

# New trial could benefit Orlando man sentenced death in 2002 slayings

Roy Lee McDuffie (shown in December) will get a new trial. (BARBARA V. PEREZ, ORLANDO SENTINEL / December 19, 2007)

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When Roy Lee McDuffie enters the courtroom for his trial, he will see 12 new faces. They won't be the faces of the men and women who convicted him of murder or recommended he should die.

They'll be the faces of the 12 jurors who will decide his fate on this rare second chance awarded to him by the Florida Supreme Court.

He will get some new attorneys. There will be different arguments. But the facts remain the facts. The state's theory of the crime likely won't change.

"But they don't call it a new trial for nothing," said attorney Rob Sanders, who represented McDuffie in 2005 and will work on his defense again. "There's style. There's form. There's a different dynamic. There will be characteristics where this really is a new trial."

It is relatively rare for criminal defendants to get a second chance on appeal. One law professor estimates that less than 5 percent get a new trial.

And usually, the outcome remains the same.

Sanders is hoping for an exception. McDuffie, of Orlando, was convicted of two counts of first-degree murder and one count each of false imprisonment and armed robbery the first time. He received two death sentences for the Oct. 25, 2002, slayings of Deltona Dollar General store clerks Janice Schneider, 39, and Dawniell Beauregard, 27.

"I'm expecting something different," Sanders said. "I think there are still some things we can find that will help us."

Attorneys and experts agree that a second trial gives a distinct advantage to the defense. There will be no surprises -- they know what witnesses will say, they know what evidence will be presented.

But the defense can change its strategy.

"I don't know that I've ever tried a case that I didn't later think maybe I could have done this differently," said Orlando defense attorney Cheney Mason, who has been practicing for nearly four decades.

Charles Rose, a law professor at Stetson University Law School, said it appears McDuffie's case was circumstantial and returned for a cumulative set of errors. The state's case hinged on a single palm print found on a piece of duct tape binding one of the victim's wrists and the motive of a debt-laden desperate man.

The Florida Supreme Court ruled that McDuffie's attorneys should have been allowed to question two witnesses further, that a threatening voice-mail message McDuffie left for an attorney should not have been relayed to jurors and that a friend who had given McDuffie a small amount of money should have been allowed to testify. His next trial is slated for May. McDuffie has maintained his innocence since his 2002 arrest. While the advantages the second time around include knowing what witnesses will say and fewer surprises, there are some disadvantages.

The evidence is older and as time passes it's more difficult to keep everything organized, Rose said. Witnesses might have passed on or moved away. If they can be found, memories fade and their recollections might leave the jury with a different impression.

Defendants who testified the first time, as McDuffie did, are also at a disadvantage, Rose said, because they are locked into their past story.

"If they change [his version of the events], his credibility will be destroyed," Rose said.

Several cases in Central Florida have gotten a second look.

Joseph "Crazy Joe" Spaziano, the Outlaws biker convicted of killing an 18-year-old in 1973, got a second chance after a witness recanted. He had been on death row and beat the electric chair five times before the conviction was thrown out 22 years later. He ended up pleading to the charges the second time and was sentenced to time served, but he will remain in prison until he dies for a separate rape conviction.

Michael Stoll, a Sanford man who planned and coached another to kill his wife in 1994, was granted a new trial by the Florida Supreme Court. He was convicted both times, but was sentenced to life in prison without the possibility of parole the second time. He had received a death sentence the first time.

Robert Craig, one of the men convicted in the 1981 Wall Sink murders of two ranchers, argued for a new sentence more than four times. First condemned to death row for both murders, he eventually earned consecutive life sentences.

The Farina brothers, convicted and sent to death row in the 1992 Daytona Beach Taco Bell murders, got a second sentencing hearing because of problems with the original jury. A second jury also recommended death for Anthony and Jeff Farina, but the younger brother, Jeff, eventually received a life sentence. He was 16 at the time of the killings and the high court deemed execution for him a cruel and unusual punishment.

State Attorney John Tanner said that in an ideal situation cases would be tried once, the verdict would stand and attorneys would move on to the next case. Often the public thinks that cases are overturned on a "technicality," but Tanner said the appeals process ensures that a defendant's rights were honored and that everything was done properly and legally.

"It's hard on the families . . . on both sides," he said of the second trial.

Schneider's sister, Kelli Lee, said she's angry she has to go through this again.

"All I feel right now is anger, anger at the whole situation," she said. "We're trying to get on with our lives. We have to move forward. As long as this is going on, we can't move forward. It's like taking a major step back."