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DNA testing ordered in Thomas Arthur murder case

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A Jefferson County judge on Wednesday ordered DNA testing in the 1982 murder-for-hire that landed Thomas Arthur on Death Row, but only as it relates to determining whether another man who confessed to the shooting is telling the truth.

Circuit Judge Teresa Pulliam ordered tests on an afro wig that Bobby Ray Gilbert said he wore when he killed Troy Wicker Jr. at his Muscle Shoals home. She also instructed the Alabama Department of Forensic Sciences to test clothing items belonging to Judy Wicker, who was convicted of murder in her husband's death and served 10 years in prison. A piece of hair found on a slipper will be tested as well.

The tests are to determine whether Gilbert had any contact with the items, Pulliam said.

"It would be an easy thing for me to go ahead and make a finding. But I have the advantage and the opportunity to have science perhaps disprove my preliminary feeling about Mr. Gilbert's affidavit," she said. "Because I do have that opportunity, I'm going to let science do its work."

The judge asked for the results in 45 days.

The Alabama Supreme Court has stayed the execution date for Arthur while Pulliam decides if Gilbert's confession should be considered new evidence for Arthur to request a new trial. Gilbert, who is serving life without parole for two murders and other crimes, confessed in July 2008 - less than a week before Arthur was to be executed.

Arthur, 67, has had three trials, and his conviction has been overturned twice. The first trial was held in Colbert County, while the last two were moved to Jefferson County.

In determining Gilbert's credibility, Pulliam said she would consider his decision not to confess on the stand Tuesday, when he cited his right against self-incrimination. Gilbert instead authenticated the sworn statement he gave saying he killed Wicker at his home while having a romantic affair with Wicker's wife when he was 15.

"It appears to me, and I certainly will consider this, that he came in the court, had his cake and ate it, too," Pulliam said. "He affirms the content of the affidavit but takes the fifth amendment in the courtroom, when it counts."

Judy Wicker this week testified she did not know Gilbert. She first claimed her husband was killed by a burglar who also raped her, before later testifying that she hired Arthur to kill her husband.

The judge said that while it is not uncommon for affidavits to be submitted and witnesses to come forward as an execution date nears, it is "quite extraordinary" for someone to confess to a murder at the 11th hour and to offer purported evidence that can be checked out by science.

Arthur's daughter, Sherrie Stone, applauded the judge's decision.

"She was big enough to step up and say, 'Let's let the technology speak here,'" said Stone, who believes the findings will give her closure.

Pulliam also found Wednesday that no evidence was presented showing the state had done anything wrong in its handling of a rape kit collected after the crime.

She ordered the district attorney's office and the court clerk's office in Colbert County to issue sworn statements saying thorough searches were done performed to find the rape kit. The state has said it can't locate it.

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