

[Back](#)
[Editorial](#)
[Local/Region](#)
[Death Notices](#)
[U.S. News](#)
[World](#)
[Weather](#)
[Health](#)
[Tides](#)
[Politics](#)
[Columnists](#)
[Multimedia Features](#)
[Late Lotteries](#)
[Crime & Punishment](#)
[Offbeat](#)
[Corrections](#)
[Contact Us](#)
[AP - The Wire](#)

[Photo Galleries](#)
[Sports](#)
[Lifestyle](#)
[Features](#)
[SoNewEngland](#)
[Friday!](#)
[Announcements](#)
[USA Weekend](#)
[Government](#)
[Classifieds](#)
[Personals](#)
[Business Directory](#)
[News Delivery](#)
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Murphy must testify at Drew's hearing

GREGG M. MILIOTE, Herald News Staff Reporter

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TAUNTON -- They will meet again.

With little opposition from prosecutors, a Superior Court Judge Tuesday ordered that recently paroled "cult murderer" Robin Marie Murphy will be summonsed into court to testify during Carl Drew's upcoming evidentiary hearings.

Although Murphy and Drew have been connected to one another for more than 25 years, the pair of convicted murderers have not been in the same room together since his 1981 murder trial.

"She is the loose cannon and now we're going to get her in the courtroom and on the stand," Drew's Brookline-based attorney Michael Cutler said Tuesday.

Murphy, Drew's co-defendant in the macabre 1980 murder of Karen Marsden, was one of two key prosecution witnesses at Drew's initial trial.

Her tale of satanic ritual murder, sex and power helped condemn Drew to a life sentence.

But now, 24 years after a piece of Marsden's skull was discovered in a densely wooded section of Westport, Murphy may be the key ingredient to Drew's potential exoneration.

Through his attorney, Drew motioned for a new trial last September. Although prosecutors downplayed the significance of the request, Drew's case has proceeded and was given a big boost when Judge John Connor ordered the matter to move forward to an evidentiary hearing.

Drew's motion for new trial is based on charges of ineffective lawyering by his initial trial attorney, John Birknes, and allegations of prosecutorial misconduct and coercion.

Birknes, Cutler said, made numerous mistakes prior to and during Drew's trial. Cutler also noted that Birknes had never handled a murder case prior to being appointed as Drew's attorney and never tried another criminal case.

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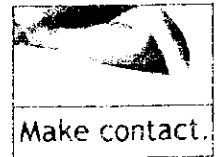


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during his career after the Drew's conviction.

At least three witnesses at Drew's murder trial have since recanted their testimony and have claimed they were forced into testifying falsely about the Fall River pimp by former prosecutors Ronald Pina and David Waxler.

Murphy's story

Although she was not listed as a potential witness when witness lists were exchanged by the prosecution and defense, Murphy inserted herself back into "cult murder" storm this past spring.

During a parole board hearing this March that eventually led to her controversial release from prison, Murphy said her testimony at Drew's trial was a lie.

She said the dark tale she told about murdering Marsden at Drew's behest in the Westport woods was a figment of her active 17-year-old imagination.

During the parole board hearing, Murphy portrayed herself as an innocent woman who committed perjury and eventually gave up her freedom to help convict Drew of the Marsden murder.

When asked why she made up the gory details of the murder, she said she did it because she believed Drew was a Satan worshipper and was responsible for Marsden's murder. She also said she believed Drew was guilty of many other murders, including those of teen prostitutes Doreen Levesque and Barbara Ann Raposa, both of whom were murdered in a ritualistic fashion over a six-month stretch prior to Marsden's slaying.

"I believed he belonged in jail, but also knew justice was not taking place. So I made the story up," Murphy told the board.

Unlike Drew, Murphy was granted a second-degree murder plea bargain in exchange for her testimony against Drew and three others accused of brutally murdering Marsden, Raposa and Levesque.

Due in large part to her testimony, prosecutors were successfully able to convict Drew of Marsden's murder and Andre Maltais of the Raposa slaying.

But the two other cases against Carl Davis and Willie Smith fell apart for various reasons, including Murphy's constantly changing stories about being present at all three murders.

Murphy was granted parole in April and is currently residing at a halfway house in Dorchester.

But as soon as word got out about her stunning reversal of stories during her parole board hearing, Cutler requested that a transcript of that hearing be recorded for use during Drew's evidentiary hearings. Then, after prosecutors objected to the use of the transcripts, Cutler filed a motion requesting Murphy be ordered to testify.

Judge Connor issued that order Tuesday, meaning the two star actors in a dark tale of murder that has spanned nearly three decades will be forced to meet again under entirely different circumstances.

"Her testimony at the parole board hearing put her in the middle of this storm," Cutler said after hearing Connor's ruling. "Her finally true story is incredibly consistent with what my witnesses are saying about the murder."

Carol Fletcher, one of Cutler's witnesses who has recanted her original trial

testimony, has claimed she did so because she was threatened by both Murphy and former Assistant District Attorney Waxler.

Her claims, submitted to the court in a sworn affidavit, also indicate that she actually witnessed Murphy begin to murder Marsden -- without assistance -- on the roof of another witness's Fall River apartment. Fletcher claims that Murphy, who has been reputed to have an extremely high IQ, duped police and prosecutors and was responsible for all three gory murders.

There has been some speculation that Murphy will take the stand and then refuse to testify or invoke her Fifth Amendment right to not incriminate herself, but Cutler said that speculation may be unfounded.

Since Murphy was convicted of Marsden's murder and was granted immunity against prosecution in the Raposa and Levesque murders, she will have no grounds to invoke her Fifth Amendment privilege, Cutler said.

The U.S. Constitution bars defendants from ever being tried twice for the same crime, also known as "double jeopardy."

Loose ends tied up

With the start of Drew's evidentiary hearings looming just three weeks from now, the court held its final pretrial hearing on the matter Tuesday morning and dealt with all outstanding motions.

One motion argued by both sides regarding so-called reputation witnesses was taken under advisement by Connor while another was denied.

Cutler recently filed a motion requesting that the commonwealth identify who its reputation witnesses will be vouching for and is also seeking a court order to obtain Board of Bar Overseers records on Pina and Waxler.

The commonwealth has listed up to 26 witnesses it plans to call during the two-week proceedings, 11 of which are slated to be "reputation" witnesses who will discuss their opinions on Waxler and Pina's professional reputations.

The "reputation" witnesses are being called to dispute the allegations made by three of Drew's witnesses that they were all coerced or threatened by the two former Bristol County prosecutors into testifying falsely against Drew.

"I'm seeking to level the playing field with this motion. If either Pina or Waxler had been disciplined for prior bad acts, it would be appropriate for you to weigh that information," Cutler said to Connor. "If I had the records from the Bar, then I could make a legitimate cross-examination of the reputation witnesses."

But Assistant District Attorney Stephen Gagne, who along with the district attorney's Chief of Appeals Kevin Connelly will be handling the case for the commonwealth, said the Board of Bar Overseers records should not be a part of this case because they are confidential documents and are "irrelevant."

"These records are unlikely to be relevant and is not an avenue we should move to," Gagne said. "But if they are requested by the court, they should be impounded and only viewed by (the judge and attorneys)."

Cutler agreed with Gagne's final point, saying he has no problem with the records being impounded and sealed from public record as long as he gets an opportunity to sift through them.

Connor said he would review case law on the issue and make a judgment on the motion prior to the commencement of the evidentiary hearings next month.

Connor, though, did deny a motion by Cutler asking the court either to order the prosecution's witnesses to meet with his investigator or preclude them from testifying.

"The fact that their investigators are privileged to come to my witnesses with holstered weapons, while their well-educated witnesses can say they have nothing to say to my investigators, is unfair," Cutler claimed. "I need some leverage in order to have access to their witnesses."

Gagne, however, told Connor that Cutler's request is unprecedented and is based on inaccurate information he received from Fletcher regarding a recent state police interview she took part in.

"(The interview with Fletcher) was a completely voluntary encounter and provides no basis for this drastic request," Gagne asserted. "There is no legal basis for this and the motion should be denied."

Connor concurred and said that the law guarantees that all witnesses can talk with whomever they wish.

Connor, though, did take a moment during the pretrial hearing to commend both sides of the case for their "strong, forceful advocacy."

"It's good to see adversaries working together like this in such a serious matter," Connor said.

Cutler said he too was thankful for the professionalism displayed by the commonwealth's attorneys, but said he was ready to go to battle next month.

"This will all leave my hands next month and will be on the shoulders of our witnesses," Cutler said. "I think we can win this thing. In fact, I think we can win it on just ineffective assistance of Drew's original trial attorney."

"All of these people have lived with this massive injustice gnawing at them for 25 years. My client was one of the victims here."

Two weeks of live testimony to determine whether Drew will be granted a new trial will begin Oct. 18 in Brockton Superior Court.

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