

REGION

DNA Evidence Helps 3 Men Gain Release in 1985 Murder Convictions

By ELISSA GOOTMAN

GARDEN CITY, N.Y., June 11 — When 16-year-old Theresa Fusco was found raped and strangled near the roller-skating rink where she worked, ripples of anxiety spread across Long Island. Not only was the crime horrific, but it took place around the same time that two other teenage girls vanished from places nearby.

A few months later, in 1985, prosecutors charged three men in their 20's and 30's, who were later convicted of raping and murdering Theresa and sentenced to more than 30 years in prison.

From the beginning, the men insisted they were innocent, saying the case had been based on a coerced confession and unreliable testimony by fellow inmates. When the men's lawyers contended in the 1990's that early DNA tests had eliminated all three as suspects, a judge sided with prosecutors, saying the tests were not reliable enough to overturn the convictions.

But today, prosecutors joined defense lawyers in asking a judge to do just that, based on new DNA evidence showing that semen found on the girl's body was that of another man. In a Nassau County courtroom here, packed with the men's relatives, who had managed to keep their faith over 18 years, Judge Victor M. Ort agreed.

The three inmates, dressed in business clothes, were then handcuffed and returned to the Nassau County jail in East Meadow. Shortly before 8 tonight, they were each released on a \$300,000 bond, into a knot of television cameras and the arms of relatives who had stood by them for two decades.

"I've been put in hell for 18 years," said one of the men, Dennis Halstead, 48. "This is my heaven."

But the men's ultimate fate is still uncertain. The Nassau district attorney, Denis Dillon, stopped short of proclaiming their innocence and said he was still considering ordering retrials for Mr. Halstead and his two co-defendants, John Kogut, 39, and John Restivo, 44.

"We're finding at this stage that they didn't get a fair trial," Mr. Dillon said at a news conference. "We can't say at this stage that they didn't do the crime." Still, he said a new investigation was under way to determine whether a killer was still at large.

The men's lawyers, and their relatives, said the new DNA evidence was a clear sign that the three had no hand in the rape and murder.

"We don't believe that there is any credible evidence at this point link-



Kevin P. Coughlin for The New York Times

Celebrating their release last night from the Nassau County jail were, from left, Dennis Halstead, 48; John Kogut, 39; and John Restivo, 44.

A prosecutor says a trial was unfair but does not call three freed men innocent.

ing them to the crime, and we think this DNA evidence is really very powerful proof of innocence," said Barry C. Scheck, a founder of the Innocence Project at the Cardozo School of Law, which uses new DNA technology to help free the wrongly convicted. The group has been involved in this case for a decade, he said, and it represented Mr. Restivo today.

A telephone call to the home of Theresa Fusco's mother was not returned yesterday.

On Dec. 5, 1984, Theresa's body was found in a wooded area near the parking lot of Hot Skates, the roller rink where she had last been seen nearly a month earlier, in her hometown, Lynbrook. The case drew widespread attention, in part because it

was not unique.

Kelly Morrissey, 15, a friend of Theresa's from Lynbrook, had disappeared in June 1984, when she was last seen headed for a video game parlor. In March 1985, Jacqueline Martarella, 19, whose body was later found, disappeared in Oceanside. Neither of those cases has been solved.

That same month, the police arrested Mr. Kogut, a 21-year-old landscaper, in the killing of Theresa Fusco. Mr. Kogut had a petty criminal record but was getting his life back on track, and had recently become engaged, said his lawyer, Terry A. Maroney.

After more than 18 hours of interrogation and sleep deprivation, Ms. Maroney said, Mr. Kogut gave a videotaped confession saying that near the roller rink, Theresa had voluntarily gotten into a van with him, Mr. Restivo and Mr. Halstead, a 29-year-old father of five who owned an aluminum siding business. The three men had worked occasionally for a moving company that Mr. Restivo's family owned, lawyers said.

Mr. Kogut, in the confession, said

the four had driven to a nearby cemetery. Mr. Restivo and Mr. Halstead raped Theresa, he said, and persuaded him to strangle her. They dumped the body near Hot Skates, he said.

Mr. Kogut recanted the confession, but prosecutors used it and the testimony of several inmates to build a case that two juries found convincing. All three men proclaimed their innocence from the start, and filed appeals. About a decade ago, the Centurion Ministries, an organization in Princeton, N.J., that represents people wrongly convicted of crimes, took on the case. The Innocence Project also got involved.

In the early 1990's, Mr. Scheck said, three sets of DNA tests were conducted, comparing semen taken from Theresa's body and preserved on a slide with the DNA of the three men. Two of the tests eliminated all three men as sources of the semen, Mr. Scheck said, but one test did not exclude all three, so a judge ruled that the results could not be trusted.

Then, about two years ago, the slide was analyzed using a more advanced DNA technique, called Short Tandem Repeat. That test indi-

cated the DNA belonged to a man other than the three in prison.

"The significance of that finding was huge," Ms. Maroney said.

Lawyers for the men and investigators in the district attorney's office redoubled their investigative efforts. This year, they made a crucial discovery: a previously untested vaginal swab, which had not been known to exist. The swab yielded a DNA profile identical to the one lifted from the slide.

In prison, Mr. Halstead became a grandfather to four. Two of his children moved to Florida, saying the memories in Nassau County were just too painful. One daughter married, but one waited until the day her father could walk her down the aisle. Mr. Restivo's mother, Frida, recently widowed when he was arrested, spent nearly 20 years preparing packages of candy and tuna. Mr. Kogut married his fiancée, Lisa, in prison. The relationship faltered when the situation became too difficult, but now, Ms. Kogut said, they plan to try to make it work.

"You're not going to get those years back," she said today.