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Prosecutor Curtis T. Hill Jr. requests conviction vacation for Lana Canen of Elkhart

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GOSHEN — A convicted murderer may get a new trial if her conviction is vacated by Elkhart Circuit Court Judge Terry Shewmaker, according to a Friday afternoon press release from the Office of the Elkhart County Prosecuting Attorney.

Lana Canen, currently incarcerated for the 2002 murder of Helen Sailor at the Waterfall High Rise apartments in Elkhart, may have her murder charges vacated, according to the release. Canen had been accused of being an accomplice in the beating, robbery and murder of Sailor. Canen's codefendant Andrew Royer was also convicted in the murder of Sailor and is currently serving a 55-year sentence.

Elkhart County prosecutor Curtis T. Hill Jr. said opinions changed on the validity of the conviction when Detective Dennis Chapman with the Elkhart County Sheriff's Department changed his position on a fingerprint he previously matched to Canen.

Chapman said he reviewed the photographs of the fingerprints in preparation for an Aug. 16 post-conviction hearing for Canen. He determined that the fingerprint found on a pill bottle at the scene did not match Canen's fingerprints, according to the release.

"After learning of Detective Chapman's change in his opinion and a review of the evidence presented to the jury, I no longer consider Detective Chapman's testimony at trial to be credible," Hill said in the press release. "As it is reasonable to believe that the jury relied upon Detective Chapman's testimony in considering the evidence against her, it is clearly in the best interest of justice that the murder conviction against Lana Canen be vacated as we continue to re-evaluate the evidence and Canen's role in the murder of Helen Sailor.

"We do not take this action lightly. While it is our responsibility to secure convictions when we believe it is right and just to do so, it is never right for us to preserve a conviction when to do so would not be just nor right."

When reached by phone Friday afternoon Capt. Jim Bradberry of the Elkhart County Sheriff's Department said the department would respond later to questions about the case. Bradberry later indicated in a press release that the Sheriff's Department was only made aware of the conviction vacation request that day. Sheriff Brad Rogers is planning a formal press conference on the matter at 3 p.m. Monday at the Sheriff's administration building.

Maintaining innocence

Cara Schaefer Wieneke, Canen's defense attorney, said she is happy the Prosecutor's Office is in agreement with her and her defendant.

"My client has always maintained her innocence," **Wieneke** said by phone Friday.

Wieneke said she has been Canen's attorney since 2008, when she was contracted by the state after a conflict of interest in the Public Defender's Office. **Wieneke** has practiced law for nine years and has worked almost solely in post-conviction and direct appeal petitions since 2005.

She has worked on a petition for post-conviction relief for Canen since she became her defender. The petitions for post-conviction relief are used most often to add new evidence to a case or question what happened in the original trial, **Wieneke** said.

"They didn't have any other evidence (against Canen) other than the fingerprint," **Wieneke** said. "I looked around for an expert to look at (the fingerprint) and I found one. She looked at it and said that it wasn't a match."

The expert's analysis happened in 2010, **Wieneke** said, and she has worked since then to get a vacation of the murder conviction on Canen. An evidentiary hearing in late August 2012 triggered the most recent movement in Canen's case toward a vacation.

When looking at fingerprints, there are three possible outcomes: Either the prints match, the expert cannot tell if they match or not or the prints definitely do not match, according to **Wieneke**. The prints definitely did not match when analyzed in August, according to three experts, including Detective Chapman.

"We had an evidentiary hearing on a Thursday (Aug. 16) and on the Monday before that hearing the deputy prosecutor called me and said that the original investigator had looked back on his original findings," **Wieneke** said.

The original investigator was Chapman, and he found that the prints did not match, she said. At that point, everyone agreed that it needed to be looked into further.

"I've been requesting all along that the evidence be sent to the state crime lab in Indianapolis," **Wieneke** said. "The prosecutor didn't want to set a precedent by sending all of the evidence for every case down there, but once this finding came out he decided that it would be good to send it. The lab said the following Monday (Aug. 27) that the print doesn't match."

On to the judge

The prosecuting attorney's release said the vacation request, which comes jointly from the Office of the Prosecuting Attorney and Canen's attorney, will be ruled on by Judge Shewmaker shortly.

“If Judge Shewmaker vacates the conviction, the murder charge against Canen will be reinstated,” the release states.

Wieneke said Canen will go back to being charged, as if her murder conviction never happened. However, the new trial may not happen, or Canen may not be convicted again, if there isn’t enough evidence.

“They’re not going to be able to rely on the fingerprint, which is really the only evidence they had against her,” **Wieneke** said. “In cases like these, there is oftentimes not enough evidence to go to a trial.”

Judge Shewmaker has 90 days after the state files a response, in this case Sept. 17, according to **Wieneke**.

“I don’t think he will take that long, especially with that press release,” she said.

Conviction vacations are very rare, **Wieneke** said. They are even more so in Indiana.

“We’re very lucky,” **Wieneke** said.