

January 28, 2004

Mary H. Harris
Circuit Court Clerk
P.O. Box 1810
Columbiana, AL 35051

RE: Ronald Patrick Swiney v. State of Alabama
CC 88-077.61

Dear Ms. Harris;

Enclosed please find, for the purpose of filing with the Court, Plaintiff's Motion for Evidentiary Hearing and Notice of Appearance.

Thank you for your attention to this matter.

Sincerely,

Wilson Myers, Attorney for Petitioner
Ronald Patrick Swiney

cc: Clay Crenshaw

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA
EIGHTEENTH JUDICIAL CIRCUIT

RONALD PATRICK SWINEY,)
)
PETITIONER,)
)
V.) CASE NO.: 88-077.61
)
STATE OF ALABAMA,)
)
RESPONDENT.)

MOTION FOR EVIDENTIARY HEARING

Plaintiff moves the Court to grant, pursuant to Rule 32.9 of the Alabama Rules of Criminal Procedure, an evidentiary hearing in the above styled case.

This motion is based upon the PETITION PURSUANT TO RULE 32 OF THE ALABAMA RULES OF CRIMINAL PROCEDURE FOR RELIEF FROM JUDGMENT as filed in this Court on August 13, 2003. Newly-discovered evidence of actual innocence has been sufficiently pleaded before this Court. The State has not sufficiently defended Plaintiff's claims or adequately applied a controlling procedural bar to these claims. The Court has jurisdiction to allow Petitioner to prove these claims at an evidentiary hearing.

Petitioner is entitled to an evidentiary hearing to determine disputed issues of material fact. Petitioner claims that newly-discovered evidence reveals that he is innocent of this crime. Newly-discovered evidence has revealed that Petitioner could not have committed this crime without being covered with GSR that would be detectible by any means employed by a competent forensic laboratory. The State has responded

by stating, through Ed Moran, that David Higgins at the Alabama Department of Forensic Sciences, conducted a FAAS test to detect antimony ONLY. Higgins would have known that antimony was not present in the subject ammunition. This absurd claim appears to be an attempt to hide exculpatory evidence.

Plaintiff has presented compelling evidence of actual innocence and the existence of exculpatory evidence to this Court. Drs. Nordby and Larkin will appear before the Court at an evidentiary hearing and the State will have the opportunity to examine these witnesses and properly defend its position. Dr. Nordby has very limited availability, therefore, the Plaintiff begs the indulgence of the court in accommodating his schedule. Dr. Nordby's schedule is as follows:

March 2-4, 2004	Available
March 9-12, 2004	Trial in Tucson
March 13-14, 2004	Available
March 16-19, 2004	Trial in Santa Fe
* March 22-24, 2004	Available
March 26-April 4, 2004	FBI Assignment
April 7-11, 2004	Easter holiday week
April 13-30, 2004	Triple murder trial (this trial may be postponed)
April 13-21, 2004	Available if above trial is postponed
May-June, 2004	Multiple trials in Florida

A hearing scheduled March 22-24, 2004 would allow time for both parties to prepare. Due to Dr. Nordby's full schedule, it will be difficult, otherwise, to schedule a hearing before July 2004 unless the April 13-30, 2004 is cleared due to trial postponement. The Plaintiff is in poor health; he suffers from advanced (acute) inflammatory spinal arthritis and has suffered three heart attacks, therefore, Counsel requests an evidentiary hearing as soon as possible.

Plaintiff filed a Request for Production of Evidence on 1/12/04. The Plaintiff trusts that the State will provide the DFS report of Higgins testing and the other evidence requested for the convenience of the Court in this evidentiary hearing.

Respectfully submitted,

Wilson Myers, Attorney for Petitioner
Ronald Patrick Swiney

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of this MOTION FOR EVIDENTIARY HEARING upon Clay Crenshaw, Attorney General's Office, Alabama State House, 11 South Union Street, Montgomery, Alabama 36130, by placing a copy of the same in the United States Mail, first class, postage prepaid on this the _____ day of _____, 2004.

Wilson Myers, Attorney for Petitioner

OF COUNSEL:

WILSON MYERS (mye006)
156 E. 15th Avenue - Suite 6
Gulf Shores, Alabama 36542
251-968-3090, Fax 968-3611
E-Mail: myerswl@gulftel.com

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of this NOTICE OF APPEARANCE upon Clay Crenshaw, Attorney General's Office, Alabama State House, 11 South Union Street, Montgomery, Alabama 36130, by placing a copy of the same in the United States Mail, first class, postage prepaid on this the _____ day of _____, 2004.

Wilson Myers, Attorney for Petitioner

OF COUNSEL:

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