

MAY 14 2007

BERNADETTE A. FIORE, PhD.  
Criminal Division Manager

STATE OF NEW JERSEY,

Respondent.

v.

BYRON HALSEY,

Movant.

SUPERIOR COURT OF NEW JERSEY  
UNION COUNTY:  
CRIMINAL DIVISION

DOCKET NO. 63-01-86  
& 210-02-87

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MEMORANDUM IN SUPPORT OF JOINT MOTION FOR A NEW TRIAL  
AND TO VACATE CONVICTION BASED ON NEW DNA EVIDENCE PURSUANT TO  
R. 3:20-1

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On March 18, 1988, after a jury trial before Judge William Wertheimer, Byron Halsey was convicted of various counts related to the brutal 1985 rape and murder of Tina and Tyrone Urquhart, seven- and eight-year-old children that he, along with their mother, was raising and living with in a Plainfield, New Jersey rooming house. Mr. Halsey was sentenced to two consecutive terms of life imprisonment plus an additional consecutive twenty years, with a total of seventy years of parole ineligibility.

On the night of November 14, 1985, Byron called Tina and Tyrone's mother during her work shift and reported that he had left the children home by themselves and returned to find them missing. (3/2/88 at 117-118). The following morning the children's bodies were found in the building's basement, according to the medical examiner, where both had been killed. (3/4/88 at 52-53; 3/7/88 at 14-16).

Tyrone's body was on the basement floor near a blue couch and chair turned over on its back. (3/2/88 at 86, 143). He had a piece of blue fabric attached to his head by several nails, and died as a result of four nails that were driven into his skull. (3/4/88 at 37-39, 44-45). There was a cigarette butt adjacent to his head, and other cigarette butts in the area. (3/2/88 at 153; 3/3/88 at 11, 33-34).

Tina's body was found on her back under a shelf in a room nearby Tyrone; she was the obvious victim of a sexual assault, which evidence technicians suspected occurred on the blue couch. (3/2/88 at 163; 3/4/88 at 31). Tina was naked with her legs spread; her nightgown was draped over her left shoulder and her underwear were stuffed in her mouth. (3/2/88 at 90-91). Her cause of death was determined to be asphyxiation due to manual strangulation. (3/4/88 at 29-30, 34).

After being questioned by police and failing a polygraph examination, Byron confessed. At trial, the State's primary evidence consisted of Byron's confession and corroborating evidence (including other incriminating statements and behavior). In the confession statement, Byron stated that he "sexually assaulted [Tina] in the basement on the blue couch" and that he ejaculated. (3/7/88 at 132-33).

The coverings from the blue couch were submitted to the FBI laboratory prior to trial. (3/2/88 at 143, 154, 162-163). In total, the FBI received over 200 items of physical evidence to examine for blood, semen and/or saliva. (3/11/88 at 7, 130). Semen was found on Tina's underwear, the couch cover, and on Tyrone's oral swab. At trial, the State introduced the results of serological

testing which included Byron as the source of the semen.  
(3/11/88 at 71-75).

The State also submitted Tina's underwear to Lifecodes for DNA testing prior to trial, however, the earlier form of DNA technology then available was unable to yield a result. (Lifecodes Report 1/20/88).

In its fifth day of deliberation, the jury acquitted Mr. Halsey of aggravated sexual assault (of Tyrone), and also acquitted Mr. Halsey of purposeful and/or knowingly causing death or serious bodily injury to Tina and Tyrone resulting in death. (3/18/88 at 18-19). The jury convicted him of aggravated manslaughter (of both children), aggravated sexual assault of Tina (by performing vaginal intercourse), felony murder of Tina and Tyrone (causing their death in furtherance of the sexual assault on Tina), child abuse (finding that he purposely abused and was cruel to Tina and Tyrone), and a weapons charge (knowing and unlawful possession of the brick and nails with the intent to use them unlawfully against Tyrone). (3/18/88 at 18-20).

The trial judge merged the aggravated manslaughter, child abuse and possession of a weapon for unlawful purpose convictions into the convictions for felony murder, and sentenced Mr. Halsey to two consecutive sentences of life

imprisonment each with thirty years of parole ineligibility, and to a consecutive sentence of twenty years imprisonment with ten years of parole ineligibility for the aggravated sexual assault.

Pursuant to an agreement between the Union County Prosecutor's Office and The Innocence Project, on March 7, 2006, evidence from this case was removed from storage and delivered by Union County detectives to Orchid Cellmark, a private DNA laboratory, where state-of-the-art Short Tandem Repeat ("STR") DNA testing was performed.

The STR DNA results **exclude Byron Halsey as the source of the spermatozoa** which was attributed to Mr. Halsey at trial and found on seven-year-old Tina's underwear (stuffed inside her mouth) and on the blue couch where she was raped. (See Exhibit A, Cellmark Report of Laboratory Examination April 5, 2007, 3/11/88 at 71-75).

The STR DNA profile obtained from the crime scene spermatozoa was searched in the convicted offender DNA CODIS database and generated a hit, **matching the DNA profile of convicted sex offender - and State's witness - Cliff Hall.** Hall is currently incarcerated at the Adult Diagnostic Treatment Center after having pled guilty to three separate sex crimes committed in Plainfield, New Jersey over the course of eleven months in 1991-92. All

three crimes had violent sexual assault components - one was an attempt while two were violent rapes. (Order for Commitments dated 6/9/93 & Ind. 92-07-0823, 92-07-0824 & 92-07-0825). As a result of these convictions, Hall was adjudicated a compulsive and repetitive sex offender, and his DNA was put in the convicted offender DNA database. The CODIS hit has been confirmed through DNA testing of a new reference sample from Hall.

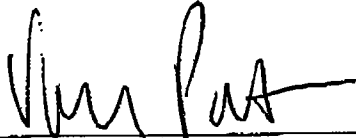
DNA testing completed in April 2007 at the New Jersey State Police Central Regional Laboratory, has additionally matched Hall to DNA from a cigarette butt recovered from the crime scene.

The newly discovered DNA evidence mandates that, pursuant to Rule 3:20-1, Mr. Halsey's convictions be vacated. The STR DNA results and CODIS hit: (1) were discovered after the trial and were not discoverable by reasonable diligence at the time of trial; (2) are material to the issue and not merely cumulative, impeaching or contradictory; and (3) of the sort that would probably change the jury's verdict if a new trial were granted. As such, the newly discovered evidence entitles Mr. Halsey to a new trial. *State v. Carter*, 85 N.J. 300, 314, 426 A.2d 501 (1981)

WHEREFORE, the Defendant and State jointly request

this Honorable Court vacate Defendants convictions and sentences.

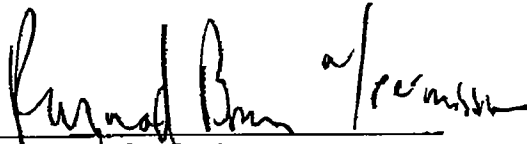
Respectfully Submitted,



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