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Attorneys seek DNA testing in murder case

Despite a lack of physical evidence, a jury convicted Dennis Perry of murder in 2003. Could DNA testing reveal the truth?

Johna Strickland Rush
johna@tribune-georgian.com

The Georgia Innocence Project filed a motion Monday seeking a new trial for Dennis Perry, who was convicted in 2003 on two counts of murder, based on advancements in DNA testing.

A jury found Perry guilty in February 2003 of murdering Harold and Thelma Swain on March 11, 1985, at Rising Daughters Baptist Church in Waverly. Perry is serving two consecutive life sentences. He will be eligible for parole in 2023 — 20 years after his conviction.

The prosecution will have 60 days to respond to the Innocence Project's motion, then a judge will make a determination and set a hearing if the motion meets the law, according to attorney and project executive director Aimee Maxwell. Attorney Christina Cribbs and Maxwell filed the motion.

Perry first wrote the project in 2004 but crime labs at the time could not do contact DNA testing — looking for DNA left on an object by someone who touched it.

"We've had to wait until DNA testing improved to a point where we can now test the items that still remain," Maxwell said. "… Because of advancements in DNA testing technology, Dennis now has the opportunity to have evidence from the crime scene tested."

Only one piece of evidence — hair lodged in a pair of glasses — collected from the scene underwent mitochondrial DNA testing, which excluded Perry, but those results were not introduced during the trial, according to the motion.

See **PERRY**, page 10A

Gathering the goodies

Emily Heglund | Tribune & Georgian

Liam Elser, 18 months, drops a piece of bubble gum into his Easter bucket Saturday, March 14, during the annual Easter egg hunt at Orange Hall in St. Marys. For a list of more upcoming local egg hunts, see page 9A.

Father files suit against St. Marys

Johna Strickland Rush
johna@tribune-georgian.com

The father of a Camden teen killed in 2014 has filed a wrongful death suit against the City of St. Marys.

Rickey Sullivan claims that his son, Braxton Sullivan, would not have been hit by a car and killed if the city had mowed the shoulder of St. Marys Road more often.

Braxton Sullivan

Through his attorney, Sullivan notified the city in late 2014 that he intended to sue for negligence. Council denied Sullivan's request for at least $2.5 million in damages in December.

The suit, which was filed March 10, asks for $5 million plus related medical and funeral expenses. Sullivan is represented by John Moore of the Moore Law Group in Atlanta.

Braxton, 15, was killed the night of June 7, 2014, as he walked east in the right lane to the right of the painted fog line on St. Marys Road between Haddock Road and Osprey Cove. A younger boy, who was with Braxton, was walking in the grass on the shoulder of the road, according to the St. Marys Police Department. The boys were headed to a party in Osprey Cove, according to Moore's ante litem notice.

See **SUE**, page 9A

Annual auto show on tap for Saturday

Johna Strickland Rush
johna@tribune-georgian.com

The 10th annual Runabout in the Royal District auto show kicks off Saturday morning in Kingsland.

The show will be held Saturday, March 21, on Lee Street in downtown Kingsland and benefit the Camden County Habitat for Humanity. The event is hosted by the Kingsland Downtown Development Authority.

Auto owners can register the day of the show from 8 to 11 a.m. for an entry fee of $25. Attendees can vote for their favorite cards from 11 a.m. to 1 p.m.

"To date, we have 40 pre-registered which is very good!" DDA executive director Trish Jared said. "We expect to do at least as well as we did last year and that was 150 vehicles."

The show is open to the public from 8 a.m. until 2:30 p.m. but the best time to attend is between 11 a.m. and 2:30 p.m. when all of the cars are in place, Jared said.

"The Kingsland car show gets better and better each year. It's a high energy and classy show that people come back to year after year. Planning it used to drive me nuts, but, in recent years, it has just been a whole lot of fun and I truly enjoy it!"

Aside from the show, there will entertainment and other activities. Staff with the Southeast Georgia Health System's Wellness on Wheels vehicle will be offering free health screenings.

The American Red Cross will hold a blood drive and a rollover vehicle from the Governor's Office of Highway Safety will be displayed. A 50/50 raffle drawing and awards will be announced at 2 p.m.

The entertainment schedule includes:

- 10 a.m. College of Coastal Georgia cooking demonstration
- 10:30 a.m. The Wannabes line dancers
- 11 a.m. Baila Fitness demonstration
- noon Pak's Karate demonstration
- 1 p.m. country music by Stephen Combs

Wyoming sailors see hearings

Johna Strickland Rush
johna@tribune-georgian.com

Two sailors implicated in illegal videotaping aboard the USS Wyoming did not know the content of the videos when they shared them with other sailors and were not involved in recording the videos, their attorneys said March 12 in an Article 32 hearing at Mayport Naval Station in Florida.

Missile Technician 2nd Class Jonathan Ashby and Missile Technician 3rd Class Samuel Buchner are both charged with conspiring to distribute videos that show the private areas of another person and distributing the videos.

The videos show female officers undressing and showering on the USS Wyoming, which is homeported at Kings Bay Naval Submarine Base in Submarine Group 10. The Wyoming was one of the first submarines to integrate female officers in late 2011. Navy-wide, there are 59 women serving aboard seven submarines, including the Wyoming, USS Georgia and USS Florida at Kings Bay. The Navy plans to begin integrating enlisted women to submarine crews in 2016.

Navy officials learned of the videos in November 2014 and launched an investigation, finding that about 12 male enlisted sailors were involved and the videos were recorded during patrols in 2013 and 2014. Ashby and Buchner are the first sailors to appear in an Article 32 hearing.

U.S. Navy photo

The USS Wyoming, an Ohio-class submarine stationed at Kings Bay Naval Submarine Base, was the site of illegal videotaping during two patrols.

Lt. Cmdr. Joshua Kelne, the Article 32 preliminary hearing officer, will review the charges and determine if there is probable cause that the charges were committed and by the defendants.

"It is my duty to impartially weigh the evidence," Kelne said.

Kelne will then make a recommendation to Rear Adm. Charles Richard, commander of Submarine Group 10. He can recommend anything from dismissing the charges up to a general court martial, according to Lt. Cmdr. Lee Marsh, who presented the Navy's case.

Richard will not be bound by Kelne's recommendation, which will be issued within 10 days of the hearing.

"He will make the final decision," Kelne said.

Ashby and Buchner were each represented by separate military attorneys in the hearing. Both men elected not to make a statement. Neither side called any witnesses.

The prosecution

As evidence, Marsh presented

See **FILM**, page 9A

POLL

Have lower gas prices impacted your spring break travel plans?

Vote online at www.tribune-georgian.com and see last week's results on page 5A.

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Creativity shines

Denese Proctor | Tribune & Georgian

Visitors and residents enjoyed a beautiful spring day Sunday during the Jazz 'n' Art on the Riverwalk in Woodbine. Vendors displays included photos, jewelry, candles, paintings, painted gourds and more. Michael Hulett (right) performed for the crowds.

Perry

from page 1A

Shirt buttons that did not come from the Swains' clothing, telephone wires and shell casings believed to have been handled by the murderer are still in evidence and could be tested for touch DNA left by the shooter.

"If the buttons contained a DNA profile that did not match Perry, the logical conclusion would be that Perry was not the man wearing the shirt and, therefore, is not the man that struggled with Mr. Swain or committed the murders," the motion reads. "If this information had been available at trial, it is reasonably probable that Perry would have been acquitted."

Maxwell and Cribbs made the same argument about the casings and wire.

The Georgia Bureau of Investigation was unable to test the items for contact DNA prior to the trial but is now capable of performing the test, the motion reads.

"The prosecution's case against Mr. Perry is based entirely on eyewitness testimony from individuals present at the crime scene and law enforcement officers that reported Mr. Perry's unrecorded 'incriminating' statements," according to the motion. "There is absolutely no physical evidence that connects Mr. Perry to the Swain murders."

The motion details the crime and the two investigations, presents an alternate suspect, discusses the physical evidence and advancements in contact DNA testing and describes issues with the eyewitnesses' descriptions and identification of the suspect.

Maxwell and Cribbs also note that many of the witnesses are now deceased.

The crime

On Monday, March 11, 1985, the Swains and nine women were attending a mission meeting at the church. Shortly before 9 p.m., Vanzola Williams left and walked through the church's vestibule.

"She was startled to see a white man leaning against the wall," according to the motion. "Ms. Williams asked the man if she could help him and he indicated he wanted to talk to 'someone' in the main room of the church. The man put his head through the swinging doors and pointed at Harold Swain, saying he wanted to talk to 'him.' A few of the women caught a glimpse of the man when he peered into the church."

Williams went back into the meeting and returned with Swain. She heard a brief exchange between the men before leaving.

Shortly after Swain encountered the man, witnesses heard a struggle followed by four gunshots. Williams, who had yet to reach her car, also heard the shots. Harold Swain was shot three times in the chest and once in the back of the head.

Thelma Swain then ran into the vestibule and the man fired a single shot into her chest.

"Cora Fisher was standing at her seat in the pews when she saw the man shoot Mrs. Swain," according to the motion. "Fisher tried to run but she fell to the floor and passed out."

The other women took cover in the back room of the church. Williams ran around the church and entered through a back door. The women tried to call for help but the phone lines had been cut.

"After a period of time, Marjorie Moore fled to her car and drove down the road to a convenience store to get help," the motion reads. "The police arrived at the church shortly thereafter."

The first investigation

As evidence, investigators collected three pairs of eyeglasses, five bullet casings, five blue plastic shirt buttons, one white plastic button, two Pepsi bottles, a smudged mirror from the vestibule, four pieces of cut telephone line and the top of the telephone connection box that had visible smudges or fingerprints.

Investigators determined that one pair of glasses found at the scene did not belong to the Swains and would have been worn by someone "extremely" far-sighted with astigmatism in the right eye. Perry had 20/20 vision in both eyes and would not have worn glasses, according to the motion.

"Although the eyeglasses themselves would be a good source for DNA collection, unfortunately, these glasses are among the items of evidence that were 'lost' before Mr. Perry's trial and are no longer in existence," according to the motion.

"Much" of the physical evidence has been "'lost,'" according to the motion. Only the bullets, shell casings, blue buttons and three pieces of telephone wire were still available at the time of the trial.

The witnesses all said the murderer was a young, white male but the rest of their descriptions differed.

Amidst the tips that came in, an anonymous tipster named Dennis Perry as a suspect. In late 1984, Perry had moved from Camden County to Jonesboro, near Atlanta, where he worked for a concrete company.

"Investigators spoke with Perry's foreman and he was cleared as a suspect based partially on this conversation and based on the fact that Williams, the witness that had the most interaction with the shooter, failed to pick Perry out of a photographic lineup shortly after the crime," according to the motion.

No arrests were made then or later when more tips poured in after "Unsolved Mysteries" did a TV episode about the murders in the late 1980s.

The second investigation

In early July 1998, the Camden County Sheriff's Office assigned the case to investigator Dale Bundy, who re-interviewed the witnesses. In talking to Fisher, he learned that someone had shown her a photo of a man about seven years after the murders.

"Fisher 'froze up' when she saw the picture and testified that the man in the picture was the same man that shot the Swains in the church in 1985," according to the motion. "When pressed for information about the identity of the killer, Fisher stated only that the perpetrator's grandfather lived in a white house near the intersection of Spring Bluff Road and Dover Bluff Road; based on this information alone, Bundy believed that Fisher was describing Dennis Perry."

Bundy showed Fisher and Williams a single photo of Perry. They both identified him as the shooter. Fisher also said he was the man in the previous photo, which had been shown to her by Jane Beaver, the mother of Perry's ex-girlfriend.

On Aug. 20, 1998, Bundy interviewed Perry at his home in Florida. Perry said he was in Atlanta at the time of the shooting, knew of Harold Swain but had never met him, wouldn't do something like that and didn't own a handgun.

"Perry was never contacted again by law enforcement until Jan. 13, 2000," according to the motion. "On that day, Dennis Perry was on his way home from work when he was arrested for the 1985 Swain murders."

Alternate suspect

In 1985, three people told investigators that Donnie Barrentine claimed to have shot a preacher at a Georgia church. One said the murder of Harold Swain was a tactic to draw out his son-in-law who owed a drug debt to Barrentine's cousin.

Investigators questioned him in July 1985 and Williams identified Barrentine as the killer from a live lineup. An arrest warrant was prepared but never submitted it to a judge.

Barrentine testified for the defense at Perry's trial, denying any involvement in the murders. His employment records showed that he worked March 11 and March 13 but did not come to work on March 12.

Eyewitness testimony

Cribbs and Maxwell claim the eyewitnesses' descriptions of the shooter are unreliable for several reasons, including that they only saw the man briefly.

They raise the question of cross-race effect, which is "a common cause of eyewitness error," according to the motion.

The effect could come into play because the witnesses are all black, the shooter is white, the motion reads.

"For 100 years, researchers have been aware that individuals are less likely to remember, and later recognize, the face of someone who is of another race versus someone of their own race," the motion reads. "Researchers have consistently found that when asked to recall faces they have previously seen, people correctly identify more members of their own race and falsely identify more members of another race."

Cribbs and Maxwell detail that the "description of the man was drastically different and contradictory from witness to witness." The descriptions vary by hair color, length and type; facial hair; clothing; and whether he was wearing glasses or not.

"Additionally, Ms. Fisher, a key witness for the prosecution, gave several descriptions of the perpetrator that changed considerably over time," according to the motion.

She first told investigators that the man had "'light medium brown'" hair; later she said "'brownish and black'" hair that curled, then said "'yellowish or whitish'" hair in her deposition.

"The jury only heard testimony that the perpetrator had blonde hair," the motion reads. "In reality, of the six witnesses able to describe the man's hair color, three described a color other than blonde at some time. Yet, the jury was never presented with this important, contradictory information."

Cribbs and Maxwell also claim that the eyewitnesses' identification of Perry were contaminated.

"Investigators interviewed seven eyewitnesses that were present at the church on the night of the murders," according to the motion. "Of these seven women, only two, Ms. Williams and Ms. Fisher, eventually identified Dennis Perry as the perpetrator. However, these identifications were not made until 1998, 13 years after the murders, and after Jane Beaver showed both witnesses a single photograph of Dennis Perry. Additionally, none of the eyewitnesses that testified at trial were asked to identify Mr. Perry as the shooter in the courtroom."

Beaver then showed Fisher the photo and Bundy later showed Fisher a single photo when she identified Perry, according to the motion.

"This identification occurred under circumstances that were, at best, less than ideal, while Ms. Fisher was sitting on the floor of her home waiting for an ambulance after she had fallen down," motion reads. "Ms. Fisher's identification was made 13 years after the crime, under stress — after she had just fallen — and was contaminated by Jane Beaver's introduction of a photograph of Perry. Furthermore, the identification was irreparably skewed as Ms. Fisher was shown only a single photograph of Dennis Perry, rather than a photographic lineup."

The identification by Williams, who got the best look at the shooter, was also contaminated and is unreliable, according to the motion. Williams did not initially identify Perry and Beaver showed her a photo of Perry, too.

"When Ms. Williams was shown a photo array that included Dennis Perry's picture shortly after the murders, she did not identify him as the shooter," the motion reads.

Bundy also showed Williams a single photo of Perry in 1998.

"No one identified Dennis Perry as the shooter until 13 years had gone by and after Jane Beaver suggested his involvement in the crime by showing them a single photograph of Dennis Perry," the motion reads. "Furthermore, Investigator Bundy failed to use the standard procedure of showing a witness a photographic lineup and, instead, chose to present the witnesses with one mug shot. It is no surprise that the two witnesses made an identification under these questionable and highly suggestive circumstances."