

PS COMMITTEE #3
July 23, 2012

MEMORANDUM

July 20, 2012

TO: Public Safety Committee

FROM: Susan J. Farag, Legislative Analyst *SJF*

SUBJECT: **Briefing: Cold Cases and New Investigative Techniques**

Today the Committee will be briefed on the Police Department's cold case investigations and new investigative techniques that aid case closures. Those expected to brief the Committee are:

Assistant Chief Russ Hamill, Investigative Services Bureau, Police Department
Captain Dave Gillespie, Major Crimes Division
Lieutenant Greg Wise, Major Crimes Division
Detective Joe Mudano, Cold Case Squad
Detective Brian Stafford, Cold Case Squad
Ray Wickenheiser, Director, Crime Laboratory

Background

In recent years, DNA technological advances and databases have helped law enforcement solve many crimes that would have otherwise gone unsolved. Since 2009, MCPD has tested DNA from 91 previously unsolved cases. Of these, 78 cases have provided evidence of identified persons. When this information was entered into the FBI's Combined DNA Index System (CODIS), 43 offenders were matched.

Today, MCPD Investigative staff will present an overview of new investigative techniques and their use in solving cold cases. They will provide information on specific open cases, including unsolved homicides, rape cases, and missing persons.

Discussion Issues

- 1) What advances have there been in DNA technology? Does MCPD currently make full use of the latest advances? If not, will the new crime lab provide this ability?
- 2) Do DNA databases contain DNA from all crimes where evidence is collected? Or is it limited to violent offenses like murder and rape?
- 3) Does evidence ever “degrade” in a way that limits successful DNA testing?
- 4) Previously, Maryland law enforcement officials had been collecting DNA samples (cheek swab) from individuals who had been arrested for violent crimes. The Court of Appeals had ruled this practice unconstitutional. Recently, the U.S. Supreme Court has granted a stay on this decision, and has allowed the State to resume collection. Has Montgomery County resumed this practice?
- 5) What impact, if any, has new DNA testing technology had on solving cold cases in the County?
- 6) What are the department’s goals, moving forward, with respect to maximizing case closures?

This packet contains the following attachments:

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“DNA Collection From Those Arrested Can Resume – For Now” The Gazette (07/20/2012)	1-2
“DNA Cracks Cold Rape Case: David Martinez Arrested for 2003 Rape” CBS (06/18/2012)	3-4
“Jury Deliberating 33-year-old Rockville Rape Case” The Gazette (03/22/2012)	5-6
“Timothy Buzbee, Aspen Hill Rapist, Gets 3 Life Sentences” WUSA (03/02/2012)	7-8

Gazette.Net

Maryland Community News

Published: Friday, July 20, 2012

DNA collection from those arrested can resume — for now C. Benjamin

Ford

Staff Writer

The U.S. Supreme Court issued a stay on a Maryland Court of Appeals decision that allows the state to continue collecting DNA samples temporarily from those arrested for crimes of violence.

The order came from Chief Justice John G. Roberts as the high court considers Attorney General Douglas F. Gansler's appeal regarding the constitutionality of the state's collection of the DNA samples. The order is in effect until July 25, when responses are due from attorneys involved in the case.

The Maryland Court of Appeals, the state's highest court, had ruled in April that the collection of DNA samples from those arrested for crimes violated the U.S. Constitution's Fourth Amendment against unlawful searches and seizures. Law enforcement officials who called the DNA collection an important crime-fighting tool opposed the Maryland court's decision.

Gansler had requested the stay. A certiorari asking the Supreme Court to hear the case will be filed in a "few weeks," he said.

"We are encouraged by Chief Justice Roberts' decision to enter a stay," Gansler said. "The court's stay may indeed result in identifying perpetrators in some of Maryland's most horrific unsolved cases where DNA was left at the scene of the crime."

An estimated 1 percent of cases appealed to the Supreme Court are accepted by the justices.

Until the Court of Appeals ruling, the state had been collecting DNA samples from individuals who were arrested by swabbing the inside of the cheek with a Q-Tip-like tool. The sample then was placed in a petri dish.

Gansler has compared the practice to fingerprinting suspects.

The Attorney General's Office says DNA collection has helped solve 190 cases in the state and has exonerated some people wrongly convicted.

In the case at the heart of the Maryland Court of Appeals' ruling, a 53-year-old woman

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in Wicomico was raped at gunpoint by a masked man. Alonzo Jay King Jr. was identified after DNA collected from the rape matched a sample taken after he was arrested in 2009 on an unrelated assault charge. King was sentenced to life in prison. His public defender has declined to comment on the decision by the Supreme Court to issue a stay.

The Court of Appeals' ruling also sent King's case back to Wicomico County Circuit Court for a new trial.

Opponents of the DNA collection argued that the state would continue to expand the practice, if unchecked. The state originally collected samples from those convicted of sex offenses. It then expanded the collection to those arrested in sex-offense cases. In 2008, it expanded the practice to include those arrested for crimes of violence.

David Rocah, an attorney with the Maryland American Civil Liberties Union and a critic of the DNA testing's expansion, referred questions to the Public Defender's Office.

Criminal defense attorney Andrew I. Alperstein of Baltimore said DNA is a "critical tool" for law enforcement because they've been able to close older cases.

"We've been seeing rape cases, old homicides where they have the DNA evidence and they've been able to match them," he said. "The broader the pool of DNA samples available, the more opportunities they have to find a match."

Alperstein said he would be surprised if the Supreme Court did not eventually hear the Maryland case.

"Why else would he issue the stay if they weren't going to take up the case?" Alperstein said of Roberts.

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DNA Cracks Cold Rape Case: David Martinez Arrested For 2003 Rape In Silver Spring

June 18, 2012 3:34 PM

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credit: Montgomery County Police Department

SILVER SPRING, Md. (CBSDC) — DNA evidence helped solve a cold rape case from 2003 in Silver Spring.

Nine years after the assault, police charged 30-year-old David Martinez with the crime.

The previously unsolved rape occurred on March 3, 2003 around 2:22 a.m. It was around that time that police responded to the 800 block of Daleview Drive after a resident reported a woman, partially dressed, knocking on the door

for help.

The victim, who was 23 years old at the time, told detectives she parked her vehicle in the 700 block of Lowlander Lane and began to walk toward him home. Police say that as she was Martinez approached her as she was walking, pushed her to the ground and choked her as she attempted to fight back.

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The woman reportedly lost consciousness in the struggle and awoke a short time later to find Martinez sexually assaulting her. Following the assault, police say Martinez carried the victim to the backseat

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Buy Time... of a vehicle and drove her to Montgomery Knolls Elementary School where he proceeded to rape her.

Martinez then drove away from the scene while the victim walked to a nearby home, knocked on the door and asked its residents to call the police.

The case remained unsolved until last last July when detectives received notice that the DNA entered into a national database from the 2003 assault was matched to David Martinez, who was incarcerated in Texas.

Martinez, 30, was transported back to Montgomery County on June 14 of this year and has been charged with first degree rape, first degree sexual offense, first degree assault and kidnapping.

He is currently being held without bond and is awaiting trial.



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Maryland Community News

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Jury deliberating 33-year-old Rockville rape case by Jeremy Arias
Staff Writer

For Damascus resident Tracey Ann Kistler Kerin, a 33-year nightmare came to an end Thursday afternoon in circuit court as the jury began deliberations in the case of a man accused with raping her in 1979.

"I'm vindicated," she said, a weary smile on her lips. "I went into that courtroom as a rape victim and now I'm a rape survivor."

Robert Armstrong White, 54, was charged last year with two counts each of first and second-degree rape as well as one count of armed robbery after Montgomery County police cold case detectives linked his DNA to that of the man who attacked and raped a 20-year-old Kerin twice at knifepoint in a wooded area on Montgomery College's Rockville campus March 12, 1979.

The jury began deliberating on the case at 1:30 p.m. Thursday after hearing closing arguments from Montgomery County Assistant State's Attorneys Debra S. Grimes and Karyn B. McAuliffe, who are prosecuting the case, and county assistant public defender Alan C. Drew, who is representing White.

Throughout the trial, Grimes and McAuliffe concentrated on not only the terrifying circumstances of the rape but also the comparison of DNA samples taken from Kerin immediately after the rape and samples taken late last year from White.

"It is a match, this DNA profile of the man who raped Tracey Kistler and this DNA profile of the defendant are the same," McAuliffe told the jury in her closing arguments. "... You have an overwhelming amount of evidence in this case; it is time to hold the defendant accountable."

Drew also focused on the DNA evidence, asking the jurors to consider that the prosecution is asking for a guilty verdict based on a single test that could very easily be mistaken.

"They want you to cloak science with the mantle of infallibility," he said.

Drew went on to say that, under the scientific method, researchers must repeatedly test their hypothesis before it is accepted as truth, contrasting this to the single test run on White's DNA.

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"Somehow or another, in the courtroom where the stakes are higher, we test it only once," he said.

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Timothy Buzbee, Aspen Hill Rapist, Gets 3 Life Sentences in Montgomery County Maryland

7:47 PM, Mar 1, 2012 | [comments](#)

Written by
Bruce Leshan

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ROCKVILLE, MD (WUSA) -- He may have attacked more women than any other rapist in Maryland history -- spreading terror in a way most of us didn't feel again until the sniper attacks.

Three decades after those rapes, a Montgomery County judge has just sentenced Timothy Buzbee to three more life sentences.

Four courageous women confronted Buzbee at his sentencing hearing her. "I'm the 18 year old lifeguard that you raped,"

one told him.

For some of them, the fear still lingers. "The rape at the hands of Timothy Buzbee helped to kill the person I was supposed to be," one told him.

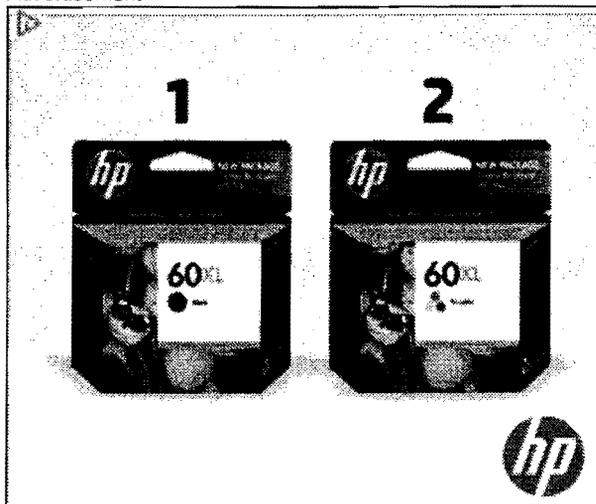
Judge Nelson Rupp looked straight at Buzbee and told him this: "You're an evil sexual predator." "The intention (of the life sentences) is that you never, every be free. That you spend the rest of your material life in a prison of your own making."

Rupp ordered that two of the life sentences be served consecutively. A third life sentence is concurrent, per the agreement that had Buzbee pleading guilty to three counts of first degree rape.

"We know he's a repeat sex offender who preyed on young women in this county over a period of what now looks like six or seven years," said Montgomery County State's Attorney John McCarthy.

Buzbee was known as the Aspen Hill rapist

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-- although it's now clear he attacked women far beyond Aspen Hill and for far longer than police originally thought.

He was already serving two concurrent life sentences after admitting raping a dozen women. But he was eligible for parole when new DNA tests on old evidence tied him to five more attacks.

"I didn't come here, I didn't expect any magical healing. That's a lifelong process. I hope that's not done," said a victim after the sentencing.

Cold case detectives suspect Buzbee attacked at least 24 women -- not just in Aspen Hill, but from Rockville to Silver Spring. He stalked a 9 year old. He also kidnapped and raped the 15 year old sister of one of the women who spoke against him -- and returned years later to rape her.

But what is perhaps most remarkable is the resilience and success of the now middle-aged women who survived his attacks. "That guy doesn't define me. He didn't and he doesn't."

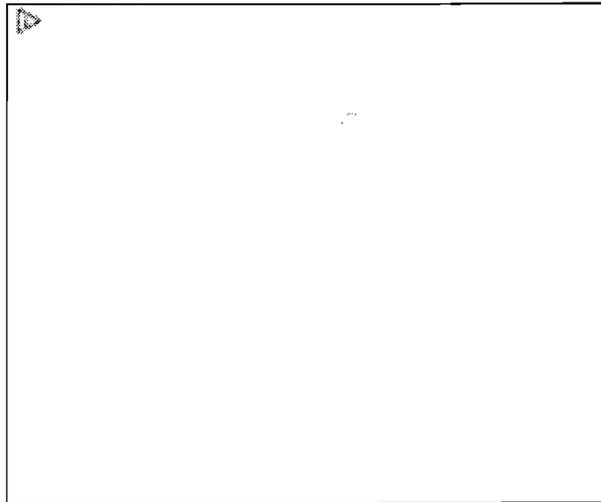
Buzbee told the judge that he knows the pain he caused and that he's truly sorry. The prosecutor's not sure Buzbee's sorry -- but says he knows for certain he has not been rehabilitated. Buzbee hasn't had psychological treatment for years.

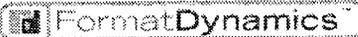
The judge said usually there is something in an offenders background or upbringing that offers some explanation for an attack. But Buzbee was brought up privileged, the

son of a real estate lawyer who attended a Catholic school. He courted, married and had two children at the same time as he was hunting and raping women across the county.

Written and Reported by Bruce Leshan
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