

engaged in improper arguments, they nevertheless found these fundamental errors to be "harmless." His conviction was therefore affirmed.

3. As a result, Mr. Peterson was imprisoned for more than eight (8) years, until Judge Hudson found in December 2011 that the prosecution's star witness, SBI Agent Duane Deaver, had committed perjury, and granted Mr. Peterson a new trial. It has now been five years since that ruling. This case began when Michael Peterson was 58 years old. He is now 73. But most importantly, what the events of the last 15 years have shown Mr. Peterson is that the criminal justice system cannot be trusted to do justice. Law enforcement officers, prosecutors, and medical examiners do not necessarily search for the truth. Once they have adopted a theory of a person's guilt, a theory in this case created by former SBI Agent Duane Deaver, they ignore evidence that is inconsistent with their theory, and twist facts to support their theory. This is why literally hundreds of innocent people have been exonerated by DNA evidence over the past 15 years. It is also why Mr. Peterson believes that an *Alford* plea, which resolves this matter while allowing him to maintain his innocence, is in his best interest at this time.

Misconduct by Law Enforcement Caused Michael Peterson's False Conviction

4. The most obvious, and most serious, misconduct in this case involved now discredited SBI Agent Duane Deaver. As established at the hearing held in December 2011, Deaver's alleged qualifications and experience were literally made up. His analysis of the blood spatters, his calculations of the alleged "points of impact," his opinions about the tiny specks of blood on Michael Peterson's sneakers and shorts, and his bogus "experiments," done to support his theories, were all fake science. As Judge Hudson subsequently found, **Deaver committed perjury at Michael Peterson's trial.** See Exhibit A. He was subsequently fired by the SBI. If the prosecutors didn't know that Deaver was testifying to junk science, they were incompetent.

If they knew it, they were complicit. Indeed, they argued that Deaver should be believed because "he had no reason to lie," although he had devoted literally thousands of hours to justifying his conclusion, reached after 15 minutes at the scene, that this was a murder. He was not an impartial expert, but rather an integral part of the prosecution team, attending numerous meetings with the prosecutors, the Assistant Medical Examiner, first responders, and other witnesses. He was also present at the Peterson house for many hours.

5. Deaver also was the first person to inspect the shirt, shorts, and shoes that Michael Peterson had worn on the night Kathleen died. Although Dan George, the lead Durham Police Department Crime Scene Technician, had seized the clothes at the house, he did not photograph or document in any way the condition of the clothes at the time they were seized, or the presence of any blood on the clothes. There is no way to determine, therefore, whether the various bloodstains that Deaver allegedly found were present when the clothes were first seized. Interestingly, although the clothing was then sent to the SBI lab for testing and analysis, after speaking to Deaver, the lab refused to examine the clothing. They wrote, "blood-spatter interpretation had been done by SBI Agent Deaver, and the lab would not override his [interpretation]."

6. Given Deaver's integral role in preparing the prosecution's case for trial, his meetings with various witnesses, and his presence at the scene, there is no reason to trust that the evidence at the scene was not tampered with to falsely incriminate Mr. Peterson, nor is there reason to believe that the testimony of first responders and other law enforcement witnesses was not influenced by Deaver. All of this alleged evidence is now suspect.¹

¹ Deaver was not rogue SBI agent. The culture at the SBI laboratory was to support the prosecution, regardless of the science, and to twist the science to help secure convictions, regardless of the truth. An audit of the SBI Laboratory, conducted by two former FBI supervisors, found hundreds of instances in which a number of SBI lab personnel, supposed scientists, had engaged in misconduct in reporting lab results on blood testing - to help

7. In fact, there is substantial reason to believe that Deaver (or others acting under his direction or control) fabricated blood spatter evidence at the scene. The photos attached as Exhibit C show some of the significant changes in the blood spatters *during the time that the police had complete and exclusive control of the scene*, changes that show alteration or tampering with the scene by the police.² The only explanation ever offered for these changes was testimony by Durham Crime Scene Technician Dan George that they were due to an otherwise unexplained, "photo glitch."³ George also admitted that much of the evidence at the Peterson house could have been altered or contaminated because of the actions of the police after they arrived, and before Deaver even got there. He admitted during cross-examination that appropriate procedures for preserving the integrity of the scene were not followed in a number of instances.⁴

8. Deaver's influence also infected the processing of the crime scene. For example, footprints were allegedly found as a result of luminol testing, done by Durham Crime Scene Technician Eric Campen on December 10, 2001. This was done at the specific request of Deaver, who observed and supervised the process. The results of the luminol testing were never photographed, although that should have been standard crime scene procedure. Campen,

prosecutors. Deaver was among the culprits named most often in this audit, but SBI Agent Suzy Barker, who testified about finding spots of blood on Michael Peterson's shorts, and worked closely with Deaver on the bogus "experiments" he conducted in this case, was found in the audit to have filed misleading reports regarding the results of chemical testing of blood she performed in at least seven other murder cases. She was suspended from the SBI for this misconduct. The results of this audit are attached as Exhibit B.

² Some of these photos were used by Deaver to claim that Michael Peterson had "cleaned up" the scene before calling the police.

³ Since offering this bizarre explanation at Mr. Peterson's trial, Dan George has been terminated by the Durham County Sheriff's Department for stealing two expensive rings from the scene of a burglary he was investigating, and then lying about it during an internal investigation. His conduct as a crime scene investigator in the Peterson case simply cannot be trusted.

⁴ Eric Campen, a second Durham Crime Scene Technician, confirmed these deviations during his cross-examination.

contrary to his usual procedure, did not begin to prepare a diagram of what he had observed until March 26, 2003, more than eighteen months later. Campen testified he was then "instructed" to erase from his computer the original diagram he created on March 26, although that specific diagram had been subpoenaed by the defense, and the court had ordered that all rough notes be preserved. He claimed he was instructed to do this because that original diagram would have been "misleading." Campen then created a different diagram, showing the footprints allegedly going from the staircase to the laundry room and then to the kitchen. Campen claimed he could tell the exact path the person had taken, based on the shape of the alleged footprints.⁵ The prosecution used this new diagram to support the theory that Michael Peterson had attempted to "clean up" the scene before the police arrived. Because he had been instructed to delete the original diagram from his computer, his testimony about the alleged path could not be contradicted.

9. In short, the testimony regarding the findings at the Peterson house in December 2001 has been put into question by the presence of Duane Deaver as the person supervising the gathering of evidence at the Peterson home, and his involvement in the preparation of the case for trial. None of this evidence, which would form the basis of any second trial, is trustworthy.

10. Finally, Art Holland, the lead Durham Police Investigator on this case, was found by both the North Carolina Court of Appeals and the North Carolina Supreme Court to have violated Mr. Peterson's constitutional rights during the investigation. From the day Mrs. Peterson died, Holland worked side by side with Deaver in conducting the investigation and

⁵ At a pretrial hearing, Dan George (who had also not documented the results of the luminol testing with a diagram) described what he observed as follows: It was just so many, it had just been tracked so much. . . . It was track over track." He admitted that there were tracks that he couldn't distinguish because there had been "too much walking," and that there was enough to where "from away from the body it . . . looked like a rabbit path." He also admitted that other law enforcement officers were upset at his hearing testimony. His subsequent testimony at the trial was inconsistent and mirrored that of Deaver and Campen. George also repeatedly refused to answer questions regarding the significance of the blood found at the scene, stating over and over "I'll leave that to the blood spatter expert [Deaver]"

preparing for trial. Holland's association with this established perjurer, and his desire to justify the conviction at the first trial, would color any testimony he might give at Mr. Peterson's re-trial.

The Medical Examiner's Testimony Is Also Suspect

11. The misconduct in this case was not limited to law enforcement. The Office of the North Carolina Medical Examiner stated in the Autopsy Report that the "CAUSE OF DEATH" of Kathleen Peterson was "blunt force trauma of the head." See Exhibit D. Dr. Radisch, the Assistant Medical Examiner who testified to the Autopsy Report, claimed at trial that this finding reflected the conclusion that *she personally* had reached. Specifically, she testified under questioning by the District Attorney about the Autopsy Report as follows:

Q. And does it reflect the actual findings, and conclusions, and diagnoses *that you made* in this case?

A. Yes, it does.

12. After Mr. Peterson's trial, however, defense counsel was authorized by statute to inspect the District Attorney's file. In that file was a note written by Assistant District Attorney Freda Black which stated that during a meeting on April 8, 2003, just before the trial began, Dr. Radisch told Black that she did *not* believe that Kathleen Peterson died of brain trauma, and that "Dr. Butts *made her back up from her findings re blood loss* [as the cause of death on the autopsy] because he did not agree." See Exhibit E.⁶

13. The Durham District Attorney's office never disclosed to defense counsel or the court this critical impeachment evidence, which went to the heart of Dr. Radisch's credibility and

⁶ Dr. Snell, the Assistant Medical Examiner who went to the Peterson house on the night of Kathleen Peterson's death and signed a death certificate on December 9, 2001 finding she had died as a result of a "fall down stairs" was subsequently required to amend the death certificate to state she had died as a result of a "beating." See Exhibit F.

the veracity of her trial testimony. Instead, the prosecutors allowed Dr. Radisch's false testimony to stand uncorrected.

The Testimony of Candace Zamperini, Lori Campell and Caitlin Atwater

14. Within weeks of Deaver falsely concluding that Kathleen Peterson had been murdered, prosecutors and Dr. Deborah Radisch began an effort to manipulate the perceptions of her daughter, Caitlin, and her sisters, Candace Zamperini and Lori Campell, regarding Michael Peterson and the cause of Kathleen's death. They did this through the use of emotional photographs taken of Kathleen's body and the injuries to Kathleen's scalp, without explaining that Kathleen's injuries were completely inconsistent with the injuries inflicted by beatings in more than 500 other cases over the previous ten years. Sadly, this effort was successful. Caitlin, Candace, and Lori were all made into tools of law enforcement and the prosecutors in their efforts to convict Mr. Peterson.⁷

15. For example, on the day Michael Peterson was indicted, Caitlin (who served as the spokesperson for the entire Peterson family, made the following statement to the news media:

"My mother and Mike had an absolutely loving relationship and there is no way either one of them would ever wish any sort of harm on the other."

By the time of Mr. Peterson's trial, Radisch and the prosecutors had convinced Caitlin that Michael Peterson had savagely beaten Kathleen to death after a night at home drinking wine and watching the romantic comedy "America's Sweethearts."

16. Similarly, after being subjected to the one-sided presentation of the prosecutors and law enforcement, Candace Zamperini, blinded by the manipulations of law enforcement, requested that the autopsy photos of her sister be made available to the news media, to be shown

⁷ In a fax sent to Dr. Radisch on February 19, 2002, Candace Zamperini stated, "Thank you again. Truly you have been invaluable in helping me and my family understand what happened to Kathleen." See Exhibit G.

to hundreds of thousands of Triangle residents who did not know Kathleen - *over the objections of Kathleen's daughter Caitlin*. In February 2002, Caitlin asked the District Attorney in writing to keep the autopsy photos of her mother from the press, to protect Kathleen Peterson's "right to privacy and dignity, even in death." See Exhibit H. In contrast, Candace Zamperini, while acknowledging the photos were "gruesome," wrote a letter to the District Attorney contradicting Caitlin's wishes, and seeking the release of the photos to the press. *Id.* The only purpose of this was to unfairly prejudice the press and the public against Michael Peterson - which was the same tactic used to manipulate Zamperini, her sister and Caitlin, and used by the prosecution throughout the trial.

17. Moreover, when the police and prosecutors could find no "murder weapon," and could come up with no theory for how an allegedly vicious beating caused no skull fracture or brain injury of any kind, *it was Candace Zamperini who came up with the fabricated theory that the medical examiner and prosecutors used at trial* - that the "weapon" Michael had allegedly used to inflict the injuries to Kathleen Peterson's scalp, without causing any skull fracture or brain injury, was a "blow poke" that she and Lori Campell claimed was mysteriously missing from the house after Kathleen's death. Campell went so far as to testify that she had seen the blow poke around the fireplace the previous Christmas, a claim that was contradicted by family photos going back years. As it turned out, the "missing blow poke" was neither missing, nor had it been used to murder Kathleen Peterson. It was found in a dark corner of an unused garage, covered in cobwebs, without any dents or indications it had ever been used to hit anything. Michael Peterson introduced the blow poke during his defense.

18. Candace and Lori also questioned the quality of the Petersons' marriage in their testimony at the trial, although both lived in other states and rarely spent time with Michael and

Kathleen. In contrast, although the District Attorney questioned all of the Petersons' close friends in Durham, none testified that the marriage was troubled in any way.

CONCLUSION

19. The contamination of the scene in the Petersons' house by Duane Deaver cannot be undone for the retrial. The effect of Deaver on the testimony of other witnesses cannot be undone, especially after 15 years. Deaver's impact on the conduct and testimony of the Durham Crime Scene Technicians, Dan George and Eric Campen, cannot be ascertained or remedied. Thus, the evidence about the scene in the house when the police entered is forever compromised and tainted. A second trial cannot change that.

20. Similarly, the impact of John Butts' pressure on Deborah Radisch to alter what she believed to be the cause of death cannot be remedied. Her testimony about the cause of death at any retrial will no doubt mirror her testimony from 15 years ago.

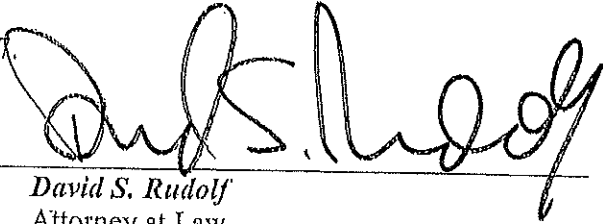
21. The impact of the prosecutors and medical examiner's conduct on the beliefs and attitudes of Caitlin Atwater, Candace Zamperini and Lori Campell cannot be undone. Any testimony they might give at a retrial would be colored by the bias that was thereby created, which served to distort the reality of Michael and Kathleen's relationship, and to create a fabricated murder weapon in the minds of Ms. Zamperini and Ms. Campell.

22. At his first trial, Mr. Peterson was convicted of beating Kathleen to death although there was no murder weapon, no credible motive or explanation of why, and no history of marital conflict, let alone domestic violence. Under these circumstances, Mr. Peterson does not trust the judicial system as a search for the truth, and believes that putting an end to the misconduct that led to his first conviction is in his best interests. Any witness testifying for the prosecution at a retrial will be attempting to vindicate their prior testimony by securing a second

wrongful conviction. It is for this reason that Mr. Peterson has agreed to enter an Alford plea, despite his innocence.

This the 22nd day of February, 2017.

By:



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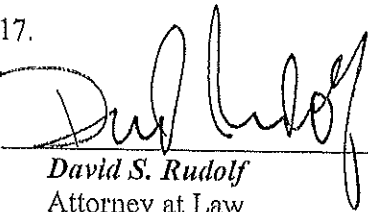
Attorney for Michael Iver Peterson

CERTIFICATE OF SERVICE

This shall certify that a copy of the foregoing *Motion for Production of Microslide with Feathers and Permission to Transport Said Microslide to Defense Expert for Inspection, Examination, and Testing* was this day served upon the District Attorney by the following method:

- depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care, custody, and control of the United States Postal Service, properly addressed to Office of the District Attorney;
- _____ by personally serving the Office of the District Attorney via hand delivery (*Assistant District Attorney James Dornfried*);
- _____ by transmitting a copy via facsimile transmittal to the Office of the District Attorney; and/or
- _____ by depositing a copy in the box for the Office of the District Attorney maintained by the Clerk of Superior Court.

This the 22nd day of February, 2017.

By:  _____

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