

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT  
COUNTY OF MCLEAN

JAMES SNOW,

Petitioner,

- vs -

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

No. 99 CF 1016

The Honorable Alesia A. McMillen,  
Judge Presiding.

FILED  
MAR 09 2011  
CIRCUIT CLERK  
MCLEAN COUNTY

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**PETITIONER'S MOTION FOR POST-CONVICTION  
BALLISTICS TESTING PURSUANT TO 725 ILCS 5/116-3**

Now comes Petitioner James Snow, by and through his counsel THE EXONERATION PROJECT at the University of Chicago Law School, and hereby respectfully requests that this Court enter an order providing for testing of certain ballistics evidence in this case through the Integrated Ballistic Identification System (hereinafter "IBIS"). In support of this motion, Petitioner states as follows:

**Introduction**

Ever since his conviction for the 1991 gas station robbery-murder at the Clark Oil Gas Station in Bloomington, Illinois, Jamie Snow has been fighting to prove his innocence and to have a fair day in court. Through counsel and on his own as a *pro se* litigant, Mr. Snow developed significant evidence of his innocence, as set forth in the post-conviction pleadings he has presented to this Court. Mr. Snow's post-conviction pleadings allege that he is actually innocent, that he received ineffective assistance of counsel, and that the State violated his right to

due process by withholding exculpatory evidence and by other irregularities. The State's Motion to Dismiss has been argued by the parties and is currently pending before this Court.

The fact that Mr. Snow filed his amended post-conviction petition, and the fact that the State's motion to dismiss is pending, has not stopped Mr. Snow's investigation into his case, and has not stopped his continuing efforts to locate evidence of his innocence. In the past few months Mr. Snow has obtained additional evidence supporting his innocence, which is the subject of his accompanying Motion to Supplement. In addition to this investigation, Mr. Snow has determined that, based on the evidence that has developed in the case to date, renewed ballistics testing has the potential here to produce new, noncumulative evidence materially relevant to Mr. Snow's assertion of actual innocence. Gas station robberies such as the one for which Mr. Snow was convicted are frequently part of a pattern of crimes, and there were other strings of gas station robberies that occurred in Bloomington around this same time. IBIS testing has the potential to connect this crime to other strings of robberies or to other crimes that have occurred in Bloomington since Mr. Snow was convicted. For that reason, this testing should be conducted to assist Mr. Snow in establishing his innocence at a future evidentiary hearing in this matter.

## **I. SUMMARY OF FACTS**

As Mr. Snow has set forth in prior pleadings, on March 31, 1991, an unknown person killed Bill Little, the attendant at the Clark Oil gas station in Bloomington. (Ex. 1, Crime Scene Report.) Mr. Little died at the scene. He was shot twice in the chest. (Id.) The Illinois State Police were able to recover two .22 caliber bullets from the victim's body. (Ex. 2, Illinois State Police Evidence Receipt.) These bullets are now in the custody of the Bloomington Police

Department as Exhibit #10 of Laboratory Case #P91-751 (Ex. 3, Illinois State Police Laboratory Report.) Based on the information at the crime scene, it appeared that the victim was shot while behind the counter. The cash drawer from the cash register was missing, suggesting a robbery had taken place. (Ex. 1, Crime Scene Report.)

The State has performed some prior ballistics testing on this evidence in the case of Mr. Snow's co-defendant. (Ex. 3, Illinois Police Laboratory Report.) It recovered a weapon during post-trial investigation, the source of which is not clear from Petitioners' records. It compared that weapon to the fired bullets from this case, and subjected that weapon to an IBIS database search. No match was found. (Id.)

Mr. Snow has also previously sought DNA testing in this case, which was the subject of a prior motion and a prior agreement from the State to conduct DNA testing on blood found at the scene. Preliminary results from the Illinois State Police Lab suggested that blood found at the scene belonged to the victim. (Ex. 4, Illinois State Police DNA Report.) Mr. Snow has sought the backup data on this testing from the State through his pending Motion for Discovery in order to have an expert review the testing to ensure it was conducted properly.

## **II. REQUEST FOR IBIS TESTING**

In 1999, the Bureau of Alcohol, Tobacco, Firearms and Explosives established and began administrative of the National Integrated Ballistic Information Network ("NIBIN"). State and local law enforcement, forensic scientists, and attorney agencies can enter ballistic information into NIBIN and can use the IBIS system to compare ballistics information already entered into IBIS with spent ammunition recovered from crime scenes or gun test fires. In a matter of hours, these comparisons may yield a match, which can be confirmed by a firearms examiner. (Ex. 5,

ATF NIBIN Fact Sheet, available online at <http://www.atf.gov/publications/factsheets/factsheet-nibin.html> (last visited March 7, 2011).) As the ATF explains, IBIS's automated environment allows law enforcement "to discovery links between crimes more quickly, including links that would never have been identified absent the technology." (Id.)

Mr. Snow seeks to use this technology to compare bullets found in the victim with ballistics information already contained within IBIS. Through this comparison, he hopes to identify the firearm used to kill the victim in his case, and therefore the true perpetrator. This testing will allow him to further prove that someone else committed this crime.

Illinois law allows petitioners to receive a court order directing ballistics evidence to be compared to ballistics evidence already within the IBIS database in order to determine if there is a match. Illinois law provides that a petitioner must be granted the opportunity to receive IBIS 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," or can be subjected to new testing not scientifically available at the time of trial that provides a reasonable likelihood of more probative results. 725 ILCS 5/116-3(a)(1) & (2);
- (c) "[I]dentity was the issue in the trial which resulted in [petitioner's] conviction." 725 ILCS 5/116-3(b)(1);

- (d) 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);
- (e) 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);
- (f) The requested testing “employs a scientific method generally accepted within the relevant scientific community.” 725 ILCS 5/116-3(c)(2); and
- (g) Reasonable notice of the motion is served upon the State. 725 ILCS 5/116-3(a)(2).

Mr. Snow’s present IBIS motion meets these requirements, and so it should be granted.

**A. The Ballistics Evidence Was Collected in Relation to the Trial**

As described above, the ballistics evidence to be tested here, the bullets that were used to shoot Mr. Little, were collected as part of the police investigation into Mr. Little’s death. (Ex. 2, Illinois State Police Evidence Receipt.) There is no doubt that this evidence was secured in relation to Mr. Snow’s trial and satisfies the requirements of subsection 3(a). 725 ILCS 5/116-3(a).

**B. IBIS Testing Using the Current IBIS Database Was Not Done at the Time of Trial**

To petitioners’ knowledge, the bullets that were found in the victim in this case have never been compared with ballistics evidence within the IBIS database, satisfying the requirements of subsection (a)(1). 725 ILCS 5/116-3(a)(1). Even if some testing has previously

been done, however, ballistics testing using the current IBIS database has never been done and was not a possibility at the time of trial.

The IBIS database came into being in 1999, and Mr. Snow's trial began in January of 2001. However, because of the radical expansion of the IBIS database, searching the current IBIS database for a match to the bullets in Mr. Snow's case has never before been done and never before could be done. Therefore, the requirements of 725 ILCS 5/116-3(a)(2) have also been satisfied, and Mr. Snow need only satisfy (a)(1) or (a)(2). See People v. Pursley, 2011 WL 287191, No. 2-09-0913, slip op. at 7 (2d. Dist. Jan. 26, 2011) (attached as Exhibit 6) (ruling petitioner deserved an IBIS search on evidence in his case because current IBIS database did not exist at the time of his trial). As the Court in Pursley recognized, even if initial ballistics testing was done at the time of Mr. Pursley's trial, "an expert comparison of evidence to the thousands of available pieces of evidence contained in the IBIS database was not," meaning further testing is allowed under Illinois law in that and similar situations. Id.

**C. Identity was the Sole Issue at Mr. Snow's Trial**

There can be no dispute that identity was the issue at Mr. Snow's trial. Mr. Snow has never disputed that Mr. Little was shot and killed at the gas station that night, but Mr. Snow vigorously contended that he was not present at the gas station and had nothing to do with Mr. Little's death. Because the identity of Mr. Little's killer was the central issue at his trial, Mr. Snow has satisfied this requirement of 725 ILCS 5/116-3(b)(1). See People v. Johnson, 205 Ill.2d 381 (2002) (finding that identity was a central issue at defendant's trial within the meaning of 725 ILCS 5/116-3 where there was a single assailant, the only direct evidence of guilt was an identification by the victim, and the defendant never admitted to being at the scene of the crime).

**D. The Ballistics Evidence Was Subject to a Proper Chain of Custody**

The chain of custody is undisputed here so that Mr. Snow has met the requirements of subsection (b)(2). 725 ILCS 5/116-3(b)(2). The exhibits attached to this Motion demonstrate that all of the evidence for which Mr. Snow seeks testing were collected by the Illinois State Police and maintained in its custody or the custody of the Bloomington Police Department. The two bullets recovered from the victim were presented as exhibits at Mr. Snow's trial, where the chain of custody was similarly established as part of their admissibility as evidence, and have remained in the custody of the Court and the Bloomington Police Department. See Johnson, 205 Ill.2d at 394 (stating that defendant had made a prima facie case for DNA testing even though he presented no evidence of a piece of evidence's location since the defendant's conviction).

Additional discovery may be appropriate, and should be ordered, in order to clear up any lingering concerns about the proper chain of custody for these items. See People v. Sanchez, 363 Ill. App. 3d 470, 480-81 (2d Dist. 2006) (remanding case back to determine, with the aid of discovery if necessary, whether the chain of custody and other statutory requirements were satisfied).

**E. The IBIS Database and Relevant Ballistics Testing is Widely Accepted in the Relevant Scientific Community**

As the parties in Pursley and other cases recognize, and as the post-conviction ballistics testing statute implicitly recognizes, IBIS testing is widely accepted in the scientific community. Pursley, 2011 WL 287191, slip op. at 9. Subsection (c)(2) has therefore been satisfied. 725 ILCS 5/116-3(c)(2).

**F. The State Has Been Given Reasonable Notice of This Motion**

This motion serves as reasonable notice to the State that Mr. Snow is seeking ballistics testing through IBIS on the physical evidence collected from the scene of Mr. Little's death, meeting the additional requirement of subsection (a)(2). 725 ILCS 5/116-3(a)(2)

**G. IBIS Testing Has the Scientific Potential to Produce New and Non-Cumulative Evidence of Actual Innocence**

The other 116-3 factors are truly not in dispute, and the only real issue for this Court to consider is whether IBIS testing has the scientific potential to produce new and non-cumulative evidence of actual innocence such that the requirements of 725 ILCS 5/116-3(c)(1) are met. Mr. Snow's case presents the precise kind of fact pattern where ballistics testing could identify the true perpetrator of this crime.

Pursley and other cases explain that the term "scientific potential" in this analysis is important. Materiality for this section does not require that the results of an IBIS search exonerate the defendant, but merely that they "significantly advance" the petitioner's claim. People v. Savory, 197 Ill.2d 203, 213 (2001); Pursley, 2011 WL 287191, slip op. at 11-12. Whether evidence would be materially relevant requires an evaluation of the evidence introduced at trial and the evidence the petitioner seeks to acquire through testing. Savory, 197 Ill.2d at 213.

It appears from all available evidence that no one but the perpetrator(s) and the victim of this crime were in the gas station when Mr. Little was killed. Other than the sole purported eyewitness outside, who, as set forth in Mr. Snow's post-conviction petition, has serious problems with his testimony and is contradicted by the responding officer, no one even claims to have seen Mr. Snow outside the gas station. Mr. Snow's conviction is therefore based solely on



the claims from third parties, many now recanted, that Mr. Snow confessed to others that he committed this crime.

This is a case with no solid evidence pointing to Mr. Snow. It is a case in which there is obvious ballistics evidence to test - the two bullets found in the victim. The firearm used in this crime was never recovered. These bullets can be tested, and in fact have been tested by the State in at least one other known instance, although not through the use of IBIS. If the bullets used to kill the victim in this case can be connected to a firearm included in the IBIS database, the other case(s) in which that firearm was used can be compared to this one. If there is a known individual connected to that firearm then that would be obvious new, non-cumulative evidence supporting Mr. Snow's innocence.

Even if the IBIS testing connects the bullets in this crime to another crime with an unknown perpetrator, if the IBIS testing connects the bullets in this case to a firearm used in crimes during a time that Mr. Snow was incarcerated, to a crime committed in a location that Mr. Snow could not have been, or to a crime committed in circumstances in which Mr. Snow could not possibly have been involved, that evidence would still be material and indicative of Mr. Snow's innocence. Therefore, there are many different kinds of IBIS results that would be material to Mr. Snow's case. Pursley is again instructive, in that there the Court recognized that IBIS searches are not "fishing expeditions" – the fact that an IBIS search might later require a hands-on comparison and test evidence of other weapons inputted into IBIS does not render IBIS searches irrelevant. Pursley, 2011 WL 287191, slip op. at 18. IBIS searches are not considered "fishing expeditions" for Illinois law enforcement, who routinely uses IBIS as an important crime-solving tool. In fact, to date the Illinois State Police Chicago Office has had over 1900 IBIS hits, more than any other department other than the New York City Police Department.

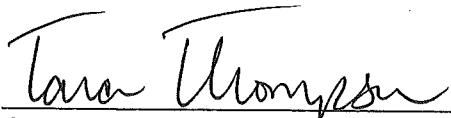
(Ex. 5, ATF NIBIN Fact Sheet.) There is ample reason to believe that an IBIS search will be equally fruitful for Mr. Snow.

### Conclusion

Mr. Snow is an innocent man who has not rested in his efforts to prove his innocence. He is entitled to access all possible post-conviction remedies provided by the Illinois courts and the Illinois legislature. The Court in Pursley said it best - “the legislature has decided that a defendant satisfying the statutory requirements may seek post-conviction IBIS testing.” Pursley, 2011 WL 287191, slip op. at 18. Mr. Snow meets the requirements of the statute. He therefore should receive the testing that he seeks.

WHEREFORE, James Snow respectfully requests that this Honorable Court order the State to produce the evidence described herein. IBIS testing should be conducted pursuant to a protocol for testing approved by this Court, after the parties have had the opportunity to confer and advise the Court on conditions that will ensure the integrity of the samples and the testing.

Respectfully submitted,

  
Counsel for Petitioner Jamie Snow

Jon Loevy (ARDC Number 6218254)  
Russell Ainsworth (ARDC Number 6280777)  
Gayle Horn (ARDC Number 6286427)  
Tara Thompson (ARDC Number 6279922)  
Elizabeth Wang (ARDC Number 6287634)  
THE EXONERATION PROJECT  
at the University of Chicago Law School  
6020 S. University Avenue  
Chicago, Illinois 60637  
(312) 243-5900 (tel)  
(312) 243-5902 (fax)  
**Counsel for Petitioner**