

SUPREME COURT OF ARKANSAS

No. CR-17-315

LEDELL LEE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 20, 2017

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. 60CR-93-1214]

HONORABLE HERBERT T. WRIGHT
CIRCUIT JUDGE

DISSENTING OPINION

JOSEPHINE LINKER HART, Justice

The circuit court erred in denying Mr. Lee the opportunity to test the “Negroid hair” found in the victim’s residence and the blood found on his tennis shoes. Beginning at trial, Mr. Lee has repeatedly asked for these items to be submitted for DNA testing, yet, neither at trial nor at any time thereafter was this done, and Mr. Lee will likely go to his grave without having this modest request granted. I therefore respectfully dissent.

The testing of this material was essential to Mr. Lee’s defense. At trial, the State argued that this evidence showed not only that he was actually inside the room of the victim’s residence where the murder took place, but also that it pointed to Mr. Lee as the murderer. Not letting him use DNA testing to rebut this evidence tilted in the State’s favor a very weak case based entirely on circumstantial evidence.

I am mindful that there were eyewitnesses who put Mr. Lee in the victim’s neighborhood at or near the time of the murder. This is not remarkable because he lived in

the neighborhood. Importantly, the testimony of the eyewitnesses varied significantly with regard to basic details, such as how Mr. Lee was dressed. William McCullough, Jr., who lent Mr. Lee a ratchet, testified that while he could not specifically recall what Mr. Lee was wearing, he was sure that he was not wearing a coat. Carol Pruitt, who admitted that she was an avid marijuana user, could only remember that Mr. Lee was wearing a red plaid shirt. Andy Gomez, who admitted using Vicodin at the time, told police that Mr. Lee was wearing a ball cap and a black jacket with some kind of emblem on the back. At trial, he described Mr. Lee's attire as a blue or gray-striped suit with a black tie. Mr. Gomez also admitted that he required glasses for distance vision but was not wearing them when he allegedly saw Mr. Lee. Mr. Gomez claimed he saw what appeared to be a struggle inside the house, but admitted that he based that conclusion on a "flash of blue" in front of the window.

The victim's husband, by his own testimony, was also present at the residence around the time of the murder. He claimed that he had given the victim a wooden "tire billy" to defend herself while he was on the road as a long-haul truck driver. The victim was strangled and then struck 36 times with that tire billy, but only after her face had been covered by a throw rug that was next to her bed. Mr. Lee's fingerprints were not found on the tire billy. Likewise, while latent fingerprints were found in the home, none of them matched Mr. Lee's, and those fingerprints remain unidentified.

Hair found after vacuuming the scene revealed "Negroid" hairs, which the hair expert stated were short and brittle like Mr. Lee's and, when put side by side were identical, but "there were not enough unique characteristics to say it was his. I cannot say that it is not his,

but I can't say that it is his." The hair was admitted into evidence at Mr. Lee's trial simply because it did not "exclude" Mr. Lee as a suspect. However, in closing argument, the State asserted that the hair was an "arrow pointing toward the defendant." I cannot overlook that in *Strawhacker v. State*, 2016 Ark. 348, 500 S.W.3d 716, and *Pitts v. State*, 2016 Ark. 345, 501 S.W.3d 803, this court granted error coram nobis relief because microscopic hair analysis had been discredited by a United States Justice Department review.

Likewise, the blood evidence in Mr. Lee's trial must also be tested. Even though the State's testing of the "pinpoints" of blood found on Mr. Lee's shoes only determined that it was "human blood." Nonetheless, the State argued that it implicated Mr. Lee. Accordingly, testing the hair and blood evidence is of critical importance.

Testing of evidence is authorized if such testing or retesting can provide materially relevant evidence that will significantly advance the defendant's claim of innocence. *Johnson v. State*, 356 Ark. 534, 546, 157 S.W.3d 151, 161 (2004). Moreover, Lee's postconviction request is identical to the request made in *Johnson v. State*, CR-17-312, a case decided only yesterday in which we stayed Stacey Johnson's execution and remanded to the circuit court on Johnson's motion for postconviction DNA testing. I am at a loss to explain this court's dissimilar treatment of similarly situated litigants. The court's error in denying the motion for stay will not be capable of correction.