

June 28, 2005

High Court to Consider Death Penalty Case

By THE ASSOCIATED PRESS

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WASHINGTON (AP) -- The Supreme Court said Tuesday it would decide when people should get a fresh chance to prove their innocence, agreeing to hear a Tennessee death row inmate's appeal based on DNA evidence that wasn't available when he was convicted of killing a young mother.

The outcome could determine when prisoners can use this modern scientific technique to get a new trial, an issue especially important for people convicted years before the advent of sophisticated genetic technology. More than 150 people have been exonerated on the basis of DNA evidence.

Justices will clarify the standards for winning new trials in the 20-year-old case of Paul House, a convicted sex offender who was accused of raping and beating to death a neighbor, Carolyn Muncey.

He was convicted of Muncey's murder, but later DNA tests, which were not widely available at the time, revealed that semen on Muncey's underwear and nightgown came from her husband.

House lost an appeal at the 6th U.S. Circuit Court of Appeals, on an 8-7 vote, and asked the high court to review his case.

"This will be the first time the Supreme Court considers the impact of DNA evidence on the constitutional right to a fair trial," said Nina Morrison, an attorney with the Innocence Project in New York, a legal clinic that handles DNA cases. "The justice system has been revolutionized by scientific evidence since the time Paul House was tried."

Morrison said that her project is handling about 100 cases involving prisoners who want a chance to prove their innocence with DNA. Most were convicted in the 1980s and early 1990s.

Jennifer Smith, an associate deputy attorney general in Tennessee, argued that there is not enough evidence to reopen the House case. She said that House could instead seek clemency from Tennessee's governor.

Kent Scheidegger, legal director of the Criminal Justice Legal Foundation, a pro-death penalty group, said the Supreme Court should not lower the standard for inmates who want new trials. "It would be misused by courts that are hostile to the death penalty," he said.

The Supreme Court usually handles several death penalty cases a year. Already, justices are hearing arguments this fall in a case that asks if someone convicted of murder can offer evidence at sentencing that casts doubt about culpability.

The court was particularly active on death penalty issues during the session that ended Monday, making it unlawful to execute juveniles, scolding prosecutors for stacking a jury on racial lines and ruling it was unconstitutional to force defendants to appear before juries in chains during a trial's penalty phase.

The House case sharply divided the appeals court last October.

"I am convinced that we are faced with a real-life murder mystery, an authentic 'who-done-it' where the wrong man may be executed. Was Carolyn Muncey killed by her down-the-road neighbor Paul House, or by her husband Hubert Muncey?" Judge Ronald Lee Gilman wrote.

The decision against House cited evidence including witnesses who saw House near a creek bank where the body was found, and testimony that he had scratches and bruises.

"Although the evidence against appellant was circumstantial, it was quite strong," Judge Alan E. Norris wrote in the majority opinion.

House had recently moved to the rural hill country of East Tennessee from Utah, where he served time for sexual assault, when Carolyn Muncey went missing in July 1985.

House's lawyers say the investigation should have focused on Hubert Muncey, a well-known member of the community known as Little Hube. He had abused his wife and confessed to friends that he killed her, justices were told by House's public defender, Stephen Michael Kissinger.

Kissinger argued that in light of recent exonerations of death row inmates and other prisoners, the court should revisit a 1993 ruling that suggested death row prisoners with claims of innocence should seek executive clemency, not count on extra rounds of federal appeals. That ruling was written by Chief Justice William H. Rehnquist.

The case is House v. Bell, 04-8990.

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On the Net:

Supreme Court: <http://www.supremecourtus.gov/>

May 7, 2005

Lab's Errors Force Review of 150 DNA Cases

By **JAMES DAO**

WASHINGTON, May 6 - A sharply critical independent audit found Friday that Virginia's nationally recognized central crime laboratory had botched DNA tests in a leading capital murder case. The findings prompted Gov. Mark Warner to order a review of the lab's handling of testing in 150 other cases as well.

Among the auditors' eight recommendations, all of which were accepted by Mr. Warner, were that the governor restrict the work of the lab's chief DNA scientist, Jeffrey Ban; review 40 cases that Mr. Ban has handled in recent years, along with a sample totaling 110 additional cases; and develop procedures to insulate the lab from any outside political pressures.

Experts said the findings could lead to a re-examination of scores of past prosecutions, including those involving some of the nearly two dozen inmates on Virginia's death row, and might also throw into turmoil many current prosecutions in which the lab's work helped identify or rule out suspects.

"You have to have doubts about the reliability of any case coming out of there," said Betty Layne DesPortes, a criminal defense lawyer from Richmond who heads a legal panel for the American Academy of Forensic Science. "How can we be sure that this case wasn't typical?" she said of the handling of evidence in the prosecution of Earl Washington Jr.

The governor called for the independent audit of the lab last fall in response to the case of Mr. Washington, a retarded man who came within days of execution for a rape and killing before DNA evidence, though not resolving the case, did raise doubts about his guilt.

The audit's findings come at a time when DNA is growing in importance in implicating and exonerating suspects. Forensic labs in several states, including Oklahoma and Texas, have come under intense scrutiny for their mishandling of that and other evidence.

The outside auditors, from the American Society of Crime Laboratory Directors, found that the Virginia lab's internal review process was flawed. They also raised concerns that lab workers had felt pressured by their superiors as well as the office of Jim Gilmore, who was governor when a flawed test of newly discovered DNA was conducted in 2000, to produce quick and conclusive reports in the Washington case, even when the evidence was muddled.

"Pressures from outside the laboratory and excessive managerial influence from within the laboratory," the report said, "had a detrimental effect on the analyst's decisions, examinations and reports in this

case."

In an interview, Mr. Gilmore, a death penalty supporter now in private law practice, said that while he had "demanded all the proper evidence we could get," he had never asked the lab to reach any particular conclusion.

Virginia has executed more people, 94, than any other state except Texas since the Supreme Court allowed reinstatement of the death penalty 29 years ago. Mr. Washington was initially sentenced to death for the 1982 rape and fatal stabbing of Rebecca Williams, a 19-year-old mother from Culpepper, Va., but the sentence was commuted by Gov. Douglas Wilder in 1994. He was then pardoned by Mr. Gilmore in 2000 because of DNA evidence that raised doubts about his guilt.

But because of mistakes in the DNA tests by the crime lab in 1993, his lawyers assert, he stayed on death row seven years longer than necessary. And additional botched testing in 2000, they say, is the reason he has never been fully exonerated.

"This laboratory touts itself as the best state lab in the country, yet it generated these wrong test results in a capital case twice," said Peter Neufeld, a lawyer for Mr. Washington who is co-director of the Innocence Project. "This case raises very serious questions about the legitimacy of the capital justice system."

Mr. Washington, 45, is living in a home for the mentally retarded on Virginia's Eastern Shore. When he was told Friday afternoon about the audit's findings, he said he hoped he would now be officially declared innocent in the Williams murder, Mr. Neufeld said.

Mr. Ban, a nationally recognized forensic scientist who has helped other states develop DNA policies, trained many members of the Virginia lab's staff. As a result, the auditors recommended that independent experts review tests by other analysts there involving low levels of DNA - the type of evidence used in the Williams case - to ensure that similar problems were not rampant at the lab.

The audit found an array of problems in the way Mr. Ban had conducted and analyzed DNA tests in the Williams case. Those mistakes caused him to conclude incorrectly that a convicted serial rapist named Kenneth Tinsley was not the source of semen found in Ms. Williams, even though he had been found to be the source of DNA on a blanket at the crime scene.

But a test commissioned by Mr. Washington's lawyers in 2004 pointed to Mr. Tinsley as the likely sole source of the DNA found in Ms. Williams. Had the state lab come to the same conclusion, Mr. Washington's lawyers claim, Mr. Tinsley would have been prosecuted for the Williams murder years ago. He never has been, though Mr. Neufeld said he was now imprisoned in an unrelated rape case.

The Virginia legislature enacted a law this year that makes the Division of Forensic Science, which runs the central crime lab, an independent state agency and creates an advisory board, made up in part by division employees, to help oversee its work. But Mr. Neufeld said the legislation did not go far enough

because it did not create an entirely independent office to review the lab's work.

"The audit provides compelling evidence that crime labs can't police themselves," Mr. Neufeld said.

Paul B. Ferrara, the director of the Division of Forensic Science, who in the past refused to acknowledge any errors in the Washington case, declined to be interviewed. But in a statement, he said the audit "belies the major body of other work" by Mr. Ban that helped lead to Mr. Washington's pardon.

Ms. DesPortes, of the forensic science academy, criticized Mr. Ferrara for what she described as his failure to shield Mr. Ban from "typical" political pressure on crime labs. She said his response to the audit suggested that he would not vigorously carry out its recommendations.

"He seems to think a perfect lab is one where errors never occur," she said. "But errors are going to occur. A perfect system is one that is able to catch its mistakes, and correct them."