

IN THE THIRTEENTH JUDICIAL CIRCUIT
CIRCUIT COURT OF LASALLE COUNTY, ILLINOIS
CRIMINAL DIVISION

Greg Vaca
CLERK OF THE CIRCUIT COURT
LASALLE COUNTY, ILLINOIS

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| People of the State of Illinois, |) | |
| |) | |
| Plaintiff-Respondent, |) | |
| |) | No. 60-CF-753 |
| v. |) | |
| |) | Honorable Michael C. Jansz |
| Chester O. Weger, |) | |
| |) | |
| Defendant-Petitioner. |) | |

PETITIONER'S MOTION FOR APPOINTMENT OF A NEW SPECIAL PROSECUTOR

Petitioner-Defendant Chester O. Weger ("Petitioner"), by his undersigned attorneys, pursuant to 55 ILCS 5/3-9008(a-10), hereby respectfully moves this Honorable Court for the entry of an Order appointing a new special prosecutor in this case. In support thereof, Petitioner states as follows:

Introduction

1. This case presents the very serious question of whether Petitioner was wrongfully convicted of the Starved Rock murders that took place in 1960, a crime for which Petitioner served over sixty years in prison.
2. Petitioner is eighty-four years old and has been seeking to prove his innocence since his incarceration over half a century ago.
3. The Will County State's Attorney's Office ("WCSAO") was appointed by this Court to act as the special prosecutor representing the interests of the State of Illinois.

4. Since its appointment, however, the WCSAO has failed and refused to carry out even its most basic and fundamental duties in this case.

5. First, the WCSAO has ignored the results of Petitioner's investigation which resulted in the discovery of substantial exculpatory evidence as well as evidence of egregious misconduct and conflicts of interest on the part of both Petitioner's prosecutors and the police.

6. Second and equally disturbing, the WCSAO has also attempted to thwart Petitioner's forensic testing of evidence from the crime scene by misrepresenting the state of that evidence and objecting to Petitioner's motion for forensic testing.

7. As the United States Supreme Court has so powerfully stated:

Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: *'The United States wins its point whenever justice is done its citizens in the courts.'* (emphasis added)

Brady v. Maryland, 373 U.S. 83, 87–88, 83 S. Ct. 1194, 1197, 10 L. Ed. 2d 215 (1963).

8. Illinois agrees:

During the trial, the prosecutors made a point, more than once, to remind the jurors that they represented the law-abiding citizens of Illinois. I suggest that the law-abiding citizens of Illinois, or anywhere else, *have no interest in wrongful convictions*. . . I agree that prosecutors represent the law-abiding members of society. *However, a wrongful conviction is not a 'verdict for their client.'* (emphasis added).

People of the State of Illinois v. Steven Cole, 2015 IL App (3d) 120992-U, *17 (May 7, 2015)
(Justice Schmidt concurring opinion).

9. The WCSAO has lost sight of whom it represents here—the people of the State of Illinois. And the people, the true parties in interest, have only *one* interest in this case: that justice be done. As such, the people can only *benefit* from the expeditious and independent review of a case that begs for justice *regardless of the outcome of that review*.

10. While the people of Illinois (in fact, as Justices Brennan and Schmidt have stated, all citizens) have everything to gain by the conduct of an independent investigation no matter the results, any further delay in the investigation here poses a mortal threat to petitioner who is 84 years old and in poor health.

11. Justice for the people and justice for Petitioner demands that the Court appoint a special prosecutor who will take immediate and swift action to test additional evidence from the crime scene, interview witnesses, and review the evidence of prosecutorial and police misconduct and conflicts of interest.

12. As discussed below, the only reasonable explanation for the WCSAO's failure is that the WCSAO has an actual conflict of interest that is preventing it from carrying out its responsibilities.

13. As such, Petitioner respectfully requests that this Court remove the WCSAO as the Special Prosecutor and appoint a new special prosecutor that will undertake the duties and responsibilities that are required in this case, and to which both Petitioner and the People of the State of Illinois are entitled.

14. In the alternative, Petitioner requests that this Court grant a hearing to determine whether the WCSAO has an actual conflict of interest in this case.

15. A summary of the WCSAO's failure and refusal to carry out its basic and fundamental duties is discussed below.

The WCSAO Opposed An Evidence Inspection

16. In April 2021, this Court appointed the WCSAO as the special prosecutor in this case.

17. Although over the years numerous school groups and various third-parties had been allowed to view the impounded evidence in this case – and even improperly handle some of that evidence – Petitioner had never been given that same opportunity.

18. Once the WCSAO was appointed as the special prosecutor, one of the first things that Petitioner sought to do was to inspect the physical evidence.

19. In response to Petitioner’s request to inspect the evidence, Will County State’s Attorney James Glasgow decided to unilaterally inspect the evidence himself, outside the presence of Petitioner and his counsel.

20. State’s Attorney Glasgow then reported back to Petitioner’s counsel that the evidence was a “*complete disaster*” and there would be no point in permitting Petitioner to inspect the evidence.

21. Thus, the WCSAO refused to allow Petitioner to simply view the evidence.

The WCSAO Misrepresented The Condition Of The Evidence

22. Thereafter, Petitioner filed a motion seeking to inspect the physical evidence.

23. This Court overruled the State’s objection and entered an Order allowing for an evidence inspection.

24. Petitioner retained Dr. Skip Palenik and Dr. Christopher Palenik from the Microtrace Laboratory to conduct the evidence inspection and catalog the evidence.

25. The evidence inspection took place on June 15, 2021 and June 23, 2021.

26. Representatives of the WCSAO attended, as did Petitioner’s counsel.

27. Over the course of those two full days, Dr. Christopher Palenik took over 2500 photographs of the evidence.

28. Those photographs revealed that the evidence was *not* a “complete disaster.”

29. Rather, the opposite was true. The evidence was in remarkable shape, especially considering the case was over sixty years old. Indeed, much of the evidence was contained in mounted and clearly labeled glass slides.¹

30. After viewing all the evidence, it is hard to fathom how State's Attorney Glasgow could categorize the evidence as a "complete disaster" and refuse to allow Petitioner to simply view the evidence.

The WCSAO Opposed Any DNA Testing

31. Thereafter, Petitioner sought to conduct forensic testing on some of those items of evidence, including several hairs that had been found on the victims.

32. And once again, the State opposed Petitioner's request.

33. This Court overruled the State's objection and entered an Order permitting Petitioner to submit eight specific items of evidence to Bode Technology for DNA testing.

34. Bode Technology was able to obtain a nuclear STR DNA profile on a hair found on the glove of victim Frances Murphy. That STR DNA profile was of a male and Petitioner was excluded as the source of that STR DNA profile.

35. The State was apprised of this significant DNA result.

36. Petitioner contends that this DNA result exonerates him. The State disagrees.

37. However, at the very least, this DNA result is new, credible, material evidence supporting Petitioner's claim of actual innocence.²

¹ In his report, filed with the Court on August 18, 2021, Dr. Christopher Palenik stated that "This evidence is in remarkably good condition and has a great deal of potential probative value." (Report at page 17 of 63).

² Illinois Supreme Court Rule 3.8(g)(2)(ii) states: "When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor *shall*: undertake further reasonable investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit." (emphasis added).

38. Despite this new DNA result, the WCSAO has failed and refused to conduct its own forensic examination of *any* of the evidence in this case.

The WCSAO Has Failed To Interview Any Of Petitioner's Witnesses

39. On October 3, 2022, Petitioner provided the WCSAO with a twelve-page letter setting forth the results of Petitioner's investigation. Along with that letter, Petitioner provided the WCSAO with a notebook containing seventy-two (72) exhibits.³

40. The evidence that Petitioner provided to the WCSAO made an overwhelming case that Petitioner was innocent. Among the evidence presented to the WCSAO were several significant witness statements.

41. For example, Petitioner provided a witness statement from a woman (Mrs. Smith) whose grandfather had told her that the Chicago Mafia had killed the three women as part of a paid hit ordered by one of the women's husbands.

42. Petitioner provided a witness statement from an attorney (Mr. McConnell) who had employed Mrs. Smith as a paralegal over a decade ago and Mrs. Smith had told Mr. McConnell about her grandfather's stunning admission back when she worked for him.

43. Petitioner provided a witness statement from an individual (Mr. Tyson) who was friends with a man named Smokey Wrona. Mr. Tyson recounted how Mr. Wrona told him that the Chicago Mafia had been involved in killing the three women as part of a paid hit ordered by one of the women's husbands.

44. Petitioner provided a witness statement from a man (Mr. Woods) who recounted how he heard former LaSalle County Sheriff's Deputy Wayne Hess tell his father that Chester Weger was innocent.

³ This same evidence has been submitted to this Court as part of Petitioner's petition for leave to file a successive post-conviction petition.

45. Petitioner provided a witness statement from a retired ATF agent (Mr. Delorto) regarding his interview of Cora Cardenas Gasca, the sister of potential suspect Lupe Cardenas.

46. Petitioner provided a witness statement from a man (Mr. Harris) who claimed that LaSalle County Sheriff's Deputy William Dummett tried to frame him for a serious crime in 1970.

47. Petitioner provided a witness statement from the daughter (Ms. Minnot) of the telephone operator who overheard the two men discussing the kid who had bloody overalls in the trunk of the car.

48. Petitioner provided a witness statement from the best friend (Mrs. Brummel) of the telephone operator who overhead the two men discussing the kid who had bloody overalls in the trunk of the car.

49. Remarkably, the WCSAO has apparently failed and refused to interview any of these witnesses.

The WCSAO Has Objected To An Examination Of Petitioner's Signatures

50. Petitioner's counsel was recently given access – for the first time – to Petitioner's original court-reported statement.

51. As noted in the pending motion seeking additional forensic testing, several of Petitioner's signatures contain irregularities apparent to the naked eye.

52. For example, some of the signatures appear to contain two different inks from two different pens.

53. The WCSAO has opposed and objected to Petitioner's request to have Microtrace conduct a nondestructive microscopic examination of those written signatures.

The WCSAO Has Failed To Review Key Documents

54. Earlier this year, Petitioner learned that a man named Steve Stout had dropped off original case files regarding the Starved Rock murders at the LaSalle County Historical Museum in Utica, Illinois.

55. These documents were apparently some of the original case files of former LaSalle County State's Attorney Harland Warren, who was involved in investigating the case back in 1960.

56. Thereafter, Petitioner's counsel reviewed those voluminous documents.

57. There were several significant documents contained in this collection, including a memo wherein the State could not match the alleged murder weapon to any trees in St. Louis Canyon and an interview of Glen Palmatier, one of the men overheard by a telephone operator discussing a kid with bloody overalls in the trunk of a car.

58. The WCSAO has failed to conduct its own review of these significant documents.

Legal Argument – The WCSAO Has An Actual Conflict Of Interest

59. Under 55 ILCS 5/3-9008(a-10), “[t]he court on its own motion, or an interested person in a cause, proceeding, or other matter arising under the State’s Attorney’s duties, civil or criminal, may file a petition alleging that the State’s Attorney has an actual conflict of interest in the cause, proceeding, or other matter.”

60. The statute further states that “[t]he court shall consider the petition, any documents filed in response, and if necessary, *grant a hearing* to determine whether the State’s Attorney has an actual conflict of interest in the cause, proceeding, or other matter. If the court finds that the petitioner has proven by sufficient facts and evidence that the State’s Attorney has an actual conflict of interest in a specific case, the court may appoint some competent attorney to prosecute or defend the cause, proceeding, or other matter.” (emphasis added).

61. A special prosecutor may be appointed “when (1) the prosecutor is interested in the case as a private individual, (2) the prosecutor is a party to the litigation, or (3) the continued participation by the prosecutor creates an appearance of impropriety.” *In Re M.D.*, 2021 IL App (3d) 200537-U (3rd Dist. May 19, 2021);⁴ *see also People v. Benford*, 2022 IL App (2d) 200349-U, at ¶39 (2d Dist. May 16, 2022) (“Additionally, a State’s Attorney may be considered ‘interested’ if (3) the attorney’s involvement creates the appearance of impropriety in prosecuting a particular defendant”);⁵ *but see contra In re: Appointment of Special Prosecutor*, 2019 IL App (1st) 173173, ¶39 (appearance of impropriety is not a basis for the appointment of a special prosecutor)(A copy of this opinion is attached hereto as Exhibit C).

62. In *In Re M.D.*, the court affirmed the denial of a motion to disqualify the State’s Attorney, finding that the “minimal relationship” between the State’s Attorney and a party (foster mother) was “insufficient to establish the appearance of impropriety.” *Id.* at ¶91.

63. The *In Re M.D.* court rejected respondent’s reliance on *People v. Lang*, 346 Ill.App. 3d 677 (2004), a case where the court found the appointment of a special prosecutor was warranted, stating: “There, the assistant state’s attorney secretly followed the defendant, hid behind potted plants, called the police, led the prosecution, and acted as the State’s key witness. The *Lang* court found that such behavior made it seem ‘that the State’s Attorney’s office was obsessed with finding evidence against the defendant to obtain a conviction against him at all costs.’ [citation omitted]. By contrast, the [assistant state’s attorney’s] connection to [the foster mother] had nothing to do with the initiation of the proceedings. Respondent also presented no evidence showing any

⁴ The *In Re M.D.* decision in an unpublished opinion that was filed under Supreme Court Rule 23. Under Rule 23(e), a nonprecedential order entered on or after January 1, 2021 may be cited for persuasive purposes. (A copy of this opinion is attached hereto as Exhibit A).

⁵ The *People v. Bedford* decision was also an unpublished opinion filed under Supreme Court Rule 23. (A copy of this opinion is attached hereto as Exhibit B).

particular steps taken (or not taken) by [the assistant state's attorney] were influenced by his connection to [the foster mother]. In fact, [the assistant state's attorney] categorically denied that his relationship with [the foster mother] influenced any actions he took in this case. In short, this case does not present the type of behavior described in *Lang*. ” *Id.* at ¶92.

64. This case, however, *does* present the type of behavior described in *Lang*, but on the flip-side.

65. In *Lang*, the assistant state's attorney's conduct made it seem “that the State's Attorney's office was obsessed with finding evidence against the defendant to obtain a conviction against him *at all costs*.” (emphasis added). Here, the WCSAO's lack of performing even its most basic duties (objecting to an evidence inspection, misrepresenting the condition of the evidence, failing to interview relevant witnesses, failing to review key documents, and failing to pursue any forensic investigation) makes it appear that the WCSAO is not interested in conducting any type of investigation, no matter the circumstances. This is the same “at all costs” approach taken by the State's Attorney's office in *Lang*.

66. Further, in *Lang*, the court stated that “[w]e believe that the appointment of a special prosecutor in such a situation may be necessary in order to maintain the public's confidence in the impartiality and integrity of our criminal judicial system.” 346 Ill.App.3d at 682.

67. The same is true here. Due to the WCSAO's refusal to perform even the most basic duties, the appointment of a new special prosecutor is necessary in order to maintain the public's confidence in the impartiality and integrity of the criminal justice system.

68. In *McCall v. Devine*, 334 Ill.App.3d 192 (1st Dist. 2002), the court held that the petitioner's petition was insufficient to warrant the appointment of a special prosecutor, with the court stating that “[petitioner] has not plead any actual or specific impropriety or insufficiency in

the investigation conducted by Devine's office." *Id.* at 204. Here, however, Petitioner *has* plead the insufficiencies in the "investigation" conducted by the WCSAO.

69. The most obvious types of conflicts of interest concern situations where a State's Attorney knows one of the parties or has some prior relationship to the case. However, there can be other types of conflicts of interest that are more subtle yet just as important. This issue was discussed in a recent law review article from the Boston College Law Review entitled "Rethinking Prosecutors' Conflict Of Interest," 58 B.C.L.Rev. 463 (2017) (A copy of this Law Review article is attached hereto as Exhibit D).

70. The law review article notes that "prosecutors' conflicts of interest can be hard to identify, especially when they rest on subjective motivations" and "[p]rosecutors' conflicts of interest are difficult to counteract precisely because...their existence is often hidden, sometimes even from prosecutors themselves, and their impact is hard to gauge." *Id.* at 468-469.

71. As noted in the law review article, "prosecutor's conflicts can arise not only out of personal and professional relationships and financial interests, but out of any personal belief, ambition, or institutional interest that undermines the prosecutor's ability to pursue justice in a disinterested way." *Id.* at 465-466.

72. "Discussions of how prosecutors implicit biases might distort prosecutors' exercise of discretion fail to identify this as a conflict-of-interest problem. An examination of conflicts of interest recasts implicit bias as a chronic problem." *Id.* at 466-467.

73. "Broadly construed, prosecutorial conflicts of interest can include any personal or professional interests, relationships, or beliefs that might lead prosecutors to act in their own self-interest or in others' interests, rather than disinterestedly. These might conceivably include personal or professional relationships, legal obligations or other motivations, inducements or

incentives that might lead prosecutors to serve their own or other private interests in the context of a criminal investigation or prosecution.” *Id.* at 472.

74. The law review article notes that politics can play a role in conflicts of interest as well. “The conflict of interest arising out of prosecutors’ political identification, a form of self-interest conflict, is likely to pervade a prosecution office because political leanings may influence any prosecutor to some degree, except in the unlikely event that the prosecutor is truly politically indifferent. Chief prosecutors, who attain their positions through political systems and who have ultimate responsibility for decisions within the prosecutor’s office, are especially unlikely to be politically disengaged.” *Id.* at 477.

75. The law review article also notes how self-interest can create a conflict of interest, especially in the case of wrongful convictions. “Prosecutors’ personal interest in their public image undermines their ability to view evidence objectively. This may explain some prosecutors’ failure to avert or correct wrongful convictions. Prosecutors’ self-interest provides an incentive to continue cases once they are initiated even if new evidence casts doubt on the defendant’s guilt. Likewise, prosecutors might fail to admit reversible errors due to their interest in preserving their image both in their own eyes and that of the public. These examples reflect not only pervasive personal-interest conflicts, but also institutional conflicts, because the office as an institution has a similar interest in avoiding embarrassment. Even if a prosecutor overseeing a post-conviction investigation was not involved in the original prosecution, the prosecutor may be concerned with the office’s interest in avoiding public opprobrium from having convicted an innocent person.” *Id.* at 481.

76. Further, the law review article notes that there can be a close connection between prosecutors’ personal interest conflicts and cognitive biases. “For example, insofar as a prosecutor

is influenced unconsciously to minimize the significance of new exculpatory evidence, in order to avoid acknowledging a mistake in charging or trying the case, one might characterize this an example of implicit bias. One might equally characterize this, though, as a conflict arising out of the prosecutor's self-interest that may influence decision-making in ways of which the prosecutor is unaware." *Id.* at 483-484.

77. The law review concludes by noting: "Conflicts of interest, which are endemic to prosecutorial decision-making, threaten the legitimacy and efficacy of the criminal justice system. Institutional conflicts make it difficult for prosecutors to serve the public interest because of their identification with the office as a whole. Pervasive personal conflicts of interest, such as reputational self-interest or political aspirations, similarly interfere with prosecutors' ability to act in a disinterested way." *Id.* at 535.

78. Here, as discussed above, the WCSAO has failed to perform even the most basic of its duties and responsibilities in this case. This is despite the fact that Petitioner has already obtained an exonerating DNA result.

79. The WCSAO was opposed to Petitioner even inspecting the physical evidence in this case.

80. The WCSAO misrepresented the condition of the physical evidence in this case.

81. The WCSAO has failed and refused to interview any of Petitioner's witnesses.

82. The WCSAO has failed and refused to review key documents in this case.

83. The WCSAO has opposed all of Petitioner's efforts to conduct forensic testing in this case and failed and refused to conduct its own forensic investigation.

84. These failures cannot be characterized as mere differences of opinion as to the merits of Petitioner's claims.

85. Indeed, in order to properly assess the merits of Petitioner's claims, the WCSAO is required to review relevant documents and interview relevant witnesses.

86. The WCSAO's failure and refusal to perform these basic and fundamental duties can only be explained by the presence of an actual conflict of interest.

87. In the alternative, this Court should grant a hearing to determine whether the WCSAO has an actual conflict of interest in this case that is preventing the WCSAO from carrying out its basic duties. *See People v. Towne*, 2019 IL App (3d) 170834 (3rd Dist. 2019)(court held a hearing on petition for appointment of a special prosecutor).

88. Petitioner is now eighty-four years old, and time is of the essence to find the truth.

89. A new Special Prosecutor should be promptly appointed to fulfill the duties that the WCSAO has failed to fulfill.

CONCLUSION

90. It is befitting to conclude this response with the words of the Solicitor General in speaking of his office in 1954:

The Solicitor General is not a neutral, he is an advocate; but an advocate for a client whose business is not merely to prevail in the instant case. *My client's chief business is not to achieve victory but to establish justice.* We are constantly reminded of the now classic words penned by one of my illustrious predecessors, Frederick William Lehmann, that the Government wins its point when justice is done in its courts. (emphasis added)

Brady v. Maryland, 373 U.S. at 94, n 2.

91. It must be asked how the WCSAO perspective in this case has run so far afield from these potent and inspiring words spoken on behalf of *all* prosecutors and spoken to *all* of the American people.

92. Either the WCSAO does not consider itself bound by the duties of its office (and no one, not even Petitioner, has argued or believes that) or an actual conflict of interest has

compromised the WCSAO's ability to cast an objective eye on the circumstances of Petitioner's trial and conviction.

93. Nearly *two years* have now passed since the WCSAO was appointed as special prosecutor here. The grace of God has kept Petitioner alive under the worst of circumstances to continue his fight for justice. The Court's order appointing the WCSAO was intended to ensure an expeditious and objective investigation as justice and the interests of the people require. That did not happen and a new special prosecutor should be appointed to fulfill the Court's intent and to discharge the duties owed to Petitioner and the people of Illinois.

WHEREFORE, Petitioner Chester O. Weger respectfully requests this Honorable Court enter an Order removing the Will County State's Attorney's Office as the Special Prosecutor in this case and appointing a new Special Prosecutor to represent the interests of the State of Illinois. In the alternative, Petitioner respectfully requests that this Court grant a hearing to determine whether the Will County State's Attorney's Office has an actual conflict in this case. Petitioner also respectfully requests that this Court provide and such other and further relief that this Court deems fair and just.

Dated: April 18, 2023.

Respectfully submitted,

/s/ Andrew M. Hale

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