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STATE OF NEW JERSEY, · TRANSCRIPT
 · OF
 ·
 · PROCEEDINGS
NATHANIEL WALKER, ·
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 ·
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NOVEMBER 5, 1986
UNION COUNTY COURTHOUSE
ELIZABETH, NEW JERSEY

B E F O R E:

THE HONORABLE ALFRED M. WOLIN, A.J.S.C.

A P P E A R A N C E S:

RICHARD P. RODBART, ESQ.
Assistant Prosecutor
for the State

PAUL J. CASTELEIRO, ESQ.
Attorney for the Defendant

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THE COURT: Mr. Prosecutor, what matter is this, please?

MR. RODBART: I come before the Court at this time--

MR. CASTELEIRO: Your Honor, I have an application.

Before we continue, could we have Mr. Walker take his jacket off?

THE COURT: His handcuffs may be removed.

MR. RODBART: Your Honor, for the record, the State and counsel are before the Court at this time on Union County Indictment 1266 May 19, 1974. This matter currently stands in a closed status in terms of court proceedings, there having been a conviction after trial by jury some 10 years ago in this county. The defense counsel, I believe, has an application to present to this Court at this time.

THE COURT: Counsel, please enter your appearance.

MR. CASTELEIRO: Paul Casteleiro on behalf of Mr. Walker.

Your Honor, this is a motion. The Court is well aware of the background of it. It's a motion based upon a disclosure of evidence which

1 unequivocally demonstrates scientifically
2 that, in fact, Mr. Walker could not have been
3 the perpetrator of the kidnap and rape, sodomy,
4 which he was convicted of in 1974.

5 The brief history, your Honor. In 1974
6 a woman was abducted on the streets of Elizabeth,
7 New Jersey and had been taken to Newark, she was
8 raped, sodomized, and then brought back to
9 Elizabeth and released by the abductor. And at
10 that point was taken to Elizabeth Hospital in
11 the city. A Dr. O'Connor examined her, and at
12 that time he took samples from the vaginal cavity
13 of the victim, which in his opinion indicated
14 that there was sperm present in the vaginal
15 cavity. He took slides and swabs of the contents
16 of the vagina, and that's where it rested.

17 The victim subsequently in February of
18 1975 in a lineup, picked Mr. Walker out of the
19 lineup saying that he, in fact, was the person
20 who abducted her and who raped her. It went to
21 trial in 1976 in this courthouse. Mr. Walker
22 was convicted, despite a defense in which he
23 ascertained that he was working at the time of the
24 offense, or shortly before the offense, until
25 11:31, the offense allegedly taking place at 12:15.

1 He presented alibi witnesses. He presented
2 medical testimony indicating that he had a normal
3 scrotum with two testicles, the victim having
4 said she believed the person who performed
5 the abduction had one testicle. And he
6 presented evidence that he had been uncircumcized.

7 The case went to trial. He got convicted,
8 got sentenced imposed on him of life plus 50 years.
9 During the whole time--in fact, during the sentencing
10 in this case, Mr. Walker stood up, interrupted the
11 sentencing judge and protested his innocence.

12 In 1986, your Honor, we had become involved with
13 this case, had conferences with the Prosecutor's Office
14 providing the discovery in this case. Mr. Rodbart gave
15 discovery, which they were unable to obtain due to
16 their distruction. In those reports, there was
17 indication in the medical record and, in fact,
18 samples had been taken of the victim that night.
19 Those samples were located and they were sent to the
20 F.B.I. Laboratory. The F.B.I. Lab came back
21 indicating that there was a presence of A, B, and H
22 antigens on the swab taken from the vaginal
23 cavity. The Court is aware of the submissions.
24 There were four types of blood, A, B, AB and O.
25 Only O gives off O antigens. A gives off A antigens.

1 B gives off B antigens. A and B gives off both AB
2 antigens. All types gives off H antigens.

3 Mr. Walker was then tested. It was determined
4 that, in fact, he was type A blood. And also in
5 that evidence he was a secretor. Some people do
6 not secrete. Then the victim was tested. It was
7 determined that she also was type A blood.

8 This all meant, your Honor, and this is
9 stipulated to based upon the prosecutor's
10 investigation on the matter and my investigation of
11 the matter, and through all the experts we
12 consulted, that the B antigen present on the swabs
13 and slides taken from the cavity of the vaginal
14 cavity of the victim on the night of the rape
15 were uncounted for. And, in fact, the defendant,
16 Nathaniel Walker, could not have been the person
17 who abducted and raped her. As a conclusion, in
18 fact, the rapist is either a person with both
19 type B blood or type AB blood, and, in fact, the
20 secretor.

21 From all the evidence we have been able to
22 gather on this, your Honor, that A blood grouping,
23 each and every person is in agreement, all the
24 experts, and some referred to this submission,
25 that it's impossible that Mr. Walker could have

1 been the rapist. Based upon that, your Honor,
2 we're asking that Mr. Walker be granted a new trial.
3 It's my understanding from the conversations I had
4 with the prosecutor is if, in fact, the Court
5 grants the motion for a new trial, the prosecutor will
6 submit a dismissal. In fact, this case will be
7 dismissed upon the granting of the motion for a
8 new trial.

9 Thank you.

10 THE COURT: Thank you, Mr. Casteleiro.

11 Before I hear from the Prosecutor, would you
12 take his legs iron off also.

13 MR. PROSECUTOR, I'll hear you.

14 MR. RODBART: Thank you, your Honor.

15 The record should show, of course, this is
16 a joint application. I take the time to commend
17 counsel for his diligentness and his dedication
18 to this case, and to his discerning eye to catch
19 material that was previously overlooked. If it was
20 not for his diligentness and dedication, it's
21 unquestioned that we would not be here today.

22 I've reviewed the standards pursuant to
23 Rule 3:20-1, which is the new trial motion rule.
24 One of the facets of that rule covers the strictions
25 of a motion for a new trial based on newly discovered

1 evidence; that is, the motion before the Court
2 at this time.

3 I reviewed State v. Carter at 91 N.J.,
4 Page 86, specifically the standards enunciated
5 by our Supreme Court, 121. That's a 1982
6 Supreme Court case. I am satisfied on behalf of
7 the State of New Jersey that those standards
8 have been satisfied and that the interest of
9 justice are similarly satisfied by this Court
10 fairly considering this motion and granting relief.

11 I echo the comments of Mr. Casteleiro.
12 There is no doubt that this is not a reasonable
13 doubt standard that we appear before the Court
14 and offer today. The State has no doubt that this
15 defendant is now excluded from the blood classification
16 of individuals who might have committed this assault
17 on the victim. The F.B.I. results were confirmed
18 in terms of cross comparisons between the blood
19 of the defendant, which was drawn in this courthouse
20 some days ago, and submitted both to the F.B.I.
21 and to the independent testing laboratory.

22 The victim, although, out of State and not
23 subject to the jurisdiction of this Court,
24 cooperated in the aftermath of the investigation,
25 and agreed to the taking of her blood for the purpose

1 of this pending motion. That blood was tested
2 at a local hospital in her state of residence
3 for blood testing and secretor status. A second
4 sample was drawn at that time last week, and
5 also forwarded to a laboratory in Bayonne on behalf
6 of the defense for independent testing. The
7 results were identical, A positive secretor.

8 In that status, as I said previously, the
9 State is absolutely convinced that this defendant
10 is excluded from the classification of persons who
11 could have committed the assault. In this joint
12 application, the State also ask this Court now to
13 grant the application for a new trial.

14 Thank you.

15 THE COURT: Thank you.

16 This Court has had the opportunity
17 to review the moving papers and hear the argument
18 of counsel. It appears that despite the procedural
19 safeguards of the criminal justice system and
20 meticulous appellate review, an innocent
21 man has been incarcerated for a crime he
22 did not commit.

23 The strength and perhaps the virtue of
24 the criminal justice system is to recognize that
25 beyond the role of convicting the guilty and

1 acquitting the innocent is the continuing obligation
2 to see that justice is accomplished and that goal
3 endures even beyond the final appeal. Fundamental
4 fairness and common decency are inextricably
5 intertwined with a profound respect for individual
6 rights and liberty. Justice is a beacon of light
7 that illumines the path of freedom and should never
8 be darkened by an unforgiving or uncaring society.
9 Here, though belatedly, the evidence unequivocally
10 establishes that Mr. Walker did not commit
11 the horrible crime charged against him and he is
12 entitled to his freedom. Both the prosecutor
13 and counsel for the defendant are to be commended
14 for the effort undertaken in presenting this joint
15 application to the court. It demonstrates
16 the caring and fairness of the system when
17 confronted with its fallibility.

18 An incident such as this creates the
19 opportunity for great notoriety and that is good.
20 It also permits the system of criminal justice
21 and all of those connected with it a moment to
22 pause and reflect about its goals and purposes
23 too often brushed aside by the pressures of
24 its everyday existence. Such introspection and
25 self analysis redounds to the benefit and not the

1 detriment of justice.

2 There are those in our midst who will
3 view this day and these proceedings as a sad day
4 for the criminal justice system. With cynicism,
5 they will underscore the imperfection of a society
6 whose laws permitted an innocent man to be
7 separated from his family and deprived of his
8 liberty and freedom. this Court rejects
9 that narrow perspective without excusing
10 the injustice suffered by Mr. Walker. It prefers
11 to focus on the positive aspect of these
12 proceedings that permit an impersonal institution
13 of government to demonstrate individual care and
14 concern when provided the appropriate opportunity.
15 Occasions such as this serve as its finest
16 hour and all who have participated in these
17 proceedings here today may take pride in a task
18 well done.

19 The motion for a new trial is granted.

20 Mr. Casteleiro, as a result of newly
21 discovered evidence, sir, I will move to
22 sentencing on Essex County Indictment 3285-78.

23 MR. CASTELEIRO: Your Honor, I'll just leave
24 it to the Court's discretion.

25 I'll just note for the Court that Mr. Walker,

1 as it is my understanding, since he's been in
2 Trenton State some time since August of 1982, he has
3 been determined as a model prisoner. I ask the Court
4 to consider that, and I note the Court is aware
5 of the fact that Mr. Walker has a loving family.
6 A family who supported him throughout this entire
7 ordeal, having been labeled not only a rapist, but
8 also a kidnapper, and one who has preyed upon
9 someone who is in no position to fight back. And
10 standing by him, your Honor, the strength has, I'm
11 sure, increased, and their strength has increased. And I
12 believe he is a completely different person than
13 at the time initially when the victim received
14 the stolen car.

15 I'll leave it to the Court's discretion.

16 THE COURT: Thank you, Mr. Casteleiro.

17 I'll hear from you, Mr. Rodbart.

18 MR. RODBART: Your Honor, as the Court knows,
19 jurisdiction to bring such a motion would ordinarily
20 be out of time. This matter now falls under
21 Court Rule 3:21-10b. This is now a joint application
22 which breaks the jurisdictional bar to bring
23 such a motion. The State joins in the application
24 of counsel. I think it can only be fairly
25 characterized that Mr. Walker had overpaid any debt

1 he owed to society. That debt being in regard
2 to Essex County 3285-78.

3 I wish to place on the record that I
4 personally in the presence of Mr. Casteleiro
5 spoke with Judge Kushenmeister, who now sits in
6 the Superior Court in Bergen County, and having
7 previously sat in Essex County having sentenced
8 the defendant on the aforementioned indictment.
9 I spoke to him through the telephone and apprised
10 him in the fashion of this case and the expectation
11 of the motions which are before the Court today.
12 He advised me that he had no objection administratively
13 to your Honor hearing this application, this joint
14 application today, in lieu of all the papers being
15 removed to Bergen County to bring the application
16 before him. He further advised me that he had no
17 objection to the relief being sought and the
18 substantive sentence on this application.

19 The State urges upon your Honor in
20 amending the previous sentence, vacating that
21 sentence, which your Honor knows was a consecutive
22 sentence, consecutive to the indictment for which
23 the defendant have been granted a new trial, and
24 which the State will now apply to the Assignment
25 Judge for a nolle prosequere dismissal. It makes no

1 sense to continue a consecutive sentence when there
2 is nothing to be consecutive to. And, in essence,
3 we're asking that the defendant receive full credit
4 for time served from the day he hit custody in the
5 State of New Jersey on the Essex County indictment.

6 The State makes that application with full
7 knowledge that he will, in effect, max out, even
8 at a three-year sentence, he will have maxed out
9 several years ago on the Essex County indictment.
10 And that, in effect, would be if Judge Beglin
11 grants the nolle prosequere application today that
12 the defendant would be discharged from custody.

13 THE COURT: Thank you.

14 Mr. Walker, please rise. Mr. Walker,
15 as all defendants, you're accorded the right
16 of allocution to say whatever you like before I
17 impose sentence. I'll hear from you, sir, if you
18 choose to be heard.

19 MR. WALKER: I like to thank everyone
20 for what they did to clear this matter up. It's
21 a crime I didn't commit.

22 THE COURT: We're talking about a crime now
23 that you did commit, the receiving stolen property.

24 MR. WALKER: No, I have nothing to say on that.

25 THE COURT: All right. I'm satisfied that

1 based upon the application submitted to me that
2 the sentence of Judge Kuechenmeister imposed on
3 October 19, 1984 sentencing you to a three year
4 custodial term consecutive to the Union County
5 sentence should be modified, although, I have
6 not discussed this matter with Judge Kuechenmeister,
7 I'm sure if he were sitting here today, that he
8 would not have considered the consecutive sentence.
9 But for the fact of the outstanding Union County
10 indictment where you were charged with a horrible
11 crime you were charged with, I'm satisfied,
12 sir, that your sentence should be modified.

13 I'm going to commit you to the custody of
14 the Commissioner of the Department of Corrections
15 for a term of three years. The consecutive aspect
16 is deleted. With time served, sir, you are
17 entitled to your immediate release. I'm going
18 to direct that the representatives of the Department
19 of Corrections release Mr. Walker forthwith
20 to the custody of the Union County Sheriff. I'm
21 going to direct that the Union County Sheriff
22 immediately release him with no need to process
23 him through the Union County Jail. He may be
24 transferred into custody now.

25 I want to advise you that you have 45 days

1 in which to file an appeal if you think that this
2 sentence imposed is unfair.

3 MR. RODBART: Your Honor, just for a formality,
4 I personally presented the original application
5 for nolle prosequere in Judge Beglin's chambers
6 this morning. I request, your Honor, to
7 determine at this time if Judge Beglin is
8 disposed to sign that application.

9 THE COURT: Would you please do that.
10 I'll amend it. Assuming that he signed your
11 nolle prosequere, you may be released. If he has not
12 signed your nolle prosequere, you have to be processed
13 by the Union County Jail.

14 Let the record also indicate that I am signing
15 the writ directing the release of Mr. Walker
16 from the Department of Correction's custody to the
17 Sheriff of Union County.

18 MR. RODBART: I believe your Honor was
19 already presented by form of order of Mr.
20 Casteleiro, motion for a new trial and motion to
21 amend sentence.

22 THE COURT: The Court has already signed all
23 of those orders. I'll present them to you,
24 Mr. Rodbart, for filing with the appropriate
25 authority.

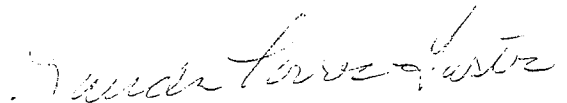
1 All right. The report is that Judge
2 Beglin had signed the nolle proesse. Mr. Walker
3 is to be released immediately.

4 Court will be in recess.

5 (Whereupon the proceedings in this matter
6 were concluded.)
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9 C E R T I F I C A T E
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12 I, Lourdes Torres-Fuster,
13 a Certified Shorthand Reporter of the State of
14 New Jersey, do hereby state that the foregoing
15 is a true and accurate transcript of my stenographic
16 notes of the within proceedings, to the best
17 of my ability.

18 

19 Lourdes Torres-Fuster

20 Dated: November 28, 1987
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