

In The Supreme Court of Wisconsin

STATE OF WISCONSIN,
PLAINTIFF-RESPONDENT-PETITIONER,

v.

JEFFREY C. DENNY,
DEFENDANT-APPELLANT.

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OF WISCONSIN

STATE OF WISCONSIN'S RESPONSE TO AMICUS
BRIEF OF THE INNOCENCE NETWORK

While the Innocence Network disagrees with the State's *factual* argument that Jeffrey Denny failed to show that he is entitled to DNA testing under Wis. Stat. § 974.07(7)'s "reasonably probable" standard, *compare* Innocence Network Br. 12–13, *with* Opening Br. 34–41, the *legal* points that the Innocence Network makes in its amicus brief only support the State's legal arguments.

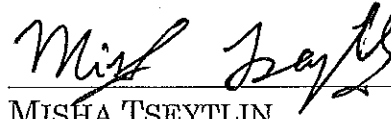
The Innocence Network makes the point that DNA testing can be a valuable tool for exonerating innocent people who can meet § 974.07(7)'s "reasonably probable" standard. *See* Innocence Network Br. 7–16. That is precisely the State's argument. The "reasonably probable" standard is the test that the Legislature adopted when it enacted the Wis. Stat. § 974.07(7) testing regime. Opening Br. 12.]Where this statutory standard is, in fact, satisfied, DNA testing is available. *Id.* Indeed, that testing will be at

public expense where the movant can also satisfy Wis. Stat. § 974.07(12)'s indigency requirement. Opening Br. 13. That generous statutory regime, which is the *only* DNA testing provision in the statute, satisfies all of the laudable goals that the Innocence Network's amicus brief articulates.

The Innocence Network's remaining legal point—that the biological materials requirement is difficult to apply in practice, *see* Innocence Network Br. 3–7—strongly supports the State's argument that *State v. Moran*, 2005 WI 115, 284 Wis. 2d 24, 700 N.W.2d 884, should be overruled. As the State explained, *Moran*'s holding that Subsection (a)2 of Wis. Stat. § 974.07(6) provides for DNA testing—even where the movant cannot meet the “reasonably probable” standard that the Innocence Network praises—is premised upon the critical limitation that this regime is cabined by the biological material requirement. *See* Opening Br. 44. Otherwise, *Moran*'s testing regime would become entirely limitless. *See* Reply Br. 7–10. The Innocence Network's arguments about the practical difficulties of applying the biological materials requirement thus underscore that *Moran* is “unworkable in practice” and should be overruled on that basis. *See Johnson Controls, Inc. v. Emp'rs Ins. of Wausau*, 2003 WI 108, ¶ 99, 264 Wis. 2d 60, 665 N.W.2d 257.

Dated this 29th day of September, 2016.

BRAD D. SCHIMEL
Attorney General

A handwritten signature in black ink, appearing to read "Misha Tseytlin", is written over a horizontal line.

MISHA TSEYTLIN
Solicitor General
State Bar #1102199

DANIEL P. LENNINGTON
Deputy Solicitor General

DONALD V. LATORRACA
Assistant Attorney General

Wisconsin Department of Justice
17 W. Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-9323
(608) 261-7206 (Fax)
tseytlinm@doj.state.wi.us

Attorneys for the State of Wisconsin