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State court overturns DNA testing order in 1976 triple murder of mom and kids

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Thirty-seven years ago, Claire Kepner and her two children were murdered in their Lycoming County home.

And for nearly as long, **Milton Scarborough** has insisted he had nothing to do with those slayings.

Over the decades, his appeals to the state and federal courts have failed, even as multiple prosecution witnesses who helped convict him of three counts of third-degree murder have recanted their testimony.

Now the state Superior Court has handed the 73-year-old Scarborough another legal setback.

In a ruling issued Monday, that court concluded that a county judge who weighed Scarborough's latest challenge to his conviction and 30- to 60-year state prison sentence incorrectly applied the law in agreeing to allow DNA testing that Scarborough sought on evidence from the murder scene.

Scarborough is contending that results of that genetic testing, which wasn't available when Kepner and her children were killed in August 1976, would exonerate him of the murders.

Leonard Sosnov, one of Scarborough's attorneys, said Tuesday that Scarborough's legal team will consider appealing the Superior Court's decision to the state Supreme Court. Sosnov declined further comment on the case.

Lycoming County District Attorney Eric R. Linhardt couldn't immediately be reached for comment on the Superior Court's decision. In contesting Scarborough's DNA testing request, prosecutors have argued that the mere absence of his DNA from the murder scene wouldn't necessarily prove that he didn't participate in the slayings.

While the state court's ruling voids the DNA testing approval given by Tioga County Judge Robert E. Dalton Jr., who is presiding specially in Scarborough's case, it doesn't shut the door completely on the possibility that Scarborough will secure the testing.

The Superior Court in an opinion by Senior Judge Robert E. Colville said only that Dalton cited the wrong legal standard in granting Scarborough's testing request and should have required Scarborough to provide more solid proof that a DNA exam of the murder scene evidence would prove his assertion that he is innocent.

But the state judges didn't rule out the possibility that Dalton could apply another legal rationale and again approve the testing that Scarborough seeks and is offering to pay for himself.

Instead, Colville and his colleagues sent the DNA issue back to Dalton for reconsideration, with direction that he "may conduct whatever proceedings (he) deems necessary to comply with our instructions and otherwise resolve this case."

Scarborough has consistently argued that he wasn't at the murder scene and didn't participate in the slayings. The DNA testing he requests would focus on a palm print found in Kepner's secluded Muncy-area house, fingernail clippings and a blood print.

The palm print was lifted from a lamp that investigators claimed Scarborough pulled down during the murders. The blood print was found near the bodies of Kepner's children, 10-year-old Tammy and 18-month-old Tommy.

Investigators concluded that Kepner, a 30-year-old single mother, and her children were slain during a robbery. All three were shot.

Scarborough and two brothers, David and Robert Hubble, were arrested by state police months after the murders. The men were tried in Lebanon County Court due to extensive publicity of the slayings.

The Hubble brothers also were convicted of the murders and were sentenced to consecutive life prison terms.

Scarborough is serving his sentence in the state prison at Laurel Highlands. David Hubble, 60, and his 58-year-old brother, who also have mounted failed appeals, are serving their life terms at the state prison at Dallas.

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