

[back to article](#)

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## Arthur granted DNA request

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Tommy Arthur smiled and thanked his attorneys repeatedly Wednesday after a judge ordered DNA tests on evidence from his capital murder trials.

Arthur has been on death row at Holman Correctional Facility in Atmore since 1983 for the Feb. 1, 1982, shooting death of Troy Wicker Jr., of Muscle Shoals. Arthur returned to court Tuesday as his attorneys asked Jefferson County Circuit Court Judge Teresa Pulliam to consider new evidence, including the confession of Bobby Ray Gilbert, who claims to have killed Wicker. The hearing was in Birmingham because Arthur's most recent trial took place there in 1991.

After listening to more than 10 hours of testimony in two days, Pulliam ordered testing on a wig prosecutors claim Arthur wore while shooting Wicker, a human hair found on a house shoe at Wicker's home and the blouse, jeans and panties worn by Wicker's wife, Judy, to determine if they contain DNA from Gilbert or Arthur.

Gilbert, an inmate at St. Clair Correctional Facility, confessed to Wicker's slaying in July, three days before Arthur was scheduled to be executed. Gilbert is serving life in prison without the possibility of parole for killing an inmate who stole a carton of cigarettes. Gilbert was in prison for murder when he killed the inmate.

During the hearing, attorneys for Arthur argued the DNA testing would determine if Gilbert's claim that he shot Wicker once in the head is creditable.

"Unlike witnesses, DNA testing, your honor, doesn't lie," Suhana Han, a New York attorney for Arthur, said in her closing argument Wednesday.

Pulliam expressed doubts about Gilbert's confession but said the DNA testing would help answer questions about his truthfulness.

"I believe when science is available to aid the court in assessing credibility, we should give science a chance," Pulliam said in announcing her decision.

Pulliam asked Angelo Della Manna, chief of forensic biology and DNA for the Alabama Department of Forensic Sciences, to conduct the tests and file a report of the findings within 45 days.

Pulliam denied a request by Arthur's attorneys to conduct DNA testing on evidence in a rape kit collected from Judy Wicker, who initially claimed she was raped by an unknown intruder who then killed her husband. Della Manna testified the rape kit is believed to have been destroyed in 1982 after prosecutors determined it was not crucial evidence.

Robert Hall, former chief of detectives for the Muscle Shoals Police Department, testified Tuesday that early in the investigation of Wicker's death, authorities shifted their focus from Judy Wicker being a victim to her having played a role in the homicide. She was convicted of murder for paying Arthur \$10,000 and having sex with him in exchange for Arthur killing her husband. She served 10 years of a life sentence.

Han argued that DNA evidence from the rape kit could prove that Gilbert had sex with Judy Wicker after killing her husband as he claimed in his confession. Gilbert contends Judy Wicker paid him \$2,000 to kill Troy Wicker.

Judy Wicker said Tuesday that Gilbert should not be believed and that Arthur killed Troy Wicker.

Della Manna testified that even if the rape kit were available, it would likely contain too little DNA for testing. "As a general rule, you like to have at least 100 sperm to generate a DNA profile." He said a department of forensic sciences biologist found only seven sperm when he tested the evidence in 1982.

Norah Rudin, a DNA expert from California who testified Tuesday for Arthur's attorneys, said modern testing methods allow DNA to be extracted from samples of fewer than five sperm.

Pulliam said prosecutors did nothing wrong in ordering the rape kit destroyed. She questioned why Arthur's attorneys waited more than 20 years before asking for DNA testing of the rape kit evidence. Pulliam noted the rape kit was never submitted as evidence in Judy Wicker's trial or in any of Arthur's three trials.

In his closing argument, Assistant Attorney General Clay Crenshaw scoffed at Gilbert's confession and the requests for DNA testing.

"This is an effort to perpetrate a fraud on the court, and it was orchestrated by the capital murderer sitting at the other end of the table," Crenshaw said.

After the hearing, Crenshaw said the DNA testing could open the door to a new round of appeals for Arthur.

"If the DNA profile of an unknown male is found and there is no DNA from Arthur, his attorneys are probably going to claim he is innocent, although there is overwhelming evidence that he committed the murder," Crenshaw said. "With that evidence having been in storage for 27 years and handled by numerous attorneys and investigators during that time, it's not out of the question that the DNA of one or more unknown males will be found."

During questioning by Pulliam on Wednesday, Della Manna said it's possible that no evidence from Arthur or Gilbert will be found, even if they handled the evidence.

Han said she looks forward to learning the results of the DNA testing. "If Mr. Arthur's DNA is not present in the wig and Bobby Ray Gilbert's DNA is found, it will be very significant evidence for corroborating Bobby Ray Gilbert's confession."

Arthur's daughter, Sherrie Stone, said in a telephone interview after the hearing that she is surprised by the judge's order.

"I'm shocked actually," she said. "It seemed like at every turn there had been a denial, when you actually get something like this accomplished, you're shocked."

She said testing the DNA is the right thing to do.

"This way, one way or another, we'll know the truth and that's all I've wanted to know," Stone said. "If it's his, fine, then execute him. If he did it, he desires the punishment; if not, then that's another story."

Stone said this will give her some closure on the case.

"At least we'll finally know whether he's guilty or innocent."

Staff Writer Tom Smith contributed to this report.

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