Court of Appeals, State of Michigan

ORDER

People of MI v Edward Lewis Higley

Docket No. 292489

LC No. 1982-000128-FC

Jane M. Beckering
Presiding Judge

Joel P. Hoekstra

Douglas B. Shapiro
Judges

The Court orders that the aspect of the circuit court's April 21, 2009 order denying defendant's motion for DNA testing is REVERSED, and this case is REMANDED for entry of an order granting defendant's request for DNA testing of the biological materials found on the cement block and in the victim's hands. Pursuant to MCL 770.16(3)(a), a defendant must show that the biological evidence sought to be tested is material to the issue of identity. *People v Barrera*, 278 Mich App 730, 737; 752 NW2d 485 (2008). He need not show that it is potentially exculpatory. That showing is for a later stage. MCL 770.16(7)(a)-(c). Defendant has made the requisite showing. In all other respects, the delayed application for leave to appeal is DENIED.

The motion to file a reply to the answer is GRANTED and the reply filed is accepted.

This Court does not retain jurisdiction.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 14 2009
Date

Sandra Schultz Mengel
Chief Clerk