

**HAYES, Robert (B/M)**

DC # 710372

DOB: 12/12/63

Seventeenth Judicial Circuit, Broward County, Case # 90-3993-CF10

Sentencing Judge: The Honorable Stanton S. Kaplan

Attorney, Criminal Trial: Barbara Ann Heyer – Special Public Defender

Attorney, Direct Appeal: Richard B. Greene – Assistant Public Defender

Attorney, Retrial: Barbara Ann Heyer – Special Public Defender

Date of Offense: 02/20/90

Date of Sentence: 06/05/92

**Circumstances of Offense:**

Robert Hayes was convicted and sentenced to death for the strangulation of Pamela Albertson, a co-worker at the Pompano Harness Track.

When Pamela Albertson did not show up for work on the morning of 02/20/90, the security officials of the Pompano Harness Track went to her dormitory room in search of her. When security officials arrived at the dormitory where Albertson and the other female grooms<sup>10</sup> lived, they found her strangled body lying on the floor in blue jeans and a t-shirt.

Investigation into the murder quickly led to the questioning and, eventually, the arrest of Robert Hayes. Witness testimony and DNA evidence placed Hayes at the murder scene; however, there was also evidence that someone else could have possibly perpetrated the crime. Pamela Albertson was found with several strands of Caucasian hair clutched in her hand. The hairs were inconsistent with Hayes' hair, as he was African-American.

At trial, the State intended to prove Hayes' guilt through DNA evidence, witness testimony, testimony of a jailhouse informant and evidence of a strikingly similar collateral attack. Further examination of the DNA evidence revealed semen on a tank top and in the vagina of Pamela Albertson. Tests confirmed a three-band match on the tank top and a seven-band match on the vaginal swab for compatibility with Hayes. Additionally, employees of the Pompano Harness Track stated that they saw a man fitting Hayes' description at Albertson's dormitory on the night of her murder. Several people testified that Albertson had expressed fear of being alone with the defendant, although no formal complaint had ever been filed. The State also introduced evidence that Hayes had attacked another co-worker at a horse track in New Jersey. Debbie Lesko filed a complaint against Hayes in 1988, stating he pinned her on the floor and began choking her. When Hayes let Lesko go, she promptly called police and Hayes was arrested for simple assault. Those charges were later dropped. Finally, Ronald Morrison, Hayes' cellmate in Broward County Jail, testified that Hayes, in essence, confessed to being in

---

<sup>10</sup> Female groom – a woman employed to take care of horses or a stable.

Albertson's room that night, choking her, and fleeing through the window. The State relied on such evidence to obtain a conviction of First-Degree Murder on 10/29/91.

**Additional Information:**

On 06/26/89, prior to his murder conviction, Hayes was arrested on charges of robbery and burglary in Wilmington, Delaware. The victim, Lillian Shephard, reported that Hayes had sexually harassed her on many occasions, and on the date of the referenced offense, Hayes broke into her apartment and choked her until she lost consciousness. She awoke to see Hayes leaving her apartment. Hayes pled guilty to these charges and received two years probation.

**Trial Summary:**

03/22/90 Defendant indicted on:  
                    Count I: First-Degree Murder  
10/29/91 The jury found the defendant guilty of First-Degree Murder, as charged in the indictment.  
11/14/91 Upon advisory sentencing, the jury, by a 10 to 2 majority, voted for the death penalty.  
06/05/92 The defendant was sentenced as followed:  
                    Count I: First-Degree Murder – Death  
06/02/95 FSC vacated Hayes' death sentence and remanded for a retrial.  
07/16/97 Robert Hayes was acquitted of the murder of Pamela Albertson.

**Appeal Summary:**

**Florida Supreme Court, Direct Appeal**

FSC # 79,997  
660 So. 2d 257

06/11/92 Appeal filed.  
06/02/95 FSC reversed the conviction, vacated the death sentence and remanded for a new trial.  
09/13/95 Rehearing denied.  
10/13/95 Mandate issued.

**Case Information:**

On 06/11/92, Hayes filed a Direct Appeal in the Florida Supreme Court. In this appeal, he argued that the DNA results were fallacious due to the unreliable means by which they were tested. Holding DNA testing, or any new scientific principle, up to the highest standards of credibility, the Florida Supreme Court insisted that the evidence or expert testimony in question must assist the jury in determining the fact in an issue, must pass

the dictates of the Frye test established in *Frye v. United States*<sup>11</sup>, and must be presented by a qualified expert on the subject. In examining the issues of the Hayes' case, the unreliable technique of "band-shifting" was used to explain the DNA test results in terms of the probability that Hayes left the semen found on the tank top. The Florida Supreme Court ruled that the "band-shifting" method employed in the Hayes case was inadmissible as a matter of law, and, as such, the tank top was erroneously admitted as evidence. The high court did, however, rule that the semen found in Albertson's vagina was properly tested and could be presented as credible evidence in Hayes' retrial. Hayes also raised the issue of collateral crime evidence in his appeal. The prosecution presented evidence that Hayes attacked another female co-worker at a track in New Jersey. The prosecution sought to show the similarities between that attack and the murder of Pamela Albertson; however, the Florida Supreme Court ruled that there were "insufficient points of similarity to the instant offense to warrant admitting evidence of the previous attack." As such, the high court deemed the admittance of collateral crime evidence as error. In addition, Hayes objected at trial and argued on appeal the admittance of hearsay evidence regarding the victim's supposed fear of him. The Florida Supreme Court agreed, and found that the trial court erred in allowing the hearsay testimony. The fourth matter brought up in appeal was the prosecution's elicitation of testimony concerning the defense's failure to request various tests of evidence. The Florida Supreme Court found error as allowing such testimony insinuated that the burden of proof lied with the defense. On 06/02/95, the Florida Supreme Court reversed Hayes' conviction, vacated his death sentence and remanded for retrial.

Upon retrial, the jury acquitted Hayes of the murder of Pamela Albertson.

#### **Law Enforcement/ Prosecution Statements:**

A letter requesting comment was sent to the Broward County Sheriff's Department on 05/01/02. No response has been received to date.

Carolyn V. McCann of the State Attorney's Office for the Seventeenth Circuit issued the following statement concerning Hayes' case:

The [Florida Supreme Court] ruled that as a matter of first impression that the "band-shifting" technique of DNA testing would be inadmissible as a matter of law regarding Hayes' DNA found on the victim's shirt. The Court did not make the same ruling as to Hayes' DNA found in the victim's vagina. On retrial, the State presented evidence of Hayes' DNA found in the victim's vagina. However, the defense challenged this evidence with other evidence that hairs inconsistent with Hayes' were found clutched in the victim's hand and expert DNA testimony that many thought was questionable. In the end, the jury disregarded the fact that Hayes' DNA was found in the victim's vagina and acquitted him of murder.

---

<sup>11</sup> *Frye v. United States* - Supreme Court case that established the guidelines for considering novel scientific techniques or methods in verifying evidence or testimony. The Frye test asks whether expert testimony is based on a scientific principle that is "sufficiently established to have gained general acceptance in the particular field in which it belongs."

**Defense Statements:**

Defense Attorney Barbara Ann Heyer commented:

The Florida Supreme Court's decision in the Hayes Case was beneficial in a number of ways. First, it clarified the use of DNA evidence and second, it clarified questions surrounding the Williams rule. I believe the court made the right decision in finding Hayes not guilty because he was innocent.

**Current Status:**

Robert Hayes is currently serving a 15-45 year sentence in New York for manslaughter, burglary, and attempted arson, which occurred in 1987. He is eligible for parole on 08/06/18.

---

Report Date: 03/07/02      ew  
Approved: 03/11/02      ws  
Updated: 10/13/06      jfl