

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
v.)
)
MARNI YANG,)
)
Defendant,)

No. 09 CF 926

FILED
AUG 11 2014
Keith Bin
CIRCUIT CLERK

NOTICE OF MOTION

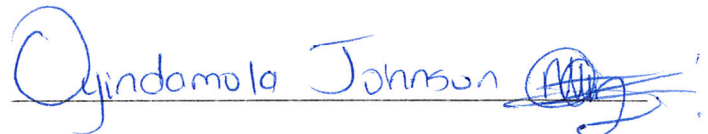
TO: ASA ARI FISZ, Fax: 847-360-1538

PLEASE TAKE NOTICE that on August 26th, 2014, at 9:00 a.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Christopher Stride or any other Judge sitting in his stead, in Courtroom C220 usually occupied by him in Lake County, Illinois and then and there file the following **MOTION FOR FORENSIC TESTING PURSUANT TO 725 ILCS 5/116-3** in the above-entitled case number:


One of the attorneys for MARNI YANG

PROOF OF SERVICE

The undersigned certifies that I caused to be served the foregoing Notice and stated documents via **HAND DELIVERY** to the person named above on August 11, 2014.



STONE & ASSOCIATES, LTD.
415 West Washington Street - Suite 107
Waukegan, IL 60085
847-336-7888

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IN THE CIRCUIT COURT OF LAKE COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

FILED
AUG 11 2014
Keith E. Smith
CIRCUIT CLERK

PEOPLE OF THE STATE OF ILLINOIS)

Respondent-Plaintiff)

v.)

No. 09 CF 926

MARNI YANG)

Petitioner-Defendant)

Honorable Christopher Stride
Judge Presiding

**MOTION FOR FORENSIC TESTING
PURSUANT TO 725 ILCS 5/116-3**

Petitioner, MARNI YANG, through her attorneys, STONE & ASSOCIATES Ltd., respectfully requests that this Court order forensic testing, both to test previously untested evidence and to conduct new testing on samples used at trial pursuant to 725 ILCS 5/116-3. In support of her motion, Yang states as follows:

INTRODUCTION

Marni Yang was convicted of murdering Rhoni Reuter and her unborn child. The trial court imposed concurrent natural life sentences. Marni Yang is innocent. No physical evidence directly linked Yang to the murder - and in fact- DNA evidence may be able to conclusively demonstrate Yang's innocence. For one, blood samples collected from the murder scene, were never subjected to DNA testing. The weapon allegedly used to murder the victim has never been found. Police recovered shell casings at the crime scene. These casings contained fingerprints and DNA material. Current technology permits testing of these shell casings for DNA. In other words, physical evidence (through DNA) from the crime scene is available, and this evidence could advance Ms. Yang's claims of actual innocence while simultaneously identifying the actual shooter.

In addition, DNA testing can also provide conclusive proof where only speculation was previously possible. The only evidence even remotely tying Yang to Rheuter's murder is the recorded wire conversations between Christie Paschen and Yang. Fortunately

technology allows for DNA testing that can completely eliminate Yang as the source of the DNA on the shell casings, which can further demonstrate Yang's innocence. Accordingly, Yang seeks forensic DNA testing and fingerprint analysis on two groups of evidence: (1) initial testing of evidence recovered from the crime scene, and nearby areas in order to eliminate the defendant as a source and to reveal the DNA profile of the true perpetrator, and (2) and testing of the shell casings recovered at the crime scene. Yang also requests that the DNA profiles generated by such testing be compared to those currently available in the Combined DNA Index System (CODIS) databases, and that the latent fingerprints found on shell casings and at the crime scene be run through the Integrated Automated Fingerprint Identification System (IAFIS), a national fingerprint and criminal history database run by the FBI, and the Automated Fingerprint Identification System (AFIS), a fingerprint database maintained by Illinois State Police.

Indeed, re-testing the DNA evidence found at the crime scene, and testing the shell casing for DNA and fingerprint analysis, and matching the results of those tests provides the only way to conclusively demonstrate who committed the murder of Rhoni Reuter. This is why, perhaps, after being provided with the details of Yang's request, the State has indicated that it does not oppose her motion for DNA testing.

I. SUMMARY OF FACTS

A. Background

1. On March 15, 2011, Marni Yang was convicted of a murder she did not commit. Throughout her trial and post-conviction proceedings, Yang has steadfastly maintained her innocence.
2. Her conviction was based primarily on recorded conversations between Yang and Christi Paschen. Eyewitnesses, the neighbors of the deceased, described a black man leaving the home after the shooting. There was no physical evidence directly linking Yang to the murder of Reuter.
3. Moreover, forensic evidence exists which was never tested, or that tested inconclusive but which has the potential to explain this crime. The fingerprint analysis and the DNA evidence from the shell casings could contain the DNA of the true perpetrator of this crime, demonstrate Yang's innocence, and at the minimum provide a more accurate picture of how this crime transpired.

B. Marni Yang's Whereabouts on October 4, 2007

4. On the morning of October 4, 2007 Marni Yang was at her home located at 5137 N. Saint Louis, Chicago, IL 60625, along with her son Andrew Yang. Andrew Yang has repeatedly told investigators that his mother was home with him the morning of the incident because he was home from school due to illness and his mom Yang, checked in on him.
5. Furthermore, Marni has maintained that her car needed a battery and as a result she was home. Her son, Andrew, corroborates this by stating that he helped his mother change the battery in her car.

C. The Investigation

6. On the morning of October 4, 2007 Rhoni Reuter was murdered in her Deerfield home.
7. The State's theory was that defendant Yang was obsessed with Shaun Gayle, (the boyfriend of Rhoni Reuter and father of her unborn child), and jealous of his continuing female relationships. The State contends that Yang became frustrated with the Gayle's lies and the idea that he was having a baby with the victim.
8. The evidence disclosed that during the early morning hours of October 4, 2007, a person dressed as a teenage boy and armed with a .9mm Beretta, drove a car to the Ms. Reuter's Deerfield home.
9. The assailant then knocked on the door of Ms. Reuter. After answering the door the Ms. Reuter was shot and killed.
10. Initially the Lake County Major Crime task force as part of its ensuing investigation, considered Andrew Yang, Marni Yang's teenage son, Shaun Gayle and Christi Paschen as viable suspects.
11. However, the State maintained that it quickly eliminated Gayle and Andrew as suspects.
12. Christi Paschen then became the State's star witness by agreeing to wear a government wire in order to record conversations from Yang regarding the murder.

13. During March 2009, Yang was charged by a Lake County Grand Jury with the first-degree murders of Rhoni Reuter and her unborn child.

D. Physical and Biological Evidence

14. Shell casings found at the crime scene, having been ejected from the murder weapon bore the fingerprints and DNA of the actual shooter.
15. Latent fingerprints were removed from the doorknob from outside the living room door, from inside the living room door, outside the kitchen door, and inside the kitchen door. None of the prints were from Marni Yang.

E. The Trial

1. Summary

16. None of the Physical evidence collected in relation to the investigation tied Marni Yang to the murder of Rhoni Reuter or her unborn child. Fingerprints were found on the door. The State's expert on fingerprint examination was unable to match any of the latent prints to Marni Yang. The DNA from the shell casings left behind by the gun used to kill Ms. Reuter was never matched conclusively to Marni Yang.

F. Procedural Posture

17. Yang was convicted of first –degree murder in the Lake County Circuit Court on March 15, 2011 and sentenced to concurrent natural life sentences.
18. The appellate court affirmed Yang's conviction and sentence, *People v Yang* No. 2-11-0542 (unpublished order under Supreme Court Rule 23).

II. REQUEST FOR FORENSIC TESTING

19. Marni Yang now brings this request for forensic testing pursuant to 725 ILCS 6/116-3, Yang seeks two categories of testing: (1) that previously untested samples be tested and (2) to have previously tested samples re-tested in order to more conclusively identify the DNA profile of those samples. Specifically in the first category, Yang requests the DNA and fingerprints from the shell casings left behind at the scene be tested. In the second category Yang requests fingerprints on

the door knobs to be re-tested, along with blood samples from the crime scene. In addition Yang requests that all fingerprints also be run through IAFIS and AFIS.

20. The Illinois Forensic Testing statute provides that a petitioner must be granted the opportunity to receive forensic DNA and fingerprint testing when the following conditions are met:
- A. The evidence to be tested was “secured in relation to the trial which resulted in [petitioner’s] conviction” 725 ILCS 5/116-3(a);
 - B. The evidence “was not subject to the testing which is now requested at the time of trial.” 725 ILCS 5/116-3(a)(1); or
 - C. The evidence, “although previously subjected to testing, can be subjected to additional testing utilizing a method that was not scientifically available at the time of trial that provides a reasonable likelihood of more probative results.” 725 ILCS 5/116-3(a)(2);
 - D. “[I]dentity was the issue in the trial which resulted in [petitioner’s] conviction.” 725 ILCS 5/116-3(b)(1);
 - E. The chain of custody is sufficient to establish that the evidence to be tested “has not been substituted, tampered with, replaced, or altered in any material aspect.” 725 ILCS 5/116-3(b)(2);
 - F. Testing has the potential to produce “ new, noncumulative evidence materially relevant to the defendant’s assertion of actual innocence.” 725 ILCS 5/116-3(c)(1);
 - G. The requested testing “employs a scientific method generally accepted within the relevant scientific community.” 725 ILCS 5/116-3(c)(2).”;
 - H. When previously tested fingerprint evidence “ does not match the defendant or the victim, the order of the Court shall direct the prosecuting authority to request the Illinois State Police Bureau of Forensic Science to submit the unknown fingerprint evidence into the FBI’s Integrated Automated Fingerprint Identification System (IAFIS) 725 ILCS 5/116-3(d); and
 - I. Reasonable notice of the motion is served upon the State. 725 ILCS 5/116-3(a)(2).

21. Because Yang clearly satisfies these requirements, this Court should allow her to establish her innocence with forensic DNA and fingerprint testing.

A. The Evidence to be Tested Was Collected in Relation to the Trial

22. Yang is seeking DNA testing on the blood samples found at the crime scene as well as DNA testing on the shell casings found at the scene and fingerprint analysis on the door knobs inside and outside the apartment.
23. This evidence was collected in relation to Yang's trial. The blood samples and fingerprints were collected by evidence technicians investigating the crime scene, and this evidence was discussed at trial. All of the evidence was removed to the Northern Illinois Police Crime Lab, and later the Illinois State Police Crime Lab, where the police and prosecution ordered testing on some of the evidence. The lab retained the unused portion of the swabs, where they remain today. 725 ILCS 5/116-4

B. Significant Evidence to be Tested Is Material To Yang's Claim Of Actual Innocence and Was Not Subjected to Testing at the Time of The Trial

24. The blood samples from the taken from the crime scene have never been subjected to DNA testing. This fact alone provides ample justification for forensic testing in this case- both for Yang and the State-, in the interest of conclusively determining the identity of Rhoni Reuter's killer. Any DNA that can be extracted from the evidence found at the scene could be materially relevant to Yang's innocence claim. The same is true of the fingerprints and the shell casings found at the scene, they are likely to include the DNA of the actual perpetrator of the Reuter murder, which could exculpate Yang. DNA was not extracted from the fingerprints found at the scene, which further provides further probative evidence related to Yang's claim of actual innocence because none of the fingerprints matched her own.
25. In the end, regardless of whatever results this testing provides, it will at a minimum provide "new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence," which justifies the test. 725 ILCS 5/116-3(c)(1); see, e.g., *People v Rozo* 970 N.E. 2d 544,547, 49-51 (Ill. App.Ct. 2d.Dist.2012) (ordering DNA testing for previously untested evidence); *People v*

Price, 801 N.E. 2d 1187, 1190-91, 1200-01 (Ill. App. Ct. 2d Dist. 2003) (ordering DNA testing for evidence from a trial that took place in 1996 on the grounds that the form of DNA testing was not available at the time of the trial and could provide new materially relevant evidence).

C. Identity Was An Issue At Trial

26. Generally, in the context of a criminal prosecution, identity refers to “whether the defendant was indeed the perpetrator or whether somebody else committed the crime.” *People v Hockenberry*, 137 N.E. 2d 1088,1091 (Ill. App. Ct. 2d. Dist. 2000). In *People v Gibson*, for example, the defendant successfully made out a prima facie case that identity was the issue at trial where he (1) had maintained his innocence from the beginning, and (2) was convicted based upon evidence “ that linked him to the crime, but did not conclusively establish him as the perpetrator.” *People v Gibson*, 828 N.E. 2d 881, 885-86 (Ill App. Ct. 4th Dist. 2005); *see also* *People v Bailey*, 897 N.E. 2d 378, 384 (Ill. App. Ct. 1st Dist.2008) (defendant established that identity was an issue at trial where the record revealed that he contested his guilt at trial and defense counsel argued the defendant was not present at the scene of the crime).
27. Undoubtedly, identity was a central issue at Yang’s trial where she steadfastly maintained her innocence. Yang maintained throughout the trial that she had no involvement of any kind with this crime, and the witness testimonies support that Yang was not the person seen leaving the scene of the murder. Yang contends that she was at her home on the day of the murder. In addition, no witness identified Yang as having been at the scene, in fact the witnesses told police they saw a teenage, black male leave the scene, and the physical evidence did not link Yang to the murder as well. This is a quintessential case of mistaken identity.
28. The involvement of Yang in this case rested on the accusation of Christi Paschen- a person known to stretch the truth and lie to benefit herself, as she did with her supposed military record- and the recorded conversations of Paschen and Yang at an area Denny’s restaurant. There was no other evidence linking Yang to the murder.

29. As required by 725 ILCS 5/116-3, Yang has established that identity was an issue at trial. She has (1) maintained her innocence of this crime from the beginning, and (2) was primarily convicted based on evidence that did not conclusively establish her as the perpetrator.

D. The Evidence Was Subject To the Proper Chain Of Custody

30. All of the physical evidence Yang seeks testing on was originally collected by the State in the course of its original criminal investigation.
31. Preservation of the evidence gathered in this case by either the Clerk of the Court or a law enforcement agency is mandated under 725 ILCS 5/116-4.
32. Since the evidence has remained in the continuous possession of law enforcement agencies since its collection, and since that evidence must have been preserved under 725 ILCS 5/116-4, the chain of custody requirement is satisfied on its face. *Cf. People v Travis*, 771 N.E. 2d. 489, 493 (Ill. App. Ct. 4th Dist. 2002) (holding that , for a defendant seeking DNA testing, the trial court should allow him to conduct limited discovery on chain of custody.)
33. Accordingly, the material sought for testing has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced or altered.

E. DNA and Fingerprint Testing Has The Scientific Potential To Produce New and Non-Cumulative Evidence of Yang's Actual Innocence

34. DNA comparison of the evidence against profiles in the CODIS database offers Yang the opportunity to produce new, non-cumulative forensic evidence. Fingerprint comparison through IAFIS similarly provides an opportunity for new, noncumulative evidence. If a DNA profile can be generated from the requested testing, then it can be compared against local, state, and national DNA databases linked together through the FBI's CODIS database. Likewise, even without DNA extraction, the fingerprint comparison through AFIS and IAFIS would certainly provide probative results regarding whether Yang was at all involved with the events that occurred at Rhoni Reuter's home on October 4, 2007.
35. Indeed, CODIS holds the potential to go further by not only identifying the DNA profile, but also by potentially identifying Reuter's true assailant(s). If the profile

generated matches that of a person in the CODIS or police fingerprint database who was not charged with this crime, this would provide material evidence that the State's theory of the case was incorrect, and that some person(s) other than Yang committed the crime.

36. In her request for forensic testing, Yang need not show that testing any piece of evidence would by itself be sufficient to exonerate her, but rather she need only show that the testing is materially relevant to her claim of innocence. *People v Savory*, 756 N.E. 2d 804, 811 (Ill. 2001).

F. DNA-STR CODIS Analysis, CODIS, IAFIS, and AFIS Are Widely Accepted in the Relevant Scientific Community

37. DNA has become widely accepted by both the forensic and the legal communities as a method of determining the biological source of the physical evidence. It is now common practice for both prosecutors and defense attorneys to offer DNA as evidence identifying people related to a crime in support of their arguments regarding guilt and innocence, respectively. The FBI crime laboratory, for example has built its National DNA Index System with the goal of using DNA profiles to help solve more crimes. The CODIS system is a powerful investigatory tool for discovering offenders. *See* FBI CODIS brochure, *supra* (including that as of May 2012 over 73,000 investigations were aided by the use of CODIS)
38. DNA-STR CODIS analysis is "currently the only scientifically acceptable approach to obtaining reliable and statistically defensible scientific data that could be used to obtain probative results for this case." as in a myriad of other jurisdictions courts in Illinois have similarly recognized that STR-based testing is "a widely accepted scientific methodology." *People v Negron*, No. 1-10-1194, 2012 WL 4748181, at *11 (Ill. App. Ct. 1st Dist. Oct 4, 2010)
39. Fingerprint analysis is likewise a well established and widely accepted form of physical evidence gathering that has been used in countless investigations. Indeed, for the present purposes, this fact cannot be disputed, as fingerprint testing is part of the Illinois post conviction statute. *See* 725 ILCS 5/116 3(a)(2).

G. Fingerprints Matching Neither the Defendant Nor the Victim Shall be Submitted to IAFIS and AFIS for Identification

40. Neither the fingerprints on the doorknobs inside or outside of the victim's home were identified as belonging to Yang or Reuter. An IAFIS or AFIS identification can further support Yang's innocence should it point to the true assailant. In addition, it can add further support for redundancy if the prints match CODIS identification for any of the tested DNA. Because, though a single unknown profile by itself might not be enough to prove innocence, finding multiple pieces of evidence that contain the same DNA profile or fingerprint at the crime scene even incontrovertibly show that a perpetrator was someone other than Yang. *People v Jackson*, 903 N.E. 2d 388, 395 (Ill. 2009).

H. The State Has Been Given Reasonable Notice of This Motion

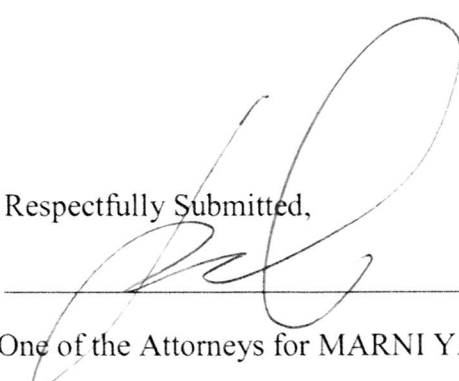
41. Before filing of this motion, the undersigned gave the State specific notice that Yang was seeking forensic testing on the biological and physical evidence collected in this case, and the Motion itself provides further notice of Yang's request.

III. CONCLUSION

As the Illinois Supreme Court has explained, where "the available DNA evidence is capable of supporting" a determination that a defendant is actually innocent," there is no valid jurisdiction to withhold [DNA testing] if requested on post- conviction review." *People v Johnson* 793 N.E. 2d 591, 601 (Ill. 2002) (internal quotes and citation omitted)

Wherefore, defendant, MARNI YANG prays this Honorable Court to enter an order allowing Forensic Testing to be done in accordance with 725ILCS 5/116-3 on the above referenced items evidence in addition to any other relief the law and justice requires.

Respectfully Submitted,



One of the Attorneys for MARNI YANG