

EVIDENCE CONVICTING ONE MAN MAY FREE ANOTHER

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AKRON, Ohio, April 15— Ernest Holbrook Jr. has spent more than two years in a state prison for the rape and murder of a child, a crime it now appears he did not commit.

Since his conviction, the man he was accused of helping in the crime was acquitted by a jury and freed and a key witness against him recanted and was sent to prison for perjury.

But Mr. Holbrook remained in the Lima Correctional Facility in northwestern Ohio on a life sentence, denied his efforts to get a new trial in the death of 12-year-old Tina Marie Harmon.

Now the man who prosecuted Mr. Holbrook, now 21 years old, doubts his guilt and has begun a legal process that could free him as soon as this week.

Evidence Linking 2 Deaths

The turnaround came earlier this month when Robert A. Buell, a former employee in the City of Akron's planning department, was convicted of sexually attacking and murdering another child, 11-year-old Krista Lea Harrison. He was sentenced Wednesday to die in Ohio's electric chair.

Scientific evidence linking the two murders is so strong, said the Wayne County prosecutor, Keith Shearer, that he "cannot, in good conscience, use it to convict Buell" without also using it to free Mr. Holbrook. Mr. Holbrook's sister, Faye Brandt, said: "I just pray now that they do the right thing. Two years is a long time for something you didn't do."

At the time of his arrest, Mr. Holbrook, a resident of a rural area in Wayne County, was working part time at a potato farm, sometimes earning \$50 a week. He had grown up poor with his seven brothers and sisters, according to his court-appointed attorney, Gerald Glinsek. Although his client socialized with troublemakers, he had never been in any trouble to speak of until this case, Mr. Glinsek said in an interview. 'I Didn't Do It, Sir'

Tina Harmon disappeared from the streets of Creston, a rural village about 20 miles from downtown Akron, on Oct. 29, 1981, after going into a grocery store to buy ice cream. Her body was found Nov. 3 in a remote area of a neighboring county. The coroner said she had been sexually attacked and strangled.

Three months later, Mr. Holbrook and a friend, Herman Ray Rucker, were charged with the girl's death. On June 9, 1982, Mr. Rucker was convicted and sentenced to life in prison. In August, Mr. Holbrook, who had told the presiding judge in his trial, "I didn't do it, sir," met the same fate, crying as he was led past his wife, Judy, and month-old son, Michael. The couple were divorced after his conviction but have since reconciled.

There was no physical evidence linking Mr. Holbrook and Mr. Rucker to the crime. They also had passed lie detector tests. According to testimony, Mr. Holbrook had been in the wedding of his sister, Mrs. Brandt, on the weekend Tina Harmon had disappeared. But the police maintained that he still had time to abduct and kill the girl.

After Mr. Holbrook and Mr. Rucker were in custody, at least two other children were slain and there were several other incidents in which children were approached but managed to get away.

It was never established in the trials what role the two defendants took in the killing, including how Mr. Holbrook was alleged to have aided Mr. Rucker. Under Ohio law,

someone can be convicted of murder if he did not do the killing but assisted.

The prosecution relied largely on the testimony of Curtis Maynard, Mr. Holbrook's cousin, and Susan Sigler, an acquaintance. Mr. Maynard testified at both trials that in a night of drinking at Mrs. Sigler's house, Mr. Rucker told them that he and Mr. Holbrook had killed a little girl because she resisted their sexual advances. Mrs. Sigler told somewhat the same story.

Defense attorneys sought to show the inconsistencies in the testimony and to question Mr. Maynard's and Mrs. Sigler's truthfulness.

After the two convictions, evidence of a mistake began to accrue.

Mrs. Sigler was subsequently convicted in a neighboring county of filing a false rape charge. She also admitted lying on a marriage license application in July 1982 when she said she had been married only once before and her husband was dead. In reality, she had been married at least four times and all her former husbands were alive. Witness Cites Police Pressure

Mr. Maynard, who according to psychiatric testimony was "borderline mentally retarded," recanted his story, saying the police had pressured him into making it up.

Detectives had first visited Mr. Maynard after learning from Mrs. Sigler that Mr. Maynard was on probation for a series of felony convictions. At first, Mr. Maynard had said he knew nothing about the Harmon killing.

But detectives then summoned him before his probation officers so they could question him in an atmosphere one detective later described as "more conducive to talking to somebody." There, he implicated Mr. Holbrook and Mr. Rucker.

A month later, when Mr. Maynard was in jail on a theft charge, he was again visited by the detectives. His probation officer released him to their custody, and he provided more detail about the Harmon killing.

After Mr. Maynard recanted, Mr. Rucker was granted a new trial and was acquitted after less than two hours of jury deliberations in June 1983.

But Mr. Holbrook was denied numerous requests for a new trial until now. The new look at his case was prompted by the evidence that led to Mr. Buell's conviction in the sexual assault and slaying of Krista Lea Harrison. She was abducted on July 17, 1982, from a ballpark across the street from her home in Marshallville, a village near where Tina Harmon had lived. Her body was found in an old garage along a rural road. Identical Carpet Fibers

In the trial, experts said rust-colored carpet fibers that covered the bodies of Tina and Krista Lea were identical and scientifically matched the carpeting in Mr. Buell's van. A representative of the carpet maker said that only carpeting enough for several homes had been sold in Ohio.

Police departments in the area are investigating whether to charge Mr. Buell in other cases involving attacks on children.

Last Friday Mr. Shearer, the prosecutor, joined Mr. Holbrook's attorneys in filing an affidavit seeking a new trial, but Mr. Shearer said, "It's not likely that I will retry him."

If Mr. Holbrook is released, he may be able to seek some economic compensation for the time he spent in jail. The Ohio Legislature last month passed a law allowing people wrongly accused of crimes to seek damages.

The law was passed after William Bernard Jackson served four and a half years for a host of rapes he did not commit. He was released Sept. 22, 1982, after Dr. Edward Franklin Jackson Jr., a Columbus physician, was convicted of 21 of the rapes.

photo of Robert Buell