

NORTH CAROLINA)
)
FORSYTH COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
84 CRS 42263

STATE OF NORTH CAROLINA)
)
Vs.)
)
DARRYL EUGENE HUNT,)
Defendant.)

ORDER ALLOWING
DNA TESTING
(N.C.G.S. §§ 15A-269)

THIS CAUSE CAME ON TO BE HEARD before the undersigned Superior Court Judge Presiding at the April 7, 2003, Session of Superior Court of the Twenty-First Judicial District upon Motion of the Defendant, Darryl Eugene Hunt, pursuant to N.C.G.S. §§ 15A-269 and 270 (the post-conviction provisions of the "Innocence Protection Act," 2001 N.C. Session Laws 282, effective October 1, 2001 as to the post-conviction provisions), pursuant to N.C.G.S. § 15A-266.1, *ff*(Article 13 of Chapter 15A, entitled "DNA Database and Databank"), and pursuant to Amendments V., VI., VIII and XIV of the United States Constitution, and Article I, § 23 of the North Carolina Constitution, for an Order requiring performance of further DNA testing in this case. The Defendant was present in Court and was represented by his attorney, S. Mark Rabil, and the State was represented by Assistant District Attorney Eric Saunders. And, it appearing to the Court, based upon the representations made in open court, that the parties have consented to the entry of this Order, the Court makes the following Findings and Conclusions:

1. In November, 1990, Mr. Hunt was convicted of the felony murder of Deborah B. Sykes which occurred on August 10, 1984. The underlying felonies included rape, sexual

offense, robbery and kidnaping. That conviction, and the denial of Mr. Hunt's Motions for Appropriate Relief, were affirmed by the North Carolina Supreme Court. State v. Hunt, 339 N.C. 622, 457 S.E.2d 276 (1995). (Mr. Hunt previously had been convicted in 1985, but the Supreme Court of North Carolina reversed that conviction; See State v. Hunt, 324 N.C. 343, 378 S.E.2d 754 (1989).) The federal courts denied Mr. Hunt's petition for habeas relief. Hunt v. McDade, 205 F.3d 1333 (4th Cir. 2000), cert. denied, 531 U.S. 945, 148 L. Ed. 2d 276, 121 S.Ct. 344 (2000).

2. In 1994, post-trial PCR/DNA testing was ordered by the Court and excluded Mr. Hunt as the source of the semen found in the victim. This DNA testing also excluded co-Defendant Sammy Mitchell and State's witness and suspect Johnny Gray (a/k/a Johnny McConnell). The victim's husband was also excluded as the source of the semen. However, the semen found in the victim has never been compared to samples available in the SBI DNA database or in the National DNA Indexing System. Labcorp, the DNA laboratory which conducted the 1994 PCR/DNA testing, did not use or consume all of the evidence from the rape kit in this case, and returned the remaining evidence to the Winston-Salem Police Department. Thus, more evidence from the rape kit remains for further DNA testing. The Winston-Salem Police Department is in possession of the remaining evidence from the rape kit in this case.

3. There may also be other biological evidence available for DNA testing. A 1994 Winston-Salem Police Department memo indicates that hair samples taken from the body of the victim were in the custody of the Police Department at that time. A 1984 SBI Laboratory

report indicates that the hairs did not originate from the Black race and are "consistent" with hairs of the victim. The hairs have never been evaluated scientifically to determine whether DNA testing is possible. The 1984 autopsy report indicates that fingernail scrapings were taken from the victim and were sent to the SBI. The fingernail scrapings have never been evaluated scientifically to determine whether DNA testing is possible. The Winston-Salem Police Department is searching to determine whether it is in possession of said hairs found on the victim and the said fingernail scrapings taken from the victim.

4. Further DNA testing should be conducted pursuant to N.C.G.S. § 15A-269.

Specifically, remaining evidence from the rape kit in this case should be sent to the SBI for comparisons in the SBI DNA Database or Databank. If no comparison is found through the SBI database or databank, then the evidence should be forwarded to the FBI for comparison with samples in the National DNA Indexing System. The SBI or the FBI should communicate the results to counsel for the parties at the addresses provided by counsel.

5. The Defendant, Darryl Hunt, is indigent and is entitled to the appointment of counsel to represent him in this matter pursuant to N.C.G.S. 15A-269(6). Furthermore, the State should pay for the costs of conducting the further DNA testing required pursuant to this Order.

**BASED UPON THE FORGOING FINDINGS AND CONCLUSIONS, IT IS
THEREFORE ORDERED, BY CONSENT, AS FOLLOWS:**

1. The Winston-Salem Police Department shall immediately deliver evidence from the rape kit in this case to the SBI Laboratory for comparison with


samples in the SBI DNA Databank or Database. The results shall be sent to counsel for the parties, as follows: Mr. Eric Saunders, Assistant District Attorney, P. O. Box 20083, Winston-Salem, N.C. 27120; and Mr. S. Mark Rabil, Attorney for Defendant, P. O. Box 20308, Winston-Salem, N.C. 27120-0308. The said laboratory is authorized to discuss the results of its DNA testing with Mr. Saunders or Mr. Rabil.

2. If no comparison is found through the SBI Databank or Database, then the evidence should be forwarded by the SBI to the FBI for comparison with samples in the National DNA Indexing System. The results shall be sent to counsel for the parties. . The results shall be sent to counsel for the parties, as follows: Mr. Eric Saunders, Assistant District Attorney, P. O. Box 20083, Winston-Salem, N.C. 27120; and Mr. S. Mark Rabil, Attorney for Defendant, P. O. Box 20308, Winston-Salem, N.C. 27120-0308. The said laboratory is authorized to discuss the results of its DNA testing with Mr. Saunders or Mr. Rabil.
3. The Winston-Salem Police Department shall search for any and all evidence in its possession which may be suitable for further DNA testing in this case. This shall include any hairs taken from the victim's body in this case and any fingernail scrapings taken from the victim in this case. If the Winston-Salem Police Department is able to locate said hairs or fingernail scrapings, then such evidence shall be retained for further testing.

4. **The Winston-Salem Police Department, the SBI, the Clerk of Superior Court and any law enforcement agency of the State shall preserve all evidence in this case which is within their possession or control, pending further orders of the Court.**
5. **The fact that this Order has been consented to by the State shall in no way constitute grounds for the Defendant to claim new facts to support any future motions for appropriate relief.**
6. **The entry of this Order is without prejudice to the right of either party to argue their respective positions at any later proceedings.**
7. **This matter is reserved for further proceedings as may be required by N.C.G.S. §§ 15A-269 and 270.**
8. **The entry of this Order is without prejudice to Defendant's right to seek other relief which was specifically set forth in his Motion filed herein even though such matters are not addressed in this Order.**

9. The Defendant is determined by the Court to be indigent. Consequently, S. Mark Rabil, Attorney At Law, is appointed by the Court to represent Defendant in this matter, and the costs of the DNA testing ordered herein shall be paid by the State of North Carolina.

This the 7th day of April, 2003.



THE HONORABLE D. ANDERSON CROMER
SUPERIOR COURT JUDGE

felonies of rape, sexual offense, armed robbery and kidnapping. Judge Forrest Ferrell sentenced Mr. Hunt to life imprisonment. Mr. Hunt appealed to the Supreme Court of North Carolina.

3. No DNA evidence was presented by the State or by Mr. Hunt during either the 1985 or 1990 trials.

4. Following his 1990 conviction, Mr. Hunt filed a motion for appropriate relief. On February 18, 1993, the Supreme Court of North Carolina remanded that motion, as amended, to the Superior Court of Forsyth County for an evidentiary hearing.

5. The Honorable Melzer A. Morgan, Jr. presided over the remand proceedings. The evidentiary hearing was held in three stages: June 1993, November 1993, and November 1994.

6. In 1993, Mr. Hunt moved for DNA testing of semen found in Ms. Sykes' vaginal fluid with Mr. Hunt's DNA. On April 25, 1994, Judge Morgan granted Mr. Hunt's motion for DNA testing.

7. On August 12, 1994, while DNA testing was still being conducted, Judge Morgan denied Defendant's motion for appropriate relief, as amended. Judge Morgan undertook an exhaustive view of all the pleadings and evidence and issued his opinion denying Mr. Hunt's Motions. However, in his August 1994 Order, Judge Morgan acknowledged that DNA testing might generate an additional ground of appropriate relief for Mr. Hunt.

8. On October 19, 1994, after learning that DNA testing had excluded Mr. Hunt as the source of the semen found in Ms. Sykes' body, Mr. Hunt filed additional motions, including a motion for appropriate relief.

9. On November 3, 1994, the State announced that additional DNA testing requested by the State also excluded co-defendant Sammy Mitchell and the State's only other suspect, Johnny McConnell (a/k/a Johnny Gray) as the source of the semen found in Ms. Sykes' body.

10. On November 10, 1994, after holding a hearing on the DNA testing, Judge Morgan issued an order denying Mr. Hunt's claim for appropriate relief based on the DNA results. In short, Judge Morgan denied Mr. Hunt's request on the grounds that even though Mr. Hunt was not the donor of the DNA, he could still be guilty under an "acting in concert" theory.

11. Mr. Hunt's conviction and the denial of his motions for appropriate relief were affirmed by a four to three vote of the North Carolina Supreme Court. However, three of the justices on the North Carolina Supreme Court entered a dissenting opinion on the grounds that post-trial DNA testing was "powerful evidence tending to weaken the State's entire case." *State v. Hunt*, 339 N.C. 622, 663; 457 S.E.2d 276, 300 (1995). The federal courts at the district and circuit levels did not disturb Judge Morgan's rulings.

12. In April 2003, this Court, at Defendant's request, but with the Forsyth County District Attorney's consent, entered an Order Allowing DNA Testing, pursuant to N.C. Gen. Stat. §15A-269. The order directed the State Bureau of Investigation ("SBI") to conduct additional testing of the original DNA sample obtained from the victim and compare the results to the state and national DNA databases to determine whether the source of the semen could be identified. The science and technology for analyzing DNA samples has evolved since the sample was first collected in 1989.

13. In the fall of 2003, after additional analysis led to new leads, the SBI had the DNA examined by the Alabama Department of Forensic Science, which had more sophisticated testing facilities and equipment. A possible source of the DNA was identified by the SBI after a search of the North Carolina Department of Correction prisoner DNA database.

14. Detective Mike Rowe of the Winston-Salem Police Department and SBI Agent Scott Williams examined old records of relatives of the person who had been identified as a possible source of the DNA. They learned that Willard E. Brown, a relative of the possible DNA source, had been investigated for a rape that had been committed in the same location as the murder of Ms. Sykes, approximately six months after the murder of Ms. Sykes.

15. Detective Rowe and Agent Williams, who were investigating the case after the new DNA results learned on or about December 16, 2003 that Willard Brown, whom other law enforcement officers previously had thought had been in prison when Ms. Sykes was murdered on August 10, 1984, had been released on June 14, 1984.

16. On December 16, 2003, Mr. Brown was in custody in the Forsyth County Detention Center for misdemeanor possession of drug paraphernalia and trespassing.

17. Mr. Brown's DNA had never been obtained by law enforcement authorities before and, therefore, was not in any DNA database. However, on or about December 17, 2003, Detective Rowe and Agent Williams obtained a DNA sample from Mr. Brown.

18. On December 19, 2003, the SBI tested the DNA sample obtained from Mr. Brown and determined that it matched the DNA sample left by the previously unknown assailant in Deborah Sykes' murder.

19. On December 22, 2003, the State arrested Willard Brown on warrants charging him with the murder, rape, robbery, and kidnapping of Ms. Sykes.

20. While being 'booked', Willard E. Brown spontaneously confessed to the murder of Deborah Sykes. Brown indicated further that he had acted alone when he murdered Deborah Sykes, and that Darryl Hunt was not involved.

21. On December 24, 2003, with the consent and request of the State and Mr. Hunt, this Court entered an order directing that Mr. Hunt be released from custody upon his execution of an unsecured appearance bond in the amount of \$250,000, pending a hearing scheduled for February 6, 2004, and subject to further orders of the Court.

22. This Court scheduled a hearing for February 6, 2004 to consider any further evidence from either side.

23. In addition to the above findings, which are made after considering the evidence and representations of the District Attorney and Mr. Hunt's attorneys and hearing the evidence presented, the court made the following additional findings.

24. The DNA testing and results have positively identified Willard Brown as the source of the semen found in the body of Deborah Sykes. The DNA results are credible.

25. Detective Rowe testified, consistent with earlier offerings to the Court, that during booking, Willard Brown confessed spontaneously that he had killed Ms. Sykes, that he had acted alone, and that Mr. Hunt was not involved. Detective Rowe

further testified that he and SBI Agent Williams had undertaken a painstaking investigation into the backgrounds of Willard Brown and Mr. Hunt and that there is no viable evidence connecting Mr. Hunt to Willard Brown, thereby dispelling any theory that Mr. Hunt acted in concert with Willard Brown in the acts that surrounded Deborah Sykes' murder.

26. Detective Rowe is a credible witness, and his testimony about his investigation in December 2003 and the confession of Willard Brown is credible.

27. Furthermore, the further investigation of the Winston-Salem Police Department, aided by the leads presented by the new DNA results and Willard Brown's spontaneous confession, reveals that there is no viable or credible evidence, direct or circumstantial, that places Mr. Hunt at the Deborah Sykes' crime scene or in any way to the crimes surrounding Ms. Sykes' death.

28. Upon full disclosure by the State, and with the State's stipulation, there remains no evidence upon which the State could proceed against the Defendant in any new trial.

CONCLUSIONS OF LAW

1. The rulings of The Honorable Melzer Morgan in this case during 1994 were made without the benefit of the new evidence presented to this Court through pleadings filed and evidence received since December 22, 2003.

2. The Court concludes that the results of the DNA testing obtained during 2003 are new evidence that is favorable to Mr. Hunt, as that term is defined in N.C.G.S. § 15A-270.

3. Moreover, the results of the DNA testing led to additional new evidence, namely the confession of Willard Brown to the murder of Deborah Sykes; verified evidence that Willard Brown acted alone; eyewitnesses' testimony that placed only one black male, who it is now known cannot be Darryl Hunt with Deborah Sykes, at the time of the acts surrounding her murder.

4. There is a reasonable probability that if the jury in the second trial had known this evidence, the verdict would have been more favorable to Defendant. That is, there is a reasonable probability that the jury would have found Defendant not guilty.

5. This new evidence satisfies the following criteria: (a) this evidence would likely be given at a new trial; (b) this evidence probably is true; (c) this evidence is competent, material, and relevant, and it has a direct bearing on Defendant's guilt or innocence; (d) this evidence was not known at the time of the second trial, was not available to Defendant at the time of the second trial, and could not have been discovered by Defendant with due diligence at the time of the second trial; (e) this evidence is not cumulative; (f) this evidence does not tend only to contradict, impeach, or discredit a former witness; and (g) this evidence is of such a nature as to show that had this new evidence been presented to the jury at either the first or second trial, there is a reasonable probability that the jury would have reached a different result on the issue of guilt or innocence.

6. Accordingly, the above new evidence supports and satisfies the criteria for allowing a motion for appropriate relief based on newly discovered evidence as set forth in N.C.G.S. §15A-1415(c), and meets the burden of proof and standards applicable for showing prejudice pursuant to N.C.G.S. §§ 15A-1420(c) and -1443. Also, *State v. Britt*,

320 N.C. 705, 360 S.E.2d 660 (1987), and *State v. Cronin*, 299 N.C. 229, 262 S.E.2d 277 (1980).

7. Defendant is entitled to appropriate relief as set forth in N.C.G.S. § 15A-270(c) and - 1417. In addition, both the State and Mr. Hunt have moved that the verdict and judgment entered against Mr. Hunt be vacated and set aside and further both the State and Mr. Hunt request that the relief includes a dismissal with prejudice.

RELIEF

The Court having determined and concluded that the Defendant is entitled to relief concludes that the appropriate relief is that Defendant is entitled to have the verdict and judgment entered against him for first-degree murder vacated and the entry of a dismissal with prejudice of all the charges pending against Mr. Hunt in this case.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Vacate Judgment and for Other Relief, as amended and the State's Motion to Vacate should be and the same hereby are granted. **IT IS FURTHER ORDERED** that the judgment of first-degree murder and the sentence of life imprisonment imposed on October 11, 1990 should be and the same hereby is vacated. **IT IS FURTHER ORDERED** that the charge against Defendant in this case of first-degree murder be and the same hereby is dismissed with prejudice.

This Order is entered on February 6, 2004.



ANDERSON D. CROMER
SUPERIOR COURT JUDGE PRESIDING

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
2005 JAN 31 PM SUPERIOR COURT DIVISION
COUNTY OF FORSYTH 84 CRS 42263

FORSYTH COUNTY, C.S.C.

STATE OF NORTH CAROLINA *Juleon E. King*

v.

ORDER

DARRYL EUGENE HUNT,
DEFENDANT.

This matter is brought forward, *sua sponte*, by the undersigned Superior Court judge to review the propriety of continuing the effect of a previous order that effectively sealed all records involving the investigation of the above named defendant.

In summary, on February 6, 2004, after entry of an order finalizing proceedings, questions were raised concerning the openness of the files involving the investigation relating to the prosecution of Defendant. At that time, Willard Brown was being investigated for and had been charged with the murder of Deborah Sykes, the event that triggered the prosecution of Darryl Hunt in 1984. Since the investigations in 1984 and until February 6, 2004 potentially overlapped with ongoing investigations and a fair trial in *State v. Willard Brown* before an impartial jury in Forsyth County risked compromise, this Court ordered in open court that the investigative files associated with the prosecution of Darryl Hunt through February 6, 2004 were to be sealed, pending later review. The court notes that the effect of the Order sealing the records entered from the bench on February 6, 2004 has never been questioned. On December 16, 2004, Willard Brown pled guilty before the Honorable Henry E. Frye, Jr. to the murder of Deborah Sykes. Upon information, no further proceedings are pending against Willard Brown. Consequently, the reasons for the sealing of the investigative files associated with Darryl Hunt no longer exist.

Accordingly, the Court *sua sponte* strikes the Order sealing the records associated with the investigation of Darryl Hunt. Furthermore, and for clarification, the effect of this Order is to place the records and matters associated with this case back into the position they would have occupied but for the rendering of the Order on February 6, 2004 sealing the records. The Clerk is directed to send copies of this order to the Forsyth County District Attorney, Darryl Hunt and Darryl Hunt's attorneys.

This Order is entered on January 28, 2005.

Anderson D. Cromer
Anderson D. Cromer
Superior Court Judge Presiding