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JAN 19 2011

DOROTHY BROWN  
CLERK OF CIRCUIT COURT

STATE OF ILLINOIS )  
 )  
 ) SS.  
COUNTY OF COOK )

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT – CRIMINAL DIVISION

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PEOPLE OF THE STATE OF ILLINOIS, )  
Respondent – Plaintiff, )  
 )  
v. ) No. 95CR-9676  
 ) Hon. Paul P. Biebel, Jr.,  
 ) Judge Presiding  
TERRILL SWIFT & MICHAEL SAUNDERS )  
Petitioners – Defendants. )

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PEOPLE’S MOTION TO DISMISS PETITIONER’S REQUEST FOR POST-  
CONVICTION DNA TESTING UNDER SECTION 116-3

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NOW COME the People of the State of Illinois, by their Attorney, ANITA ALVAREZ, State’s Attorney of Cook County, through her Assistant, Mark A. Ertler, and respectfully request that this Honorable Court deny Petitioner’s request for post-conviction DNA testing due to the fact that this case does not meet the requisite criteria of 725 ILCS 5/116-3. In support thereof, the People state the following:

1. Petitioners were convicted after bench trials of the murder and aggravated criminal sexual assault of Nina Glover stemming from their roles in the attack upon the victim on November 6, 1994. The Honorable Thomas Sumner sentenced defendant Saunders to 40 years imprisonment and sentenced defendant Swift to 36 years imprisonment. The judgments and sentences of the trial court were affirmed on direct appeal. *People v. Saunders*, 307 Ill. App. 3d 406, 718 N.E.2d 531 (1<sup>st</sup> Dist. 1999);

*People v. Swift*, No. 1-98-2624 (1<sup>st</sup> Dist. December 13, 1999). Petitioners now seek relief in the form of post-conviction DNA testing under 725 ILCS 5/116-3.

2. Also charged in the same indictment as the instant petitioners were Jerry Fincher, Harold Richardson and Vincent Thames. Richardson and Thames were also convicted, Thames via a guilty plea. Richardson was sentenced to 40 years and Thames to 30 years. Charges against Jerry Fincher were dismissed on motion of the State prior to trial.

3. Under Section 116-3, paragraph (b) requires that the Petitioner must establish a *prima facie* case that:

- (1) identity was the issue in the trial which resulted in his or her conviction; **and**
- (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.

4. Paragraph (c) requires that this Honorable Court order testing to be done only upon a determination that:

- (1) the result of the testing has the scientific potential to produce new, non-cumulative evidence materially relevant to the defendants' assertion of actual innocence even though the results may not completely exonerate the defendant;
- (2) the testing requested employs a scientific method generally accepted within the relevant scientific community.

5. The evidence at trial demonstrated that the petitioners took part in the gang rape and fatal beating of the victim. The victim was lured into a basement where she was repeatedly sexually assaulted then beaten with a shovel and fists, as well as choked. The shovel and a mop used to clean the basement were thrown into the Sherman

Park Lagoon and the victim's body was left in a dumpster. The shovel and mop were later recovered by the police based upon information provided by defendant Swift.

6. Prior to the defendants' trials, DNA testing using a method known as DQ-Alpha was conducted on a vaginal swab collected from the victim and on standards from the defendants. Each of the defendants was excluded as the possible source of DNA found on the swab. An additional comparison was made at another time to the standard of Hubert Gerald, and he too was excluded.

7. In *People v. Gholston*, the Illinois Appellate Court applied a standard set forth in *People v. Washington* to petitions for DNA testing under section 116-3. *People v. Gholston*, 297 Ill. App. 3d 415, 422, 697 N.E.2d 375, 380, 231 Ill. Dec. 821 (1998); *People v. Washington*, 171 Ill. 2d 475, 489, 665 N.E.2d 1330, 1337 (1996). This standard holds that a petitioner under section 116-3 is entitled to relief only when newly discovered evidence which is material to a free-standing claim of actual innocence would probably change the result on retrial. *Gholston* at 421-422. In *People v. Johnson*, the Illinois Supreme Court held that to support a request for post-conviction forensic testing the evidence must tend to significantly advance a claim of actual innocence. *People v. Johnson*, 205 Ill. 2d 381, 395, 793 N.E.2d 591, 600 (2002), citing *People v. Savory*, 197 Ill. 2d 203, 756 N.E.2d 804 (2001). The court in *Johnson* followed the guidelines set forth in *Savory* which hold that a court considering a request for post-conviction forensic testing should evaluate the evidence introduced at trial as well as the evidence the defendant seeks to test when determining whether the forensic evidence is materially relevant. *Id.*

8. The testing now requested by the defendants has no potential to significantly advance a claim of actual innocence. Petitioners acknowledge in their motion that each of the defendants was excluded as the source of DNA found in the victim's body prior to trial. DNA testing now would not change the simple fact that the defendants were convicted in spite of the DNA exclusions.

9. The petitioners base their instant request entirely on speculation that DNA testing using current methods is still possible and that a profile or profiles suitable for CODIS database comparison will be generated. Moreover, petitioners assume that a database comparison will generate a "hit" to the DNA profile of a known serial killer. Even if all the stars align as the petitioners hope, such a scenario still would not significantly advance a claim of actual innocence in the context of this case.

10. The petitioners assert in their motion that the victim engaged in a "high risk" lifestyle including drug use and prostitution." (Pet. Motion for DNA Testing par. 3) This notion comes primarily from the statements given by the defendants in this case. If the victim did engage in prostitution, or simply lived a lifestyle that involved many consensual partners and drug use, it would not be unreasonable to think that she may have engaged in sexual intercourse with someone who also lived a so-called high risk lifestyle and later was convicted of a crime, particularly someone who frequented the same areas frequented by the victim. Such a link would not tend exonerate the defendants in this case, especially since it is defendant Swift who led police to the murder weapon several months after the crime.

11. No possible result of DNA testing now holds the potential to exonerate the defendant. The exclusion of each defendant as a source of DNA in the victim was known at trial and Judge Sumner found sufficient evidence to convict nevertheless. Those convictions withstood challenge on direct appeal. The suggestion that the potential identification of the DNA profile of a convicted offender in material recovered from the victim is merely the proverbial "red herring." It is not a fact that would potentially change the result on re-trial and does not now merit consideration.

WHEREFORE, the People respectfully request that this Honorable Court deny the petitioners' request for post-conviction DNA testing based upon the reasons stated above. The People further request that this Court dismiss the petition for DNA testing and that this cause be terminated without further proceedings.

Respectfully submitted,



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