

Gilmore Reviews Double Slaying

New DNA Test Is Sought for Man Scheduled to Die Tonight in Electric Chair
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Amid growing national concern that innocent people are being condemned to death, Virginia Gov. James S. Gilmore III has asked to see DNA and forensic evidence in the case of a Virginia Beach man who is scheduled to die in the electric chair tonight.

Gilmore's request comes just two weeks after he ordered new DNA tests in another murder case.

Gilmore (R) has not ordered new DNA tests in the case of Russel W. Burket, 32, who chose the electric chair over lethal injection. But Burket's attorney said yesterday that he hopes the governor will consider making use of new testing technology that could exonerate Burket. It is one of Burket's final hopes. The state Supreme Court yesterday rejected his request for a stay of execution.

Burket pleaded guilty to killing his Virginia Beach neighbor and her 5-year-old daughter in 1993.

Previous DNA tests of semen taken from a washcloth at the crime scene narrowed the possible suspects to 7.8 percent of the white population and did not rule out Burket or his brother Lester, who also was a suspect.

Burket has been characterized by his attorney, Andrew A. Protogyrou, as a mentally ill man who was hallucinating and seeing monsters in the days before he pleaded guilty.

Protogyrou said Gilmore's staff on Monday requested copies of the DNA certificate, forensic lab reports, a draft of Burket's confession to police and copies of newspaper reports from the time of the double murder.

Protogyrou said he has asked the governor to allow new DNA tests to further narrow the possible suspect pool. He said he hopes Gilmore will stay tonight's execution at least long enough to complete a new round of testing.

"Governor Gilmore is a governor, but people also forget that he is a trial lawyer," Protogyrou said yesterday. "Any trial lawyer understands evidence and the importance of getting it right. I think that [Gilmore's staff is] going to examine everything and come up with an intelligent decision, and I am 100 percent confident in that."

The governor's office declined to comment specifically about Burket's clemency petition. But Lila White, a spokeswoman for Gilmore, said the governor and his staff are conducting a "very extensive review" of the evidence. White said the governor's recent decisions to look at DNA evidence are based solely on the circumstances of the two cases and don't necessarily indicate a trend.

"It's very important to take each case as it comes and to treat it individually," White said. "If a case warrants individual testing, the governor has indicated that he will ask for it. It could very likely come back inconclusive, and it's not always the accurate predictor that we hope it might be."

On June 1, Gilmore ordered new DNA tests in the case of Earl Washington Jr., who was sentenced to death after he confessed to the 1982 stabbing of a Culpeper County woman. Washington's sentence was commuted to life in prison in 1994 because of doubts about his guilt.

Washington's case was the first in which Gilmore ordered post-conviction DNA testing. The results are pending. Washington has been in prison for more than 17 years.

White said Gilmore will not make a decision regarding a stay in Burket's case until all of Burket's court appeals have been exhausted.

An appeal before the U.S. Supreme Court argues that Burket was incompetent to stand trial and that he was not properly represented at the time of his confession and guilty plea.

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