

## **NEW TRIAL IN ' 83 KILLING - DESTROYED DNA, OTHER IRREGULARITIES CITED BY APPEALS COURT**

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The Michigan Court of Appeals has ordered a **new trial** for a man convicted **in** the 1983 murder of a Battle Creek teenager, citing irregularities that included a prosecutor's destruction of DNA evidence that might have cleared the man.

**In** a ruling released Wednesday for Thomas Cress, the appeals court also rebuked a lower-court judge who earlier refused to grant Cress a **new trial** . The appeals court said the judge abused his discretion **in** discounting the testimony of a suspected serial killer, who confessed to the 1983 slaying and to two similar slayings **in** the Battle Creek area.

Questions about Cress' 1985 murder conviction were chronicled **in** a June 2000 Free Press investigation. The case has since gained national attention, with Michigan Democratic Sen. Carl Levin citing it as a reason to pass legislation that requires states to preserve DNA evidence while criminal defendants are **in** prison.

"We scarcely can imagine a scenario that would constitute a more appropriate basis for an order granting a **new trial** ," wrote Appeals Judge Hilda Gage, **in** an opinion joined by Judge E. Thomas Fitzgerald. "To refuse defendant a **new trial** under these circumstances . . . would represent a miscarriage of justice."

David Moran, Cress' appellate lawyer, was ecstatic. "I'm still on cloud nine," he said.

Calhoun County Prosecutor John Hallacy vowed to appeal the decision to the Michigan Supreme Court, and perhaps beyond. Hallacy would not discuss the ruling.

He said, though, that it would be difficult to retry the case, if it comes to that, so many years later. "Time is always an issue and, if and when it comes to that point, we would have to do an evaluation on our ability to retry it," he said.

Cress, 45, has served 17 years of a life sentence **in** Michigan prisons. He was convicted **in** the rape-murder of 17-year-old Patricia Rosansky, who was abducted as she walked to school on Feb. 3, 1983. Her body was later found **in** a wooded ravine near Battle Creek.

There was no physical evidence tying Cress to the murder. Strands of hair clutched **in** Rosansky's hand didn't match his, and semen on her body could not be linked through DNA back then.

At his 1985 **trial** , Cress, who functioned at the level of a third-grader, denied **killing** Rosansky and presented an alibi witness who said Cress was helping him deliver newspapers at the time Rosansky disappeared. But several prosecution witnesses testified Cress later bragged of the **killing** .

The jury believed the witnesses and convicted Cress. Several of those witnesses have since recanted, been discredited or died.

**In** early 1992, Battle Creek Police Detective Dennis Mullen interviewed a convicted murderer **in** Arkansas named Michael Ronning. Ronning, who was from Battle Creek, told the detective that he, not Cress, killed Rosansky. He also admitted **killing** two other young women **in** the Battle Creek area **in** the early 1980s: Maggie Hume, 20, and Karry Evans, 17.

Mullen and his commander said they repeatedly informed then-Calhoun County Prosecutor Jon Sahli about Ronning's admissions. Despite the warnings, Sahli signed an order **in** May 1992 allowing the State Police to destroy the DNA evidence **in** the Rosansky case.

Sahli, now a prosecutor **in** Saginaw, has said he did not know about Ronning's confession when he signed the order. He could not be reached Wednesday.

**In** its ruling, the appeals court cast a skeptical eye on Sahli's claim. It noted, for instance, that Mullen had documented his conversations with Sahli on several occasions. Calling Sahli's actions "deeply disturbing," the appeals court said the destruction of DNA evidence created "an inference of the prosecutor's bad faith."

The court then went further, saying that if the case is retried, the **trial** judge must instruct the jury that if it finds Sahli acted **in** bad faith it must infer that the destroyed evidence would have supported Cress' defense.

The court then took aim at Calhoun County Circuit Judge Allen Garbrecht, who **in** 1997 granted Cress a **new trial** , then reversed himself a year later.

The appeals court said Garbrecht erred when he completely discounted Ronning's confessions when experts **in** the case offered conflicting testimony on Ronning's credibility. **In** any event, the court said, Garbrecht should have also considered that Ronning passed a lie-detector test **in** which he admitted to three Michigan murders. Cress, too, passed a polygraph **in** which he denied **killing** Rosansky.

The court also praised Mullen, the detective whose career was ultimately ruined by his belief **in** Cress' innocence. That praise was echoed by Moran, Cress' appellate lawyer.

"There are some real heroes **in** this case and Dennis Mullen is one of them," Moran said. "He was willing to put his career at risk to tell the truth about what his investigation revealed. I don't think there is anything better you can say about a police officer." Mullen retired **in** 2000.

**In** a partial dissent, Appeals Judge Richard Bandstra agreed that Garbrecht should have considered the destruction of the DNA evidence **in** deciding whether Cress deserved a **new trial** . But Bandstra said he did not believe Garbrecht abused his discretion, and believed more hearings were **in** order, not a **new trial** .

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To read the June 2000 Free Press story on this case, go to [www.freep.com/news/mich/cress14\\_20000614.htm](http://www.freep.com/news/mich/cress14_20000614.htm).

Caption: Photo

Thomas Cress was convicted **in** the slaying of Patricia Rosansky.

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