



TRULY INNOCENT?

A Review of 23 Case Histories of
Inmates Released from Florida's Death Row Since 1973

Commission on Capital Cases
The Florida Legislature
Roger R. Maas, Executive Director

May 13, 2011

Table of Contents

	Page #
Commission on Capital Cases – Commission Members & Staff	3-5
Commission on Capital Cases – Commission History	6
Project Introduction	7-8
Project Statistics	9
Case Histories – Quick Reference Chart	10-12
Glossary of Legal Terms	13

Case Histories

	Page #
John Ballard	14-16
Anthony Brown	17-20
Joseph Brown	21-27
Willie Brown & Larry Troy	28-30
Robert Cox	31-36
Andrew Golden	37-40
Joseph Green	41-44
Robert Hayes	45-48
Rudolph Holton	49-54
Anibal Jaramillo	55-58
Dave Keaton	59-68
Herman Lindsey	69-73
Joaquin Martinez	74-77
Juan Melendez	78-83
Anthony Peek	84-88
Freddie Pitts & Wilbert Lee	89-99
Juan Ramos	100-102
James Richardson	103-113
Bradley Scott	114-119
Frank Lee Smith	120-130
Delbert Tibbs	131-135
<i>Cases of Innocence</i> , DPIC, Case Summaries	136-144

COMMISSION ON CAPITAL CASES

402 S. Monroe Street

Tallahassee, FL 32399-1300

Phone: (850) 921-4704 Fax: (850) 921-4737

E-mail: CommissiononCapitalCases@leg.state.fl.us

Commission Members:



Honorable James "Jim" Waldman – Chair
State Representative, District 95
4800 West Copans Road
Coconut Creek, FL 33063 954/956-5600



Honorable Ronda Storms
State Senator, District 10
421 Lithia Pinecrest Road
Brandon, FL 33511 813/651-2189



Honorable Eric Eisnaugle – Vice-Chair
State Representative, District 40
2003 Curry Ford Road, Suite 1
Orlando, FL 32806 407/893-3141



Honorable Charles Harris
Retired Judge, Fifth District
Court of Appeal
402 South Monroe Street
Tallahassee, FL 32399 850/921-4704



Honorable Arthenia Joyner
State Senator, District 18
508 West Dr. Martin Luther King Jr.
Blvd., Suite C
Tampa, FL 33603 813/233-4277



Honorable Jeffrey D. Swartz
Former Judge, Miami-Dade
County Court
402 South Monroe Street
Tallahassee, FL 32399 850/921-4704

Previous Commission Members:



Senator Joe Negron
2010-2011



J.C. Planas
2005-2010



Dan Gelber
2002-2006



Sally A. Heyman
1997-2002



Michael Scionti
2007-2010



Justice Charles
Canady
2004-2005



Walter Campbell, Jr.
2002-2006



Ronald A. Silver
1997-2001



Victor D. Crist
2006-2010



Judge Richard Luce
2004-2005



Bruce Kyle
2002-2003



Victor D. Crist
1997-2001



Judge Leslie B.
Rothenberg
2006-2010



Sandy Adams
2003-2005



Randy John Ball
2001-2002



Parker L. McDonald
1997-2001



Judge Paul Hawkes
2006-2010



Alex Villalobos
2002-2006



Locke Burt
1997-2002



Charles E. Miner, Jr.
1997-2003

Commission Staff:

Roger R. Maas, Executive Director

Jim Ledbetter, Program Manager

Mary Jean Hinson, Program Specialist

Legislative Research Assistants:

Elise Jensen

Joshua Kuch

Cary Rice

Other Commission Staff:

Erika Castellucci

Nicole Chinn

Karen Hogan

Ashleigh Holand

DeeDee Kurth

Nicole Prior

Susan Quinn

Kelly Roberts

Wendy Schulte

Emily Wray

Commission on Capital Cases History

The Commission on Capital Cases was statutorily created in 1997. Chapter 27.709, Florida Statutes, provides that the commission:

...shall review the administration of justice in capital collateral cases, receive relevant public input, review the operation of the Capital Collateral Regional Counsel offices (CCRC), and advise and make recommendations to the Governor, Legislature, and the Supreme Court.

In 1996, the McDonald Commission recommended the transformation of the office of Capital Collateral Representative (CCR), which represented inmates in capital collateral appeals, into three separate offices that were divided by region. The three collateral appellate offices became known as the Capital Collateral Regional Counsel (CCRC). Following another recommendation of the McDonald Commission, the Commission on Capital Cases was established to oversee the offices of the Capital Collateral Regional Counsel, as well as to create and oversee a registry of attorneys designed to handle the overflow of cases from the Capital Collateral Regional Counsel offices.

Roger Maas was appointed by the late Governor Chiles to be the interim Capital Collateral Representative Director and was charged with the overseeing of the transition into the three offices of the Capital Collateral Regional Counsel. In 1997, Mr. Maas was appointed to the position of Executive Director of the newly formed Commission on Capital Cases.

The Commission on Capital Cases is comprised of diverse members recognized as being knowledgeable in criminal justice issues and experts in their respective fields. As a result of their leadership, Florida has one of the most comprehensive and well-funded collateral representations in the United States. The dedication of the Florida Legislature and the commission is reflected in the following observation by Florida Supreme Court Justice Harry Lee Anstead:

Because of the progressive and effective reforms made by the Legislature and the accomplishments of the Commission on Capital Cases in carrying out these reforms, Florida is now recognized as a model in the administration of justice in capital cases.

Project Introduction

In response to the increased scrutiny of Florida's capital cases; specifically, recent studies claiming that Florida has the highest rate of death row releases,¹ an analysis by the commission has researched the 23 cited cases where individuals have been released from death row. Of these 23 inmates, none were found "innocent," even when acquitted, because no such verdict exists in Florida. A defendant is found guilty or not guilty, never innocent. For the purposes of this analysis, cases will be included if a conviction and death sentence is overturned and the following occurs: the prosecutor declines to prosecute, the remanding court orders acquittal, or the inmate is acquitted at retrial; or, the inmate is granted a pardon by the Governor.

The guilt of only four defendants was subsequently doubted by the prosecuting office or the Governor and Cabinet members: Freddie Lee Pitts and Wilbert Lee were pardoned by Governor Askew and the Cabinet, citing substantial doubt of their guilt, Frank Lee Smith died before the results of DNA testing excluded him as the perpetrator of the sexual assault, and the State chose not to retry James Richardson due to newly discovered evidence and the suspicion of another perpetrator.

An analysis of the remaining 19 cases can be divided into three categories that account for their releases: (1) nine cases were remanded due to evidence issues, (2) an additional seven were remanded in light of witness issues, and (3) the remaining four were remanded as a result of issues involving court officials. Rudolph Holton was released due to a combination of two reasons – evidence and witness issues.

Further examination of all 23 cases yielded various case dispositions. Eight had their cases nolle prossed² by the prosecutor, and the reasons are as follows: witness recantation, the choice not to subject witnesses to further trials, the death of witnesses, and lost or missing evidence. In no case did a court dismiss charges. Twelve inmates were either acquitted at retrial or their cases were remanded for an acquittal. Of the remaining, one died in custody and the Governor and Cabinet pardoned the remaining two. In addition, no case has had a subsequent suspect arrested or convicted.

¹ In 2002, A Broken System (Columbia Law School) and in 2006, The Florida Penalty Assessment Report (ABA Death Penalty Moratorium Implementation Project). Both studies relied upon The Death Penalty Information Center's (DPIC) definitions, statistics, and conclusions in their analysis and findings. The DPIC definition for innocence is: "...convicted and sentenced to death, and subsequently either a) their conviction was overturned and they were either acquitted at a re-trial or all charges were dropped; or b) they were given an absolute pardon by the governor based on new evidence of innocence."

² At the prosecutor's discretion, a decision is made to discontinue the prosecution of the case.

Additional examination reveals the following:

- Thirteen had an offense date prior to 1985, 8 from 1985-1995, and 2 since 1995
- Three confessed to the initial charges of murder (Keaton, Lee, Pitts)
- Six were found not guilty at the retrial (Brown, A., Green, Hayes, Martinez, Peek³, Ramos)
- Three were found guilty at the retrial (Lee, Peek³, Pitts)
- Fourteen had criminal records prior to their arrest for murder⁴ (Ballard, A. Brown, W. Brown, Cox, Green, Hayes, Holton, Jaramillo, Keaton, Lee, Lindsey, Scott, Smith, Troy)
- As of 2006, ten have committed 30 felonies (F) since their release⁵ (A. Brown (1F), W. Brown (11F), Troy (2F), Cox (1F), Golden (3F), Green (3F), Hayes (3F), Holton (4F), Jaramillo (2F))
- Five are currently incarcerated (W. Brown, Cox, Hayes, Holton, Peek, Troy)
- Three cases were dropped when an inmate/witness recanted their previous testimony (W. Brown, Holton, Troy)
- Five cases were reversed due to insufficient evidence (Ballard, Cox, Golden, Jaramillo, Lindsey)
- Zero cases have had a subsequent suspect arrest and conviction

³ Anthony Peek was found guilty at his first retrial, and not guilty at the second retrial.

⁴ This information does not include the criminal histories of seven inmates: Joseph Brown, Andrew Golden, Joaquin Martinez, Juan Ramos and James Richardson.

⁵ This information does not include the criminal histories of six inmates: Joseph Brown, Joaquin Martinez, Juan Ramos and James Richardson. It does not reflect a **full** criminal history for Robert Cox and Andrew Golden

Project Statistics

<u>Reasons for Release</u> ⁶		<u>Percentage</u>
Evidence issues	(9/23)	39%
Case based on circumstantial evidence	(5/23)	
Newly discovered evidence	(2/23)	
Problems with evidence	(2/23)	
Witness issues	(7/23)	30%
Prejudicial testimony	(3/23)	
Recanted Testimony	(2/23)	
Witness Credibility	(1/23)	
Inability to cross-examine	(1/23)	
Issues with Court Officials	(4/23)	17%
Discovery violation	(2/23)	
Ineffective assistance of counsel	(1/23)	
Substantial delay in indictment	(1/23)	
Doubt about guilt	(4/23)	17%
<u>Remanding Authority</u>		
Florida Supreme Court	(16/23)	70%
Florida Circuit Court	(4/23)	17%
Florida Governor	(2/23)	9%
U.S. District Court	(1/23)	4%
<u>Appeal Granted</u>		
Direct Appeal	(17/23)	74%
3.850 Motion	(4/23)	17%
Pardon	(2/23)	9%
<u>Case Disposition</u>		
Nolle prossed by the State	(8/23)	35%
Acquitted at the retrial	(6/23)	26%
Remanded for acquittal	(6/23)	26%
Pardoned by Governor	(2/23)	9%
Died in Custody	(1/23)	4%
<u>Date of Offense</u>		
Before 1985	(13/23)	57%
1985 – 1995	(8/23)	35%
Since 1995	(2/23)	9%

⁶ Includes two reasons for release for Rudolph Holton (evidence & witness issues); therefore, percentages will be greater than 100%.

Quick Reference Chart

Name	Date of Sentence	Factors Leading to Release	Current Status
Ballard, John	05/23/2003	FSC determined that evidence presented at trial (fingerprints and hairs) were legally insufficient to support the convictions.	After his release, authorities considered him a suspect in other murders.
Brown, Anthony	07/27/1983	FSC found that the State's failure to notify Brown of pretrial deposition was reversible error. On retrial, Brown was acquitted due to witness recantation.	09/17/90 - Received a 30-year sentence for aggravated battery with a deadly weapon. He also received a charge of introducing a controlled substance into a detention facility for which he received an additional three years on 06/18/96. He was released on 08/01/10 and is under community supervision.
Brown, Joseph	07/03/1974	Conviction reversed by Federal Court because, contrary to the co-defendant's testimony, he had received immunity in exchange for his testimony against Brown, and the state did not correct the false testimony.	There is no information available as to Joseph Brown's criminal history subsequent to his release.
Brown, Willie A. Troy, Larry	07/19/1983	FSC found that the failure to conduct a <u>Richardson</u> hearing for an alleged discovery violation was reversible error. The State dropped the charges when a key witness recanted.	Brown sentenced to life for multiple crimes committed in 1999. Troy was sentenced to 12 years for a 1991 cocaine sale conviction and arrested on 02/01/02 for smuggling contraband and cocaine possession. He was released on 04/24/03 and rearrested on cocaine possession charges in 2008. He is currently serving a 5-year sentence.
Cox, Robert	10/06/1988	FSC reversed on Direct Appeal, finding that evidence was insufficient to support conviction.	Prior to the indictment on the Florida case, Cox was serving two nine-year sentences for kidnapping and assault. After his release from prison in Florida, he was arrested in 1995 for holding a gun on a 12-year-old girl in Decatur, Texas. He is presently serving a life sentence for that robbery.
Golden, Andrew	11/15/1991	FSC reversed on Direct Appeal, finding the evidence was insufficient to establish guilt beyond a reasonable doubt.	Andrew Golden was imprisoned in Texas for three separate cases of Indecency with a Child. He was released on Mandatory Supervision on 03/16/07.
Green, Joseph Nahume	11/30/1993	FSC reversed and ordered a new trial due to a bad search warrant and improper cross-examination of a defense witness by the State. Acquitted by the judge at the retrial.	After acquittal, Green was sentenced to two one-year terms for two cocaine possession charges that occurred in 2000. He was released on 11/05/01. He was sentenced to a three-year term for cocaine possession in 2003 and was released on 07/27/06.

Hayes, Robert	06/05/1992	Conviction reversed due to a <u>Williams Rule</u> violation and due to the admittance DNA evidence that had not met the <u>Frye Standard</u> . Hayes was acquitted on retrial.	Robert Hayes is currently serving a 15-45 year sentence in New York for manslaughter, burglary, and attempted arson. He is eligible for parole on 08/06/18.
Holton, Rudolph	12/17/1986	FSC reversed due to DNA evidence and a <u>Brady</u> violation. Prosecutors dropped charges due to evidence and witness issues.	Holton was sentenced to two years for a 2003 aggravated battery on his wife and was released on 08/29/05. He was sentenced to twenty years for June 2006 attempted murder and domestic battery charges. His scheduled release date is 05/16/25.
Jaramillo, Anibal	04/08/1981	FSC reversed because the State's evidence was not inconsistent with Jaramillo's reasonable hypothesis of innocence.	Anibal Jaramillo was deported to Colombia subsequent to his release and was murdered there.
Keaton, David	05/11/1971	Sentence under pre- <u>Furman</u> statute automatically reduced to life by USSC. Upon review of the life sentence, the FSC reversed based on claim of newly discovered evidence.	Subsequent to his release, Keaton was arrested on a DUI charge. NCIC does not show any other arrests.
Lindsey, Herman	06/17/2007	FSC reversed the convictions and directed that a judgment of acquittal be entered.	Released from prison 07/28/09.
Martinez, Joaquin	05/27/1997	FSC reversed and ordered a new trial due to improper comments by a State witness as to the guilt of Martinez. Martinez was acquitted at retrial.	There is no information available as to Martinez's criminal history subsequent to his release.
Melendez, Juan	09/21/1984	Circuit Court ordered a new trial based on newly discovered evidence. The state decided to drop charges.	Released from prison on 01/03/02.
Peek, Anthony	05/02/1978	FSC reversed the case after finding that it was error to admit evidence of a collateral rape. Peek was acquitted after a new trial.	Peek is currently incarcerated in Florida, serving a life sentence for sexual battery.
Lee, Wilbert Pitts, Freddie	08/28/1963	Sentences reduced to life by <u>Furman</u> . First conviction was remanded for new trial after another man confessed to the murders. During retrial, the confession was ruled inadmissible and Pitts and Lee were convicted again. They were pardoned in 1975.	According to NCIC reports, neither Pitts nor Lee have had any subsequent arrests.
Ramos, Juan	03/10/1983	FSC reversed and remanded for new trial due to scientifically unreliable evidence admitted at trial. Acquitted by jury at second trial.	There is no information available as to Ramos' criminal history subsequent to his acquittal.
Richardson, James	05/31/1968	Richardson's conviction and life sentence were reversed on post conviction on a newly discovered evidence claim. He was not retried.	There was no available information regarding Richardson's arrest history subsequent to release.

Scott, Bradley	02/08/1988	Due to the 7-year delay before an indictment was issued, FSC reversed, noting that prejudice was established because evidence did not rebut every reasonable hypothesis of innocence.	According to NCIC, Bradley Scott has had no arrests subsequent to release.
Smith, Frank Lee	04/14/1985	After his death, Smith was excluded as the perpetrator of the sexual assault, through the use of DNA evidence.	Died in custody.
Tibbs, Delbert	03/24/1975	FSC reversed because the conviction rested solely on victim identification. The State later dropped the charges.	According to NCIC, Delbert Tibbs has had no arrests subsequent to release.

Glossary of Legal Terms

Anderson v. Florida – Florida Supreme Court decision that held the reduction of sentence dictated by *Furman v. Georgia* did not divest the court's jurisdiction over capital appeals pending at the time *Furman* was decided.

Brady Violation – an error committed when the State fails to disclose exculpatory evidence to the defense (*Brady v. Maryland*).

Frye v. United States – established the guidelines for considering novel scientific techniques or methods in verifying evidence or testimony. The *Frye* test asks whether expert testimony is based on a scientific principle that is "sufficiently established to have gained general acceptance in the particular field in which it belongs."

Furman v. Georgia – held that the imposition and carrying out of the death penalty was cruel and unusual punishment in violation of the Eighth Amendment, causing all death sentences to be converted to life imprisonment without the possibility of parole.

Gardner v. Florida – a sentencing error committed when the trial judge considers information unknown to the defendant or his counsel when imposing the death penalty.

Lockett v. Ohio – the guidelines established in *Lockett v. Ohio* allow a defendant to present non-statutory mitigating evidence.

Mercy Trial – a procedure where the judge impaneled a jury of 12 to render a verdict on whether or not mercy should be recommended resulting in the reduction of the sentence from life to death.

NCIC – National Crime Information Center.

Nolle Prosequi (nolle pros, nolle prossed) – at the prosecutor's discretion, a decision is made to discontinue the prosecution of the case.

Parker v. Dugger – case law requiring a meaningful review of a death sentence when imposed over a jury's recommendation of life.

Writ of Error Coram Nobis – a writ of error directed to a court for review of its own judgment and alleged on an error of fact.

BALLARD, John R. (W/M)

DC# 181741

DOB: 09/03/68

Twentieth Judicial Circuit, Collier County Case # 01-1353

Sentencing Judge: The Honorable Lauren Brodie

Attorney, Trial: Michael Orlando & Joe Rineila – Assistant Public Defenders

Attorney, Direct Appeal: Paul Helm – Assistant Public Defender

Date of Offense: 03/07/99

Date of Sentence: 05/23/03

Circumstances of Offense:

Jennifer Jones and Willie Patin lived in an apartment together, and were planning to move to Texas on Monday, March 8, 1999. Friends of Jones and Patin noted that John Ballard was an acquaintance of Jones and Patin, and he was frequently a guest in the apartment several times prior to and also including the weekend prior to March 8th. It was well known that Jones sold marijuana out of the apartment and considerable sums of money were typically present in several locations in the apartment.

Ariana Harralambus, a friend of Jones and Patin tried to contact the couple on March 8th, but was unsuccessful. She was concerned and called Jones' father to help her investigate. They gained access to the apartment by prying the sliding glass door open and discovered Jones' body in the master bedroom and Patin's body in the spare bedroom.

Forensic technicians lifted several fingerprints from the bed frame and several hairs were found clutched in the hands of both Jones and Patin. Both Jones and Patin died of blunt force trauma to the head.

Subsequent to the murders, law enforcement personnel questioned Jones and Patin's acquaintances, including Ballard. Forensic analysis determined that the fingerprints found on the bed frame belonged to Ballard, and the hairs found in the victims' hands were consistent with the hair of Ballard. Ballard hypothesized that Jones and Patin were robbed and killed by others who knew about the money that was frequently kept in the apartment. Ballard also told investigators that he witnessed a drive-by shooting. During the week prior to the murders, several shots were fired into the apartment's windows.

Prior Incarceration History in the State of Florida:

Offense Date	Offense	Sentence Date	County	Case No.	Prison Sentence
11/06/1986	BURG/DWELL/OCCUP.CONVEY	11/16/1987	PALM BEACH	8612093	6Y 0M 0D
11/03/1986	BURG/DWELL/OCCUP.CONVEY	11/16/1987	PALM BEACH	8612194	6Y 0M 0D
11/05/1986	TRAFFIC IN STOLEN PROPERTY	11/16/1987	PALM BEACH	8612194	6Y 0M 0D
06/14/1987	BURGUNOCCSTRUC/CV OR ATT.	11/16/1987	PALM BEACH	8707019	6Y 0M 0D

Trial Summary:

06/14/01 Indicted as follows:
Count I: First-Degree Murder (Jennifer Jones)
Count II: First-Degree Murder (Willie Patin)
Count III: Armed Robbery

04/04/03 Jury returned guilty verdicts on all counts of the indictment
04/11/03 Jury recommended death by a vote of 9-3
05/23/03 Sentenced as follows:
Count I: First-Degree Murder (Jennifer Jones) – Death
Count II: First-Degree Murder (Willie Patin) – Death
Count III: Armed Robbery – 15 Years

Appeal Summary:

Florida Supreme Court – Direct Appeal

FSC# 03-1012
923 So.2d 475

06/06/03 Direct Appeal filed
02/23/06 FSC reversed convictions and vacated sentences
02/24/06 Mandate issued

Case Information:

On 06/06/03, Ballard filed a Direct Appeal with the Florida Supreme Court, citing the following errors: failing to prove the charges, failing to find a discovery violation regarding the fingerprint comparison chart, finding that the defense failed to prove the mitigating factors of brain damage and impaired capacity, and failing to have aggravating circumstances determined by the jury. On 02/23/06, the FSC reversed the convictions, vacated the sentences, and remanded to the Circuit Court for a judgment of acquittal.

The FSC determined that the evidence presented at trial, specifically the fingerprints and hairs, were legally insufficient to support the convictions.

Law Enforcement / Prosecution Statements:

In a statement to the St. Petersburg Times, Assistant State Attorney Michael Provost still thinks Ballard was guilty of murder:

I don't want to make it sound like sour grapes, but we thought we had enough evidence to convict and the jury did, too. There was one hair you could identify in that whole apartment and it happened to be John Ballard's and it happened to show up in her hand. I don't think that's probable unless he's a really unlucky guy. Same with the fingerprint.

In a statement to the Naples Daily News, Provost said:

We certainly knew that it was a close case going in. I'm disappointed, mostly for the victims' families.

Defense Statement:

In a statement to the St. Petersburg Times, Assistant Public Defender Michael Orlando says that Ballard was a victim of pressure:

You're dealing with the intensity of the courtroom in this particular case. All these things tend to put a lot of pressure on jurors.

Current Status:

On 02/24/06, Ballard was released from Union Correctional Institution.

Collier County Sheriff's Office officials have said Ballard is the primary suspect in the November and December 1999 slayings of Glenn Soos, Ballard's brother-in-law, and Allie Walsh, who had been his sister's roommate. Detectives consider both cases to be open and active.

Report Date: 08/07/06 JFL

BROWN, Anthony S. (B/M)

DC# 838162

DOB: 03/28/56

First Judicial Circuit, Escambia County, Case #82-5992

Sentencing Judge: The Honorable Joseph Q. Tarbuck

Trial Attorney: Robert A. Dennis, Jr., Private

Attorney, Direct Appeal: Michael Minerva, Assistant Public Defender

Date of Offense: 12/21/82

Date of Sentence: 07/27/83

Circumstances of the Offense:

Evidence collected by the police indicated that the Veteran's Gas Company received a phone call from an individual who identified herself as Annie Rivers at 3:30 p.m. on 12/21/82. The female requested that the minimum amount of gas be delivered to 3905 Pine Forest Road. Five minutes later, the same individual called back questioning where the gas was. The order was relayed, via the dispatcher, to deliveryman James Dassinger, the victim. Dassinger never returned from his route and the gas company called the police and reported him missing around 6:00 p.m. that night.

Deputy Schultz went to the neighborhood and stopped at a house to inquire about the location of the address of the gas request. Wydell Rogers, who was visiting a friend, answered the door at this house. He admitted that the address in question was his, but he denied any knowledge of the gas request. Deputy Schultz then went to Roger's residence (the address of the gas request) and found the gas truck and the body of James Dassinger. There was no wallet found on the body. There was a large wound under the armpit. A pad was found in the truck with a list of names; Annie Rivers was the last name on the list. Two 410-shotgun shells were found at the scene. Two shoeprints that resembled tennis-shoe prints were found about 150 feet southeast from the house. An employee from the Veteran's Gas Company identified the body and indicated that no gas had been delivered to the house and that approximately \$225.00 was missing.

During the inspection of the scene, Anthony Brown appeared at the address. Blood spatters had been found in the truck, and Brown had a small spot of blood on the watch that he was wearing. The watch was taken into evidence, and Brown was asked to go to the station for questioning. There he was advised of his rights and signed a waiver. In his statement, Brown declared that he was a friend of Rogers and had stopped by for a visit and that he was at a pool hall in Atmore, Alabama, earlier in the day. In a later statement, Brown indicated that he had been with Rogers earlier that day and had left to buy drugs at the pool hall and then had returned. Brown had a fresh track mark on his arm, possibly from an infection. Rogers was questioned on 12/21/89 and 12/22/89. He did not show up for further questioning on 12/26-28/89. On 12/29/89, authorities found an unserved warrant for Grand Theft on Rogers. He was spotted by an officer and promptly taken to the police station. During the questioning, Rogers stated that he knew who was involved

in the robbery and the killing and named Brown and Ulysses Robinson. During the initial stage of the interrogation, Rogers did not implicate himself, but later on testified and admitted to participating in the robbery conspiracy.

Rogers testified that he stated that he arrived at the Oaks Tavern around 1:30 p.m. and was sitting in his car in the parking lot with David Davis. Brown approached the car and asked Rogers to get out of the car. Brown detailed his idea for the crime to Rogers, and Rogers stated that he would go along with it. Rogers' statements led to the conclusion that it was Brown's idea to commit the robbery. Brown got into the car and the three men drove to Brown's mother's house to get a change of clothes. They drove to the Jr. Food Store, where Brown and Rogers used the phone. Brown called information and got the number to Veteran's Gas Company. He then used Rogers' girlfriend's name, and called the gas company and ordered 50 gallons of gas in a female voice. The three men drove to Rogers' house and got a 410-shotgun and some shells that were under the house. Brown loaded the gun and stayed at the house. The plan was for him to hide in the bushes and wait for the deliveryman. Rogers drove to the gas station down the street and waited until he saw the gas truck. He then went to pick up Brown after the allotted five minutes. Brown was not at the designated spot. Rogers then drove back toward the gas station and saw Brown standing on the side of the road. Brown did not have the shotgun. Rogers picked Brown up, and Brown stated that he had killed the deliveryman. Brown had a wallet and a check. When Brown got out of the car he placed \$50 over the visor and stated it was in case anyone inquired as to whether Rogers could pay for the gas.

At the trial, Brown testified to a different sequence of events. He had been home until approximately 1:30 p.m. on 12/21/89. He then drove to Oaks Tavern and saw Rogers. Next, he bought a six-pack of beer and took it to the tavern and drank it. At approximately 3:30 p.m., Brown asked Rogers to take him home. He then walked back to the tavern around 4:30 p.m. Brown and two other individuals then went to Atmore; they bought gas and dope. Brown returned to the Oaks Tavern and then proceeded to Roger's house to give him some pills. Brown stated that he did not know where the blood on his watch came from. Brown also testified that Rogers had pulled a sawed-off shotgun on him several months earlier.

Fingerprints found in the truck did not match Rogers' or Brown's. Davis was never fingerprinted; thus his fingerprints were never compared to the fingerprints found inside the truck. Two of the charges against Rogers were nolle prossed because of insufficient evidence and information. The pathologist testified that the cause of death was a gunshot from close range - within an inch. The death was almost instantaneous because of the massive bleeding.

Additional Information:

In 1974, Brown was arrested for Aggravated Assault twice and given one year and five-years probation. In 1975, he was arrested for Breaking and Entering; the charges were nolle prossed. In 1980, Brown was arrested for Aggravated Assault and Battery and Burglary and was given a one-year suspended sentence and one year of probation. In January of 1983, while out on bail from the murder charge, Brown was arrested for Possession of a Firearm by a Convicted Felon; the charges were dismissed.

Codefendant Information:

Wydell Rogers entered a plea bargain and pled guilty to a charge of Second-Degree Murder and Robbery with a Firearm in exchange for his testimony against Brown. Rogers received a life sentence for the murder and 15 years for the robbery.

During Brown’s retrial, Rogers recanted his testimony. He received three counts of perjury and was sentenced to five years for each. Rogers was released on 08/24/10.

Trial Summary:

- 01/11/83 Defendant indicted on the following charges:
 - Count I: First-Degree Murder
 - Count II: Armed Robbery
 - Count III: Possession of a Firearm by a Convicted Felon
- 07/15/83 The defendant was found guilty of the following:
 - Count I: First-Degree Murder
 - Count II: Armed Robbery
- 07/15/83 A majority of the jury recommended that the defendant receive a life sentence.
- 07/27/83 The defendant was sentenced as follows:
 - Count I: First-Degree Murder - death
 - Count II: Armed Robbery – no separate sentence imposed
- 09/01/83 The defendant nolle prossed for count III

Retrial Information:

- 09/27/85 Motion for retrial filed
- 02/10/86 Jury trial held
- 02/14/86 Defendant acquitted

BROWN, Joseph Green (B/M)

DC # 042546

DOB: 10/02/50

Thirteenth Judicial Circuit, Hillsborough County, Case # 73-2180

Sentencing Judge: The Honorable Robert W. Rawlins, Jr.

Attorney, Criminal Trial: J. Michael Shea, Esq.

Attorney, Direct Appeal: J. Michael Shea, Esq.

Date of Offense: 07/07/73

Date of Sentence: 07/03/74

Circumstances of Offense:

Joseph Green Brown was convicted and sentenced to death for the 07/07/73 rape and murder of Earlene Evans Barksdale.

Ronald Floyd revealed the relevant facts of this case at trial. Floyd was with Joseph Brown prior to the crime and immediately afterwards. Floyd testified that on 07/07/73, he, Brown, and a third man, known as "Poochie," drove to the store where the murder would take place. Floyd, reportedly unaware of his companion's intentions, waited in the car while Brown and Poochie entered the store. Floyd noted, however, that prior to entering the clothing store, Brown had what appeared to be a gun under his shirt. After waiting about 15 minutes, Floyd exited the car and walked over to the entrance of the store. Floyd recalled hearing a gunshot, after which he immediately entered the store. Inside the store, Floyd peered over the counter and saw the body of Earlene Evans Barksdale lying close to a rear storage room. Brown, Floyd and Poochie fled the scene and, while speeding away, Poochie exclaimed to Brown, "Man, you didn't have to do that." Barksdale's body was found at 9:30 p.m. that evening. She had been raped and shot to death.

The same night of the Barksdale murder, Brown and Floyd robbed a couple at a motel and Brown sexually assaulted the woman (CC # 73-1338). Brown turned himself in to authorities the following day and implicated Floyd in the motel robbery and sexual assault. He and Floyd were arrested, and the man known as "Poochie" was never located. Brown alerted police to the location of the gun used in the motel robbery, which belonged to a man named Raymond Vinson. Vinson's car was also used in the robbery, and he charged as an accomplice in the crime. Vinson's gun, the one used in the motel robbery, was also introduced as the alleged murder weapon in the Barksdale case.

Joseph Brown's convictions for the rape, robbery and murder of Earlene Barksdale were based primarily on the testimony of Ronald Floyd. At trial, Floyd recalled that the day following the murder, he, Brown, and Raymond Vinson heard a radio broadcast about the Barksdale murder. Floyd claimed he stated something to the effect of "People will do anything these days" to which Brown replied, "Yes, she should have never done what she did." The testimony of Vinson corroborated that such a conversation did, in fact, take

place. Floyd testified that he later confronted Brown directly, asking him if he killed Barksdale. Brown reportedly answered yes and then made some lewd comment indicating that he had had sex with her.

There was no fingerprint evidence linking Brown to the Barksdale murder, and the only physical evidence implicating Brown was Vinson's gun. State ballistic reports could not prove, however, that the bullet that killed Barksdale came from Vinson's gun.

Trial Summary:

11/07/73 Defendant indicted on the following:
Count I: First-Degree Murder
Count II: Rape
Count III: Robbery

06/28/74 The jury found the defendant guilty on all counts.

07/01/74 Upon advisory sentencing, the jury recommended, by a majority vote, that the defendant be sentenced to death.

07/03/74 The defendant was sentenced as followed:
Count I: First-Degree Murder – Death
Count II: Rape – Life
Count III: Robbery – Life

Appellate Summary:

Florida Supreme Court, Direct Appeal

FSC # 46,925
381 So. 2d 690

02/18/75 Appeal filed.
01/31/80 FSC affirmed the convictions and sentence.
04/21/80 Rehearing denied.

Florida Supreme Court, Petition for Writ of Habeas Corpus

FSC # 59,732
392 So. 2d 1327

09/29/80 Petition filed.
01/15/81 Petition denied.

United States Supreme Court, Petition for Writ of Certiorari

USSC # 80-5708

449 U.S. 1118

12/17/80 Petition filed.

01/19/81 Petition denied.

United States Supreme Court, Petition for Writ of Certiorari

USSC # 80-6434

454 U.S. 1000

04/03/81 Petition filed.

11/02/81 Petition denied.

State Circuit Court, Motion to Vacate Judgment and Sentence (3.850)

CC # 73-2180

05/18/83 Motion filed.

10/04/83 Motion denied.

Florida Supreme Court, 3.850 Appeal & Petition for Writ of Error Coram Nobis

FSC # 64,348

439 So. 2d 872

10/07/83 Appeal filed.

10/12/83 Denial affirmed.

United States District Court, Middle District, Petition for Writ of Habeas Corpus

USDC # 83-1287-Civ-T-10

10/14/83 Petition filed.

03/06/85 Petition denied.

United States Court of Appeals for the 11th Circuit, Habeas Appeal

USCA # 85-3217

785 F.2d 1457

03/26/85 Appeal filed.

03/17/86 USCA reversed the denial reached by the USDC, ordering the Habeas to be issued.

Warrants:

09/23/83 Death warrant signed by Governor Bob Graham.
10/27/83 Stay of execution granted by the United States District Court, Middle District.

Clemency:

10/12/82 Clemency hearing held (denied).

Case Information:

While on Direct Appeal to the Florida Supreme Court, questions arose concerning the veracity of Ronald Floyd's testimony that he was not given an immunity agreement by the State in exchange for his testimony against Brown. While in prison on a completely separate robbery conviction, Floyd gave Brown's defense counsel an affidavit in which he recanted his trial testimony and noted that the State offered "favorable consideration" in the motel robbery and in the Barksdale murder in exchange for his testimony against Brown. The Florida Supreme Court remanded to the trial court for an evidentiary hearing on the issues raised in Floyd's affidavit. At the hearing, Floyd reaffirmed his trial testimony and the court denied Brown's motion for a new trial. While still on Direct Appeal, the Florida Supreme Court remanded the case for a second time for an evidentiary hearing based on an alleged *Brady violation*⁷. Brown contended that the State had statements made by Floyd to his counsel that should have been furnished to the defense before trial. The trial court again denied Brown's motion for a new trial, stating that Brown's defense received everything it was entitled to. The Florida Supreme Court noted that Floyd's testimony at the 1975 evidentiary hearing claiming that he had not entered into an immunity agreement with the State matched his trial testimony, regardless of what he stated in the affidavit. As such, the Florida Supreme Court affirmed his convictions and sentence on 01/31/80.

Brown next filed a Petition for Writ of Certiorari in the United States Supreme Court, which was denied on 01/19/81.

Brown additionally filed a Petition for Writ of Habeas Corpus, essentially claiming a *Gardner violation*⁸, which was denied on 01/15/81. He then filed a Petition for Writ of Certiorari in the United States Supreme Court, which was denied on 11/02/81.

Brown subsequently filed a Motion to Vacate Judgment and Sentence (3.850) in the State Circuit Court. Brown alleged ineffective assistance of counsel during the guilt and penalty phases of his criminal trial. Following an evidentiary hearing on the issue, the State Circuit Court denied all relief. Brown filed an appeal of that decision in the Florida

⁷ *Brady violation* – an error committed when the State fails to disclose exculpatory evidence to the defense

⁸ *Gardner violation* – a sentencing error committed when the trial judge considers information unknown to the defendant or his counsel when imposing the death penalty.

Supreme Court, which affirmed the denial on 10/12/83. Brown concurrently filed a *Petition for Writ of Error Coram Nobis*⁹. Brown obtained a videotape deposition of Ronald Floyd's recanted testimony. In the video, Floyd outlined his motivation for testifying against Brown, primarily his fear that the State Attorney's Office would prosecute him for the same crimes that Brown was charged with. Floyd stated, that in exchange for his testimony against Brown, he was promised that he would not be charged with murder and would receive "favorable consideration" in another criminal case. Brown presented this new evidence as the basis for his *Petition for Writ of Error Coram Nobis*. He argued that, had this information been known to the trial court, "it conclusively would have prevented entry of the judgment." Having examined the issue of Floyd's recantation in a previous evidentiary hearing, the Florida Supreme Court noted that Floyd reaffirmed his trial testimony. Brown claimed that Floyd's retraction was caused by fear of prosecution for perjury. Since his counsel failed to object to the issue during the hearing and did not raise the issue on appeal, the Florida Supreme Court opined that Brown did not have credible grounds for his *Petition for Writ of Error Coram Nobis*.

Brown next filed a *Petition for Writ of Habeas Corpus* in the United States District Court, Middle District. In that petition, he asserted that the State knowingly presented false evidence to the jury when they failed to disclose that Ronald Floyd had, in fact, received "favorable consideration" for his crimes and allowed him to testify to the contrary. The District Court recognized that a deal had been made between Floyd and the State, as evident in proffered testimony given by the State; however, the court held that Brown was not entitled to the writ because he had failed to show that Floyd's false testimony was "material" to his conviction. The court denied Brown's *Petition for Writ of Habeas Corpus* on 03/06/85.

Brown filed an appeal of that decision in the United States Court of Appeals for the Eleventh Circuit on 03/26/85. The Court of Appeals also acknowledged that a deal had been made between Floyd and the State and decided to further examine the issue of materiality. In *Giglio v. U.S.*, the Supreme Court held, that in a case where the State knowingly introduces false evidence that "[a] new trial is required if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . .'" In noting that the prosecution presented Floyd's false testimony that he did **NOT** receive a deal from the State, the Court of Appeals commented, "The government has a duty not to exploit false testimony by prosecutorial argument affirmatively urging to the jury the truth of what it knows to be false." The Court of Appeals ruled that the knowledge that Floyd had been given a plea arrangement in exchange for his testimony against Brown would have affected his credibility as a witness and would have undoubtedly been "material" to Brown's conviction. Floyd's testimony was material in that it was the only evidence that Brown admitted to killing and raping Barksdale and was the only evidence that placed him at the scene. As such, the United States Court of Appeals for the Eleventh Circuit reversed the order of the District Court and ordered that Brown's *Petition for Writ of Habeas Corpus* be granted.

⁹ *Writ of Error Coram Nobis* – A writ of error directed to a court for a review of its own judgment and alleged on an error of fact.

Brown's convictions and sentence were overturned on 10/06/86, and charges against him were nolle prossed. He was released from jail on 03/05/87.

Law Enforcement/ Prosecution Statements:

A letter requesting comment was sent to the Hillsborough County Sheriff's Department on 05/01/02. That request was forwarded to the Tampa Police Department on 05/09/02. The Tampa Police Department responded by mailing a copy of the case file.

Henry Lavandera, who handled the Brown case solely during post-conviction proceedings as an Assistant State Attorney, issued the following statement on the State's decision to nolle prosequere the case:

I did not nolle prosequere the case against Mr. Brown because I felt he was innocent, I nolle prossed it because I could not prove beyond and to the exclusion of every reasonable doubt that he was guilty.

The Eleventh Circuit's opinion provides an excellent recitation of the facts of the case and the legal issues involved. Of note is the fact that one of the reasons argued by Mr. Brown for reversal was that there was insufficient evidence of his guilt. However, as stated on page 1467 of the opinion, Mr. Brown abandoned that issue and did not raise it on appeal. That is tantamount to an admission that there was sufficient evidence. Of note as well, is the fact that the Court did not reverse and discharge the case, but rather the Court remanded the case with instructions that the writ be issued "subject to the right of the state to retry Brown." As stated in the opinion, the case centered almost entirely around the testimony of Mr. Floyd. There were no fingerprints or any other trace evidence. There was no firearms identification evidence as to the weapon involved, and there were no eye witnesses unless Mr. Floyd's trial testimony were to be believed. From the time of the Court's decision, until the day I nolle prossed the case, I and investigators from the SAO attempted to assemble a case in order to retry Mr. Brown. We went to state prison to interview Mr. Floyd who persisted that he had lied at trial. It was that fact above any other that compelled me to nolle prosequere the case. Whether I believe that Mr. Floyd was being truthful or not is of no consequence. For me to have proceeded to trial under those circumstances would have been, in my opinion, a violation of my oath. Finally, it should be noted that Mr. Brown pled guilty to the motel robbery. I don't recall his sentence, but he would have been doing prison time irrespective of the outcome of the Barksdale case.

Defense Statements:

Defense counsel J. Michael Shea commented:

Joseph Green Brown got off after his fifth appeal and had his stay granted 16 hours before death, because the case the State forgot to tell us that their major witness was lying. The two prosecutors went onto become judges although both are no longer on the bench.

After the case was reversed the State of Florida chose not to try Mr. Brown because there was not enough evidence to take the case to trial.

Current Status:

There is no information available as to Joseph Brown's criminal history subsequent to his release.

Report Date: 04/30/02 ew
Approved: 05/02/02 ws
Updated: 05/29/02 ew

BROWN, Willie A. (B/M)

DC# 022323

DOB: 06/06/50

Troy, Larry (B/M)

DC# 022401

DOB: 07/24/50

Eighth Judicial Circuit, Union County, Case # 82-163

Sentencing Judge: The Honorable John J. Crews

Trial Attorneys: Bill Salmon, Esq. & Daniel Mazar, Esq.

Direct Appeal Attorneys: Philip Padovano, Patrick Doherty, Steven Bolotin, APDs

Date of Offense: 07/07/81

Date of Sentence: 07/19/83

Circumstances of Offense:

Union Correctional Institution (U.C.I.) inmate Earl Owens was stabbed to death by two black men in his cell around 5:00 p.m. on 07/07/81.

Willie Brown and Larry Troy were indicted for the murder on 10/14/82.

The State called U.C.I. inmates Frank Wise, Claude Smith and Herman Watson to testify as to the events surrounding the murder of Earl Owens. Frank Wise testified that he heard noises coming from Owens' cell at the time of the murder and saw inmates Willie Brown and Larry Troy emerge from the cell carrying a towel or shirt with something wrapped in it. Wise testified that he did not notice any blood on Brown's or Troy's clothing. Claude Smith testified that he heard a scream from Owens' blanket-draped cell at the time of the murder and saw Brown and Troy, both with blood on their clothes, leave the cell. Herman Watson testified to a conversation that he had with Troy on the afternoon of the murder, with Troy laughingly confiding in Watson that he (Troy) had "killed the cracker." Watson further testified that Brown asked Watson to get rid of Brown's clothes and shoes, which Watson did.

The State also called U.C.I. employees, Mitchell Anderson and Donald Conner to testify. Anderson, a correctional officer, testified that on the morning after the murder, while searching the prison athletic yard for evidence regarding Owens' murder, he found a bucket containing an "inmate's shirt and towel and stuff," all of which had been partially burned. The shirt had the name "W. Brown" on it. Donald Conner, the laundry manager, who is in charge of tracking inmate clothing, testified that Brown was missing a set of clothes.

The defense called U.C.I. inmates Franklin Kelly, Michael Madry and Noel White to testify as to the events surrounding the murder of Earl Owens. Franklin Kelly and Michael Madry testified that both Brown and Troy had been in the prison chow hall at the time of the murder. Noel White testified to hearing "odd sounds" coming from Owens' cell at the time of the murder and to seeing two anonymous black males--not Brown or Troy-- leave the cell with a bloody knife. White further testified that Wise and Smith

were not present at the time of the murder and could not have been witnesses to the crime. The State impeached White's testimony by demonstrating that White had previously identified Brown and Troy as the men responsible for Owens' murder.

Trial Summary:

10/14/82	Indicted on one count of First-Degree Murder
06/16/83	Jury returned a guilty verdict on the sole count of the indictment
06/22/83	Jury recommended death sentences by a vote of 9-3
07/19/83	Sentenced to death

Additional Information:

As a juvenile, Willie Brown had an extensive criminal record. As an adult and prior to the Owens murder, Brown was sentenced to seven years imprisonment, with ninety-nine days of community supervision, for a 1968 Robbery conviction, and was sentenced to twenty years imprisonment, with ninety-nine days of community supervision for a 1976 Armed Robbery conviction. Brown was serving this sentence at the time of the Owens murder.

Larry Troy, prior to the Owens murder, was sentenced to five years imprisonment for a 1968 Armed Robbery conviction and three years imprisonment for convictions stemming from Armed Robbery, Burglary, and Possession of Stolen Property charges in 1972. While serving a term of twenty-five years for a 1975 Second Degree Murder conviction and a term of fifteen years, six months for Aggravated Battery and Possession of a Weapon by State Prisoner convictions in 1977, Troy was charged with the murder of Owens.

Appeal Summary:

Florida Supreme Court – Direct Appeal

FSC# 64,802; 64,803; 69,427
515 So.2d 211

01/30/84	Appeal filed
11/12/87	FSC vacated conviction and sentence and remanded for retrial

Case Information:

On 01/30/84, Brown and Troy filed a Direct Appeal with the Florida Supreme Court, alleging that the trial court improperly failed to investigate a discovery violation by the State. On 11/12/87, the FSC agreed with Brown and Troy's allegation and vacated the convictions and sentences and remanded for a retrial.

The State dropped the charges when Frank Wise recanted his testimony.

Current Status:

After the Owens murder, Brown was sentenced for the following crimes committed on 04/02/99:

- Burglary – Life imprisonment
- Armed Robbery – Life imprisonment
- Armed Robbery – Life imprisonment
- Armed Robbery – Life imprisonment
- Grand Theft Auto – 5 years imprisonment
- Leaving a Crash with Injury – 5 years imprisonment
- Leaving a Crash with Injury – 5 years imprisonment
- Resisting a Law Enforcement Officer with Violence – 5 years imprisonment
- Battery of a Law Enforcement Officer – 5 years imprisonment
- Battery of a Law Enforcement Officer – 5 years imprisonment
- Battery of a Law Enforcement Officer – 5 years imprisonment

After the Owens murder, Troy was sentenced to twelve years imprisonment, with nearly two years community supervision, for a 1991 Unlawful Sale of Cocaine On or Near School Property conviction. On 02/01/02, while on Conditional Release, Troy missed curfew, thus violating the conditions of his parole, and was taken to a Miami county jail for processing. While he was being searched, crack cocaine was discovered, and Troy was arrested for Smuggling Contraband into a Detention Facility and Possession of Cocaine. The charges were dismissed at trial, but Troy’s Conditional Release was revoked. He was released on 04/24/03. In 2008, Troy was arrested on felony cocaine possession charges and sentenced to five years in prison.

Report Date: 05/08/02 JFL
Approved: 05/08/02 WS
Updated: 07/10/09 AEH

COX, Robert Craig (W/M)

DC# 113377

DOB: 10/06/59

Ninth Judicial Circuit, Orange County, Case # CR88-364

Sentencing Judge: The Honorable Richard F. Conrad

Trial Attorneys: Patricia Cashman & Kelly Sims, Assistant Public Defenders

Attorney, Direct Appeal: Larry B. Henderson, Assistant Public Defender

Date of Offense: 12/30/78

Date of Sentence 10/06/88

Circumstances of the Offense:

On 12/30/78, 19-year-old Sharon Zellers disappeared after leaving work at Walt Disney World. On 1/3/79, her abandoned car was discovered in an orange grove in Orange County. The following day, her body was discovered fully submerged in a sewage lift station located in close proximity to the orange grove. Ms. Zellers' body was heavily decomposed, and she was identified by her dental records. A medical examiner testified that she died from blunt force trauma to the head and reported that she had received 14 separate head wounds. Despite Ms. Zellers' injuries, the examiner reported that she probably lived 20-30 minutes subsequent to the attack.

The law enforcement investigation led detectives to question Robert C. Cox. Cox and his parents, who lived in California, were vacationing in Orlando. They were staying at a Days Inn, which was located 340 feet from the sewage lift station where Ms. Zellers' body was discovered. Cox's mother had called the hotel security on 12/30/78, because her son had returned to the motel and was bloody around the face and mouth. A portion of his tongue had been severed off, and he was unable to talk and had to communicate by writing. Cox then passed out and was transported to the emergency room by an ambulance. Emergency surgery was performed on Cox to repair his damaged tongue.

Cox made a statement to officers on 1/19/78, two weeks after the incident, and claimed that he was injured during a fight at the local skating rink, Skate World. He stated that there was a fight involving of eight people, four blacks and four whites, outside of the skating rink. Cox claimed that after he was hit in the face, he bit his own tongue. He claimed that he then got into his own car and left the scene. He claimed that he could not find the hotel, so he went back to Skate World, where a Good Samaritan picked him up and dropped him off at the hotel.

Detectives found three loose hairs in the victim's car that were consistent with Cox's chest hair, and type-O blood, which is the same type as Cox's but not the victim's.

A military-type boot print was discovered inside Ms. Zellers' car. Cox was in the U.S. Army at the time of his arrest and was wearing that type of boot when treated at the hospital. A match, however, was never made linking the two prints together.

The State claimed that, although the evidence was circumstantial, it pointed to Cox as the perpetrator. The State argued that Cox's claim that he was in a fight at Skate World was not credible and could not be corroborated by any of the security personnel who were working that evening. There were no eyewitnesses who could support Cox's alibi. On appeal, the State argued that Cox's statement that, after being injured, he left the rink in his own car in search of his hotel was not true. Medical evidence was presented that an artery in Cox's tongue had been severed, and he was bleeding profusely from the mouth. There was a trail of blood at the Days Inn leading from the second floor to the third floor. There was, however, no blood discovered in Cox's vehicle. Type-O blood, Cox's blood type, was discovered in Ms. Zellers' car. The State acknowledged that 45 percent of the population has type-O blood; therefore, the discovery of this type of blood in the victim's car did not automatically prove that Cox was the murderer. It did, however, prove that Ms. Zellers' murderer was injured and lost blood in her car prior to her death.

A surgical assistant testified at trial that the injury to Cox's tongue was more consistent with someone other than himself biting off his tongue because of the shape of the wound and the ragged tear. The defense brought up the fact that the missing portion of Cox's tongue was not discovered in the victim's mouth or near the victim. The State countered that the victim's body was severely decomposed as a result of being submerged in human waste; therefore, the tongue may not have been able to be discovered.

Additional Information:

Cox was indicted in Florida nine years after the commission of the offense. At the time of the indictment, Cox was serving a nine-year sentence in California for Kidnapping and two separate counts of Assault with a Deadly Weapon. Circumstances of the offenses are as follows;

In August of 1985, a young girl named Kathleen Boice arrived at her house in Crestview California. As she exited her vehicle, Cox, who was following her, jumped from his car, grabbed the victim, threw her to the ground, placed a seven-inch knife to her throat and told her, "Go with me, don't scream or I'll kill you." During this scuffle, the knife cut the victim's hand.

In December of 1985, a young woman, Gidget Wickam, was stationed with the U.S. Army at Fort Ord, California. Ms. Wickam went to the airport to retrieve luggage and, as she was leaving the airport, Cox, who asked her for a ride to the base, confronted her. She complied and, en route, Cox drew a firearm on Ms. Wickham and told her they were not driving to the base but driving to the mountains.

Trial Summary:

12/15/87 Florida detainer lodged against defendant while incarcerated in California.
01/22/88 Arrest warrant issued.
02/25/88 Defendant indicted:
Count I: Murder in the First Degree
09/30/88 Upon advisory recommendation, the jury recommended death by a 7-5 majority.
10/06/88 Defendant sentenced as follows
Count I: Murder in the First Degree

Appeal Summary:**Florida Supreme Court, Direct Appeal**

FSC# 73,150
555 So. 2d 352

10/06/88 Appeal filed
03/10/89 Initial brief filed.
06/08/99 State's answer brief filed
07/11/89 Defendant's reply brief filed.
12/21/89 FSC reversed conviction, vacated the sentence and directed that defendant be acquitted.
02/12/90 Rehearing denied.
02/23/90 Mandate issued.

Case Information:

On 03/10/89, the defendant filed his Direct Appeal initial brief, which included the following claims of trial court error: the evidence was legally insufficient to support a conviction; improper excusal of two prospective jurors; the State failed to try Cox for the offense within 180 days and did not indict until nine years after the murder thereby violating the defendant's due process and preventing him from conducting a proper investigation; and, that Cox's due process was violated regarding other evidentiary matters.

The Florida Supreme Court unanimously agreed that there was insufficient evidence to support the verdict and commented that, although the State's evidence would have created a reasonable suspicion, the case was not proven beyond a reasonable doubt. The Court stated the evidence did not prove that Cox, and only Cox, murdered the victim. The Court then vacated Cox's death sentence, reversed his conviction and remanded to the trial court to enter an order of acquittal for the crime.

Law Enforcement/ Prosecution Statements:

Former Assistant State Attorney and current Circuit Court Judge Frederick J. Lauten wrote:

Jeff Ashton and I prosecuted Robert Cox together. The case was ten years old when I was sent to California by Robert Egan to speak to Cox to see if he would plead to first-degree murder if we waived the death penalty. He would not.

Blood stains found on a floor mat were sent to a new DNA lab to determine if DNA was present. A preliminary report indicated that DNA could be obtained so we took a sample of blood from Robert Cox. The lab reported that the sample from the floor mat lacked even molecular weight for the lab to report a match and maintain the standards established for accuracy and reliability. The lab confirmed that the blood type on the mats matched Cox's blood type, which was evidence we already had. Jeff and I reviewed the case thoroughly and felt that we had enough circumstantial evidence to establish that Cox committed the murder and indicted him.

Nineteen-year-old Sharon Zellers went to work at Walt Disney World on December 30, 1978. She had a habit of informing her parents by telephone of everywhere she went. She was unusually diligent about calling her parents. At the end of her work shift, she called her parents to tell them she was going to meet some friends for breakfast. She promised to call when she left the restaurant; however, she never called. Her father left home and began driving around town to look for her.

At the same time, Robert Cox appeared at a hotel where his parents were staying, the Day's Inn on Sandlake Road. He was bleeding profusely from the mouth and a deputy sheriff was called to take a report. Eventually, Cox was taken to surgery for the injury to his tongue. That night, through his father, he gave a statement to the police, and he also gave another statement directly to the police. He told them that he had been at an ice-skating rink on Highway 50 near Kirkman, and as he was leaving, had been sucker punched by a group of white and black young men and had bitten his tongue off. Rather than return to the ice skating rink to seek help from the police officer he had walked past seconds ago, he reported that he got in his car and drove around looking for a hospital, and unable to find one, returned to the parking lot of the Albertson's grocery store, right next to the skating rink. At that time, some good Samaritan picked him up, bleeding like mad, and drove him the Sand Lake Day's Inn and simply dropped him in the parking lot and left him there to find his parents room! The same night, his father accompanied a deputy back to the car at Albertson's so his dad could drive it back to the hotel. The deputy who took the report went with Cox's father and looked inside the car for evidence and discovered that not one single drop of blood was present, even though Cox himself was bleeding like crazy when he found him at the hotel.

Five days after her disappearance, Sharon Zellers' body was found in a sewage lift station. That station was no more than 300 yards from the Day's Inn. Her body was unrecognizable because it had been in water and feces, which was pumped down a pipe to a raw sewage station, located further east on Sand Lake Road. Her car was found 20 yards away with blood in it, a boot print, and hair samples, all of which matched Robert Cox. The back seat of the car was missing and to this day has never been found.

As the case proceeded to trial, during discovery, a surgical nurse was identified who assisted in the surgery to the injury to Cox's tongue. She had never been interviewed before, but when finally interviewed by Jeff and me she testified that on the night of the surgery she and the surgeon were told how Cox had injured his tongue (sucker punched at the ice-skating rink) but that the shape of the injury to the tongue was inconsistent with that type of injury and consistent with his having his tongue bitten off by someone else. For example, while it was in their mouth!

At trial, we presented the testimony of the detective who found the car in Albertson's without any blood in it despite the statement from Cox that he had driven around injured in the car; the testimony from the surgeon, that profuse amounts of blood would have been lost by Cox until he received surgery; the testimony of the nurse I just referred to; testimony of blood experts that the blood in Sharon Zellers' car matched Cox's blood type; testimony from a hair expert that the hair found in the car was consistent with the characteristics of his hair; testimony from a witness that the boot print found in the car was consistent with the kind of sole worn by Army Ranger's at that time (Cox was an army ranger).

The jury deliberated at length and found Cox guilty of murder in the first degree. At the sentencing hearing, we flew in two women from California who Cox had kidnapped at either knifepoint or gunpoint. They testified to the terror of their kidnapping by Cox. The jury recommended death 7 to 5 and Judge Conrad imposed the death penalty.

The Florida Supreme Court held that the evidence in Cox's case was circumstantial and did not preclude every reasonable hypothesis of innocence and entered a judgment of acquittal. Cox was returned to California to serve out the remainder of his sentence for the kidnappings. Eventually he was paroled and a few years later committed a series of armed robberies in Texas where he was sentenced to life in prison.

Jeff Ashton, Assistant State Attorney wrote that he agreed with Judge Lauten's recitation of the case and added that Cox is presently serving a 35-year State and a consecutive 15-year Federal sentence out of Texas.

Detective Dan Nazarchuk (retired) of the Orlando County Sheriff's Office was one of the investigators on the Cox case. He stated that he believes very strongly that Robert Cox

committed this murder. He claimed there were never any other suspects and stated that he feels the jury reached the correct verdict.

Defense Attorney Statements:

A request for comment and a copy of this report was sent to defense attorney, Patricia Cashman. Ms. Cashman provided the following statement regarding Cox's case:

This case is one of two unanimous reversals in death penalty cases by the Florida Supreme Court. A wrongful conviction occurred and the appellate court released Mr. Cox after he spent 18 months on death row.

Current Status:

In 1995, Cox was arrested for holding a gun on a 12-year-old girl in Decatur, Texas. He is presently serving a life sentence for that robbery and a consecutive 15-year federal sentence.

Report Date: 03/19/02 WHS

GOLDEN, Andrew, (W/M)

DC# 365791

DOB: 06/14/44

Tenth Judicial Circuit, Polk County, Case # 90-1778

Sentencing Judge: The Honorable Robert E. Pyle

Trial Attorney: Allen R. Smith Esq.

Attorney, Direct Appeal: Gwendolyn Spivey, Esq.

Date of Offense: 09/13/89

Date of Sentence: 11/15/91

Circumstance of Offense:

On 9/13/89, at 3:30 a.m., a police officer found the body of Ardelle Golden floating in Lake Hartridge, which is located in Winter Haven, Florida. Golden's rented car was submerged in the lake. On 4/5/90, her husband, Andrew Golden, was indicted for her murder.

At trial, Andrew Golden testified that he and his wife had been at Lake Hartridge on the evening of 09/12/89 and had returned home at approximately 11:00 p.m. He claimed that upon returning home, his wife could not find her cigarette case and went out to go look for it and to purchase more cigarettes. Mr. Golden claimed that he stayed home and went to sleep. When Mr. Golden awoke the next morning, he asked his eldest son where his mother was. His son did not know where his mother was and left the home shortly after 6:00 a.m. to look for her. He was, however, unable to find her and returned home and then left again shortly thereafter to report to his school that he would be late. Golden called the police to report that his wife was missing. Two detectives came to the Golden home and, while they were there gathering information, they received a radio call informing them that the drowning victim was identified as Andrew Golden's wife. Mr. Golden was subsequently arrested a month after his wife's drowning for First-Degree Murder.

The State presented evidence at trial that the cigarette case that Mr. Golden claimed his wife "was going crazy looking for" was discovered floating in the lake near Mrs. Golden's body and an unopened package of cigarettes was found inside of her purse. The State claimed that investigators went to every convenience store in close proximity to the Golden home, and there were no clerks who could identify Mrs. Golden as being a customer that evening. Mrs. Golden's body was found floating in the lake without her glasses, which were discovered inside of her purse. Mrs. Golden's vision was 400/20, and an expert testified that Mrs. Golden was extremely nearsighted and would not have been able to see more than 10 inches away without her glasses; therefore, she would not have been able to drive the car to the lake prior to driving the vehicle into the water.

Appeal Summary:

Florida Supreme Court, Direct Appeal

FSC# 78,982

629 So. 2d 109

11/25/91	Appeal filed
11/10/93	FSC vacated Golden's conviction and sentence and directed that he be released from custody.
11/17/93	Motion for rehearing filed (State filed)
01/05/94	Rehearing denied
01/05/94	Mandate issued

Case History:

On 11/25/91, Golden filed a Direct Appeal in the Florida Supreme Court. The main issue, on appeal, was that there was insufficient evidence to prove that his wife's death resulted from the criminal agency of another person.

The Supreme Court stated that "... the finger of suspicion points heavily at Golden. A reasonable juror could conclude that he more than likely caused his wife's death." The Court concluded, however, that the State's circumstantial evidence was insufficient to prove beyond a reasonable doubt that Mr. Golden's wife's drowning was not an accident. The Court subsequently vacated the conviction and sentence and ordered that Golden be released.

Prosecution/ Law Enforcement Statements:

John Aguero, Director, Special Prosecution, State Attorney's Office - Tenth Judicial Circuit, wrote:

I received your memo and list of the "21 innocent" defendants convicted and sentenced to death. I write only to comment on one, Andrew Golden. This abominable opinion by the Florida Supreme Court was an insult to the memory of Ardelle Golden and to the jurors and the judge who heard the case. The Supreme Court just decided to be 13th juror and disagree with everyone else. They overturned this conviction and sentence saying that "The finger of suspicion points heavily at Golden. A reasonable juror could conclude that he more likely than not caused his wife's death." They also said "There were no wounds or other signs of violence on the body." This last quote shows that they completely misapprehended the manner in which Mr. Golden killed his wife. They paid absolutely no attention to the FACTS. If they had, Mr. Golden would still be on death row where he belongs. The reason the above quote is of particular significance is that Mr. Golden claimed his wife drove her car into the lake. I proved she

would have to have been going over 35 miles per hour to get the car as far out in the lake as it was found. According to the testimony of the medical examiner and the accident reconstruction expert, either the woman should have had seat belt injuries (she always wore a seat belt) or, in an unexpected crash like the defense theorized, she would have hit the windshield. Thus it was precisely the LACK OF INJURIES that helped prove the case. Of course there was a multitude of other evidence, but this complete lack of understanding in deciding a death penalty case is what misleads people like those who think there were 21 innocent people on death row. I got calls from three of the jurors after Mr. Golden was released. Each asked me essentially, who the hell does the Supreme Court think they are? They didn't sit through this trial. I challenge anyone who thinks Mr. Golden is innocent to sit down and talk to me. They won't think he's innocent when they leave."

Defense Attorney Statements:

Gwendolyn Spivey, Golden's attorney on Direct Appeal stated that any information relative to this case may be found in her Direct Appeal initial brief. She stated, "The Florida Supreme Court did an excellent job regarding this case."

Current Status:

Andrew Golden is presently serving a fifteen-year prison sentence in Texas for three separate cases of Indecency with a Child. He was released on Mandatory Supervision on 03/16/07.

Report Date: 03/25/02 WHS
Updated: 04/07/10 JFL

GREEN, Joseph Nahume (B/M)

DC# 091882

DOB: 01/10/56

Eighth Judicial Circuit, Bradford County, Case # 92-633

Sentencing Judge: The Honorable Robert P. Cates

Trial Attorneys: Jeffrey Leukel and F. Reed Replogle, Esq.

Direct Appeal Attorney: David A. Davis, Assistant Public Defender

Date of Offense: 12/08/92

Date of Sentence: 11/30/93

Circumstances of Offense:

At 10:10 p.m. on 12/08/92, Judy Miscally was using a public phone at the Mapco convenience store in Starke, Florida, when she was approached by a man who demanded money. When she refused and screamed, the man shot her and fled the scene. Miscally later died.

Three people witnessed the shooting – John Goolsby, Katrina Kintner and Lonnie Thompson. Miscally described the shooter as a skinny, black man in his mid-twenties, and described the gun as a small, semiautomatic pistol. Goolsby was in his car at a stoplight near the Mapco store when he heard the shot, and he saw two people in front of the store. Goolsby was not wearing his glasses at the time and could not determine the sex or race of either person. Kintner was sitting in her car in a convenience store parking lot across the street from the Mapco store when she heard the shot. Kintner said she saw three black men surrounding a white woman but could not describe them in any detail. Thompson was near the convenience store across the street from the Mapco store when he heard the shot. Thompson said he saw Green and Miscally struggle and saw Green shoot Miscally before fleeing behind the store.

Green's alibi was that on the night of the murder, he and his girlfriend, Gwen Coleman, were walking around Starke. During that night, Green helped Donald Laverly and David Padgett take a muffler off of Laverly's car in the parking lot of the Pizza Hut restaurant. Green returned to the motel where he and Coleman were staying sometime after 11:00 p.m., when Green was reminded by the motel owner that the rent was due the next day.

Trial Summary:

01/15/93	Indicted on one count of First-Degree Murder
10/05/93	Jury returned a guilty verdict
10/25/93	Jury recommended a death sentence by a vote of 9-3
11/30/93	Sentenced to death

Retrial Summary:

03/16/00 Acquitted at retrial

Additional Information:

Prior to his trial for the murder of Judy Miscally, Green had a criminal record in the State of Florida. The following is his prior prison history in Florida:

Offense Date	Offense	Sentence Date	County	Case No.	Prison Sentence
07/28/1983	2ND DEG.MURD,DANGEROUS ACT	10/31/1983	MIAMI-DADE	8316923	3Y 0M 0D
06/29/1985	BATTERY LAW ENFORCEMENT	01/13/1986	MARTIN	8500729	2Y 6M 0D
02/03/1989	BURG/DWELL/OCCUP.CONVEY	04/17/1989	MIAMI-DADE	8904489	1Y 0M 1D
01/14/1990	BURG/DWELL/OCCUP.CONVEY	08/08/1990	MIAMI-DADE	9024005	3Y 6M 0D

Appeal Summary:

Florida Supreme Court – Direct Appeal

FSC# 83,003
688 So.2d 301

01/10/94 Appeal filed
11/27/96 FSC vacated conviction and sentence and remanded for retrial

Case Information:

Green filed a Direct Appeal with the Florida Supreme Court on 01/10/94, citing twelve trial court errors. The FSC found two trial court errors harmful enough to warrant a new trial and chose not to comment on the other ten issues. The FSC found that errors were committed by allowing the State to cross-examine a defense witness about her prior alcohol abuse and by admitting evidence seized pursuant to a bad search warrant. Additionally, the FSC found that Lonnie Thompson’s trial testimony was often inconsistent and contradictory. On 11/27/96, the FSC vacated the conviction and sentence and ordered a new trial.

On 03/16/00, Green was acquitted of the charge of First-Degree Murder. The trial court judge found that there was a lack of witnesses or evidence tying Green to the crime.

Law Enforcement/Prosecution Statements:

Curtis French, who was the Assistant Attorney General for the Direct Appeal to the Florida Supreme Court, had the following statement regarding the Green case:

French noted that once the testimony of the State witness (Thompson) had been excluded as unreliable, “the prosecution could not prove its case,” thus Green was acquitted at retrial.

According to French, Green had not been cleared of the crime, but instead, he “had been given the benefit of the doubt” in the case due to the nature of the testimony and evidence against him. French stated that the evidence pointed to Green because Green “certainly had both the motive and opportunity to commit the crime,” and, additionally, problems existed with his alibi that was given to police.

To French, Green had not been cleared of the crime and French “would tend to dispute his innocence.”

Additional comments were received from William Cervone, State Attorney for the Eighth Circuit:

As to Joseph Green, I can provide my comments since I tried the case. In essence, the ultimate acquittal was because the trial court suppressed the identification testimony of witness Lonnie Thompson after the original remand from the Florida Supreme Court. Thompson was the only eyewitness linking Green to the murder and when his testimony was disallowed the remaining circumstances were insufficient to secure a conviction.

Interestingly, the same judge who ultimately suppressed the identification after the remand had conducted extensive hearings before the first trial as to the competency of Thompson and had allowed him to testify. While the Supreme Court Opinion questioned Thompson's competency as a witness, it did not rule on that or find the original admission of his testimony to be error. It being my belief that the trial court had improperly invaded the province of the jury in ruling on the credibility that should be given to a witness' testimony, the suppression of the identification was appealed but that appeal was not successful. Additionally, even before the first trial the trial court had suppressed evidence showing the presence of gun powder residue in the pockets of the defendant's clothing, and the Supreme Court Opinion suppressed the seizure of the clothing itself. I remain convinced of Green's guilt, as was the jury that originally heard the testimony of Thompson, evaluated it, and convicted Green based on it.

Defense Statements:

David Davis, who was Green's defense counsel for the Direct Appeal to the Florida Supreme Court, had the following statement regarding the Green case:

Davis cited competency issues of the State's witness, Thompson, as the primary reason for the acquittal of Green at the retrial. According to Davis, "the case died when Thompson was declared incompetent to testify."

Davis commented that, due to the exclusion of Thompson's testimony and the lack of other compelling evidence that Green committed the crime, Green had a "strong claim of innocence," probably "the strongest claim of innocence that I have seen in a long time."

Davis attributes the suspicion and prosecution of Green to "community uproar" and a small town trying to get revenge for the murder of a popular citizen.

According to Davis, Green was acquitted due to bad police practices, most notably the bad search warrant and use of Thompson as a witness, and the overall weakness of the case against him.

Current Status:

After acquittal, Green was sentenced in 2001 to one-year terms for two cocaine possession charges that occurred in 2000. He was released from prison on 11/05/01.

Green was sentenced to a three-year term for cocaine possession in 2003 and was released on 07/27/06.

Report Date:	05/14/02	JFL
Approved:	05/17/02	WS
Updated:	10/05/06	JFL

HAYES, Robert (B/M)

DC # 710372

DOB: 12/12/63

Seventeenth Judicial Circuit, Broward County, Case # 90-3993-CF10

Sentencing Judge: The Honorable Stanton S. Kaplan

Attorney, Criminal Trial: Barbara Ann Heyer – Special Public Defender

Attorney, Direct Appeal: Richard B. Greene – Assistant Public Defender

Attorney, Retrial: Barbara Ann Heyer – Special Public Defender

Date of Offense: 02/20/90

Date of Sentence: 06/05/92

Circumstances of Offense:

Robert Hayes was convicted and sentenced to death for the strangulation of Pamela Albertson, a co-worker at the Pompano Harness Track.

When Pamela Albertson did not show up for work on the morning of 02/20/90, the security officials of the Pompano Harness Track went to her dormitory room in search of her. When security officials arrived at the dormitory where Albertson and the other female grooms¹⁰ lived, they found her strangled body lying on the floor in blue jeans and a t-shirt.

Investigation into the murder quickly led to the questioning and, eventually, the arrest of Robert Hayes. Witness testimony and DNA evidence placed Hayes at the murder scene; however, there was also evidence that someone else could have possibly perpetrated the crime. Pamela Albertson was found with several strands of Caucasian hair clutched in her hand. The hairs were inconsistent with Hayes' hair, as he was African-American.

At trial, the State intended to prove Hayes' guilt through DNA evidence, witness testimony, testimony of a jailhouse informant and evidence of a strikingly similar collateral attack. Further examination of the DNA evidence revealed semen on a tank top and in the vagina of Pamela Albertson. Tests confirmed a three-band match on the tank top and a seven-band match on the vaginal swab for compatibility with Hayes. Additionally, employees of the Pompano Harness Track stated that they saw a man fitting Hayes' description at Albertson's dormitory on the night of her murder. Several people testified that Albertson had expressed fear of being alone with the defendant, although no formal complaint had ever been filed. The State also introduced evidence that Hayes had attacked another co-worker at a horse track in New Jersey. Debbie Lesko filed a complaint against Hayes in 1988, stating he pinned her on the floor and began choking her. When Hayes let Lesko go, she promptly called police and Hayes was arrested for simple assault. Those charges were later dropped. Finally, Ronald Morrison, Hayes' cellmate in Broward County Jail, testified that Hayes, in essence, confessed to being in

¹⁰ Female groom – a woman employed to take care of horses or a stable.

Albertson's room that night, choking her, and fleeing through the window. The State relied on such evidence to obtain a conviction of First-Degree Murder on 10/29/91.

Additional Information:

On 06/26/89, prior to his murder conviction, Hayes was arrested on charges of robbery and burglary in Wilmington, Delaware. The victim, Lillian Shephard, reported that Hayes had sexually harassed her on many occasions, and on the date of the referenced offense, Hayes broke into her apartment and choked her until she lost consciousness. She awoke to see Hayes leaving her apartment. Hayes pled guilty to these charges and received two years probation.

Trial Summary:

03/22/90 Defendant indicted on:
 Count I: First-Degree Murder
10/29/91 The jury found the defendant guilty of First-Degree Murder, as charged in the indictment.
11/14/91 Upon advisory sentencing, the jury, by a 10 to 2 majority, voted for the death penalty.
06/05/92 The defendant was sentenced as followed:
 Count I: First-Degree Murder – Death
06/02/95 FSC vacated Hayes' death sentence and remanded for a retrial.
07/16/97 Robert Hayes was acquitted of the murder of Pamela Albertson.

Appeal Summary:

Florida Supreme Court, Direct Appeal

FSC # 79,997
660 So. 2d 257

06/11/92 Appeal filed.
06/02/95 FSC reversed the conviction, vacated the death sentence and remanded for a new trial.
09/13/95 Rehearing denied.
10/13/95 Mandate issued.

Case Information:

On 06/11/92, Hayes filed a Direct Appeal in the Florida Supreme Court. In this appeal, he argued that the DNA results were fallacious due to the unreliable means by which they were tested. Holding DNA testing, or any new scientific principle, up to the highest standards of credibility, the Florida Supreme Court insisted that the evidence or expert testimony in question must assist the jury in determining the fact in an issue, must pass

the dictates of the Frye test established in *Frye v. United States*¹¹, and must be presented by a qualified expert on the subject. In examining the issues of the Hayes' case, the unreliable technique of "band-shifting" was used to explain the DNA test results in terms of the probability that Hayes left the semen found on the tank top. The Florida Supreme Court ruled that the "band-shifting" method employed in the Hayes case was inadmissible as a matter of law, and, as such, the tank top was erroneously admitted as evidence. The high court did, however, rule that the semen found in Albertson's vagina was properly tested and could be presented as credible evidence in Hayes' retrial. Hayes also raised the issue of collateral crime evidence in his appeal. The prosecution presented evidence that Hayes attacked another female co-worker at a track in New Jersey. The prosecution sought to show the similarities between that attack and the murder of Pamela Albertson; however, the Florida Supreme Court ruled that there were "insufficient points of similarity to the instant offense to warrant admitting evidence of the previous attack." As such, the high court deemed the admittance of collateral crime evidence as error. In addition, Hayes objected at trial and argued on appeal the admittance of hearsay evidence regarding the victim's supposed fear of him. The Florida Supreme Court agreed, and found that the trial court erred in allowing the hearsay testimony. The fourth matter brought up in appeal was the prosecution's elicitation of testimony concerning the defense's failure to request various tests of evidence. The Florida Supreme Court found error as allowing such testimony insinuated that the burden of proof lied with the defense. On 06/02/95, the Florida Supreme Court reversed Hayes' conviction, vacated his death sentence and remanded for retrial.

Upon retrial, the jury acquitted Hayes of the murder of Pamela Albertson.

Law Enforcement/ Prosecution Statements:

A letter requesting comment was sent to the Broward County Sheriff's Department on 05/01/02. No response has been received to date.

Carolyn V. McCann of the State Attorney's Office for the Seventeenth Circuit issued the following statement concerning Hayes' case:

The [Florida Supreme Court] ruled that as a matter of first impression that the "band-shifting" technique of DNA testing would be inadmissible as a matter of law regarding Hayes' DNA found on the victim's shirt. The Court did not make the same ruling as to Hayes' DNA found in the victim's vagina. On retrial, the State presented evidence of Hayes' DNA found in the victim's vagina. However, the defense challenged this evidence with other evidence that hairs inconsistent with Hayes' were found clutched in the victim's hand and expert DNA testimony that many thought was questionable. In the end, the jury disregarded the fact that Hayes' DNA was found in the victim's vagina and acquitted him of murder.

¹¹ *Frye v. United States* - Supreme Court case that established the guidelines for considering novel scientific techniques or methods in verifying evidence or testimony. The Frye test asks whether expert testimony is based on a scientific principle that is "sufficiently established to have gained general acceptance in the particular field in which it belongs."

Defense Statements:

Defense Attorney Barbara Ann Heyer commented:

The Florida Supreme Court's decision in the Hayes Case was beneficial in a number of ways. First, it clarified the use of DNA evidence and second, it clarified questions surrounding the Williams rule. I believe the court made the right decision in finding Hayes not guilty because he was innocent.

Current Status:

Robert Hayes is currently serving a 15-45 year sentence in New York for manslaughter, burglary, and attempted arson, which occurred in 1987. He is eligible for parole on 08/06/18.

Report Date: 03/07/02 ew
Approved: 03/11/02 ws
Updated: 10/13/06 jfl

HOLTON, Rudolph (B/M)

DC# 829326

DOB: 04/20/53

Thirteenth Judicial Circuit, Hillsborough County Case # 86-8931

Sentencing Judge: The Honorable Harry Lee Coe

Attorney, Trial: Mina Morgan, Court-Appointed Counsel

Attorney, Direct Appeal: Douglas Connor, Assistant Public Defender

Attorney, Collateral Appeals: Linda McDermott & Martin McClain, CCRC-N

Date of Offense: 06/23/86

Date of Sentence: 12/17/86

Circumstances of Offense:

On June 23, 1986, the naked, partially-charred body of Katrina Graddy was found in a burning vacant house. Pieces of a nylon cloth were tied around her neck and around one wrist, and the neck of a glass bottle was partially inserted in her anus. Investigators determined that the fire was started intentionally, but the cause of death was strangulation.

Police questioned Carl Schenck, who had been asleep in his truck, which was parked directly across from the burning house. Schenck told investigators he had parked there at about 10:00 or 11:00 p.m. the night before. He had picked up a hitchhiker earlier in the day and was waiting for his return, but Schenck fell asleep and eventually was awakened by the fire engines. A black shaving bag left by the hitchhiker in Schenck's vehicle was taken as evidence. While unable to make a positive identification of the hitchhiker, later identified as Rudolph Holton, Schenck said the hitchhiker closely resembled Holton.

Witnesses claimed they saw Holton enter the house and saw him talking to the victim around the time of the murder. Holton was seen holding a black shaving bag. Another witness, who had known Holton for a number of years, testified that Holton told him "he had killed a girl, that he had strangled her" and then set fire to the house.

When questioned by investigators, Holton claimed he was at home at the time of the murder. He said he had not been to the vacant house for ten days. When told that his fingerprint had been found on the wrapper of an empty pack of cigarettes removed from a room in the house, Holton admitted he had been shooting drugs in the house several days before the homicide occurred but denied being near the house on the night of the murder. Photographs taken of Holton showed scratches on his chest and a cut on his finger.

Three hairs were removed from the victim's mouth at the medical examiner's office. The only conclusive remarks that the expert could offer were that the hairs were from an African American, which included both the victim and the defendant. Additionally, one

of the hairs was from one of three possible areas: the area immediately above the pubic area, from in between the anus and the lower pubic area, or from the nape of the neck. The defense learned during the pretrial investigation that the victim reported being raped anally a week prior to the murder by a person who used a street name of “Pine.” The defense could not ascertain the true identity of “Pine” prior to the trial and proceeded without that information. During an evidentiary hearing several years after Holton’s conviction, the trial attorney was shown two police reports that were taken on the night of the alleged rape. One of the police reports confirmed that the victim had reported being raped, but withdrew the complaint. The second report showed that a David Pearson was questioned by police and arrested for obstruction by giving a false name (he gave the name of Donald Smith), even though the sexual battery charges were dropped by the victim. The trial attorney stated that had she had this information prior to proceeding with the trial, she could have pursued the connection between the incident with David Pearson (Pine) and the subsequent murder of the victim. Additionally, the defense presented the argument that Pearson’s criminal records indicated that Pearson carried a leather black pouch, which had a similar description to the shaving bag seized from Schneck’s car.

Prior Incarceration History in the State of Florida:

Prior to his trial for the murder of Katrina Graddy, Holton had a criminal record in the State of Florida. The following is his prior prison history in Florida:

Offense Date	Offense	Sentence Date	County	Case No.	Prison Sentence
03/12/1979	ROBB. GUN/DEADLY WPN	03/12/1979	HILLSBOROUGH		2Y 0M 0D
05/08/1981	BURGUNOCCSTRUC/CV OR ATT.	09/03/1981	HILLSBOROUGH		1Y 6M 0D
12/22/1982	GRAND THEFT,\$300 LESS &20,000	03/29/1983	HILLSBOROUGH	8215094	1Y 6M 0D
02/15/1983	GRAND THEFT,\$300 LESS &20,000	03/29/1983	HILLSBOROUGH	8302236	1Y 6M 0D
12/26/1983	BURGUNOCCSTRUC/CV OR ATT.	03/28/1984	HILLSBOROUGH	8315326	1Y 0M 0D
12/23/1983	BURG/DWELL/OCCUP.CONVEY	03/28/1984	HILLSBOROUGH	8400242	1Y 0M 0D
12/27/1984	GRAND THEFT MOTOR VEHICLE	06/10/1985	HILLSBOROUGH	8500114	3Y 0M 0D
01/06/1985	BURG/DWELL/OCCUP.CONVEY	06/10/1985	HILLSBOROUGH	8500840	3Y 0M 0D
01/08/1985	ORGANIZES THEFT PROPERTY	06/10/1985	HILLSBOROUGH	8500841	3Y 0M 0D
01/05/1985	BURG/DWELL/OCCUP.CONVEY	06/10/1985	HILLSBOROUGH	8501118	3Y 0M 0D

Trial Summary:

07/09/86 Indicted on the following charges:
Count I: First-Degree Murder
Count II: Sexual Battery
Count III: Arson
12/05/86 Jury returned guilty verdicts on all counts of the indictment
12/05/86 Jury recommended death by a vote of 7-5
12/17/86 Sentenced as follows:
Count I: First-Degree Murder – Death
Count II: Sexual Battery – Life
Count III: Arson – 30 years

Appeal Summary:

Florida Supreme Court – Direct Appeal

FSC# 69,861
573 So.2d 284

01/12/87 Appeal filed
09/27/90 FSC affirmed conviction and death sentence
02/14/91 Mandate issued

U.S. Supreme Court – Petition for Writ of Certiorari

USSC# 90-7757
500 U.S. 960

04/16/91 Petition filed
06/03/91 USSC denied petition

Circuit Court – 3.850 Motion

CC# 86-8931

07/15/92 Motion filed
11/02/01 CC overturned conviction and sentence and ordered a retrial

Florida Supreme Court – 3.850 Motion Appeal (state)

FSC# 01-2671
No Opinion

12/04/01 Appeal filed
12/18/02 FSC affirmed retrial order

Case Information:

Holton filed a Direct Appeal with the Florida Supreme Court on 01/12/87, citing the following errors: allowing improper peremptory challenges, allowing prejudicial cross-examination of investigators, allowing improper closing statements by the prosecutor, failing to grant a continuance until a defense witness could be located, using insufficient evidence for first-degree murder and arson convictions, finding evidence of sexual assault, failing to complete a sentencing guidelines score sheet, determining that four aggravating circumstances existed, and failing to consider statutory mitigating circumstances. On 09/27/90, the FSC affirmed the first-degree murder conviction and death sentence.

Holton filed a Petition for Writ of Certiorari with the U.S. Supreme Court on 04/16/91 that was denied on 06/03/91.

Holton filed a 3.850 Motion with the Circuit Court on 07/15/92. On 11/02/01, the CC overturned Holton's conviction and death sentence and ordered a retrial. In making the decision, the court cited DNA tests that proved that crucial hair evidence did not belong to Holton and a *Brady* violation in that police did not turn over some information to Holton's trial attorney.

The state filed a 3.850 Motion Appeal with the Florida Supreme Court on 12/04/01, and on 12/18/02, the FSC affirmed the granting of a retrial.

On 01/24/03, prosecutors dropped the murder charge against Holton. In a document to the Circuit Court, State Attorney Mark Ober wrote, "Due to the unreliability of witness testimony and the lack of physical evidence, the state of Florida cannot proceed to trial."

Law Enforcement/Prosecution Statements:

Mark Ober, State Attorney for the 13th Judicial Circuit, provided the following written statement:

In 1986, Rudolph Holton was convicted by a jury of his peers for the murder of Katrina Graddy, and the Florida Supreme Court affirmed the conviction.

Since that time, the trial court has ordered a new trial after an evidentiary hearing in 2001 where trial witnesses recanted their testimony and an alternative suspect was developed over a decade later.

The police detectives and the prosecutor handled the case ethically with the information they had at the time.

The real focus of my inquiry in January 2003 of the Holton case was to legally assess the case as it exists today. After an objective, impartial, and extremely

detailed analysis of the evidence by senior members of my staff and myself, it became clear that the case could not be proven beyond a reasonable doubt.

This was a very complicated case and was carefully examined from all aspects. We could not proceed with a new trial because of the witness recantations, which are highly suspect, the lack of corroborating evidence, and the defense's argument of an alternate suspect. This office could not ethically proceed with the case because of those factors. However, it should be made abundantly clear that I am not saying that Rudolph Holton did not commit this crime. My stance is that the State of Florida can not prove the case against Mr. Holton beyond a reasonable doubt, and we do not have a reasonable likelihood of obtaining a conviction as the case exists today.

Defense Statements:

Linda McDermott, an attorney at CCRC-N, provided the following written statement:

I have been Mr. Holton's primary counsel in his postconviction proceedings since 1997. Shortly after becoming involved in his case, I began to realize the strong possibility of his innocence. Through hard work, dedication, and the assistance of my colleagues at CCRC, we were able to transform that possibility into a reality.

Mr. Holton is innocent of the murder of Katrina Graddy. This conclusion has been echoed by many others who have taken a close look at this case. A news article recently reported that the original prosecutor who tried Mr. Holton's case now believes he is innocent. During an oral argument which I conducted before the Florida Supreme Court, Justice Pariente stated that Mr. Holton's case 'comes close to one of the strongest cases of potential for actual innocence that [she] had seen.'

Remarkably, the Florida Supreme Court issued an order affirming the lower court's granting of a new trial just six days after the oral argument. In my experience, a minimum of six months to one year often elapses prior to an opinion being issued by the Court.

In a press conference following Holton's release, another of Holton's attorneys, Martin McClain, said:

Though we are certainly pleased that the state attorney has dropped the charges, this does not change the awful fact that Rudolph Holton served over sixteen years on Death Row for a crime that he did not commit.

Current Status:

On 01/24/03, Holton was released from Union Correctional Institution.

In early 2003, Holton was arrested and charged with aggravated assault for threatening his nephew with a machete.

Holton was arrested on 12/11/03 and charged with aggravated battery for punching his wife and beating her with the shaft of a golf club. On 06/21/04, Holton was given a two-year sentence and was released on 08/29/05.

On 11/14/06, Holton was sentenced to twenty years for attempted second-degree murder and domestic battery. On 06/18/06, Holton choked his wife until she passed out.

Report Date: 10/04/06 JFL
Updated: 11/14/06 JFL

JARAMILLO, Anibal (H/M)

AKA: Jose Bernardo Pineda

DC # 077098

DOB: 02/03/58

Eleventh Judicial Circuit, Dade County, Case # 80-24540

Sentencing Judge: The Honorable Ellen Morphonios

Attorney, Criminal Trial: Terrance McWilliams, Esq.

Attorney, Direct Appeal: Louis Casuso, Esq. & Edward McHale, Esq.

Date of Offense: 11/30/80

Date of Sentence: 04/08/81

Circumstances of Offense:

Anibal Jaramillo was convicted and sentenced to death for the murders of Gilberto Caicedo Reyes and Candelaria Castellanos Marin.

In the early morning hours of 12/02/80, the bodies of Gilberto Caicedo Reyes and Candelaria Castellanos Marin were discovered in a home in South Dade County. Both had been bound, gagged, and killed execution style with three shots to the head. Medical examiners estimated the murders took place between 2:00 a.m. on November 30th and 2:00 a.m. on December 1st. All six of the shots were believed to have been from the same gun, probably a MAC-10 submachine gun with a silencer.

Marin's hands had been bound by handcuffs, upon which, medical examiners identified fingerprints that did not belong to Jaramillo. A coil of hemp cord was found next to Reyes' body. It was apparent that a portion of the cord had been severed by a knife and used to bind his hands behind his back. Packaging for a knife was found next to Reyes' body and the knife itself was found on the dining room table, both of which bore Jaramillo's prints. The house had been ransacked in an apparent search for valuables; however, among the numerous latent fingerprints that police discovered, none of them belonged to Jaramillo.

At trial, Jaramillo testified that he had gone over to the Reyes' residence on November 29th to help Edison Caicedo, Reyes' nephew, clean out the garage. Jaramillo wanted to break down several boxes in order to make them more stackable, so he asked Caicedo for a knife. Caicedo directed Jaramillo to a bag on the dining room table that contained a new knife. Jaramillo stated that he unwrapped the knife, leaving the wrapper on the table, and once finished using it in the garage, returned the knife to the table. Jaramillo reported that he left the Reyes' residence at approximately 10:00 p.m. that night.

A neighbor testified that he heard a series of loud noises, which sounded like fighting, come from the house around 7:00 p.m. on November 30th. Mr. Breslaw, who lived next door, reported that he heard what sounded like furniture being pushed around, a scream, and what could have been a gunshot. When police arrived on the scene during the early

morning hours of 12/02/80, they met Caicedo, who was accompanied by two attorneys. Since he lived with his uncle Gilberto Caicedo Reyes, Edison Caicedo's fingerprints were found all over the house, including the ransacked areas. Caicedo did not testify at Jaramillo's trial, as his whereabouts were unknown at the time.

Jaramillo was convicted of two counts of First-Degree Murder and sentenced to death.

Additional Information:

Jaramillo was arrested on 12/14/80 for allegedly stealing and attempting to use another's passport. On 04/14/81, Jaramillo pled guilty as charged and was sentenced to 2.5 years imprisonment to run concurrent with his death sentences (CC # 80-24540).

Jaramillo was again arrested on 03/13/83 for illegal possession of a firearm and for receiving ransom money from a kidnapping. He was convicted and sentenced to four years and two years imprisonment respectively.

Trial Summary:

12/16/80 The defendant was arrested.
01/07/81 Defendant indicted on the following:
 Count I: First-Degree Murder
 Count II: First-Degree Murder
 Count III: Use of a Firearm in the Commission of a Felony
04/08/81 The jury found Jaramillo guilty of two counts of First-Degree Murder, as charged in the indictment. He was acquitted on Count III: Use of a Firearm in the Commission of a Felony.
04/08/81 Upon advisory sentencing, a majority of the jury voted that Jaramillo be sentenced to life imprisonment.
04/08/81 The defendant was sentenced as followed:
 Count I: First-Degree Murder – Death
 Count II: First-Degree Murder – Death
07/08/82 The Florida Supreme Court reversed the convictions and remanded to the trial court with instructions to discharge Jaramillo.

Appellate Summary:

Florida Supreme Court, Direct Appeal

FSC # 60,570
417 So. 2d 257

05/04/81 Appeal filed.
07/08/82 FSC reversed the convictions and remanded to the trial court with instructions to discharge Jaramillo.

Case Information:

On 05/04/81, Jaramillo filed a Direct Appeal in the Florida Supreme Court. In that appeal, he argued that the State's case was based entirely on circumstantial evidence, and that such evidence was insufficient to support his convictions of First-Degree Murder. Applying the standard set forth in *McArthur v. Nourse*, the high court noted, "where the only proof of guilt is circumstantial, no matter how strong the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence." The only evidence offered by the State to show Jaramillo's guilt was the presence of his fingerprints on several items at the murder scene. Jaramillo, however, had a reasonable explanation as to how his fingerprints got on the knife and the wrapper in question. Since forensic experts could not determine that the fingerprints were left at the time of the murder and not some time before, the State's evidence was not inconsistent with Jaramillo's reasonable hypothesis of innocence. As such, the Florida Supreme Court reversed the convictions and remanded to the trial court with instructions to discharge Jaramillo.

Law Enforcement/ Prosecution Statements:

Al Singleton of the Dade County Sheriff's Office provided the following comment on the Jaramillo case:

Through several informants, it was learned that Jaramillo was an 'enforcer' (hit man) from Colombia. He was implicated in two separate homicides in 1980, the first of which involved the shooting death of a woman in November 1980. Although he was charged with this murder, he was never convicted. The second murder involved the execution style killing of a couple in South Dade County. Jaramillo's fingerprints were found inside the house on the packaging of rope/cord. That cord was used to bind the victims' hands behind their backs. Jaramillo was found guilty of the murders, but the Florida Supreme Court ruled that the evidence was insufficient to support his convictions and ordered an acquittal. It is the opinion of the Dade County Sheriff's Office that Anibal Jaramillo was guilty of both homicides.

The State Attorneys Office for the Eleventh Circuit provided the following statement regarding Jaramillo's case:

It is an old case and the original prosecutors are not with the office any longer, but [our] understanding is that Jaramillo, although the evidence was deemed to be sufficient by a jury and a judge to convict him of two counts of first-degree murder (and to sentence him to death), the FSC thought that his fingerprints found on a knife near the victim's bodies and on a grocery bag in the house were insufficient, as the defendant gave a story that despite the State's attempt to rebut it, was deemed insufficient to refute it. See 417 So. 2d 257 (Fla. 1982). Although the victims had been shot, one of the victims had their hands tied behind their

back with a cord. The coil of the cord was found next to the packaging of a knife (the one in which the defendant's fingerprints were on). The State had also prosecuted a codefendant, Jaime Savino, whose fingerprints were found on the handcuffs used to bind one of the victims. The trial court directed a verdict against the State saying that was insufficient. It is our Office's position that two men (one being Jaramillo) got away with a double homicide.

Defense Statements:

Louis Casuso, Jaramillo's defense attorney, commented:

I thought the Court made the correct decision. The only evidence against Jaramillo was that his fingerprints were found at the scene; however, there was a reasonable explanation as to why they were there.

Current Status:

Anibal Jaramillo was deported to Colombia subsequent to his release and was murdered there.

Report Date: 03/07/02 ew
Approved: 03/12/02 ws
Updated: 05/29/02 ew

KEATON, Dave Roby (B/M)

DC# 030350

DOB: 02/05/52

Second Judicial Circuit, Leon County, Case # 6366

Sentencing Judge: The Honorable Guyte P. McCord, Jr.

Trial Attorney: Harry L. Michaels, Private

Attorneys, Direct Appeal: Kent Spriggs, Paul L. Ross, James Reif, Morton Stavis,
Margaret Ratner, Private

Date of Offense: 09/18/70

Date of Sentence: 05/11/71

Circumstances of the Offense:

At approximately 2:30 p.m. on September 18, 1970, two deputy sheriffs assigned as jailors in Leon County, Thomas Revels and Hallie M. Carroll, entered Luke's Grocery Store to make a purchase. Three armed black males, who were in the process of robbing the store, ordered the two unarmed officers to the east side of the building and directed them to lie down on the floor with the four other victims of the robbery. After taking the deputies' money, one of the black males stated, "We are going to kill everybody in here and start with the women." Deputy Revels jumped to his feet and grabbed one of the assailants and a struggle ensued. Deputy Revels was shot under the left armpit and in the back of the head. Deputy Carroll attempted to aid Deputy Revels, and he was shot once in the stomach and once in the mouth. Deputy Carroll survived the attack; however, Deputy Revels died as a result of his injuries.

The following five defendants were indicted for the felony murder described above: Dave Keaton, Johnny Frederick, Alphonso Figgers, Johnny Lee Burns, and David Charles Smith, Jr. These five defendants were referred to as "the Quincy Five."

Keaton was initially brought in for questioning in the unrelated armed robbery of a Colonial Food Store that occurred on 09/10/70.

Keaton later gave three separate confessions regarding the Luke's Grocery robbery to different officers on different days- two of which were recorded. He gave a taped statement initially to Lt. Terry and made a subsequent taped statement to Captain Pitts. Both of the confessions that were played during the trial provided a detailed description of how Keaton and his codefendants committed the robbery. In a taped interrogation, Keaton was asked if during the commission of the robbery he remembered any "colored people" entering the store. Keaton's taped reply was, "Yeah, there was an elderly man, come in with some bottles or something." This information matched the trial testimony of witness, Eddy Davis, who claimed that, although he was unable to identify the assailants, he had, in fact, entered Luke's grocery with glass bottles to return.

Keaton recanted his confession at trial. He testified that, although he had given taped statements confessing the crime to the officers, he was coerced into admitting that he was involved in the robbery at Luke's Grocery. Keaton stated that he was brought in for questioning on another robbery case and was later asked about the Luke's Grocery Store robbery. Keaton testified that, when he denied his involvement in the robbery of Luke's Grocery, Lt. Terry told him that he was lying and claimed they had ways to prove that he was at the store on the night of the robbery. Keaton stated investigators refused to allow him to call anyone for five days. He claimed that he made repeated requests to phone his mother, so that she could obtain an attorney for him. He also claimed that he was driving his mother to work at the Sunland Hospital on the day of the offense.

Keaton testified that Lt. Perry directed him as how to answer all of the questions and provided him with all of the answers heard on the tape. He stated that he was subject to lengthy interrogations and claimed he finally decided to give them the statement that they wanted. Keaton stated that, although he had confessed, he assumed that at trial he would be found not guilty, since he was never present during the offense. At trial, both Lt. Terry and Capt. Pitts denied forcing Keaton to confess.

Keaton and Frederick were tried together while a severance was granted for separate trials for the other three defendants because Keaton and Frederick had given written statements that implicated Smith, Burns, and Figgers.

Frederick also gave an oral confession to law enforcement officers. Frederick reenacted the crime and explained how he, Keaton, and the other defendants committed the robbery. Frederick stated that the car belonging to 'the Quincy Five' was parked around the side of Luke's Grocery Store prior to the robbery.

After the trial of Keaton and Frederick, but before Smith's trial, three more defendants were indicted for the murder of Deputy Sheriff Thomas Revels based on latent fingerprints found at the scene. These individuals were John Allen Mitchell, James Fussell, and Jessie Henry Damon. These defendants were called "the Jacksonville Three." The evidence presented at "the Jacksonville Three's" trial was exculpatory to the trials of "the Quincy Five." Due to the fact that Smith had not yet been tried, the evidence implicating three additional suspects was used in his defense. No fingerprints from any of "the Quincy Five" defendants were found at the scene. Keaton explained the lack of fingerprints in his confession by claiming that he and Smith wore gloves.

During the original trial, Keaton, Frederick, Burns, and Smith were identified by eyewitnesses as participants of the robbery. Deputy Carroll identified Smith as the shooter. The same eyewitnesses identified four of the "Quincy Five" at all of the trials as participating in the robbery, two of which specifically identified Keaton as one of the robbers.

Additional Information:

Keaton was indicted on unrelated charges of two counts of Armed Robbery and one count of Assault with Intent to Commit First-Degree Murder on January 18, 1971. On 10/13/72, he pled no contest to the charges and was sentenced to two concurrent twenty-year sentences. In his statement, Keaton admitted his guilt. He was released and paroled on 07/24/79 and his parole was terminated on 09/09/81.

Codefendant Information:

Quincy Five:

Johnny Fredrick was tried with Keaton and found guilty. The jury recommended mercy for Fredrick, who, consequently was sentenced to life. The sentence and conviction were overturned.

Johnny Lee Burns was found incompetent and did not stand trial. He was committed to the State Hospital.

Alphonso Figgers' case was nolle prossed due to insufficient evidence. Figgers was sentenced to Life on 10/27/70 for Robbery with a Firearm.

A jury tried David Charles Smith, Jr. after the conviction of "the Jacksonville Three." Smith was acquitted of all charges.

Jacksonville Three:

John Allen Mitchell was tried by a jury and found guilty on January 14, 1972. The jury recommended mercy; therefore, Mitchell was sentenced to life.

Jessie Henry Damon was tried by a jury and found guilty on December 16, 1971. The jury recommended mercy; therefore, Damon was sentenced to life.

A jury tried James Fussell. He was found guilty and sentenced to Life on April 21, 1972. Fussell passed away on 10/23/01, while in the custody of the Department of Corrections.

Trial Summary:

01/28/71	The defendant was indicted for First-Degree Murder. The defendant pled not guilty.
05/06/71	The defendant was found guilty.
05/11/71	A majority of the jury did not recommend mercy; therefore, the defendant received an automatic death sentence due to the law at the time.

Retrial Information:

02/21/73 FSC remanded the case for a new trial
07/19/73 The State Attorney nolle prossed the case

Appeal Summary:

Florida State Supreme Court, Direct Appeal

FSC# 41231
273 So. 2d 385

05/28/71 Appeal filed.
07/21/72 FSC relinquished jurisdiction to the Circuit Court for an evidentiary hearing.
09/08/72 Defendant's sentence was converted to life, as per *Anderson v. Florida*¹².
11/14/72 Circuit Court stated that a new trial was needed.
02/21/73 FSC remanded for new trial.
03/15/73 Mandate issued.

Case Information:

Keaton filed a Direct Appeal with the Florida Supreme Court on 05/28/71. Keaton's sentence was converted to life based upon the rulings of *Furman v. Georgia* and *Anderson v. Florida*¹. Frederick filed a 3.850 Motion in the Circuit Court alleging that the existence of newly discovered evidence was withheld by the State. The evidence connected the "Jacksonville Three" to the crime. This evidence was presented by the defense in the trial of a codefendant, Smith. The state made a motion to the Florida Supreme Court to relinquish jurisdiction of Keaton's case to the Circuit Court for consolidation with Frederick's motion. On 07/22/72, the Florida Supreme Court relinquished jurisdiction of the case and, on 11/14/72, the Circuit Court ruled that a new trial was needed. On 02/21/73, the Florida Supreme Court adopted the Circuit Court's recommendation and vacated Keaton's judgment and sentence.

The Florida Supreme Court remanded the case for a new trial; subsequently, the State Attorney decided to nolle prosequere the case. The State claimed the factors contributing to the decision not to prosecute were as follows: (a) the crime was no longer a capital crime due to a change in legislation, (b) Keaton, who was not the triggerman, was already serving 20 years for another robbery case, and (c) several of the eyewitnesses were physically ill and further trials could possibly contribute to the additional deterioration of their health.

¹² In *Anderson v Florida*, the Florida Supreme Court held that the reduction of sentence dictated by *Furman v. Georgia* did not divest the court's jurisdiction over capital appeals pending at the time *Furman* was decided.

Prosecution/Law Enforcement Statement:

Harry Morrison, the State Attorney who tried the case, passed away in 1980. The following are excerpts from the Nolle Prosequi that Mr. Morrison filed when he chose not to retry the case. The format has been altered to improve readability:

In the course of this first trial the confessions of Keaton and Frederick were duly admitted into evidence. Mr. Keaton implicated himself and the four other defendants. Mr. Frederick implicated himself and the four other defendants. Mr. Keaton first gave an oral, confession to a State officer, namely special - agent Joe Townsend of the Florida Department of Law Enforcement. This statement was given on January 13, 1971. Almost immediately thereafter, on the same date, Keaton gave a detailed recorded confession to Lt. Melvin Terry of the Leon County Sheriff's office. This statement was witnessed by deputy sheriff Charles Landrum. On the next day, January 14, 1971, Capt. Lavelle Pitts of the Leon County Sheriff's took an even more detailed recorded confession from the defendant Keaton. In one of his statements Keaton indicated that he and Smith wore gloves so as to leave no fingerprints.

The defendant Frederick also first orally confessed to the same officer, Mr. Townsend, on January 14, 1971, the defendant Frederick also gave a recorded statement in detail to Lt. Terry, which was witnessed by Capt. Pitts. In his statement Frederick stated that the car they were riding in was parked around the side of Luke's Store prior to the robbery. Lt. Terry testified how in January 15, 1971, he and deputy sheriff Landrum were accompanied by Johnny Frederick who reenacted in minute detail the route by which Frederick and the other named defendants came to Tallahassee from Quincy on the afternoon of the robbery. Lt. Terry testified how Frederick located and pointed out the Jr. Food Store quick service center, 2411 Jackson Bluff Road, where the tape used to bind the victims was purchased. Mrs. Dorothy Lindsay, manager of this Jr. Food Store, identified the tape found in the Luke Store and testified at the trial that it was purchased from her by four black males about the time of the robbery.

In the course of this first trial defendants Keaton and Frederick, as well as defendants Burns and Smith, were definitely identified by witnesses as participants in the robbery resulted in the death of deputy sheriff Revels. In this first trial, and in four subsequent separate trials of other defendants charged with the same crime, defendant David Charles Smith was identified by Mr. Carroll as the trigger man who actually pulled the trigger of the pistol which killed Mr. Revels.

It will be noted that many unidentified fingerprints were developed in the Luke store during the original investigation of this robbery and murder. Later, during the year 1971, the State Attorney was given the name of three additional suspects for fingerprint comparison with these latents developed and listed at the scene of

the crime. The fingerprints of these suspects were compared with certain latents at the specific locations in the store, and on articles, which were obviously handled by the robbers in the store. The latent fingerprints of one Henry Damon were developed from scattered cartons of cigarettes found in the floor under the cash register; also Damon's prints were lifted from a jar of pennies in the store office and from the filing cabinet in the same office. The latent palm prints of one John Allen Mitchell were developed from an outside wrapper of a pack of hose found among several packages of scattered hose recovered from the east aisle of the store. Also Mitchell's fingerprints were on the outside cover of an unopened package of hose found in the floor at another location further back in the same east aisle. The latent fingerprints of John Allen Mitchell and James Fussell were developed from a brown paper sack containing two rolls of tape found on the frozen food counter adjacent to the east aisle. The latent fingerprints of Fussell were also found on one of four different packages of hose picked up by an officer who originally investigated the crime scene (All of the above allegations with reference to the fingerprints of Damon, Mitchell and Fussell were later brought out by sworn testimony at their subsequent trials.)

Further investigation developed evidence indicating that John Allen Mitchell, James Fussell and Jessie Henry Damon were traveling together in Tallahassee at the time of the robbery and were prime suspects in the same robbery resulting in the death of Mr. Revels. The State proved "The Jacksonville 3" guilty by circumstantial evidence, and beyond a reasonable doubt they were all personally present and participating in the same robbery even though they were not actually seen or recognized by eye witnesses.

The evidence in all of these trials reflected that Luke's store contained an estimated 4000 square feet of floor space with various entrances including doors on the east, north and south; that it was heavily loaded with aisles of merchandise making it impossible for persons in the store to see everyone else who may be moving about in this store. The evidence at each trial clearly reflected that the various eye witnesses saw different robbers at different times ranging in different numbers from 1 to 5. The number they saw depended on the location of the witnesses and the restrictions imposed on them by these robbers who were armed and threatening to kill the witnesses if they attempted to look up and identify the robbers.

In all of the above cases, beginning with the first trial, of Keaton and Frederick, of, the "Quincy 5" and in each of the three separate trials of "The Jacksonville 3" substantially the same eye witnesses appeared and testified under oath and definitely identified four of the "Quincy 5" defendants as also participating in the same robbery which resulted in the murder of Mr. Revels. These witnesses included Mrs. Gwynn Phillips, Mrs. P. B. Deter, Mr. Hallie M. Carroll, Mr. Luther W. Adamson, Mr. Cleo Simmons and Mrs. Dorothy Lindsay. These same witnesses gave sworn testimony in five separate trials that put four of the "Quincy 5" defendants, including Keaton and Frederick, at the scene and

participating in the robbery that led to the death of Mr. Revels. The fifth man in the "Quincy 5" group, namely, Alphonso Figgers, was tentatively identified by Mrs. Phillips as also being there and this defendant Figgers was also implicated in the confessions of Keaton and Frederick which were received in evidence at their first trial.

It was the State's theory and argument to the court and jury in each trial of "the Jacksonville 3" and in the later trial of David Charles Smith, Jr. that the subsequent identification of additional defendants did not exonerate the "Quincy 5"; that this was simply additional evidence leading to the identification of additional participants in the same crime and did not affect the guilt or innocence of the "Quincy 5"; that the evidence showed that the car of "The Jacksonville 3" was backed into a side street east of the store; both the Quincy 5" and "the Jacksonville 3" were all there in two automobiles in which they made their escape following the robbery. That was also this State Attorney's contention in all other proceedings dealing with the question of a new trial for defendants Keaton and Frederick.

In making the decision to enter this nolle prosequi in the case of Keaton and Frederick, it should be noted that the State Attorney is not obliged to present all charges which the evidence might support; neither is he obliged to prosecute all defendants against whom evidence exists which would support a conviction. It is well established that the prosecutor may in some circumstances and for good cause decline to prosecute a defendant notwithstanding that evidence exists which would support his conviction.

It is interesting to note that this particular case is no longer a capital crime. While the legislature has since enacted a new capital crimes law, this particular case falls within the category of a non-capital. If it was tried it would be before a six-man jury. Keaton, who was not the triggerman, is already serving 20 years for robbery in another case imposed in Leon County, October 13, 1972.

So the question arises as to whether further prosecution of Keaton would serve any good purpose consistent with the public interest since he is already serving 20 years in the State prison. In fact, all eight of the defendants charged with the murder of Mr. Revels have been removed from society for some time as follows:

1. Dave Roby Keaton is currently serving a sentence 20 years imposed 10/13/72 in Leon County for robbery.
2. Alphonso Figgers is currently serving a sentence of life on one count of robbery and 15 years on a second count of robbery, both to run concurrently; he was sentenced from Jackson County 10/13/72; still wanted by U.S Government for violation of gun law; detainer placed.
3. David Charles Smith, Jr. is currently serving two sentences of 25 years each from Leon County for robbery, and 10 years from Gadsden County for bombing a power plant; all of said sentences will run concurrently but will not run concurrently with any other sentences he may receive in the Federal court. He is

presently wanted by US Government for violation of gun law; detainer placed; also wanted by Jackson County for robbery; detainer placed.

4. Johnny Lee Burns is reported incurably insane and has been committed to the State Hospital at Chattahoochee since early 1971.

5. Jessie Damon is currently serving a sentence of life in the State prison from Leon County for the murder of Mr. Revels.

6. John Allen Mitchell is currently serving a sentence of life in the State prison from Leon County for the murder of Mr. Revels.

7. James Fussell is currently serving a sentence of life in the State prison from Leon County for the murder of Mr. Revels.

8. Johnny Frederick is currently serving a sentence of life in the State prison imposed May 1, 1971, for the murder of Mr. Revels, he has been granted a new trial and this nolle prosequi will have the effect of releasing him. It is noted, however, that Johnny Frederick has not been identified as a member of the gang that Smith, Keaton, Burns and Figgers were associated with. He has no known criminal record. In his confession he declared he was outside in the car and was not actually participating in the robbery as such which resulted in the death of Mr. Revels. There is no evidence that his release at this time would necessarily be against the public interest.

Another factor to consider is the continuing expense to the State. This case will obviously be appealed by attorneys for the defendants in the event of a second conviction of either of them.

But a most important factor which the prosecutor may properly consider in exercising his discretion deal with witnesses. These cases have already been tried five times in two years, or since May 3, 1971. Each trial was about one week: this retrial could be stretched longer than that. Many of the same witnesses have been summoned for each trial; on each of these occasions they have been very willing, cooperative and patient, although their appearance was always at great discomfort inconvenience and expense to themselves. One had a heart attack before the first trial, although she has since appeared at subsequent trials. Two other very material eyewitnesses are ill. The latter two have testified in five trials and were ill when they testified in the last trial. A continuance of the Keaton and Frederick re-trial to permit their recovery would serve little if any purpose. The doctor for one of them has advised that his patient is unable to testify even though she has [to] agree to cooperate and try to do so. An affidavit from the doctor for one material eyewitness reflects that her further appearances in his opinion will deteriorate her existing condition and damage her physical and mental health. It is doubtful if a conviction could be obtained without her. While she is willing to try to do so, she cannot assure the State that she will be able to do so. The undersigned State Attorney feels an obligation to these witnesses in making the decision to enter this nolle prosequi. The conviction of Keaton and Frederick for any of the several offenses embraced within the indictment is not worth taking a chance of injuring the health of one single witness.

THEREFORE, the undersigned State Attorney respectfully says that the case of State of Florida vs. Dave Roby Keaton and Johnny Frederick is nolle prosequi.

Defense Statement:

Trial attorney (defense), Harry Lewis Michaels, made the following comments in regard to the Dave Roby Keaton case:

I never did believe that the eye witness testimony was that strong and convincing. It was confusing. However, even without the confessions, the testimony probably would have been sufficient to convict.

The lack of fingerprints of any of the five defendants was, of course, strongly argued by the defense.

The confessions bothered me from the outset. Keaton did not present the usual accusations, such as threats, beatings, etc. He said that after awhile he just threw up his hands and said: "if you say it was that way, it must have been." It was not until the trial that I got the revelation as to what occurred during the interrogation.

The polygraph operator is the one who obtained the confession. It was through trickery, chicanery, lying by the operator, deviousness and just plain unethical conduct, that a confession was obtained. I had nothing but contempt for this state witness. Judge McCord expressed concern over the methods used in obtaining the confession, but, after considerable deliberation, did allow the confession into evidence.

Up until the trial I had believed the confessions were probably voluntary. Keaton and his mother at one point expressed concern that I did not believe in his innocence and questioned whether I should be representing him. I devoted five months almost exclusively to this court appointed task. My partners took over my workload at my law firm. So regardless of Keaton's concern, I gave it all I had on his behalf. As the trial progressed, coerced through fraud and trickery, no fingerprints and shaky eye witness testimony.

I followed the "Jacksonville Three" case with great interest. The fact that not any of the "Quincy Five" were on the premises all were innocent of that robbery and murder, shows how our criminal justice system just fails us at times. The confession should not have been admitted into evidence. The death penalty should not be given on shaky eye witness testimony."

Current status:

Subsequent to his release, Keaton was arrested on a DUI charge. NCIC does not show any other arrests.

Report Date: 03/05/02 NMP
Updated: 10/05/06 JFL

LINDSEY, Herman (B/M)

DC# 185502

DOB: 12/29/72

17th Judicial Circuit, Broward County Case # 06-04260

Sentencing Judge: The Honorable Bernard Bober

Attorney, Trial: Bruce Raticoff – Public Defender’s Office

Attorney, Direct Appeal: Jeffrey L. Anderson – Public Defender’s Office

Attorney, Collateral Appeals: N/A

Date of Offense: 04/19/94

Date of Sentence: 06/19/07

Date of Release: 07/28/09

Circumstances of Offense:

On 04/19/94 around 9:30 a.m., the owner of the Big Dollar pawn shop, Gerald Singer, called Joanne Mazollo, an employee of the pawn shop, to make sure she was at the store and doing well. He also called several times an hour later, but no one answered the phone. Singer then went to the pawn shop to check on Mazollo and found her body sitting in a chair in the back room. According to the medical examiner, she died instantly from a gunshot wound to the head. Her death occurred during a robbery of the pawn shop. Singer reported that between five and seven firearms, fifty envelopes of jewelry, and a blue velvet Crown Royal bag filled with jewelry were missing; the cash drawer was empty as well.

Over a decade later, Herman Lindsey was sentenced to death for Mazollo’s murder on 06/19/07. Prior to the sentencing, during October of 1995, Lindsey made a statement to the police claiming he had been in the store before the crime occurred to pawn his Sega under a false name, but said he never took part in the robbery. He also implicated Ronnie LoRay for the murder of Mazollo. LoRay was an acquaintance who he had helped get rid of stolen goods in the past. Lindsey said LoRay came over to his house on the day of the robbery to tell him about it, and LoRay said he heard a shot, but did not know if the woman had died. According to Lindsey, LoRay had gold jewelry in his pockets, a few hundred dollars, and a gun.

At the trial, Lindsey’s ex-wife, Demeatres Gause (also known as “Nikki”), said Lindsey was not in the apartment, where they stayed on occasion, between 10:30 a.m. and 11:00 a.m.; however, she mentioned that he might have been downstairs. Both Lindsey and LoRay were in the apartment before noon. During the twelve o’clock news report, Lindsey asked Nikki to turn up the volume on the television, so he could hear the report about the Big Dollar pawn shop robbery. Nikki found a Crown Royal Bag filled with jewelry in a closet in the apartment sometime later. Lindsey sold it and never mentioned how he acquired it. Also, a close friend of Nikki’s, Alfonzer Harrold, testified that LoRay was wearing a new bracelet the day after the robbery occurred. Evidence showed that LoRay’s fingerprint was found on a stun gun box that was located in the back room of the

pawn shop next to the safe. Lindsey's thumbprint was found on a pawnshop receipt that was signed by David Ashley—the name Lindsey used to pawn his Sega.

Codefendant Information:

LoRay was convicted of second-degree murder for Mazollo's death.

Prior Incarceration History in the State of Florida:

Offense Date	Offense	Sentence Date	County	Case No.	Prison Sentence
07/30/88	Robb. Gun/Deadly Weapon	04/14/89	Broward	8817947	2 Years, 6 Months
12/23/89	Grand Theft Motor Vehicle	07/13/90	Broward	9009608	3 Years
04/21/90	Grand Theft Motor Vehicle	07/13/90	Broward	9010541	3 Years
04/21/90	Burglary Tools – Possess	07/13/90	Broward	9010541	3 Years
04/27/90	Burg/Dwell/Occup.Convey	11/08/90	Palm Beach	9009565	1 Year, 6 Months
04/27/90	Grand Theft, \$300 Less & \$20,000	11/08/90	Palm Beach	9009565	1 Year, 6 Months
03/27/92	Trafficking in Cocaine	03/01/95	Broward	9206510	7 Years
03/27/92	Cocaine – Sale or Purchase	03/01/95	Broward	9206510	7 Years
11/26/93	Traffic in Stolen Property	03/01/95	Broward	9321430	7 Years
11/27/93	Traffic in Stolen Property	03/01/95	Broward	9321430	7 Years
10/21/94	Cocaine - Possession	03/01/95	Broward	9418117	2 Years, 6 Months
10/21/94	Resisting Officer w/ Violence	03/01/95	Broward	9418117	2 Years, 6 Months
02/24/98	Escape	11/18/95	Broward	9804079	7 Years, 6 Months

Community Supervision History in the State of Florida:

Offense Date	Offense	Sentence Date	County	Case No.	Community Supervision
03/27/92	Trafficking in Cocaine	03/01/95	Broward	9206510	2 Years
03/27/92	Cocaine – Sale or Purchase	03/01/95	Broward	9206510	2 Years
11/26/93	Traffic in Stolen Property	03/01/95	Broward	9321430	2 Years
11/27/93	Traffic in Stolen Property	03/01/95	Broward	9321430	2 Years
10/21/94	Cocaine Possession	03/01/95	Broward	9418117	2 Years
10/21/94	Resisting Officer w/ Violence	03/01/95	Broward	9418117	2 Years

Trial Summary:

03/08/06 Indicted as follows:
 Count I: First-Degree Murder (Joanne Mazollo)
 Count II: Soliciting to Commit Armed Robbery
10/05/06 Jury returned guilty verdicts on Count I; Count II was disposed *nolle
prosequi*
10/05/06 Jury recommended death by a vote of 8-4
06/19/07 Sentenced as follows:
 Count I: First-Degree Murder (Joanne Mazollo) – Death

Appeal Summary:

Florida Supreme Court – Direct Appeal

FSC# 07-1167

06/25/07 Direct Appeal filed
05/05/09 Oral Arguments held
07/09/09 FSC reversed the conviction and sentence and directed that an acquittal be
 entered
07/27/09 Mandate issued

Case Information:

Lindsey filed a Direct Appeal to the Florida Supreme Court on 06/25/07. He raised the following 18 issues on appeal: (1) the trial court erred in admitting irrelevant testimony; (2) the trial court erred in denying Lindsey's motion for judgment of acquittal; (3) the trial court erred in allowing a witness to testify that the victim knew Lindsey; (4) the trial court erred in allowing the State to redact a portion of Lindsey's statements; (5) the trial court erred in admitting evidence that Lindsey had been in jail; (6) the trial court erred in denying Lindsey's motion to dismiss the indictment; (7) the trial court erred in admitting an autopsy photo into evidence; (8) trial court erred in sending unrequested evidence to the jury; (9) the trial court erred in denying Lindsey's request for a new trial; (10) the trial court erred in finding the avoid-arrest aggravator; (11) the trial court erred in denying Lindsey's request for a special jury instruction; (12) the trial court erred in instructing the jury on the avoid-arrest aggravator; (13) the death sentence is not proportionate to the crime; (14) the trial court erred in allowing the prosecution to question Lindsey about guilt phase issues during the penalty phase; (15) the trial court erred in allowing the prosecution to impeach Curtis Fox; (16) the trial court erred in giving great weight to the jury's recommendation of the death sentence; (17) Florida's death penalty law is unconstitutional, and (18) Florida's felony-murder aggravator is unconstitutional. On 07/09/09, the Florida Supreme Court reversed the conviction and sentence and directed that an acquittal be entered. A mandate was issued on 07/27/09.

Prosecution Statements:

David Frankel, who is from the State Attorney's Office and was the prosecuting attorney on the Herman Lindsey case, made the following comments:

The opinion of the Fla. Supreme Court notwithstanding I doubt anyone connected with this case would argue loudly for Mr. Lindsey's actual innocence and deny that he got away with murder. The evidence while compelling was indeed circumstantial. This seems to frighten appellate courts in general and in this instance, the Fla. Supreme Court in particular.

As it pertains to actual "innocence" I am certain that neither defense attorney, Christopher Pole or Thomas Cazel will suggest that the prosecution of the case was: "In bad faith," a "rush to judgment," based on an incomplete investigation, myopic, or anything else of similar nature. Simply put Mr. Lindsey's "exoneration" by the state's high court was based on two clear weaknesses in our system of justice. The first is that this system neither trusts in, nor is greatly concerned whether someone actually committed the crime, but only whether it can be proven. And I mean that to include all sides, the defense, the court, and on rare and deviant occasions the prosecution. Ironically, of the three interests it is the prosecution who bears the greatest responsibility to consider the actual innocence of the accused.

The second is the false belief that any appellate court can recreate the issues presented at a trial from a printed record. Appellate review should be the hallmark of restraint. Whether it's our egoic nature, or need to fill any space we can with our opinions, the Florida Supreme Court opinion in State of Florida v. Herman Lindsey said nothing about the brutal murder of Joanne Mozzola.

Defense Statement:

In a conversation with Christopher Pole, Lindsey's trial attorney, he expressed the following comments:

Initially, he did not understand why the prosecutors would go forward with the case. He had always felt that there was insufficient evidence to convict Lindsey. He was shocked when the jury did not acquit Lindsey, and the judge affirmed the death sentence.

Current Status:

On 07/28/09, Lindsey was released from Florida State Prison.

Report Date: 04/05/10 EMJ
Approved: 04/05/10 RM
Updated: 04/08/10 EMJ

MARTINEZ, Joaquin (W/M)

DC# 091882

DOB: 01/10/56

Thirteenth Judicial Circuit, Hillsborough County, Case # 96-1465

Sentencing Judge: The Honorable J. Rogers Padgett

Trial Attorneys: Robert Fraser and Thomas Fox, Esq.

Direct Appeal Attorney: Peter Raben, Esq.

Date of Offense: 10/27 – 10/31/95

Date of Sentence: 05/27/97

Circumstances of Offense:

The bodies of Douglas Lawson and Sherrie McCoy-Ward were found in their home on 10/31/95, but their time of death was determined to be sometime between 10/27/95 and 10/30/95. Lawson died from gunshot wounds, while McCoy-Ward died from multiple stab wounds.

The police did not find any weapons or any forensic evidence at the scene that would link the crime to a suspect. A list of names and telephone numbers was found in the kitchen, including a pager number for a person named “Joe.” After the police left several numeric messages on the pager, Sloane Martinez, the ex-wife of Joaquin Martinez (“Joe”), made a telephone call to the police and told them that she had suspicions that her ex-husband was involved in the murders of Lawson and McCoy-Ward. Sloane agreed to have her house wired for audio and video recording, in an effort to get information from Martinez that would implicate him in the murders. In conversations between Sloane and Martinez, Martinez made several comments that could be interpreted as incriminating. The police also made a transcript of the audio tape conversation.

Further circumstantial evidence implicating Martinez in the murders was given by Laura Babcock, the ex-fiancé of Martinez, who testified that on 10/27/95, Martinez told her that he planned to get in touch with a friend named “Michael,” who owed him money. When Martinez returned later that night, he was wearing clothing that did not fit him properly and he had a swollen lip and scraped knuckles.

Additional evidence implicating Martinez came from several jail inmates who testified against Martinez, alleging that he admitted to committing the murders, attempted to implicate another individual for the crimes, and paid one of the inmates \$400 for assistance with the case.

Trial Summary:

02/14/96 Indicted on the following charges:
Count I First-Degree Murder (Lawson)
Count II First-Degree Murder (McCoy-Ward)
Count III Armed Burglary
04/15/97 Jury returned guilty verdicts on all counts of the indictment
04/16/97 Jury recommended death for Count II of the indictment by a vote of 9-3
05/27/97 Sentenced as follows:
Count I Life imprisonment
Count II Death
Count III Life imprisonment

Retrial Summary:

06/06/01 Acquitted at retrial

Appeal Summary:

Florida Supreme Court – Direct Appeal

FSC# 90,952
761 So.2d 1074

07/09/97 Appeal filed
06/15/00 FSC vacated convictions and sentences and remanded for a new trial
07/19/00 Mandate issued

Case Information:

Martinez filed a Direct Appeal with the Florida Supreme Court on 07/09/97, citing ten trial court errors; however, the FSC chose to comment on only one of the alleged errors. On 06/15/00, the FSC reversed the convictions, vacated the death sentence, and remanded the case for a new trial. The FSC ruled that comments by a State witness, Detective Conigliaro, were improperly admitted by the trial court. During his testimony, Conigliaro improperly gave his opinion about the guilt of Martinez, saying, “[T] here was no doubt that he [Martinez] did it.”

On 06/06/01, Martinez was acquitted at the retrial.

Law Enforcement/Prosecution Statements:

Candace Sabella, who was the Assistant Attorney General in the Direct Appeal, had the following statement regarding the Martinez case:

Sabella observed that Martinez' conviction and sentence were overturned on Direct Appeal, so the only issue that was considered by the FSC was the issue of a potential trial court error (improper testimony of a State witness), not claims of innocence due to newly discovered evidence, which would have arisen in a collateral proceeding and not in a Direct Appeal.

Sabella noted that at the retrial, a different prosecution team was brought in than was used at trial, witnesses [fellow inmates and ex-wife] recanted their testimony, and evidence was lost (i.e. audio tape and transcript of conversation between Martinez and his ex-wife that were ruled inadmissible at retrial), all of which resulted in an acquittal for Martinez.

To Sabella, Martinez' acquittal was a matter of timing (i.e. witness recantation and lost evidence), not a matter of innocence.

Defense Statements:

Peter Raben, who served as Martinez' counsel in the Direct Appeal to the Florida Supreme Court, had the following statement regarding the Martinez case:

According to Raben, Martinez did not have a fair trial, but the Florida Supreme Court was "reasoned and judicious" in its reversal of Martinez' convictions and sentences, sending the case back to the trial court where Martinez was acquitted.

Raben also noted that Martinez was able to obtain private counsel and received effective assistance of counsel, thus, the system worked for him. To Raben, Martinez was "lucky" in the sense that he was able to afford competent counsel who could work for him, something that Raben feels is not true of most inmates on death row.

Raben noted that many people on death row do not have effective assistance of counsel and the current system of CCRC representation is unable to effectively handle the cases on death row.

In a subsequent telephone conversation with Raben, he noted that some State evidence presented at the original trial was not presented at the retrial. This evidence included the audio tape and transcript of the conversation between Martinez and his ex-wife, both of which were ruled inadmissible by the trial judge due to inaudible sections of the audio tape, and the testimony of both Martinez' ex-wife and inmates who alleged that Martinez implicated himself while in jail.

Current Status:

There is no information available as to Martinez' criminal history subsequent to his release.

Report Date:	05/17/02	JFL
Approved:	05/23/02	WS
Updated:	10/05/06	JFL

MELENDEZ, Juan (H/M)

DC# 046466

DOB: 05/24/51

Tenth Judicial Circuit, Polk County, Case # 84-1016

Sentencing Judge: The Honorable Edward R. Threadgill

Trial Attorney: Roger Alcott, Esq.

Direct Appeal Attorney: Marshall G. Slaughter, Esq.

Collateral Appeals Attorney: Martin J. McClain, CCRC-N

Date of Offense: 09/13/83

Date of Sentence: 09/21/84

Circumstances of Offense:

On the evening of 09/13/83, the body of Delbert Baker was found in the back room of his cosmetology school in Auburndale, Florida. Mr. Baker's throat was slashed and he had been shot in the head and shoulders. His jewelry (four diamond rings, watch, and gold bracelet) and \$50 in petty cash were missing, but the business receipts from the day were found in his briefcase.

Juan Melendez was arrested and charged with First-Degree Murder and Armed Robbery on the basis of an allegation by an acquaintance of Melendez, David Falcon, who alleged that Melendez confessed to the crime while the two were doing cocaine together.

Falcon testified at trial that Melendez claimed that he and an accomplice went to Baker's cosmetology school with the intent of robbing him. According to Falcon, Melendez's accomplice slashed Baker's throat, Melendez shot Baker, and the two cleaned up any fingerprints and took the jewelry and money.

John Barrien testified at trial that he, his cousin George Barrien, and Melendez drove to Auburndale on 09/13/83 so that Melendez could get his hair done and pick up some money. John Barrien dropped Melendez and George Barrien off at Baker's cosmetology school and picked them up two hours later. Neither Melendez nor George Barrien had any blood on them or their clothes when they were picked up. According to John Barrien, on the next day, he took George Barrien to the train station, so that George could take a train to Wilmington, Delaware to visit his children. While at the train station, Melendez gave two rings and a watch to George and asked him to sell them in Wilmington.

George Barrien testified at the trial, during which he denied riding in the car with Melendez and said he had seen Melendez only once before at John Barrien's house. Melendez's girlfriend, Dorothy Rivera, testified at trial that Falcon told her that he was going to falsely testify against Melendez. She also testified that she was with Melendez on the night of the murder, which was corroborated by her sister's testimony.

A prisoner named Roger Mims testified at trial that his cellmate, Vernon James, told him that he [James], his partner, and another man robbed and killed Baker.

Prior to trial, Vernon James, who was incarcerated on other charges, was interviewed by Melendez's attorney, Roger Alcott. In a taped statement, James admitted that he was sexually involved with Baker and had been at Baker's cosmetology school when he and his two accomplices killed Baker. An FDLE agent interviewed James, and he again admitted his presence at the killing of Baker. A State Attorney investigator also interviewed James and, again, James admitted his involvement in the murder, although this interview was never disclosed to the defense. At trial, James invoked his Fifth Amendment rights and refused to testify. The judge ruled that the testimony of the FDLE agent that James had confessed to was inadmissible hearsay evidence. The defense counsel failed to offer his taped interview of James as evidence.

Trial Summary:

09/20/84	Jury returned guilty verdicts on the following charges:
	Count I First-Degree Murder
	Count II Armed Robbery
09/21/84	Sentenced as follows:
	Count I Death
	Count II Life Imprisonment

Codefendant Information:

John Barrien was arrested, but pled no contest to charges of Accessory After the Fact, in exchange for testifying against Melendez, and was sentenced to two years probation.

George Barrien was never charged.

Additional Information:

On 03/25/75, Melendez was sentenced to 10 years imprisonment for an Armed Robbery conviction and was released on 07/01/82.

Appeals Summary:

Florida Supreme Court – Direct Appeal

FSC# 66,244
498 So.2d 1258

11/30/84	Appeal filed
12/11/86	FSC affirmed convictions and sentences

Trial Court – 3.850 Motion

CC# 84-1016

01/16/89 Motion filed
07/12/89 Trial court denied Motion

Florida Supreme Court – 3.850 Motion Appeal

FSC# 75,081

612 So.2d 1366

11/30/89 Appeal filed
11/12/92 FSC affirmed denial of 3.850 Motion
02/18/93 Rehearing denied and Mandate issued

U.S. District Court, Middle District – Petition for Writ of Habeas Corpus

USDC# 93-662

04/19/93 Petition filed
01/04/02 USDC administratively closed case

U.S. Supreme Court – Petition for Writ of Certiorari

USSC# 93-5528

510 U.S. 934

08/06/93 Petition filed
10/18/93 USSC denied Petition

Florida Supreme Court – Petition for Writ of Habeas Corpus

FSC# 82,570

644 So.2d 983

10/18/93 Petition filed
09/08/94 FSC denied Petition
11/16/94 Rehearing denied

Trial Court – 3.850 Motion

CC# 84-1016

09/22/94 Motion filed
07/17/96 Trial court denied Motion

Florida Supreme Court – 3.850 Motion Appeal

FSC# 88,961
718 So.2d 746

09/16/96 Appeal filed
06/11/98 FSC affirmed denial of 3.850 Motion
09/15/98 Rehearing denied
10/15/98 Mandate issued

Trial Court – 3.850 Motion

CC# 84-1016

10/19/00 Motion filed
12/06/01 Trial court granted Motion and ordered a new trial

Clemency Hearing:

02/10/88 Clemency hearing held (denied)

Case Information:

Melendez filed a Direct Appeal with the Florida Supreme Court on 11/30/84, citing errors in police evidence-gathering, the trial court's failure to grant a mistrial when two defense witnesses refused to appear in court to testify, and aggravating factors that were not proven beyond a reasonable doubt. The FSC affirmed the convictions and sentences on 12/11/86.

Melendez filed a 3.850 Motion with the Trial Court on 01/16/89, citing issues involving ineffective assistance of counsel and the fundamental fairness of the trial. The Trial Court denied the Motion, without an evidentiary hearing, on 07/12/89.

Melendez filed a 3.850 Motion Appeal with the Florida Supreme Court on 11/30/89. The FSC affirmed the denial of the 3.850 Motion on 11/12/92.

Melendez filed a Petition for Writ of Habeas Corpus with the U.S. District Court, Middle District, on 04/19/93 that was administratively closed on 01/04/02.

Melendez filed a Petition for Writ of Certiorari with the U.S. Supreme Court on 08/06/93 that was denied on 10/18/93.

Melendez filed a Petition for Writ of Habeas Corpus with the Florida Supreme Court on 10/18/93, alleging ineffective assistance of counsel. On 09/08/94, the FSC denied the Petition, finding it to be without merit.

Melendez filed a 3.850 Motion with the Trial Court on 09/22/94, seeking to present newly discovered evidence that another man, Vernon James, killed Baker. At an

evidentiary hearing held on May 23rd and 24th of 1996, Melendez called five witnesses, all of which testified as to James' involvement in the murder, yet the court found that the witness testimony fell short of the standard required to grant a retrial. The Trial Court denied the Motion on 07/17/96.

Melendez filed a 3.850 Motion Appeal with the Florida Supreme Court on 09/16/96, citing issues of newly discovered evidence, the State's failure to disclose exculpatory evidence regarding John Barrien's statements to police, and ineffective assistance of counsel. The FSC affirmed the denial of the 3.850 Motion on 06/11/98.

Melendez filed a 3.850 Motion with the Trial Court on 10/19/00, citing newly discovered evidence, the State's failure to disclose exculpatory evidence, and ineffective assistance of counsel. Melendez's newly discovered evidence consisted of the transcript of the taped interview of Vernon James by Melendez's original trial attorney, notes from State Attorney files relating to interviews that the State held with James, and new witnesses who claimed that James implicated himself in the Baker murder. The ineffective assistance of counsel claim focused on the defense counsel's failure to investigate an interview that James had given to John Barrien's trial counsel, implicating himself in the murder of Baker. On 12/06/01, the Trial Court granted the 3.850 Motion and ordered a retrial.

On 01/03/02, the State decided to drop the charges after one witness, John Barrien, recanted much of his testimony and another witness, David Falcon, had died in the late 1980's.

Law Enforcement/Prosecution Statements:

The following statement was taken from Hardy Pickard, Assistant State Attorney for the Tenth Judicial Circuit:

According to Mr. Pickard, Juan Melendez was released from death row due to the fact that "given the current state of the facts, the State did not believe that it could prove its case beyond a reasonable doubt." Further, Mr. Pickard stated that if the State went to trial against Melendez, he would be found not guilty.

Mr. Pickard noted that both the recanted testimony of Barrien and the death of Falcon, the only witnesses against Melendez, led to the decision of the State to not continue the prosecution against Melendez, thus leading to his release from death row.

Defense Statement:

The following statement was taken from Martin McClain, collateral defense counsel for Juan Melendez:

Mr. McClain noted two prominent problems that led to the release of Juan Melendez from death row: serious Brady violations coupled with ineffective assistance of counsel.

The Brady violations came from the State withholding evidence of another person's confession to the crime, and after indictment, taking sworn statements from both state and defense witnesses without the defense counsel being present and not disclosing this evidence to the defense. Mr. McClain noted that this practice was contrary to Florida case law, and he also expressed a concern that this practice of taking post-indictment statements was perhaps a systemic problem, indicating that the same state attorney had done this in the past, or that other state attorneys had also participated in this behavior.

McClain indicated that the ineffective assistance of counsel was an issue due to the failure of the original trial defense counsel to present the tape-recorded confession of Vernon James as evidence in the original trial. James confessed to a number of state agents, although the trial jury never heard any of the testimony.

Another issue in the Melendez case that Mr. McClain mentioned as problematic was the fact that the jury foreman lied during voir dire, hiding the fact that both he and his wife knew the victim of the crime. Also, Mr. McClain noted that in an interview with a local newspaper, the foreman admitted to convincing the last holdout to convict by using a picture of Melendez and saying that "someone with that haircut [afro] had to have committed the crime." What was most troublesome to McClain about the behavior of the jury foreman was that Florida Bar Rules prevent the defense counsel from interviewing jurors about improprieties that occurred during deliberations unless given court permission. The only way this information was exposed was through the admission of the jury foreman.

Current Status:

Melendez was released from Union Correctional Institution on 01/03/02.

Alternate Suspect:

Vernon James was murdered in 1986.

Report Date: 06/19/02 JFL
Updated: 08/14/02 JFL

PEEK, Anthony Ray (B/M)

DC# 850039

DOB: 03/18/58

Tenth Judicial Circuit, Polk County, Case # 78-445

Sentencing Judge: The Honorable Gordon MacCalla

Trial Attorney: Frederick R. Replogle, Assistant Public Defender

Attorney, Direct Appeal: Paul C. Helm, Assistant Public Defender

Retrial Attorney: Dale Jacobs, Assistant Public Defender

Attorney, Direct Appeal after Retrial: Edward S. Stafman, Private

Date of Offense: 05/22/77

Date of Sentence: 05/02/78

Date of Retrial: 10/24/84

Circumstances of the Offense:

On May 22, 1977, at 8:30 a.m., Erna L. Carlson's body was found in the bedroom of her Winter Haven, Florida, home. Ms. Carlson's robe and part of her bedspread had been tied around her neck. Her pajama bottoms contained blood and semen fluid stains. Inspection of the house revealed that the screens on two doors leading into the house had been cut. In the garage, remnants of a stocking were found that contained a strand of hair that is consistent with hair belonging to a black individual. The telephone wires outside of the house had been cut.

Ms. Carlson's car was found beside Lake Martha, which is approximately one mile from the victim's home. The driver's side door was locked, but the passenger side was open. The keys were found in the glove compartment, and fingerprints were found on the inside of the driver's side window.

Law enforcement had been informed that Anthony Peek had gone door to door in Ms. Carlson's neighborhood in attempts to find odd jobs. The police interviewed Peek a couple of days after the murder. At the time of the murder, Peek lived in a supervised halfway house. Peek told the officers that he had returned to the halfway house before 11:00 p.m. on the night of May 21, 1971. Peek voluntarily submitted his fingerprints and hair samples.

At the trial, experts testified that Ms. Carlson died of strangulation. She had two broken ribs and had been raped. The crime lab advocated that the hair samples provided by Peek were microscopically similar to the one found at the crime scene, although it was never stated that they were identical. The hair samples were lost following the testing. The blood and semen found in Ms. Carlson's pajama bottoms originated from an individual with Type O blood, which was consistent with Peek's blood type. The fingerprints found in Ms. Carlson's car matched Peek's fingerprints.

Peek's testimony at the trial was consistent with the statement that he had previously given to law enforcement officers, with the exception of the admission that he had been inside the victim's car. Prior to the trial Peek had stated that he had not been in the area where the car had been found on May 22, 1977. During the trial, Peek stated that he rode his bike to the lakeside park and noticed the car. He saw that the door was unlocked, so he searched the glove compartment. He then rode his bike back to the halfway house.

When the murder was committed, Peek was out on bond for a burglary and grand theft charge.

Trial Summary:

02/16/78 Defendant was indicted on the following charges:
Count I: First-Degree Murder
Count II: Sexual Battery
Count III: Grand Larceny

03/23/78 Motion for consolidation of Case# 78-445 and Case# 77-2567.

04/12/78 The Defendant was found guilty of all of the charges in the indictment in addition to a Burglary Charge from Case # 77-2567

04/13/78 A majority of the jury recommended a death sentence for Count I.

05/22/78 The defendant was sentenced as follows:
Count I: First-Degree Murder - death
Count II: Sexual Battery – life, run consecutive to the sentence in Count I
Count III: Grand Larceny – 5 years

Case #77-2567:
Count I: Burglary – 5 years

Retrial Information:

08/24/84 Defendant was found guilty of all of the charges in the indictment.

09/05/84 The jury recommended a sentence of death by a vote of nine to three.

10/24/84 The defendant was sentenced as follows:
Count I: First Degree Murder - death
Count II: Sexual Battery – 30 years, run consecutive to the sentence in Count I
Count III: Grand Larceny – 1 year, to run concurrent with Count I and Count II

Case #77-2567:
Count I: Burglary – 15 years, to run consecutive with the sentences in Case # 78-445

Second Retrial Information:

04/17/86 FSC remanded the case for a new trial
01/19/87 Defendant found not guilty on all counts.

Appeal Summary:

Florida State Supreme Court, Direct Appeal

FSC# 54226
395 So. 2d 492

05/30/78 Appeal filed
10/30/80 FSC affirmed the conviction and sentence.
01/27/81 Rehearing denied

United States Supreme Court, Petition for Writ of Certiorari

USSC# 806369
451 U.S. 964

03/19/81 Petition filed
04/27/81 Petition denied

State Circuit Court, 3.850 Motion

CC# 78-445

03/08/83 Motion filed
11/02/83 Motion granted

Florida State Supreme Court, Direct Appeal after Retrial

FSC# 66,204
488 So. 2d 52

11/29/84 Appeal filed
04/17/86 FSC remanded for a new trial.
06/04/86 Rehearing denied
07/03/86 Mandate issued

Case Information:

Peek filed a Direct Appeal with the Florida Supreme Court on 05/30/78. Peek raised three issues to contest his conviction. Two of the issues revolved around the hair samples and their subsequent misplacement; The Florida Supreme Court did not find an error. The issues challenging his sentence revolved around the aggravating and mitigating factors. The Court found that there were sufficient aggravating factors to justify the imposition of

the death penalty. The Florida Supreme Court affirmed the conviction and sentence of death on 10/30/80. The rehearing was denied on 01/27/81.

Peek filed a Petition for Writ of Certiorari with the United States Supreme Court on 03/19/81. The Petition was denied on 04/27/81.

Peek filed a 3.850 Motion in the Circuit Court on 03/08/83. After an evidentiary hearing, the trial judge found that false expert testimony pertaining to the hair samples inhibited Peek from a fair trial. The motion was granted, thereby vacating the judgment and sentence on 11/02/83. The State filed an appeal of the trial court's decision with the Florida Supreme Court and the appeal was dismissed on 03/22/84 with the stipulation that the State could retry Peek.

Peek was granted a new trial and found guilty of all counts on 08/24/84. The jury recommended the death penalty by a vote of nine to three on 09/05/84. Peek was sentenced to death on 10/24/84.

Peek filed a Direct Appeal with Florida Supreme Court on 11/29/84. In the previous retrial, the State offered the same evidence it had presented in the original trial, in addition to evidence displaying that Peek admitted to raping a young girl after the murder of Ms. Carlson. Peek's main claim in regard to the Direct Appeal was the admission of this other criminal offense denied his constitutional right for a fair trial. The Florida Supreme Court found that the collateral crime evidence was prejudicial, but stated that, minus this evidence, sufficient evidence still remained for the conviction. In addition to this ruling, the Florida Supreme Court discussed the disqualification of the trial judge who made racial comments during the interim between the guilt phase and the penalty phase of the trial. Peek's conviction and sentence was vacated, and the case was remanded for a new trial on 04/17/86. The rehearing was denied on 06/014/86.

Peek was retried in the Circuit Court and found not guilty of on all counts on 01/19/87.

Prosecution/Law Enforcement Statement:

Comment provided by Robert Nettleton, prosecuting attorney, on 04/30/02 via phone.

A witness gave erroneous statistics regarding the hair evidence, which was not material enough to warrant a reversal. There was enough additional circumstantial evidence without the hair evidence statistics to obtain a conviction. There was a severity and conclusiveness in the case, which both the jury and judge concurred with. The state proved the guilt, and the judge and jury agreed. In regard to the retrial, the passage of time, number of appeals, and loss of evidence contributed to the not guilty verdict. The not guilty verdict was due to missing evidence and not innocence. There was no reasonable doubt that Peek was guilty at the conclusion of the first trial.

Jerry Hill, the State Attorney for the Tenth Circuit, provided the following comment on 01/28/02:

Mr. Peek is also on the list, as are several others from other circuits who got new trials and then were acquitted. I fail to see the rationale for including these people. Juries found them guilty; they got new trials; and, juries found them not guilty. I spoke to Assistant State Attorney Hardy Pickard who prosecuted Mr. Peek. Hardy continues to believe he was guilty. That's why he tried him. The jury disagreed. It doesn't make him innocent.

Defense Statement:

Comment provided by Dale Gardner Jacobs on 04/10/02 via fax.

Defendant was tried three times after two successful appeals and was found not guilty on the third trial. Supreme Court case of *State of Florida vs. Anthony Ray Peek* is very interesting because of prejudicial racial remarks by the circuit court judge.

Current Status:

Peek is currently incarcerated in Florida Department of Corrections for the following offenses:

Offense Date	Offense	Sentence Date	County	Case No.	Prison Sentence
09/21/1976	BURGUNOCCSTRUC/CV OR ATT.	05/12/1978	POLK	7601842	5Y 0M 0D
09/22/1976	GRAND THEFT,\$300 LESS &20,000	05/12/1978	POLK	7601842	5Y 0M 0D
07/06/1977	SEX BAT/THREAT W/DEADLY WPN.	04/04/1978	POLK	7701658	SENTENCED TO LIFE
07/06/1977	BURGUNOCCSTRUC/CV OR ATT.	04/04/1978	POLK	7701658	15Y 0M 0D
07/06/1977	ROBBERY W/FIREARM OR D/WEAPON	04/04/1978	POLK	7701658	15Y 0M 0D

Report Date: 05/08/02 NMP
 Updated: 10/05/06 JFL

PITTS, Freddie L. (B/M)
DC# 009491
DOB: 03/09/41

LEE, Wilbert (B/M)
DC# 009492
DOB: 05/20/35

Original Trial Information:

Fourteenth Judicial Circuit, Gulf County, Case # 519, 520
Sentencing Judge: The Honorable W.L. Fitzpatrick
Trial Attorney: W. Fred Turner, Assistant Public Defender
Attorney, Direct Appeal: W. Fred Turner, Assistant Public Defender
Attorney, Collateral Appeals: Phillip A. Hubbart

Retrial Information:

Fourteenth Judicial Circuit, Jackson County, Case # 3-72-1, 3-72-2
Retrial, Sentencing Judge: The Honorable D.R. Smith
Retrial, Trial Attorneys: Irwin Block, private attorney, for Pitts
Phillip A. Hubbart, Assistant Public Defender, for Lee
Retrial, Collateral Attorneys: Phillip A. Hubbart, Irwin J. Block, Maurice Rosen,
Jack Greenberg, Michael Meltsner, James A. Nabrit, III

Date of Offense: 07/31/63
Date of Sentence: 08/28/63
Date of Retrial: 03/15/72

Circumstances of the Offense:

On August 1, 1963, at approximately 4:30 a.m., the Gulf County Sheriff's office received a report that the MoJo Service Station in Port St. Joe, Florida, was open and the money, the two attendants, Jesse Burkett and Grover Floyd, a paycheck cashed by Freddie L. Pitts, and a .38 caliber Smith and Wesson pistol were missing. The police found the soft drink machine open, but the money was not gone. The scene revealed no sign of struggle. Preliminary investigation revealed that the disappearance of the attendants occurred after one of the attendants received a telephone call at approximately 2:30 a.m. Two females who were on their way to go fishing found the bodies of the two attendants on 08/03/63 around 8:30 in the morning. The bodies were in the location where the murder took place.

Willie Mae Lee, Wilbert Lee, Freddie Lee Pitts, Wilbert Lee's wife, and Roland Lee Jones pulled up to the MoJo service station around midnight on July 31, 1963. Lee made a phone call and the remainder of the group had a dispute with the attendants because they refused to let the group use the restrooms. The six left the station and went back to Wilbert Lee's home and were joined by three soldiers and another woman for a few drinks. At approximately 2:00 a.m., after the group had consumed some beer and moonshine, Willie Mae Lee drove Freddie Lee Pitts in his car to get some vodka. Only

after getting into the car did Ms. Lee realize that Wilbert Lee was lying down in the back of the car. She protested, but Pitts drove to the MoJo service station.

The following sequence of events is a compilation of the confessions made by Lee and Pitts as well as the testimony of Ms. Willie Mae Lee.

Pitts and Lee robbed the gas station and abducted and killed the two attendants. Pitts and Lee had the .38-caliber Smith and Wesson revolver that had been taken from the service station on the first visit, which had been around midnight. The younger attendant had been struck in the head with the revolver and the older attendant was forced to tie the wounded man's hands behind his back. Pitts and Lee then robbed the station. They then put the two victims in the front seat of the car. One of the defendants drove while the other defendant sat in the back seat with the gun pointed at one of the victim's head. Ms. Lee was also in the back seat. They drove approximately 12 miles down White City Road to a secluded wooded spot. The defendant holding the pistol armed the other defendant with a car jack. The defendants forced the victims to climb through an iron gate and then marched them into the woods near a canal. Both of the victims were savagely attacked with the tire iron. The younger victim, who had his hands tied, begged for the release of the other victim because he was older and had a family. His pleas were denied, and he was shot and then his hands were untied. Ms. Lee testified that she heard two shots and then the two defendants returned to the car and drove away with Ms. Lee in the car.

According to Ms. Lee, she was very frightened and took no part in the crime. She also testified that the two defendants drove her home and told her that if she told anyone about the events that she would never see her daughter again.

The Sheriff's Department initially considered the disappearance of the two attendants to be due to them getting drunk and wandering off with the money. A polygraph officer arrived at Port St. Joe around noon on 08/02/63 to perform exploratory tests in a missing persons' case. Pitts and Lee, along with others who had been at the service station on the night of 07/31/63, were questioned. Because of factual differences in their statements, many of those who were questioned were advised of their rights and asked to take lie detector tests. Lee was tested first and the results indicated deception. Pitts was tested next. He stated that he and Lee did return to the service station, and they had robbed the attendants and then they had driven away leaving the attendants alive. This information was the first indication law enforcement had about the robbery. Lamberson Smith, one of the individuals who had been drinking with Pitts and Lee on the night in question, was tested next. He stated that Pitts, Lee, and Willie Mae Lee left Lee's house around 2:00 a.m. and returned approximately two to three hours later. His test reflected no deception. Pitts and Lee were detained while the other individuals were tested. They were transported to the Bay County Jail in Panama City because state officials had condemned the Gulf County Jail. They were admitted to the Bay County Jail at 10:30 p.m. Two women and one man entered written statements that it was Pitts, Smith, and Willie Mae Lee who left the home and Lee was in bed with his wife. Willie Mae Lee stated, when questioned and given a polygraph test, that she had been an unwilling witness to the crime and described the crime in full detail, but stated that the culprits had been Pitts and

Smith. Willie Mae Lee had been placed in a cell with Ella Mae Lee who, she claimed, had forced her to lie. Lee was released and allowed to go home with his wife at this time.

During the weekend, a minor male spoke with Bay County Deputy Kittrell and stated that he had slept in the bed with Lee's wife. Lee's wife, Ella Mae Lee, admitted during her test that her husband left the house with Pitts and Willie Mae Lee. This statement was contrary to Ella Mae's original story in which she had stated that her husband had been at home in bed with her.

On 08/05/63, Willie Mae Lee was given another polygraph test. At this time she changed her story concerning Smith being one of the assailants. Both Smith and Pitts were also tested again. Lee and his wife were rearrested on 08/06/63.

Circuit Court Judge Fitzpatrick appointed Attorney Gaskin to represent Pitts and Lee at the arraignment only, which was held before County Judge Husband. The arraignment occurred on 08/07/63 and the defendants pled not guilty. Gaskin testified that, at the time he represented the defendants, they did not appear to have been mistreated at all. County Judge Husband testified that he saw no evidence of mistreatment at the arraignment. Judge Fitzpatrick testified that he asked the defendants into his chamber and inquired as to their treatment and both Pitts and Lee stated that they had not been mistreated in any way. The judge went on to inquire as to whether the two had an attorney, which they did not. He asked them if they had a preference, which they did not. The judge appointed Fred Turner. After the arraignment, the officers brought Lee and Willie Mae Lee together. After speaking with Willie Mae, Lee orally confessed to the crime. Pitts was then united with the other two, and he then orally confessed as well. On 08/08/63 at 3:00 p.m., Pitts signed a written statement giving details of the crime, but stated that Lee and Willie Mae committed the crime, and he remained in the car. At 7:00 p.m. the same day, Willie Mae signed a full written statement and at 1:30 a.m. the next day Lee signed a written confession.

The night after being appointed, Turner visited the defendants in jail and informed them of the appointment. He asked if they had been mistreated in any way, and they had told him no. He returned to see the men the next day. He requested copies of the statements that Pitts and Lee had made to the police. He testified that the first statements made by the defendants stated that they had no knowledge of the crime. Turner recorded the sessions. Turner read Willie Mae's statement to them, and Pitts reacted by stating he would like to see her face-to-face. The deputy brought Ms. Lee into the room, as Ms. Lee had asked to remain in jail for protection. Pitts confronted Ms. Lee, but Ms. Lee reiterated her previous statement. Lee finally agreed that it was the truth, and told Pitts that they had better tell their lawyer the truth if they wanted his help. They discussed the fact that the gun had not been found, and Pitts told Turner that he had gone back to the base, had run out on the sand dunes and had thrown the gun as far as he could.

Turner attempted to get a plea to a lesser charge for his client, but was unable to do so. The judge promised Turner a mercy trial¹³ if the defendants pled guilty. He relayed this information to his clients, and they decided to plead guilty. Turner testified that he did not attempt to persuade his clients about how to plea. The previous indictments were quashed and new indictments were handed down by the Grand Jury.

Pitts, Smith and three other men who were at Lee's house on the night of 07/31/63 were in the army. Criminal Investigation Division (CID) officers were allowed to see Pitts in the jail on 08/08/63. Pitts told the officers that he had confessed because he had been beaten. CID officers testified that Pitts looked "very tired, like he was in pain." They said he complained that his jaw was swollen. He asked them to feel the bumps on his head and to see if they could tell what was wrong with his eyes, which were bloodshot. The CID officers did not report the alleged beatings to the jail officials at that time.

Individuals were questioned as to whether Pitts and/or Lee had made a request for a lawyer prior to one being appointed for them. Sheriff Daffin testified that the two had requested that he contact Timothy Youngblood, the head of the local NAACP, on their behalf. The sheriff stated that he contacted Youngblood, who stated that he was not a lawyer and that he had previously checked on the two defendants. Turner testified that he had seen both of the defendants in the dining area of the jail prior to his appointment. They also asked him to contact Youngblood, and Turner stated that he did.

Pitts and Lee were arraigned on 08/14/63. The defendants entered pleas of guilty before Judge Fitzpatrick. Judge Fitzpatrick again inquired as to whether the defendants had been mistreated and again they answered that they had not. They indicated to the judge that they were satisfied with their attorney's performance.

The mercy trial was held on 08/28/63. Attorney Marion Knight was present at the trial and asked the defendants why they were pleading guilty. Both of the defendants' responses indicated that they had not been beaten or coerced. They stated that they wanted the whole thing over. Knight then asked Turner why they had pled guilty and Turner responded that they had confessed to everyone who would listen. The defendants freely testified at the mercy trial. They stated nothing about being mistreated.

On 10/29/63, FBI agents interviewed both Pitts and Lee. It was at this time that they stated that they had been beaten and subsequently confessed. Then, and in ensuing statements, Pitts claimed that he had been taken for a ride after his first polygraph test, and it was during the ride that he was beaten. He stated that he was knocked unconscious on several occasions. Lee stated that he was beaten and that law enforcement officers threatened to shave his wife's head and execute her if he did not talk. New evidence was introduced in the Rule 1.850 Petition filed on 12/19/67. The petition alleged that Curtis Adams, Jr. (Boo) had committed the crime. Adams had basically grown up in Port St. Joe. He knew the owner of The Mo Jo Service Station and was also friends with the attendants. Adams was convicted of armed robbery in Panama City in

¹³ A procedure where the judge impaneled a jury of 12 men to render a verdict on whether or not mercy should be recommended resulting in the reduction of the sentence from life to death.

1956. He was paroled in 1962 and moved back to Port St. Joe. In early August of 1962, Adams and his girlfriend quit their jobs and moved to Broward County. Adams was in need of money and, on the night of August 16, 1963, he robbed a service station, took the attendant into the woods and killed him. The manner in which the crime was perpetrated was very similar to the method in which the Mo Jo killings were committed. Adams and his girlfriend returned to Port St. Joe approximately three or four months later to visit relatives. During this time, Adams made a trip to Fort Lauderdale where he robbed an Avon Package Store and one to Perry where he robbed a supermarket. In April 1964, he was arrested for robbing a finance company in Key West. Adams' mother was very sick at the time, and Adams feared that she would pass away before he could see her again; therefore, he requested permission to place a call to law enforcement officers in Gulf County. He told the officers of Gulf County that if they would allow him to return that he would give them information on the Mo Jo Service Station murders. The sheriff declined the offer. In 1966, Adams was interrogated and admitted to killing the two attendants at the Mo Jo Service Station.

Adams testified at the petition hearing. He stated that he did not commit the murders, but did admit that, sometime during the night of 07/30/63 or 08/01/63, he stopped at the Mo Jo Service Station. He went into the bathroom, and while there he heard someone inside the store yell, "Don't anybody move or I'll shoot." He stated that he looked out of the door and saw Pitts and another man taking the two attendants away. He stated that he confessed to the crime because 16 black men threatened him, hung him from the bars and beat him into doing so while he was incarcerated in the Broward County Jail. He also testified that he knew both Pitts and Lee from the streets and from being incarcerated with them, but stated that he had never talked to them. When asked if he had any concerns about being sent to the electric chair for something that he did not do, he responded, "I never worried about dying. Everybody's days are numbered, so it don't matter what you do or what; you're not going to prolong it or you're not going to rush it."

Adams' girlfriend, Mary Jean Adkins, was interviewed by law enforcement. She recounted events that Adams had related to her concerning the Mo Jo killings and that it had bothered him for a time. She changed her story when she was given a polygraph test and then reverted to the original story after the test.

All of the events that were related by Ms. Adkins and Adams paralleled the information Pitts and Lee provided at the mercy trial.

Additional Information:

Freddie L. Pitts had no prior record before the above incident.

Between 1953 and the above incident, Wilbert Lee had been arrested four times for Vagrancy, three times for gambling offenses, and five times for Malicious Mischief or Disorderly Conduct. He was also convicted of one DUI, three weapons offenses, one Burglary, and one Aggravated Assault.

Trial Summary:

08/16/63 The defendants were indicted with two counts of First-Degree Murder.
08/17/63 Defendants pled guilty
08/28/63 The mercy trial was held. A majority of a jury of 12 did not recommend mercy for each of the two counts against the two defendants. Both defendants were sentenced to death.

Retrial Summary:

09/15/71 The trial court dismissed the original 1963 Grand Jury indictments because they had been indicted by a Grand Jury from which members of the black race were systematically excluded.
10/20/71 A Grand Jury in Gulf County re-indicted the defendants on the original First-Degree Murder charges.
12/15/71 The trial court dismissed the above indictments on the grounds that the Grand Jury was illegally constituted based on the fact that one of the jurors had been previously convicted of a felony and had not had his civil rights restored. The venue was transferred to Jackson County, Florida.
01/04/72 The Jackson County Grand Jury indicted the defendants on the original First-Degree Murder charges.
03/15/72 The defendants were found guilty. A majority of the jury did not recommend mercy. Both defendants were sentenced to death.

Appeal Summary:**Florida State Supreme Court, Direct Appeal**

FSC# 32981 and 33022
166 So. 2d 131

10/03/63 Appeal filed
05/29/64 FSC affirmed the conviction and sentence.
07/02/64 Rehearing denied
07/02/64 Mandate issued

United States Supreme Court, Petition for Writ of Certiorari

USSC # 535
380 U.S. 917

03/01/65 Petition denied

Circuit Court, Rule 1.850 Petition

CC # 519 and 520

04/29/69 Motion denied

District Court of Appeal of Florida, First District, Appeal of 1.850 Denial

DCA # H-203 and H-204

188 So. 2d 872

12/09/65 Appeal filed
07/21/66 DCA affirmed the trial's court denial of the postconviction relief.
08/22/66 Rehearing denied
08/22/66 Mandate issued

United States Supreme Court, Petition for Writ of Certiorari

USSC # 996

386 U.S. 983

03/27/67 Petition denied

Circuit Court, Rule 1.850 Petition

CC # 519 and 520

05/13/69 Motion granted

District Court of Appeal of Florida, First District, Appeal of 1.850 Denial

DCA # L-462

06/02/69 Appeal filed
12/03/70 DCA reversed the trial court's order granting postconviction of relief

Florida Supreme Court, Petition for Writ of Certiorari

FSC # 40618

247 So. 2d 53

12/30/70 Petition filed
04/21/71 FSC reversed the DCA's order and remanded the case to DCA to remand
 to CC for retrial.
05/07/71 Mandate issued

District Court of Appeal of Florida, First District, Appeal of 1.850 Denial

DCA # L-462

249 So. 2d 47

04/21/71 On remand from the FSC

06/04/71 DCA issued a revised opinion remanding the case for retrial

District Court of Appeals, First District, Appeal of Judgment and Sentence

DCA # T-146, T-147

307 So. 2d 473

05/13/73 Appeal filed

02/03/75 DCA affirmed judgment and sentence.

Clemency:

09/11/75 Governor Askew and the cabinet, acting as the executive clemency board, granted the defendants a full pardon by a vote of four to three.

Case Information:

Pitts and Lee filed a Direct Appeal with the Florida Supreme Court on 10/03/63. Each filed separate appeals that were consolidated. One of the issues raised in the appeals was a challenge of the judge's actions in determining the defendants sentence, which combined the fact that the defendants pled guilty to an indictment that did not specify the degree of the offense with which they were charged and the fact that the judge utilized the unprecedented procedure of impaneling a jury of twelve to answer the question of whether mercy should be given. The Florida Supreme Court found that the method utilized by the judge did not constitute a reversible error and affirmed the sentence of death on 05/29/64. The rehearing was denied and the mandate was issued on 07/02/64.

Pitts and Lee then filed a Petition for Writ of Certiorari with the United States Supreme Court. The petition was denied on 03/01/65.

Pitts and Lee then filed a petition based on Rule 1.850 with the Circuit Court on the grounds that the composition of the grand and petit juries was unconstitutional. The petition was denied. Subsequently, Pitts and Lee filed an appeal of this denial in the District Court of Appeal of Florida, First District, on 12/09/65. The District Court of Appeals of Florida, First District, affirmed the circuit court's denial on 07/21/66. The rehearing was denied and the mandate was issued on 08/22/66. Pitts and Lee then filed a Petition for Writ of Certiorari with the United States Supreme Court, which was denied on 03/27/67.

Pitts and Lee filed another petition based on the 1.850 rule with the Circuit Court on 12/19/67. The petition was granted on 05/13/69 because the trial judge found for the petitioners on the issues of innocence and the State knowingly or negligently withheld

evidence favorable to the defendants. The judge found for the State on all of the other issues raised in the petition; specifically, that the confessions were not coerced but that the guilty pleas may have been. The State filed an appeal with the District Court of Appeal of Florida, First District, and the appellees filed a cross-appeal on 06/02/69. The District Court of Appeals found that the trial judge erred as a matter of law with respect to the burden of proof applicable in collateral proceeding, but stated that, if the conclusions made by the judge hold up when the correct measure of proof is utilized, and then his findings should be affirmed. The District Court of Appeal made the following rulings: (a) the trial court erred in finding that the guilty pleas reasonably may have been the result of fear, (b) the trial court was correct in finding that there was no evidence displaying incompetency of counsel, (c) The evidence supposedly withheld was immaterial because the defendants chose to plead guilty and went to trial only on the issue of punishment, and (d) that the trial court erred in finding for the appellees on the issue of innocence. The District Court of Appeal of Florida reinstated the original judgments of guilty and the original sentences of death on 12/03/70.

Pitts and Lee filed a Petition for Writ of Certiorari with the Florida Supreme Court on 12/30/70. The Florida Supreme Court vacated the District Court of Appeals opinion “without any determination on the questions of law” on 04/21/71. This decision was due to the fact that the Attorney General had filed a “motion in confession of error,” thereby requesting that the case be returned to the trial court for purposes of a new trial. The mandate was issued on 05/07/71. On 06/04/71, the District Court of Appeals published a revised opinion remanding the case to the trial court for a retrial. The District Court of Appeals, First District, issued a mandate on 06/04/71.

On 09/15/71, the trial court dismissed the original 1963 Grand Jury indictments because black individuals had been systematically excluded from the Grand Jury. On 10/20/71, a Grand Jury in Gulf County re-indicted Pitts and Lee with two counts of First-Degree Murder each. On 12/15/71, the trial court dismissed these indictments because the Grand Jury had been illegally constituted because one of the jurors had previously been convicted of a felony and had not yet had his civil rights restored. Due to all of the above activity, the venue for the case was changed to Jackson County, Florida. On 01/04/72, the Grand Jury of Jackson County indicted both defendants with two counts of First-Degree Murder. On 03/15/72, both defendants were found guilty. A majority of the jury did not recommend mercy, and the defendants were sentenced to death on the same day.

On 08/26/72, the Florida Supreme Court issued an opinion, *In re Bernard R. Baker*, which was based on the United States Supreme Court decision of *Furman v. Georgia*. This opinion voided the sentences of all of the persons who had been sentenced to death in the state of Florida, which included both Pitts and Lee. On the date of the Bernard opinion, both Pitts’ and Lee’s sentences of death were commuted to life sentences.

Pitts and Lee filed an appeal of judgment and sentence in the District Court of Appeals, First District, on 05/13/73. Some of the issues that were raised in the appeal were that the Grand Jury was unconstitutionally composed because black individuals were systematically excluded from the list from which it was drawn, the defendant’s right to a

fair trial was denied because of the media coverage of the case in Jackson County, Florida, for several years prior to the trial, and the trial judge's refusal to permit persons to testify about Adams' alleged confessions. The District Court of Appeal found no error in regard to the above-mentioned issues, in addition to the remaining issues. Pitts' and Lee's judgments and sentences were confirmed on 02/03/75.

On 09/11/75, Pitts and Lee were granted a full pardon citing substantial doubt about either man's guilt by the Clemency Board, which consisted of Governor Askew and the cabinet. On 05/01/98, House Bill Number 3035 was approved. This bill awarded Freddie Lee Pitts and Wilbert Lee \$500,00 each for compensation.

Prosecution/Law enforcement Statement:

Former Assistant Attorney General, Ray Marky, said that the summary of the Pitts and Lee case is quite good and added the following comments:

Deputy White testified at the 3.850 hearing held before Circuit Judge Holly that Pitts after confessing to the crime agreed to take him to the area where the bodies were left after being shot. They proceeded to the area where there were a bunch of fire roads out in the woods and Pitts kept driving them down the wrong paths. When they got fed up with the search and started heading back to the jail they passed a road and Pitts said that was the one but the deputy said they were not going to keep going down useless trails.

The next day a woman fishing in one of the canals called and said that there were some dead bodies near one of the canals where they were fishing. Wayne White said that when he went out the bodies were indeed down the road that Pitts last said was where they were. The significance of this testimony cannot be overstated because at the time no one could have known where the bodies were other than the perpetrators of the crime.

In the mid 80s a select committee of the House of Representatives conducted a full hearing into the Pitts and Lee case and Dexter Douglas represented the House in presenting witnesses who had testified at the trial held in Marianna, FL. After a lengthy hearing the Committee voted against granting Pitts and Lee any compensation for the alleged wrongful conviction.

It is my opinion after having participated in the case for almost 15 years that Pitts and Lee were not innocent; that the jury properly found them guilty of first degree murder based on the testimony of Willie Mae Lee, who testified at trial and at the

House hearing but who Askew didn't bother to talk with prior to concluding they were innocent; that the pardon was granted solely for political reasons

The Pitts and Lee case and the disposition of it was a perversion of justice.

Defense Statement:

None received.

Current Status:

According to NCIC reports, neither Pitts nor Lee have had any subsequent arrests.

Report Date: 04/02/02 NMP

RAMOS, Juan (H/M)

DC# 088561

DOB: 07/12/57

Eighteenth Judicial Circuit, Brevard County, Case # 82-1321

Sentencing Judge: The Honorable J. William Woodson

Trial Attorneys: Norman Wolfinger & Arthur Kutsche, Assistant Public Defenders

Direct Appeal Attorney: Michael S. Becker, Assistant Public Defender

Date of Offense: 04/23/82

Date of Sentence: 03/10/83

Circumstances of Offense:

Mary Sue Cobb was found dead in her bedroom at 1:30 p.m. on 04/23/82. She had multiple knife wounds and had a butcher knife protruding from her chest. Forensic evidence indicated that the victim had been strangled and sexually assaulted.

At the time of the murder, Juan Ramos was employed at a manufacturing firm near the victim's residence. Ramos stated that on the day of the murder, he arrived at work before 7:00 a.m., found out that he had been laid off, and returned to his apartment at 7:10 a.m. He testified that as he returned home from work, he noticed a black man walking in the street near the victim's home.

Ramos was interrogated for approximately seven hours in an interrogation room of the Cocoa Police Department. On the next day, the same room was used for two dog scent discrimination lineups, where the only people present were the police chief, a police detective, a sergeant from the sheriff's office, and the dog handler. The first lineup consisted of five blue shirts, four which belonged to the husband of the police chief's secretary and one which was worn by the victim when she was killed. The dog was given a cigarette pack that belonged to Ramos and was allowed to sniff each shirt in turn. The dog indicated that shirt #5, the one belonging to the victim, was the shirt in question. On a second pass, the dog again indicated that shirt #5 was the shirt in question. The second lineup consisted of five knives, three which belonged to a local diner, one which belonged to a police officer, and one that was imbedded in the victim's body. The dog again sniffed the cigarette pack, and selected knife #3, the knife found in the victim as the knife in question. On a second pass, the dog again indicated that knife #3 was the knife in question.

The only evidence linking Ramos to the murder was the knife found in the victim and the dog scent identification.

Trial Summary:

06/11/82 Indicted on one count of First-Degree Murder
01/25/83 Jury returned a guilty verdict on the sole count of the indictment
01/26/83 Jury recommended a life sentence
03/10/83 Judge overrode the jury recommendation and sentenced Ramos to death

Retrial Summary:

04/24/87 Acquitted at retrial

Appeal Summary:**Florida Supreme Court – Direct Appeal**

FSC# 63,444
496 So.2d 121

03/28/83 Appeal filed
08/28/86 FSC vacated conviction and sentence and remanded for retrial

Case Information:

Ramos filed a Direct Appeal with the Florida Supreme Court on 03/28/83. The FSC found that the dog scent lineup was not conducted in a fair manner, and that the reliability and accuracy of dog scent identification was questionable. On 08/28/86, the FSC vacated the conviction and sentence and remanded the case for retrial.

Law Enforcement/Prosecution Statements:

Christopher White, who represented the State at the original trial, had the following statement: “Just because someone is found not guilty does not mean that they are innocent. I can’t say that he was innocent.”

Defense Statements:

On 05/15/02, the following statement was taken from Norman Wolfinger, who represented Ramos at his original trial: “This was just a case that was botched by the police. The case was handled properly by the courts, but once the evidence against Ramos was suppressed, the case against him was over.”

Current Status:

Ramos was acquitted at his retrial.

There is no information available as to Ramos' criminal history subsequent to his acquittal.

Report Date:	05/08/02	JFL
Approved:	05/08/02	WS
Updated:	07/09/02	JFL

RICHARDSON, James Joseph (B/M)

DC # 021377

DOB: 12/26/35

Twelfth Judicial Circuit, DeSoto County, Case # 3302-D

Sentencing Judge: The Honorable John Justice

Attorneys, Criminal Trial: John Spencer Robinson, Esq. & Richard S. Whitson, Esq.

Attorney, Direct Appeal: John Spencer Robinson, Esq.

Date of Offense: 10/25/67

Date of Sentence: 05/31/68

Circumstances of Offense:

James Richardson was convicted and sentenced to death for the 10/25/67 poisoning of his stepdaughter Betty Jean Bryant.

Evidence presented at trial revealed that Betty Jean Bryant and her six siblings were poisoned with a large amount of parathion. On the day in question, the children had returned home from school in order to eat lunch. Their parents were miles away at work picking fruit. It was determined that parathion poison had been placed in every container that the children might have eaten lunch from. Upon returning to school after lunch, teachers reported that the children immediately began showing symptoms of distress and were taken to the hospital.

James Richardson and his wife, Annie Mae Richardson, were alerted to their children's conditions and taken to the hospital where they were receiving treatment. Upon learning that the children were dying as a result of something they ingested, Sheriff Frank Cline of the DeSoto Sheriff's Department rushed to the Richardson home for the purpose of identifying the consumed toxin. Sheriff Cline searched the home, with the permission of James Richardson, in the hope that identifying the poison may help doctors save the children's lives. Nothing was seized from the home at that time. Sheriff Cline then returned to the hospital to inform Richardson that he would like to search the refrigerator, which was locked. Richardson gave Sheriff Cline the keys to the refrigerator, which he kept around his neck, and "invited" him to make a thorough search of the house. At that time, there was never any suspicion that a crime had been committed or that Richardson was involved in any way. Upon returning to the Richardson home, Sheriff Cline located and removed the poisoned food and containers that the children ate from.

Sheriff Cline subsequently searched the Richardson home on several occasions with the voluntary consent of James Richardson. Richardson even helped once. Several articles were taken from the home to be analyzed by toxicology experts, but there was still no reason to suspect that the children had been purposefully poisoned. Upon learning that Richardson had acquired life insurance policies on each of his children the day before

their poisonings, a search warrant was secured for subsequent searches of the Richardson home.

James Richardson was eventually arrested and charged with the poisoning death of Betty Jean Bryant. At trial, the State presented the testimony of several jail inmates who claimed that Richardson admitted to killing his children. One inmate, Ernell Washington, testified at the preliminary hearing that he heard Richardson confess to poisoning his children to calm problems arising between his wife and her ex-husband. Ernell Washington was murdered prior to testifying at Richardson's trial. At that time, there was no official record of Washington's testimony from the preliminary hearing. As such, several persons, all of whom were present at the preliminary hearing, testified as to the statements made by Washington during that hearing.

There was strong suspicion that Betsy Reese, the Richardson's neighbor and occasional babysitter, was responsible for the poisoning deaths of the Richardson children. Evidence indicated that Betsy Reese prepared the lunch that resulted in the children's deaths, and she was the last person to come in contact with the children before the poison took hold. Betsy Reese, however, was never charged in the investigation of the poisoning deaths of the Richardson children.

James Richardson was convicted of First Degree Murder and sentenced to death.

Trial Summary:

12/05/67	The defendant was indicted on the following: Count I: First-Degree Murder
03/29/68	Motion for change of venue granted and trial moved to Lee County.
05/31/68	The defendant was found guilty of First-Degree Murder, as charged in the indictment.
05/31/68	A majority of the jury did not recommend mercy.
05/31/68	The defendant was sentenced as followed: Count I: First-Degree Murder – Death

Appeal Summary:

Florida Supreme Court, Direct Appeal

FSC # 38,003
247 So. 2d 296

09/17/68	Appeal filed.
04/21/71	FSC affirmed the conviction and sentence of death.

Florida Supreme Court, Petition for Writ of Error Coram Nobis

FSC # 73,435
546 So. 2d 1037

12/15/88 Petition filed.
06/26/89 FSC denied Richardson's petition with leave to file a Motion to Vacate
 Judgment and Sentence (3.850) in the State Circuit Court
09/08/89 Rehearing denied.

Case Information:

Richardson filed a Direct Appeal in the Florida Supreme Court on 09/17/68. In that appeal, he argued that the trial court erred in refusing to grant his motion to suppress evidence seized from his home. Richardson asserted that Sheriff Cline should have informed him of his constitutional rights prior to conducting a search of his home. The Florida Supreme Court responded, "The initial searches of the premises were made for the purpose of aiding doctors to save the children's lives and before the defendant became a suspect. Furthermore, the initial searches were made with the defendant's consent and subsequent searches with a search warrant." Richardson further contended that the trial court erred in allowing several persons testify as to their recollection of Ernell Washington's testimony at the preliminary hearing. In their opinion, the Florida Supreme Court cited the "former testimony" exception to the hearsay rule, which allows a third party to relay witness testimony given under oath in any proceeding where the defendant was represented by counsel and had the opportunity to confront the witness. The Florida Supreme Court also noted that Ernell Washington's testimony that Richardson confessed to killing his children was further supported by the testimony of several other inmates at the Arcadia jail. The Florida Supreme Court found no merit in Richardson's appeal, and as such, they affirmed the conviction and sentence of death on 04/21/71.

Richardson's death sentence was converted to life imprisonment without the possibility of parole for 25 years, as dictated by the United States Supreme Court's decision in *Furman v. Georgia* (408 U.S. 238, 92 S. Ct. 2726, 33L. Ed. 2d 346 (1972)).

Twenty years after his original conviction, Richardson filed a petition for Writ of Error Coram Nobis in the Florida Supreme Court. In that petition, Richardson alleged newly discovered evidence including perjury, evidence suppression and witness recantation. In response, the Florida Supreme Court noted that an appellant seeking a new trial would traditionally apply to the appellate court with leave to petition the trial court for a Writ of Error Coram Nobis. However, the establishment of Criminal Rule of Procedure 3.850 replaced the need to petition the appellate court for Writ of Error Coram Nobis, streamlining the process by allowing an appellant to file a 3.850 Motion directly in the State Circuit Court. As such, on 06/29/89 the Florida Supreme Court denied Richardson's Petition for Writ of Error Coram Nobis with leave to file a 3.850 Motion in the State Circuit Court.

While Richardson's Petition for Writ of Error Coram Nobis was pending in the Florida Supreme Court, Richardson filed a Motion to Vacate Judgment and Sentence (3.850) in the State Circuit Court. The Attorney General filed a motion requesting the Supreme Court to relinquish jurisdiction to the Twelfth Judicial Circuit. The Florida Supreme Court denied the motion, but instructed the State Circuit Court to hear the 3.850 Motion. On 05/02/89, Judge Clifton Kelly vacated Richardson's conviction and sentence of death and granted Richardson a new trial.

Law Enforcement/ Prosecution Statements:

Assistant State Attorney Don Horn issued the following statement regarding the disposition of the Richardson case:

My comments are numerous, but I will try to restrict them to three (3) issues:

- 1) Errors and Inappropriate Conduct by the State Attorney's Office;
- 2) Insufficient Investigation by the Sheriff's Office; and
- 3) Inexperience of the Defense Attorney

My six (6) month review of the case led me to the unenviable conclusion that a great travesty of justice occurred and the blame must primarily be laid at the feet of the State Attorney's Office and the Sheriff's Office which prosecuted and investigated this matter. I am listing the information here based on my recollection of the investigation we did with FDLE in 1989.

Errors and Inappropriate Conduct by the SAO

A. Richardson's trial attorney filed a motion with the trial court judge requesting copies of statements of the State's many witnesses. The Court granted the motion and ordered the State to turn over the information. The State never provided that information to Richardson's attorney, even though most of it constituted Brady material. The importance of this is underscored by your summary. Your summary refers to "several jail inmates who claimed that Richardson admitted to killing his children", and also specifically refers to Ernell Washington and his testimony. Many of these witnesses gave several statements. In addition to claiming that Richardson admitted the killing, each witness also claimed that Richardson felt he knew who poisoned his kids (the babysitter, Betsy Reese), and that Richardson gave a very detailed explanation of a motive for Reese to do so. As to Ernell Washington, in one portion of his transcribed statement, (if my recollection is correct) both of Richardson's alleged claims are on the same typed page. Contrary to the express order of the trial court judge, these statements were never provided to Richardson's attorney. Interestingly, the Florida Supreme Court, in

addressing the “former testimony” exception to the hearsay rule as it related to the third party witnesses who testified about their recollection of Ernell Washington’s testimony, specifically noted the Washington’s testimony (of Richardson’s admission) was further supported by the testimony of several other inmates. I cannot help but wonder whether the Florida Supreme Court would have reached a different conclusion had it 1) been informed of the existence and full contents of the other statements; 2) been fully aware that the State failed to turn over Brady material pursuant to a court order; and 3) been aware of the fact that the State Attorneys Office failed to even disclose to defense counsel the existence of testimony in the State’s file which tended to exonerate the defendant. Nevertheless, the State presented the testimony of the jailhouse informants knowing it had information in its files, which directly contradicted that evidence.

B. Although not required to prove “motive” at the trial, the State argued that Richardson poisoned his seven kids to get the insurance money from insurance policies he had acquired the night before their deaths. What is the problem with this argument? The State had in its files numerous statements of Gerald Purvis, the insurance agent, who repeatedly and consistently stated under oath that 1) Richardson did not acquire insurance that night; 2) Purvis told Richardson that the insurance would not be effective until the premiums were paid; 3) Richardson would not be able to pay him until he got paid (several days later); and 4) Richardson knew when Purvis left that night that the children were not insured. These statements were not provided to Richardson’s trial attorney, allowing the State to make an argument to the jury, which was directly contradicted by evidence in its files.

C. The State argued its theory of the case knowing that the physical evidence directly contradicted it. Everyone agrees that breakfast was prepared that morning for the children, that Richardson and his wife left to go to work before the children got up, that the children ate breakfast that morning and that the Richardsons did not return to the house until after they were summoned to the hospital from the field many miles away (they did not have their own transportation). The physical evidence revealed that parathion poisoning was located on the plates, which the kids used to eat breakfast and in the grits pot from which the breakfast was served. Yet, not one of the children got sick until after they ate lunch. Parathion poisoning was also discovered on plates, which the children used to eat lunch, and in the pots from which the lunch was served. Moreover, parathion poisoning was found in detergent and other items in and around the kitchen and in the locked refrigerator (there was testimony that indicated there was a second key to the refrigerator which was kept somewhere in the kitchen), which may have indicated a desire that everyone in the house would at some point ingest the poison. If the

children all ate breakfast and the poison was present when they ate, they would have gotten sick long before their noon lunchtime. They didn't. Mr. Treadwell was the Assistant State Attorney who prosecuted this case with Frank Schaub, the State Attorney. I took a sworn statement from Mr. Treadwell during the course of our investigation. When I questioned Mr. Treadwell on this issue, his response was "that has always bothered me". In other words, to him the physical evidence clearly demonstrated that in all probability, the poison was placed in all these locations after Richardson left the house, and there is no evidence (or assertion from the State) that Richardson returned to the house before the authorities contacted him. The State argued a theory that was directly contradicted by the evidence contained in its files and presented such a theory when one of the ASAs prosecuting the case had specific concerns about the inconsistency between the physical evidence and their theory of the case. Mr. Treadwell opined that someone may have assisted Richardson and therefore, Richardson would have been guilty as a principal. Of course no such argument was ever made, nor was there any evidence in the State's file supporting that argument or indicating that any investigation was ever pursued for such a theory.

Insufficient Investigation by the Sheriff's Office

A. Two of the most startling statements made to me during the course of my investigation were made by the Sheriff (Frank Cline, I believe) and referred to the investigation conducted by his office. The first statement referred to the fact that the Sheriff had no reason to suspect Betsy Reese as a suspect. This statement was made in spite of the fact that on the day in question:

1. Betsy Reese warmed the food and served lunch to all of the Richardson children;
2. Betsy Reese was the last person to come into contact with the children before they started exhibiting signs of having been poisoned;
3. Betsy Reese had access to the Richardson's residence because she was also serving as babysitter for the younger, non-school age children;
4. Betsy Reese had already been convicted and served time for murdering a former husband due to jealousy;
5. It was widely known (by the Sheriff's office and others) that Betsy Reese was suspected of killing a second husband (via poisoning);
6. Betsy Reese was upset with Mr. Richardson because Richardson's wife had a sister who visited them in Arcadia. When Richardson's sister-in-law left to return to Jacksonville, Florida, Betsy Reese's third husband accompanied them. That husband never returned to Arcadia;
7. After her husband failed to return, Betsy Reese became upset with Richardson and his wife and although she lived in the same structure,

shared a common porch and lived right next door, she stopped visiting the Richardsons;

8. Betsy Reese had just started visiting the Richardsons a few days before the deaths of the seven (7) children;

9. Richardson explained this theory in detail to the Sheriff and also to the jailhouse informants; and

10. The Sheriff conducted at least 3 searches of Richardson's residence, the areas around and under Richardson's residence and a shed a short distance away. Nevertheless, the morning after those searches Betsy Reese went directly to the shed with the "town drunk" and "found" the poison. The second remarkable statement from the Sheriff was, He didn't see anything unusual about this discovery by Betsy Reese.

B. Notwithstanding the above, and more importantly, while everyone was trying to find the source of the poisoning and all the searches were being conducted in , around, under and down the path from Richardson's residence, the only area that was not searched was Betsy Reese's residence. The Sheriff knew that some of the younger children had actually been in Reese's residence that day during the morning hours and before she fixed their lunch. The Sheriff had no explanation of why such a search was not conducted other than his assertion that she was not a suspect.

C. The Sheriff assisted in the taking of statements from Richardson and the jailhouse informants and knew of the Brady material contained in those statements. The Sheriff also assisted in the taking of statements from the insurance agent Gerald Purvis. Notwithstanding his full knowledge of those statements he testified contrary to this evidence that was also contained in the State Attorney's file. This false testimony was never brought to the attention of the trial court judge (by the State).

Inexperience of the Defense Attorney

One of the other things that I feel contributed to this travesty was the defense attorney's lack of experience in handling criminal cases of this magnitude and his failure to have previously handled a capital case. The playing field might have been leveled if the State Attorney had performed his duty and obligation as prosecutor. The State's failure to do so caused the trial to be nothing more than a farce, with the State presenting arguments, theories and testimony, which it knew was directly contradicted by evidence in its file and which was not known to the defense attorney or the Court. Had someone not broken into the office of the former Assistant State Attorney, stolen the files and forwarded them to the Governor's Office, Mr. Richardson might still be sitting in prison and the egregious nature of the State's (and Sheriff's) actions in this case might never have been uncovered. In my argument to Judge Clifton Kelly

at the hearing on the 3.850 motion, I informed the Court that contrary to the arguments and assertions by other attorneys who spoke during the hearing, my statements and assertion were going to be backed up by documents. Unfortunately, the evidence that led Judge Kelly to release Mr. Richardson at the conclusion of the hearing and the overwhelming majority of documents that supported our claim that Richardson had not gotten a fair trial were still in the State Attorney's file twenty-one years later.

Defense Statements:

Defense Attorney Mark Lane provided the following statement on the Richardson case:

I thank you for this opportunity to contribute to the historical record regarding the State of Florida v James Joseph Richardson.

First allow me to advise you regarding statements contained in the present account of the matter.

John Spencer Robinson is deceased.

Mr. Richardson is residing in Kansas and is gainfully employed. He has thus far battled against severe physical problems that were created or contributed to by his treatment by the State of Florida. During his years of residence and work in Kansas he has been a model citizen.

No one broke into the office of the former Assistant State Attorney, stole the files and forwarded them to the Governor's office. Mr. Horn's assertions are in error. Below, you will find an accurate account of those matters.

The refusal of Mr. Horn to acknowledge the central and crucial role of State Attorney Janet Reno, who was the only State Officer formally assigned to investigate the case and who was assisted by two subordinates, one of whom was Mr. Horn, raises questions. Indeed his refusal to even mention her name gives the impression that truth has surrendered to transitory politics. Mr. Horn states that he addressed the Court and takes credit for being the only attorney whose statements were supported by documents. In fact, the only attorney who spoke on behalf of the State of Florida, who did so at length and who presented the conclusion that the State had committed error was Janet Reno. Mr. Horn did make a few brief comments.

Similarly, the refusal of Mr. Horn to mention, with the exception of a passing reference, the name of the State Attorney Frank Schaub, who

shared with Sheriff Frank Cline, the responsibility for deliberately framing a man they both had reason to believe was innocent, causes concern to any person seeking to understand the record.

It is in this context of shifting blame and credit rather recklessly that one must examine Mr. Horn's assertion that the defense lawyer, Mr. Robinson, who served without fee, who did his best under the extreme circumstances that existed in Arcadia at that time, is also to blame for the travesty of justice. Indeed, State Attorney Reno, in her official report, revealed that she was considering action against Mr. Schaub but that likely it was time barred. The monumental and unforgivable violation of the rights of a resident of the State of Florida by its officers who were sworn to uphold the law cannot be fairly revised for reasons of political expediency.

After Mr. Richardson was convicted, sentenced to death and was confined to death row at the State Prison in Raiford, Florida, I met his attorney, John S. Robinson and subsequently visited Mr. Richardson in prison.

I began my own investigation that continued for more than one year. I interviewed all of the relevant witnesses who could be located including the woman who had poisoned the seven children, the witness who later located the poison in a shed, the insurance salesman, jurors who had served at the trial and others. I interviewed the Chief of Police of Arcadia, Richard Barnard, who from the outset believed that Mr. Richardson was innocent and believed that Sheriff Cline and Frank Schaub were engaged in serious misconduct. He was removed from the case.

Based upon my experience as a trial lawyer [at present I have been a trial lawyer for more than half a century] and the information I had secured from forensic experts regarding the relevant properties of the poison, I concluded that Mr. Richardson was innocent. I wrote a book, Arcadia, about the case, hoping that it might play some part in saving Mr. Richardson's life.

That book was read by a young woman who was then, ten years after the trial, employed by the Assistant State Attorney in Arcadia. She told her employer, Mr. Treadwell, that she had read the book. Mr. Treadwell, who had played a minor role as Mr. Schaub's assistant during the trial, then stated -- "We framed an innocent man. We almost killed an innocent man." Later the young woman repeated that confession to a friend of hers. He was outraged, asked her for the key to the office and then visited the office and took the file with him when he left. The file was maintained in his constructive possession for a decade.

Subsequently, my wife, Patricia and I organized an "End The Silence " meeting in an old school house, the building where the older Richardson

children had attended and died. Hundreds of people attended, none more important than the gentleman who had taken the file. In the presence of a Deputy Sheriff, Cline had since been defeated, he revealed the facts that resulted in his possession of the State Attorney's file. Soon the file was delivered to me.

The file was nothing less than the anatomy of a frame-up. Before the Sunshine Laws and the Freedom of Information Act as Amended, prosecutors and law enforcement officers thought nothing of having the proof of their misconduct set forth on the record, secure in their belief that no outside person would ever have access to it.

I took the file to the general counsel of the Governor of the State of Florida with a letter setting forth the relevant facts and demanding that a special prosecutor be appointed. I also contacted my two close friends, Dick Gregory and Steve Jaffe, and together we launched a media campaign. In a short time more than eleven thousand letters from all over the country reached the governor. Newsweek reported that the case began as a tragedy and ended as a travesty. Demands from all over the country with network television programs giving the name and address of the Florida Governor, front page headlines in newspapers throughout the state, all coordinated by Dick Gregory and Mr. Jaffe, resulted in many thousands of additional letters to the governor supporting our demand for the appointment of a special counsel.

The governor appointed Janet Reno as the special counsel with the authority to speak for the State of Florida. At a hearing in Florida I stated that the state had secured its conviction by suborning perjury, using perjured testimony and suppressing exculpatory evidence. The nation waited for Ms. Reno's response. The arguments were carried live via television across America. She said that Mr. Lane had made the most serious charges against a State that can be made. She added that unfortunately those charges were true. She confessed error on behalf of the State and joined in my request that the conviction be set aside.

After a long recess, somewhat inexplicable since both sides to the controversy were in agreement that the verdict should be reversed causing one wit to suggest that he had heard of a hung jury but not a hung judge, the judge set aside the conviction and James Richardson and I walked out of the Arcadia jail together.

To the scores of reporters, photographers and television cameras James spoke briefly. He said:

"To the people of Arcadia I thank you. You knew I was innocent and you

came together, black and white, all together, to free me. There are still problems here in Arcadia. Stay together. Help each other."

Current Status:

There was no available information regarding Richardson's arrest history subsequent to release.

Report Date:	04/30/02	ew
Approved:	05/03/02	ws
Updated:	06/04/02	ew

SCOTT, Bradley (W/M)

DC # 057405

DOB: 01/18/51

Twentieth Judicial Circuit, Charlotte County, Case # 86-195 CF A

Sentencing Judge: The Honorable William C. McIver

Attorneys, Criminal Trial: Leonard M. Johnson, Esq. & Mark Cooper – APD

Attorney, Direct Appeal: Dennis J. Rehak, Esq.

Date of Offense: 10/12/78

Date of Sentence: 02/08/88

Circumstances of Offense:

Bradley Scott was convicted and sentenced to death for the 10/12/78 murder of 12-year-old Linda Pikuritz.

On the afternoon of 10/12/78, Linda Pikuritz left her home in Charlotte County on her bicycle. Witnesses testified they saw her riding around the neighborhood and in the vicinity of the local “Lil’ General” convenience store. When Linda did not return home by 9:00 p.m. that evening, her sister, Deborah Bianchi, filed a missing persons report with the Charlotte County Sheriff’s Department. At 11:00 p.m., authorities received a report of a brush fire approximately three miles from the convenience store where Linda was last seen. The body of a young female was discovered at the scene of the blaze and, upon forensic examination, was determined to be that of Linda Pikuritz. An autopsy revealed that a flammable substance had been poured over Linda’s body and that she had been set afire while still alive. Smoke inhalation was the cause of death, and Linda was reportedly unconscious at the time of death. There was no evidence of sexual assault or any other injuries not consistent with the fire. Several of Linda’s personal items were found at the scene, including one tennis shoe, a pair of underpants, a package of bubble gum and a broken shell necklace. The day following her murder, Linda’s bicycle was found stashed in the brush just off the road from the “Lil’ General” convenience store.

The investigation into the murder of Linda Pikuritz quickly focused on Bradley Scott as the primary suspect; however, he was able to produce an alibi that included details of his whereabouts on the night of 10/12/78. Scott claimed that, on the evening in question, he and his girlfriend had gone to the Sarasota Mall and purchased a suede jacket from Foxmoor Casuals. Scott was, however, indicted for murder in 1986, seven years and seven months after the crime.

The State based its entire case against Scott on circumstantial evidence. Scott was reportedly seen talking to Linda from his car near the convenience store and again later in the parking lot of the convenience store. Their conversation appeared to be friendly and non-threatening. A classmate of Linda Pikuritz testified that she and Linda had met Scott at that convenience store many times prior to the murder. This classmate reported that Scott would occasionally buy the girls beer and smoke marijuana with them. Another

friend of Linda Pikuritz confirmed that the girls flirted with other older men who bought them beer. Another witness reportedly saw two people, who matched the descriptions of Linda and Scott, talking to one another close to the location where Linda's bicycle was found the day after her murder.

Additionally, Scott's employer and his employer's wife recalled statements that Scott made the day after Linda's murder. When telephoning about his paycheck, Scott reportedly asked his employer's wife if she had "heard about the little girl that had been murdered by [her] house." She asked Scott where he had gotten said information, and Scott replied that he had been stopped by a police roadblock the night before. At trial, it was revealed that Scott had actually had the aforementioned conversation with his employer's neighbor and that she had, in turn, relayed the information to Scott's employer's wife. There was additional controversy over whether Scott had driven his employer and a co-worker to the site where he claimed he was stopped by a police roadblock. The State provided evidence that there was no such roadblock at the location identified by Scott's employer, and that Scott had, in fact, lied about how he found out about the murder. Seven years after the murder, Scott's employer could not remember whether Scott had taken him to the site of the roadblock. Further examination of Scott's employer's testimony revealed several inconsistencies between what he said at trial and his earlier statements.

Regarding the physical evidence, the State presented hair samples that had been forcibly removed and a seashell, which were found in Scott's car approximately one year after Linda Pikuritz's murder. Investigators recovered Scott's car from a used car dealership, where it had been sitting for four months since Scott sold it to them. Investigators retrieved the aforementioned hair samples by vacuuming Scott's car; however, no hair samples had been taken from the victim for comparison. Five years after her murder, investigators were able to obtain two hair samples from a wool ski cap that belonged to Linda Pikuritz. At trial, one expert opined that the hairs obtained from Scott's car were indistinguishable from the hairs taken from the ski cap, matching in all characteristics to Linda Pikuritz's. Another expert countered that positive hair identification was impossible and that an ideal comparison amount was between 15 and 20 hairs, not the two hairs used in the instant case. A small seashell was also found in Scott's car. Linda Pikuritz was wearing a shell necklace on the night of her murder, which was found broken at the scene. The State sought to prove the shell from Scott's car was from Linda's broken necklace; however, Scott's mother testified that she had used Scott's car many times to transport shells and, on occasion, some of the shells spilled or toppled over onto the car's floor.

At the conclusion of the guilt phase of the trial, Scott moved for an acquittal based on the circumstantialities of the evidence, arguing that the State had not proven their case beyond a reasonable hypothesis of innocence. Scott was convicted of the First-Degree Murder of Linda Pikuritz and sentenced to death.

Prior Record:

Date	Location	Charge	Disposition
09/26/1968	Hillsborough County	I. Burglary	Dismissed
		II. Petit Larceny	
		III. Vehicle Theft	
04/11/1970	Hillsborough County	I. Possession of Stolen Property	Dismissed
04/14/1970	Vero Beach	I. Vehicle Theft	6 Months in Co. Jail
07/20/1971	Indian River	I. Probation Violation	Convicted
07/07/1975	Hillsborough County	I. Aggravated Assault	Disposition Unknown
		II. Aggravated Assault	
01/15/1976	Pasco County	I. Damage Property	Disposition Unknown
		II. Trespassing After Warning	
01/30/1976	Hillsborough County	I. Delivery of Barbiturates	18 Months
		II. Violation of Drug Abuse Law	
		III. Receiving Stolen Property	
12/22/1978	Desoto County	I. Aggravated Assault	1 Year
		II. Strong Arm Rape	
03/06/1982	Lake Worth	I. Petit Theft	6 Months Probation
03/16/1982	Palm Beach County	I. DUI	Dismissed
03/05/1983	Palm Beach County	I. DUI	Probation
01/16/1986	Lantana	I. Solicitation of Prostitution	Disposition Unknown

Trial Summary:

05/29/86 Defendant arrested.

06/09/86 Defendant indicted on the following:
Count I: First-Degree Murder

03/16/87 Motion for change of venue.

06/30/87 Motion for change of venue denied.

01/28/88 The defendant was found guilty of First-Degree Murder, as charged in the indictment.

01/29/88 Upon advisory sentencing, the jury, by an 8 to 4 majority, voted for the death penalty.

02/08/88 The defendant was sentenced as followed:
Count I: First-Degree Murder – Death

05/30/91 Upon Direct Appeal, the Florida Supreme Court reversed the conviction, vacated the death sentence, and remanded with instructions for the trial court to enter an order of acquittal on the grounds of a violation of due process.

Appellate Summary:

Florida Supreme Court, Direct Appeal

FSC # 72,091

581 So. 2d 887

03/14/88 Appeal filed.
05/30/91 FSC reversed the convictions and vacated the death sentence, with
instructions to the trial court to enter an order of acquittal.
07/26/91 Rehearing denied.

Case Information:

Scott filed a Direct Appeal in the Florida Supreme Court on 03/14/88. Scott raised seven issues on appeal; however, the Florida Supreme Court focused its discussion on the effects that the seven-year, seven-month indictment delay had on Scott's due process rights and the circumstantial evidence upon which Scott's conviction was based. *Rogers vs. State* (511 So. 2d 526 (Fla.1987)) dictated:

When a defendant asserts a due process violation based on pre-indictment delay, he bears the initial burden of showing actual prejudice If the defendant meets this initial burden, the court must then balance the demonstrable reasons for delay against the gravity of the particular prejudice on a case-by-case basis. The outcome turns on whether the delay violates the fundamental conception of justice, decency, and fair play embodied in the Bill of Rights and the Fourteenth Amendment.

In attempting to show the prejudice that the seven-year delay caused, Scott pointed out that the evidence that could have verified his alibi was lost or no longer available. Scott's argument focused on his claim that he and his girlfriend had gone to the Sarasota Mall and purchased a suede jacket from Foxmoor Casuals. Specifically, Scott claimed that the sales receipts from Foxmoor Casuals could have proven the purchase of the leather jacket and that the work schedule of Sambo's Restaurant could have proven that his girlfriend had the night off from work. By the time of the trial, all such records were lost or unavailable. Other investigative police reports concerning the alibi were also missing. The initial investigating officers did, however, testify that the alibi had checked out in 1978-79 and the State Attorney's Office refused to indict at that time because of the alibi.

Scott also claimed that he was denied the chance to present evidence that Phillip Drake, another police suspect and marijuana dealer to the victim, could have killed Linda Pikuritz. Two witnesses who could have placed Phillip Drake's car in close proximity to the murder scene died prior to Scott's indictment.

Scott also raised many questions regarding the reliability of the hair analysis. He pointed out that there was a five-year delay in obtaining a hair sample from the victim, and even when a hair sample became available, it was much less than the ideal sample amount.

In examining Scott's claims, the Florida Supreme Court opined:

...that the seven-year delay, seven month delay in the prosecution of this cause [violated] the due process clause of the fourteenth amendment and that the state [was not] able to show that the circumstantial evidence in this cause [was] not only consistent with the defendant guilt but also inconsistent with any reasonable hypothesis of innocence.

The Florida Supreme Court reversed Scott's convictions, vacated his death sentence and remanded with instructions to the trial court to enter an order of acquittal.

Law Enforcement/ Prosecution Statements:

Assistant State Attorney Dean Plattner of the 20th Circuit issued the following statement regarding the Scott case:

Mr. Scott was prosecuted because we felt that the evidence proved his guilt. Despite the very high burden involved in proving guilt beyond a reasonable doubt, a jury of 12 citizens believed we had met our burden and convicted him. The same jury recommended the death penalty. A trial judge heard the evidence and also felt it was legally sufficient to support the conviction, and the judge also accepted the jury recommendation and imposed the death penalty.

The Supreme Court reversed the conviction based on a legal issue (pre-indictment delay), and their view that the circumstantial evidence did not support the conviction (appeals courts do not usually re-weigh the evidence like this, as that's normally the province of the jury, but they did so in this case). The court obviously has the power and authority to make this ruling, but we respectfully disagree with the reasoning. No one else has been prosecuted for this murder, nor really any evidence developed pointing to anyone else. We still believe the correct person was prosecuted, but obviously accept and abide by the court's ruling.

Defense Statements:

None received.

Current Status:

According to NCIC, Bradley Scott has had no arrests subsequent to release.

Report Date: 03/07/02 ew
Approved: 03/13/02 ws
Updated: 05/29/02 ew

SMITH, Frank Lee, (B/M)

DC# 016296

DOB: 07/20/47

Seventeenth Judicial Circuit, Broward County, Case # 85-4654CF

Sentencing Judge: The Honorable Robert W. Tyson, Jr.

Trial Attorney: Andrew D. Washor, Special Public Defender

Attorney, Direct Appeal: Michael Gelety

Attorneys, Collateral Appeals: Thomas Dunn, Leslie Delk, Martin McClain, Brett Strand,
CCRC

Date of Offense: 04/14/85

Date of Sentence: 05/02/86

Circumstances of the Offense:

According to information located in the defendant's court file and pre-sentence investigation the circumstances of the offense were as follows:

On Sunday, April 14, 1985, at approximately 11:55, the Broward County Sheriff's Office responded to the victim's home in reference to a burglary with an assault. Upon arrival detectives discovered Shandra Whitehead, an eight-year-old black female, who had been beaten and strangled around the neck with her pajamas. The victim was transported to the hospital where it was discovered that she had been sexually assaulted, with evidence of both vaginal and anal penetration. The examination revealed numerous lacerations from a blunt instrument to the face, head and temples. The victim subsequently died nine days later on April 23, 1985, as a result of her injuries.

The victim's mother, Dorothy McGriff, stated that at the time of the offense, she had left her two children home alone while she worked the late shift, as a nurse. She had requested that her sister check in with the children periodically. When Ms. McGriff returned home that evening, at approximately 11:55 p.m., she observed a black male exiting her residence through a side window. Ms. McGriff stated that the suspect began to run when she shined her headlights on him and blew her horn. She then picked up a rake in an attempt to chase him off of her property. When she entered her residence, she discovered her son asleep in one room, and her daughter Shandra, nude from the waist down, unconscious and beaten. Ms. McGriff discovered that her television had been removed from its usual place and was sitting on her bed next to the open window. A bloody rock thought to be the weapon was discovered outside the bedroom window.

At the time of the initial report, Dorothy McGriff provided a description of the suspect. During a canvass of the area, investigators made contact with Ms. Chiquita Lowe and Mr. Gerald Davis, both of whom would later become witnesses for the prosecution. Ms. Lowe related that she had been in the area near the victim's home, when a black man approached her and attempted to solicit money. She related that the suspect was acting in a bizarre manner. Mr. Davis informed investigators that, prior to the approximate time of

the crime, he observed a black male in the area. He claimed the suspect approached him and made homosexual advances toward him. Mr. Davis also described the man's behavior as odd.

On April 18, 1985, Ms. Lowe called the Broward County Sheriff's office. She reported that she had just seen the subject in question outside of her home, attempting to sell a television set. Police responded to the area, where they observed a black male fitting the description with a large object concealed underneath his shirt. The suspect, Mr. Frank Lee Smith, was ordered to the ground at gunpoint and subsequently searched. Police discovered a knife, with a seven-inch blade, hidden under his clothing. The subject was placed under arrest for Carrying a Concealed Weapon.

At the time of the subject's arrest, he denied his involvement in the crime and provided investigators with an alibi for his location at the time of the offense. When law enforcement attempted to verify his statement, they questioned the relatives that Smith had provided as witnesses. Law enforcement officials claimed that his relatives' statements did not match Smith's. The detectives, in an attempt to solicit information from Smith, falsely told Smith that the victim's brother had witnessed the crime. The subject reportedly replied, "No way could that kid have seen me, it was too dark."

The witnesses, Ms. Chiquita Lowe and Mr. Gerald Davis, selected Smith's photo from a photographic lineup provided by investigators as the man they saw the night of the offense. On 4/19/85 based on the positive identification provided by the witnesses Frank Lee Smith was charged with Sexual Battery on a Minor, Criminal Attempted Murder, and Burglary with an Assault. When the victim died Smith was subsequently charged with First-Degree Murder.

Additional Information:

At the time of the defendant's arrest for the 1985 murder of Shandra Whitehead, Smith was on lifetime parole from a Life sentence for First-Degree Murder, Broward County Case # 89-Sauls. The defendant was paroled on 04/22/81.

Prior Incarceration History:

Juvenile Record:

On 09/30/60, at the age of 13, Smith was arrested for Manslaughter and turned over to the Juvenile Authorities. He was declared delinquent and committed to the State School for Boys. He was released in August, 1961.

Smith was arrested for numerous Breaking and Entering cases that occurred in Ft. Lauderdale, FL., between 09/19/63 and 11/20/63. Smith admitted to eleven burglary cases and the theft of numerous items. He was committed to the School for Boys, and while there obtained a poor disciplinary record, which included: fighting, a disrespectful attitude, unkempt room and using obscene language. He was released on 10/13/64.

Adult Record:

Offense Date	Offense	Sentence Date	County	Case No.	Prison Sentence
12/07/1965	1ST DG MUR/PREMED. OR ATT.	03/17/1966	BROWARD	0000000	SENTENCED TO LIFE
04/14/1985	1ST DG MUR/PREMED. OR ATT.	05/02/1986	BROWARD	8504654	DEATH SENTENCE
04/14/1985	SEX BAT BY ADULT/VCTM UNDER 12	05/02/1986	BROWARD	8504654	SENTENCED TO LIFE
04/14/1985	BURGLARY ASSAULT ANY PERSON	05/02/1986	BROWARD	8504654	SENTENCED TO LIFE

Trial Summary:

05/09/85 Defendant was indicted.
05/30/85 The Public Defender appointed to represent the defendant.
08/24/85 Court granted the Public Defender's Motion to Withdraw.
09/04/85 Court appointed Special Public Defender Andrew Washor.
09/11/85 The defendant entered a plea of "Not Guilty".
11/18/85 Motion for Change of Venue denied.
01/31/86 The defendant was found guilty by the trial jury of all counts as charged.
02/05/86 Upon Advisory Sentencing, the trial jury, by a majority vote of 12-0, recommended the death penalty.
05/02/86 The defendant was sentenced as follows:
Count I: First-Degree Murder- Death
Count II: Sexual Assault- Life, 25-year mandatory minimum.
Count III: Burglary with an Assault- Life, consecutive to Count II.

Appellate Summary:**Florida Supreme Court, Direct Appeal**

FSC# 68,834
515 So. 2d 182

05/23/86 Appeal filed.
10/22/87 FSC affirmed the convictions and sentences.
12/09/87 Motion for rehearing denied.
01/14/88 Mandate issued.

United States Supreme Court, Petition for Writ of Certiorari

USSC# 87-6368

485 U.S. 971

01/27/88 Petition filed
03/21/88 USSC denied petition

State Circuit Court, 3.850 Motion

Circuit Court # 85-4654

11/17/89 Motion filed.
12/13/89 Motion denied.

Florida Supreme Court, Petition for Writ of Habeas Corpus

FSC# 75,038

565 So. 2d 1293

11/17/89 Petition filed
02/15/90 FSC denied petition.
09/06/90 Rehearing denied.

Florida Supreme Court, Appeal of 3.850 Denial

FSC# 75,208

565 So. 2d. 1293

01/08/90 Appeal filed.
01/08/90 FSC granted a temporary Stay of Execution.
01/18/90 FSC granted a Stay of Execution.
02/15/90 FSC affirmed the Trial Court's summary denial of motion; however,
remanded the case to the Trial Court for an evidentiary hearing regarding a
claim of newly discovered evidence.
09/06/90 Motion for rehearing denied.

State Circuit Court, On remand from Florida Supreme Court

Circuit Court Case # 85-4654

03/07/91 Evidentiary hearing held.
06/07/91 Motion denied.

Florida Supreme Court, Appeal of 3.850 denial

FSC# 78,199

708 So. 2d 253

10/05/92 Appeal filed.
01/22/98 FSC reversed the 3.850 denial
05/08/98 Motion for rehearing denied.
05/08/98 Mandate issued

State Circuit Court, On Remand

Circuit Court Case # 85-4654

09/16/98 Evidentiary hearing begins.
02/24/99 Motion denied.

Warrants:

10/18/89 Death Warrant signed by Governor Bob Martinez
01/18/90 Florida Supreme Court granted a Stay of Execution.

Clemency:

09/14/88 Clemency Hearing held (denied).

Case History:

On Direct Appeal, Smith's attorney argued on one claim, that the Trial Court erred by not granting the Defense's request for an expert to analyze the semen and blood found at the crime scene. He was critical of the State's lack of physical evidence linking Smith to the crime scene. This issue was brought up in the appeal, although it was not the main area of focus, and a response to this claim was not mentioned in the Florida Supreme Court opinion. The claims on appeal were: (1) the argument that the State committed a discovery violation by submitting additional witnesses on the day of trial, (2) prosecutorial misconduct, in that a relative of Smith's, observed the prosecutor coaching a witness, (3) the claim that the Trial Court erred by allowing the testimony of a Court witness on the request of the State, who claimed that they could not vouch for his credibility, (4) the evidence is circumstantial and insufficient to convict, V: the Trial Court made a series of erroneous rulings that cumulatively denied Smith a fair trial, (5) the Trial Court erred in departing from sentencing guidelines for the offense of Burglary with an Assault, (6) the Trial Court erred in imposing the death penalty. After considering these claims, the Florida Supreme Court affirmed the convictions and sentences.

Smith's attorneys filed a Petition for Habeas Corpus in the Florida Supreme Court and a 3.850 Motion. The attorneys did argue in the 3.850 Motion, ineffective assistance of counsel, claiming that that trial counsel erred by not consulting with serology experts to establish evidence that would rule out Smith, and only moved for an expert chemist to

analyze the evidence post-trial. The Trial Court denied the motion and attorneys appealed this denial to the Florida Supreme Court. The Supreme Court acknowledged this claim but rejected it and others as procedurally barred, having already been raised on Direct Appeal. The Florida Supreme Court denied the Petition for Habeas Corpus; however, remanded the 3.850 denial to the Trial Court for an evidentiary hearing based on newly discovered evidence. Chiquita Lowe, a witness for the State, recanted the testimony she gave at trial, and in a sworn affidavit, admitted that she had identified the wrong man. Ms. Lowe claimed the State pressured her to identify the defendant, Frank Lee Smith, despite the fact she knew at trial that he was the wrong man. She claimed after the trial, she was shown a photograph of Eddie Lee Mosely and stated that he was the suspect that she observed the evening of the murder.

On remand the Trial Court held an evidentiary hearing, and denied relief.

The Trial Court's denial was appealed to the Florida Supreme Court. This appeal focused once again on the mistaken identity claim and emphasized Chiquita Lowe's recantation and subsequent identification of Eddie Lee Mosely. Smith's attorney's also claimed that there was ex-parte communication between the Trial Court Judge and the State during the handling of the 3.850 Motion. The lack of DNA testing was not argued in this motion. The Florida Supreme Court reversed the Trial Court's denial of the 3.850 Motion and remanded the case to the Trial Court based on improper ex-parte communication.

The Trial Court, on remand, scheduled an evidentiary hearing for 09/16/98. On 09/14/98 Smith's attorney filed a motion for DNA testing. This was the first formal motion requesting DNA testing to be filed during Smith's collateral appeals. This issue was argued at the evidentiary hearing. The State agreed to conducting a DNA test, however, requested that several conditions be met. The State argued that although DNA testing should be procedurally barred in this case, they would agree based on the following conditions: the results of the testing would be shared with all parties, testing would be conducted by FDLE, and that the Court would defer ruling on the motion until the results of the DNA tests were obtained.

Attorneys for Smith argued that the results of the test should be held confidential. The Trial Court denied this motion, and subsequently denied the 3.850 Motion on 02/24/99. This was the last appeal heard in Smith's case prior to his death on 01/30/00.

On 12/11/00, the FBI informed the State that the DNA samples on the vaginal swabs of the victim did not match Frank Lee Smith's. The State subsequently filed a Motion to Vacate and Set Aside Judgments and Sentences of Frank Lee Smith. The Trial Court on 12/22/00 granted the motion.

The evidence presented at trial was largely circumstantial, with no forensic evidence to definitively link Smith to the crime. The defendant had allegedly made a very incriminating statement to investigators, which was used at trial as a confessional statement. The eyewitnesses, at trial, identified Smith as the suspect they observed the evening in question. It appears that, with the defendant's reported statement and the

positive identification of Smith at trial, the jury did not believe that Smith was innocent, and made a unanimous decision regarding his guilt.

Prosecution/Law Enforcement Statements:

The FBI has recently determined, through an examination of case evidence utilizing DNA analysis, that the defendant, Frank Lee Smith, did not commit the offenses of conviction. Mr. Smith died of cancer, while incarcerated, on January 30, 2000. He maintained his innocence from the time of his arrest in 1985 until his death.

According to Parole and Probation Officer, Marc H. Johnson, who conducted the pre-sentence investigation, Smith stated “he was not in the area of the murder on 04/14/85, and, in fact, had never been in that area in his life”. He also stated that the police know who committed the crime, but arrested him because he had a prior record. He claimed that since he had been paroled from prison he had been trying to take steps in a positive direction, but claimed that someone is always “messing with me.”

Captain Richard Scheff of the Broward County Sheriff’s Office stated:

My opinion is irrelevant because I have a conflict of interest, and it is inappropriate for me to comment. In an abundance of caution I would defer to the opinion of others who do not have a conflict.

Carolyn V. McCann, Assistant State Attorney in Charge, 17th Judicial Circuit provided the following written statement:

Initially I would like to say that there is no doubt that the system failed Frank Lee Smith. Had DNA testing been in existence at the time of Shandra Whitehead’s murder, Mr. Smith would have been excluded as the perpetrator and he would not have been prosecuted for that 1985 crime. Unfortunately, Mr. Smith’s lawyers, for reasons unknown, did not ask for DNA testing until September of 1998.

Therefore, while it is indisputable that Mr. Smith was prosecuted and incarcerated for a crime he did not commit, we believe that the blame for this injustice can and must be shared by all persons who were involved in Mr. Smith’s case, as demonstrated by a factual history of this case which many have chosen to ignore.

To be specific, enclosed with this letter is a chronology, time line and record excerpts from the legal proceedings in Mr. Smith’s case. These are the same documents prepared for the Florida Senate’s Criminal Justice Committee when they investigated the circumstances of Mr. Smith’s conviction, incarceration, and death in prison. The record in Mr. Smith’s case is a matter based upon facts and is contained in these documents. I hope that you will take the considerable time to

peruse them yourself. These documents will tell you several things that others have not. First, as previously mentioned in this letter, lawyers for Smith did not ask for DNA testing until September 14, 1998, two days before the scheduled Evidentiary Hearing. It is well established that DNA evidence was recognized as admissible evidence as early as 1988 in the case of Andrews v. State, 533 So. 2d.841 (Fla. 5th DCA 1988). The Supreme Court of Florida addressed the admissibility of DNA evidence in the context of the timelines of requests for DNA testing in the case of Ziegler v. State, 654 So. 2d 1162 (Fla.1995). Thus, DNA testing was available in 1989 when Mr. Smith filed his first motion for post-conviction relief. Inexplicably, lawyers for Mr. Smith did not ask for DNA testing then or in 1990, 1991, 1992, 1993, 1994, 1995, 1996, or 1997. Instead, they waited until two days before a scheduled evidentiary hearing was to commence and filed for DNA testing on September 14th 1998. It is crucial to note that at no time prior to September 14, 1998, did defense attorneys ever ask for DNA testing in Mr. Smith's case. In fact, this was conceded by lawyers for Mr. Smith at the 1998 hearing on Mr. Smith's motion for post conviction relief. Any claims that original trial counsel Mr. Washor, pursued an independent chemist for blood group typing should not and cannot be equated with a request for DNA testing. Incidentally, the denial of Mr. Washor's Motion to Inspect and Test Evidence and for the Appointment of an Expert Chemist and costs for the purpose of same was appealed to the Florida Supreme Court and was summarily disposed of. See, Smith v. State, 515 So. 2d 182, 184 (Fla. 1987). The issue of group typing was raised by the defense in a motion to post-conviction relief and denied. It was also raised on appeal from that denial and rejected by the Florida. The fact that DNA had not been done or requested was never an argument, major or otherwise, raised by Mr. Smith's trial or post-conviction lawyers until DNA was requested on September 14, 1998. These facts clarify and correct what is currently in the case history, tab 18, page 7, with regard to the defense's total lack of request and lack of argument concerning DNA testing prior to September 14, 1998.

The second thing that the documents will tell you is that when the State asked for DNA testing at the 1998 hearing, the defense objected. Third, that the Judge who presided over the post- conviction hearing in 1998 told Mr. Smith's lawyers that they could pursue an appeal of his ruling denying DNA testing, but they did not. In fact, lawyers for Mr. Smith did not again bring up DNA testing to the State until December of 1999, one month before Frank Lee Smith's death.

Finally the State is compelled to point out that at Mr. Smith's trial; Attorney Andrew Washor argued that Eddie Lee Mosely, among others, could have been responsible for the crimes charged. Eddie Lee Mosely was not the focus of the defense but was one of several names suggested by Mr. Washor as being the perpetrator. The case history at page 8 paragraphs 4 and 5 is a totally inaccurate and misleading characterization of the argument presented by Mr. Washor. Should you wish to read the voluminous transcript of Mr. Smith's trial to verify my statements in this letter, please let me know as I will send them to you. I am confident that if you read them you will agree with my statements.

Lawrence Mirman, Attorney in Charge, Legal Affairs Division, 19th Judicial Circuit, conducted an investigation into the circumstances surrounding the Smith case¹⁴. Included in Mr. Mirman's report was his opinion of the most likely scenario of the crime:

Based upon my review of all the facts of this case, I believe that Chiquita Lowe was telling the truth in 1991 and 1998 when she stated that the man she saw on the street on the night of the murder was Eddie Lee Mosely, not Frank Lee Smith. I believe that after Eddie Lee Mosely approached Gerald Davis and Chiquita Lowe he then went into the McGriff home and raped and murdered Shandra Whitehead. In light of the DNA evidence, this conclusion is virtually inescapable. However, I also believe that after Mosely left the house, Dorothy McGriff saw Frank Lee Smith (the "figure at the window" in [Smith's] own words) attempting to steal a television set from the McGriff home. Smith's final words prior to sentencing are haunting in this regard. He stated, "The point must be established *whether this figure was actually the figure that raped and killed the victim.*"

... The McGriff home was described as a "target of opportunity" for burglars like Frank Lee Smith. Days after trying to steal a television, Smith was trying to sell a "hot" television. Smith told (Detective) Scheff the house was dark which is consistent with Smith's presence at the window. It stands to reason that if Scheff fabricated this admission, he would have fabricated a more incriminating statement. Smith denied being at the house to his lawyers because he was on parole for murder. He knew that if he admitted being at the window he would have been sent back to prison despite his innocence of the rape and murder. Mosely approached Davis, a.k.a. "Gigi," and asked him for sex. Part of Mosely's modus operandi was to approach persons (usually female prostitutes) and sexually proposition them. Dorothy McGriff remains adamant that Frank Lee Smith was the man she saw at her window. It is also important to note that, under this scenario, though Smith would be guilty of burglarizing the McGriff home, Shandra's death did not occur *as a consequence of* and while Smith was engaged in the commission of Smith's burglary. Consequently, he would not be criminally responsible for her death. There is no evidence that Mosely and Smith acted in concert.

Defense Statement:

Defense Attorney Andrew Washor was contacted for his comment on the case; however, no comment has been received to date; therefore, the following was obtained from court documents:

¹⁴ Pursuant to the request of Governor Bush (Executive order #01-24), the State Attorney's Office for the 19th Circuit conducted an investigation as to whether Detective Scheff committed perjury during the original trial by falsely implicating Frank Lee Smith.

During the trial, special counsel Andrew Washor, brought up the lack of physical evidence obtained at the crime scene and the failure of the evidence to definitively link Smith to the crime. DNA testing was a new scientific procedure at this time and was not readily available or readily used. At the time of sentencing, Mr. Washor filed a motion to Inspect and Test Evidence and for the Appointment of an Expert Chemist and Costs for the Purpose of Same. The motion claimed that the State's chemist, Howard Seiden, found intact spermatozoa in the vaginal smears taken from the victim. Mr. Seiden testified, in depositions and at trial that he could not pick up any blood group substance from the evidence, meaning that defendant Smith could neither be eliminated nor pinned down as the actual perpetrator. Mr. Washor requested that an independent chemist, with more sophisticated equipment than that of Mr. Seidel, be appointed to test the evidence in question. Judge Tyson denied this motion on 04/04/86.

Mr. Washor did bring up the lack of serological evidence; however it was not the main basis for Smith's defense. He focused his defense of Smith on the State's circumstantial evidence, improper police technique for soliciting suspect identification from witnesses, and the lack of credible eyewitness testimony.

There was no physical evidence to link Smith to the crime. The State was not able, at the time of trial, to provide evidence against Smith by providing any hair and fiber samples or fingerprints.

Mr. Washor focused on the mistaken identity of Smith. Mr. Washor claimed that the only real eyewitness to the crime was the mother of the victim, Dorothy McGriff. He claimed that, since Ms. McGriff did not get a good look at the suspect, and that she would have been in an agitated state at the time of the offense, she was not a credible witness. Mr. Washor later requested a mistrial after Ms. McGriff's testimony, because she became hysterical and unresponsive, which he felt prejudiced the jury.

Mr. Washor also argued that there was improper police handling of the other two witnesses for the State, Chiquita Lowe and Gerald Davis. Washor argued that Lowe and Davis had different police sketch artists, but later switched and then collaborated on their effort despite the fact they were not together at the time of identification. He also argued that the witnesses were given a photographic lineup up and not a physical lineup. Both witnesses claimed the suspect was over 6 ft. tall and weighed in the 190's. Frank Lee Smith was approximately 5'11" and less than 170 lbs.

Mr. Washor alleged throughout the trial that this was a case of mistaken identity. He named an alternative suspect, Eddie Lee Mosely, as the likely perpetrator. The police listed Mr. Mosely as a suspect during the investigation, and this information was provided to Mr. Washor by the State. He discovered that Mosely had been arrested for numerous sex offenses and murders in the neighborhood. Mr. Washor contended that the description of the suspect by Ms. Lowe and Mr. Davis actually better described Mosely than his client Smith.

Washor argued that the physical build, erratic behavior, the homosexual advances, the nature of the violent sexual assault, and the method of selling stolen merchandise out of a shopping cart could all be attributed to the known characteristics of Eddie Lee Mosely. Smith, although he had offenses of violence in his past, did not have any prior arrests related to sexual crimes. Mr. Washor claimed the witnesses were not offered the chance to view Mosely in the photo lineups.

Prior to sentencing Mr. Washor requested that a psychiatrist be appointed to evaluate Smith. He was determined competent and the Court proceeded with sentencing. Mr. Washor claimed that Smith was not competent and argued diminished capacity. Mr. Washor did not feel that Smith would have ever made the confessional statement to detectives claiming the victim's brother could not have seen him, because it was too dark. He claimed that Smith was not mentally competent and was often incomprehensible.

Alternate Prosecuted Suspect:

There has been DNA evidence linking the rape offense to Eddie Lee Mosely. Mosely has been determined mentally incompetent to proceed with other pending charges and has not been charged in this case.

Report Date: 01/18/01 WHS
Updated: 10/05/06 JFL

TIBBS, Delbert (B/M)

AKA: Delbert Johnson

DC # 046450

DOB: 06/19/39

Twentieth Judicial Circuit, Lee County, Case # 74-254 CF

Sentencing Judge: The Honorable Thomas W. Shands

Attorney, Criminal Trial: George W. Howard, Esq.

Attorney, Direct Appeal: George W. Howard, Esq.

Date of Offense: 02/03/74

Date of Sentence: 03/24/75

Circumstances of Offense:

Delbert Tibbs was convicted and sentenced to death for the 02/03/74 rape of Cynthia Nadeau and the murder of Terry Milroy.

At trial, Cynthia Nadeau recalled the following information concerning the alleged crime: On the evening of 02/03/74, Cynthia Nadeau and Terry Milroy were hitchhiking from St. Petersburg to Marathon, Florida. A man driving a green truck picked up the pair in Fort Myers. The truck reportedly had a rounded hood, black vinyl seats, no door handle, and an oil light that sporadically blinked on and off. The driver then pulled off road into a field and stopped the truck. The driver exited the truck and asked Milroy for some help. After a short time, Nadeau got out of the truck and saw the driver holding a gun on Milroy. The driver ordered Nadeau to undress and then he shot Milroy. The assailant walked over to the place where Milroy lay pleading for his life and shot him again. Nadeau was raped and then ordered to redress. The two got back into the truck and, upon reaching the highway, Nadeau was forced to get out and walk in front of the truck. At that point, Nadeau was able to run and successfully escape her captor.

Delbert Tibbs was convicted of the rape and murder based solely on the testimony of Cynthia Nadeau, which was never corroborated. At trial, Gibbs, a jail cellmate, testified that Delbert Tibbs confessed to the murder of Terry Milroy. Gibbs was given a polygraph test, which indicated that he was telling the truth. Subsequently, the Florida Supreme Court ruled that Gibbs' testimony was not credible. Tibbs was sentenced to life imprisonment for the rape of Cynthia Nadeau and to death for the murder of Terry Milroy.

Trial Summary:

- 03/27/74 Defendant indicted on the following:
Count I: Rape
Count II: First-Degree Murder
Count III: Felony Murder
- 12/14/74 The jury found the defendant guilty of Rape and First-Degree Murder, as charged in the indictment.
- 12/14/74 Upon advisory sentencing, the jury voted by majority for the death penalty.
- 03/24/75 The defendant was sentenced as followed:
Count I: Rape – Life Imprisonment
Count II: First-Degree Murder – Death
- 07/28/76 Upon Direct Appeal, the Florida Supreme Court reversed Tibbs' convictions, vacated his death sentence, and remanded for a retrial.
- 09/03/82 The State dropped the charges against Tibbs.

Appellate Summary:

Florida Supreme Court, Direct Appeal

FSC # 47,258
337 So. 2d 788

- 04/23/75 Appeal filed.
- 07/28/76 FSC reversed Tibbs' convictions, vacated his death sentence, and remanded for a retrial.
- 09/28/76 Rehearing denied.

Case Information:

Tibbs filed a Direct Appeal in the Florida Supreme Court on 04/23/75. Tibbs' main argument was that there was insufficient evidence to place him at the scene of the rape and the murder at the time that they occurred. Tibbs asserted that the uncorroborated testimony of Cynthia Nadeau was insufficient to establish his identity as the assailant beyond all reasonable doubt.

The Florida Supreme Court noted a Florida law, which dictates that no corroborative evidence is required in a rape case where the victim can testify directly to the crime and identify the perpetrator. The same law, however, requires extreme scrutiny of the victim's testimony if she is the only witness for the prosecution. As such, the Florida Supreme Court carefully examined the testimony of Cynthia Nadeau and found the following weaknesses in Tibbs' convictions. First, no other evidence, besides Nadeau's testimony, placed Tibbs anywhere near Fort Myers at the time of the crimes. In fact, there was evidence to the contrary. Tibbs presence had been established in Daytona Beach on February 2nd and 3rd. He was also known to have been in Leesburg on February 6th and in Ocala on February 7th. Second, the perpetrator's green truck was never found,

even with all the details Nadeau provided the police one hour after the attack. A car and helicopter search of the area never produced a match either. Third, Tibbs was never found with a gun or car keys in his possession, nor was a gun ever found. Fourth, police stopped Tibbs on three separate occasions based on Nadeau's description of the perpetrator. He cooperated with police all three times and there was never any evidence to cast doubt on his credibility. Fifth, since the crime happened at night and Nadeau had been smoking marijuana all day, her ability to accurately identify her attacker was seriously diminished.

Based on all the aforementioned information, the Florida Supreme Court opined, "Rather than risk the very real possibility that Tibbs had nothing to do with these crimes, we reverse his conviction and remand for a new trial." As such, Tibbs' convictions were reversed, his death sentence vacated, and his case remanded for retrial.

Facing retrial, Tibbs filed a motion to dismiss the indictment against him. The trial court granted the motion, concluding that to retry Tibbs would be in violation of the double jeopardy clause of the Fifth Amendment.

The State filed an appeal of the trial court's decision in the Court of Appeal of Florida, Second District. The high court agreed with the State that to retry Tibbs would not be double jeopardy, as the conviction reversal was based on the weight, not the insufficiency of the evidence against him. As such, they reversed the decision and remanded for retrial.

Tibbs then appealed the decision of the Court of Appeals to the Florida Supreme Court. He asked the court to rule that their previous reversal of his convictions was based on evidentiary insufficiency, not evidentiary weight. The Florida Supreme Court noted that Tibbs' convictions were based solely on the testimony of Cynthia Nadeau. If it were not for several infirmities, the testimony alone would have been sufficient for conviction. Since there was doubt about Nadeau's credibility, however, Tibbs' conviction was reversed and remanded for retrial.

Tibbs then filed a Petition for Writ of Certiorari in the United States Supreme Court, which was granted on 11/02/81. Tibbs argued that to retry him would, in fact, be a violation of double jeopardy. The United States Supreme Court noted that a reversal based on weight, rather than the sufficiency of the evidence would allow the state to initiate a new prosecution. On 06/07/82, The United States Supreme Court affirmed the decision of the Florida Court of Appeals, Second District.

On 09/03/82, the State dropped the charges against Tibbs.

Law Enforcement/ Prosecution Statements:

State Attorney Joseph Alessandro commented:

By the time of the retrial, witness/victim Cynthia Nadeau had progressed from a marijuana smoker to a crack user and I could not put her up on the stand, so I declined to prosecute. Tibbs, in my opinion, was never an innocent man wrongfully accused. He was a lucky human being. He was guilty, he was lucky and now he is free. His 1974 conviction was not a miscarriage of justice.

Assistant State Attorney Dean Plattner also stated:

I can definitely tell you that no one else was ever prosecuted for this crime. To the best of my knowledge, there was never any evidence which ever pointed to anyone else as a suspect. The eyewitness said it was Tibbs, but apparently became unavailable or incapable of giving testimony before a retrial could occur after the lengthy appeal process.

Raymond Marky of the Attorney General's Office commented:

Tibbs' alibi that he was in Daytona Beach continuously during the time the crime was committed was impeached by the receipt from a Salvation Army that Tibbs stayed in Orlando the night prior to the murder. The record also demonstrated that the victim's testimony was corroborated by an inmate who was in a cell with Tibbs who testified the latter confessed to him.

The Tibbs case had racial overtones to it. Several South Florida politicians had written letters to the Attorney General wanting us to confess error in the case because Tibbs was a prominent black minister from Chicago. It had generated complaints from Black organizations before that was standard operating procedure.

As an aside, I will never forget reading the record particularly the testimony of Nadeau's testimony which carried with it its own credibility. Defense counsel suggested that she was lying because her own boyfriend had raped her and she was just blaming Tibbs. She responded, "you have to be kidding, I've been raped so many times by men that I feel like a pin cushion. If this was only a rape case I wouldn't even be here -- but he murdered my boy friend." I called the prosecutor and asked if that testimony was as powerful as it sounded and he told me that all of the jurors looked at Tibbs and as far as he was concerned the case was over at that point.

The Tibbs case was the most outrageous example of judicial corruption I ever experienced in the 25 years that I spent in the Attorney General's Office as a criminal appellate attorney and I lost all respect for the judges who

participated in the majority opinion. I would love to know the behind the scenes story on this one but like Joe D'Alessandro Tibbs was not innocent of the rape and murder -- he was the unworthy recipient of intellectually dishonest judicial officers.

Defense Statements:

Defense Attorney George W. Howard is no longer a member of the Florida Bar and could not be reached for comment.

Current Status:

According to NCIC, Delbert Tibbs has had no arrests subsequent to release.

Report Date:	05/01/02	ew
Approved:	05/07/02	ws
Updated:	05/29/02	ew

Death Penalty Information Center

[DPIC home page](#)

Cases of Innocence 1973 - Present

1973

1. David Keaton Conviction: 1971 Charges Dismissed: 1973
On the basis of mistaken identification and coerced confessions, Keaton was sentenced to death for murdering an off duty deputy sheriff during a robbery. The State Supreme Court reversed the conviction and granted Keaton a new trial because of newly discovered evidence. Charges were dropped and he was released after the actual killer was identified and convicted. (*Keaton v. State*, 273 So.2d 385 (1973)).

Read "[The Stigma is Always There](#)" by Sydney Freedberg in *The St. Petersburg Times*

1975

2. Wilbert Lee Conviction: 1963 Pardoned: 1975
3. Freddie Pitts Conviction: 1963 Pardoned: 1975
Although no physical evidence linked them to the deaths of two white men, Lee and Pitts' guilty pleas, the testimony of an alleged eyewitness, and incompetent defense counsel led to their convictions. The men were sentenced to death but maintained their innocence. After their convictions, another man confessed to the crime, the eyewitness recanted her accusations, and the state Attorney General admitted that the state had unlawfully suppressed evidence. The men were granted a new trial (*Pitts v. State* 247 So.2d 53 (Fla. 1971)) but were again convicted and sentenced to death. They were released in 1975 when they received a full pardon from Governor Askew, who stated he was "sufficiently convinced that they were innocent." (*Florida Times-Union*, 4/23/98).

Read "[The Other 13 Survivors...](#)" by Sydney Freedberg in *The St. Petersburg Times*

1977

4. Delbert Tibbs Conviction: 1974 Charges Dismissed: 1977

Tibbs was sentenced to death for the rape of a sixteen-year-old white girl and the murder of her companion. Tibbs, a black theological student, was convicted by an all-white jury on the testimony of the female victim whose testimony was uncorroborated and inconsistent with her first description of her assailant. The conviction was overturned by the Florida Supreme Court because the verdict was not supported by the weight of the evidence, and the state decided not to retry the case. Tibbs' former prosecutor said that the original investigation had been tainted from the beginning and that if there was a retrial, he would appear as a witness for Tibbs. (*Tibbs v. State*, 337 So.2d 788 (Fla. 1976)).

Watch "[Barred From Life's](#)" interview with Delbert Tibbs

Read "[The Other 13 Survivors...](#)" by Sydney Freedberg in *The St. Petersburg Times*

1982

5. Anibal Jarramillo Conviction: 1981 Charges Dismissed: 1982

Jarramillo was sentenced to death for two counts of first degree murder, despite the jury's unanimous recommendation of life imprisonment. On appeal, his conviction was reversed when the Florida Supreme Court ruled the evidence used against him was not legally sufficient to support the conviction. (*Jarramillo v. State*, 417 So.2d 257 (Fla. 1982)). Evidence suggests that the murderer may have been the victims' roommate.

Read "[The Other 13 Survivors...](#)" by Sydney Freedberg in *The St. Petersburg Times*

1986

6. Anthony Brown Conviction: 1983 Acquitted: 1986

Brown was convicted of first degree murder and sentenced to death despite a jury recommendation of life imprisonment. At trial, the only evidence against Brown was a co-defendant who was sentenced to life for his part in the crime. At retrial, the co-defendant admitted that his testimony at the first trial had been perjured, and Brown was acquitted. (*Brown v. State*, 471 So.2d 6 (Fla. 1985)).

Read "[The Other 13 Survivors...](#)" by Sydney Freedberg in *The St. Petersburg Times*

1987

7. Joseph Green Brown

Conviction: 1974 Charges Dismissed: 1987

Charges were dropped after the 11th Circuit Court of Appeals ruled that the prosecution had knowingly allowed false testimony to be introduced at trial. Brown was convicted of first-degree murder and sentenced to death on the testimony of Ronald Floyd, a co-conspirator who claimed he heard Brown confess to the murder. Floyd later retracted and admitted his testimony was lie. Brown came within 13 hours of execution when a new trial was ordered. Brown was released a year later when the state decided not to retry the case. (Brown v. Wainwright, 785 F.2d 1457 (11th Cir. 1986); Los Angeles Times, 5/10/87; and Charlotte Observer, 3/8/87).

Read "[Yes, I'm Angry...](#)" by Sydney Freedberg in The St. Petersburg Times

Read "[Fourteen Years...](#)" by George Anderson in America Magazine

8. Anthony Ray Peek

Conviction: 1978 Acquitted: 1987

Peek was convicted of murder and sentenced to death, despite witnesses who supported his alibi. His conviction was overturned when expert testimony concerning hair identification evidence was shown to be false. He was acquitted at his third retrial. (Peek v. State, 488 So.2d 52 (Fla. 1986)).

Read "[The Other 13 Survivors...](#)" by Sydney Freedberg in The St. Petersburg Times

9. Juan Ramos

Conviction: 1983 Acquitted: 1987

Despite a jury recommendation of life in prison, Juan Ramos was sentenced to death for rape and murder. No physical evidence linked Ramos to the victim or the scene of the crime. The Florida Supreme Court granted Ramos a new trial because of the prosecution's improper use of evidence. At retrial, Ramos was acquitted. (Ramos v. State, 496 So.2d 121 (Fla. 1986) and St. Petersburg Times, 7/9/99)

Read "[Freed From Death Row](#)" by Sydney Freedberg in The St. Petersburg Times

1988

10. Willie Brown

Conviction: 1983 Charges Dismissed: 1988

11. Larry Troy

Conviction: 1983 Charges Dismissed: 1988

Brown and Troy were sentenced to death after being accused of fatally stabbing a fellow prisoner. The main witness against them was Frank Wise, whose original statements exonerated the men. Pending retrial, the charges against the men were dropped when Wise admitted that he had perjured himself. (Brown v. State, 515 So.2d 211 (Fla. 1987)).

Read "[The Other 13 Survivors...](#)" by Sydney Freedberg in The St. Petersburg Times

1989

12. Robert Cox

Conviction: 1988 Charges Dismissed: 1989

Cox was convicted and sentenced to death, despite evidence that Cox did not know the victim and no one testified that they had been seen together. In 1989, Cox was released by a unanimous decision of the Florida Supreme Court that the evidence was insufficient to support his conviction. (Cox v. State, 555 So.2d 352 (Fla. 1989)).

13. James Richardson

Conviction: 1968 Acquitted: 1989

Richardson was convicted and sentenced to death for the poisoning of one of his children. The prosecution argued that Richardson committed the crime to obtain insurance money, despite the fact that no such policy existed. The primary witnesses against Richardson were two jail-house snitches whom Richardson was said to have confessed to. Post-conviction investigation found that the neighbor who was caring for Richardson's children had a prior homicide conviction, and the defense provided affidavits from people to whom he had confessed. Richardson's conviction was overturned after further investigation by then-Dade County State Attorney General Janet Reno, which resulted in a new hearing. (Richardson v. State, 546 So.2d 1037 (1989)).

Read ["Life After Death Row"](#) by Sara Rimer in The New York Times Magazine

Read ["Life After Death Row"](#) by Sara Rimer in The New York Times Magazine
Watch an [interview with James Richardson](#)

Read ["The Other 13 Survivors..."](#) by Sydney Freedberg in The St. Petersburg Times

1991

14. Bradley P. Scott

Conviction: 1988 Acquitted: 1991

Scott was convicted of murder and sentenced to death. His arrest came ten years after the crime, when the evidence corroborating his alibi had been lost. Scott was convicted on the testimony of witnesses whose identifications had been plagued with inconsistencies. On appeal, he was released by the Florida Supreme Court, which found that the evidence used to convict Scott was not sufficient to support a finding of guilt. (Scott v. State, 581 So.2d 887 (Fla. 1991)).

Read Court TV's [Interview with Bradley Scott](#)

Read ["We Don't Look Back"](#) by Sydney Freedberg in The St. Petersburg Times

1994

15. Andrew Golden Conviction: 1991 Charges Dismissed: 1994
Andrew Golden spent 26 months on Florida's death row, convicted in 1991 for the murder of his wife in 1989. According to Golden, his wife, Ardelle, died after accidentally driving down an unmarked, unlit boat ramp into the water. Prosecutors argued that Golden, heavily in debt, had killed Ardelle to collect on the life insurance. Police investigators and the medical examiner testified at the trial that the evidence did not suggest foul play (Life Magazine, October 1994). Nonetheless, the jury opted for the prosecutor's version of the story and sentenced Golden to die in the electric chair.

Golden, a high school teacher in Florida before the death of his wife, had his conviction overturned by the Florida Supreme Court in 1993. The Court held that the state had failed to prove that the victim's death was anything but an accident. Golden was released into the waiting arms of his sons on January 6, 1994. (*Golden v. State*, 629 So.2d 109 (Fla. 1993)).

Read "[The Other 13 Survivors...](#)" by Sydney Freedberg in *The St. Petersburg Times*

1997

16. Robert Hayes Conviction: 1991 Acquitted: 1997
Hayes was convicted of the rape and murder of a co-worker based partly on faulty DNA evidence. The Florida Supreme Court threw out Hayes's conviction and the DNA evidence in 1995 (*Hayes v. Florida*, 660 So. 2d 257 (1995)). The victim had been found clutching hairs probably from her assailant. The hairs were from a white man, whereas Hayes is black. Hayes was acquitted at a retrial in July, 1997. (Ft. Lauderdale Sun Sentinel, 7/17/97).

Read "[The Other 13 Survivors...](#)" by Sydney Freedberg in *The St. Petersburg Times*

2000

17. Joseph Nahume Green Conviction: 1993 Charges Dismissed: 2000
Joseph Nahume Green was convicted of the 1992 killing of the society page editor of the weekly Bradford County Telegraph, Judith Miscally, and was subsequently sentenced to death. Prosecutors dismissed charges on March 16, 2000 of the murder. (St. Petersburg Times March 17, 2000).

Green, who has always maintained his innocence, was convicted largely upon the testimony of the state's only eyewitness, Lonnie Thompson. In appeals process, the Florida Supreme Court questioned Thompson's fitness in ordering a new trial Green, citing that Thompson's testimony was "often inconsistent and contradictory." (*Nahume Green v. Florida*, 688 So. 2d 301 (1996)). Considering the importance of Thompson's

testimony to the prosecution's case, the Florida Supreme Court overturned the conviction and ordered a new trial in Alachua County.

During the re-trial, Green's attorneys challenged Thompson's competency. The court found that Thompson was mildly retarded and had suffered head traumas that caused memory problems. Based on these facts, the trial judge found Thompson incompetent to testify, and the 1st District Court of Appeal affirmed the decision. This dismissal of testimony, coupled with the fact that the prosecution could not present any physical evidence linking Green to the crime, led Circuit Judge Robert P. Cates, who had originally sentenced Green to die, to dismiss all charges, saying that there was no evidence tying Green to the murder (St. Petersburg Times, November 28, 2001).

Read "[Ex-Death Row Inmate...](#)" by Sydney P. Freedberg in *The St. Petersburg Times*

18. Frank Lee Smith Conviction: 1985 Charges Dismissed: 2000
Frank Lee Smith, who had been convicted of a 1985 rape and murder of an 8-year-old girl, and who died of cancer in January 2000 while still on death row, was cleared of these charges by DNA testing, according to an aide to Florida Gov. Jeb Bush. After the trial, the chief eyewitness recanted her testimony. Nevertheless, Smith was scheduled for execution in 1990, but received a stay. Prosecutor Carolyn McCann was told by the FBI lab which conducted the DNA tests that: "He has been excluded. He didn't do it." Another man, who is currently in a psychiatric facility, is now the main suspect. (Washington Post, 12/15/00 (AP) and St. Petersburg Times (Florida) 12/15/00).

Read "[Requiem for Frank Lee Smith](#)" by Frontline

2001

19. Joaquin Martinez Conviction: 1997 Acquitted: 2001
Former death row inmate Joaquin Martinez was acquitted of all charges at his retrial for a 1995 murder in Florida. Martinez's earlier conviction was overturned by the Florida Supreme Court because of improper statements by a police detective at trial. (Martinez v. Florida, 761 So. 2d 1074 (2000)). The prosecution did not seek the death penalty in Martinez's second trial after key prosecution witnesses changed their stories and recanted their testimony. An audio tape of alleged incriminating statements by Martinez, which was used at the first trial, was ruled inadmissible at retrial because it was inaudible. The new jury, however, heard evidence that the transcript of the inaudible tape had been prepared by the victim's father, who was the manager of the sheriff's office evidence room at the time of the murder and who had offered a \$10,000 reward in the case. (The Tampa Bay Tribune, 6/7/01). Both the Pope and the King of Spain had tried to intervene on behalf of Martinez, who is a Spanish national. Spanish Prime Minister Jose Maria Aznar welcomed the verdict, saying: "I'm very happy that this Spaniard was declared not guilty. I've always been against the death penalty and I always will be." (Tampa Bay Tribune (AP) 6/6/01).

2002

20. Juan Roberto Melendez Conviction: 1984 Charges Dismissed: 2002
In 1984, a jury convicted Juan Melendez, then 33, of killing Delbart Baker and leaving him on the floor of his beauty school in Auburndale, FL. A convicted felon testified that Melendez admitted to the crime, and another witness with a grudge against Melendez put him at the scene. No physical evidence was found connecting Melendez, a migrant fruit picker with a 9th-grade education, to the crime. Nevertheless, a jury sentenced Melendez to die, and in 1986, the Florida Supreme Court upheld the conviction and death sentence. In a little noticed opinion, however, Justice Rosemary Barkett, the dissenting voice on the Florida Supreme Court raised doubts about the evidence, “there are cases [...] when a review of the evidence leaves one with the fear that an execution would perhaps be terminating the life of an innocent person” (St. Petersburg Times, January 4, 2002). Melendez lost another round of appeals in the mid 1990s.

Melendez spent nearly 18 years on Florida's death row before Linda McDermott, a young death penalty attorney with the Capital Collateral Regional Counsel, took an interest in his case. In December 2001, Florida Circuit Court Judge Barbara Fleischer overturned Melendez's capital murder conviction after determining that prosecutors in his original trial withheld critical evidence, thereby undermining confidence in the original verdict (St. Petersburg Times, January 4, 2002). The judge noted that no physical evidence linked Melendez to the crime. The state had used the testimony of two witnesses whose credibility was later challenged with new evidence. (Associated Press, 12/5/01) Following the reversal of the conviction, prosecutors announced the state's decision to abandon charges against Melendez (Associated Press, 1/3/02).

See "[Juan Melendez](#)" by Journey of Hope

2003

21. Rudolph Holton Conviction: 1987 Charges Dismissed: 2003
Florida death row inmate Rudolph Holton was released on January 24, 2003, after prosecutors dropped all charges against him. (Miami Herald, January 25, 2003). Holton's conviction for a 1986 rape and murder was overturned in 2001 when a Florida Circuit Court held that the state withheld exculpatory evidence from the defense that pointed to another perpetrator. The court also found that new DNA tests contradicted the trial testimony of a state's witness. At trial, a prosecution witness testified that hairs found in the victim's mouth linked Holton to the crime. However, recent DNA tests conclusively exclude Holton as the contributor of the hair, and found that the hairs most likely belonged to the victim. (Florida v. Holton, No. 86-08931 (Fla. Cir. Ct. Sept. 2001) (order granting, in part, motion to vacate judgment)). In December 2002, the Florida Supreme Court upheld the lower court's decision to reverse Holton's conviction and sentence. (Florida v. Holton, No. SC01-2671, 2002 Fla. LEXIS 2687 slip op. at 1 (Fla. December 18, 2002)). Prosecutors announced in January 2003 that the state was dropping all charges against Holton, who had spent 16 years on death row.

(Miami Herald, January 25, 2003)

Read "Part I: The Innocence Defense" by David Karp in *The St. Petersburg Times* (January 24, 2003)

Read "Part II: The Innocence Defense" by David Karp in *The St. Petersburg Times* (January 24, 2003)

Read "[Part I: The Innocence Defense](#)" by David Karp in *The St. Petersburg Times*

Read "[Part II: The Innocence Defense](#)" by David Karp in *The St. Petersburg Times*

2006

22. John Ballard Conviction: 2003 Acquitted: 2006

The Florida Supreme Court unanimously overturned the conviction of death row inmate John Robert Ballard and ordered his acquittal in the 1999 murders of two of his acquaintances. The Court concluded that the evidence against Ballard was so weak that the trial judge should have dismissed the case immediately. The primary evidence presented against Ballard was a hair and a fingerprint, both of which he could have left during his many visits to the victims' apartment. Bloody fingerprints and 100 other hair samples were found associated with the crime scene, none of them belonging to Ballard, who has always maintained his innocence. One of the victims was a known drug dealer.

The state Attorney General's office said that it would not seek a rehearing in the case. At Ballard's trial, only 9 of the 12 jurors recommended a death sentence. The judge decided to sentence Ballard to death, commenting: "You have not only forfeited your right to live among us, but under the laws of the state of Florida, you have forfeited your right to live at all." The Florida Supreme Court, in overturning this decision, held that the circumstantial evidence used in the case was insufficient to support an inference of guilt "to the exclusion of all other inferences." (*Ballard v Florida*, No. SC03-1012, February 23, 2006).

(Associated Press, Feb. 23, 2006; Miami Herald, Feb. 24, 2006; [Ballard v. Florida, No. SC03-1012](#), Feb. 23, 2006).

2009

23. Herman Lindsey Conviction: 2006 Acquitted: 2009

In a unanimous decision, the Supreme Court of Florida rendered a judgment of acquittal for Herman Lindsey who was convicted in 2006 of the murder of the clerk at the Big Dollar Pawn Shop, a murder that happened 12 years earlier. Since his conviction, Lindsey has been on Florida's death row.

The Court held that the evidence in the case was not sufficient to convict Lindsey. They noted that the case was based completely on circumstantial evidence and that a special standard of review applies. "[T]he State failed to produce any evidence in this case placing Lindsey at the scene of the crime at the time of the murder. . . . Indeed, we find that the evidence here is equally consistent with a reasonable hypothesis of innocence."

Lindsey v. State, No. SC 07-1167 (Fla. 2009). The Court also found that the trial court had erred in denying Lindsey's motion for a judgment of acquittal at the conclusion of the presentation of evidence.

Three of the justices concurred with the Court, but went further and stated that the State's line of questioning of the defendant during the penalty phase improperly exceeded the permitted scope of cross-examination. "The prosecution's comments were not only improper, but were also prejudicial and made with the apparent goal of inflaming the jury." These Justices found that the inflammatory statements made during cross-examination would have affected the jury's decision to impose the death penalty.

Ron Ishoy, a spokesman for the Broward County State Attorney's Office, said the prosecution will not appeal the unanimous decision.

(See P. McMahon, "Broward death row inmate ordered set free," Sun-Sentinel (FL), July 10, 2009; M. Caputo, "Florida Supreme Court frees Death Row Inmate in 1994 Broward murder," Miami Herald, July 8, 2009).

Available: <http://www.deathpenaltyinfo.org/cases-innocence-1973-present>

Criteria for inclusion on the list:

The definition of innocence that DPIC uses in placing defendants on the list is that they had been convicted and sentenced to death, and subsequently either a) their conviction was overturned and they were either acquitted at a re-trial or all charges were dropped; or b) they were given an absolute pardon by the governor based on new evidence of innocence.

This document was modified from its original format, with permission from DPIC, as to only include Florida cases.