

Thomas Arthur is on Alabama's death row, and since before his 1991 trial the State of Alabama has successfully opposed the forensic/DNA testing of blood, hair, sperm, clothing and other crime related evidence. Arthur claims the testing can not only prove he was not at the scene of the 1982 murder he was convicted of committing, but it can provide a scientific way to identify the actual perpetrator. (*Justice:Denied* previously reported on Arthur's case, see, "Thomas Arthur — In His Own Words," Issue 7, Fall 1999).

Alabama is one of only eight states that have no law establishing a protocol for DNA testing of crime scene evidence at the request of a prisoner. Consequently, after Arthur's *pro bono* law firm spent years fruitlessly sending formal letters to Alabama authorities requesting access to the evidence

## Alabama Has Opposed Testing Evidence In Thomas Arthur's Case For 16 Years

for DNA testing at the law firm's expense, in April 2007 Arthur filed a federal civil rights lawsuit seeking a court order to compel Alabama to "search for and release ... the Requested Evidence and transfer ... the Requested Evidence to Mr. Arthur's counsel for purposes of DNA and other testing;"

Alabama is the only state that does not provide legal counsel for death row prisoners and there is no law library for death row prisoners. So by the time Arthur found a law firm to take his case *pro bono*, the time limit had expired for filing for state post-conviction review, and the federal courts wouldn't toll the AEDPA's one-year filing deadline. Thus, Arthur has had no state or federal post-conviction review of his case, even though

there are numerous prejudicial irregularities in Arthur's case that could be expected to result in a new trial, and his subsequent acquittal or dismissal of the charges. Just one of those significant issues is that Arthur's court-appointed trial lawyer, who was paid \$1,000, did not conduct *any* investigation of Arthur's alibi that at the time of the murder in Muscle Shoals, he was more than an hours drive away in Decatur. Yet there are witnesses who would have testified if contacted, and who swore in post-conviction affidavits, that they saw and talked with him in Decatur. In *Wiggins v. Smith*, 539 U.S. 510 (2003), the U.S. Supreme Court established the precedent that defense counsel's failure to "reasonably" investigate their client's case can establish constitutionally ineffective assistance of counsel.

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*Justice:Denied* posted the following editorial on its website six days before Alabama was scheduled to end Thomas Arthur's life on September 27, 2007. Just hours before Arthur was to be administered a lethal dose of drugs, Gov. Bob Riley ordered a 45-day stay so that the AL Dept. of Corrections could alter its lethal injection protocol. As of early October, the AL Sup. Ct. has not set a new date.

Murder is defined as, "The action of killing or causing destruction of life, regarded as wicked and morally reprehensible irrespective of its legality." (*Oxford English Dictionary*, def. 1.c.) Although murder is commonly thought of only in terms of how it is defined in a statute, as a concept it predates any written laws.

Murder is what Judy Wicker was convicted of committing in 1982 in Muscle Shoals, Alabama against her husband Troy Wicker. After almost ten years of imprisonment she made a deal with the State of Alabama. She would be paroled from her life sentence in exchange for recanting her trial testimony and numerous extra-judicial statements that she had been raped by a black intruder who then killed her husband, and that Thomas Arthur had nothing to do with the crime.

Murder is what Thomas Arthur was convicted in 1991 of committing against Troy Wicker. Yet none of the plethora of crime scene evidence that included hair, blood, sperm, fingerprints, and a bullet and bullet cartridges, was forensically linked to him. The only direct evidence placing Thomas Arthur at the murder scene was the revised testimony of Judy Wicker.

Murder is a gravely serious charge, and if a State is going to make that accusation against a person, that person deserves the aid of a competent and diligent team of attorneys, who prior to trial independently investigate the case, interview witnesses, review the state's evidence, and file all necessary pre-trial motions. To accomplish those crucial tasks, Thomas Arthur's counsel was paid the princely sum of \$1,000 — the amount designated by law in Alabama.

Murder can be punished by a sentence of death in Alabama, and that was Thomas Arthur's sentence. However, Alabama does not provide a post-conviction lawyer for a death row prisoner, so by the time he was able to find a *pro bono* lawyer to handle his case the time limit had expired for him to file his state, and then a first federal habeas corpus petition. So neither Thomas Arthur's claim of innocence nor any of the irregularities related to the investigation of Troy Wicker's murder, Judy Wicker's suspect testimony, and the deficient performance of Thomas Arthur's counsel, has ever been considered by a state or federal post-conviction review

### Thomas Arthur's Impending Murder

*Justice:Denied* Editorial

for how they affected his constitutional right to due process, a fair trial, effective assistance of counsel and to be shielded from cruel and unusual punishment. (Arthur's trial counsel has admitted that he received inadequate representation.)

Murder can be disproved, and a convicted person's claim of innocence can be vindicated, by DNA testing of crime scene evidence that can directly or indirectly exculpate that person. The State of Alabama has for many years unwaveringly opposed making the crime scene evidence in Thomas Arthur's case available to him for forensic testing at his expense. Alabama's refusal to allow post-conviction testing of the evidence has continued with its opposition to a federal civil rights lawsuit Thomas Arthur filed seeking access to the biological evidence for DNA testing that could contribute to proving his innocence. That evidence sought for DNA testing includes Judy Wicker's bloody clothing, Judy Wicker's rape kit that includes sperm recovered from her the morning of the murder, a wig and hair samples collected from Judy Wicker's car, vacuum sweepings from the Wickers' home, hair samples taken from a shoe, bullet cartridges, a bullet, and a pillow case taken from the Wickers' home.

Murder can be characterized as what a State intends when it uses its prosecutorial power to obtain a conviction and death sentence that is tainted by numerous pre-trial, trial and post-trial irregularities, and possibly illegal tactics that have a direct bearing on concealing both the truth of the crime and the possible innocence of the defendant. There are many suspect aspects of Thomas Arthur's case. Those include that the office of Alabama's Attorney General strong-armed two credible alibi witnesses to recant their post-trial sworn affidavits that on the morning of Troy Wicker's murder they saw and talked with Thomas Arthur in Decatur, which was then about an hours drive from Muscle Shoals.

Murder describes what will happen the State of Alabama and its agents commit the "wicked and morally reprehensible" act of administering a lethal mix of substances into Thomas Arthur's body until he is legally, clinically and permanently dead — when there is the all too real possibility that he is factually innocent of Troy Wicker's murder and the evidence that could prove it remains untested.