

**Pro Bono**

## **ST. LOUIS TEAM WINS EXONERATION FOR CLIENT WRONGFULLY CONVICTED OF CAPITAL MURDER**

Oct 19, 2020

St. Louis Partner Charlie Weiss, Counsel Steve Snodgrass and Associate Jonathan Potts recently won a complete exoneration of *pro bono* client Donald Nash, who was wrongfully convicted of capital murder in 2009.

In 1982, Nash's girlfriend was brutally murdered in rural Missouri after leaving her friend's apartment to go out drinking. For the next 26 years, no suspect was charged with the murder. In 2008, however, the Missouri Highway Patrol reopened the case and claimed they found a trace amount of Nash's DNA underneath the victim's fingernails. At age 66, Nash, who had no criminal history, was charged and convicted of capital murder. His capital murder conviction was affirmed on appeal by the Supreme Court of Missouri. Because sharing DNA underneath fingernails is a naturally occurring phenomenon for romantic couples, the prosecution had engaged an expert to present junk science testimony about the supposed "effect" of hair washing on eliminating such DNA. Moreover, the trial court did not allow Nash's defense counsel to present evidence that a violent sex offender's fingerprints (and not Nash's fingerprints) were found on her abandoned car, which was in a ditch on a rural highway.

The BCLP team toiled for eight years, through multiple rounds of habeas corpus proceedings, to disprove the state's junk science and establish Nash' innocence. In 2019, the team finally persuaded the Supreme Court of Missouri to appoint a special master to hear Nash's case. Following a three-day trial, which included the discovery of new DNA evidence from the victim's clothing that implicated an unknown suspect, the special master issued a 226-page report discrediting the state's junk science and declaring Nash "actually innocent." Nash thus became only the fifth person in Missouri history to win a declaration of his innocence following a wrongful conviction. Three of those five people were BCLP *pro bono* clients.

The saga, however, was not over. In the midst of the exoneration, Nash, who is 78 years old with lung disease, was trapped inside a state prison under lockdown because of a COVID-19 outbreak among the prisoners. The team filed an emergency motion to expedite review of the special master's recommendation and release Nash immediately, which was opposed by the state. The Supreme Court of Missouri convened for a special session on a national holiday, agreed on Nash's

actual innocence, and held that multiple constitutional violations had occurred during his trial. Nash was thus released from prison on July 4, Independence Day.

But even then, the saga was not over. The state announced, for the first time in Missouri history, that it planned to retry Nash, an exoneree who had been declared innocent, for capital murder. The state also brought Nash's original prosecutor out of retirement to retry the case. The BCLP team demanded an immediate, public and in-person trial notwithstanding the global pandemic. Trial was scheduled for Oct. 19. The state rushed to conduct additional DNA testing of the shoestring used to strangle the victim. The result of that testing, however, was to find two unknown men's DNA, and none of Nash's DNA, on the shoestring, which was the murder weapon. Moreover, the state ultimately conceded that the original finding of DNA underneath the victim's fingernails was so miniscule that it did not even meet current scientific standards to identify Nash. In a rare show of candor, the prosecution told the trial court that Nash could not ethically be prosecuted. The state dismissed all charges with prejudice on Oct. 9.

## MEET THE TEAM



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