

Why Jerry Conner Did Not Seek Clemency Today

Ten days from his scheduled execution, Jerry Wayne Conner is in the same position he was in almost two months ago when he first asked the State to consent to DNA testing. Attorneys for Mr. Conner did not participate in today's clemency hearing before Governor Easley, because they were unable to adequately represent Mr. Conner before the Governor given the questions still existing about his guilt. Mr. Conner has presented both the courts and the governor with the means to answer these questions—a new DNA test that would conclusively answer these questions. Until answers are available, participation in the clemency process would not be constructive.

REQUEST FOR DNA TESTING

A fundamental question must be asked before Mr. Conner's May 12 execution date: what is the harm in conducting a DNA test that can conclusively determine whether the State correctly identified Mr. Conner as the person who raped Linda Rogers? If the State gets this wrong, the harm to Jerry Conner and to the citizens of the State of North Carolina is unimaginable.

At Jerry Conner's 1991 trial for armed robbery, the murder of Minh Rogers and the rape and murder of Linda Rogers, the State's prosecution theory was simple: these acts were committed by a single person, Jerry Wayne Conner. Unfortunately for the State, it had to pursue this theory without use of the most unassailable of evidence—a DNA test linking Mr. Conner to the crimes. Because the crimes included a sexual assault, biological evidence was available. At the State's request, the evidence was tested, but the results were inconclusive. Left without the most probative evidence, the State was forced

to rely on Jerry Conner's statements to law enforcement—statements replete with inconsistencies and other indicia of its unreliability.

DNA testing methods have evolved a great deal since the original tests in Mr. Conner's case were conducted more than 15 years ago. Using modern testing methods we can determine conclusively whether or not Jerry Conner is the source of the semen sample found at the crime scene. According to Shawn Weiss, Associate Director of Forensic Identity for Lab Corp of America, the new STR testing would be more reliable and significantly more probative than the RFLP testing used in 1991 by the FBI. Mr. Weiss states that greater accuracy and probative value is assured because, unlike RFLP testing, STR testing can be conducted on significantly smaller quantities of biological evidence, is more sensitive, and broadens the scope of the testing to evaluate substances other than spermatozoa such as epithelial cells and white blood cells.

Mr. Conner's interest in a DNA test is not a newborn reaction to the scheduling of a May 12 execution date. The State first requested that the FBI test the biological evidence prior to Mr. Conner's trial in 1991. That test proved inconclusive. Mr. Conner asked for a new test on August 17, 1998, prior to filing his Motion for Appropriate Relief in State Court. That test was denied, as was his more recent request in March 2006.

The other evidence in the case is unreliable. Although Mr. Conner "confessed" his involvement in these crimes at the time of his arrest, his statements to the police were taken under the threat of the death penalty and were marred by internal inconsistencies. Although many find it difficult to imagine how someone could admit to a crime they did not commit, the Innocence Project reports that false confessions have been present in more than 1 in 4 DNA exonerations that have occurred across the country.

Dr. Solomon Fulero, a professor of law and psychology, has reviewed Mr. Conner's statements to law enforcement as well as the trial testimony of the interrogating officers, and has concluded that there are profound and disturbing questions about the reliability of Mr. Conner's statements. Dr. Fulero has testified numerous times as an expert in the psychology of interrogations and confession and whose work on the relationship between mental retardation, suggestibility and confession has been cited by the United States Supreme Court. Dr. Fulero considered many factors in his analysis including Mr. Conner's borderline mental retardation and concluded that given Mr. Conner's psychological make-up, the interrogation techniques employed by law enforcement had a highly coercive effect on Mr. Conner.

Even the law enforcement officers who questioned Mr. Conner following his arrest testified at his trial that they had questions about the veracity of Mr. Conner's statements. Deputy Sheriff Stallings testified that it was difficult to believe many of the details included in Mr. Conner's confession and SBI Agent McCloud testified that Mr. Conner was uncertain of many of the details surrounding the crime. Although Mr. Conner's trial lawyers believed the statements were unreliable, they never retained expert assistance to assist them in arguing their unreliability to the jury, and because science had not evolved to the degree where a conclusive DNA test could be done, Mr. Conner's trial attorneys were forced to pursue unorthodox methods in their attempt to help Mr. Conner avoid a death penalty. Accordingly, they made a strategic decision to admit Mr. Conner's guilt of the murders and beg the jury for a life sentence.

The State also introduced at trial evidence of a bloody shoe print found in the store; an SBI agent testified that the print matched a Nike shoe found at Mr. Conner's

home. Yet no evidence of blood was found on the shoe or in the car belonging to Mr. Conner. Equally important, Mr. Conner stated in his confession that he disposed of the clothes and shoes he wore that night.

The State also relied on evidence of witnesses who identified Mr. Conner as the man they saw outside the store at the scene of the crime who identified himself as a DEA or SBI agent and who carried a shotgun. Mr. Conner did not confirm these details in his confession.

Other statements gathered by police following the murders, but withheld from the jury at trial, further call into question Conner's identification by witnesses at the scene of the crime. Moreover, some of the evidence gathered by police, point in the direction of a third party who may have committed these murders. For example, on August 20, 1990, Jacqueline Boone gave two statements to law enforcement officials. In her first statement, Ms. Boone stated, in pertinent part, the following:

Boone stated that on Saturday night, August 18, 1990, she and her husband Gayron L. Boone, Jr., had traveled Highway 13 south coming from Roduco to their home. Boone stated that they had passed Rogers Grocery at approximately 9:20 p.m. and made the left turn at the store to travel east on the secondary road by the store. Boone stated that as they got in front of the store, while traveling on Highway 13, they observed M.L. Rogers outside the store walking in the direction of the area of where the old gas pumps once were. Boone stated that a white male was walking very close to her and as he talked, was using a lot of hand and arm gestures. Boone stated that this scene looked very odd to her and she paid very close attention as they were slowly making the left hand turn beyond the store. Boone stated that the white male was very close to Rogers' face as he talked and gestured, and they could possibly been arguing. Boone stated that it was odd to see M.L. Rogers outside the store at night with someone like this.

Boone stated that she observed M.L. Rogers and this male turn and walk to the south side of the building where a two-tone blue full size Dodge pickup was parked. . . Boone stated that this vehicle was occupied by possibly three (3) white males, each with collar length hair. Boone stated that she thought each was wearing a cap. . . .

Boone stated that the subject M.L. Rogers was talking and walking with was a white male, possibly twenty-two (22) to twenty-three (23) years of age with dirty blond hair, approximately collar length. Boone stated that this subject was of a slim build and appeared to be 5'8" inches tall. . . .

(Statement of Jacqueline Boone, Exhibit 2 to Mr. Conner's Reply to the State's Answer to his Second Motion for Appropriate Relief).

This first statement by Boone indicates that one of the victims was seen in unusual circumstances with a young white male outside the store, at a time when the store normally closes. The description provided by Boone does not fit the defendant. According to Boone's second statement to police, the Rogers' store "usually closed 9-9:30 p.m." She recognized the victims' cars in the parking lot. She was "certain that the person she saw was not Conner - longer hair; similar to #1 in 8 photo i.d." This statement contradicts some of the testimony by the state's witnesses at trial.

The State's evidence of guilt is flawed in important respects. The confession by this borderline mentally-retarded individual is unreliable. Further, the identification of Conner at the scene by the State's witnesses is impeached by other witness statements not introduced at trial.

The State's theory of guilt has always been that one person, Jerry Conner, raped Linda Rogers and shot and killed Linda and Minh Rogers. New DNA testing will conclusively show, one way or another, whether Jerry Conner committed the rape of Linda Rogers. The State has presented no plausible theory that Jerry Conner could be innocent of rape and yet guilty of the murders or armed robbery. Under the State's

theory, the DNA evidence is probative, therefore, of Jerry Conner's guilt as to all of the crimes for which he was convicted and sentenced to death.

In contrast to its present position, the State has demonstrated confidence in the relevance and probative value of a DNA test since prior to Mr. Conner's 1990 conviction when the State first sent a biological sample to the FBI for DNA testing. Mr. Conner is simply requesting now what the State thought to be prudent and necessary, but was ultimately unavailable at that time: scientifically validated testing of biological evidence that can reliably identify the contributor of the semen found in Linda Rogers. The State has identified no harm to its interests by allowing such a test; contrariwise, if Jerry Conner is innocent, the harm by foregoing the DNA testing is incalculable.

JUROR MISCONDUCT

Along with claims challenging his convictions, Mr. Conner has litigated claims challenging the constitutionality of his death sentence—specifically, questions raised by the inclusion of a biased juror, Helene Knight, serving on his 1995 re-sentencing jury. As News Editor of the local newspaper, Ms. Knight had cultivated a close relationship with several of the law enforcement officers who investigated the case and served as key witnesses against Mr. Conner in court. Through this relationship, the Ms. Knight obtained confidential information about Mr. Conner and his case. A federal judge expressed grave concern that Conner's case represented a “quintessential instance of juror bias” and “comparable to or greater than the risk in *virtually every other Supreme Court case on actual bias.*” *Conner v. Polk*, 407 F.3d 198, 210 (4th Cir. 2005) (emphasis in original).

In 1991, Helene Knight worked for the *Gates County Index*, and was assigned to cover Mr. Conner's case. Knight attended every stage of the 1991 trial. When Mr. Conner's case returned to court in 1995, Knight was called for jury duty. Knight was selected as one of the jurors who would decide whether Mr. Conner lived or died. When asked whether she had discussed the case with persons who had first-hand knowledge about the facts, Knight said no, kept silent about her close connections to law enforcement officials, and hid her insider knowledge about Mr. Conner's case.

Juror Knight had a close relationship with the Sheriff and SBI officers who investigated the case and testified for the State. The Sheriff had told Knight of evidence that was not admissible in court, including emotional evidence about how the 14-year-old son of Minh Rogers reacted to news of his mother's death. This is not a case where Mr. Conner's claims were adequately heard by the courts. Mr. Conner was turned away by every court each time he asked to present evidence about whether his right to an impartial jury was violated by Knight's close — and undisclosed — relationship with prosecution witnesses. The only judge to acknowledge the unfairness in Mr. Conner's case was Fourth Circuit Judge Michael Luttig, often named as a likely nominee to the U.S. Supreme Court. In a strongly worded dissent, Judge Luttig argued that Mr. Conner was entitled to a hearing. Judge Luttig concluded that the state courts were unreasonable in denying a hearing on what amounted to a very real risk of juror bias.

CONCLUSION

There is little reason to have confidence that Mr. Conner's path through the capital litigation process has been fair. His early request for DNA testing during post-conviction was ignored by the courts; every court, both state and federal, rejected his efforts to

demonstrate unfairness in his case in an evidentiary hearing; the reliability of his statements to law enforcement are highly suspect; and despite scientific advances that could make it possible, there has never been a DNA test conclusively linking Mr. Conner to the crime. With each measure of unfairness, the strength of Mr. Conner's conviction diminishes precipitously and with it so does the assurance that North Carolina is about to execute the one man responsible for these crimes.

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