

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO,

Respondent,

Case Number: 87-447

-vs-

JEROME HENDERSON,

Petitioner.

DEATH PENALTY CASE

RECEIVED

OCT 21 2011

MOTION FOR NEW TRIAL

CLERK OF COURT
SUPREME COURT OF OHIO

Jerome Henderson now, moves this Court for a new trial pursuant to Sections 2945.79(A); (F) and, 2945.80, of the Ohio Revised Code. The reasons for this motion are stated in the attached Memorandum In Support.

FILED

OCT 21 2011

CLERK OF COURT
SUPREME COURT OF OHIO

Respectfully submitted,



Jerome Henderson
Prisoner ID No. A186-271
878 Coitsville-Hubbard Road
PO Box 1436
Youngstown, Ohio 44505

Out of an abundance of caution, Jerome Henderson is simultaneously filing a Successive Post-Conviction Petition. The relevant facts supporting each pleading are identical.

Memorandum In Support

Jerome Henderson did not kill Mary Acoff. The reality is, this "capital case" was never investigated and, a race-based conspiracy to provide Jerome Henderson with constitutionally deficient representation and investigation during his 1985 aggravated murder trial and subsequent appeals, postconviction proceedings, and federal habeas corpus proceedings deprived Jerome Henderson of due process and equal protections rights; to influence upon State Authorities in carrying out the Court ordered death sentence against Jerome Henderson, to deprive Jerome Henderson, a victim of the conspiracy, of his federal constitutional rights. Further, EXAMINATION OF SEMEN, BLOOD AND OTHER BIOLOGICAL EVIDENCE, by Independent Expert hired by the Court; as tested according to the most modern and accurate means available, SHOW THAT ... this Semen, Blood, and Other Biological, Evidence strenuously advocated by Hamilton County Prosecutors to ensure a death penalty indictment against Jerome Henderson and, that, the jury used as a basis for their determination as did the Trial Judge, The Ohio Court of Appeals (First District), and finally This Ohio Supreme Court, WAS ABSENT, UNRELIABLE, INVALID, AND NONEXISTENT ... and, that this jury, Jerome Henderson's 1985 aggravated murder trial (jury), was highly misled because Jerome Henderson's jury was advised of facts that based on the findings of EXAMINATION OF THE SEMEN, BLOOD AND OTHER BIOLOGICAL EVIDENCE, by Independent Expert hired by the Court; as tested according to the most modern and accurate means available, TURNED OUT TO BE UNTRUE AND FALSE IN THE MOST DETRIMENTAL FASHION TO JEROME HENDERSON ... FORENSIC SCIENCE ASSOCIATES "New, Conclusive Exculpatory Scientific DNA" Report, File No. 02-111. (i.e., Newly Discovered Evidence And, New Facts, NOT PRESENTED AT JEROME HENDERSON'S 1985 AGGRAVATED MURDER TRIAL: (1) discloses a strong probability that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) is such as could not in the exercise of due diligence have been discovered before the trial, (4) is material to the issues, (5) is not merely cumulative to former evidence, and (6) does not merely impeach or contradict the former evidence) ... INTRODUCED ON HABEAS CORPUS, in District Court Number 94-00106, before Senior United States District Court Judge

S. Arthur Spiegel of the Southern District of Ohio at Cincinnati, dated January 29, 2003.

Pursuant to Ohio Revised Code Section 2945.79 a defendant may obtain a new trial "(w)hen abuse of discretion by which the defendant was prevented from having a fair trial." Section 2945.79(A) of the Ohio Revised Code. A defendant is also entitled to a new trial when new evidence is discovered material to the defendant, which he could not with reasonable diligence have discovered and produced at the trial. Section 2945.79(F) of the Ohio Revised Code.

This Ohio Supreme Court delineated the standard for granting a new trial based on newly discovered evidence in State v. Petro, 148 Ohio St. 505, 76 N.E.2d 370 (1947). This Court reiterated that standard in State v. Hawkins, 66 Ohio St.3d 339, 612 N.E.2d 1227 (1993):

TO WARRANT THE GRANTING OF A MOTION FOR A NEW TRIAL IN A CRIMINAL CASE, BASED ON THE GROUND OF NEWLY DISCOVERED EVIDENCE, IT MUST BE SHOWN THAT THE NEW EVIDENCE (1) DISCLOSE A STRONG PROBABILITY THAT IT WILL CHANGE THE RESULT IF A NEW TRIAL IS GRANTED, (2) HAS BEEN DISCOVERED SINCE THE TRIAL, (3) IS SUCH AS COULD NOT IN THE EXERCISE OF DUE DILIGENCE HAVE BEEN DISCOVERED BEFORE THE TRIAL, (4) IS MATERIAL TO THE ISSUES, (5) IS NOT MERELY CUMULATIVE TO FORMER EVIDENCE, AND (6) DOES NOT MERELY IMPEACH OR CONTRADICT THE FORMER EVIDENCE.

Id. at 350, 612 N.E.2d at 1235 (citation omitted).

I. Ohio Revised Code Section 2945.79(A).

A. The abuse of discretion by which the defendant was prevented from having a fair trial.

The State of Ohio Legislature elected to fulfill their obligation to ensure Jerome Henderson, an indigent African American litigant, access to counsel ... and, funding for Investigative, Expert, or other services for those financially unable to obtain such services when such services are "necessary

for an adequate defense" and, by extension the courts, at his 1985 aggravated murder trial, on his 1986 direct (first) appeal, as of right, during his postconviction remedies, and his federal habeas corpus proceedings, pursuant to Section 1.60 "State agency" defined and, Chapter 120: PUBLIC DEFENDERS, of the Ohio Revised Code; whose representation Jerome Henderson relied upon to his own detriment, because the State of Ohio Legislature via the Ohio Public Defender Commission, "A GOVERNMENT ENTITY", caused Jerome Henderson to be subjected to a Civil Rights Violation, i.e., Racially Motivated Injustices' And Bigotry, And Betrayed His Trust, pursuant to An Intentional Out and Out Unlawful State Source Of Invidiously De Facto Racial Discrimination pursuant to A Purposeful Unlawful Discriminatory Practice, of the Ohio public defender, of NOT AFFORDING Apposite Investigation of the capital case when the recipient is an indigent African American litigant, while, conspicuously, AFFORDING Apposite Investigation of the capital case to those similarly situated indigent White American litigants', to influence upon State Authorities in carrying out the Court ordered death sentence against Jerome Henderson, an indigent African American litigant, to deprive Jerome Henderson, a victim of the conspiracy, of his federal constitutional rights as guaranteed by the First, Fifth, Sixth, Eighth, Thirteenth (Section 2), and Fourteenth, Amendments of the United States Constitution ... and, Article I: Bill Of Rights, Sections 2, 3, 6, 9, 10, 11, and 16, of the Constitution of the State of Ohio. THEREFORE, The State of Ohio Legislature has Failed To Afford To Jerome Henderson the Full Measure of Equal Enjoyment Of Legal Rights, on account of his race, Secured By The Law To All Citizens Under The Constitution of the United States; and, Thereby, Jerome Henderson was prevented from having a fair trial.

II. Ohio Revised Code Section 2945.79(F).

A. The evidence discloses a strong probability that it will change the result if a new trial is granted.

(W)hen the defendant asserts that the new evidence and, new facts, at issue is exculpatory evidence which was suppressed by his trial counsel's deficient performance in violation of Strickland v. Washington, 466 U.S. 668 (1984), he should not

have to satisfy the severe burden of demonstrating that newly discovered evidence probably would have resulted in acquittal. Rather, the defendant must show only that the favorable evidence at issue was "material," with "materiality" defined according to opinions interpreting the Brady doctrine. United States v. Frost, 125 F.3d 346, 382 (6th Cir. 1997) (internal citations and quotations omitted).

While trial counsel's deficient performance lessen the burden imposed on Jerome Henderson, he easily meets the more stringent requirements of Petro and Hawkins. The new evidence and, new facts, presented by Jerome Henderson will change the result if this Court grants him a new trial.

A fingerprint expert is needed. If the bloody fingerprint (State's Exhibit 106) can be found, it is Jerome Henderson's position that the results of Apposite Investigation and/or Proper Fingerprint Identification And Analysis would be exonerating in nature and would exclude Jerome Henderson as a source of the alleged purported bloody fingerprint (State's Exhibit 106), and lead the investigation to the Cincinnati Police Department's "misconduct" OF FALSIFYING THE ALLEGED PURPORTED FOUND BLOODY FINGERPRINT "(State's Exhibit 106)" TESTIMONY, FABRICATING THE STAGED CRIME SCENE PHOTOGRAPHS (State's Exhibits 16 and 19) AND, PLANTED AB BLOOD OF MARY ACOFF ON THE INSIDE COAT LINING OF THE LONG BLACK LEATHER COAT No. Q15 (State's Exhibit 5 (Item 2)).

Apposite Investigation Is Required: If Jerome Henderson committed this homicide, and he then put the clothes on we know he wore, there would be AB Blood (And "Human Tissue" (State's Exhibit 5 (Item 5)) of Mary Acoff, ALSO ON THE INSIDE COAT LINING AS WELL AS UPON THE SHORT-LENGTH LEATHER JACKET No. Q19 (STATE'S EXHIBIT 6) WORN UNDERNEATH WITH ITS SLEEVES WITHIN THE BLOODY SLEEVES OF THE LONG BLACK LEATHER COAT No. Q15 (STATE'S EXHIBIT 5 (ITEM 2)). See Petition Exhibit R, page 138. And there would have been AB Blood on the tops of his Gym Shoes No. Q20 (State's Exhibit 8 (Item 3)), and perhaps on his hands or face. When he handled his door key + leather cord (State's Exhibit 67), there likely would have been AB Blood on it.

The alleged purported found Semen Evidence (State's

Exhibit 63), inside Mary Acoff's vagina; strenuously advocated to the jury as evidence Jerome Henderson raped and, murdered, Mary Acoff has changed.

The alleged purported found Blood Evidence (State's Exhibit 61 (Item 4)), on the door frame of Jerome Henderson's residence; strenuously advocated to the jury as being the human blood of Mary Acoff has changed.

The alleged purported found Blood Evidence (State's Exhibit 1 (Item 1)), from the stained length of tissue paper; strenuously advocated to the jury as being the human blood of Mary Acoff has changed.

The alleged purported found Semen Evidence (State's Exhibit 5 (Item 2)) inside lining of the long black leather coat; strenuously advocated to the jury as evidence Jerome Henderson attempted to rape Mary Acoff has changed.

The alleged purported found "Human Tissue" Evidence (State's Exhibit 5 (Item 5)), inside lining of the long black leather coat; strenuously advocated to the jury as the "Human Tissue" of Mary Acoff ("consistent with many of the injuries of Mary Acoff's body") (Closing Argument, by the Prosecution, Trial Tr. Vol. VI, page 414), has changed.

Presentation of this newly discovered evidence and, new facts, at a new trial certainly would change the result of the proceedings.

B. This evidence has been discovered since trial.

Jerome Henderson only discovered this information in January, 2003. See Petition Exhibit Y, EXAMINATION OF SEMEN, BLOOD AND OTHER BIOLOGICAL EVIDENCE, by Independent Expert hired by the Court; as tested according to the most modern and accurate means available, FORENSIC SCIENCE ASSOCIATES "New, Conclusive Exculpatory Scientific DNA" Report, File No. 02-111, dated January 29, 2003.

C. The evidence is such as could not in the exercise of due diligence have been discovered before the trial.

This evidence could not have been discovered through due diligence. In 1985, when this homicide occurred, DNA Testing was not common. ABO blood type, and secretor versus non-secretor typing was done with respect to Semen, Blood, And Other Bodily Fluids. The semen was found to be from a Type O secretor ... and, ultimately, Jerome Henderson became the State's target as he was found to be a Type O secretor. And the state proceeded to build a case for Jerome Henderson's guilt in the presence of semen, Type O secretor, found in Mary Acoff's vagina. Although the evidence at trial established that Mary Acoff had sexual intercourse with her boyfriend earlier in the evening, Jerome Henderson could not be excluded as the source of the evidence as both he and Mary Acoff's boyfriend were Type O secretors. The trial prosecutor argued this fact -- the inability to exclude the defendant as the source of the semen found in the victim's vagina -- as reason to convict Jerome Henderson of either rape or attempted rape. See, Trial Tr. Vol. I, page 14 (Opening Statement by Assistant Prosecutor Flessa, "(The evidence will show) you that Jerome Henderson is the type O secretor"); Tr. Vol. I, page 15 (Id., "(H)e dragged her into the living room ... she was naked ... (h)e spread her legs apart, he engaged in or attempted to engage in vaginal intercourse against her will"); Tr. Vol. IV, pages 297, 298 (Testimony of Barbara Heizman, Criminalist at the Hamilton County Coroner's Laboratory, vaginal swabs recovered semen in victim's vagina from a type O secretor; "Jerome Henderson is a type O secretor"). Throughout the prosecution of this case, the State's theory was that Jerome Henderson had broken into Mary Acoff's apartment, raped her and killed her to silence her about the rape. ("(The victim) could have walked into this courtroom and explained to you how he tortured her in order to get her to have sexual intercourse with him. She could have sat on that witness stand and said: "He raped me." But he made sure she couldn't say anything when he sliced her throat. . . ." (Closing Argument by Assistant Prosecutor Flessa, Trial Tr. Vol. VI, page 401). Despite the State's current argument that Jerome Henderson was only found guilty of attempted rape, the State's theory has always been that Jerome Henderson raped the victim and then killed her to silence her, the fact that Mary Acoff also had intercourse with her boyfriend (James Martin) earlier in the evening she was killed,

has always been a mere coincidence to the State, complicated by the fact that both the boyfriend and Jerome Henderson were both Type O secretors. While this evidence muddied the water for the state, it did not deter the State from strenuously advocating that it was Jerome Henderson's semen in the victim's vagina, which proved that Jerome Henderson had raped and killed her. See also Trial Tr. Vol. VI, page 414 (Id., "And what else is inside (the defendant's coat)? Semen, consistent with the defendant's blood type, O secretor. There was semen in Mary Acoff's vagina. There's also tissue, human tissue. The tissue that was found inside that coat had human blood on it ... and it was tissue consistent with many of the injuries of Mary Acoff's body.")

DNA Testing that could have excluded Jerome Henderson as the source of the semen was not available at the time of trial (in 1985), although it has been available since the late 1980's. The State has been in sole and exclusive possession of this evidence since the date of the offense. Further, in 1990 Jerome Henderson was transported to the Hamilton County Jail from the Southern Ohio Correctional Facility in Lucasville, Ohio, to attend a hearing on Petition To Vacate Or Set Aside Judgment ... and, while there Hamilton County Jailors forcibly acquired a blood sample from Jerome Henderson. Thus, DNA Testing that could have excluded Jerome Henderson as the source of the semen could have been performed by the State as early as 1990. In the case at Bar, the State was obligated to do this under the continuing duty of disclosure imposed by the Brady line of cases.

Jerome Henderson could only learn this information if the State came forward.

D. This evidence is material to the issues.

Jerome Henderson was convicted of killing Mary Acoff on the word of Hamilton County Prosecutors. There was no eyewitness to the crime. Who killed Mary Acoff should have been the central issue at Jerome Henderson's aggravated murder trial and remains the central issue of this appeal. The reality is, this "capital case" was never investigated and, a race-based conspiracy to provide Jerome Henderson with constitutionally deficient representation and investigation during his 1985 aggravated

murder trial and subsequent appeals, postconviction proceedings, and federal habeas corpus proceedings deprived Jerome Henderson of due process and equal protections rights; to influence upon State Authorities both in obtaining and, carrying out, the Court ordered death sentence against Jerome Henderson, to deprive Jerome Henderson, a victim of the conspiracy, of his federal constitutional rights, as well as the alleged Strickland violations, are material to that precise issue.

E. This evidence is not merely cumulative to former evidence.

No evidence was introduced at trial nor on post-conviction appeal exculpating Jerome Henderson as the actual perpetrator in this "capital case".

F. This evidence does not merely impeach or contradict the former evidence.

While this evidence certainly raises serious questions about the credibility of Hamilton County Prosecutors and, State Witnesses, this evidence does far more than impeach or contradict evidence introduced at Jerome Henderson's 1985 aggravated murder trial. Rather than attacking the claims of a single witness, this evidence shakes the very foundation of the Prosecution's case. With specificity, this evidence exculpates Jerome Henderson. It is not impeachment evidence.

Conclusion

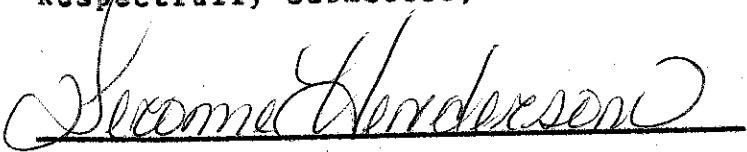
The above described new evidence and, new facts, could well establish Jerome Henderson's actual innocence based upon the State's theory of the crime argued to the jury at trial, and because under any theory of the offense could have been used by Jerome Henderson to secure a new trial years ago. Instead, pursuant to their conspiracy, the State left him to languish on Ohio's death row for a crime it had every reason to believe he did not commit.

The new evidence and, new facts, suppressed by trial counsel's deficient performance could have secured Jerome Henderson's release from Ohio's death row. It cannot be denied that it substantially affected his material rights.

A STATE PRACTICE INTERFERES WITH A FUNDAMENTAL RIGHT AND, DISCRIMINATES AGAINST A SUSPECT CLASS OF INDIVIDUALS, i.e., The abuse of discretion by which Jerome Henderson was prevented from having a fair trial. See, Ohio Revised Code Section 2945.79(A).

Jerome Henderson has discovered "new evidence" and, "new facts," material to his defense, "which he could not with reasonable diligence have discovered and produced at the trial." Pursuant to Ohio Revised Code Sections 2945.79(F) and, 2945.80, Jerome Henderson requests that this Court grant his Motion for a New Trial.

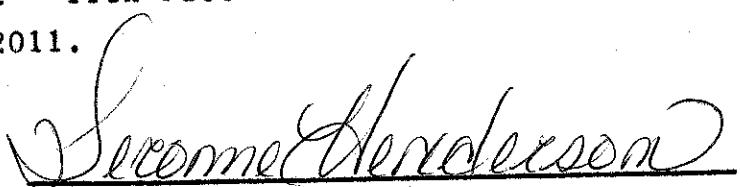
Respectfully submitted,



Jerome Henderson
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION FOR NEW TRIAL was forwarded via regular U.S. Mail to Mr. Ronald W. Springman, Assistant Prosecutor, Hamilton County, Suite 4000, 230 E. 9th Street Cincinnati, Ohio 45202 and, Mr. Laurence R. Sayder, Assistant Attorney General, Capital Crimes Unit, 615 West Superior Avenue - 11th Floor Cleveland, Ohio 44113 on this 16th day of October, 2011.



Jerome Henderson
Prisoner ID No. A186-271
878 Coitsville-Hubbard Road
PO Box 1436
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JURAT

Pursuant to 28 U.S.C. Section 1746, I declare (or certify, verify, or state) under penalty of perjury that the foregoing is the Truth and Correct to the best of my knowledge and belief and, that, the same was deposited in the institution's internal mailing system on the date infra ... and, first-class postage has been prepaid.

October 16, 2011

Date

Jerome Henderson

Jerome Henderson