

Two more cleared in Fusco murder

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After 17 years in prison and more than two years of waiting, Dennis Halstead and John Restivo were cleared today of the 1984 rape and murder of Lynbrook teenager Theresa Fusco.

Acting Supreme Court Justice William Donnino dismissed the indictments in Mineola, after Assistant District Attorney Fred Klein told the judge that there was not enough evidence to try the two men. Prosecutors concluded they "could not persuade a rational jury" that they were guilty "beyond a reasonable doubt."

The dismissal, which prompted applause in the courtroom by family and friends of the two men, came after the acquittal last week of Restivo and Halstead's co-defendant, John Kogut, in a non-jury trial before Acting Supreme Court Justice Victor Ort.

Kogut, Restivo and Halstead were convicted in 1986, but released in 2003 when newly discovered DNA -- sperm on a swab taken from Fusco's body -- failed to match their DNA profiles. To date, the evidence hasn't matched anyone in databases of known offenders or unknown DNA recovered from crime scenes.

Kogut was retried because he had given police a detailed written and videotaped confession. But Ort, in his verdict last week, said several facts in the confession were at odds with evidence presented at trial. Legally, Kogut's statement, which implicates the two, couldn't have been used against Restivo and Halstead anyway.

Ort also said he did not believe the only physical evidence in the case -- three hairs from Fusco that police said they found in Restivo's van -- were ever in the vehicle.

That finding, Klein said, was "likely going to preclude us from introducing" the hair as evidence in any trial, eliminating the only physical evidence linking the defendants to Fusco. That, in combination with the DNA and the lack of any confession from the two men, prompted the office to consent to the dismissal, he said.

Afterward, Restivo, 47, and Halstead, 51, said they were grateful for the dismissal but angry at police and prosecutors who, they said, were responsible for putting them in prison for a crime they didn't commit.

"We need to get to the bottom of this," said Restivo, who called for an outside agency to investigate what he called misconduct on the part of local law enforcement. He accused prosecutors and police of manipulating witnesses and evidence to knowingly frame the defendants and lying to the family of the victim.

Halstead said he felt "a huge weight off of my shoulders." While both men had been free and living in Florida, they remained under indictment until today.

Police referred all comment to the district attorney's office. Klein, responding afterward to charges of misconduct, said, "Before the DNA evidence came out, 24 jurors unanimously agreed they were guilty. They

lost every appeal they had and if it wasn't for the good faith of the district attorney's office in consenting to new trials after the DNA evidence was finalized, they would still be in prison. I think we did our job in 1985 and 1986, we did our job in the 20 years in between and I know we did our job today."

Theresa's father, Thomas Fusco, said outside court that his family is "completely heartbroken."

"I believe these people were the people," he said. "This is a hard decision for me. My concern now is to move on."

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