures to seek review of his convictions and sentences of death. He has previously issues subpoenas to the Oktibbeha County Sheriff's Department, the Starkville Police Department, the District Attorney's Office, the Mississippi Crime Lab, and the Tri-County Narcotics Task Force, requesting those prosecutorial and law enforcement agencies involved in petitioner's prosecution to allow for inspection and copying of their files pursuant to M.R.A.P. 22(c)(4)(ii). That Rule provides, in relevant part, that "[t]he State, to the extent allowed by law, shall make available to post-conviction counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed and the prosecution of the petitioner."

3. Petitioner has also filed a motion for leave to invoke discovery to require the state to provide, *inter alia*, all files, documents, letters, recordings, and any other material pertaining to Paula Hathorn, Frank Parker, Earl Jordan, and Barbara Duck that are in the custody, care, and control of the Oktibbeha Sheriff's Department, the Starkville Police Department, the Office of the District Attorney for the 16th District, the Lowndes County Sheriff's Department, and the Columbus City Police Department.

4. Petitioner incorporates by specific reference the legal principles underlying this request, which principles were set forth in the prior motion for leave to invoke discovery.

SPECIFIC DISCOVERY REQUESTS

5. Dr. Steven Hayne conducted the autopsies of Tiffany Miller and Jon Steckler. Dr.

Hayne took scrapings beneath the nails of both victims and forwarded it to the Mississippi Crime Lab. Likewise, he took a sexual assault kit, which was forwarded to the Crime Lab. Hair was found in Ms. Miller's right hand and in Mr. Steckler's left hand. Law enforcement meticulously vacuumed Ms. Miller's car and searched for other trace evidence. The sweepings were also sent to the Mississippi Crime Lab and eventually to the F.B.I.

6. At the Mississippi Crime Lab, these exhibits were given the following numbers:

- Exhibit 5 hair from Ms. Miller's right hand
- Exhibit 8 sexual assault kit taken from Ms. Miller
- Exhibit 9 right finger nail scrapings (from Ms. Miller)
- Exhibit 10 left finger nail scrapings from Ms. Miller
- Exhibit 19 right finger nail scrapings from Mr. Steckler
- Exhibit 20 left finger nail scrapings from Mr. Steckler
- Exhibit 24 hair from Mr. Steckler's left hand
- Exhibits 42-51 pillboxes of hair and fiber taken from Ms. Miller's

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7. Pursuant to M.R.A.P. 22, petitioner has received a certified copy of the Crime Lab reports. It appears that no testing was done on Exhibits 5 and 24. Hair was found in Exhibit 8, but petitioner has seen no evidence of any testing conducted on that hair. The finger nail scrapings from both victims underwent serological testing, but there was no follow up testing.

8. Examination of hair taken from Ms. Miller's car played a prominent role at petitioner's trial. An expert from the F.B.I. testified that some hair found in Ms. Miller's car, though not sufficient for comparison purposes, originated from an African-American. The prosecutor

repeatedly stressed the importance of this evidence in his summation:

[O]ut of all the people that could have been a burglar of John Wise's car, **how many of them could leave hair fragments in the car, hair fragments that came from a member of the African-American race** because that's what they find when they vacuum the sweepings of the car, that's what they find in both significantly the passenger's seat and the driver's seat, just like it would be if the man rode out there as a passenger and came back as a driver. . . . **How many people, ladies and gentlemen, who could leave those fragments**, how many of those also left his home on the morning of December 9th. . . . How many people could have committed this crime, ladies and gentlemen, that **could have left those fragments**, that left their home carrying a gun and some gloves **How many people could leave those hair fragments**, how many people left their house that morning with the gun and the gloves **How many people could leave those hair fragments**, left the house with the gun and the gloves, was trying to sell a ring and a watch like Jon Steckler's, and also had the jacket from John Wise's car **How many people could leave the fragments**, left his house with gun and gloves, were trying to sell rings and watches like Jon Steckler's, had a jacket from the burglary, and undeniably had the CD player from that burglary

Tr. 1546-47 (emphasis added). The prosecutor continued in this vain, each time reminding the jury of the hair fragments.

9. In his rebuttal argument, the prosecutor attempted to answer the defense's position that no physical evidence linked petitioner to the murder scene. After discussing the token that was found at the murder scene, the prosecutor added, "there's even some additional proof inside that vehicle and that's the hair fragments." Tr. 1607.

10. Defense counsel made no attempt to have testing done on any of this evidence.

11. DNA testing, if possible, would exonerate Mr. Manning. For example, the prosecution used the hair fragments as evidence that Mr. Manning had been in Ms. Miller's car. If the hair originated from someone other than Mr. Manning or the students, it would make it all but impossible for Mr. Manning to have been in the car. Likewise, DNA originating from someone else

other than Mr. Manning or the students in the nail scrapings or the hands of the victims would all but eliminate the likelihood of Mr. Manning's involvement in the crimes and would point to the actual killer.

12. Aside from a couple of jailhouse informants whose credibility is open to question, the prosecution's case against Mr. Manning was entirely circumstantial. The prosecution speculated that the burglary of John Wise's car in the fraternity parking lot was related to the shooting of the students, but even the sheriff admitted that there was no evidence of a kidnapping in the parking lot, and no prints were found on the restroom token found at the crime scene. Some testimony was elicited to link Mr. Manning to goods taken from the Mr. Wise's car, but the possibility that Mr. Manning may have been involved in fencing goods does not lead inexorably to the conclusion that he committed murder. The prosecution also relied heavily on the testimony of Paula Hathorn, who testified that she saw Mr. Manning shoot a gun at a tree near his house. The bullets allegedly fired from that gun matched the bullets fired at Ms. Miller and Ms. Steckler. Ms. Hathorn, however, gave inconsistent statements about whether she actually saw Mr. Manning fire into the tree. In addition, Ms. Hathorn had a number of charges pending against her, and understood that testimony favorable to the state would net her a substantial reward.

13. At the same time, the defense pointed to evidence indicating that someone else was responsible for the homicides. For instance, the defense called a witness who saw Ms. Miller's car parked at the Mayhew Apt. complex at 1:00 a.m., which is when the prosecution thought Mr. Manning was committing the kidnapping and murder. Later, two students saw a car traveling at a high rate of speed around the time that the bodies of Ms. Miller and Mr. Steckler were found. DNA evidence of another individual at the crime scene will corroborate the defense case and make it

unlikely, if not impossible, that Mr. Manning was guilty of murder.

14. It remains to be seen whether DNA testing on this evidence was possible in 1994. If so, then petitioner may be able to establish that counsel was ineffective for not seeking expert assistance and necessary testing. *See, e.g., Miller v. Anderson*, 255 F.3d 455 (7th Cir. 2001). On the other hand, even if that testing was not available in 1994, petitioner has the right to determine whether testing is now feasible. Great strides have been made in the potential for testing very small samples, including hair. *See, e.g.,* United States Department of Justice, *Postconviction DNA Testing: Recommendations for Handling Requests* (1999). For example, mitochondrial DNA testing may be performed on materials containing degraded or even very small amounts of DNA, including strands of hair that lack nuclear DNA. The Mississippi Supreme Court has allowed DNA testing. *Lambert v. State*, 777 So.2d 45 (Miss. 2000) (remand allowed for DNA testing). The testing requested is also critical to an allegation of actual innocence, *cf. Schlup v. Delo*, 513 U.S. 298 (1995), and possibly to allegations concerning the knowing presentation of false evidence, *e.g. Napue v. Illinois*, 360 U.S. 264 (1959), or the failure to disclose exculpatory evidence, *e.g., Brady v. Maryland*, 373 U.S. 83 (1963).

15. Petitioner also requests leave of court to issue a subpoena to determine the identity of jail inmates housed in cells M3 - M9 of the county detention facilities between July and December 1993. Petitioner believes that there is an inmate or inmates who need to be interviewed concerning the jailhouse informants who gave statements to law enforcement concerning his alleged involvement in the offenses. Petitioner cannot recall the specific name of the individual or individuals, but believes that seeing the list will refresh his recollection.

16. Finally, petitioner requests any and all information pertaining to a Mirage leather

jacket that was submitted to the Mississippi Crime Lab on December 30, 1992. This jacket was sent to the Crime Lab long before Paula Hathorn delivered her jacket to the sheriff. The crime lab reported that no blood had been found on the jacket. There is no indication as to the origin of the jacket, whether John Wise at some point identified it as being his jacket, or any other information as to why that jacket, out of the many other leather jackets found, was submitted to the crime lab for analysis.

17. The materials requested in the preceding two paragraphs are relevant to potential claims of ineffective assistance of counsel and the state's failure to disclose material exculpatory information. *See, e.g., Brady v. Maryland*, 373 U.S. 83 (1963); *Strickland v. Washington*, 466 U.S. 668 (1984).

CONCLUSION

WHEREFORE, for the foregoing reasons, petitioner requests that the Court order the above-requested discovery and forensic testing.

Respectfully submitted,

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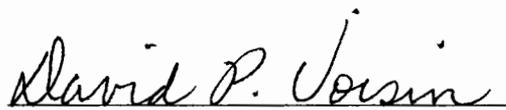
September 25, 2001.

CERTIFICATE OF SERVICE

I certify that on September 25, 2001, I mailed a true and correct copy of petitioner's motion for examination of fingerprint evidence by first-class mail to counsel for respondent at the following address:

Marvin L. White, Jr.
Assistant Attorney General
Post Office Box 220
Jackson, MS 39205-0220

This the 25th day of September, 2001.



David P. Voisin