

Posted 8/30/24

## SWITCHING SIDES

***St. Louis' D.A. argues that a man condemned on his predecessor's watch is in fact innocent***

Time left until execution:

<b>25</b>	<b>09</b>	<b>52</b>	<b>26</b>
Days	Hours	Minutes	Seconds

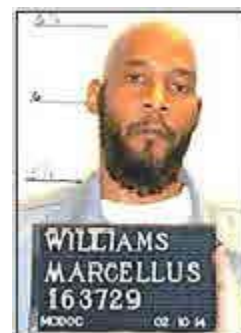
*For Police Issues by Julius (Jay) Wachtel.* As its “time left until execution” clock relentlessly counts down, [The Innocence Project](#) warns that the State of Missouri intends to murder an innocent man:

DNA evidence proves Marcellus Williams is innocent and the prosecuting attorney seeks to vacate his wrongful conviction, yet Missouri has scheduled his execution for Sept. 24.

It's not just about the death penalty. (We, too, [have come out against it.](#)) It's about what actually took place on that fateful Tuesday, twenty-six years ago. That's when Mr. Williams, a multi-convicted felon allegedly on the prowl for things to steal, reportedly broke into the residence of Felicia Gayle, a total stranger, stabbed her to death, and absconded with her laptop computer.

In June 2001 a St. Louis jury convicted Mr. Williams of murder and recommended he be sentenced to death. And that's the penalty the judge imposed. But as execution neared, things drastically changed. In [a January 2024 motion](#), St. Louis County D.A. Wesley Bell – the chief prosecutor, mind you – filed a detailed, 63-page motion arguing that a man convicted during his predecessor's watch was in fact innocent. Here's an outtake:

DNA evidence supporting a conclusion that Mr. Williams was not the individual who stabbed Ms. Gayle has never been considered by a court. This never-before-considered evidence, when paired with the relative paucity of other, credible evidence supporting guilt, as well as additional considerations of ineffective assistance of counsel and racial discrimination in jury selection, casts inexorable doubt on Mr. Williams's



conviction and sentence.

When an objection comes from *that* side of the tracks, one can't help but take notice. And as we pored through the competing accounts, the complexities were staggering. Here are (admittedly, incomplete) summaries of (1) the evidence at trial, (2) a disparaging assessment of the prosecution's case by Mr. Williams' advocates, including the current D.A., and (3) a retort by the Missouri Attorney General, who strongly opposes a re-do.

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## TRIAL EVIDENCE

During the evening hours of August 11, 1998, the husband of Felicia Gayle returned to their residence in University City, a St. Louis suburb. Dr. Daniel Picus [found his wife's body](#) at the bottom of the stairs, a kitchen knife embedded in her neck. She had been stabbed *forty-three times*.

Nine months later Marcellus Williams, a prolific felon who was serving a twenty-year term for robbery, told cellmate Henry Cole that [he was the one who had murdered Ms. Gayle](#). Upon his release in June, 1999, Mr. Cole – perhaps motivated by the \$10,000 reward offered by Dr. Picus – informed police. His account supposedly included details that hadn't been publicly released.

Police subsequently interviewed Mr. Williams' girlfriend, Laura Asaro, a reported sex worker. [After initially denying any knowledge of the killing](#), she changed her tune. Ms. Asaro said that her boyfriend showed up with a badly scratched, bloodied neck. There was a strange laptop in his car, and a purse with the victim's I.D. was in the trunk. Mr. Williams described the killing in grisly detail. He also warned her to tell no one.

Mr. Williams soon told his girlfriend that he sold the laptop to Glenn Roberts. When contacted by police, Mr. Roberts had the machine, and authorities confirmed that it belonged to the victim's husband. According to Mr. Roberts, Mr. Williams said that it had been his girlfriend's, [and that he was selling it on her behalf](#).

As one would expect, Mr. Williams appealed his conviction. Since it was a death penalty case, final say rested with the State Supreme Court. And on January 14, 2003, the Justices [affirmed the verdict and the penalty](#). Here's their concluding paragraph:

Finally, this Court concludes that the death sentence in this case is neither excessive nor disproportionate to the penalty imposed in similar cases,

considering the crime, the strength of the evidence, and the defendant. Williams confessed to the murder. The crime involved a vicious attack during a burglary. Williams has a lengthy and violent criminal record. The sentence is not disproportionate...All concur.

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### REPUDIATION BY DEFENSE

Mr. Williams’ defenders felt that physical evidence was abundant, and it all pointed away from Mr. Williams. Arguing that DNA effectively ruled out Mr. Williams as the perpetrator, his defenders embarked on a decades-long set of legal moves, including a pair of (unsuccessful) appeals to the U.S. Supreme Court (click [here](#) and scroll down to “Facts and Procedural History”).)



While all this maneuvering repeatedly managed to put off Mr. Williams’ execution, claims that DNA excluded him as the killer were contradicted by the findings of a “Special Master” appointed by the State Supreme Court. Ultimately the St. Louis County D.A. – its office was

already on board – turned to an alternative method: [a “Motion to Vacate”](#). Here’s an outtake:

Mr. Williams was excluded as the source of the footprints, Mr. Williams was excluded by microscopy as the source of the hairs found near Ms. Gayle’s body (which did not match Ms. Gayle or her husband, the home’s only residents, and thus were presumably the perpetrator’s), and Mr. Williams was not found to be the source of the fingerprints. Now, three DNA experts have reviewed the DNA testing performed on the knife and each has independently concluded that Mr. Williams is excluded as the source of the male DNA on the handle of the murder weapon.

And it wasn’t just physical evidence. Ms. Asaro was labeled as profoundly untrustworthy. She had outstanding warrants and was likely motivated by that \$10,000 reward. And, just like Mr. Williams told its buyer, the laptop came from her. Indeed, several witnesses now said that Ms. Asaro had tried to sell the machine. What’s more, her account of what Mr. Williams supposedly said about the crime substantially changed over time (at trial, she attributed any inconsistencies to her drug use.)

Henry Cole, Mr. Roberts' cell-mate and himself a repeat offender, was characterized as a notorious liar who was trying to lessen his punishment and, as well, grab a chunk of the reward. While the pair shared a cell, Mr. Cole reportedly sent his son a message to the effect that "something big" (meaning, a crime) was "in the works." Was it Mr. Cole all along?

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## ATTORNEY GENERAL'S RETORT

To prepare for hearings on the motion to vacate, the State A.G. unleashed a flurry of re-investigation. Its findings are summarized in two press releases (click [here](#) and [here](#).)

Most importantly, the knife. From recovery through trial it was extensively handled by multiple persons. And no, they weren't wearing gloves. According to [a new lab report](#), knife DNA "is consistent with a mixture of at least two individuals." But the profile is incomplete, so "no conclusions can be made." Bottom line: no one can be excluded as a possessor. As for body hairs, Ms. Gayle "cannot be excluded" as a contributor. That, too, is the most that analysts could say. And as for the truthfulness of the State's witnesses, the A.G.'s detailed retort highlighted a host of corroboration.

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY STATE OF MISSOURI		<b>FILED</b>
In Re: Prosecuting Attorney, 21 <sup>st</sup> Judicial Circuit, ex rel. Marcellus Williams,	)	AUG 21 2024
Movant/Petitioner,	)	JOAN M. GILMER CLERK, ST. LOUIS CO.
v.	)	Case No. 24SL-CC00422
State of Missouri,	)	Division 13
Respondent.	)	
CONSENT ORDER AND JUDGMENT		

Indeed, the A.G.'s blowback was so compelling that it apparently drove the D.A. (remember, he was on the defense team) to re-assess things. Instead of relying on a "Motion to Vacate", he had Mr. Williams [plead "no contest" to the murder charge](#) in exchange for a sentence of life without parole. On August 21st, a

Circuit Court judge issued a "Consent Order and Judgment" that endorsed the move.

Job done!

Not so fast, said the A.G. Turning to the State Supreme Court, [he quickly secured an order reinstating](#) Mr. Williams' first-degree murder conviction and death sentence pending a hearing on that "Motion to Vacate".

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A (paid) search of Missouri's [MACHS online criminal record system](#) revealed that Mr.

Williams (his birth year was reported as 1968 or 1969) had been repeatedly arrested and convicted of felony crimes he committed in the St. Louis area. Here's a summary:

<b>Arrest date</b>	<b>Charge</b>	<b>Disposition</b>	<b>Sentence</b>
1/21/87	Burg 2nd deg.; stealing	6/5/87 Guilty on both	3 yrs. prob; revoked 3/5/88, 2 yrs. prison
10/6/87	Assault 1st deg.	4/13/88 Guilty	2 yrs. prison
12/18/87	Burg. 2nd. deg.	4/13/88 Guilty	2 yrs. prison
8/31/90	Burg. 2nd. deg.; stealing (2 counts @)	2/7/91 Guilty on all counts	7 yrs. prison
8/31/98	Robbery 1st. deg.; armed crim. act.; unlawful use of wpn.	11/17/99 Guilty on all counts	20 yrs. prison
1/31/00 (while in custody for prior conv.)	Murder 1st. deg.; robbery 1st. deg.; armed crim. act.; burglary 1st. deg.; etc	8/27/01 Guilty on all counts	Life imprisonment (on record); death (in fact)

Note that Mr. Williams' next-to-last set of convictions, for robbery and related offenses, stemmed from an arrest, on August 31, 1998, which followed his release from a seven-year prison term for burglary and stealing. That arrest took place only *twenty days* after the murder of Felicia Gayle.

In its 2003 ruling [affirming Mr. Williams' conviction](#), the Missouri Supreme Court pointed out that when it comes to imposing a death sentence, the defendant's "character" and criminal history are justifiably "central issues." Mr. Williams' criminal record indicates that he spent most of his adulthood committing (and being penalized for committing) serious crimes. That his behavior ultimately doomed him seems hardly surprising.

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What *does* seem extraordinary, though, is that despite an accused's sordid past, and a seeming abundance of damning evidence, a prosecutorial office would "switch sides", and particularly in a grisly murder case. While we also oppose the death penalty, our (hopefully, objective) assessment of the evidence leads us to agree with the police, the original prosecutor, the jury, and the state Supreme Court. Mr. Williams *was* the killer.

Still, as your writer discovered during his career as a Fed, stoking the fires of innocence can affect *any* case where the proof depends, even in part, on the accounts of marginal, possibly self-interested players. But the strength of this case suggests that something beyond mere “facts” drove St. Louis County’s new D.A., Wesley Bell, to seek Mr. Williams’ exoneration. [Elected in 2015 to the Ferguson City Council](#), Mr. Bell promised to help reform a system that ostensibly set the stage for the 2014 [police killing of Michael Brown](#). Three years later, Mr. Bell’s avowed intention “to change a system that he argues sends too many minority suspects to prison and causes too many people to ‘lose jobs, home and custody of their children’” helped him oust Robert McCulloch, St. Louis’ long-serving D.A. (like Mr. Bell, he was also “Blue”, but perhaps insufficiently so.)

[Mr. Bell’s official website](#) touts him as “a vocal leader in criminal justice and court reform, including being the first prosecutor to advocate for the recall of thousands of non-violent municipal warrants.” Being D.A., though, isn’t Mr. Bell’s final move. [He’s now running for Congress](#). Could it be that the ambitious politician’s ideological inclinations – and their past success in stirring up votes – might have influenced his championing of Mr. Williams?

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Two days ago, Circuit Court Judge Bruce Hilton held the [presumably last and final hearing](#) on that re-born “motion to vacate”. After sitting through a six-hour rehash of the arguments, pro- and con-, he has two weeks to decide whether the judgment of guilt should stand. What’s his yardstick? Here’s an extract from [Missouri law](#):

The court shall grant the motion of the prosecuting or circuit attorney to vacate or set aside the judgment where the court finds that there is clear and convincing evidence of actual innocence or constitutional error at the original trial or plea that undermines the confidence in the judgment...the court shall take into consideration the evidence presented at the original trial or plea; the evidence presented at any direct appeal or post-conviction proceedings...and the information and evidence presented at the hearing on the motion.

And that’s where things presently sit. Ergo, the ticking clock.