Peterson gets new trial in the death of his wife

Michael Peterson reacts after Judge Orlando Hudson rules Wednesday that he'll get a new trial. Peterson has spent eight years in prison after being convicted in 2003 of murdering his wife, Kathleen Peterson, 10 years ago.

PHOTOS BY SHAWN ROCCO – srocco@newsobserver.com

A judge says he and the jury were misled by a former SBI agent.

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After eight years in prison, Durham novelist Michael Peterson will be home with his family this weekend after a judge ruled that Peterson deserves a new trial because of misconduct by a former agent of the State Bureau of Investigation.

Superior Court Judge Orlando Hudson said Wednesday that former SBI agent Duane Deaver misled him and the jury at Peterson's 2003 murder trial, when he was convicted of killing his wife, Kathleen.

"Is a new trial required because of due process violations and the perjured testimony?" Hudson said. "The answer is yes."

Durham DA Tracey Cline wouldn't say whether she would pursue a perjury case against ex-SBI agent Duane Deaver.

Hudson was worried that Deaver may have given false testimony in other cases, and asked Peterson's lawyer to research whether the judge had the power to appoint a special prosecutor to investigate Deaver.

"I am concerned about Mr. Deaver," Hudson said.

Wednesday's courtroom victory for Peterson is the latest twist in his saga, which has spun out books, documentaries and a feature-length film. For six days, Hudson listened impassively as Peterson's lawyer, David Rudolf, relentlessly attacked Deaver, who as an expert witness opined that bloodstains on the staircase of the Petersons' home and on Peterson's clothes proved he killed his wife.

Rudolf played clips of Deaver testifying at the 2003 trial, and then contradicted Deaver's assertion with testimony from SBI agents, expert witnesses and the SBI's own files. Deaver said he wrote 200 blood spatter reports when the SBI could only find 54. Experts said his blood spatter ex-

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A warning for Cline: A judge admonishes the Durham DA. ▸1B

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Pictures: See more photos of Wednesday's developments in Michael Peterson's hearing at **newsobserver.com/localpics**.

Defense challenged Deaver at trial in 2003

Michael Peterson's hearing for a new trial this month was not the first time his defense team had challenged the credentials of former State Bureau of Investigation agent Duane Deaver. In the 2003 trial, lawyers David Rudolf and Thomas Maher scoffed at Deaver's expertise but did not persuade Judge Orlando Hudson to exclude him from the trial.

A sample of The News & Observer's reporting from the time:

■ Aug. 14: "Rudolf argued that Deaver was no expert, but (District Attorney Jim) Hardin retorted that Rudolf's question (about whether Deaver had passed proficiency tests) was a straw man because no such testing exists in the United States. Deaver, Hardin said, 'has testified as an expert in 60 cases. They can't all be wrong.' "

■ Aug. 16: Deaver defends the experiments he used to form opinions about how Kathleen Peterson died, which included dropping a sponge, beating a sponge and a Styrofoam head, and stomping on bloody clothing.

"The witness candidly said he would have not have given an opinion without the experiment," Maher said. "The experiments are unscientific, and that makes them unreliable."

Hudson disagreed. "Each opinion is reliable and routinely used in his area of expertise," he said.

■ Aug. 20: "Rudolf asked, Did Deaver measure the amount of blood used in his experiments? Did he measure the impact force he applied with the metal rod?

Deaver

Did he take before-and-after photographs? Each time, Deaver said 'No.'

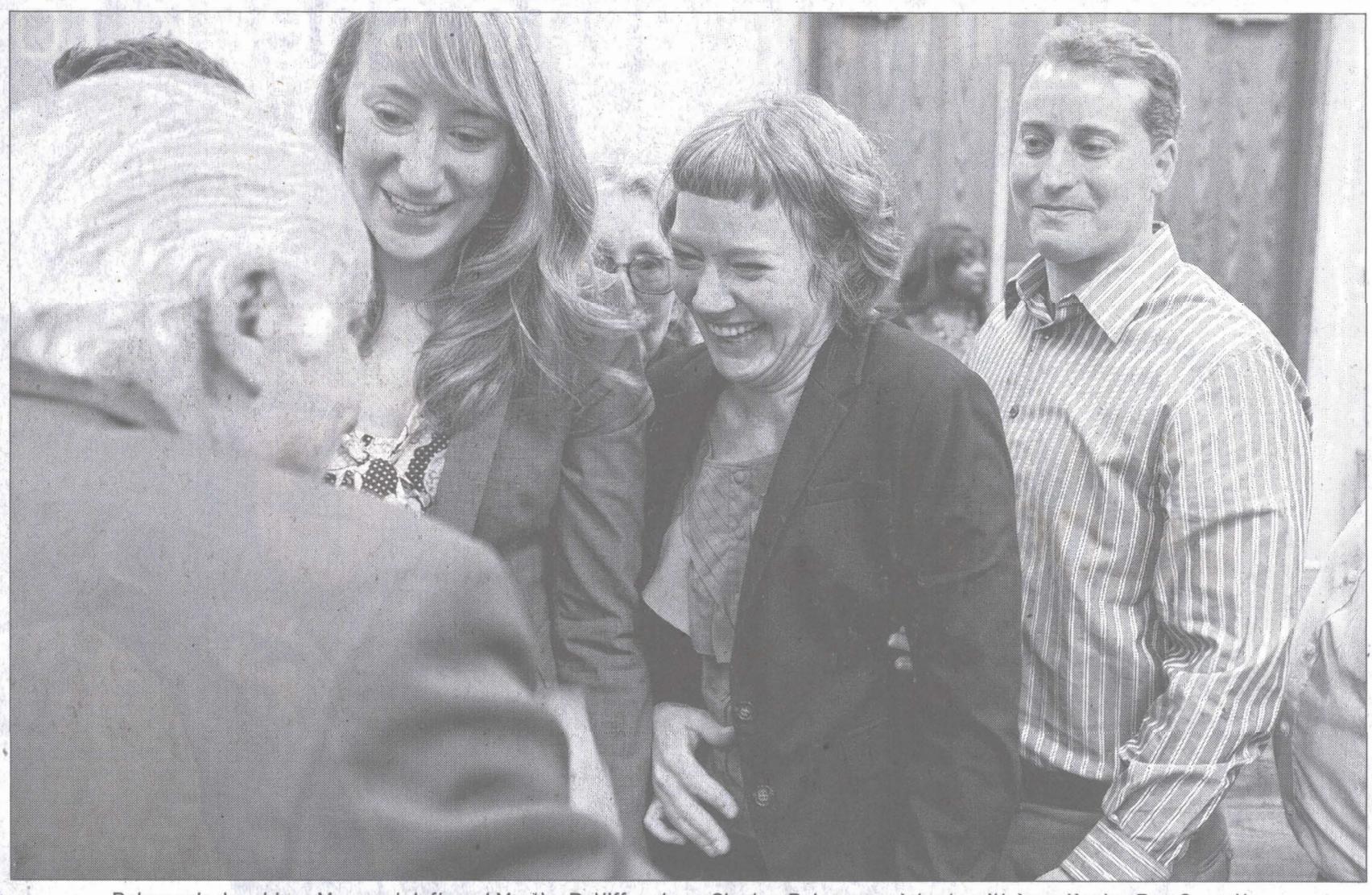
"In one experiment, Deaver struck the sponge to see whether he could replicate the bloodstain found on the inside right leg of Peterson's shorts. That led Rudolf to wonder, 'By the way, what is this?'

"The video shows Deaver flexing his right leg after the experiment, and SBI agent Suzi Barker looking at the inside of his thigh. Barker then throws up her hands, kicks up her heels and bounds away in an end-zone dance.

"Giggles floated through the courtroom. Deaver smiled for an instant, then his face melted into impassivity. Barker, he said, was excited that the experiment 'produced a result.' "

■ Aug. 25: "In his cross-examination, Rudolf has raised questions about Deaver's qualifications, his previous testimony, the integrity of his experiments, and his use of what Rudolf characterizes as outdated technology.

" 'I believe the kind of testimony that Duane Deaver gives is very dangerous,' Rudolf said in an interview. 'It is the essence of junk science, and I hope that someone will take a look at all the cases that he has testified in and re-examine the opinions he gave and the bases on which he claims to have reached those opinions.' "



Peterson's daughters Margaret, left, and Martha Ratliff and son Clayton Peterson celebrate with investigator Ron Guerette.

PHOTOS BY SHAWN ROCCO - srocco@newsobserver.com

TRIAL

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periments were unscientific and designed to produce the answers Deaver wanted.

Former colleagues and SBI records gave examples of pro-prosecution bias from 1987 to 2009, when Deaver insisted that Greg Taylor was guilty of a 1991 murder. The Innocence Inquiry Commission exonerated Taylor, in large part because of Deaver's failure to report the results of lab tests favorable to Taylor.

"Deaver could never admit that he was wrong," Mark Nelson, Deaver's former boss, told investigators. "Deaver's testimony before the Innocence Commission sounded like he was throwing people under the bus, ... a manifestation of Deaver not being able to admit he was wrong and trying to get himself out from under attack."

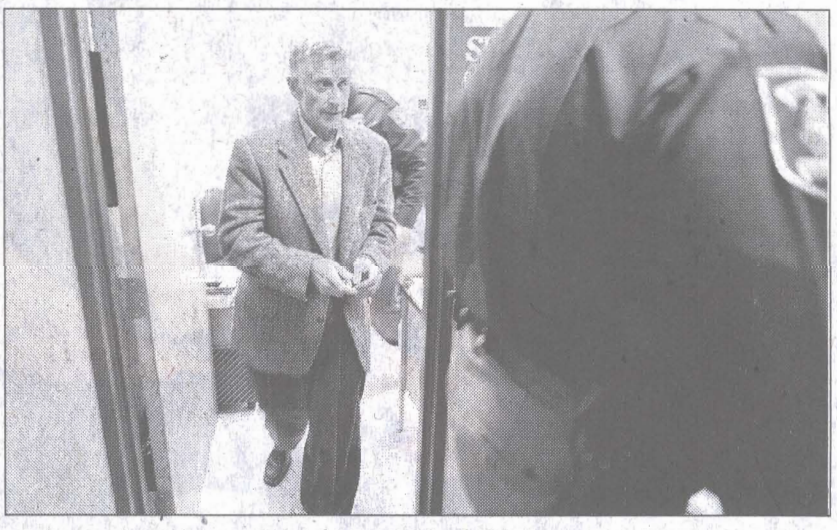
Rudolf called Deaver a liar a half-dozen times as he summed up his case Wednesday.

"There is no way to sugarcoat it. Agent Deaver lied to this court and our jury, not once or twice, but repeatedly and purposefully," Rudolf said Wednesday.

Freda Black, a prosecutor at the 2003 trial, said Hudson's finding of "perjured testimony" was a bombshell: "That is shocking to me that he would make that finding. But he is a fair judge, one of the best judges in the state."

Anger from wife's family

As Hudson quietly made his ruling from the bench just before lunch, Peterson's face reddened, he closed his eyes and put a hand to his forehead.



Peterson's bail was set at $300,000, and he's under electronic house arrest. He plans to stay in the Durham home of a friend.

His family and friends crowding the bench behind him hugged each other, some in tears.

When Peterson returned to court after lunch for his bond hearing, his supporters applauded him. Gray, gaunt and visibly limping, Peterson smiled widely and brushed the cheek of his year-old grandson, Dorian. He has not been allowed physical contact with family in the courtroom.

Hudson set bail at $300,000 and required electronic house arrest, meaning Peterson has to be at his residence at certain times. He will stay in the Durham home of a friend.

But Peterson does not enjoy the support of all his family.

Kathleen Peterson's daughter and sisters have opposed his bid for a retrial and release.

"My sister's autopsy speaks volumes," Candace Zamperini said in a phone interview Wednesday. "She was murdered. Plain and simple, she was murdered. We'll see him in the Court of Appeals."

Durham District Attorney Tracey Cline filed notice that she would appeal Hudson's decision. She had unsuccessfully argued that Rudolf had turned up nothing new in the hearing, just evidence that he could have discovered before and during the 2003 trial.

"They had plenty of time to do that," Cline said.

A perjury case?

Cline declined to discuss whether she would pursue a perjury investigation against Deaver, given Hudson's ruling that Deaver presented "perjured testimony."

In general, perjury investigations are difficult, Cline said. A prosecutor must first establish the truth, "and we have to show that he knew the truth and testified otherwise, and that is difficult."

Deaver, who is fighting his firing by the SBI in January, has declined interviews for the past 18 months.

Philip Isley, one of his lawyers, said he respectfully disagreed with Hudson's ruling. "We don't believe our client committed perjury," Isley said.

The retrial

Peterson's retrial likely will be very different from the first trial, which sprawled over five months and generated 12,000 pages of testimony and boxes of evidence.

Rudolf said the state will have an uphill battle at the retrial.

Prosecutors won't be able to introduce evidence from Peterson's computer, where investigators found evidence of Peterson's bisexuality and contact with a gay escort service. Prosecutors alleged the killing was sparked by Kathleen Peterson's discovery of her husband's bisexuality. The state Court of Appeals ruled in 2006 that Hudson should not have allowed that evidence at trial.

Rudolf also asserted that the prosecution would not be able to use any evidence gathered from the crime scene after Deaver arrived, 15 hours after the 911 call.

"Once Deaver got on the scene, everything is up for grabs," Rudolf said. "The wolf is foraging around the hen house for hours and hours."

LEARN MORE

Hear Joseph Neff discuss the Peterson case today at noon on WUNC-FM's "The State of Things."

Neff: 919-829-4516

TIME LINE: THE MICHAEL PETERSON CASE

2001

Dec. 9: Kathleen Peterson, 48, is found dead in a back staircase at her mansion in Durham.

Dec. 20: Michael Peterson is indicted on a charge of first-degree murder in the death of his wife. Peterson says he discovered her body after she fell.

2002

Jan. 14: Peterson posts bail of $850,000 and is released from the Durham County jail.

2003

May 5: Jury selection in the first-degree murder trial begins. It takes eight weeks to seat the 12 jurors and four alternates.

July 1: Durham District Attorney Jim Hardin says a blow poke, a fireplace tool, is likely the murder weapon. Defense attorney David Rudolf says the death came from an accidental fall.

July 14: A retired Durham police sergeant testifies that when he arrived at the scene of Kathleen Peterson's death, the amount of blood immediately made him suspicious.

Aug. 11: Brent Wolgamott, a former male escort, testifies that Mike Peterson arranged to pay him for sex three months before Kathleen Peterson's death.

Aug. 18: SBI agent Duane Deaver testifies that the blood spatters on the walls of the staircase, as well as the blood on Mike Peterson's shorts and sneakers, are evidence of a beating.

Aug. 22: Judge Orlando Hudson rules that evidence about the 1985 death of Mike Peterson's friend Elizabeth Ratliff in Germany is admissible.

Sept. 4: Assistant medical examiner Deborah Radisch testifies that the lacerations on Kathleen Peterson's head were consistent with a beating, not a fall.

Sept. 15: Forensic expert Henry Lee testifies that the blood spatters at the death scene are consistent with a fall, not a beating.

Sept. 17: The defense displays drawings re-enacting an accidental fall that could have caused the injuries Kathleen Peterson suffered.

Sept. 23: Rudolf surprises the courtroom by offering a blow poke that he says was found in the Peterson house over the weekend.

Oct. 10: After 14 hours of deliberations over four days, the jury finds Peterson guilty of first-degree murder. Hudson sentences him to life in prison without parole. Rudolf immediately appeals.

2005

"The Staircase," produced by French documentary crew Maha films, airs on the Sundance Channel and later is named winner one of the 13 winners of the Alfred I. duPont-Columbia University Awards.

2006

Henry Lee includes the Peterson case in his book "Dr. Henry Lee's Forensic Files."

April 18: Attorney Tom Maher argues before a three-judge panel at the state Court of Appeals for a new trial, saying that the trial judge should not have allowed evidence about Peterson's bisexuality and the death of Elizabeth Ratliff.

September: A majority of the three-judge panel rules against Peterson.

2007

November: The Supreme Court upholds conviction.

2008

Aug. 21: Peterson supporter Larry Pollard holds a news conference stating that an SBI report listing the presence of a microscopic feather supports the theory that an owl attacked Kathleen Peterson.

Nov. 12: New attorneys Jason J. Anthony and J. Burkhardt Beale allege that prosecutors withheld evidence about a tire iron found by a neighbor, suggesting that an intruder with a tire iron might have killed Kathleen Peterson.

2009

March 10: Judge Orlando Hudson rejects Peterson's appeal for a new hearing, saying he did not think the outcome of the trial would have been different had the trial lawyers known about the tire iron.

2010

August: The N&O series "Agents' Secrets" questions SBI investigative tactics, including those used by Deaver. An audit ordered in the spring by Attorney General Roy Cooper finds more than 200 cases where official SBI lab reports did not reflect the results obtained in the lab. The most serious mistakes were contained in reports written by Deaver.

2011

February: Rudolf asks for a new trial because of the new information affecting Deaver's credibility.

Dec. 14: Hudson grants motion for new trial.