

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE)
STATE OF ILLINOIS)
Plaintiff,)
vs.)
JAMES CHRISTOPHER SNOW,) NO. 99 CF 1016
Defendant.)

HEARING

REPORT OF PROCEEDINGS of the hearing before the
Honorable DONALD D. BERNARDI on the **7th day of November,**
2008.

APPEARANCES:

MR. WILLIAM WORKMAN,
Assistant State's Attorney for McLean County,
for the People of the State of Illinois;

MS. TARA THOMPSON,
Attorney at Law,
for the Defendant;

Defendant also present.

Nancy L. McClarty, CSR, CP-RPR
CSR License No. 084-002264
Official Court Reporter
McLean County, IL

1 THE COURT: We'll go on the record, 99 CF 1016.
2 The People appear by Mr. Workman. And Mr. Snow appears along
3 with Miss Thompson.

4 We had set this over today for, as I recall it was
5 really a -- well, it looks like we initially set it for
6 hearing on the motion. So maybe I'll ask Mr. Workman what
7 the status is.

8 MR. WORKMAN: Your Honor, I have had contact with
9 the Illinois State Police crime lab, and they have indicated
10 to me that they do, in fact, do post-conviction testing all
11 the time. They would have no problem with working on this
12 case. Although they have indicated that there are some
13 parameters, and a couple of the items that we did, in fact,
14 talk about that were requested, the State Police crime lab
15 said that that either couldn't be done or it at least is not
16 feasible in their lab. They didn't know that it would be
17 feasible in any lab. I'm specifically talking about the
18 bullets on that regard.

19 THE COURT: Okay. So, there are a number of items
20 that you can identify and you and Miss Thompson have already
21 identified those items. That's part of what we were doing?

22 MR. WORKMAN: Yeah, we did meet and see what they
23 had at the Bloomington police evidence locker.

24 THE COURT: And there is at least a couple of items

1 that Miss Thompson can explore another resource if she thinks
2 that someone else can test those?

3 MR. WORKMAN: That's correct.

4 THE COURT: But the lab says they can't?

5 MR. WORKMAN: The lab says they can't, and they
6 actually said that they didn't think given the technology
7 today that any other lab would be able to.

8 THE COURT: All right.

9 MR. WORKMAN: But --

10 THE COURT: All right. Go ahead.

11 MR. WORKMAN: They're free to explore that
12 possibility.

13 THE COURT: So is the status of the motion from
14 your side then that it's not really contested other than to
15 identify these exhibits as we said and --

16 MR. WORKMAN: That would be correct. And they
17 did -- the lab did indicate that on these types of hearings
18 they do ask that the items submitted be limited to five to
19 ten items. They did give some parameters.

20 I haven't had a chance to talk to Miss Thompson yet
21 about those. I just found out about those. But I do have
22 some parameters that they are wanting to go by, and I think,
23 for example, there was the discussion about the blood stain
24 on the floor that was found next to the counter. The crime

1 lab said that would be no problem. Being in '91, they didn't
2 do DNA testing on that. They just did the blood typing, so
3 that is a possibility of having work done on it.

4 The clothing for touch-transfer DNA possibilities
5 are available. That's also a possibility. They just ask
6 that those items be limited.

7 They also indicated that due to their workload,
8 which is one of the concerns that I had, they said that they
9 ask that it be recognized that this would be put into their
10 regular course of the examinations that they do. They said
11 it would probably take at least three to six months, probably
12 on the latter part, the six-month period. They also
13 indicated that there has to be an agreement of consumption of
14 any materials that are going to be used and be tested and
15 because of the way that they put it into the regular course,
16 they don't have on these types of cases an independent
17 watching done.

18 THE COURT: All right. Well, that was one of the
19 questions we had last time. So you're telling me that the
20 lab doesn't require someone else to observe?

21 MR. WORKMAN: That's exactly right. Actually, I
22 think they specifically asked that it not happen.

23 THE COURT: All right. And, as you understand it,
24 are we over the number that they've asked --

1 MR. WORKMAN: We had a large number of items that
2 were looked at and discovered. I haven't been -- we haven't
3 talked any further about which ones they specifically want,
4 but I would just bring that out that if it needs to be
5 limited, if the defense has a -- specific items that they
6 want to highlight or look at.

7 There was also some discussions in this motion
8 about fingerprints, and I would also indicate to the court
9 and to counsel on the fingerprints, on the processing of
10 those fingerprints, specifically whether or not they would be
11 put into AFIS, back in '91 when these prints were taken, they
12 were put into AFIS and because this is a homicide case, those
13 prints are never removed from AFIS, so they've been in AFIS
14 the whole time. They are constantly generating some type of
15 a match to see if there is a match to these fingerprints. So
16 that part of the request is -- actually has been complied
17 with since 1991. It's still in there. It's an ongoing
18 thing.

19 THE COURT: Well, I think it's -- that's only part
20 of the request. I'm sure Miss Thompson wants a report on
21 that to show that, but I think if you can generate that, that
22 probably you're right, would satisfy that.

23 MR. WORKMAN: I think I can. I talked to the same
24 individual that did the -- on the fingerprint analysis.

1 Chris Jacobson is the individual that I spoke with, and he's
2 the one that actually did the work on the original prints
3 that were submitted.

4 THE COURT: All right.

5 MR. WORKMAN: He's still there at the crime lab.

6 THE COURT: So your understanding today is that one
7 of two things is going to happen. You're either going to
8 have an agreement upwards of ten exhibits that are going to
9 go to the lab, or you're going to have a request from
10 Miss Thompson -- I'll hear from her in a moment -- that some
11 number in excess of that is being asked to go to the lab, and
12 you may need a hearing to resolve that issue. Does that
13 sound right to you?

14 MR. WORKMAN: That would be correct.

15 THE COURT: And then you can -- you can resolve the
16 fingerprint issue because you can get a current report as to
17 the -- first you've got to identify those exhibits I guess,
18 but that they have been run by the lab so at least that part
19 of the request can be granted and complied with then,
20 correct?

21 MR. WORKMAN: Correct.

22 THE COURT: All right. So, Miss Thompson,
23 what's -- what are you suggesting we do given all of this
24 information?

1 MS. THOMPSON: Well, I'm obviously -- this is the
2 first that I'm hearing about the report from the crime lab.
3 In terms of --

4 THE COURT: Which report?

5 MS. THOMPSON: In terms of sort of everything that
6 Mr. Workman has just said about what the lab has indicated
7 about possibilities of testing, their parameters for the
8 number, so I haven't had an opportunity to discuss these
9 issues with my client I guess is what I'm saying. I believe
10 and, you know, we can -- I can talk about this or give my
11 argument about this further with Your Honor that we really
12 are entitled to testing of all these items.

13 If it's an issue with the crime lab in terms of
14 submitting a certain number first, I'm happy to, you know,
15 work with the lab about the parameters about what we're going
16 to submit initially and to see what the rulings are from that
17 evidence. But in terms of there being some limit under the
18 statute as to the number of items we're allowed to have
19 tested, there isn't any sort of limit in the statute just
20 from a numerical perspective. If Your Honor wants to comply
21 with that indication from the lab about a certain number
22 first, then I'm happy to work with Mr. Workman to determine,
23 you know, what items that's going to be initially.

24 In terms of the fingerprints and AFIS, as Your

1 Honor suggested, there can be a report from -- from Chris
2 Jacobson or if Chris Jacobson is willing to speak to me about
3 these issues, I'm willing to talk to him or her in person to
4 determine what the issues are to satisfy ourselves that what
5 we are seeking has already been done.

6 And finally, the issue of the bullet testing, I
7 believe that DNA testing is possible on those items. I'm
8 happy to, if Your Honor wants to defer ruling on the entire
9 motion until we can present further evidence, I'm happy to do
10 that. If you want to order testing on the other items and
11 present an affidavit after consulting with experts about how
12 that can be accomplished, I'm happy to do things that way,
13 too.

14 THE COURT: Well, you know, so far on this entire
15 motion, I've not been asked to decide anything, as you know.
16 And that's because essentially the State is really not
17 objecting to the request other than to the extent now they're
18 talking about some limitations at the lab, okay.

19 So, if you believe that there is an alternative lab
20 that can do everything that you want that can take more than
21 ten, then the only question is whether or not the State's
22 either willing to agree to that or if that lab will accept
23 someone to observe if the State's willing to provide that,
24 but, you know, I'm guessing and my memory is that you said

1 you don't have a particular objection to the crime lab except
2 that, you know, now we're getting these limitations. Is that
3 correct?

4 MS. THOMPSON: That's correct, Your Honor. And my
5 understanding, although you know I'm happy to investigate
6 this further and report back to the court with more specific
7 information, is that the state crime lab is currently
8 contracting out with Cellmark, which is a private DNA lab, to
9 do a lot of their DNA testing. I don't know if they would
10 contract this particular case out or not, but my
11 understanding is Cellmark is able to do the kinds of testing
12 that we're requesting. And I need to get an affidavit or
13 something from someone there obviously to make that
14 representation to the court more firmly, but that is my
15 understanding at this point.

16 THE COURT: Well, it strikes me that this is all in
17 your hands and that of Mr. Workman because so far I've not
18 been asked to either order the lab to do more than the ten or
19 I've not been asked to do anything, and, you know, I really
20 don't want to set another hearing if we're going to come back
21 with just more unresolved issues. I mean the two of you have
22 got to decide what you want me to decide because if I'm being
23 asked by Miss Thompson to order the state crime lab to
24 analyze 22 items, then that's one issue, and Mr. Workman can

1 respond as to whether I have the authority to do that. But,
2 you know, right now this is very much in your hands, and I
3 appreciate that you just heard about it today, but I guess
4 what I'm suggesting is that the two of you can't come into
5 court and just tell me that we haven't resolved anything. I
6 mean that's why we moved it over to today, and, you know,
7 we're not moving this ball at all. I mean this is already a
8 long-standing petition, and I'd like it to at least be in a
9 position where it's going to get resolution one of these
10 days.

11 I mean it sounds like we've got partial resolution
12 with the fingerprints, but we don't with the rest of the
13 crime lab material. So we have to decide what lab is going
14 to do it, and if the two of you can agree with what number
15 the lab is going to do, then it's an agreed order coming to
16 me.

17 If you can't do that, then, Miss Thompson, you can
18 pursue an alternative lab, and then the shoe is on the other
19 foot. You have to consult with Mr. Workman about whether or
20 not the State can live with the transport to them. But, it's
21 not -- it's just not very helpful to not have an issue for
22 the court to resolve.

23 So, I think that I need an estimate from you,
24 Miss Thompson. It sounds like you're the one who wants to

1 investigate the possibility of an alternate lab, some time
2 frame that you think you're going to need to get that
3 answered, because once you determine the status of the bullet
4 rounds and whether or not they can be tested and once you've
5 checked for an alternate lab, then things start to fall in
6 place.

7 If you don't have an alternate lab, then this might
8 be done piecemeal, as you suggested. We might send out by
9 agreement a group of exhibits and see what that result is,
10 and then maybe there will be an argument at that time as to
11 whether additional ones should be sent out, but at least the
12 process can be started.

13 MS. THOMPSON: I agree --

14 THE COURT: Go ahead.

15 MS. THOMPSON: Sorry. I agree with Your Honor, and
16 certainly my client's interest is in resolving this as
17 quickly as possible. My preference would actually be not to
18 do this piecemeal. As Your Honor said, I'd rather not be
19 coming back here to resolve bits and pieces of it. I would
20 rather just figure out what we can do and resolve the entire
21 issue.

22 So what I would do is consult with Cellmark, and my
23 understanding is normally they require 30 days to do a
24 consultation about a potential DNA testing for evidence; and

1 so I guess I would ask for maybe 45 days to be able to
2 consult with them and then consult with my client and
3 Mr. Workman so we can come back and either let the court know
4 that we've been able to resolve this or that we definitively
5 haven't and leave it up to the court to make a ruling.

6 THE COURT: All right. Well, is that all right
7 with you then, Mr. Workman?

8 MR. WORKMAN: Yeah, that's fine with me, Your
9 Honor.

10 THE COURT: Here is what I'm going to suggest we do
11 then. I would just prefer that the -- that Miss Thompson
12 have the 45 days to consult. And then a period of time after
13 that where you and Mr. Workman have got to decide what you're
14 going to want the court to decide, and then there has to be a
15 written filing to that effect because I don't want to come
16 back here with either of you giving new Cellmark information
17 on the defense side or new state lab information on the State
18 side because the next time we come into court, we ought to
19 try to resolve the pending motion with an order that Exhibits
20 A, B, C, and D, whatever they may be, are going to be
21 examined by whom and what the conditions are. And I suspect
22 that I'll hear from Miss Thompson that the fingerprint issue
23 is resolved because Mr. Workman got that ordered. So that
24 just leaves the DNA issues. So I guess what I'm suggesting

1 to you is I'm going to want something in writing.

2 Bob, do you want to -- I guess the book is
3 not -- why don't you get the book, anyway.

4 THE CLERK: Okay.

5 MR. WORKMAN: I have a couple other points I'd like
6 to bring out, Your Honor.

7 THE COURT: Yes, let me get -- does it have
8 anything to do about the timing?

9 MR. WORKMAN: No.

10 THE COURT: Okay, go ahead, you can do it.

11 MR. WORKMAN: I just wanted to advise the court one
12 of the issues that we were looking at was the 911 tape,
13 whether or not it existed or not. When Miss Thompson and I
14 were looking together through the evidence, we also went back
15 to my office, looked through the tapes and stuff that we had
16 in our office and we did actually find one. I have attempted
17 to reproduce it for her in electronic form. I've been able
18 to download it on to my computer, but for some reason the
19 computer will not put it on to any other material, like a
20 compact disk or anything, but I was able to e-mail that to
21 her so we have resolved that issue on the 911, that portion
22 of it anyway whether any of it existed, and we did find I
23 think there is about eight minutes of tape there.

24 THE COURT: Okay.

1 MR. WORKMAN: Additionally, I would actually also
2 point out as to the fingerprint portion of it, looking at the
3 motion that the defendant's filed under page four on the
4 exhibits or actually I guess it's Exhibit Four, the second
5 paragraph indicates that the AFIS evaluation was done and it
6 continues, so I mean there is already actually a report there
7 that shows the fingerprints are put into AFIS and they remain
8 there for verification purposes.

9 THE COURT: Yes, I think all I would want if this
10 were a contested issue is something from Jacobson indicating
11 how often they run it and the last time they ran it and what
12 the results were, and I think -- I don't know that there is
13 much more that you can do. I didn't realize that that was a
14 continuous process when they -- when they put them in, which
15 is probably a good thing.

16 MR. WORKMAN: I didn't realize that either until I
17 was -- spoke to Mr. Jacobson.

18 MS. THOMPSON: And, Your Honor, one point on that.
19 I guess if it is going to be a report from Mr. Jacobson, I
20 would like to know how often they intend to continue to run
21 that in the future.

22 THE COURT: Yes, so would I. If I were getting it,
23 I would like to know that, too, so hopefully Mr. Workman will
24 have that explanation put in there. I think that's good to

1 know whether it's annually or how often they run the
2 unknowns.

3 MR. WORKMAN: I -- I will find out for sure, Your
4 Honor, but I think it's just those prints are in the AFIS
5 system and anytime a new print is put in --

6 THE COURT: It checks for a match.

7 MR. WORKMAN: It checks everything.

8 THE COURT: Which means it's happening daily.

9 MR. WORKMAN: Continuously.

10 THE COURT: Well, that's fine.

11 MR. WORKMAN: But I'll get that in writing.

12 THE COURT: If we look at 45 days, Miss Thompson,
13 it's, you know, close to the end of December for you to do
14 the lab check, and then I would like to choose a time frame
15 where the two of you need to consult and provide a written
16 response to the court indicating what the issues remain for
17 resolution, okay? That's what I'm looking for.

18 MS. THOMPSON: If it's acceptable to Your Honor, I
19 think we planned, and to Mr. Workman, I think I plan on
20 coming in with an agreed order or a motion from the defendant
21 on what specific testing we're seeking.

22 THE COURT: That's perfect because all I want next
23 time is that whoever takes it over knows what it is that
24 needs to be decided. So, the question is after you have this

1 45-day period to check the lab, how many days do you want to
2 talk to Mr. Workman and get your motion, if you need it, on
3 file?

4 MS. THOMPSON: I think two additional weeks would
5 be sufficient for that.

6 THE COURT: All right. And, Mr. Workman, does that
7 sound okay to you?

8 MR. WORKMAN: Yeah, that's fine, Your Honor.

9 THE COURT: Then I'm going to give you 30
10 additional days to get a motion on file. And you know what,
11 that can be a motion from either side, of course.

12 All right, let's take a couple of minutes then and
13 let me see if I can get you a new date and a courtroom and
14 everything, okay?

15 MS. THOMPSON: Okay.

16 THE COURT: So let's hold on for just a couple of
17 minutes.

18 (Recess.)

19 THE COURT: Back on the record, 99 CF 1016.
20 Parties appear same as before.

21 Here is what we're going to do. I'm going to give
22 you a date in January which fits with the time frames I've
23 suggested to you or I can give you either the 15th or the
24 16th and that would be a Thursday or a Friday. It needs to

1 be in the morning, so, I can give you like an 11 o'clock.

2 It's the end of the week. Even if it's a jury
3 week, Mr. Workman, it's at least a chance that you'll be out.

4 MR. WORKMAN: On Thursday and Fridays we generally
5 have other stuff scheduled on jury weeks so either one of
6 those days will be fine.

7 THE COURT: Here, we'll do 11 o'clock. Does it
8 make any difference, Miss Thompson, to you?

9 MS. THOMPSON: No.

10 THE COURT: All right, 11:00 a.m. on January 15th.
11 It's going to be in front of Judge Lawrence right now. I
12 have no idea -- it will be reassigned, but Judge Robb is gone
13 so I couldn't get you a judge. So, I'm going to set it first
14 in courtroom 3D. I need to have something for the writ, and
15 I will make sure that Judge Robb knows that this is
16 scheduled.

17 At worst it may just be a judge and a courtroom
18 change, but we can get that solved for you. But at least
19 then she would do an assignment so you'll know exactly who
20 has got it.

21 Do you have the writ, Bob?

22 THE CLERK: Yes.

23 MR. WORKMAN: I'm sorry, Your Honor, what was the
24 date?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE COURT: It's 1-15 at 11, and it will be in 3D.
Anything further?

MR. WORKMAN: Nothing by the people.

THE COURT: Miss Thompson?

MS. THOMPSON: Just one other thing for the record,
although he did find the portion of the 911 the prosecutor
had, I am going to subpoena the full 911 tape. I just wanted
to put it on the record, Your Honor.

THE COURT: That's fine. I would prefer that these
issues get resolved definitively. So if you do that and it
doesn't exist and the portion you've got is the only portion,
then it's been answered and resolved.

So I'm just going to show then on the docket 1-15
at 11. See you all back on that day. Thank you.

MS. THOMPSON: Thank you, Your Honor.

(Which were all the proceedings had in the
hearing of the above cause on said date.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
17
18
19
20
21
22
23
24

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

I, Nancy L. McClarty, an Official Court Reporter
and Certified Shorthand Reporter in and for the Eleventh
Judicial Circuit of the State of Illinois, do hereby certify
that I reported in shorthand the foregoing proceedings and
that the foregoing is a true and correct transcript of my
shorthand notes so taken as aforesaid.



Certified Shorthand Reporter
License No. 084-002264

Dated this 10th day
of May, 2021