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June 14, 2022

VIA U.S. MAIL/VIA E-MAIL

Attention: Board of Parole
1220 Washington Avenue
Building #4
Albany, NY 12226
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CC: Todd C. Carville, Esq.
Assistant District Attorney
Oneida County District Attorney's Office
235 Elizabeth Street
Utica, NY 13501
E-mail: TCarville@ocgov.net

CC: Attention Community Supervision
Sullivan Correctional Institute
325 Riverside Drive
PO Box 116
Fallsburg, NY 12733
E-mail: Rebecca.Madison@doccs.ny.gov

Re: Robert Earl Hayes DIN# 04B3541 Parole Hearing

To Whom It May Concern:

We are writing to advise your office about a case that may warrant additional review before the next parole hearing for Robert Earl Hayes. It relates to new DNA testing results that implicate Hayes in a homicide case in Broward County, Florida. This is a matter of great public concern as double jeopardy precludes the prosecution of state homicide charges against him in Broward County.

Recent DNA testing conducted at the request of Hayes' defense has implicated him in the 1990 homicide of Pamela Albertson. He was tried twice for that crime and eventually acquitted by a jury in 1997.

The original DNA testing used in this case was among the first of its kind in Florida. It was deemed unreliable under the Frye standard, *Hayes v. State*, 660 So. 2d 257 (1995). However, in 2021, the newest DNA technology identified hair found clutched in the victim's hand, which was a hotly contested issue in both trials in Florida as well as a focus of the most recent defense request in the 1987 New York homicide of Leslie Dickenson. The newly tested evidence confirmed the DNA findings from the first trial were correct.

In 2019, the Broward County State Attorney's Office opened our Conviction Review Unit (CRU). The CRU was formed to continue our practice of reviewing and investigating claims of innocence. The CRU

screens cases for plausible claims of innocence and conducts detailed investigations. Since its inception, we have had one exoneration. We use the newest science, technology, techniques, experts, and laws to ensure that innocent people are free and that true perpetrators are held accountable.

In November of 2020, the Innocence Project of New York contacted our CRU regarding Robert Earl Hayes. The defense attorneys requested our assistance in reviewing a claim of innocence that involved Hayes' conviction for the 1987 homicide in New York and any possible link to his acquittal in Broward.

His defense requested testing of evidence from the 1990 homicide in Broward County. Hayes was convicted of first-degree murder in the Broward County case and sentenced to death but his conviction was overturned partly because of the Florida Supreme Court's DNA ruling. The evidence presented by the state in his retrial was severely limited by the appellate ruling and the second jury acquitted him.

The facts of the Florida case are as follows: the victim Pamela Albertson was a horse groomer working at the Pompano Harness Track in Pompano Beach. On February 20, 1990, when Albertson did not report to work, track security entered her dormitory room and discovered her dead body. Her death was determined to be from manual strangulation. Almost immediately, the investigation honed in on Hayes, an employee at the track. He was known for his history of violence and sexual harassment of Albertson and other women. Albertson expressed on numerous occasions that she was afraid of Hayes. Hayes was also seen the night before Albertson's death arguing with her outside of her door. Hayes initially denied seeing Albertson after 5:30 PM. After being confronted with eyewitness statements, Hayes admitted to speaking to Albertson outside her room that evening. He has consistently denied going into her room that night.

The medical examiner determined that Pamela Albertson was beaten, likely the victim of sexual battery and killed by manual strangulation. Seminal fluid was found on a red tank top near her body and rooted hairs were found clutched in her hand. DNA samples were first sent to Cell Mark Laboratories, which refused to test the vaginal swabs because they contained no visible sperm. In 1990, the samples were sent to Life Codes, a DNA testing company, which found a seven-band DNA match with the blood sample taken from Hayes as well as a three-band match from the tank top sample. Hayes was convicted at trial and sentenced to death in 1992. The conviction was overturned on appeal, *Hayes v. State*, 660 So. 2d 257 (1995), largely due to the banded DNA match being deemed unreliable. Hayes was re-tried in 1997 and found not guilty. A major theme of the defense at both trials was that the hair Albertson had clutched in her hand belonged to a Caucasian individual and Hayes is African-American. The defense at the second trial presented an alternative suspect, Scott Nicholas, a Caucasian male with a criminal history who worked on the same racing circuit. The FBI was contacted to look at the hairs in the 1990s but the hairs were not matched to anyone at the time. The FBI excluded Hayes as the source but never determined where the hairs originated.

The facts of the New York case are as follows: the victim Leslie Dickenson, a horse groomer working at the Vernon Downs race track, was found hanging in her dormitory on August 14, 1987. She had multiple stab wounds and cuts and her room was on fire. Dickenson's death was initially ruled a suicide. Broward County authorities, however, came to suspect the deaths of these two women were connected. Both victims were Caucasian women in their mid-thirties found strangled to death in their dormitory rooms at horse race tracks on the same circuit. After Hayes was arrested for Albertson's murder in Florida, New York authorities exhumed Dickenson's body. The medical examiner ruled Dickenson's death a homicide, concluding that she died from blunt force trauma, cuts to her body, and hanging. Hayes was one of two people who "found" Dickenson's body. In 2003, the Oneida County District Attorney's Office in New York charged Hayes with the murder of Dickenson. During the second day of his 2004 trial, Hayes pled guilty to manslaughter, arson, and burglary. During his allocution, he admitted he went to her room to steal money. After Dickenson hit Hayes' hand away, he punched her in the face, took an extension cord and tied it around her neck. He slit her wrists, cut her fingers, and set fire to her room in an effort to cover up his

crime. Hayes was sentenced to 15 to 45 years in state prison in New York. He will be eligible for parole in 2025.

To be clear, Robert Earl Hayes was brought to our attention long after his 1997 acquittal in Florida when the Innocence Project of New York representatives contacted our office in November of 2020 because they believed that the hairs found in Albertson's hand could assist the defense in the Dickenson case. The Innocence Project requested our permission to test the hairs found clutched in Albertson's hand to identify their origin.

The Conviction Review Unit, with the help of the Broward Sheriff's Office, assessed what evidence remained after Hayes' second trial: seven (7) samples of "light brown" hairs from Albertson's hand; vaginal, oral, and anal swab smear slides; and fingernails from Hayes and Albertson, which were never previously tested.

My office agreed to release the hairs for testing to the defense's choice of lab Forensic Analytical Crime Lab (FACL) in California. Albertson's profile, Hayes' profile, and a profile of the alternate suspect, Nicholas, were also released to the lab. As part of our agreement with Hayes' defense, CRU Assistant State Attorney-in-Charge Arielle Demby Berger and Broward Sheriff's Office Detective John Curcio also requested DNA testing of the swab smear slides and fingernails at the same lab.

The lab's DNA test report stated the results provided "very strong evidence" the male profile from the sperm on the vaginal swab smear slide originated from Hayes and that at least one of the hairs matches the victim's profile, but not Hayes or the alternate suspect. The rest of the DNA from the hairs was low-level and minimal. None of the tested DNA or hairs matched the alternate suspect, Nicholas. The new DNA test results from the vaginal swab point to Hayes' involvement in the Broward slaying of Albertson, despite the fact that a jury acquitted him of the state homicide charge in 1997. The DNA results from the hair support the theory that the victim's own hair was clutched in her hand during the fatal attack.

In addition to the heinous killings of Albertson and Dickenson, Hayes was a suspect in four additional alleged incidents involving women on or near the horse racing circuit in New Jersey, Pennsylvania, and Delaware from 1987 through 1989. Due to the nature of these crimes, the new and novel DNA testing, and Hayes nearing parole eligibility, we thought that it was imperative that we bring this evidence to your attention. Please let us know if you need additional information. We have contacted next of kin for both victims. The family of Ms. Dickenson would like to address the Parole Board. Ms. Albertson's family is still deciding if a representative would like to address the Parole Board. We would like to speak at the parole hearing if that is possible.

We greatly appreciate your assistance in this matter.

Sincerely,



HAROLD F. PRYOR
State Attorney

Attachments:

Final Report from Detective John Curcio
Final Report from Forensic Analytical Crime Lab (FACL)