

***Reasonable Doubts:***  
**Is the U.S. Executing  
Innocent People?**

October 26, 2000

A Preliminary Report  
of the

**GRASSROOTS INVESTIGATION PROJECT**



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# Table of Contents

I. Acknowledgements

II. Introduction

III. Methodology

IV. Findings

V. Conclusion

VI. Recommendations

VII. The Case Summaries

Alabama

- Brian K. Baldwin
- Cornelius Singleton
- Freddie Lee Wright

California

- Thomas M. Thompson

Florida

- James Adams
- Willie Jasper Darden, Jr.
- Jesse J. Tafero

Illinois

- Girvies Davis

Missouri

- Larry Griffin
- Roy Michael Roberts

Texas

- Odell Barnes, Jr.
- Robert Nelson Drew
- Gary Graham (aka Shaka Sankofa)
- Richard Wayne Jones
- Frank Basil McFarland

## Virginia

- Roger Keith Coleman

## VIII. Appendices – Case Charts

- Brian K. Baldwin
- Cornelius Singleton
- Freddie Lee Wright
- Thomas M. Thompson
- James Adams
- Willie Jasper Darden, Jr.
- Jesse J. Tafero
- Girvies Davis
- Larry Griffin
- Roy Michael Roberts
- Odell Barnes, Jr.
- Robert Nelson Drew
- Gary Graham (aka Shaka Sankofa)
- Richard Wayne Jones
- Frank Basil McFarland
- Roger Keith Coleman

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# Introduction

“I cannot support a system, which, in its administration, has proven to be so fraught with error and has come so close to the ultimate nightmare, the state’s taking of innocent life.”

– Governor George Ryan, on declaring a moratorium in Illinois<sup>1</sup>

The administration of the death penalty in the United States is plagued by injustice. The proof has become irrefutable. Individuals are being sentenced to death for crimes they did not commit. While some of these individuals are being exonerated and released, others are likely being executed.<sup>2</sup>

Mounting evidence of unfairness has become so compelling that some death penalty supporters, such as Illinois Governor George Ryan, can no longer ignore it. In January of this year, Governor Ryan announced a moratorium on executions in the state, just days after Illinois’ thirteenth death row inmate was exonerated.<sup>3</sup> In so doing, Illinois became the first U.S. jurisdiction to suspend executions while it examines the administration of the death penalty.

This report marks the first national effort to document and expose cases of people executed despite compelling evidence of their innocence since executions resumed in the U.S. in 1977. It is released in a climate that is increasingly hostile to efforts to re-open or investigate cases in which people have been executed for crimes they probably didn’t commit.<sup>4</sup>

The report highlights the cases of 16 individuals who were executed by the states of Alabama, California, Florida, Illinois, Missouri, Texas, and Virginia in the face of exculpatory evidence and evidence of rights violations. In all of these cases, the state and federal courts had every opportunity to interrupt the process and determine whether the original conviction was wrong, but they failed to do so. These cases are a part of an alarming trend in the administration of justice in the U.S. in which the

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<sup>1</sup> January 31, 2000 Press Release, Office of Governor George Ryan. (See [www.state.il.us/gov/press/00/Jan/](http://www.state.il.us/gov/press/00/Jan/))

<sup>2</sup> Once death row inmates have been killed, it becomes very difficult to absolutely prove their innocence. In these cases, the weight of the trial and appeals process has been stacked against them. New evidence has not been tested by a court of law. New witnesses have not had the opportunity to be examined and cross-examined.

<sup>3</sup> Since Illinois reinstated the death penalty in 1977, more people on death row have been exonerated than have been executed. Nationwide, nearly 90 death row prisoners have been proven innocent. For every seven people executed, one is set free because they were found innocent. (Death Penalty Information Center, [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org))

<sup>4</sup> The rape kit in the case of Joseph Odell – executed in 1997 for a brutal rape and murder – was destroyed by the state on March 30 of this year. The Catholic Diocese of Richmond and members of Odell’s family had sought DNA testing after the state had refused Odell’s request for the testing just prior to his execution. The state successfully blocked the test, convincing the state Supreme Court that it was not in the state’s interest to prove that an innocent man had been executed. Currently, *The Boston Globe* and Centurion Ministries are seeking DNA testing of vaginal swab samples taken from Wanda McCoy, whose rape and murder resulted in Roger Coleman’s execution in Virginia in 1992. Coleman’s case is profiled in this report. Again the state is opposing new tests, arguing the public does not have a “right to know” the truth. In a hopeful sign, *The Boston Globe*, *The Atlanta Constitution*, CBS, and the *Macon Telegraph* have won the first court order in the country for post-execution DNA testing in the Georgia case of Ellis Wayne Felker. (See “Two Seek Post-Trial DNA Tests,” April 24, 2000, A-1 and “State objects to more testing; DNA work sought on executed man,” October 7, 2000, both in *The Richmond Times Dispatch*.) Clearly, the battle to re-examine cases where potentially innocent defendants were executed is only just beginning.

courts overwhelmingly favor efficiency and rigid procedural rules over justice and constitutional protection. This trend has created a system of arbitrary justice and has left a trail of arbitrary executions in its wake.

## Methodology

This report is based on five months of research conducted by a network of activists and lawyers as part of the Grassroots Investigation Project. The Project is an ongoing effort to document and investigate cases where there is compelling evidence of innocence and due process violations. The researchers have employed a case study methodology, in which they have relied on individual cases to highlight widespread patterns and practices of the state that lead to the violation of rights and may lead to the execution of innocent people.

All 16 cases contained in this report were selected based on the compelling nature of the evidence of innocence. Additional criteria used to select cases included the exemplary nature of the cases; all of the cases demonstrate widespread and recurrent defects in the administration of the death penalty. Using criteria for review developed by the Center on Wrongful Convictions at Northwestern University School of Law, trial, appellate, and investigative documents were compiled and analyzed. This information, as well as information obtained through independent investigations in some cases, formed the basis of the case studies and the charts that were developed for each of the cases. (See appendix for charts on cases included in this report.)

This report represents only a small number of the actual cases in which people have been executed for crimes they probably did not commit. The project's research into such cases is ongoing.

## Findings

In each of the 16 cases profiled in this report, there exists compelling evidence that the defendant was convicted of the crime he did not, in fact, commit. Viewed collectively, these 16 cases highlight patterns and practices in the administration of justice at the state and federal levels that violate constitutionally and internationally protected rights. Abuses that led to rights violations included the following.

### **Defense attorneys routinely failed to provide their clients with competent legal counsel.**

In all 16 cases, the defendant was convicted and sentenced to death at a trial that did not conform to basic standards of fairness and due process. The lack of competent counsel undermined the right to a fair trial. There was compelling evidence that the defense attorneys failed to perform their duties to their clients with adequate competence. Defense attorneys, most of whom were appointed by the court, routinely failed to mount a defense, to investigate, to produce witnesses that could testify to the defendant's innocence or challenge the prosecution's evidence, to comply with court deadlines, to object to illegal or improper conduct, or to preserve evidence and issues for appellate review.

### **Prosecutors and police routinely engaged in misconduct during investigations and trials.**

In all of the cases, there was compelling evidence of official misconduct and abuse committed at the investigation and trial stage. Suppression of exculpatory evidence was common. Prosecutors frequently relied on a single eyewitness or on jailhouse informants – sources shown to be unreliable. In some cases, witnesses were intimidated or offered deals for testifying. Confessions were obtained through coercion, force, threats, and even torture and then used to convict defendants despite the illegal means utilized to obtain the confessions. Line-ups were prejudicial and leading in many cases. In at least one case, evidence was probably planted.

### **Racial bias fueled the actions of police, prosecutors, defense attorneys, and judges.**

People of color are disproportionately represented on U.S. death rows. Furthermore, the race of the victim is a principle determinant in sentencing offenders to death. The combination of an African American defendant and a white victim is most likely to result in a death sentence. In these 16 cases, only one of the crime victims was black and 16 were white. Nine of the executed men were African American.

In every case in which an African American was the defendant, racial discrimination was a determining factor in the conviction. In many cases, prosecutors excluded jurors based on race, a practice found to be an unconstitutional form of racial discrimination by the U.S. Supreme Court in 1986 (*Batson v. Kentucky*). In some cases, lawyers – both for the prosecution and defense – used racist language to inflame the jury. In at least one case, the judge and prosecutor were later found to have engaged in persistent racial discrimination.

### **State and federal appellate courts failed to intervene in cases with compelling evidence of innocence and evidence of rights violations.**

In all of the cases, the decision of the trial court was appealed based on due process violations and, in some cases, on compelling evidence of innocence. In most of the cases, evidence of innocence was never heard in any court because it surfaced only after the original trial. In most cases, appeals were repeatedly denied without re-hearing, irrespective of the evidence. This was largely a result of strict appellate review standards and inflexible time limits. These include restrictions on federal courts' ability to review convictions as mandated by the 1996 Anti-Terrorism and Effective Death Penalty Act and state time limits for the introduction of new evidence after sentencing.

The existence of innocence claims and the evidence to support these claims render the related allegations of unfairness and lack of due process particularly alarming. In all of the cases, both state and federal courts had every opportunity to remedy the rights violations but did not. Both state and federal courts failed to protect the rights enshrined not only in state constitutions and the Constitution of the United States, but also in international law. Courts overwhelmingly favored procedure over justice and efficiency over fairness. And, in so doing, state and federal governments sanctioned state killing of men who were probably innocent.

# Conclusion

The definitive nature of the death penalty requires the highest standards of due process and fairness. The findings of this report suggest that while such standards exist in law, they do not exist in practice. Death penalty states, through the police, the state prosecutors' offices, court-appointed defense attorneys, and the judicial system, routinely fail to exercise necessary diligence to ensure the protection of the rights of the accused. Federal courts, which have been limited by the Anti-Terrorism and Effective Death Penalty Act of 1996, fail to exercise the necessary oversight to provide remedies for rights violations in death penalty cases. As such, state governments, with the acquiescence of the federal government, are executing people under the guise of due process and fair trials, despite compelling evidence of innocence.

## Recommendations

There is an emerging national consensus that the administration of the death penalty in the U.S. is in dire need of reform. After many years of deep cuts to indigent defense funding and radical restrictions on prisoner appeals, the pendulum is beginning to swing in the other direction. Reforms are now being proposed at the state and national level. Measures like the Innocence Protection Act,<sup>5</sup> now pending before Congress, could lessen the risk of executing innocent people by increasing compensation, training, and oversight of defense counsel and by making DNA testing available to death row prisoners.

The proposed reforms, however, only address the first finding of this report. They do not address the reluctance of state and federal appellate courts to review and/or intervene when faced with cases with compelling evidence of innocence or rights violations. Furthermore, the proposed remedies do not address racial bias and prosecutorial misconduct.<sup>6</sup> Officially, neither the state nor federal governments acknowledge that innocent people are being executed. The necessary first step to meaningful reform is a time-out on executions that allows time, space, and resources for independent evaluations of the state and federal governments' administration of the death penalty.<sup>7</sup>

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<sup>5</sup> On February 11, 2000, Senator Patrick Leahy (D-VT) introduced the Innocence Protection Act in the Senate (S.R. 2073). Reps. Ray LaHood (R-IL) and William Delahunt (D-MA) introduced the same bill in the House (H.R. 4167). This legislation would allow prisoners on death row to request DNA testing on evidence from their case that is in the government's possession and provide mechanisms to guarantee defendants access to a professional and experienced lawyer. Laws allowing DNA testing have also been introduced in various states.

<sup>6</sup> A recent Columbia University study revealed that state and federal courts found grave constitutional error in two-thirds of the cases they reviewed between 1973-1995. Of these errors, 19% involved police or prosecutors suppressing exculpatory evidence and another 19% involved coerced confessions, use of jailhouse informants, exclusion of black jurors, and other official abuses of power. (See *A Broken System: Error Rates in Capital Cases, 1973-1995*, James Liebman, Columbia University School of Law, June 2000, available at [www.thejusticeproject.org](http://www.thejusticeproject.org))

<sup>7</sup> Currently, legislation is pending in Connecticut, Kentucky, Missouri, New Jersey, Ohio, and Pennsylvania that would impose moratoria while issues of fairness are studied: HB5051 in Connecticut, SB325 in Kentucky, SB838 in Missouri, A1853 in New Jersey, HB733 in Ohio, SB952 in Pennsylvania. Over the last two years, 14 states have considered bills that would impose a moratorium on executions while issues of fairness are studied.

Similar national legislation has been introduced in Congress that would temporarily halt state and federal executions and would commission a national inquiry. On April 24, 2000, Senators Russ Feingold (D-WI) and Carl Levin (D-MI) introduced into the Senate the National Death Penalty Moratorium Act of 2000 (S.R. 2463). It would impose a moratorium on state and federal executions and establish a National Commission on the Death Penalty to review current administration and make recommendations for ensuring it is imposed fairly and with due process. On February 11, 2000, Rep. Jesse

Based on the findings of this report, the Grassroots Investigation Project of Equal Justice, USA recommends the following in order to protect the rights of individuals and to ensure that innocent people are not executed:

- **State and federal governments should impose immediate moratoria on executions and should constitute independent bodies to study the administration of the death penalty.**
- **State and federal governments should investigate alleged cases in which people have been executed for crimes they did not commit.**
- **State and federal governments should consistently provide compensation to individuals, or the families of individuals, who have been wrongfully convicted or wrongfully executed.**

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Jackson Jr. introduced into the House the Accuracy in Judicial Administration Act of 2000 (H.R. 3623). This House bill would impose a seven-year moratorium on executions to allow death row prisoners time to explore potentially exculpatory evidence, including DNA.

# The Cases

## Brian K. Baldwin (Alabama)

### ALLEGATION

On June 18, 1999, the State of Alabama, with the acquiescence of the federal government, executed Brian K. Baldwin in the electric chair. The state and federal governments failed to ensure Baldwin's right to a fair and impartial trial, his right to be free from torture, and his right to be free from racial discrimination. State torture and an unfair, racially discriminatory trial resulted in his execution.

### CRIME

On March 14, 1977, 16-year-old Naomi Rolon was murdered. Prior to her murder, Rolon had picked up Brian Baldwin, age 18, and Edward Horsley, age 17, in North Carolina and proceeded to drive with them to Alabama. Baldwin and Horsley had recently escaped from a youth detention center. In Alabama, Baldwin stole a truck.<sup>1</sup> Horsley drove off with Rolon. Horsley later returned alone and on foot. Baldwin and Horsley were arrested, tried, and convicted for the murder of Naomi Rolon.

### SALIENT ISSUES

- After Baldwin had been arrested, his parents were not informed of his whereabouts until after he had been convicted of capital murder.<sup>2</sup>
- Police repeatedly beat and intimidated Baldwin until he signed a confession.<sup>3</sup>
- Baldwin's confession failed to name the correct weapon and failed to provide an accurate description of the murder.<sup>4</sup> The confession was later altered to fit the facts, as revealed by Baldwin's co-defendant.<sup>5</sup>
- Baldwin's trial lasted a total of one and one-half days, including jury selection, jury deliberation, and sentencing.<sup>6</sup>
- Baldwin's trial attorney failed to undertake an independent pre-trial investigation, to prepare his client to testify, to call any defense witnesses, to introduce exculpatory forensic evidence, or to object to the improper actions of the prosecution.<sup>7</sup>
- Forensic evidence suggested Baldwin's innocence, but was not introduced at trial.<sup>8</sup>
- Brian Baldwin was in the courtroom in handcuffs throughout jury selection<sup>9</sup>

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<sup>1</sup> Affidavit, Travis Durant (owner of stolen truck)

<sup>2</sup> Affidavit, James Baldwin (father of Brian Baldwin)

<sup>3</sup> Affidavit, Deputy Nathaniel Manzies, Wilcox Co., AL; affidavits of Raymond Portis, Harris Mason, and H.B. Williams re: Charles Peoples

<sup>4</sup> Clemency Petition, p. 9, 10

<sup>5</sup> Id. p. 10, 11

<sup>6</sup> Clemency Petition, p. 16

<sup>7</sup> Id. p. 16

<sup>8</sup> State of Alabama Dept. of Toxicology Report, p. 3 #11; p. 4, Baldwin's clothing

<sup>9</sup> Affidavits of Geneva Andrews, Elizabeth Richardson, Willie Lambert re: handcuffs in courtroom

- Throughout the trial, the prosecutor repeatedly suggested that Baldwin had committed sexual assault, although Baldwin was never charged with sexual assault.<sup>10</sup>
- After the trial, the state withheld a complete record of Baldwin’s trial from the defense and claimed to have lost key evidence, thereby hindering his appeal.<sup>11</sup>
- Eleven years before his own execution, Baldwin’s co-defendant confessed to the crime and exonerated Baldwin.<sup>12</sup>
- African-Americans were intentionally excluded from the jury, in a county where 46% of the residents were African-American.<sup>13</sup> An all-white jury convicted Baldwin.
- An Alabama court later found that the prosecutor and judge in Baldwin’s trial and appeal had, over a period of time and including the period of Baldwin’s trial, practiced “deliberate racial discrimination.”<sup>14</sup>

## TRIAL

Brian Baldwin was convicted by an all-white jury of Naomi Rolon’s murder in a trial that lasted for only one and one-half days. The prosecution successfully excluded all African-American persons from the jury and Baldwin’s court-appointed attorney did not object. Intentional exclusion of jurors solely on the basis of race has since been found to be unconstitutional (*Batson v. Kentucky*, 1986). Baldwin’s conviction was based largely on his confession, a confession that had been obtained under torture.

Baldwin was both beaten and cattle-prodded to obtain information about the whereabouts of Naomi Rolon. When Rolon’s body was found, Baldwin was beaten and prodded again until he signed a confession that named the wrong weapon and the wrong method used to kill Naomi Rolon. In a separate confession, Horsley claimed Baldwin was the murderer, but supplied accurate information about the murder weapon and the attack. The information was added to Baldwin’s confession after the fact, as was the signature of a deputy who claimed to have witnessed Baldwin’s waiver of rights, but who was not present.<sup>15</sup>

Forensic evidence discovered shortly before Baldwin’s execution showed that the deadly blows were the work of a left-handed assailant. Horsley, not Baldwin, was left-handed.<sup>16</sup> Also, Horsley’s clothes and shoes were stained with blood, but Baldwin’s clothing tested negative.<sup>17</sup> Years after Baldwin had been convicted and sentenced to death, Baldwin’s co-defendant, Edward Horsley, confessed in a letter that he, alone, was responsible for the murder of Naomi Rolon and that Baldwin knew nothing about the killing until Rolon’s body was discovered by police.<sup>18</sup>

Baldwin’s lawyer failed to provide competent counsel. According to Baldwin, his lawyer met with him for a total of 20 minutes, before the trial. Baldwin’s lawyer did no investigation of the case and presented no witnesses except Baldwin, whom he did not prepare for testifying. Baldwin’s attorney also failed to present the forensic evidence and did not object when the prosecution suggested that a

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<sup>10</sup> Clemency Petition, #4, p. 16

<sup>11</sup> Petition for *Writ of Certiorari*, #4, #5, #6 p. vi-viii

<sup>12</sup> Clemency Petition, p. 4, 5

<sup>13</sup> Petition for *Writ of Certiorari*, p. iv-v, #2, #3

<sup>14</sup> Clemency Petition, p. 17, Petition for *Writ of Certiorari*, p. ix #7

<sup>15</sup> Clemency Petition, p. 7, 8

<sup>16</sup> Affidavit, Dr. Burton, forensics

<sup>17</sup> Clemency Petition, p. 11, 112

<sup>18</sup> *Id.* p. 4, 5

sexual assault might have taken place, even though Baldwin had never been charged with sexual assault. Baldwin was found guilty of murder and sentenced to die.

## APPEALS

The initial appeal, claiming Baldwin's trial was marred by improper procedure and racism, was assigned to the original trial judge in the case. He denied the appeal and upheld his earlier decision. The Alabama Court of Criminal Appeals accepted his ruling in its entirety and denied Baldwin relief.<sup>19</sup> This action was later denounced in a brief signed by 33 prosecutors and judges across the country, including six justices of state supreme courts.<sup>20</sup> Despite the discovery of the suppressed trial record and irrespective of alleged violations of Baldwin's constitutional rights, the U.S. Court of Appeals for the Eleventh Circuit and the U.S. Supreme Court both denied relief.<sup>21</sup>

During the appeals process, complete transcripts of Baldwin's trial were withheld from his attorneys. A court recorder claimed no voice tapes of the trial had been made, although both the tapes and short-hand notes were discovered 20 years later. Both tapes and notes revealed discrepancies in the transcript provided by the state after Baldwin's trial.<sup>22</sup> Baldwin was never provided with the opportunity to present this evidence in any court.

## CONCLUSION

Brian Baldwin was executed despite compelling evidence of his innocence and evidence that he did not receive a fair trial. Allegations of torture and racial bias by the State of Alabama, in violation of constitutional and international human rights, were sufficiently egregious to warrant a reversal of the trial court's decision. The initial appeal alleging improper procedure and racism was heard by the same judge who had convicted Baldwin, and against whom some of the allegations of racism and misconduct were being made. Nonetheless, the trial court's decision held. Both state and federal courts, including the U.S. Supreme Court, denied relief in spite of the numerous and egregious allegations of rights violations. Brian Baldwin was executed after sitting in the electric chair for one hour.

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<sup>19</sup> *Baldwin v. State*, p. 539 So.2d 1103 (Ala. Ct. App. 1988)

<sup>20</sup> Statement of Interest of *Amici Curiae* to 11<sup>th</sup> Circuit and Letters

<sup>21</sup> Petition for *Writ of Certiorari*, p. ix #7

<sup>22</sup> *Id.* p. vii-viii #6

# Cornelius Singleton (Alabama)

## ALLEGATION

On November 20, 1992, the State of Alabama, with the acquiescence of the federal government, executed Cornelius Singleton in the electric chair. The state and federal governments failed to ensure Singleton's right to a fair and impartial trial, free from racial discrimination. The unfair and racially discriminatory trial resulted in Singleton's execution.

## CRIME

On November 12, 1977, Sister Ann Hogan was murdered while praying in a cemetery in Mobile, Alabama. Hogan was found buried under stones and logs in a wooded area adjacent to the cemetery. She died from strangulation and asphyxiation. Singleton was arrested, tried, and convicted for her murder.

## SALIENT ISSUES

- There was no physical evidence placing Singleton at the scene of the crime or linking him to the murder.<sup>1</sup>
- Singleton had no connection to the victim and no motive.<sup>2</sup>
- Eyewitnesses identified the man thought to be the killer as a white male with blonde hair.<sup>3</sup> Singleton was an African-American man.
- No other suspects were investigated.<sup>4</sup>
- Cornelius Singleton had an IQ between 55 and 65. He was illiterate.<sup>5</sup>
- Singleton unknowingly waived his right to counsel.<sup>6</sup>
- Singleton signed a dictated confession, but did not understand what he was confessing to or the consequences of his confession.<sup>7</sup> He was led to believe that he was confessing to stealing bed sheets.<sup>8</sup>
- The prosecutor had Singleton's girlfriend sit on his lap in the interrogation room while the prosecutor was dictating the confession.<sup>9</sup>
- In order to charge Singleton with a capital crime, the prosecution needed evidence of an additional crime. Police conducted a thorough search for a watch allegedly stolen from the victim, but failed to find it. A brief second search produced the missing watch, which was allegedly found on the mantel of Singleton's grandfather's house.<sup>10</sup>

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<sup>1</sup> Whitman Narrative on case, p. 3

<sup>2</sup> Id.

<sup>3</sup> Police Report, Statement of Cathy Barnes, November 19, 1977

<sup>4</sup> Affidavits, Rosie and Terri Miller; Narrative, p. 2

<sup>5</sup> State Parole and Probation report, p. 4

<sup>6</sup> Motion to Suppress Evidence, Circuit Court of Mobile, AL, p. 5; Interview with Singleton, January 1, 1988

<sup>7</sup> Trial Testimony Cathy Barnes, p. 207

<sup>8</sup> Motion to Suppress Evidence, Circuit Court of Mobile, AL, p. 5; Interview with Singleton, January 1, 1988

<sup>9</sup> Trial Testimony Cathy Barnes, November 1981, p. 206

<sup>10</sup> Motion to Suppress, #2, p. 2; Affidavit, Officer Lofton

## **TRIAL**

Cornelius Singleton, an African-American man, was convicted by an all-white jury<sup>11</sup> of capital murder based on a coerced confession, dictated by the prosecution. After his arrest, Singleton was interrogated for several hours. During that time, he unknowingly waived his rights to counsel.<sup>12</sup> His girlfriend was then brought to the police station and made to sit on Singleton's lap while the District Attorney reportedly dictated a confession, which he had Singleton repeat while another officer recorded it as if it was Singleton's own words.<sup>13</sup> Throughout the interrogation, there was a discussion of a recent incident in which Singleton thought he was buying bed sheets from another resident in his boarding house. A neighbor had reported that her sheets were stolen. The discussion was confusing and disorienting for Singleton, who thought he was being questioned about the sheets. Singleton had an IQ between 55 and 65.

Singleton was taken to the cemetery where the murder took place and was questioned about details, despite his apparent lack of knowledge of the crime. According to Singleton, the victim's pager and some papers were on the ground and he was told to pick them up but refused.<sup>14</sup> He was then returned to the police station where he was told to sign the confession.<sup>15</sup> He could not read, but he signed the confession after being told that other charges pending against him would be dropped. In fact, no charges were pending. His girlfriend witnessed his signature.<sup>16</sup>

In order to secure a capital conviction, the state needed to convict Singleton not only of murder, but also of an aggravating circumstance, in this case, robbery. The state alleged the victim's watch was missing and undertook an extensive search of the home of Singleton's grandfather. The search failed to turn up the watch. A second, brief search subsequently was conducted and the watch was found in plain sight on his grandfather's mantel. The watch served as evidence that the victim had been killed during the commission of a felony robbery, which provided the necessary special circumstances for a capital conviction.

There was no evidence to link Singleton to the crime or the crime scene and no evidence that he knew the victim or had a motive to kill the victim. Eyewitnesses in the area described a suspicious white man with long blonde hair lurking around the cemetery on the day of the murder. There was some blood on the victim's blouse and the outline of a hand with fingers pointing downward on the back of the blouse. The state failed to investigate eyewitness accounts and failed to link the forensic evidence to Singleton.

Singleton's lawyers failed to investigate independently, failed to provide an adequate defense, and failed to challenge the selection of an all-white jury. Singleton was convicted quickly and sentenced to death, despite the lack of any clear evidence linking him to the scene of the crime or to the victim and statements that another man had committed the murder.

## **APPEALS**

Appeals were based on the fact that Singleton's original attorney had failed to use his mental retardation for mitigation purposes at sentencing, according to Matthew McDonald, one of his last

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<sup>11</sup> *Mobile Register*, "New Evidence Claims may Delay Execution," p. 1a, November 18, 1992

<sup>12</sup> Motion to Suppress, p. 5; Trial Transcript, p. 205

<sup>13</sup> Trial Testimony Cathy Barnes, p. 207-208

<sup>14</sup> Trial Testimony Cathy Barnes, p. 209; interview with Singleton, Jan. 1, 1988

<sup>15</sup> Id. p. 208

<sup>16</sup> Id. p. 208

lawyers. Singleton's appeals were denied.<sup>17</sup> His conviction was then overturned when the US Supreme Court found part of the death penalty statute unconstitutional. He was retried in 1981 and again convicted and sentenced to death.<sup>18</sup> He never met with the attorney who filed two of his appeals,<sup>19</sup> and for many years while on death row, he never had an attorney. Before Singleton's execution, a church bus of people from Mobile went to the governor's office to plead for clemency. When they arrived they were told that the governor was busy and an aide would talk with them. All the people sat down in the capitol and refused to leave. Around 7:30 p.m., Governor Hunt, who was a minister and also had a retarded daughter, agreed to see a group of them. He did not grant clemency.

## CONCLUSION

Cornelius Singleton was executed in spite of compelling evidence of innocence and numerous allegations of rights violations during the police investigation and the original criminal trial. The State of Alabama failed to protect Singleton's right to a fair and impartial trial and his right to be free from racial discrimination. Such rights violations are especially egregious in light of Singleton's mental incapacity. The state and federal appeals courts, including the U.S. Supreme Court, denied relief.

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<sup>17</sup> This is based on the information available to the researchers. The Grassroots Investigation Project regrets that it was unable to receive full documentation from Mr. Singleton's appeals.

<sup>18</sup> *Mobile Press Register*, February 11, 1986

<sup>19</sup> Interview with Singleton, January 1, 1988; Interview with Press, video, November 19, 1992

# Freddie Lee Wright (Alabama)

## ALLEGATION

On March 3, 2000, the State of Alabama, with the acquiescence of the federal government, executed Freddie Lee Wright in the electric chair. The state and federal governments failed to ensure Wright's right to a fair and impartial trial, free of racial discrimination. The unfair and racially discriminatory trial resulted in Wright's execution.

## CRIME

Warren and Lois Green, a white couple, were shot and killed during an armed robbery at their Western Auto Store in Mount Vernon, Alabama. A woman entering the store later identified Theodore Otis Roberts as one of the robbers and he was arrested. The state identified a handgun belonging to Roberts as the murder weapon.<sup>1</sup> Months later, charges against Roberts were dropped and four other black men, including Freddie Lee Wright, were indicted in the case. Wright's three co-defendants named him as the shooter in the robbery, and he was tried and convicted of armed robbery and murder.<sup>2</sup>

## SALIENT ISSUES

- Wright's first trial ended in a mistrial with eleven out of twelve jurors voting to acquit.<sup>3</sup>
- No physical evidence linked Wright to the crime.<sup>4</sup>
- Wright's co-defendants testified against him in exchange for receiving lesser sentences. Two of those co-defendants later recanted. One named another man as the killer.<sup>5</sup>
- The man who was originally arrested for the crime was never tried, even though his gun was identified as the murder weapon.<sup>6</sup>
- Key exculpatory evidence was suppressed by the prosecution.<sup>7</sup>
- The prosecution in Wright's second trial excluded all African-American persons from serving on the jury.<sup>8</sup>
- The detective who did much of the state's investigation admitted in court that he "bullshits his witnesses to get confessions" and that he lied to one of the co-defendants toward this end.<sup>9</sup>
- Two state Supreme Court justices voted to stay Wright's execution finding clear and convincing evidence of his innocence.<sup>10</sup>

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<sup>1</sup> 11<sup>th</sup> Circuit Ct. of Appeals, p. 4: The Johnson Testimony; 5: The Stroh Affidavit; Clemency Petition, p. 16

<sup>2</sup> Clemency Petition, p. 8

<sup>3</sup> 11<sup>th</sup> Circuit Ct. of Appeals, March 10, 1999, 2, B. Procedural history; Evidentiary Hearing, US District Ct., Oct. 1, 1996, p. 10, Lines 21-22

<sup>4</sup> Clemency Petition, p. 8-9

<sup>5</sup> Supreme Court of Alabama, dissent by Justice Johnstone, p. 3; Clemency Petition, p. 8

<sup>6</sup> Supreme Court of Alabama, p. 3; Clemency Petition, p. 7-8; 11<sup>th</sup> Circuit Court of Appeals, p. 4: The Johnson Testimony

<sup>7</sup> Clemency Petition, p. 19-20

<sup>8</sup> 11<sup>th</sup> Circuit Ct. of Appeals, p. 8, #2; Clemency Petition, p. 2 #2, 10, #4

<sup>9</sup> Evidentiary Hearing, p. 199, cross-examination of Detective Tillman

<sup>10</sup> Supreme Court of Alabama Petition for *Writ of Certiorari*, dissent Johnstone and Cook, p. 4

## TRIAL

It took two trials to convict Freddie Lee Wright. The first trial, with a mixed-race jury, voted eleven to one in favor of acquittal, resulting in a mistrial. An all-white jury convicted him of armed robbery and capital murder in the second trial.

The prosecution in Wright's first trial relied on the testimony of two of his co-defendants. One later recanted his testimony, saying the prosecutor threatened him with the electric chair if he did not name Wright as the shooter.<sup>11</sup> The other later provided a written affidavit saying that he, too, was pressured by the prosecution to name Wright.<sup>12</sup> This second co-defendant named another man as the killer. In exchange for their testimony, both men were allowed to plead guilty to lesser charges. One received a ten-year sentence and the other was permitted to serve his Alabama sentence concurrently with a sentence he had for another crime in Mississippi. The third man received a 25-year sentence but was later paroled. In spite of these witnesses' testimony at trial, a mixed-race jury voted eleven-to-one to acquit Wright of all charges, resulting in a mistrial. The same witnesses the state used to convict Freddie Wright were later deemed to be non-credible witnesses when they admitted that they had only fingered Wright to avoid the death penalty.

Wright's second trial took place before an all-white jury. The state's new witness was Doris Lambert, Wright's former girlfriend and the mother of their child. She claimed Wright had confessed his guilt to her, although in his first trial she had planned to testify for him, and was never called to the stand. The prosecution suppressed Lambert's history of drug addiction and mental illness.<sup>13</sup> Also, Lambert reportedly received help regaining custody of her children in exchange for her testimony against Wright. Wright's lawyer claimed he had been unable to locate a key alibi witness, an insurance agent, with whom Wright did business shortly before the murders. The jury discounted the testimony of Wright's friends, who were with him in a club at the time of the murders. Wright was found guilty of capital murder and sentenced to death.

## APPEALS

Wright's attorney continued to represent him in the appeals process, even after claims of ineffective representation were raised. Wright's attorney was subsequently disbarred. The District Attorney acknowledged that he should have disclosed evidence about Doris Lambert's psychiatric history and about deals made with Wright's co-defendants.<sup>14</sup> In the course of denying Wright's *habeas corpus* petition, the U.S. District Court was critical of the state's conduct. The court also wrote that "numerous imperfections in the state court proceedings were revealed," that "some of these imperfections like the state's failure to disclose certain exculpatory materials – do not in any way deserve the blessing of this Court."<sup>15</sup> However, it believed that a federal court was not the proper forum in which to re-try the case, so it denied relief and the Eleventh Circuit Court of Appeals affirmed. The Eleventh Circuit found that virtually all of these claims were procedurally barred from review because they had not first been presented to the state courts.<sup>16</sup> Two Alabama Supreme Court Justices voted to stay Wright's execution citing evidence that "his conviction resulted from a lack of a

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<sup>11</sup> Evidentiary Hearing, 1996, Cross examination of Roger McQueen, p. 149, Lines 8-22

<sup>12</sup> Evidentiary Hearing, 1996: Direct examination of Al Pennington; Reginald Tinsley letter, 1978

<sup>13</sup> Supreme Court of Alabama, dissent, p. 3; Clemency Petition, p. 13-14

<sup>14</sup> Clemency Petition, p. 17; Evidentiary Hearing, 1996, p. 117 – cross examination of DA Galanos

<sup>15</sup> Id. p. 19,20

<sup>16</sup> Id. p. 20

fair trial” and “the likelihood that we are sending an innocent man to his death.”<sup>17</sup> Wright was, nevertheless, executed on schedule.

## CONCLUSION

Freddie Lee Wright was convicted despite compelling evidence of his innocence and overwhelming evidence that he failed to receive a fair and impartial trial, free from racial discrimination. The State of Alabama withheld information from defense lawyers. It failed to provide Wright with competent legal representation. It excluded all African-American persons from the jury in order to secure a conviction – a practice later found to be an unconstitutional form of racial discrimination. (*Batson v. Kentucky*) Nonetheless, both state and federal courts, including the U.S. Supreme Court, upheld both Wright’s conviction and his death sentence.

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<sup>17</sup> Supreme Court of Alabama, dissent Johnstone and Cook

# Thomas M. Thompson (California)

## ALLEGATION

On July 14, 1998, the State of California, with the acquiescence of the federal government, executed Thomas Thompson by lethal injection. The state and federal governments not only failed to ensure Thompson's right to a fair and impartial trial, they intentionally disregarded a federal court ruling that Thompson's trial was unconstitutional. The unfair and unconstitutional trial resulted in Thompson's execution.

## CRIME

On September 11, 1981 Ginger Fleischli was stabbed five times in the head and killed in Orange County, California. Fleischli had spent the evening with her former lover, David Leitch, Leitch's new roommate, Thomas Thompson, and Leitch's ex-wife. Fleischli went home with Thompson to an apartment Thompson shared with David Leitch, and had consensual sex with him. The next day, her body was found in a shallow grave. Both Leitch and Thompson were arrested and charged with Fleischli's murder, and Thompson was charged with rape. Thompson and Leitch were tried separately and convicted; Thompson was convicted of both murder and rape.

## SALIENT ISSUES

- Both the Federal District Court<sup>1</sup> and the State Appeals Court<sup>2</sup> threw out the rape conviction, which was the special circumstances that made Thompson eligible for the death penalty.
- Both the Federal District Court<sup>3</sup> and the State Appeals Court<sup>4</sup> held that it was probable that Thompson would not have been convicted of rape or sentenced to death if his attorney had been competent.
- Seven former prosecutors, including an author of California's death penalty law, filed a brief on Thompson's behalf in the U.S. Supreme Court, citing the prosecution's manipulation of witnesses and facts in Thompson's trial and expressing doubt about Thompson's conviction.<sup>5</sup>
- Evidence that Leitch, the other man convicted of the murder, witnessed Thompson and the victim engaging in consensual sex the night of the murder was revealed to state investigators and Leitch's trial counsel prior to Thompson's trial, and was reiterated by Leitch under oath at his parole hearing in 1995. This evidence, which was inconsistent with the prosecution's theory that Thompson had raped and then murdered the victim to cover up the rape, was suppressed by prosecutors and only discovered by a defense investigator in 1997.<sup>6</sup>
- An eleven-judge panel of the Federal Appeals Court found that the prosecutor manipulated evidence and witnesses in Thompson's trial and later, at Leitch's trial, presented evidence that

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<sup>1</sup> See *Thompson v. Calderon*, No. CV-89-3630-RG, slip opinion, p. 2 (C.D. Cal. Mar. 29, 1995)

<sup>2</sup> See *Thompson v. Calderon*, 120 F.3d 1045 (9<sup>th</sup> Cir. 1997) (*en banc*), rev'd, 118 S. Ct. 1489 (1998)

<sup>3</sup> *Thompson*, No. CV-89-3630-RG, p. 10184-5, 10194-5

<sup>4</sup> *Thompson*, 120 F.3d, p. 1048

<sup>5</sup> Brief of *Amici Curiae* in Support of Petitioner, *Thompson v. Calderon*, 120 F.3d 1045 (9<sup>th</sup> Cir. 1997) (No.96-8707)

<sup>6</sup> In re. Thomas M. Thompson, Petition for a *Writ of Habeas Corpus* and Emergency Application for Stay of Sentence of Death (July 3, 1997) p. 35. See also, Stephan Reinhardt, The Anatomy of an Execution: Fairness vs. "Process," 74 NYU Law Rev. p. 313, 347-348 (1999)

discredited its own previous case against Thompson.<sup>7</sup> It ruled Thompson's death sentence erroneous and his trial unconstitutional.<sup>8</sup>

- The U.S. Supreme Court reversed the judgment of the Appeals Court, ruling that the court, in a series of errors, took too long to reach the decision to vacate Thompson's death sentence.<sup>9</sup>
- The evidence that Thompson was innocent of the special circumstances that made him eligible for the death penalty was barred by the Ninth Circuit Court from consideration because of the Anti-Terrorism and Effective Death Penalty Act of 1996.<sup>10</sup>

## **TRIAL**

Thomas Thompson and David Leitch were tried and convicted separately, by separate juries. The prosecutor and judge were the same at each of the trials. Thompson was tried first, in 1983. At the preliminary hearing, the prosecution produced three jailhouse informants who testified that Thompson had confessed that he was hired by Leitch to help murder Fleischli, and after having consensual sex with her, Thompson had helped Leitch kill her. The prosecution subsequently rejected this theory and did not call these informants at trial.

At trial, the prosecution introduced a new theory – that Thompson had raped Fleischli and murdered her to cover up the rape. In this version of the murder, David Leitch solely helped Thompson dispose of Fleischli's body. The earlier testimony of the three jailhouse informants was discarded, and two new jailhouse informants testified that Thompson had confessed to the rape and murder.

Leitch had been arrested more than once for assault and had previously threatened to kill Fleischli, including ten days before she was murdered. Several defense witnesses, including a police officer, testified to Leitch's violent disposition, threats, and motive for the murder, but were discredited by the prosecution. The prosecution later used these same witnesses to convict David Leitch. Thompson was found guilty of both rape and murder, and because of the special circumstances of rape, was sentenced to death.

## **APPEALS**

In March 1995, a federal court heard Thompson's appeal and reversed the rape conviction and the death sentence. The court found that there was no substantial evidence of rape or that Thompson had committed rape. The court also found that a competent attorney could have easily rebutted the circumstantial evidence used to convict Thompson and that Thompson's attorney was incompetent in failing to discredit a notoriously unreliable jailhouse informant. The court declined to reverse Thompson's murder conviction because of stringent legal hurdles for overturning convictions. However, it urged the state not to re-try Thompson on the rape, stating that the numerous inconsistencies in the case left the court with an "unsettled feeling."

In 1996, a three-judge panel of the U.S. Court of Appeals re-instated the rape conviction and the death sentence, finding that the incompetence of Thompson's attorney would not have made a difference in the verdict. In May 1997, additional evidence surfaced concerning Thompson's rape conviction. Two

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<sup>7</sup> Thompson v. Calderon, 120 F.3d, p. 10195-10205

<sup>8</sup> Reinhardt, Anatomy of an Execution, p. 337

<sup>9</sup> See Calderon v. Thompson, 118 S. Ct. 1489, 1494 (1998) (Kennedy, J., joined by Rehnquist, C.J., O'Connor, Scalia, and Thomas, JJ.), #97-215; p. 4369-70

<sup>10</sup> Reinhardt, p. 349-51

years earlier at a parole hearing, David Leitch testified that he had walked in on Thompson and Fleischli having consensual sex the night of the murder. Although Leitch said he gave this same information to police in 1981, he was never called to testify in Thompson's trial. Leitch's attorney corroborated that Leitch had always maintained Thompson and Fleischli had engaged in consensual sex. The parole board failed to pass this information on to Thompson's attorneys in 1994, although they were required to do so by law.

Based on this new information, Thompson's attorneys appealed his case again, asking for a hearing by the entire bench of judges of the Ninth Circuit of the U.S. Court of Appeals. Although the court initially denied the request, on August 3, 1997, an eleven-judge panel of the U.S. Court of Appeals found that it had erred in denying the original request and acted on its own motion to reverse Thompson's rape conviction and vacate his death sentence. The court disclosed a series of internal clerical and procedural errors that had caused Thompson's earlier appeal for a full bench hearing to be mistakenly denied. The federal panel found that the prosecution acted egregiously in Thompson's trial by manipulating witnesses and evidence, arguing inconsistent motives, and, at Leitch's trial, ridiculing its own theory of prosecution used to convict Thompson. Because Thompson's murder conviction was linked to the rape conviction, the court referred the case back to the District Court to re-examine the validity of the murder conviction.

The State of California challenged the decision of the U.S. Court of Appeals. In a 5-4 decision, the United States Supreme Court overturned the lower court's decision, upholding Thompson's rape conviction and death sentence. The Court did this in spite of an unprecedented appeal by seven former prosecutors and an author of the California death penalty statute, which outlined substantial doubts about the prosecutor's conduct and about Thompson's guilt. The Supreme Court justified its decision based on the Anti-terrorism and Effective Death Penalty Act of 1996.

## **CONCLUSION**

Thomas Thompson was executed despite a U.S. Court of Appeals ruling that Thompson failed to receive a fair trial and that the original criminal trial was unconstitutional. Thompson's constitutional rights and international human rights were again violated by the direct actions of United States Supreme Court when it overturned the Court of Appeals decision despite overwhelming evidence of Thompson's innocence and compelling evidence that he failed to receive a fair and impartial trial.

# James Adams (Florida)

## ALLEGATION

On May 10, 1984, the State of Florida, with the acquiescence of the federal government, executed James Adams in the electric chair. The state and federal governments failed to ensure Adams's right to a fair and impartial trial. The unfair and racially discriminatory trial resulted in Adams's execution.

## CRIME

On the morning of November 12, 1973 at approximately 10:30 a.m., Edgar Brown was beaten with a fire poker in the course of an alleged robbery in his home. He died in the hospital the next day as a result of the beating. Adams was arrested, tried, and convicted of his murder.

## SALIENT ISSUES

- The one eyewitness who saw and spoke to a person leaving the house where the murder was committed originally said that he was certain Adams was not the person.<sup>1</sup> At trial, this eyewitness testified that Adams “may or may not” have been the person to whom he spoke.
- One of the witnesses, Vivian Nickerson, borrowed Adams's car shortly before the murder. This witness had a masculine appearance and fit many of the characteristics described by the eyewitness, but she was never included in any photo array or lineup.<sup>2</sup>
- According to Vivian Nickerson's original sworn statement, Adams was at her house at the time of the murder while she used his car. At trial, she testified to a different time-frame, alleging that Adams arrived after the time of the murder. The defense failed to impeach her testimony by raising the inconsistency between her two statements.<sup>3</sup>
- According to the Florida State Crime Lab, hair found in the victim's hand was not from Adams. This evidence was released three days after Adams was sentenced and then suppressed by the state.<sup>4</sup>
- A small bloodstain on one of the dollar bills in Adams's possession was consistent with the victim's blood type, but also with 45 percent of people living in the United States.<sup>5</sup>
- The one positive identification of Adams as the driver of the car seen in the victim's driveway was made by a man who accused Adams of having an affair with his wife, for which he had threatened revenge.<sup>6</sup>
- At the trial, Adams's criminal record was used by the prosecution to prejudice the jury, and it was a determining factor in Adams's conviction and death sentence.<sup>7</sup>
- Prosecutors used Adams's prior rape conviction, which was likely unconstitutional because he was tried without a lawyer, as an aggravating circumstance in the penalty phase of his trial to secure the death sentence.<sup>8</sup>

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<sup>1</sup> Application for Executive Clemency, p. 25

<sup>2</sup> Application for Executive Clemency, p. 21

<sup>3</sup> Id. p. 22

<sup>4</sup> Id. p. 22

<sup>5</sup> Id. p. 4, also footnote #2

<sup>6</sup> Id. p. 24

<sup>7</sup> FL Supreme Court, Initial Brief of Appellant, on appeal from 19<sup>th</sup> Judicial Circuit Court of FL, p. 5

- At the penalty phase of the trial, Adams’s defense attorney did not present mitigating evidence or challenge the prosecution’s use of a racially-biased prior conviction.<sup>9</sup>
- Throughout the trial, Adams was referred to as “nigger” by both the prosecution and his own defense counsel.<sup>10</sup>
- Prior to closing arguments, a private conference was held at which both the trial judge and prosecutor agreed that there was “no pre-meditation,” which should have exempted Adams from a death sentence.<sup>11</sup>
- The jury voted to convict Adams of capital murder. At sentencing, the vote for death was 7 to 5.<sup>12</sup>

## TRIAL

James Adams was convicted of capital murder on circumstantial evidence and on evidence that was contradictory. On the morning of the crime, Adams’s car had been seen traveling to and from the victim’s house and had been parked in the victim’s driveway. One witness reported that he thought Adams was driving the car towards the victim’s house shortly before the robbery and assault. A second witness positively identified Adams as the driver of the car seen leaving the victim’s home. This witness reportedly stated that he would testify against Adams because he believed that Adams was having an affair with his wife. However, the only witness to see a person leaving the victim’s house at the approximate time of the crime provided a description that did not fit Adams. After viewing a police line-up in which Adams was included, this witness was “positive” that Adams was not the person with whom he spoke. At trial, the same witness who could not pick Adams out of a lineup testified that Adams may or may not have been the person he saw leaving the house.

Adams said he was at the house of a friend, Vivian Nickerson, from 10:00 a.m. until 3:00 p.m. on the day of the murder. Nickerson initially confirmed Adams’s alibi and stated that she had borrowed Adams’s car before 10:30 a.m. At trial, she changed her testimony to say that Adams did not arrive at her house before 11:00 a.m. Adams’s attorney did not question the inconsistency of her statements. Although the state crime lab found that strands of hair on the victim were not from Adams, the crime lab report was not released until three days after the trial.<sup>13</sup>

Race was a factor throughout the trial. During the trial, both the prosecution and the defense referred to Adams as “nigger.” The prosecution repeatedly raised Adams’s prior conviction for rape in terms of the race of the victim. The fact that Adams had raped a white woman – not that he had merely committed rape – was the aggravating circumstance used by the state to secure a sentence of death, despite the fact that Adams had never before been convicted of a crime punishable by death.

## APPEALS

The Florida Supreme Court upheld Adams’s sentence in December 1976, and *certiorari* was denied on October 3, 1977. He received a stay of execution by the Florida Supreme Court in April 1978. The U.S. Supreme Court continued his stay so he could file his *writ of certiorari*, which was denied

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<sup>8</sup> Motion to Vacate Judgment & Sentence, April 1984, p. 9, 10

<sup>9</sup> Petition for *Writ of Habeas Corpus* 11<sup>th</sup> Circuit, p. 6-7

<sup>10</sup> Southern Coalition Report, Summer 1984

<sup>11</sup> Petition for *Writ of Habeas Corpus* 11<sup>th</sup> Circuit, 6, 7

<sup>12</sup> State File Record 45, p. 450

<sup>13</sup> Motion to Vacate Judgment and Sentence, 19<sup>th</sup> Circuit, p. 8,C

October 30, 1978. He had a clemency hearing November 5, 1979. His first death warrant was signed January 9, 1980. The Florida Supreme Court denied a stay, but he obtained one from the Southern District Court in February of 1980. His *writ* was denied in an unpublished opinion, and in July of 1983 the Eleventh Circuit Court of Appeals affirmed the denial. On January 11, 1984, the U.S. Supreme Court denied *certiorari*, and on April 12, 1984, his second death warrant was signed. All relief was then denied in the courts, and on May 9, 1984, the U.S. Supreme Court vacated his stay. He was executed the next day.<sup>14</sup>

## CONCLUSION

James Adams was executed despite undisputed evidence of racial discrimination and compelling evidence of innocence. James Adams did not receive a fair trial. His court-appointed lawyers failed to lodge a competent defense, the state withheld evidence, and both the prosecution and defense were racially-biased and used racist remarks, which served to bias the jury. Nonetheless, by denying all appeals, both state and federal appeals courts upheld both Adams's conviction and his death sentence.

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<sup>14</sup> State File Record 45, 450 Appellate History

# Willie Jasper Darden, Jr. (Florida)

## ALLEGATION

On March 15, 1998, the State of Florida, with acquiescence by the federal government, executed Willie Jasper Darden, Jr. in the electric chair. The state and federal governments failed to ensure Darden's right to a free and fair trial. The unfair and racially discriminatory trial resulted in Darden's execution.

## CRIME

On the evening of September 8, 1973, in the course of a robbery at Carl's Furniture Store in Lakeland, Florida, James Carl Turman was shot and killed and his 16-year-old neighbor was wounded. The police estimated the time of the murder to be between 6:00 and 6:30 p.m. Darden was arrested for a traffic violation but then subsequently charged with, tried, and convicted of Turman's murder, assault, and armed robbery.

## SALIENT ISSUES

- The wife of the victim, who was an eyewitness to the shooting, was never asked to identify Darden in a lineup, but was asked to identify him in the courtroom, where he was the only African American male present.<sup>1</sup>
- The alleged murder weapon was never conclusively tied to either the murder or to Darden.<sup>2</sup>
- Numerous state witnesses independently corroborated various parts of Darden's testimony, in which he denied any involvement in the crime.<sup>3</sup>
- Although the police claimed the crime occurred sometime between 6:00 p.m. and 6:30 p.m., the victim's minister was called to the crime scene at 5:30 p.m. He was never questioned and never called to testify.<sup>4</sup>
- A witness, Christine Bass, could place Darden at her house from 4:00 p.m. to 5:30 p.m. on the day of the crime, at or about the time of the murder, but was never called to testify though she came to court every day during the trial.<sup>5</sup>
- Bob Brazen, at a nearby filling station, repaired a muffler on the car and reported to the police that Darden left his filling station at closing time, around 6:00 p.m.<sup>6</sup>
- John Stone, a witness to a crash Darden had soon after his car was fixed, went to call a wrecker for Darden. On the way, as he drove by the furniture store he noticed police cars in front with flashing lights. He estimated the time as around 6:00 p.m.<sup>7</sup>
- Darden, meanwhile, contacted a wrecker about his car, got a ride to his girlfriend's house and called the sheriff's department to report his disabled car and to say he would remove it in the morning.<sup>8</sup>

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<sup>1</sup> U.S. Supreme Court, dissent by Justice Blackmun, *Darden v. Wainwright*, No. 85-5319, pp.11-12

<sup>2</sup> *Id.* at 12

<sup>3</sup> *Id.* at 12

<sup>4</sup> Affidavit, Rev. Sam Sparks, Oct. 10, 1986

<sup>5</sup> Affidavit, Christine Bass, October 10, 1986

<sup>6</sup> *Executing Justice: The Moral Meaning of the Death Penalty*, by Lloyd Steffen, Pilgrim Press, 1998, p. 13

<sup>7</sup> *Id.* p. 13

<sup>8</sup> *Id.*

- Darden, an African American male, was convicted and sentenced by an all-white jury.
- At trial the prosecutor repeatedly referred to Darden as an animal who should be on a leash and said he wished he could see Darden with his face blown off by a shotgun.<sup>9</sup>
- Darden was sentenced to death despite the fact that the trial judge found Darden’s own testimony about his innocence a mitigating factor.<sup>10</sup>
- The Florida Supreme Court’s “careful review of the totality of the record” consisted of three paragraphs.<sup>11</sup>
- The Magistrate before whom Darden’s federal *habeas* proceedings were conducted recommended that Darden be granted *habeas* relief on the basis of prosecutorial misconduct.<sup>12</sup>

## TRIAL

Darden, an African American, was convicted by an all-white jury of killing a white man. The state intentionally excluded all African-American persons from the jury. Intentional exclusion of jurors solely on the basis of race has since been found to be unconstitutional (*Batson v. Kentucky*, 1986). Jury selection in Darden’s case was improper, according to U.S. Supreme Court Justice Harry Blackmun in his dissenting opinion.<sup>13</sup>

Three witnesses – the victim’s wife, the neighbor who was wounded in the shooting, and another neighbor – provided conflicting descriptions of the suspect, but all later identified Darden. Initially, the victim’s wife had difficulty describing the suspect. She was never asked to identify Darden in a line-up. She identified him in court, where he was the only African-American male present. The neighbor injured in the shooting initially described the shooter as a man larger than Darden. Discrepancies in eyewitness accounts included whether Darden had a mustache and whether he was wearing a white or maroon shirt. Darden’s lawyer failed to raise these discrepancies at trial.<sup>14</sup>

The time frame was key to securing Darden’s conviction. Christine Bass had stated that Darden was in front of her house with a broken down car from 4 to 5:30 p.m. She came to court daily during the trial to testify and was never called. Other witnesses, Brazen and Stone, had noted the time when they had contact with Darden. Stone, in particular, saw police cars in front of the furniture store at about 6 p.m. Darden, himself, called the sheriff’s office to report an accident he had after his car was fixed. This was at 6:32 p.m., according to the sheriff’s report.<sup>15</sup> Yet the state was able to get a conviction. Years later, the victim’s minister, who had been called to the crime scene at 5:30 p.m. and had arrived at 5:55 p.m., realized that this information was significant to the case. Both he and Christine Bass gave affidavits that would have strengthened Darden’s alibi.

The prosecutor used racist remarks and inflammatory statements to prejudice the jury. During trial, he repeatedly expressed a wish “that I could see [Darden] sitting here with no face, blown away by a shotgun.”<sup>16</sup> In addition to evidence of Darden’s innocence and evidence of ineffective counsel, the prosecution’s racist and inflammatory statements should have been grounds for a re-examination of this case.

<sup>9</sup> U.S. Supreme Court, Dissent by Justice Blackmun, p. 4-5, #2, 3; Appellate Counsel Summary of Case, p. 8-9

<sup>10</sup> U.S. Supreme Court, Dissent by Justice Blackmun, p. 12 & 13

<sup>11</sup> Id. footnote 1, p. 2

<sup>12</sup> U.S. Supreme Court, Dissent by Justice Blackmun, footnote #3

<sup>13</sup> Id. p. 13, II

<sup>14</sup> U.S. Supreme Court, dissent by Justice Blackmun, p. 12

<sup>15</sup> Summary of Case, p. 6

<sup>16</sup> U.S. Supreme Court, Dissent by Justice Blackmun, p. 4-5

## APPEALS

On its way through state and federal appeals, Darden's case was found sufficiently egregious to warrant review on numerous grounds. Darden was granted a stay of execution to allow the court time to consider his appeal. In all he received seven death warrants and six stays. He came within hours of death several times.<sup>17</sup> In 1984, the Eleventh Circuit Court of Appeals voted 7-5 to grant *habeas* relief to Darden. This decision, however, was overturned by the U.S. Supreme Court, which remanded the case for further consideration. On remand, the Eleventh Circuit denied relief. In 1986, Florida Governor Bob Martinez refused to meet with the witnesses whose statements corroborated Darden's alibi. He kept signing the death warrants as Darden lost in the courts.

## CONCLUSION

Willie Jasper Darden, Jr. was executed despite compelling evidence of his innocence. The state failed to provide Darden with competent legal counsel. Darden's state appointed lawyers did not identify or call important witnesses who had evidence of Darden's innocence. The state intentionally excluded all African-American persons from the jury – a practice later found to be an unconstitutional form of racial discrimination. While appeals courts did find evidence of prosecutorial misconduct sufficiently egregious to warrant further review and even to grant *habeas* relief, the decision of the trial court, in the end, was upheld.

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<sup>17</sup> *Executing Justice: The Moral Meaning of the Death Penalty*, by Lloyd Steffen, p. 9

# Jesse J. Tafero (Florida)

## ALLEGATION

On May 4, 1990, the State of Florida, with the acquiescence of the federal government, executed Jesse J. Tafero in the electric chair. The state and federal governments failed to ensure Tafero's right to a fair and impartial trial and right to be free from cruel and unusual punishment. The unfair trial resulted in Tafero's execution.

## CRIME

Early on the morning of February 20, 1976, a Florida highway patrolman and his friend, a visiting Canadian constable, approached a car parked at a rest stop for a routine check. Jesse Tafero, Sonia Jacobs, their two children, and Walter Rhodes, a prison friend of Tafero's, were asleep in the car. Allegedly, the patrolman saw a gun on the floor of the car. He woke the occupants and had Rhodes and then Tafero get out of the car. At some point after that, both the patrolman and the constable were shot. After fleeing the scene in the patrolman's car, and then dumping the car, kidnapping a man, and stealing his car, the three were caught at a roadblock. Rhodes, Tafero, and Jacobs were all arrested. Rhodes turned state's evidence in exchange for a plea to a lesser charge. Tafero and Jacobs were tried and convicted of capital murder.

## SALIENT ISSUES

- Jesse Tafero was convicted and sentenced to death largely on the testimony of one co-defendant, Walter Rhodes, who named Tafero as the shooter.<sup>1</sup>
- In exchange for his testimony, Rhodes was allowed to plead guilty to second-degree murder, and avoid the death penalty.<sup>2</sup>
- The prosecutor justified Rhodes's plea bargain based on a polygraph test he alleged Rhodes had passed.<sup>3</sup>
- The summary of Rhodes's polygraph test was withheld from the defense by the state.<sup>4</sup>
- In a legal challenge by Tafero's other co-defendant, Sonia Jacobs, a federal appeals court found that withholding the polygraph test was unconstitutional.<sup>5</sup>
- Rhodes recanted his testimony on three separate occasions – in 1977, 1979, and 1982 – stating that he, not Tafero, shot the policemen. Ultimately, Rhodes reverted to his original testimony.<sup>6</sup>
- Gunpowder tests were performed by the state. A federal appeals court confirmed that the test results indicated that Rhodes was the only one to have fired a gun.<sup>7</sup>

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<sup>1</sup> Jacobs v. Singletary, 952 F.2d 1282, 1285 (11th Cir. 1992), 1285

<sup>2</sup> Id. p. 285, B

<sup>3</sup> Id. p. 1289

<sup>4</sup> Id.

<sup>5</sup> Id. p. 1289

<sup>6</sup> *Sun-Sentinel*, October 3, 1992, "Threats, bribes changed testimony, inmate says"

<sup>7</sup> *Jesse Joseph Tafero vs. State of Florida*, transcript of proceedings before FL Parole & Probation Comm., September, 1982, p. 225

- At both his trial and his sentencing hearing, Tafero’s lawyer failed to call or question any witnesses on Tafero’s behalf.<sup>8</sup>
- Two eyewitnesses, who were testifying for the state, said that while the shots were being fired, one officer was holding Tafero over the hood of the car.<sup>9</sup>
- The judge was a former highway patrolman, who had only retired from the police force three years prior to the trial. He wore his police hat to work as a judge. He did not allow Tafero to call witnesses and would not allow him hearings on this decision.<sup>10</sup>
- The jury in the trial was un-sequestered.<sup>11</sup>
- Tafero’s other co-defendant, Sonia Jacobs, was likewise convicted of capital murder on the basis of Rhodes’s testimony. After Tafero’s execution, evidence that had been suppressed by the state, which pointed to both Jacobs’s and Tafero’s innocence, was discovered.<sup>12</sup> Jacobs’s conviction was eventually overturned.
- Tafero’s court-appointed trial lawyer was subsequently convicted of bribing a jury and sent to prison.<sup>13</sup>

## **TRIAL**

Jesse Tafero was convicted largely on the basis of co-defendant Walter Rhodes’s testimony that Tafero had shot both officers. A jailhouse informant also testified against Tafero. Rhodes was allowed to plead guilty to a lesser charge in exchange for his testimony against his two co-defendants, Tafero and Jacobs, who were each tried separately. The prosecutor maintained that Rhodes had passed a polygraph test and thus a plea bargain was justified. Evidence discovered after the trial showed that Rhodes had not passed the polygraph test and that the state had suppressed the results of the test, which contained statements contradicting Rhodes’s trial testimony. Rhodes recanted his testimony on three separate occasions – in 1977, 1979 and 1982 – stating that he, not Tafero, shot the policemen. Ultimately, Rhodes reverted to his original testimony. A statement from a prison guard corroborating Rhodes’ recantations was also suppressed and found years later.

Ballistic tests indicated that one gun shot both policemen. Ballistic tests also showed that Rhodes definitely had fired a gun and that Tafero might have fired a gun or might have simply handled a gun after it was fired. The later scenario corroborated Tafero’s account that Rhodes had shot the policemen and then handed Tafero the gun so that he could drive the car. Rhodes was driving the car when it was finally stopped during a shoot-out at a police roadblock.

At the trial, one eyewitness testified that he saw a man in brown, Tafero, spread eagle on the hood of the police car when the shots were fired. A second eyewitness testified that he saw a man in blue, Rhodes, move from the front of the car to the rear just before the shooting. Neither witness could identify which man was the shooter.

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<sup>8</sup> Id. p. 218-219

<sup>9</sup> Id. p. 225

<sup>10</sup> Id. p. 217

<sup>11</sup> Id. p. 222

<sup>12</sup> *Jacobs v. Singletary*, 952 F.2d 1282 (11th Cir. 1992)

<sup>13</sup> *Jessie Joseph Tafero v. State of Florida*, Record-on-Appeal from the Circuit Court of the 16th Judicial Circuit in and for Broward County, Florida, In the Supreme Court of Florida, p. 216-217

## **APPEALS**

Tafero's conviction was affirmed on June 11, 1981. A motion for *error coram nobis* failed in 1983. In 1988, the Florida Supreme Court denied state *habeas* relief. Other state appeals were also denied in 1984, 1987, and 1990. The Eleventh Circuit Court of Appeals reviewed the case twice, in 1986 and 1989, and affirmed the conviction.

In Sonia Jacobs' 1992 appeal, evidence of the suppressed polygraph test, the prison guard's suppressed statement, and a physical re-creation of the crime scene presented a convincing scenario that Rhodes was the sole shooter. The new evidence resulted in the reversal of Jacobs' conviction. Had the evidence been found prior to Tafero's execution, it is highly probable that his conviction would have been likewise overturned.

## **EXECUTION**

Jesse Tafero was executed in Florida's electric chair. During the execution, Tafero's head seemed to catch on fire. Flames and smoke were seen shooting out of his head, causing the state to interrupt the electric current three times. Witnesses to the execution claimed that Tafero continued to breathe and move after the first charge was interrupted. The state's execution was particularly cruel, and it served as a final violation of Tafero's right to be free from cruel and unusual punishment.

## **CONCLUSION**

Jesse J. Tafero was executed despite evidence of his innocence that was finally heard by a United States court, but only after Tafero was executed. The Eleventh U.S. Circuit Court found evidence compelling enough to overturn the conviction of Tafero's co-defendant, Sonia Jacobs – a conviction based almost entirely on the evidence used to convict Tafero. Jacobs later accepted a plea bargain and was released. Immediately upon release, she reaffirmed her innocence. Both state and federal courts failed to protect Tafero's right to a fair trial. The state's suppression of evidence that was favorable to Tafero's defense and that corroborated his claim of innocence violated Tafero's constitutional and international human rights. The initial violation was compounded by the failure of state and federal courts to act to protect Tafero's rights to a fair trial and his right to be free from cruel and unusual punishment, a right violated in the course of his execution.

# Girvies Davis (Illinois)

## ALLEGATION

On May 17, 1995, the State of Illinois, with acquiescence by the federal government, executed Girvies Davis by lethal injection. The state and federal governments failed to ensure Davis's right to a free and fair trial. The unfair and racially discriminatory trial resulted in Davis's execution.

## CRIME

On December 22, 1978, Charles Biebel, an 89-year-old man, was shot and killed during the course of a robbery in his mobile home in Belleville, Illinois. There were no witnesses to the robbery/murder and there was no physical evidence at the crime scene to help identify the murderer.<sup>1</sup> Girvies Davis was arrested, tried, and convicted of Biebel's murder.

## SALIENT ISSUES

- Despite the fact that Davis was illiterate, he allegedly wrote a list of his crimes. He then signed written confessions for more than a dozen other crimes, including eleven murders. The jury was not told that he was illiterate.<sup>2</sup>
- Davis testified at a pre-trial hearing that he had signed the confessions under duress. He alleged that he was taken out of police car, unshackled, and told he could sign or make a run for it.<sup>3</sup>
- Before the trial, the prosecutor acknowledged that several of Davis's confessions appeared to be false.<sup>4</sup>
- The prosecution acknowledged that Davis was not the triggerman in the Biebel killing.<sup>5</sup>
- Davis's confession named Richard Holman as triggerman; Holman was never tried in relation to the murder.<sup>6</sup>
- The state presented no physical evidence to link Davis to the crime scene at the time of the crime.<sup>7</sup>
- Students at Medill School of Journalism at Northwestern University, working under Professor David Protess, found many inconsistencies in the confessions. One of the officers who took them down acknowledged that they were not read to Davis.<sup>8</sup>
- Davis refused to allow his lawyers to present evidence of his psychological disorders at his sentencing hearing, although this information might have helped avert a death sentence.<sup>9</sup>
- Three murders to which Davis had confessed were cited to the jury to gain a death sentence, even though prosecutors acknowledged that Davis could not have committed them.<sup>10</sup>

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<sup>1</sup> Clemency Petition, p. 10

<sup>2</sup> Clemency Petition, p. 11-12

<sup>3</sup> Clemency Petition, p. 17

<sup>4</sup> Id. p. 13; Volume of Exhibits from Clemency Petition, exhibit 5, news article September 19, 1979

<sup>5</sup> Clemency Petition, p. 9

<sup>6</sup> Id.

<sup>7</sup> Clemency Petition, p. 21-22

<sup>8</sup> Center on Wrongful Convictions website, [www.Illinoisdeathpenalty.com/Girvies Davis](http://www.Illinoisdeathpenalty.com/Girvies%20Davis)

<sup>9</sup> Clemency Petition, p. 32-33

<sup>10</sup> Center on Wrongful Convictions website, [www.Illinoisdeathpenalty.com/Girvies Davis](http://www.Illinoisdeathpenalty.com/Girvies%20Davis); Clemency Petition, p. 33

- The prosecution systematically used preemptory challenges to exclude all African Americans from the jury. Intentional exclusion of jurors solely on the basis of race has since been found to be unconstitutional.<sup>11</sup> (*Batson v. Kentucky*, 1986)

## **TRIAL**

Davis, known to the police as a small-time hustler and a thief, was picked up by the police and driven around East St. Louis in a squad car. He testified at a pre-trial hearing that he confessed to a large number of crimes under duress. He was then coerced into signing a series of confessions. Since he was illiterate, he could not read the confessions he signed. In his confession to the Biebel murder, he said he was outside the house when Richard Holman allegedly shot the victim. This confession was the only evidence linking Davis to the crime. Holman was never tried for the murder.

During the sentencing phase of the trial, the jury was never told that Davis was illiterate, nor was it told about the brain damage he had sustained when he was hit by a truck as a child. He was considered borderline mentally retarded and suffered from mental illness and alcoholism. Davis, whether out of shame or ignorance, did not allow his attorneys to present this information to the jury. Had they been able to do so, it might have helped him to avoid a death sentence.<sup>12</sup>

## **APPEALS**

Davis's conviction and sentence were affirmed by the Illinois Supreme Court on February 18, 1983. Justice Joseph Goldenhersh voted to affirm the conviction, but dissented on the sentence on the grounds that there was no evidence that Davis, not Holman, had been the triggerman. Justice Seymour Simon dissented on both conviction and sentence. The St. Clair County Circuit Court dismissed Davis's petition for post conviction relief without a hearing. The Illinois Supreme Court unanimously denied his appeal on December 21, 1987. On January 13, 1994 the U.S. District Court and the Seventh Circuit Court of Appeals denied Davis's petition for federal *writ of habeas corpus*. His petition for a rehearing *en banc* by Seventh Circuit was denied on April 13, 1994.<sup>13</sup>

## **CONCLUSION**

Girvies Davis was executed despite compelling evidence of his innocence. The state intentionally excluded all African Americans from the jury, a practice later found to be an unconstitutional form of racial discrimination. The only evidence against Davis was his confession, which he claimed was coerced. Many of his other confessions were found to be false. Other evidence, such as his illiteracy, brain damage, and mental impairments was not presented to the jury. Another man, thought to be the triggerman in this case, was never tried for the crime.

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<sup>11</sup> Clemency Petition, p. 22

<sup>12</sup> Clemency Petition, p. 3

<sup>13</sup> *Id.* at Girvies Davis, defendant case data

# Larry Griffin (Missouri)

## ALLEGATION

On June 21, 1995, the State of Missouri, with the acquiescence of the federal government, executed Larry Griffin by lethal injection. The state and federal governments failed to ensure Griffin's right to a fair and impartial trial. The unfair trial resulted in Griffin's execution.

## CRIME

Quintin Moss was killed in a drive-by shooting while allegedly dealing drugs on a street corner in St. Louis, Missouri on June 26, 1980. Griffin was arrested, tried, and convicted for the murder.

## SALIENT ISSUES

- Larry Griffin's lawyer was a recent law school graduate who had never tried a murder case. He failed to provide Griffin with competent legal representation. He failed to investigate adequately and thus did not find evidence of, or identify eyewitnesses who could testify to, Griffin's innocence.<sup>1</sup>
- Three eyewitnesses were able to substantiate Griffin's claim of innocence.<sup>2</sup>
- The state's primary witness later recanted his testimony and discredited his identification of Larry Griffin, claiming the identification process was highly prejudicial.<sup>3</sup>
- Evidence suggests that, prior to testifying, the state's primary witness was promised a reduced sentence in exchange for his testimony. The jury was not provided with this information.<sup>4</sup>
- Investigations conducted after the trial revealed two new eyewitnesses who provided accounts of the incident that corroborated Griffin's innocence.<sup>5</sup>
- One eyewitness testified under oath that Griffin was not involved in the killing.<sup>6</sup>
- Another eyewitness, who knew both the victim and Larry Griffin, stated in a sworn affidavit that he saw the shooting, that he knew Larry Griffin, and that Griffin did not participate in the shooting.<sup>7</sup>
- Forensic evidence from the car and weapons failed to link Griffin to the murder.<sup>8</sup>
- The prosecution suppressed information about a witness who could testify that Griffin was not involved in an earlier attempt on the victim's life.<sup>9</sup>
- The "actual innocence" standard imposed by the U.S. Supreme Court in reviewing state court decisions resulted in Griffin's actual innocence claims not being heard by the courts despite substantial evidence of innocence.<sup>10</sup>

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<sup>1</sup> Clemency Petition, p. 3, 14; Narrative on case, provided by appellate attorney Kent Gipson, p. 2, 34-37

<sup>2</sup> Id. p. 24

<sup>3</sup> Id. p. 2-4, 18-20, 27

<sup>4</sup> Id. p. 3-4

<sup>5</sup> Id. p. 23-24, footnote, 24

<sup>6</sup> Id. p. 6, 20-23, Narrative on case, p. 1, "Kerry Caldwell"

<sup>7</sup> Id. p. 23-24; Narrative on case, p. 2

<sup>8</sup> Clemency Petition, p. 39

<sup>9</sup> Id. p. 39 (Trial Transcript, p. 243-246); Id. p. 7-8 *Herrera v. Collins*, 113 S. Ct. 853 (1993); *Schlup v. Delo*, 115 S. Ct. 851 (1995); clemency petition, p. 24-25

## **TRIAL**

Larry Griffin was convicted of murdering Quintin Moss based largely on the testimony of one eyewitness, Robert Fitzgerald, who had been at the scene of the killing. Shortly after the murder, Fitzgerald made a positive photo identification of Griffin. He then testified at trial that he saw three black males in the car from which the shots were fired and that he could identify Larry Griffin as one of them. He testified that Griffin shot at the victim through the window of the car with his right hand. Griffin's attorney did not challenge this, even though Griffin was, in fact, left-handed. He did present evidence that Griffin had seriously injured his left arm a few weeks earlier, but without evidence that Griffin was left-handed, the relevance of the testimony was lost to the jury. Larry Griffin's fingerprints were not found on either the car or the weapons.<sup>11</sup> All other evidence against Griffin was circumstantial.

Griffin's lawyer failed to present a competent defense. In addition to missing important opportunities to challenge the state's case, he presented an alibi defense without investigation of the alibi. The prosecution conducted its own investigation and was able to discredit the alibi, showing that the alibi witness had erred about the day he and Griffin had been together, thus making it appear that the alibi had been fabricated.<sup>12</sup>

Post-trial investigations by Griffin's lawyers revealed police and prosecutorial misconduct prior to and at the trial. The prosecutor had cut a deal for one witness' testimony. The prosecution failed to reveal that there were two additional eyewitnesses who confirmed that Griffin was not involved in the murder. The first testified that he witnessed the shooting, and he did not recognize any of the three men who killed the victim. He knew Griffin and was certain that Griffin was not in the car with the shooters. The other witness, a 16-year-old member of a gang led by Griffin's brother at the time of the murder, also testified that Larry Griffin was not involved in the shooting and named the three men who were – all members of the gang led by Griffin's slain brother. He was able to describe the exact sequence of events leading to Moss's murder and to testify to the killers' motive. He also was able to identify correctly the place where the car and guns had been abandoned and later found by the police.

Fitzgerald, the eyewitness used by the prosecution to convict Griffin, also later provided information that helped support Griffin's claim of innocence. Fitzgerald admitted that he perjured himself at Griffin's trial when he positively identified Griffin in court. He also testified to the suggestive nature of the original police identification process. According to Fitzgerald, one of the investigating officers showed him a photograph of Griffin and told him, "We know this man is involved." Fitzgerald was then presented with five photos from which he identified Griffin.<sup>13</sup>

## **APPEALS**

Griffin's trial lawyer also served as his lawyer in the initial appeals despite his inexperience and apparent incompetence. The conviction and sentence were affirmed in state appeals courts without rehearing – decisions upheld by the U.S. District Court and, initially, by the Eighth Circuit Court of Appeals. Due to the incompetence of the original lawyer in failing to identify and raise several constitutional claims, the Eighth Circuit vacated its earlier decision and remanded the case back to the

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<sup>10</sup> Clemency Petition, p. 12

<sup>11</sup> Id. p. 35-36 (Trial Transcript, p. 329-340)

<sup>12</sup> Id. p. 19 (Hearing trial, pp. 19-23)

<sup>145</sup> Id.

district court for further proceedings. The Eighth Circuit appointed a new lawyer, who amended Griffin's petitions to reflect the constitutional claims, including the claim that Griffin's first lawyer failed to provide competent counsel and thus, Griffin did not receive a fair trial. A limited evidentiary hearing was held by the Federal District Court, at which new evidence of Griffin's innocence was produced, including testimony from the two new witnesses, and Fitzgerald's testimony that he had perjured himself in his in-court identification of Griffin. Despite the constitutional claims and the new evidence of Griffin's innocence, the District Court again dismissed Griffin's petitions for relief. The Eighth Circuit affirmed the denial of all relief without permitting Griffin or his new lawyer to brief the court – a decision upheld by the U.S. Supreme Court.

## **CONCLUSION**

Larry Griffin was executed despite compelling evidence of his innocence and evidence that he did not receive a fair trial. Griffin's original lawyer lacked the necessary experience to undertake capital cases and failed to provide Griffin with competent counsel. He neither found nor presented evidence of his innocence or evidence challenging key prosecution witnesses. He also made a highly prejudicial error when he failed to confirm independently the information provided by the defense's alibi witness at trial. Although the Eighth Circuit Court of Appeals agreed that Griffin's original lawyer failed to provide competent counsel, federal courts, including the U.S. Supreme Court, upheld Griffin's conviction and death sentence. In so doing, the courts relied on the new, and unreasonably high, standard of review for cases claiming innocence, which had evolved during Griffin's appeals. With issues of innocence still unresolved, Griffin was executed.

# Roy Michael Roberts (Missouri)

## ALLEGATION

On March 10, 1999, the State of Missouri, with the acquiescence of the federal government of the United States, executed Roy Michael Roberts. The state and federal governments failed to ensure Roberts's right to a fair trial. The unfair trial resulted in Roberts's execution.

## CRIME

Thomas Jackson, a guard at the Moberly Training Center for men, was stabbed to death during a prison riot on July 3, 1983. Roy Roberts was accused of holding Jackson, while other inmates stabbed him. He was tried and convicted of capital murder.

## SALIENT ISSUES

- No physical evidence linked Roberts to the killing.<sup>1</sup>
- Many inmates testified at Roberts's trial that he was elsewhere during the riot and did not take part in the killing.<sup>2</sup>
- The four eyewitnesses who testified against Roberts in the guilt phase of his trial did not identify Roberts, a large man who weighed over 300 pounds, in their initial statements.<sup>3</sup>
- All of the surviving guards who could identify who stabbed Jackson named another man as the killer. That man was tried and received a life sentence.<sup>4</sup>
- At trial, Roberts's lawyer failed to cross-examine three of the four eyewitnesses for the prosecution about their initial failure to identify Roberts.<sup>5</sup>
- None of the witnesses or the prosecution claimed Roberts had a weapon or that he had stabbed the victim.<sup>6</sup>
- Although the victim was covered in blood after he was stabbed in the eye, the heart, and the abdomen, Roberts's clothes had no blood on them.<sup>7</sup>
- A 17-page summary report by the investigator for the Department of Corrections released two weeks after the riot did not mention Roberts as a suspect and indicated there was not likely to be other identification of prisoner involvement.<sup>8</sup>
- Two days after this report, Officer Halley implicated Roberts in the murder despite no mention of him in his initial report.<sup>9</sup>
- An inmate who testified against Roberts recanted his testimony and stated that he had lied to get parole from the State of Missouri.<sup>10</sup>

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<sup>1</sup> Clemency Application of Roy Michael Roberts, In the Offices of the Governor and the Missouri Board of Pardons and Parole, Feb. 1999, p. 4, 13-15

<sup>2</sup> Id. p. 7

<sup>3</sup> Id. p. 7-13, Exhibit L, 4: Statement of Officer Hess, July 4, 1983; Exhibit J, 6 – Statement of Officer Wilson, September 13, 1983

<sup>4</sup> Id. p. 3

<sup>5</sup> Id. p. 4, 5

<sup>6</sup> Id. p. 13, B

<sup>7</sup> Id. p. 13

<sup>8</sup> Id. p. 5

<sup>9</sup> Id. p. 9

- Roberts passed a polygraph test in which he attested to his innocence just weeks before his execution.<sup>11</sup>

## **TRIAL**

Roy Roberts was convicted of capital murder for allegedly holding down a prison guard while other inmates stabbed him to death. No physical evidence ever tied Roberts to the crime. Although it was a bloody murder, the clothes Roberts was wearing on the day had no blood on them. Immediately after the riot, prison officials did a thorough search and confiscated all bloodied clothes from inmates. Roberts's clothes were not confiscated because they were not bloody.

Roberts was convicted based on what has been called “evolving testimony,” that is testimony that evolves over time to fit the facts of the crime. No one implicated Roberts in the murder in the two weeks following it. None of the eyewitnesses mentioned Roberts as being anywhere near the victim, much less holding him down, as was later alleged in testimony, despite the fact that Roberts, a large man weighing over 300 pounds, stood out in a crowd.

Two weeks after the murder, the Department of Corrections submitted a 17-page internal investigative report. It failed to identify Roberts as a participant in the murder. It confirmed that no one knew who, if anyone, had held down the victim. Nonetheless, three guards later testified that Roberts held down the victim. All of these guards knew Roberts prior to the murder and yet failed to identify him as a participant in the murder immediately following it. One of these officers was hypnotized to bolster his memory, and still did not identify Roberts. Roberts's lawyer cross-examined only one of the eyewitnesses about inconsistencies between his initial statements and his trial testimony. This eyewitness maintained that he had simply forgotten to report seeing Roberts holding Jackson. Roberts's attorney never cross-examined the other three.

## **APPEALS**

Roberts's appeals in the state courts were denied. In 1986, his direct appeal and his federal *writ of certiorari* were denied. Again in 1989, his *writ of certiorari* was denied by the court *en banc*. The U.S. Supreme Court denied his final petition for *certiorari* on Jan 11, 1999. Shortly before his execution, his attorneys filed a *writ* in the Missouri Supreme Court claiming that Roberts was innocent and that the execution of an innocent man violated due process. This petition was denied and an appeal was made to the U.S. Supreme Court, which was denied hours before his execution.

## **CONCLUSION**

Roy Michael Roberts was executed despite compelling evidence of his innocence. There was no evidence that Roberts stabbed the victim. There was very little evidence that he participated in the murder. There was substantial evidence of his innocence. In fact, there is some evidence that he was innocent of the crime that put him in prison in the first place.<sup>12</sup> Roberts's court-appointed lawyers failed to challenge the little evidence that there was against Roberts, an omission that rendered his assistance to Roberts ineffective and Roberts's trial unfair. Nonetheless, Roberts was executed.

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<sup>10</sup> Affidavit, Richard Hays, investigator with statement from Michael Dunn, February 26, 1999

<sup>11</sup> Report from Don Dunlap & Associates, certified polygraphists, February 20, 1999

<sup>12</sup> Clemency Petition, p. 3, footnote 2

# Odell Barnes, Jr. (Texas)

## ALLEGATION

On March 1, 2000, the State of Texas, with acquiescence by the federal government, executed Odell Barnes by lethal injection. The state and federal governments failed to ensure Barnes's right to a fair and impartial trial. The unfair trial resulted in Barnes's execution.

## CRIME

Helen Bass was murdered on November 30, 1989. She had been shot, bludgeoned, and stabbed. She was found face down on her bed, nude. A rifle butt was found in her room and a kitchen knife covered in blood was found on the floor just inside the door to her house. The room was in shambles. Her jewelry box and two purses appeared to have been dumped and scattered. Other belongings were discovered near a fence outside her house. Barnes was arrested, tried, and convicted for the murder.

## SALIENT ISSUES

- The original defense attorneys appointed by the state failed to investigate, and thus failed to discover and present evidence of Barnes's innocence.<sup>1</sup>
- The original defense attorneys failed to have evidence that was used to convict Barnes tested by defense experts.<sup>2</sup>
- Counsel who took over the case for federal appeals sought analysis of the crime scene, fingerprint identification, DNA testing, and additional time to conduct a factual investigation. All these requests were denied.<sup>3</sup>
- Counsel in federal appeals nonetheless carried out independently funded investigations that yielded substantial evidence that raised doubts about Barnes's guilt.
- Blood on Barnes's coveralls, part of the evidence used to secure his conviction, contained a preservative found in test tubes used to store blood. The expert opinion of the chemist, hired by the defense, was that it did not come from "original, legitimate crime scene evidence . . . deriving from natural bleeding from a normal human being."<sup>4</sup>
- The primary eyewitness and his sister saw a man jump a fence near the crime scene one and one-half hours before the victim returned home.<sup>5</sup> The witness told his sister that the man was not Barnes, but testified at trial that it was Barnes.<sup>6</sup>
- The two main witnesses for the prosecution were implicated in the crime by independent witnesses.<sup>7</sup>

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<sup>1</sup> Petition for a *Writ of Certiorari* in the case of Odell Barnes, Jr. v. Gary Johnson, Supreme Court of the United States, October Term, 1999, p. 13

<sup>2</sup> Successor Application for *Writ of Habeas Corpus, Ex parte Odell Barnes, Jr.*, Court of Criminal Appeals, State of Texas and in District Court of Wichita County, Texas, 89<sup>th</sup> Judicial District, January 21, 2000, p. 2

<sup>3</sup> Petition for a *Writ of Certiorari, Odell Barnes, Jr. v. Gary Johnson*, Supreme Court of the United States, October Term, 1999, p. 4

<sup>4</sup> Successor Application for *Writ of Habeas Corpus, Ex parte Odell Barnes, Jr.*, Court of Criminal Appeals, State of Texas and in District Court of Wichita County, Texas, 89<sup>th</sup> Judicial District, January 21, 2000, p. 19

<sup>5</sup> Successor Application for *Writ*, 9

<sup>6</sup> Petition for *Writ of Certiorari*, p. 12 #6

<sup>7</sup> Id at Slip op. p. 12

- The fingerprint on the murder weapon was analyzed by the state and was found not to be Barnes's fingerprint.<sup>8</sup> A defense expert identified the fingerprint as belonging to one of the state's main witnesses.<sup>9</sup>
- A lamp on which Barnes's fingerprint was found, and that the state claimed had been recently acquired by the victim, had been in the victim's home for at least five years.<sup>10</sup> Barnes had been in the house numerous times and had helped move furniture.<sup>11</sup>
- Evidence suggests that one of the state's witnesses cut a deal with the District Attorney on two drug charges pending against him in exchange for his testimony, although this was not revealed to Barnes's original trial lawyers.<sup>12</sup>

## **TRIAL**

Barnes was convicted of Helen Bass' murder. The prosecution's case against Barnes consisted primarily of circumstantial evidence. Two witnesses were presented to link Barnes to the murder weapon. There was substantial evidence implicating one of these witnesses in the murder. The other witness agreed to testify in exchange for a deal on two drug charges, despite a state policy prohibiting such deals. There was no other evidence that the gun had been in Barnes's possession or that he had used it. Two small spots of blood were found on coveralls in Barnes's car. The blood was consistent with the victim's blood type, which is also the blood type of 50% of the African-American population in the U.S. Another witness for the prosecution testified that he had seen Barnes jump a fence at the victim's house one and one-half hours before she returned from work, even though he had earlier told his sister that it was not Barnes. This witness admitted he was at least 45 yards away. Barnes's mother testified that she had brought the victim home that night and returned to her home whereupon her son arrived within five minutes.

Defense attorneys appointed by the state failed to carry out their own investigation or to test independently the forensic evidence. At trial, they did not present evidence of Barnes's innocence or challenge the prosecution's witnesses.

## **APPEALS**

Initial appeals at the state level were handled by Barnes's original state appointed lawyers. Both the District Court of Wichita County and the Court of Criminal Appeals affirmed the trial court's decision and upheld Barnes's conviction and sentence. Part way through the appeals process, new attorneys took over the case. Finding that independent investigations and forensic testing had never been done, they asked courts for funds and time to investigate. In Texas, new evidence must be introduced within 30 days of the original sentencing. They were repeatedly denied, but performed an investigation using volunteers and private funding, which uncovered substantial evidence of innocence. They also uncovered evidence of prosecutorial misconduct, perjury, and constitutional violations. Nevertheless, state and federal courts denied relief.

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<sup>8</sup> Successor App. For *Writ*, p. 16

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* p. 19

<sup>11</sup> *Id.* p. 18

<sup>12</sup> *Id.* p. 29

## **CONCLUSION**

Odell Barnes was executed despite compelling evidence of his innocence that was never heard by any court in the United States. His original court-appointed defense attorneys failed to provide him with adequate legal counsel. They neither found nor presented evidence of his innocence or evidence challenging key prosecution witnesses. Once the opportunity had been missed at the trial level, state and federal appeals courts refused to hear new evidence – evidence that had been suppressed by the prosecution and that had gone undiscovered by the defense. In many cases, inflexible time limits and increasingly rigid thresholds for review, such as those imposed by the Federal Anti-Terrorism and Effective Death Penalty Act, lead to violations of constitutional protections and human rights. Odell Barnes's was one such case. Despite the fact that he did not receive a fair trial and in spite of evidence of his innocence, no appeals court would hear his case.

# Robert Nelson Drew (Texas)

## ALLEGATION

On August 22, 1994, the State of Texas, with the acquiescence of the federal government, executed Robert Nelson Drew. The state and federal governments failed to ensure Drew's right to a fair and impartial trial. The unfair trial resulted in Drew's execution.

## CRIME

On February 21, 1983, Jeffrey Mays was stabbed to death. He had been traveling with a friend and three hitchhikers they had picked up. Two of the hitchhikers, Robert Drew and Ernest Puralewski, were arrested, charged, and convicted of capital murder.

## SALIENT ISSUES

- Drew's co-defendant, Ernest Puralewski, pleaded guilty to the murder in exchange for a lesser sentence. He later confessed that he, alone, killed Jeffrey Mays.<sup>1</sup>
- Puralewski signed a sworn affidavit fully exculpating Drew.<sup>2</sup>
- The murder weapon was owned by and in the possession of Drew's co-defendant, Puralewski, when Puralewski was arrested.<sup>3</sup>
- Drew was convicted largely on the testimony of one eyewitness, Bee Landrum.
- Landrum later admitted that he did not see what happened and recanted his original testimony.<sup>4</sup>
- Landrum took two polygraph tests; the first was inconclusive and the second showed "no deception."<sup>5</sup>
- The state withheld a tape-recorded interview with Landrum made hours after the killing in which he admitted not having seen the murder. The tape was suppressed for more than five years after the trial.<sup>6</sup>
- Both the prosecution and the defense acknowledged that Drew's knife was not the murder weapon and did not cause fatal wounds.<sup>7</sup>
- Puralewski pleaded guilty to one count of capital murder and was sentenced to 60 years.<sup>8</sup>

## TRIAL

Robert Drew was tried and convicted largely on the testimony of one man, Bee Landrum, who claimed to be an eyewitness to the murder. Landrum's testimony was extremely shocking, powerful, and graphic. He claimed he could see all the people at the crime scene and that he saw Drew pull the

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<sup>1</sup> Application for *Writ of Habeas Corpus*, p. 5

<sup>2</sup> Id. p. 5, 10, 11-12

<sup>3</sup> Id. p. 9

<sup>4</sup> Petition for *Writ of Certiorari*, October, 1993, p. 11-12, B

<sup>5</sup> Application for *Writ of Habeas Corpus*, p. 17-18

<sup>6</sup> Petition for *Writ of Certiorari*, p. 12-13, C

<sup>7</sup> Petition for *Writ of Habeas Corpus*, p. 9

<sup>8</sup> Id. p. 10

victim's head back and slash his throat. He even re-enacted the killing for the jury.<sup>9</sup> A tape-recorded interview with Landrum, made several hours after the murder in which he admitted that he had not seen the killing, was not offered into evidence at trial. Drew's co-defendant, Ernest Puralewski, who was awaiting his own trial for capital murder, refused to testify at Drew's trial. Drew was sentenced to death.

## APPEALS

In March 1984 Drew filed a motion for a new trial based on Puralewski's confession and affidavit exonerating Drew.<sup>10</sup> The motion was denied without opinion, a decision affirmed by the Texas Court of Criminal Appeals. According to the court, the motion, filed 101 days after sentencing, was 71 days too late and thus no court in Texas could hear the motion or grant relief.<sup>11</sup> A petition for *writ of habeas corpus* was filed in state court based on new evidence of Drew's innocence, including evidence that had been suppressed by the state. It was denied.<sup>12</sup> Drew filed a petition for *writ of habeas corpus* in federal district court on June 14, 1988. This court denied relief, and the Fifth Circuit Court of Criminal Appeals affirmed. Drew's execution was stayed November 25, 1992 by a timely filing of a *writ of certiorari*. The U.S. Supreme Court denied review on June 28, 1993. Drew had another execution date for October 14, 1993, which was set aside by a new *habeas* application in state court. It went on to the Court of Criminal Appeals and was denied in an unpublished order, September 30, 1993. Drew filed a second petition for *habeas* challenging the bias of the state trial judge. Three days later the federal district court dismissed that petition. The Fifth Circuit affirmed on October 11, 1993. Drew filed a petition for *certiorari* in the U.S. Supreme Court, which denied review. He received a temporary injunction on October 13, 1993, just six hours before his execution, to resolve pending issues. Ultimately, all relief was denied, and he was executed.

## CONCLUSION

Robert Nelson Drew was executed despite evidence that he did not receive a fair trial. Because of a strictly imposed time limit, Texas courts refused to grant Drew a new trial despite substantial evidence of his innocence that only became available after the trial. The state withheld evidence of Drew's innocence and discredited their sole eyewitness, whose testimony was essential in securing Drew's conviction. The withholding of evidence rendered Drew's trial unfair.

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<sup>9</sup> Id. p. 9

<sup>10</sup> Application for *Writ of Habeas Corpus*, p. 12; Motion for Remand for Fair Hearing on Evidence of Innocence, Application For *Writ of Habeas Corpus*, Additional Evidence, July, 1994, all

<sup>11</sup> Id. p. 12; Memorandum in Support of Plaintiff's 1<sup>st</sup> Original Petition For Declaratory and Injunctive Relief and *Writ of Mandamus*, October 5, 1993, p. 5

<sup>12</sup> Id. p. 15, footnote #10

# Gary Graham (Texas)

## ALLEGATION

On June 22, 2000, the State of Texas, with the acquiescence of the federal government, executed Gary Graham by lethal injection. The state and federal government failed to ensure Graham's right to a fair and impartial trial in which all the facts could be presented. The unfair trial resulted in Graham's execution.

## CRIME

On May 13, 1981 at approximately 9:30 p.m., Bobby Grant Lambert was shot and killed, execution-style, as he walked across the parking lot of a Safeway store in Houston, Texas. Gary Graham was arrested shortly after the murder for unrelated crimes, and was then charged with Lambert's murder, for which he was tried and convicted.

## SALIENT ISSUES

- No physical or circumstantial evidence placed Graham at the crime scene.<sup>1</sup>
- The prosecution's case against Graham consisted almost entirely of the testimony of a single eyewitness who saw him through her car window from 30 to 40 feet away.<sup>2</sup>
- In a reportedly suggestive identification procedure, this witness failed to identify Graham in a photo array. She subsequently identified him in a line-up in which he was the only person who also had been in the photo array.<sup>3</sup>
- None of the other four eyewitnesses identified Graham as the killer or placed him at the crime scene.<sup>4</sup>
- In the police line-up, which included Graham, one eyewitness specifically excluded Graham.<sup>5</sup>
- Graham's physical appearance differed in important respects from the descriptions provided by several witnesses.<sup>6</sup>
- Two witnesses, who saw the man thought to be the killer at close range, have provided affidavits in which they assert that, having viewed Graham's photograph, they are positive that he was not the shooter.<sup>7</sup>
- Graham's court-appointed trial lawyer did not interview or present at trial the other eyewitnesses or Graham's alibi witnesses.<sup>8</sup>
- The Houston Police Department's firearms expert found that the bullet that killed the victim was not, and could not have been, from Graham's gun.<sup>9</sup>

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<sup>1</sup> Original Petition for *Writ of Habeas Corpus*, October 1999, p. 3

<sup>2</sup> *Id.* p. 3

<sup>3</sup> *Id.* p. 7-9

<sup>4</sup> *Id.* p. 3-7

<sup>5</sup> *Id.* p. 4

<sup>6</sup> *Id.* p. 3-7

<sup>7</sup> *Id.* p. 3-7

<sup>8</sup> *Id.* p. 3

<sup>9</sup> *Id.* p. 10

- On appeal to the U.S. Court of Appeals for the Fifth Circuit, the court found that “there is a large body of relevant evidence that has not been presented to the state court” and sent the case back to the state of Texas for an evidentiary hearing.<sup>10</sup>
- The state of Texas dismissed Graham’s application for such an evidentiary hearing.<sup>11</sup>
- Graham returned to federal court, but the Anti-Terrorism and Effective Death Penalty Act of 1996, which subjects cases to a much higher threshold for federal review, had been enacted by Congress in the interim, and thus the Fifth Circuit refused to review the decision of the state court.<sup>12</sup>
- The Supreme Court of the United States refused to review the contradictory decisions.<sup>13</sup>
- Despite substantial evidence of innocence, Governor George W. Bush refused to grant Graham a 30-day stay of execution and the Board of Pardons and Paroles denied clemency.

## **TRIAL**

Gary Graham was convicted based on the testimony of one eyewitness, Bernadine Skillern, who witnessed the crime from 30 to 40 feet away while she sat in her car in the store parking lot at 9:30 at night. She remembered the killer as being clean-shaven with a short afro. She failed to identify Graham in a photo display. However, Graham’s photo was the only one fitting her description, and she remarked that it might be him. The next day she viewed a line-up in which Gary Graham was the only person she had seen previously in the photo array. She then identified him as the killer. The jury did not hear evidence that Skillern had failed to identify Graham in her initial review of photos. In fact, she testified that she initially did identify him, despite the police report that said she did not.

There were four other eyewitnesses in the parking lot or the store that night. Two were called for a line-up, but failed to identify Graham. They were not asked specifically if Graham was the shooter. The other two witnesses were certain that Graham was not the shooter. They had seen a man, whom they described as the killer, waiting in front of the store. Neither of these witnesses was ever heard by the jury that convicted Graham or by any judge reviewing his appeals at either the state or federal level.

Lambert was killed by a .22 caliber bullet. Although Graham had a .22 caliber pistol, according to the Houston Police Department’s firearms expert, it was not the gun used in the killing. Thus, no forensic evidence linked Graham to the murder. The jury was never given this information.

No motive for murder was established at trial. During a ten-day period following Lambert’s murder, Graham did commit a dozen aggravated robberies; he pled guilty to all charges. These crimes bore no similarity to the murder, but were similar to each other. Lambert had not been robbed and he and Graham did not know each other. Lambert, a white man, had faced federal drug trafficking charges in Oklahoma City after his arrest in 1980. He was forced to testify before a federal grand jury about the persons for whom he was transporting drugs. He was killed soon after he testified. Lambert’s attorneys informed Graham’s counsel before the execution that they had reason to believe that Lambert was killed by the drug organization with which he was involved.

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<sup>10</sup> Clemency Petition , p. 16-17

<sup>11</sup> Id. p. 17

<sup>12</sup> Id. p. 17-18

<sup>13</sup> Id. p. 17-18

Graham's court-appointed trial attorney failed to investigate, interview, or call to the stand Graham's alibi witnesses or the four eyewitnesses who could have testified for the defense. Evidence of Graham's innocence was never heard in a court of law.

## **APPEALS**

Graham's court-appointed trial attorney failed to produce evidence of Graham's innocence at trial, as well as at his first state and federal *habeas corpus* proceedings in 1988 and 1993. Only after a second round of state and federal appeals in 1993 was the evidence of innocence presented. State courts refused to re-examine the case and denied the application without a hearing. In Texas, new evidence must be introduced within 30 days of sentencing. Graham was then required to show evidence of actual innocence in order to qualify for federal review. On appeal to the U.S. Court of Appeals for the Fifth Circuit, the court found that "there is a large body of relevant evidence that has not been presented to the state court" and sent the case back to Texas for an evidentiary hearing. Texas again refused to hold an evidentiary hearing. Graham immediately returned to the Fifth Circuit, but the Anti-Terrorism and Effective Death Penalty Act of 1996, which subjects cases to a much higher threshold for federal review, had been enacted by Congress in the interim, and thus the Fifth Circuit refused to review the decision by the state court.

## **CONCLUSION**

Gary Graham was executed despite compelling evidence of his innocence and evidence that he did not receive a fair trial. A substantial body of exculpatory evidence existed. Initially, Graham's court-appointed lawyer failed to seek and find such evidence. His later defense counsel did investigate and did find this evidence. By then, the trial and initial appeals already had been completed. Defense lawyers were barred from ever presenting the evidence in any court by both state and federal courts. Texas courts repeatedly refused to hear new evidence, despite eventually being directed to do so by the Fifth Circuit Court of Appeals. The Anti-terrorism and Effective Death Penalty Act (AEDPA), enacted in 1996 in the final stages of Graham's appeals, then limited federal jurisdiction over the case. In Graham's case, as in an increasing number of other cases, rigid thresholds for review and inflexible time limits for appeals, such as those imposed by the AEDPA, lead to violations of constitutional protections and human rights. Both state and federal courts, including the U.S. Supreme Court, denied Graham relief. In spite of substantiated allegations that Graham never received a fair trial and compelling evidence of his innocence, Graham was executed.

# Richard Wayne Jones (Texas)

## ALLEGATION

On August 22, 2000, the State of Texas, with the acquiescence of the federal government, executed Richard Wayne Jones by lethal injection. The state and federal governments failed to ensure Jones's right to a fair and impartial trial. The unfair trial resulted in Jones's execution.

## CRIME

On February 19, 1986, Tammy Livingston was abducted, robbed, and then stabbed 19 times and murdered. Her body was left in a field and, later, set on fire. The next day, a woman was arrested while trying to cash checks belonging to the victim. Under interrogation, the woman said she had obtained the checks from her boyfriend, Richard Jones. Jones was arrested that evening and was subsequently charged with and convicted of the crimes.

## SALIENT ISSUES

- After 12 hours of interrogation and 21 hours in custody without food or sleep, during which police exerted undue influence by threatening Jones and his pregnant girlfriend with the death penalty if he did not confess, Jones confessed.<sup>1</sup>
- He signed the confession under duress, only after he was told that his girlfriend's release was contingent upon his signing the statement.<sup>2</sup>
- Jones's girlfriend signed two statements implicating Jones, but alleged that police changed her words when writing them down.<sup>3</sup> She claimed the police told her that Jones had fled, and she was going to have to take the rap for the murder.<sup>4</sup>
- Three eyewitnesses to the abduction provided a description of the suspect as a clean-cut, white male with reddish-brown hair, who was wearing a red shirt the night of the murder. Jones had blonde hair, a mustache, and was wearing a brown and gray plaid shirt the night of the murder.<sup>5</sup>
- Two of the three eyewitnesses to the abduction failed to identify Jones in a line-up. Their failure to identify him was omitted from the police report.<sup>6</sup>
- One eyewitness identified Jones, even though he did not fit her original description.<sup>7</sup>
- Despite the bloodiness of the murder, only two small spots of blood were found on Jones's jeans, and no blood was found on his shirt.<sup>8</sup>
- According to Jones, his sister admitted to him that she and her boyfriend, Walt Sellers, committed the crimes.<sup>9</sup>

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<sup>1</sup> *Writ of Habeas Corpus*, August 12, 2000, p. 10-12, 20; In Re Richard Wayne Jones, Application for Reprieve From Execution, Commutation of Death Sentence, and Conditional Pardon, p. 12-13, Exhibit #2, Jones Affidavit, p. 5

<sup>2</sup> *Writ of Habeas Corpus*, p. 12

<sup>3</sup> Id. p. 9-10, Clemency Petition, p. 18-19, Clemency Exhibits, #3 – Grand Jury Testimony, Yelena Comalander

<sup>4</sup> In Re Richard Wayne Jones, Application for Reprieve From Execution, etc. p. 14

<sup>5</sup> *Writ of Habeas Corpus*, 2000, p. 20-21

<sup>6</sup> Id. p. 20-22

<sup>7</sup> Id.

<sup>8</sup> Id. p. 13, 15-16

- From the time he was arrested, Jones maintained that Sellers was the actual killer.<sup>10</sup>
- Two witnesses gave sworn statements that they heard Sellers implicate himself in the murder.<sup>11</sup>
- Witnesses corroborated Jones's testimony that Sellers had tried to sell items belonging to the victim.<sup>12</sup>
- Jones had an IQ of 75 and was considered borderline retarded.<sup>13</sup>
- DNA testing was requested and denied prior to execution.<sup>14</sup>

## TRIAL

Richard Wayne Jones was convicted of Tammy Livingston's murder largely on the basis of his coerced confession. While in police custody, Jones was denied food and sleep for 21 hours, and was threatened with the death penalty for himself and his girlfriend if he did not confess. The circumstances under which he confessed were coercive, particularly for a man who was diagnosed as being border-line mentally retarded and had grown up in state schools – the last of which had been closed down for brutality.

The evidence was overwhelmingly circumstantial and contradictory. Although there were three eyewitnesses, only one identified Jones in a police lineup. Jones, however, did not fit her original description of the abductor. A second witness failed to identify Jones in a police line-up.

Jones's sister, a drug addict, admitted to Jones that she and her boyfriend, Walt Sellers, committed the crimes. Sellers was never investigated as a possible suspect, despite his convictions for similar crimes during the period of 1985 to 1987. Sellers was arrested with a dagger one month after the murder. The Fort Worth Police confiscated the dagger and had it in their locker room at the time of Jones's pre-trial investigation, but never subjected it to forensic testing. It was later destroyed.<sup>15</sup> Three witnesses provided sworn statements that Sellers had been in possession of the victim's property shortly after the murder. After Jones's trial and conviction, two other witnesses gave affidavits in which they stated that Sellers told them he knew Jones was innocent.

## APPEALS

Jones's trial lawyer filed his initial state appeals, which were denied. On November 1, 1993, Jones filed an application for post conviction *habeas corpus*. After an evidentiary hearing, the trial court recommended relief be denied. The Court of Criminal Appeals adopted the recommendation, May 25, 1994. After obtaining new counsel, Jones was allowed to return to state appeals courts to raise issues, such as lack of effective trial counsel, which had not been raised by Jones's original lawyer. Jones filed a petition for *writ of habeas corpus* in federal district court on August 12, 1994. It was dismissed because several state issues were not resolved. He reapplied for state relief and was denied again with the Court of Criminal Appeals adopting the denial. The Fifth Circuit Court of Appeals affirmed his

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<sup>9</sup> *Writ of Habeas Corpus*, 2000, p. 13-14

<sup>10</sup> *Writ of Habeas Corpus*, 2000, p. 3,14; Supplement and Exhibits – Clemency Petition Supplement #4, Letter to wife from Jones, p. 2-3

<sup>11</sup> *Writ of Habeas Corpus*, 2000, p. 17-19, Exhibit B, C; Clemency Petition, Exhibits 10, 11 – Gravelle & Miller

<sup>12</sup> *Writ of Habeas Corpus*, 2000, p. 16-17; Clemency Petition, Exhibits 6, 7, 8 – affidavits: Daffern, King, Christian

<sup>13</sup> *Writ of Habeas Corpus*, 1993, p. 22-23: Cognitive Dysfunction

<sup>14</sup> *Writ of Habeas Corpus*, 2000, p. 22-24

<sup>15</sup> *Writ of Habeas Corpus*, 2000, p. 17, 18, footnote # 9

conviction in an unpublished opinion on April 7, 2000. The U.S. Supreme Court denied hearing his case.

## **CONCLUSION**

Richard Wayne Jones was executed despite compelling evidence of his innocence that was never sufficiently considered by any court in the United States. He was convicted largely on the basis of a confession obtained under coercion and duress. Both the state and federal courts failed to protect Jones's right to a fair trial by sanctioning the trial court's use of the coerced confession to convict Jones. State and federal appeals courts denied the legal challenge to Jones's conviction and the evidence of innocence uncovered after his conviction. Despite being subjected to police coercion, in violation of his constitutional and international human rights, and irrespective of evidence of his innocence, Jones was executed.

# Frank Basil McFarland (Texas)

## ALLEGATION

On April 29, 1998, the State of Texas, with the acquiescence of the federal government, executed Frank Basil McFarland by lethal injection. The state and federal governments failed to ensure McFarland's right to a fair and impartial trial by not providing effective counsel, withholding exculpatory evidence, permitting perjured testimony, making deals with witnesses, and using jailhouse informants. The unfair trial and refusal of the state to hear new evidence resulted in McFarland's execution.

## CRIME

On February 1, 1988, Terry Hokanson, a shoeshine girl at a topless bar, was seen near a parking lot by three boys. She called for help, stumbled, and fell to the ground. She had been stabbed repeatedly. Before she died, she told the boys that she thought she had known her assailants, but realized she did not know them when she accepted an invitation to get in their car and go partying. She was quite conscious. She gave her name and other details to a police officer, who inadvertently arrived at the scene of the crime while on routine patrol. McFarland was arrested over a month later.

## SALIENT ISSUES

- The state withheld evidence regarding the victim's dying declarations at the crime scene: Three boys found her and two of these boys spoke with her. The one who did not was the only one to testify at trial.<sup>16</sup>
- The two boys who spoke with the victim gave sworn oral statements and written statements just after the murder that were suppressed by the state and discovered seven years later through a Freedom of Information request.<sup>17</sup>
- All three boys saw a white car in the area; only one testified and he mentioned a white car.<sup>18</sup>
- Six state witnesses (5 police officers and one police dispatcher) testified that the boys said they saw a blue car, thereby perjuring themselves. McFarland's car was blue.<sup>19</sup>
- DNA testing by an FBI specialist on hair found in the victim's hands was inconsistent with that of McFarland or his co-defendant.<sup>20</sup>
- DNA testing on hairs found in McFarland's car was consistent with those from a rabbit skin coat worn by the victim. Semen in victim was consistent with McFarland and 6% of the Caucasian population in the U.S.<sup>21</sup>
- The state's star witness had warrants out for his arrest for parole violation. After McFarland was convicted, they were dismissed. This witness gave testimony about why he returned to testify and about a conversation he had with McFarland's co-defendant. This testimony was rebutted in affidavits by the witness' own mother and a witness to the conversation, Larry

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<sup>16</sup> First Amended Application for *Writ of Habeas Corpus*, April 1996, p. 34 and Appendix A, B

<sup>17</sup> Id. p. 34-35, Appendix A-D

<sup>18</sup> Id. p. 40

<sup>19</sup> Petition for *Writ of Certiorari*, motion for certificate of probable cause to appeal, 1997, p. 12

<sup>20</sup> Petition for *Writ of Habeas Corpus*, p. 28

<sup>21</sup> Id. p. 28, 29

York. Neither was called to testify. The star witness had previously been a police informant.<sup>22</sup>

- Another state witness had a pending arrest warrant which was later dismissed; when the warrant was recalled, the reason given was “key witness in a murder prosecution in Texas.”<sup>23</sup>
- McFarland’s co-defendant was murdered a month after Hokanson. Throughout McFarland’s trial, prejudicial statements were made by the prosecution that McFarland might have been involved in this murder. The actual murderer was convicted years later and had no connection to McFarland.<sup>24</sup>
- The police officer that spoke with the victim before her death was hypnotized to “enhance” his recall of her statements.<sup>25</sup> He then claimed she had said, “two white men she met at the club had raped and stabbed her.”<sup>26</sup>
- Another police officer testified that the victim did know McFarland previous to the murder; she did not name him before she died, bolstering the defense position that her assailants were unknown to her.<sup>27</sup>
- The deceased co-defendant’s girlfriend gave hearsay testimony that she had heard her boyfriend talk about the fact that he and McFarland killed a girl. She had not mentioned this in earlier statements.<sup>28</sup>
- The state presented evidence about McFarland’s character and acts of misconduct that should have been deemed inadmissible in the guilt/innocence phase of the trial.<sup>29</sup>
- Defense counsel failed to present evidence that the victim knew McFarland previously, that McFarland’s girlfriend also had a rabbit skin coat and had been in his car, and that two witnesses could have impeached star witness testimony.<sup>30</sup>

## THE TRIAL

Michael Wilson, McFarland’s co-defendant, was killed a month after Terry Hokanson. Two witnesses came forward and testified that Wilson had “confessed” to his involvement in the Hokanson murder and had implicated McFarland as the killer. One was Wilson’s girlfriend, Rachel Revill, who was an illegal immigrant, and the other was Mark Noblett, a known police informant who was able to walk away from an arrest warrant a day after the trial ended.<sup>31</sup> Noblett gave perjured testimony about Wilson’s confession that could have been rebutted by his own mother and Larry York, who were not called to testify. Both Revill and Noblett were questionable witnesses.<sup>32</sup> The prosecution used Wilson’s murder in the trial to suggest the possible involvement of McFarland in another violent crime, although McFarland was never formally charged.

Of the people who spoke with the victim before her death, two boys who had provided sworn statements during the investigation were never called by the state to testify. Furthermore, the state

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<sup>22</sup> Id., 51-53 and Petition for *Certiorari*, motion for certificate of probable cause to appeal, p. 14, Appendix F

<sup>23</sup> Petition for *Writ*, p. 60

<sup>24</sup> Id. p. 64

<sup>25</sup> Id. p. 65

<sup>26</sup> Id. p. 68

<sup>27</sup> Petition for *Writ*, p. 49

<sup>28</sup> Petition for *Writ*, p. 18-19

<sup>29</sup> Id. p. 48

<sup>30</sup> Id. p. 46, 49, 50

<sup>31</sup> First Amended Petition for *Writ of Habeas Corpus*, p. 53, A

<sup>32</sup> Id. p. 30

failed to turn the boys' statements over to the defense as exculpatory evidence. Neither boy ever mentioned a blue car, only a white car. Yet, five police officers and a dispatcher testified at trial that the boys had seen a blue car. A police officer used hypnosis to elicit quite different testimony from the original sworn statements.

Forensic evidence showed that McFarland was in a group of 6% of Caucasians in the U.S. who could have left semen in the victim. Hair in her hands was not from Wilson or McFarland, according to tests available at that time. The hair from a rabbit skin coat found in McFarland's car could have been from the victim's coat. It was not until sentencing that it was brought out that McFarland's girlfriend had a similar coat.

McFarland was convicted and sentenced to death.

## APPEALS

In 1993, McFarland had an execution date and no lawyer because Texas law at that time did not require the state to provide legal representation after his first automatic appeal. He contacted the now defunded Texas Resource Center, and they agreed to help him find counsel. State and federal courts, including the Fifth Circuit Court of Appeals, denied him both appointment of counsel and a stay of execution without the filing of a *habeas* petition. Hence, he filed a *pro se writ of habeas corpus*.<sup>33</sup> The U.S. Supreme Court stayed the execution and ordered federal courts to appoint him *habeas* counsel.<sup>34</sup> State courts and the Court of Criminal Appeals denied both the petition for *writ of habeas corpus* and requests for discovery on November 15, 1995.<sup>35</sup> Petition for *writ of certiorari* was filed in 1995 and a Motion for Certificate of Probable Cause to Appeal in April 1998. All were denied and McFarland chose not to file a Clemency Petition.

## CONCLUSION

Frank McFarland was executed despite compelling evidence of his innocence and evidence that his trial was unfair. His trial counsel failed to raise issues that would have been exculpatory. This occurred at the same time that the state suppressed evidence favorable to McFarland. Perjured testimony from police officers, key witnesses, and the use of an informant enabled the state to gain a conviction and death sentence.

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<sup>33</sup> Petition for *Writ of Habeas Corpus pro se*, p. 1

<sup>34</sup> See *McFarland v. Scott* 114 S. Ct 2563 (1994)

<sup>35</sup> Petition for *Writ*, p. 5-6

# Roger Keith Coleman (Virginia)

## ALLEGATIONS

On May 20, 1992, the State of Virginia, with the acquiescence of the federal government, executed Roger Keith Coleman in the electric chair. New evidence, including evidence that another man committed the crime, failed to stop his execution. The state and federal governments failed to secure Coleman's right to a fair and impartial trial. A missed deadline barred appellate review and resulted in his execution.

## CRIME

Wanda McCoy was attacked in, or just outside, her home on March 10, 1981. She was then raped and murdered. There was little sign of a struggle and, as she seldom opened the door when she was home alone, it was assumed she had allowed her attacker to come into the house. Roger Coleman, her brother-in-law, had access to the house and immediately became a suspect. Coleman, who worked in a mine, had reported to work that night but had left when his shift was dismissed. A fingerprint was found on the front screen door and a pry mark on the front door molding, and bloodstains inside the house.<sup>1</sup> The victim had broken fingernails, cuts on the hands, and a dark, dusty substance on her body. The autopsy report recorded wounds to her chest and throat, but did not mention defensive wounds on her hands or a bruise on her arm. Limited forensic testing was done.

## SALIENT ISSUES

- Coleman had a well-documented list of his whereabouts on the night of the murder and several alibi witnesses who gave affidavits.<sup>2</sup>
- The state's own timeline of events the night of the murder suggested it was unlikely Coleman could have committed the murder.<sup>3</sup>
- Physical evidence from the crime scene – including soil on McCoy's hands, an unanalyzed fingerprint on the front screen door of her house, and a pry mark on a door molding – contradicted the prosecution's theory that the victim willingly allowed her murderer to enter her home, a theory used to convict Coleman.<sup>4</sup>
- The prosecution claimed that there was little sign of a struggle. However, the victim had defensive wounds, including cuts on her hands, broken fingernails, and a bruise on her upper arm but the defense did not introduce this evidence.<sup>5</sup>
- Testing of semen did not rule out Coleman but later forensic opinions based on more sophisticated DNA testing indicated a second person may have participated in the crime.<sup>6</sup>

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<sup>1</sup> Crime Scene Report, Exhibits to 2<sup>nd</sup> Petition for *Writ of Habeas Corpus*, p. 24

<sup>2</sup> Clemency Petition, Exhibit 6: Affidavits by Sandra Ratliff, Gary Ratliff, Johnny Stiltner, Ronald Perkins; Exhibit 7: Coleman's corroborated timeline for night of the murder

<sup>3</sup> Clemency Petition, exhibit 7: Prosecutor's account of Coleman's whereabouts the night of the murder

<sup>4</sup> 2<sup>nd</sup> Petition for *Writ of Habeas Corpus*, see footnote 1; Clemency Pet., Exhibit 9: Affidavit of James McCloskey, p. 15-16, #35, #36

<sup>5</sup> *May God Have Mercy*, John C. Tucker, p. 74-75

<sup>6</sup> 2<sup>nd</sup> Pet. for *Writ of Habeas*, Exhibit V: Forensic Science Assocetty Smithiates, November 1990, p. 5, #2, #3

- At trial, the prosecution presented evidence given by a jailhouse informant who alleged Coleman had confessed to the crime. The informant was released from jail soon after testifying.<sup>7</sup>
- Another man later stated that he had killed Wanda McCoy. This man had a history of violence and rape.<sup>8</sup>
- Coleman's chances to appeal his conviction in state and federal courts were restricted when his lawyers missed a deadline for filing his original appeal in state court by one day.<sup>9</sup>

## THE TRIAL

There was intense pressure in the community for an arrest in the McCoy murder, and police were frustrated at the lack of evidence tying Coleman to the crime.<sup>10</sup> Coleman had been convicted of attempted rape several years earlier despite his denial of involvement and having an alibi.<sup>11</sup> He served almost two years in prison and was released with a record as a sex offender. This affected his trial for the McCoy murder. Furthermore, McCoy's husband had immediately named Coleman as a likely suspect because of his access to the McCoy household as Wanda's brother-in-law. An expert for the state examined two hairs taken from the victim's body, compared them with Coleman's, and found they were consistent with his hair type.<sup>12</sup> Coleman's attorney did not present effective challenges to this testimony.<sup>13</sup> The state presented a seemingly impossible series of events between Coleman's arrival at the mine and the victim's husband's discovery of her body, but the prosecution was able to point out some uncertainties in testimony of alibi witnesses. Blood type testing did not rule Coleman out, nor did it show he had a role in the murder. A jailhouse informant claimed Coleman had confessed to him while Coleman was in the county jail awaiting trial. No other suspect was asked to provide hair or blood samples for comparison with those recovered from the victim's body.<sup>14</sup> Roger Coleman was convicted and sentenced to death.

## APPEALS

Confusion and disagreements about deadlines in the state courts led to a judge's order refusing the state *habeas corpus* petition. Coleman's lawyers had 30 days under Virginia law to file an appeal to the refusal. Their calculations were different than those of the state. They sent the appeal by regular, not certified mail, and it arrived after the 30-day deadline. Coleman's appeal was, therefore, dismissed without review. This ruling crippled Coleman's subsequent attempts to have his claims heard. The U.S. Supreme Court supported the state's position that the missed deadline precluded federal review of his *habeas* claims.<sup>15</sup> Clemency was refused partly because of the certainty with which the courts refused the appeals. Before Coleman's scheduled execution, Governor Douglas Wilder agreed to grant clemency if Coleman passed a polygraph test. Coleman failed the test just hours before he was executed.<sup>16</sup>

<sup>7</sup> Clemency Pet., McCloskey Affidavit, Exhibit 9, p. 12-13, Section B

<sup>8</sup> Id. p. 2, #3; Clemency Pet., Exhibit 21, statement of Betty Hurley; Exhibit 22, statement of Betty Smith; 2<sup>nd</sup> Pet. For *Writ of Habeas*, Exhibit I, statement of Teresa Horn; Exhibit L, statement of Linda Mullins

<sup>9</sup> *May God Have Mercy*, John C. Tucker, p. 114-116

<sup>10</sup> Clemency Pet., Exhibit 37, p. 1, Frank Hinkle statement, #5

<sup>11</sup> *May God Have Mercy*, John C. Tucker, p. 25

<sup>12</sup> 2<sup>nd</sup> Pet. for *Writ of Habeas*, Exhibit T, Report of Morris Clark, p. 5, #11

<sup>13</sup> Id. p. 8, 9, #19, #20

<sup>14</sup> *May God Have Mercy*, John C. Tucker, p. 52

<sup>15</sup> Id. p. 190, 191

<sup>16</sup> *May God Have Mercy*, John C. Tucker, p. 305-314

## **CONCLUSION**

Roger Keith Coleman was executed despite compelling evidence of his innocence. Coleman's attorneys had made claims about a biased jury, ineffective assistance of counsel, and exculpatory evidence withheld by the state, all of which would have been constitutional violations. The merits of these claims were never considered because his lawyers missed a deadline by one day. He was executed without full review. As U.S. Supreme Court Justice Harry Blackmun observed in his dissent, "one searches the majority's opinion in vain for any mention of . . . Coleman's right to a criminal proceeding free from constitutional defect or his interest in finding a forum for his constitutional challenge to his conviction and sentence of death."<sup>17</sup>

## **PRESENT SITUATION**

A Virginia court was asked in 2000 to order new DNA testing on physical evidence. An independent laboratory is still holding the samples, and the State of Virginia has demanded their return. Fearing that the state may never make appropriate use of the samples, the lab has refused to release them. A state court hearing is scheduled for December.

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<sup>17</sup> See Footnote 15

# **Appendices**

## **(Case Charts)**

## Brian K. Baldwin (AL)

<b>Name/DOC #</b>	Brian Keith Baldwin Z-357
<b>Address</b>	Holman Unit, Atmore AL /Deceased
<b>Date of Birth</b>	July 16, 1958
<b>Race</b>	Black
<b>Date of Crime</b>	March 14, 1977
<b>Age at Time of Crime</b>	18
<b>Date Sentenced</b>	August 8, 1977
<b>Victim(s)</b>	Naomi Rolon, age 16
<b>Relationship to Defendant</b>	Picked up defendant and companion hitchhiking in North Carolina 3 days prior to murder in Alabama
<b>Facts Alleged by State</b>	Murder/stab wounds and cut throat, presumably with axe or hatchet; robbery of car
<b>County of Trial</b>	Monroe County AL
<b>Trial Judge</b>	Robert E. Lee Key
<b>Trial Attorney</b>	Windell Owens
<b>Prosecutor(s)</b>	Theodore Pearson
<b>Trial By</b>	Jury
<b>Race of Jurors</b>	All White
<b>Convicted of</b>	Capital murder; robbery of auto
<b>Confession</b>	Yes/coerced
<b>Accomplice Testimony</b>	Not at original trial
<b>Eyewitness Testimony</b>	No
<b>Forensic Testimony</b>	<ul style="list-style-type: none"> <li>● Fingerprints in victim's car</li> <li>● Semen present (but rape not charged)</li> <li>● No blood on Baldwin's clothes or shoes</li> </ul>
<b>Jailhouse Snitch</b>	No
<b>Defendant Testimony</b>	<ul style="list-style-type: none"> <li>● Coerced confessions both signed and taped</li> <li>● On stand at trial, Baldwin denied having made a voluntary confession</li> </ul>
<b>Principal Exculpatory Evidence</b>	<ul style="list-style-type: none"> <li>● No fingerprints on murder weapon</li> <li>● No blood on clothes or shoes</li> <li>● Forensic pathologist report that wounds were inflicted by left-handed person; Baldwin was right-handed. (Not available at trial; presented in 1999 investigation.)</li> </ul>
<b>Sentencing Authority</b>	Jury, subject to judge override
<b>Statutory Aggravating Factor</b>	Robbery of car
<b>Non-Statutory</b>	None

<b>Aggravating Factor</b>	
<b>Mitigating Factors</b>	None presented except age
<b>Mental Illness, retardation or neurological damage</b>	No
<b>Criminal History</b>	<ul style="list-style-type: none"> <li>• Escaped from youth detention center in North Carolina; car theft offenses</li> <li>• Concurrent conviction for stealing car in Camden, AL just before the murder</li> </ul>
<b>Appellate History</b>	<ul style="list-style-type: none"> <li>• George Elbrecht (Monroeville) † appeals Judge Key (Mobile) † coram nobis</li> <li>• Michael McIntyre (Atlanta) Federal Habeas (404-688-0900)</li> </ul>
<b>Ineffective Assistance?</b>	<p>Yes</p> <ul style="list-style-type: none"> <li>• Attorney only met with Baldwin for total of 20 minutes before trial</li> <li>• No investigation (judge denied funds) and no witnesses called</li> <li>• No presentation of exculpatory evidence in forensic report</li> <li>• Parents not informed of his whereabouts</li> <li>• No challenge to striking Blacks from jury</li> <li>• No challenge to Judge referring to Baldwin as "boy"</li> <li>• No challenge to Baldwin being in handcuffs and shackles during jury selection, in view of prospective jurors</li> </ul>
<b>Police Misconduct?</b>	<p>Yes</p> <ul style="list-style-type: none"> <li>• Torture during interrogation by beatings, probable use of cattle prod</li> <li>• Probable denial of right to counsel prior to interrogation</li> </ul> <p>(During 1999 investigation, three witnesses attested to having seen bruises on Baldwin's back and legs following interrogation. A former Deputy Sheriff signed an affidavit and gave a video-taped deposition attesting to presence of a cattle prod in the jail where Baldwin was questioned, and to having been present when Baldwin was beaten during the interrogation. Deputy also signed an affidavit attesting to having falsely signed a statement saying he had witnessed Baldwin's signature to a waiver of his right to counsel. This Deputy, who had been the first Black appointed as Deputy Sheriff in the county, later retracted his testimony regarding the beatings in a private interview with the Governor of Alabama)</p>
<b>Prosecutorial Misconduct?</b>	<p>Yes</p> <ul style="list-style-type: none"> <li>• Rape implied, although no charge of rape was ever brought</li> <li>• Racist practice in striking all Blacks from jury</li> <li>• Failure to provide a complete trial transcript</li> </ul> <p>(State claimed transcript had been lost in a flood, and denied existence of tapes; later an incomplete transcript was found and furnished. During investigation in 1999, tapes were discovered, and found to differ from the transcript provided.)</p>
<b>Newly Discovered Exculpatory Evidence?</b>	<p>Yes</p> <ul style="list-style-type: none"> <li>• Forensic pathologist signed affidavit based on crime-scene photos stating fatal wounds had been inflicted by a left-handed person. Baldwin was right-handed.</li> </ul>

<b>Failure of Judicial Process?</b>	<p>Yes</p> <ul style="list-style-type: none"> <li>● Change of venue denied despite intense pre-trial publicity</li> <li>● Newly discovered exculpatory evidence and evidence of police misconduct denied fair presentation in appeal process</li> <li>● All physical evidence which could have furnished relevant DNA evidence was lost or destroyed (discovered in 1999 investigation).</li> </ul>
<b>Appellate Counsel</b>	George Elbrecht of Monroeville, AL

## Cornelius Singleton (AL)

<b>Name/DOC #</b>	Cornelius Singleton
<b>Address</b>	Holman Prison/Deceased November 20, 1992
<b>Date of Birth</b>	April 14, 1956
<b>Race</b>	Black
<b>Date of Crime</b>	November 12, 1977
<b>Age Time of Crime</b>	21
<b>Date Sentenced</b>	July 1978
<b>Victims</b>	Sister Ann Hogan
<b>Race of Victims</b>	White
<b>Relationship to Defendant</b>	None
<b>Facts Alleged by State</b>	Murder and robbery of Sister Ann Hogan in Catholic Cemetery in Mobile, AL
<b>County of Trial</b>	Mobile
<b>Trial Judge</b>	Ferrill D. McRae
<b>Trial Attorney</b>	Reggie Stephens & Mike Scheuermann (Mobile) 1978; Gary Porter Mobile
<b>Prosecutors</b>	Charles Graddick
<b>Trial By</b>	Jury
<b>Race of Jurors</b>	White
<b>Convicted of</b>	Capital murder-sentenced to death
<b>Confession</b>	Coerced and dictated by prosecutor
<b>Accomplice Testimony</b>	No
<b>Eyewitness Testimony</b>	Yes, of other suspects, mainly a white man with long blonde hair
<b>Forensic Testimony</b>	None to implicate Singleton. <ul style="list-style-type: none"> <li>• No fingerprints of his in stolen truck or at crime scene</li> <li>• Blood on blouse of nun with outline of hand on back of blouse—no testing</li> </ul>
<b>Jailhouse Snitch</b>	Someone Singleton referred to as Pootenany put in cell with him to get confession
<b>Defendant Testimony</b>	No-wanted to testify about his innocence
<b>Principal Exculpatory Evidence</b>	<ul style="list-style-type: none"> <li>• IQ of 55-67</li> <li>• Mental age of seven</li> <li>• Waived Miranda rights without knowing</li> <li>• Coerced, dictated confession</li> <li>• Girlfriend put on his lap during confession</li> <li>• Illiterate and signed confession thinking he was confessing to stealing sheets</li> <li>• Could not drive standard shift truck</li> </ul>
<b>Sentencing Authority</b>	Jury (judge had override)
<b>Statutory Aggravating Factor</b>	Theft of victim's watch
<b>Non-Statutory Aggravating Factor</b>	Previous record
<b>Mitigating Factors</b>	IQ, illiteracy, waiving of rights, coerced confession
<b>Evidence of Mental Illness Retardation and or Neurological Damage</b>	Retardation
<b>Criminal History</b>	<ul style="list-style-type: none"> <li>• 1972—sentenced to 3 years for arson and burglary.</li> <li>• Served full term, released in 1976</li> </ul>
<b>Appellate History</b>	Based on fact that original attorney failed to use retardation as a

	mitigating factor for sentencing. Conviction overturned when U.S. Supreme Court found part of death penalty unconstitutional in AL. Retried in 1981, sentenced to death. All appeals failed
<b>Ineffective Assistance?</b>	Yes <ul style="list-style-type: none"> <li>• No investigation</li> <li>• No challenge to all white jury</li> <li>• No challenge to coerced confession</li> </ul>
<b>Police Misconduct?</b>	Yes Did not understand waiving of Miranda rights; Police Officer Bell told him where to walk and what to say at cemetery; failure to investigate other suspects
<b>Prosecutorial Misconduct?</b>	Yes Prosecutor Graddick dictated confession
<b>Appellate Counsel</b>	Al Pennington-Mobile; Blair Brown (Wash., DC) and M. McDonald (Mobile)

## Freddie Lee Wright (AL)

<b>Name/DOC #</b>	Freddie Lee Wright
<b>Address</b>	Holman Prison/deceased
<b>Date of Birth</b>	April 29, 1951
<b>Race</b>	Black
<b>Date of Crime</b>	December 1, 1977
<b>Age Time of Crime</b>	26
<b>Date Sentenced</b>	July 1979
<b>Victims</b>	Warren and Lois Green
<b>Race of Victims</b>	White
<b>Relationship to Defendant</b>	None
<b>Summary of Facts Alleged by State</b>	Robbery of Western auto store; victims tied up and shot and killed
<b>County of Trial</b>	Mobile
<b>Trial Judge</b>	William Bolling
<b>Trial Attorney</b>	Al Pennington, Mobile Alabama
<b>Prosecutors</b>	Originally Charles Graddick (did investigation); Chris Galanos tried case with Neil Hanley.
<b>Trial By</b>	Jury
<b>Race of Jurors</b>	1 <sup>st</sup> trial: mixed (11 to 1 for acquittal); 2 <sup>nd</sup> trial: all White
<b>Convicted of</b>	Capital murder
<b>Confession</b>	Alleged partial confession to Detective Cookie Estes
<b>Accomplice Testimony</b>	Yes: Percy Craig, Roger McQueen, and Reginald Tinsley–co-defendants
<b>Eyewitness Testimony</b>	Yes: Mary Johnson, of Mt. Vernon, AL saw a man entering Western Auto as she left; She identified him and the car. The man was Theodore Otis Roberts.
<b>Forensic Testimony</b>	No fingerprints of Wright; found fingerprints of McQueen
<b>Jailhouse Snitch</b>	No
<b>Defendant Testimony</b>	No
<b>Principal Exculpatory Evidence</b>	Alibi
<b>Sentencing Authority</b>	Jury with possibility of override by judge
<b>Statutory Aggravating Factor</b>	Robbery
<b>Non-Statutory Aggravating Factor</b>	Previous record and incarceration
<b>Mitigating Factors</b>	No father; mother died when he was 13; he was a follower; not a violent person
<b>Evidence of Mental Illness Retardation and or Neurological Damage</b>	No
<b>Criminal History</b>	Yes: juvenile record, various convictions for robbery, served some time
<b>Appellate History</b>	All appeals denied. See dissent by Justice Johnstone from AL Supreme Ct. ruling, March 2000.
<b>Ineffective Assistance?</b>	Yes. <ul style="list-style-type: none"> <li>• Original arrest of Theodore Otis Roberts allowed to be suppressed from use in Trial.</li> <li>• Failure to find alibi witnesses</li> <li>• Failure to object to all white jury</li> <li>• Failure to Question credibility of star witness in 2<sup>nd</sup> trial</li> </ul>
<b>Police Misconduct?</b>	Yes.

	<ul style="list-style-type: none"> <li>• Coerced confessions from McQueen, Tinsley, and Craig and deals made.</li> <li>• Officer Larry Tillman obtained statements from McQueen</li> </ul>
<b>Prosecutorial Misconduct?</b>	See above. McQueen and Tinsley claim that DA Galanos and Detective Tillman told them what they had to say.
<b>Appellate Counsel</b>	Al Pennington: Direct Appeal; Arthur Madden: Rule 32 Brian McDonough (NY) handled all others

## Thomas M. Thompson (CA)

<b>Name/DOC #</b>	Thomas Martin Thompson C-91600
<b>Address</b>	San Quentin, CA/deceased
<b>Date of Birth</b>	March 20, 1955
<b>Race</b>	White
<b>Date of Crime</b>	September 11, 1981
<b>Age Time of Crime</b>	26
<b>Date Sentenced</b>	August 17, 1984
<b>Victims</b>	Ginger Fleischli
<b>Race of Victims</b>	White
<b>Relationship to Defendant</b>	Acquaintance
<b>Summary of Facts Alleged by State</b>	Thompson raped victim and then killed her to cover up rape
<b>County of Trial</b>	Orange, CA
<b>Trial Judge</b>	Robert Fitzgerald
<b>Trial Attorney</b>	Ronald Brower
<b>Prosecutors</b>	Michael Jacobs
<b>Trial By</b>	Jury
<b>Race of Jurors</b>	Unknown/not applicable
<b>Convicted of</b>	First degree murder with rape special circumstance, rape
<b>Confession</b>	No—he always maintained innocence
<b>Accomplice Testimony</b>	None
<b>Eyewitness Testimony</b>	The only eyewitness testimony, that of David Leitch, co-defendant, stating that victim had consensual sex with Thompson, was withheld by the State and later barred from review by the Anti-terrorism and Effective Death Penalty Act
<b>Forensic Testimony</b>	Very questionable evidence of rape presented by coroner and later successfully rebutted at Federal habeas evidentiary hearing
<b>Jailhouse Snitch</b>	Yes: 4 used at preliminary hearing. These were later discarded and 2 new informants were used with new variation on the so-called confession
<b>Defendant Testimony</b>	Yes: he admitted having consensual sex with victim, denied rape, and denied killing her
<b>Principal Exculpatory Evidence</b>	Co-defendant's testimony that he saw victim and Thompson having consensual sex
<b>Sentencing Authority</b>	CA Death Penalty Statute
<b>Statutory Aggravating Factor</b>	No prior record
<b>Non-Statutory Aggravating Factor</b>	
<b>Mitigating Factors</b>	No prior record
<b>Evidence of Mental Illness Retardation and or Neurological Damage</b>	No
<b>Criminal History</b>	None
<b>Appellate History</b>	Conviction affirmed in State court; Reversed and vacated in US District Ct.; Reinstated by 9 <sup>th</sup> Circuit Ct. of Appeals-3 judge panel; Reinstated by USSC, not on merits but procedurally
<b>Ineffective Assistance?</b>	Yes: found by US District Ct. and 9 <sup>th</sup> Circuit En Banc
<b>Police Misconduct?</b>	No
<b>Prosecutorial Misconduct?</b>	Yes: found by 9 <sup>th</sup> Circuit En Banc
<b>Appellate Counsel</b>	Quin Denvir, Gregory Long, Andrew Love, William Arzbaeher

## James Adams (FL)

<b>Name/DOC #</b>	James Adams
<b>Address</b>	Florida State Prison/deceased
<b>Date of Birth</b>	May 30, 1936
<b>Race</b>	Black
<b>Date of Crime</b>	November 12, 1973, Ft. Pierce, FL
<b>Age Time of Crime</b>	37
<b>Date Sentenced</b>	March 15, 1974
<b>Victims</b>	Edgar Brown
<b>Race of Victims</b>	White
<b>Relationship to Defendant</b>	Did some work for him
<b>Summary of Facts Alleged by State</b>	Adams entered victim's home to rob him and when Brown returned, he bludgeoned him to death with a fire poker
<b>County of Trial</b>	St. Lucie
<b>Trial Judge</b>	Wallace Sample
<b>Trial Attorney</b>	N. Richard Schopp, Port. St. Lucie, FL and Bruce Wilkinson, Stuart, FL
<b>Prosecutors</b>	R. N. Koblegard, Raymond E. Ford
<b>Trial By</b>	Jury voted 7-5 for death penalty
<b>Race of Jurors</b>	White-all male
<b>Convicted of</b>	Capital murder
<b>Confession</b>	No, always claimed innocence
<b>Accomplice Testimony</b>	No
<b>Eyewitness Testimony</b>	Yes: Foy Hortman spoke with person leaving house where murder committed; viewed lineup and stated "not Adams"
<b>Forensic Testimony</b>	Hairs found in victim's hand were not from Adams
<b>Jailhouse Snitch</b>	No
<b>Defendant Testimony</b>	Yes: maintained innocence
<b>Principal Exculpatory Evidence</b>	Alibi, playing cards at friend's house; hair in hand of victim not his
<b>Sentencing Authority</b>	Jury; judge had override
<b>Statutory Aggravating Factor</b>	Previous (unconstitutional) conviction for rape of a white woman in TN in 1962
<b>Non-Statutory Aggravating Factor</b>	Race
<b>Mitigating Factors</b>	12 <sup>th</sup> of 14 children in family of impoverished sharecroppers; no witnesses called by defense in penalty phase
<b>Mental Retardation or Neurological Damage</b>	No
<b>Criminal History</b>	Previous conviction for rape of white woman in TN; conviction for stealing a pig in 1976, had no counsel
<b>Appellate History</b>	<ul style="list-style-type: none"> <li>• 1976 FL Supreme Court affirmed conviction and death sentence; USSC refused to intervene and to reconsider decision, 2977; 1978 FL Supreme Court denied relief on info not known to defense; 1978 U.S. supreme Court would not intervene; 1978 Petition for rehearing—U.S Supreme court invited State to respond but denied petition in 1979</li> <li>• 1980 Gov. Graham signed death warrant; PCR denied</li> <li>• 1980 FL Supreme Court affirmed above; Fed. District Court granted stay; writ denied; 1983, 11<sup>th</sup> Circuit Ct. of Appeals affirmed; Jan. and Feb.</li> <li>• 1984 U.S. Supreme Court refused to review or reconsider; April 12, 1984</li> </ul>

	<p>2<sup>nd</sup> death warrant</p> <ul style="list-style-type: none"> <li>• Supreme Court, U.S. District Court. denied relief; May 8, 1984 11<sup>th</sup> Circuit granted stay on racial Disparities; vacated by U.S. Supreme Court-Blackmun, Brennan, Marshall, &amp; Stevens dissented.</li> </ul>
<b>Ineffective Assistance?</b>	Yes
<b>Police Misconduct?</b>	Unknown
<b>Prosecutorial Misconduct?</b>	Suppression of forensics on hair in hand of victim until 3 days after sentencing
<b>Appellate Counsel</b>	Richard Burr and Craig Barnard

## Willie Jasper Darden, Jr. (FL)

<b>Name/DOC #</b>	Willie Jasper Darden
<b>Address</b>	Florida State Prison—executed March 15, 1988
<b>Date of Birth</b>	1933
<b>Race</b>	Black
<b>Date of Crime</b>	September 8, 1973
<b>Age Time of Crime</b>	40
<b>Date Sentenced</b>	January 23, 1974
<b>Victims</b>	James Carl Turman—killed; Phillip Arnold—wounded
<b>Race of Victims</b>	White
<b>Relationship to Defendant</b>	none
<b>Summary of Facts Alleged by State</b>	During a robbery at Carl’s Furniture store in Lakeland, FL, James Carl Turman shot and killed a neighbor; Phillip Arnold, 16, was wounded
<b>County of Trial</b>	Citrus Co., FL
<b>Trial Judge</b>	John H. Dewell
<b>Trial Attorney</b>	Asst. PD’s: Dennis Maloney and Tod Goodwill
<b>Prosecutors</b>	Ray McDaniel and J. Norman White
<b>Trial By</b>	jury
<b>Race of Jurors</b>	All white, 4 women, 8 men
<b>Convicted of</b>	Capital murder
<b>Confession</b>	No
<b>Accomplice Testimony</b>	No
<b>Eyewitness Testimony</b>	Yes: victim’s wife and Phillip Arnold, 16 year old who was wounded; identification under highly suggestive circumstances
<b>Forensic Testimony</b>	FBI agent testified gun found by police could have fired bullet that killed victim, however gun was not proven to be murder weapon or to belong to Darden
<b>Jailhouse Snitch</b>	No
<b>Defendant Testimony</b>	Yes—testified at guilt phase that he was innocent
<b>Principal Exculpatory Evidence</b>	Darden’s car had broken down on highway near someone’s house. He was standing there waiting for a tow truck at time of crime. She came to court every day to testify and was never called; victim’s minister could have corroborated Darden’s alibi but was not called to testify
<b>Sentencing Authority</b>	Jury recommended and judge imposed death
<b>Statutory Aggravating Factor</b>	Crime committed while under sentence of imprisonment; crime committed while in commission of a robbery; crime especially heinous, atrocious, and cruel
<b>Non-Statutory Aggravating Factor</b>	FL law does not require jurors to specify aggravating factors
<b>Mitigating Factors</b>	Mother died in childbirth when he was two; Darden considered non violent, very poor ex-slave, farming family; no mitigating evidence presented at trial (477 US 168). Judge considered Darden’s claims of innocence and fact that he had 7 children
<b>Evidence of Mental Illness Retardation and or Neurological Damage</b>	No
<b>Criminal History</b>	6 year sentence for forging check for \$48; on furlough from a FL prison; FSC said he was a career criminal with at least 5 convictions; furlough was from 1968 sentence for assault with intent to rape a 70 year old woman
<b>Appellate History</b>	<ul style="list-style-type: none"> <li>• FSC affirmed on direct appeal (Darden v. State, 329 So. 2d 287) 1976;</li> </ul>

	<ul style="list-style-type: none"> <li>• USSC granted cert, heard argument, dismissed writ (430 US 704) 1977;</li> <li>• FDC denied habeas (Darden v. Wainwright, 513 F. Supp 947)1981;</li> <li>• US Ct. of Appeals panel affirmed, 2 to 1 (699 F 2d 1031)1983;</li> <li>• US Ct. of Appeals rehearing en banc, affirmed (court equally divided) (708 F 2d 646)1983;</li> <li>• US Ct. of Appeals heard case again en banc and reversed (725F.2d 1526);</li> <li>• USSC granted state’s cert petition, vacated 11<sup>th</sup> Circuit opinion and remanded for reconsideration (469 U.S. 1201) 1985;</li> <li>• On remand, 11<sup>th</sup> Circuit denied relief (767 F. 2d 752) 1985;</li> <li>• USSC granted cert on petition for stay of execution (473 U.S. 928) 1985;</li> <li>• USSC affirmed case, 1986;</li> <li>• US Ct. of Appeals rejected appeal from failure of 3<sup>rd</sup> habeas writ (825 F.2d 287) 1987;</li> <li>• USSC granted cert (484 US 943) 1988; USSC denies cert &amp; stay (485 US 949) 1988.</li> </ul>
<b>Ineffective Assistance?</b>	Alleged but rejected by courts
<b>Police Misconduct?</b>	None shown
<b>Prosecutorial Misconduct?</b>	Prosecutor used inflammatory and racist language in trial; Justice Blackmun, in US Supreme Ct. Dissent, stated he did not get a fair trial; identified by victim’s wife in a courtroom where he was the only Black man, not in a lineup
<b>Appellate Counsel</b>	Robert Augustus Harper, CCR office

## Jesse J. Tafero (FL)

<b>Name/DOC #</b>	020285
<b>Address</b>	Florida State Prison
<b>Date of birth</b>	October 12, 1945
<b>Race</b>	White
<b>Date of crime</b>	February 20, 1976
<b>Age at time of crime</b>	29
<b>Date sentenced</b>	May 20, 1976
<b>Victims</b>	Highway Patrolman Phillip Black & Canadian Constable Donald Irwin
<b>Race of victims</b>	White
<b>Relationship to defendant</b>	No relationship
<b>Summary of facts as alleged by state</b>	See attached summary
<b>County where tried</b>	Broward County Florida
<b>Trial judge</b>	<b>Judge Daniel Futch</b> Futch's nickname was "Maximum Dan" – he displayed a miniature electric chair on his desk Futch was a former highway patrolman.
<b>Trial attorney</b>	<b>Robert McCain</b> After Tafero's trial, McCain was disbarred. He was convicted of obstruction of justice for bribing a witness in another case and for narcotics conspiracy.
<b>Prosecutors</b>	Michael Satz <ul style="list-style-type: none"> <li>• Satz was an assistant DA at the time of the trial</li> <li>• A day after securing death penalty convictions against Tafero and his co-defendant Sonia Jacobs, Satz announced he was running for DA. Elected largely on this high profile case.</li> <li>• Satz easily won the election and has been State's Attorney in Broward County since 1976.</li> <li>• In November 2000, for the first time in Satz's career, someone is running against him.</li> </ul>
<b>Trial by</b>	Jury
<b>Race of jurors</b>	White
<b>Convicted of</b>	First Degree Murder/Felony Murder <ul style="list-style-type: none"> <li>• Theory was that they killed the police so they could steal the trooper's gun and trooper's car for getaway.</li> <li>• It is unclear whether Tafero was convicted on felony murder theory or because jury believed he was the triggerman.</li> </ul>
<b>Confession</b>	No
<b>Accomplice testimony</b>	Yes. The co-defendant, Walter Norman Rhodes, took a plea bargain for 2 <sup>nd</sup> Degree Murder in exchange for his testimony against Jesse Tafero and Sonia Jacobs.
<b>Eyewitness testimony</b>	Two truck drivers watched the drama unfold from a distance of 150 to 200 feet away. (Pierce Hyman and Robert McKenzie.) Neither truck driver could say who the shooter was, but both said in their first statements to the police that Tafero was pinned over the hood of the car during all the shots. Hyman's story changed slightly only after several discussions with the police. He then said Tafero might have gotten up off the hood of the car before the shooting stopped, but almost when it was over. Both truck drivers saw slightly different things, the most significant

	<p>being where co-defendant Walter Rhodes was standing. Hyman said Rhodes was always standing in front of the car. McKenzie said Rhodes moved to the rear of the car as the shots were fired. McKenzie’s statement was very significant because the shooter, according to ballistics evidence, had to have shot from the rear of the car. The reason Hyman thought Rhodes never moved from the front of the car is because McKenzie moved his truck toward the exit blocking Hyman’s view of the scene at the exact time Rhodes moved to the back of the car. In Rhodes’ 1982 recantation, he swore under oath he moved from the front to the back of the car and fired at the two cops.</p>
<b>Forensic testimony</b>	<ul style="list-style-type: none"> <li>• When Tafero was apprehended, he had the murder weapon in his possession.</li> <li>• Ballistics proved this gun killed both police officers.</li> <li>• Rhodes had a matching 9mm gun. A bullet hole in the windshield post of the trooper’s car determined that the shooter was at the rear of the Camaro when firing.</li> <li>• Gun powder tests done on Walter Rhodes, Jesse Tafero and Sonia Jacobs resulted in the following findings: <ul style="list-style-type: none"> <li>○ Walter Rhodes – gunpowder residue found consistent with “having discharged a weapon.”</li> <li>○ Jesse Tafero – gunpowder residue found consistent with “handling an unclean or recently discharged weapon, or possibly discharging a weapon.”</li> <li>○ Sonia Jacobs – residue found consistent with “having handled an unclean or recently discharged weapon.” Jacobs’s 9 year old son had the same result as she.</li> </ul> </li> </ul>
<b>Jailhouse snitch</b>	<ul style="list-style-type: none"> <li>• Ellis Marlowe Haskew testified at trial that he heard Tafero say at a New Year’s Eve party 5 weeks before the murders that he would never go back to prison, and that he owned a lot of guns.</li> <li>• The fact that Haskew was at that time testifying in many federal drug cases was not disclosed; the fact that Haskew’s lawyer’s fees were paid by the Florida Department of Criminal Law Enforcement was not disclosed.</li> <li>• When this snitch was named only on the first day of trial, Defense counsel asked for a continuance to investigate Haskew’s background and claims but Judge Futch denied request.</li> <li>• Defense counsel only had 30 minutes to interview snitch before his testimony.</li> <li>• In Sonia Jacobs’ trial the DA also used a jailhouse snitch who testified that Jacobs confessed to her that she killed the police and would do it again.</li> <li>• The snitch was released from jail in exchange for her testimony.</li> <li>• Years later, the snitch recanted her testimony and went on national television to apologize to Jacobs</li> <li>• She also said the DA knew she was lying.</li> </ul>
<b>Co-Defendant testimony</b>	<ul style="list-style-type: none"> <li>• Star witness Walter Rhodes testified at both Tafero’s and Jacobs’s trials in exchange for a plea to second-degree murder, escaping the capital charge.</li> <li>• He said Jacobs fired first from the back seat of the car</li> <li>• He then said Tafero got away from the officer holding him, grabbed the gun from Jacobs and shot the two police officers.</li> </ul>
<b>Principal exculpatory evidence</b>	<p>Tafero always maintained his innocence.</p> <ul style="list-style-type: none"> <li>• Both eyewitnesses said in their first statement to the police that Tafero was held over the hood of the police car while all the shots were fired.</li> <li>• Jesse did not have enough gunpowder on his hands to prove conclusively he fired a gun.</li> </ul>

	<ul style="list-style-type: none"> <li>• Hyman saw Rhodes move from the front to the back of the car to put him into position for shooting the police officers, directly contradicting his trial testimony.</li> <li>• Rhodes confessed to the murders at three different times: in 1977, in 1979 and in 1982.</li> <li>• All three recantations became public.</li> <li>• In 1977, Rhodes bragged to two inmates that he alone committed the double murder.</li> <li>• A prison guard named Jowers overheard the confession.</li> <li>• Jowers gave a formal statement to the prosecutor’s investigator, but that statement was never turned over to Tafero’s lawyers.</li> <li>• The prosecutor said he relied on a polygraph in giving Rhodes a plea bargain to second-degree murder.</li> <li>• Later, three polygraph experts confirmed that Rhodes did not pass the polygraph and one said it was the most botched test he had ever seen.</li> <li>• A Brady violation in Jacobs’s case reversed her conviction because the prosecutor failed to turn over the polygraph summary report.</li> <li>• Star witness Rhodes said to the polygraph examiner that he did not think Sonia fired at all, directly contradicting his trial testimony where he said she fired first and handed the gun to Tafero</li> </ul>
<b>Sentencing authority</b>	Judge – according to Florida Statutes.
<b>Statutory aggravating factor</b>	<p>Double murder and Felony murder.</p> <ul style="list-style-type: none"> <li>• Found crime to be especially heinous, atrocious or cruel.</li> <li>• Used the statutory factor that defendant knowingly created a great risk of death to many persons (based on the kidnapping and running of a roadblock after the murders.)</li> <li>• Judge used Tafero’s prior conviction for violent crimes.</li> <li>• Judge found the killings were done to avoid arrest (and be returned to prison as both Tafero and Rhodes were on parole) and to hinder the enforcement of laws.</li> <li>• Judge found murders were committed by a person under sentence of imprisonment (judge used the fact Tafero was on parole).</li> </ul>
<b>Non-statutory factors in aggravation</b>	
<b>Mitigating factors</b>	<p>None.</p> <ul style="list-style-type: none"> <li>• The penalty phase consisted of a 30-second closing statement by Attorney McCain insulting the jury. See below in “Ineffective Assistance of counsel” section.</li> <li>• Judge failed to consider that Jesse may have been convicted only on a felony murder theory and may not have been the actual cause of death on the facts proven.</li> </ul>
<b>Evidence of mental illness, retardation, and/or neurological damage</b>	None.
<b>Criminal history</b>	When Tafero was 20-years-old, he went to prison for attempted robbery and crimes against nature.
<b>Appellate history</b>	<p>Tafero exhausted all his state and federal appeals.</p> <ul style="list-style-type: none"> <li>• Conviction and death sentence affirmed on direct appeal to Florida Supreme Court. <i>Tafero v. Wainwright</i>.</li> <li>• Certiorari was denied.</li> </ul>

	<ul style="list-style-type: none"> <li>• State and federal habeas unsuccessful.</li> <li>• In Tafero’s state habeas evidentiary hearing the co-defendant initially agreed to tell the truth about what he did, but copped out at the last minute.</li> </ul>
<b>Was ineffective assistance of counsel an issue?</b>	<p>Yes.</p> <ul style="list-style-type: none"> <li>• Tafero’s trial lawyer had a drug problem during the time of the trial.</li> <li>• After Tafero’s trial, the lawyer was disbarred.</li> <li>• He was convicted of obstruction of justice for bribing a witness in an unrelated case and for narcotics conspiracy.</li> <li>• The penalty phase consisted of a 30-second argument by defense counsel who said the defendant feels he did not receive a fair trial, the verdict is not fair, and he will not beg for his life or ask for mercy.</li> <li>• Later, at the state evidentiary hearing on habeas, McCain testified Tafero forced him to make this argument.</li> </ul>
<b>Was police misconduct an issue?</b>	<ul style="list-style-type: none"> <li>• In Jacobs’s trial, two police officers testified that Jacobs had confessed to them, implicating Tafero in the murders.</li> <li>• In the 11<sup>th</sup> Circuit opinion overturning her conviction, the court found both alleged confessions ludicrous based on the circumstances, but threw only one out on Miranda grounds.</li> <li>• In Tafero’s case a police officer claimed Tafero bragged about killing the police, but other officers present at the time of the alleged confession did not overhear Tafero’s statement.</li> </ul>
<b>Prosecutorial Misconduct</b>	<ul style="list-style-type: none"> <li>• The prosecutor suppressed the statement by a guard who overheard Rhodes confess to two inmates.</li> <li>• Prosecutor lied saying he gave Rhodes the deal only because he passed a polygraph exam: the polygraph was a sham.</li> <li>• In Sonia’s case, the jailhouse informant who later recanted said the prosecutor knew she, the snitch, was making it up.</li> <li>• In Jesse’s case, the prosecutor came up with a bogus jailhouse snitch named as a witness on the first day of trial and failed to divulge facts about that witness’ career as a snitch.</li> <li>• (State’s Attorney Satz apparently has a habit of using jailhouse snitches in a large percentage of his cases.) In Sonia’s case, the prosecutor failed to turn over the exculpatory polygraph summary.</li> <li>• Although the statement only directly exculpated Sonia, because Jesse and Sonia were linked by Rhodes’ testimony, any evidence contradicting his trial testimony and showing him to be a liar would also have helped Jesse.</li> </ul>
<b>Appellate counsel</b>	<p>Craig Barnard and Richard Jorand by of W. Palm Beach Public Defender’s Office; Mark Olive and Jenny Greenberg of Tallahassee, Capital Collateral Counsel; Michael Tarre, Coral Gables, Fl, and Bruce Rogow, Nova University, Ft. Lauderdale.</p>

## Girvies Davis (IL)

<b>Date of birth</b>	January 20, 1958
<b>Race</b>	Black
<b>Date of crime</b>	December 22, 1978
<b>Age at time of crime</b>	20
<b>Victim:</b>	Charles Biebel
<b>Race of victim</b>	White
<b>Age of victim</b>	89
<b>Relationship to defendant</b>	None
<b>Summary of crime</b>	Wheelchair-bound victim shot during the burglary of his home in St. Clair Co.
<b>County where tried</b>	St. Clair
<b>Trial judge</b>	Stephen M. Kernan
<b>Trial attorney</b>	Patrick M. Young
<b>Prosecutor</b>	Clyde L. Kuehn, St. Clair County State's Attorney
<b>Trial by</b>	Jury
<b>Race of jurors</b>	White; 3 Blacks excused by prosecutorial peremptory challenge
<b>Convicted of</b>	Murder
<b>Principal inculpatory evidence</b>	Confession, recanted before trial, acknowledging participation in home invasion during which crime was committed but attributing actual murder to co-defendant, Richard Holman; testimony of Gregory Mitchell, a self-described "fence" that Davis told him, "We might have something for you later on," and that Holman later the same day sold him the gun stolen from the victim and used to kill the him; evidence of two prior murders of elderly women, Frieda Mueller and Esther Sepmeyer, introduced for purpose of establishing modus operandi; items taken from Sepmeyer home found in Davis's possession.
<b>Principal exculpatory evidence</b>	Testimony of two special agents of the Illinois Division of Criminal Investigation establishing that other persons had been convicted of two murders to which Davis had confessed at the same time he confessed to the Biebel, Mueller, and Sepmeyer murders.
<b>Defendant testimony</b>	None
<b>Jailhouse snitch</b>	None
<b>Accomplice testimony</b>	None (Although during the sentencing phase the jury was shown a video-taped interrogation of Davis during which State's Attorney Clyde L. Kuehn stated that Davis's alleged accomplice, Richard Holman, had implicated Davis in several murders in which Davis allegedly was the trigger man.)
<b>Confession</b>	Yes (recanted before trial)
<b>Eyewitness testimony</b>	None
<b>Forensic testimony</b>	None
<b>Non-forensic expert testimony</b>	None
<b>Evidence of mental illness, retardation, and/or neurological damage</b>	No evidence presented to jury (Out of the jury's presence, defense attorney Young informed Judge Kernan that there was evidence Davis suffered from mental illness, retardation, and brain damage. Young described the evidence as sufficient to show that "the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance, although not such as to constitute a defense to the prosecution." Young said Davis did not want such evidence presented to the jury. Kernan then asked Davis if Young had correctly stated his position, and Davis replied, "That's correct.")
<b>Statutory aggravating</b>	Prior murder convictions (murders of John Oertel and Frank Cash)

<b>factor</b>	
<b>Sentencing authority</b>	Jury
<b>Mitigating factors</b>	The only evidence in mitigation was the testimony of Davis's wife, Cindy Davis, who testified that her husband never had been violent toward her and that, if he were allowed to live, she would visit him in prison.
<b>Criminal history</b>	Convictions for the murders of John Oertel and Frank Cash in St. Clair County, conviction for attempted murder in St. Clair County, conviction of the murder of Esther Sempfeyer in Madison County.
<b>Date sentenced</b>	December 1980
<b>Age when sentenced</b>	22
<b>Co-defendant</b>	Richard Holman
<b>Disposition of co-defendant's case</b>	Case severed, charges dismissed on state's motion; Holman had been convicted and sentenced to natural life for the Sempfeyer crime.
<b>Appellate history</b>	<ul style="list-style-type: none"> <li>• Conviction and sentence affirmed by Illinois Supreme Court on February 18, 1983, <i>People v. Davis</i>, 95 Ill.2d 1. (Justice Joseph Goldenhersh voted to affirm the conviction but dissented on the sentence on the ground that there was no evidence that Davis, as opposed to Holman, had been the triggerman. Justice Seymour Simon dissented on both the conviction and the sentence.)</li> <li>• Petition for post-conviction relief dismissed by St. Clair County Circuit Court Judge Patrick J. Fleming without a hearing, appeal unanimously denied by Illinois Supreme Court on December 21, 1987, <i>People v. Davis</i>, 119 Ill.2d 61. (Justices Simon and Cunningham took no part in decision.)</li> <li>• Petition for federal writ of habeas corpus denied by U.S. District Court Judge William D. Stiehl, of the Southern District of Illinois, appeal denied by U.S. Court of Appeals for the Seventh Circuit on January 13, 1994, <i>Davis v. Greer</i>, 13 F.3d 1134.</li> <li>• Petition for rehearing en banc denied by Seventh Circuit on April 13, 1994, <i>Davis v. Greer</i>, 21 F.3d 788. (Judges Kenneth F. Ripple, Richard D. Cudahy, and Ilana Diamond Rovner dissented.)</li> </ul>
<b>Appellate counsel</b>	Daniel D. Yuhas, Charles M. Schiedel, Lawrence Bapst, and David Bergschneider, of the Illinois Appellate Defender's Office, on direct appeal; Russell J. Hoover and Julia A. Martin, of Jenner & Block, in petition for post-conviction relief; John D. Shugrue, Russell J. Hoover, Barry Levenstam (argued), and Jannice A. Hornaday, of Jenner & Block, on petition for federal writ of habeas corpus.
<b>Date of execution</b>	May 17, 1995
<b>Age when executed</b>	37
<b>Time lapse (conviction to execution)</b>	14 years, 5 months

## Larry Griffin (MO)

<b>Name/DOC #</b>	Larry Griffin
<b>Address</b>	Potosi Correctional Center/deceased
<b>Date of Birth</b>	September 23, 1954
<b>Race</b>	Black
<b>Date of Crime</b>	June 26, 1980
<b>Age Time of Crime</b>	25
<b>Date Sentenced</b>	August 7, 1981
<b>Victim(s)</b>	Quintin Moss
<b>Race of Victim(s)</b>	Black
<b>Relationship to Defendant</b>	Suspected murderer of Griffin's brother, Dennis.
<b>Facts Alleged by State</b>	Griffin shot Moss from a moving car at the intersection of Sarah and Olive in St. Louis, Missouri.
<b>County of Trial</b>	City of St. Louis
<b>Trial Judge</b>	Gallagher
<b>Trial Attorney</b>	Frederick Steiger
<b>Prosecutors</b>	Gordon Ankney
<b>Trial By</b>	Judge and Jury
<b>Race of Jurors</b>	
<b>Convicted of</b>	Capital murder
<b>Confession</b>	None
<b>Accomplice Testimony</b>	None
<b>Eyewitness Testimony</b>	Unreliable photo identification by sole eyewitness Robert Fitzgerald, who later recanted his in-court identification of Griffin.
<b>Forensic Testimony</b>	None of Griffin's fingerprints found on car None of Griffin's fingerprints found on murder weapons.
<b>Jailhouse Snitch</b>	N/A (Prosecution denied there was a plea bargain in exchange for Fitzgerald's testimony but he was released from custody having had his sentence reduced to time served for credit card fraud charges on the day Griffin was convicted.)
<b>Defendant Testimony</b>	Did not testify
<b>Principal Exculpatory Evidence</b>	Testimony of Kerry Caldwell, an actual participant in the killing, that Griffin was not involved. New eyewitness (Jimmy Massey) stated Griffin not involved.
<b>Sentencing Authority</b>	
<b>Statutory Aggravating Factor</b>	The circumstances of the shooting created a risk of danger to other persons.
<b>Non-Statutory Aggravating Factor</b>	N/A
<b>Mitigating Factors</b>	Actual Innocence Death penalty disproportionate sentence for drive-by shooting Defendant did not receive a fair trial.
<b>Evidence of Mental Illness Retardation and or Neurological Damage</b>	N/A
<b>Criminal History</b>	Shoplifting and burglary - details not known
<b>Appellate History</b>	See page 9 clemency petition
<b>Ineffective Assistance?</b>	At trial: <ul style="list-style-type: none"> <li>• Failure to present relevant evidence that Griffin was left-handed</li> <li>• Inadequately investigated alibi defense collapsed in court</li> <li>• Failure to discover and utilize information undermining Fitzgerald's credibility.</li> </ul>

	<ul style="list-style-type: none"> <li>• No preparation for penalty phase.</li> </ul>
<b>Police Misconduct?</b>	Police presented photo of Griffin to Fitzgerald and suggested he was involved before actual photo identification.
<b>Prosecutorial Misconduct?</b>	<ul style="list-style-type: none"> <li>• Prosecutor referred to Griffin's failure to testify</li> <li>• Failed to reveal Fitzgerald's conviction</li> <li>• Failed to disclose that Robert Campbell was an available witness.</li> <li>• Fitzgerald plea bargain not disclosed</li> </ul>
<b>Appellate Counsel</b>	Frederick Steiger (Direct Appeal to Missouri Supreme Court) Kent E. Gipson (Federal Habeas)

## Roy Michael Roberts (MO)

<b>Name/DOC #</b>	Roy Roberts
<b>Address</b>	Moberly Training Center for Men
<b>Date of Birth</b>	
<b>Race</b>	White
<b>Date of Crime</b>	July 3, 1983
<b>Age Time of Crime</b>	
<b>Date Sentenced</b>	
<b>Victims</b>	Thomas Glen Jackson
<b>Race of Victims</b>	White
<b>Relationship to Defendant</b>	Prisoner/guard
<b>Facts Alleged by State</b>	Holding prison guard while he was stabbed to death
<b>County of Trial</b>	
<b>Trial Judge</b>	
<b>Trial Attorney</b>	Tom Marshall
<b>Prosecutors</b>	Tim Finnical
<b>Trial By</b>	Jury
<b>Race of Jurors</b>	
<b>Convicted of</b>	Capital murder
<b>Confession</b>	No
<b>Accomplice Testimony</b>	No: <ul style="list-style-type: none"> <li>• Rodney Carr, stabber, got life</li> <li>• Robert Driscoll-recently retried and got death penalty</li> </ul>
<b>Eyewitness Testimony</b>	Yes: <ul style="list-style-type: none"> <li>• 3 guards and 1 prisoner: all failed initially to identify Roberts, a 300+ pound man</li> <li>• Guard Halley claimed in trial testimony that he just forgot to mention him</li> </ul>
<b>Forensic Testimony</b>	<ul style="list-style-type: none"> <li>• Blood on other inmates' clothes, not known if tested;</li> <li>• Nothing on Roberts's clothes (they were not saved, tested, or offered as evidence)</li> </ul>
<b>Jailhouse Snitch</b>	No
<b>Defendant Testimony</b>	
<b>Principal Exculpatory Evidence</b>	<ul style="list-style-type: none"> <li>• No bloody clothes.</li> <li>• No physical evidence tying him to crime.</li> <li>• One guard testified that he fought with Roberts elsewhere during riot.</li> <li>• Roberts took polygraph test Feb. 19, 1999 - results showed "no deception" on direct questions about murder</li> </ul>
<b>Sentencing Authority</b>	Jury
<b>Statutory Aggravating Factor</b>	Previous arrest for robbery of restaurant; did 2 years before that
<b>Non-Statutory Aggravating Factor</b>	
<b>Mitigating Factors</b>	
<b>Evidence of Mental Illness Retardation and or Neurological Damage</b>	No
<b>Criminal History</b>	<ul style="list-style-type: none"> <li>• Crime for which he was in prison: robbing a restaurant</li> <li>• Carl Harris confessed to that crime in February, 1999 (St. Louis Post-Dispatch-February 21, 1999, Bill McClellan,</li> </ul>

	reporter)
<b>Appellate History</b>	<ul style="list-style-type: none"> <li>• Direct appeal denied State v. Roberts, 709 S.W. 2d 857 (Mo.1986).</li> <li>• His writ of certiorari was denied in Roberts v. Missouri, 479 U.S. 946 (1986).</li> <li>• Again in 1989 his writ of certiorari was denied by the court en banc, 494 U.S. 1039 (1990).</li> <li>• The U.S. Supreme Ct. denied his final petition for certiorari on Jan. 11, 1999. Roberts v. Bowersox, 119 S. Ct. 808 (1999).</li> <li>• The U.S. Supreme Ct. denied his final petition and appeal March 9, 1999, hours before the execution.</li> <li>• Roberts v. Bowersox, 119 S. Ct. 1160 (1999)</li> </ul>
<b>Ineffective Assistance?</b>	Yes: Lawyer failed to cross examine 3 of the 4 eyewitnesses about discrepancies in testimony
<b>Police Misconduct?</b>	
<b>Prosecutorial Misconduct?</b>	
<b>Appellate Counsel</b>	Bruce Livingston

## Odell Barnes, Jr. (TX)

	<b>DEFENDANT' S INFORMATION</b>
<b>Defendant' s Name</b>	Odell Barnes
<b>Date of Birth</b>	1971
<b>Defendant' s Race</b>	Black
<b>Criminal History</b>	Aggravated robbery; rape, after the Bass crime
<b>Execution Date</b>	March 1, 2000
<b>TDC Number</b>	
<b>Age at time of crime</b>	18
<b>Age at execution</b>	29
	<b>THE CRIME</b>
<b>Date of Crime</b>	November 29 or 30, 1989
<b>County</b>	Wichita
<b>Victim(s)</b>	Helen Bass
<b>Race of Victim(s)</b>	Black
<b>Relationship to Defendant (if any)</b>	<ul style="list-style-type: none"> <li>• Barnes' mother was friends with her</li> <li>• Barnes had worked on her house previously</li> <li>• Barnes had a consensual sexual relationship with her</li> </ul>
<b>Offense Alleged</b>	Capital murder
<b>Allegations</b>	Raped, shot, stabbed, beat, robbed victim
	<b>THE TRIAL</b>
<b>County where tried</b>	Lubbock
<b>Trial Judge</b>	Temple Driver–Wichita Falls
<b>Prosecutor(s)</b>	Barry Macha and John Brasher—trial and post conviction
<b>Defense Attorney(s)</b>	Reginald Wilson and Marty Canedy–Wichita Falls
<b>Plea</b>	Not guilty
<b>Racial Makeup of Jury</b>	
<b>Convicted of (statute)</b>	Capital murder (Rape, robbery and murder)
<b>Confession?</b>	No
<b>Accomplice(s)</b>	No
<b>Eyewitness(es)</b>	Robert Brooks–testified to seeing Barnes jump victim's fence one and one half hours before victim's return home from work Mary Barnes (Odell's mother) brought victim home from work
<b>Scientific Evidence</b>	Identification by prosecution of blood and semen–50% probability, 2 spots blood on coveralls Fingerprint on lamp
<b>Jail House Snitch?</b>	No
<b>Defendant testimony</b>	No
<b>Exculpatory Evidence Offered?</b>	Not at trial
<b>Additional Punishment evidence by State</b>	One of his unadjudicated rapes; prior criminal history

<b>Mitigating Evidence by Defense</b>	None presented at punishment phase: <ul style="list-style-type: none"> <li>• A few family members spoke for him.</li> <li>• Psychological test done right before trial</li> <li>• Psychologist never testified</li> <li>• No mitigation with regard to family life</li> <li>• Fights in family</li> <li>• Heavy use of alcohol and fighting (Barnes had shot father while trying to protect mother)</li> </ul>
<b>Mental Retardation, Mental Illness, neurological damage?</b>	No
<b>Sentencing Date:</b>	May 14, 1991
	<b>DIRECT APPEAL COURT OF CRIMINAL APPEALS</b>
<b>State' s appellate attorney</b>	Macha and Brasher
<b>Defendant' s appellate attorney</b>	Wilson and Canedy
<b>Appellate brief filed</b>	Date
<b>Grounds Raised</b>	<b>Challenged:</b> <ul style="list-style-type: none"> <li>• Search warrants</li> <li>• Admission of photos of victim</li> <li>• Sufficiency of evidence to sustain conviction</li> <li>• Failure of trial court to define reasonable doubt</li> <li>• Evidence to suggest Barnes as future threat</li> <li>• Jury selection</li> <li>• Error in punishment charge</li> <li>• Witness not on State' s list allowed to testify</li> </ul>
<b>Date of opinion</b>	1994/affirmed conviction (Barnes v. State 876 s.w. 3d316)
<b>Opinion citation</b>	Affirmed conviction
<b>Cert to S. Ct?</b>	October 1999
	<b>STATE WRIT OF HABEAS CORPUS</b>
<b>Writ Attorney</b>	John Curry–Wichita Co. Public Defender
<b>Appointed, retained or volunteer?</b>	Appointed/filed Writ April 1997
<b>Grounds Alleged</b>	<ul style="list-style-type: none"> <li>• Denial of instruction on reasonable doubt</li> <li>• Denial of reasonable appellate review by CCA</li> <li>• Failure to inform jury that a single “no” vote on special issue would force court to give Barnes a Life sentence.</li> <li>• Disproportionality on sentence</li> <li>• Sentence-arbitrary and capricious</li> <li>• Mitigation instruction inadequate</li> <li>• Invalidity of search warrant</li> <li>• Ineffective assistance of counsel</li> </ul>
<b>Writ Judge</b>	Temple Driver
<b>Date of Decision</b>	December 1997
<b>Decision</b>	Denied

<b>Cert to S. Ct.?</b>	No
	<b>NEW EVIDENCE OF INNOCENCE</b>
<b>Developed by:</b>	Gary Taylor, Phil Wischkaemper, Mike Charlton, attorneys; and Lisa Milstein and Mike Ward, investigators
<b>Presented to:</b>	
<b>Summary:</b>	<ul style="list-style-type: none"> <li>• Eyewitness to Barnes jumping fence one and one half hours before Ms. Bass returned home from work—sister was in car and he originally did not identify Barnes with certainty</li> <li>• 1 of 2 spots of blood on coveralls had citric acid on them, probably planted (prosecutors went back and did DNA testing in 1997 and found the semen was Barnes’ and the one blood spot belonged to the victim.)</li> <li>• Attorneys for Barnes did a test and were able to date the semen as much earlier than day of murder and in doing the blood testing, they discovered citric acid in the spot that the State said was victim’s blood</li> <li>• Humphries sold a gun wrapped in a purple bandana to Harvey Neil</li> <li>• Humphries was wearing coveralls with blood on them</li> <li>• Williams, drug dealer and state’s witness, made a deal for lesser charges on pending cases</li> <li>• Humphries seen leaving victim’s home night of murder by Homer Kines; lamp with Barnes’ fingerprint had been in victim’s home for some time</li> <li>• Marquita Mackey, Williams’ girlfriend, was overheard by Sandy Durant, a white woman in her cell, saying that Humphries, Williams, and a 3<sup>rd</sup> person had come to her home the night of the murder covered in blood and demanding clean clothes.</li> <li>• Humphries put a gun to her head and said he would kill her like he did Ms. Bass if she didn’t get him the clothes</li> <li>• Tammy Lewis gave sworn statement about deal Williams made with DA</li> <li>• Rodney Brown saw Patrick Williams with bloody gun</li> <li>• Bloody bandana was in Humphries’ possession</li> <li>• Humphries told Brown “I did something.”</li> </ul>

## Robert Nelson Drew (TX)

<b>DEFENDANT'S INFORMATION</b>	
<b>Defendant's Name</b>	ROBERT NELSON DREW
<b>Date of Birth</b>	April 8, 1959
<b>Defendant's Race</b>	White
<b>Criminal History</b>	None
<b>Execution Date</b>	August 22, 1994
<b>TDC Number</b>	755
<b>Age at the time of crime</b>	24
<b>Age at the time of execution</b>	35
<b>THE CRIME</b>	
<b>Date of Crime</b>	February 21, 1983
<b>County</b>	Harris County
<b>Victim(s)</b>	Jeffrey Leon Mays
<b>Race of Victim(s)</b>	White male
<b>Relationship to Defendant (if any)</b>	Traveling acquaintance
<b>Offense Alleged</b>	Capital murder
<b>Factual summary of allegations</b>	<ul style="list-style-type: none"> <li>• In the course of committing robbery against Mays, Drew intentionally caused the death of Mays by stabbing him.</li> <li>• In the course of the kidnap of Landrum – stabbing Mays intentionally and knowingly caused death of Mays by stabbing him with a knife.</li> <li>• Intention to cause severe bodily injury to Mays, and caused death of Mays by intentionally and knowingly committing an act clearly dangerous to human life.</li> <li>• While traveling in a car Mays and Drew got into an argument. After beating Mays in the car, Drew and Puralewski (accomplice) ordered Mays out of the car and stabbed him to death.</li> </ul>
<b>THE TRIAL</b>	
<b>County where tried</b>	Harris County
<b>Trial Judge (name, address and telephone)</b>	Hon. Charles Hearn, 263 District Court, Harris County, TX
<b>Prosecutor(s) (name, address and telephone)</b>	Eric Hagstette, Assistant DA with DA office of Harris County, TX
<b>Defense Attorney(s) (name, address, and telephone)</b>	Don Rogers and Richard Stephanow.
<b>Plea</b>	Not Guilty
<b>Racial Makeup of Jury</b>	
<b>Convicted of (statute)</b>	Capital Murder – TX PC s.19.03 (a)(2)
<b>Confession?</b>	No
<b>Accomplice(s)</b>	Ernest Puralewski, who later admitted that he committed the murder alone
<b>Eyewitness(es)</b>	One (as well as Puralewski) – Bee Landrum, who later recanted his testimony and admitted that he did not, in fact, see what happened.
<b>Scientific Evidence</b>	No psychiatric testimony presented.
<b>Jail House Snitch?</b>	
<b>Defendant Testimony?</b>	
<b>Exculpatory Evidence Offered?</b>	
<b>Additional Punishment evidence by State</b>	

<b>Mitigating Evidence by Defense</b>	<ul style="list-style-type: none"> <li>• Drew’s Uncle – Donald Martelle – testified as to Drew’s broken and poverty stricken home background with a history of domestic problems and drinking problem.</li> <li>• Drew was average in school, had been married and divorced, had one child and was a drifter at the time of the murder.</li> </ul>
<b>Evidence of Mental Retardation, Mental Illness, and/or neurological damage?</b>	“Applicant’s responses were consistent with counsel’s personal observation of applicant and corroborated counsel’s conclusions that neither insanity nor competency to stand trial were issues in applicant’s case.”
<b>Sentencing Date:</b>	December 9, 1983
	<b>DIRECT APPEAL TO COURT OF CRIMINAL APPEALS</b>
<b>State’s appellate attorney</b>	
<b>Defendant’s appellate attorney</b>	William Kunstler, Bradford E. Yock
<b>Date appellate brief filed</b>	March 30, 1984
<b>Grounds Raised</b>	Appellant raised 12 grounds of error, encompassing: <ul style="list-style-type: none"> <li>• Trial court erred in denying appellants out-of-time motion for new trial on basis of a lack of jurisdiction because the “new available” evidence warranted a new trial and because the jury misconduct occurred when parole was discussed.</li> <li>• Challenges to the sufficiency of the evidence to prove that the murder was committed in the course of committing robbery of the deceased and the sufficiency of the evidence to support an affirmative finding of the 2<sup>nd</sup> special issue submitted – that appellant was a continuing threat to society.</li> <li>• Four points of error re: improper jury argument of prosecutor.</li> <li>• Two points of error re: trial court error in sustaining challenges for cause to venire men Grover Smith and Archie Cotton.</li> </ul>
<b>Date of opinion</b>	September 30, 1987, conviction affirmed
<b>Opinion citation (or attached)</b>	Drew v. State, 743 S.W. 2d 207 (Tex. Crim. App. 1987)
<b>Cert to S. Ct?</b>	Denied June 28, 1993.
	<b>STATE WRIT OF HABEAS CORPUS</b>
<b>Writ Attorney</b>	<ul style="list-style-type: none"> <li>• Ronald Kuby and William Kunstler</li> <li>• Rob Owen</li> <li>• Michael Jackson</li> </ul>
<b>Appointed, retained or volunteer?</b>	Indigent, so either appointed or volunteer
<b>Grounds Alleged</b>	<p>INNOCENCE:</p> <ul style="list-style-type: none"> <li>• Alternative murderer – Ernest Puralewski confessed in sworn affidavit fully exculpating Drew</li> <li>• Bee Landrum, only eyewitness, recanted</li> <li>• Tape with Landrum hours after killing in which he admitted he didn’t see murder was suppressed until 5 years after Drew’s trial</li> <li>• Execution of an innocent person violates 8<sup>th</sup> and 14<sup>th</sup> Amendment of US Constitution and Art 1 s. 13 of TX Constitution</li> </ul> <p>AMMENDED APPL FOR POST-CON WRIT OF Habeas Corpus Prosecutor repeatedly used a hypothesis at voir dire that fundamentally misstated TX Law, in violation of TX and federal constitutional guarantees and resulted in inability of jurors to determine guilt reliably and to consider and give effect to mitigating evidence.</p>
<b>Writ Judge</b>	Ruben Guerrero

<b>Date of Decision</b>	July 28, 1994
<b>Decision</b>	Denied
<b>Cert to Supreme Ct.?</b>	Denied Feb. 28, 1994
	<b>NEW EVIDENCE OF INNOCENCE</b>
<b>Developed by:</b>	writ attorneys
<b>Presented to:</b>	TX Court of Criminal Appeals
<b>Summary:</b>	Additional evidence that Puralewski had been claiming sole responsibility for the murder since his incarceration in Harris County Jail. Alan Burns – inmate incarcerated with Puralewski sworn affidavit to above effect.

## Gary Graham (aka Shaka Sankofa) (TX)

<b>TDCJ Number</b>	696
<b>Address</b>	Death Row – Huntsville & Livingston, Texas/deceased
<b>Date of birth</b>	September 5, 1963
<b>Race</b>	Black
<b>Date of crime</b>	May 13, 1981
<b>Age at time of crime</b>	17
<b>Date sentenced</b>	1981
<b>Victims</b>	Bobby Lambert
<b>Race of victims</b>	White male
<b>Victim Relationship to defendant</b>	No relationship
<b>Facts alleged by state</b>	<ul style="list-style-type: none"> <li>• Gary Graham was arrested in May 1981, after a weeklong crime spree.</li> <li>• A 57-year-old white woman who told police that Gary had raped her at gunpoint turned him in</li> <li>• Charged with aggravated robbery and capital murder of a white man who had been robbed and murdered in a dimly lit grocery store parking lot in Houston</li> <li>• Not charged with rape</li> <li>• He pleaded guilty to 10 counts of aggravated robbery, but always maintained his innocence of the murder</li> <li>• The only evidence used to convict Gary was the testimony of a single eyewitness who saw the perpetrator for 2 to 3 seconds in the dark. This eyewitness, Bernadine Skillern, helped police make a sketch of the shooter. She picked Gary out of a live line-up having seen his picture in a photo spread the day before. Gary was the only person in the photo spread and live line-up to match the general characteristics of the shooter.</li> <li>• <b>All</b> the eyewitnesses agreed the shooter was a clean-shaven black male with a short, compact afro wearing a white jacket and dark slacks. They all agreed the shooter resembled the police sketch, which bore little resemblance to Gary Graham.</li> <li>• Graham was arrested with a .22 caliber handgun.</li> <li>• The victim was killed with a .22 caliber handgun, but Houston police stated unequivocally that Graham’s gun was NOT the murder weapon. The jury never heard this ballistics evidence or the other eyewitnesses.</li> <li>• In the penalty phase of the trial, Graham’s other crime victims testified against him.</li> </ul>
<b>County where tried</b>	Harris County
<b>Trial judge</b>	Judge Travathian
<b>Trial attorney</b>	Ron Mock
<b>Prosecutors</b>	Johnny Holmes Office
<b>Trial by</b>	Jury
<b>Race of jurors</b>	11 white, one Black
<b>Convicted of</b>	Capital murder
<b>Confession</b>	No confession. Gary always maintained his innocence.
<b>Accomplice testimony</b>	No accomplice.
<b>Eyewitness testimony</b>	One eyewitness identifies Gary. Her identification process was tainted. Six other eyewitnesses fail to identify him.
<b>Forensic testimony</b>	The victim was killed with a .22 caliber handgun. Ballistics proved Gary’s gun was NOT the murder weapon. No other physical evidence linked Gary to the crime.
<b>Jailhouse snitch</b>	No jailhouse snitch.

<b>Defendant testimony</b>	Gary did not testify, although he always said he wanted to testify.
<b>Principal exculpatory evidence</b>	<ul style="list-style-type: none"> <li>• No physical evidence linked Graham to the crime.</li> <li>• Six eyewitnesses swear Graham was not the killer.</li> <li>• The police did not follow up three very promising leads after Graham was arrested.</li> <li>• The eyewitness identification process used with Bernadine Skillern was tainted.</li> <li>• The guilt phase of the trial lasted less than two days. Graham's attorney put on no defense and did no investigation. He virtually did no cross-examination of Bernadine Skillern and even suggested to the jury that his client was the murderer.</li> <li>• The murder weapon did not match Graham's gun; the jury never heard this information.</li> <li>• The jury never heard from eyewitnesses Ron Hubbard and Sherian Etuk who said Graham was not the shooter. Eyewitnesses Ron Hubbard, Sherian Etuk and Wilma Amos told police the shooter was 5' 3" to 5' 5".</li> <li>• Mock failed to ask eyewitnesses Daniel Grady or Wilma Amos, who did testify at trial, if Graham was the shooter.</li> <li>• Four alibi witnesses never testified nor were even interviewed by defense counsel.</li> </ul>
<b>Sentencing authority</b>	Jury
<b>Statutory aggravating factor</b>	10 aggravated robberies; two victims were shot and wounded during the robbery.
<b>Non-statutory factors in aggravation</b>	Although never charged with rape, the judge allowed the jury to hear the testimony of the woman who said Gary raped her.
<b>Mitigating factors</b>	Gary was 17 when he was arrested. He grew up in poverty with a mentally ill mother and a father with a drinking problem.
<b>Mental illness, retardation or neurological damage</b>	None.
<b>Criminal history</b>	Armed robbery when he was a juvenile.
<b>Appellate history</b>	<ul style="list-style-type: none"> <li>• case was presented to all the appropriate state and federal courts, including the U.S. Supreme Court.</li> <li>• Case was summarily denied on procedural technicalities and time bar rules in every court.</li> <li>• Graham had one evidentiary hearing in 1988 where two alibi witnesses were heard. These witnesses were deemed non-credible by the judge.</li> <li>• The compelling evidence of other eyewitnesses who said Graham was not the killer was discovered in 1993. The 1988 hearing was the only evidentiary hearing Graham ever had.</li> <li>• In 1995, the 5<sup>th</sup> Circuit Court of Appeals said there <b>was</b> merit to Graham's case, but would not rule because Graham had not exhausted his state appeals.</li> <li>• In 1996, the Texas Court of Criminal Appeals rejected the case on technical grounds without addressing the merits.</li> <li>• When the case was sent back to the 5<sup>th</sup> Circuit, the court now refused to review it because of the 1996 Anti-terrorism and Death Penalty Act that stated that new evidence would not be considered if it could have been discovered at the time of trial.</li> <li>• Graham's case was NEVER reviewed on the merits by any court or judge.</li> </ul>
<b>Ineffective Assistance of Counsel</b>	Yes-failure to call other eyewitnesses or alibi witnesses to testify, no investigation, failure to cross examine one eyewitness adequately

<b>Police Misconduct</b>	<p>The identification process used by police was tainted.</p> <ul style="list-style-type: none"> <li>• They showed Bernadine Skillern a photo array 13 days after the murder.</li> <li>• The only suspect in the photo spread to resemble the general characteristics of the murderer – a clean, black male with a compact afro – was Gary Graham.</li> <li>• The other four men in the photo spread had long hair or facial hair or both. Skillern could not identify Graham from the photo spread, but did tell police that the photo of Graham resembled the suspect, but the person she saw had a “thinner face and a darker complexion.”</li> <li>• The following day, Skillern viewed a live line-up.</li> <li>• Again, Graham was the only person to meet the general characteristics of the shooter.</li> <li>• She picked out Graham from the line up, telling police she recognized him from the photo spread the day before.</li> <li>• The police told her that he was their suspect too.</li> </ul>
<b>Was prosecutorial misconduct an issue?</b>	<ul style="list-style-type: none"> <li>• The prosecutor waved Graham’s .22 caliber pistol in front of the jury giving the false impression that Graham’s gun was the murder weapon.</li> <li>• During the appellate process, the prosecutor’s office failed to turn over discovery material to the appellate attorneys in a timely manner which prevented them from arguing key issues in their appeals.</li> <li>• The Harris County District Attorney stated on national television that 33 courts had reviewed the merits of the case and found that the other eyewitnesses were not credible. This was not true.</li> </ul>
<b>Appellate counsel</b>	<p>Richard Burr, Jack Zimmermann, Mandy Welch, Doug O’Brien and the now defunct Texas Resource Center.</p>

## Richard Wayne Jones (TX)

<b>DEFENDANT'S INFORMATION</b>	
<b>Defendant's Name</b>	Richard Wayne Jones
<b>Date of Birth</b>	April 9, 1960
<b>Defendant's Race</b>	White
<b>Criminal History</b>	Runaway as a juvenile; burglary and theft: served 2 yr. 4 mo; paroled in 1981; 1983 aggravated robbery; paroled in 1985
<b>Execution' Date</b>	August 22, 2000
<b>TDCJ Number</b>	
<b>Age at the time of crime</b>	26
<b>Age at the time of execution</b>	40
<b>THE CRIME</b>	
<b>Date of Crime</b>	Feb. 19, 1986
<b>County</b>	Tarrant
<b>Victim(s)</b>	Tammy Livingston
<b>Race of Victim(s)</b>	White
<b>Relationship to Defendant</b>	None
<b>Offense Alleged</b>	Capital murder
<b>Factual summary of allegations</b>	Victim abducted, stabbed 19 times, body nude but no sexual assault, field set on fire, body burned; robbed: credit cards, checks, car
<b>THE TRIAL</b>	
<b>County where tried</b>	Tarrant
<b>Trial Judge</b>	CC "Kit" Cook
<b>Prosecutor(s)</b>	Sharon Wilson, Scott Wise, Brent Carr
<b>Defense Attorney(s)</b>	Jack Strickland, Bill Lane
<b>Plea</b>	Not guilty
<b>Racial Makeup of Jury</b>	
<b>Convicted of (statute)</b>	Capital murder
<b>Confession?</b>	Coerced: confessed after he and his pregnant girlfriend were threatened with the death penalty
<b>Accomplice(s)</b>	Walt Sellers and Brenda Jones Ashmore (Richard's sister)
<b>Eyewitness(es)</b>	Ruthie Amato and 2 teenage daughters; Robert Speights (heard screams from crime scene)
<b>Scientific Evidence</b>	A lot of blood around body indicating she was killed in field; a few spots of blood on leg of jeans of Jones; Jones' fingerprint in car; fingerprints and hair samples at crime scene—never tested
<b>Jail House Snitch?</b>	On Sellers: several witnesses said he confessed, some from jail
<b>Defendant Testimony?</b>	Yes; shackled in court
<b>Exculpatory Evidence Offered?</b>	No, but Jones kept silent to protect sister. He knew Walt Sellers did the murder and eventually stated this
<b>Additional Punishment evidence by State</b>	
<b>Mitigating Evidence by Defense</b>	No psychiatric investigation Indication of cognitive dysfunction ADHD-hyperactive Abusive family-drinking, beatings Started running away at 8 Mostly raised in state schools Two suicide attempts Last state school closed for brutality shortly after he left

<b>Mental Retardation, Mental Illness, and/or neurological damage?</b>	Borderline retardation: IQ of 75, 3 <sup>rd</sup> grade level
<b>Sentencing Date</b>	July 24, 1987
	<b>DIRECT APPEAL COURT OF CRIMINAL APPEALS</b>
<b>States appellate attorney</b>	
<b>Defendant's appellate attorney</b>	
<b>Date appellate brief filed</b>	
<b>Grounds Raised</b>	
<b>Date of opinion</b>	April 29, 1992
<b>Opinion citation</b>	Affirmed conviction: Jones v State 843 S.W. 2 <sup>nd</sup> 487
<b>Cert to S. Ct?</b>	
	<b>STATE WRIT OF HABEAS CORPUS</b>
<b>Writ Attorney</b>	1 <sup>st</sup> : Strickland, Butcher, Lamoreaux; 2 <sup>nd</sup> : William Harris (Ft. Worth) and Rob Owen (Austin)
<b>Appointed, retained or volunteer?</b>	Appointed
<b>Grounds Alleged</b>	Coerced confession, physical evidence doesn't support conviction, real killer known, need for DNA testing
<b>Cert to S.Ct.?</b>	February 2, 1993; denied April 19, 1993

## Frank Basil McFarland (TX)

<b>DEFENDANT' S INFORMATION</b>	
<b>Defendant' s Name</b>	FRANK BASIL McFARLAND
<b>Date of Birth</b>	October 7, 1963
<b>Defendant' s Race</b>	White
<b>Criminal History</b>	juvenile offense of sexual assault
<b>Execution Date</b>	April 29, 1998
<b>TDCJ Number</b>	963
<b>Age - time of crime</b>	24
<b>Age - time of execution</b>	34
<b>THE CRIME</b>	
<b>Date of Crime</b>	02/01/88
<b>County</b>	Tarrant County (Northeast)
<b>Victim(s)</b>	Terry Hokanson
<b>Race of Victim(s)</b>	White
<b>Relationship to Defendant</b>	N/A –met her in a topless club, he was a patron, she was a shoe shine girl.
<b>Offense Alleged</b>	capital murder in the course of committing aggravated sexual assault.
<b>Actual Allegations</b>	<ul style="list-style-type: none"> <li>• Intentionally causing the death of Terry Hokanson by stabbing her in the course of committing the offense of aggravated sexual assault.</li> <li>• Met Hokanson at a topless bar and arranged to meet her to party afterwards.</li> <li>• Along with Michael Wilson, McFarland took her in his truck to Hurst Park where she was raped and stabbed 43 times and then left to die behind a church under construction.</li> </ul>
<b>THE TRIAL</b>	
<b>County where tried</b>	Tarrant county –commenced October 26, 1989, verdict November 13, 1989
<b>Trial Judge</b>	Hon. Don Leonard, Judge Presiding, Criminal District Court # 3, Tarrant County, Texas, 76196
<b>Prosecutor(s) (name, address and telephone)</b>	Clair Theodore and Ken Dies –Assistant US DA's, Southern District of Texas, 910 Travis, Suite 1500, Houston, Texas.
<b>Defense Attorney(s) (name, address, and telephone)</b>	Hon. Tolly Wilson, 112 North Beach, Fort Worth, Texas, 76111Sharen Wilson, 400 The Professional Building, 303 West 10 <sup>th</sup> St, Fort Worth, Texas, 76102
<b>Plea</b>	Not Guilty
<b>Racial Makeup of Jury</b>	?
<b>Convicted of (statute)</b>	capital murder –TX. Pen. Code. Ann. s.19.03 (a) (2)
<b>Confession?</b>	<p>No.</p> <ul style="list-style-type: none"> <li>• Testimony of Revill – Wilson's girlfriend re: confession by Wilson implicating McFarland. Suggestion this testimony could have been due to a deal with the authorities re: Revill's illegal immigrant status.</li> <li>• Before Wilson's funeral Detectives Blue and Teague had a telephone conference with Revill during which she did not implicate Wilson or McFarland.</li> <li>• Investigator Craig Teague admitted Revill's status as an illegal immigrant was discussed when a videotape of her story re: Wilson's alleged confession was made.</li> <li>• Alleged confession of Wilson to Mark Leonard Noblett re: Wilson and McFarland stabbing a woman in a church parking lot.</li> </ul>
<b>Accomplice(s)</b>	Wilson –later murdered before McFarland's trial

<b>Eyewitness(es)</b>	not specifically BUT <ul style="list-style-type: none"> <li>• Angela Autrey – saw victim leave club with 2 men.</li> <li>• Cheryl Kepp – owner of club saw Victim leave with two men, one of whom she said was Timothy Todd Tickle.</li> <li>• Warren, Mires and Rich – three boys who saw white car with red roof drive away and then saw Victim before she died.</li> </ul>
<b>Scientific Evidence</b>	<ul style="list-style-type: none"> <li>• Special Agent Blythe – FBI’s Microscopic Analysis Unit – analyzed the hair samples found in the victim’s hands and found that they were not consistent with the known hairs of Wilson/McFarland.</li> <li>• Testimony that the DNA from semen found on the victim matched McFarland’s semen, but 6% of the Caucasian population would also have the same characteristics.</li> <li>• Evidence that McFarland had hair on the back seat of his car which matched the rabbit hair coat worn by victim – but McFarland’s girlfriend had a rabbit hair coat she had previously worn in the truck.</li> </ul>
<b>Jail House Snitch?</b>	NO –but police informant– Mark Noblett testified against McFarland(worked as police informant in other cases)
<b>Defendant Testimony?</b>	Defense presented no testimony or evidence
<b>Exculpatory Evidence Offered?</b>	None
<b>Additional Punishment evidence by State</b>	Witnesses testified about McFarland’s bad character which should have been inadmissible in guilt phase of trial
<b>Mitigating Evidence by Defense</b>	<ul style="list-style-type: none"> <li>• Suzie Weber – testified she lived with McFarland since 1986 and never had any serious problems.</li> <li>• No legal consequences to McFarland as a result of attack on Ruth McGuire –Juvenile offense.</li> </ul>
<b>Mental Retardation, Mental Illness, and/or neurological damage?</b>	None
<b>Sentencing Date:</b>	November 15,1989 – Jury decided. November 27, 1989 – sentence passed.
	<b>DIRECT APPEAL TO COURT OF CRIMINAL APPEALS</b>
<b>State’ s appellate attorney</b>	Defense appeal cites Ken Dies and Clair Theodore – BUT State’s reply is done by: Tim Curry, C. Chris Marshall and Edward L. Wilkinson of The Office of the Criminal D. A. Tarrant County, Texas, 76196
<b>Defendant’ Attorney</b>	Jack V. Strickland and Michael Logan Ware, The Bryce Building, 909 Throckmorton St., Fort Worth, Texas 76102, Telephone: 817-338-1000.
<b>Date appellate brief filed</b>	Nov. 13, 1991
<b>Grounds Raised</b>	No innocence claim, but note failure to put on mitigating evidence.
<b>Date of opinion</b>	September 23, 1992 –opinion by Campbell J. Overstreet and Benavides JJ concur Clinton J dissents Baird J not participating.
<b>Opinion citation</b>	McFarland v. State, 845 F.2d 824 (1992)
<b>Cert to S. Ct?</b>	Denied petition for writ of certiorari – June 7, 1993

	<b>STATE WRIT OF HABEAS CORPUS</b>
<b>Writ Attorney (name address &amp; telephone)</b>	Danny D. Burns -115 North Henderson St., Fort Worth, Texas 76102, Tel: 817-870-1544
<b>Appointed, retained or volunteer?</b>	Appointed
<b>Grounds for Alleged Ineffective Assistance of Counsel.</b>	<p>Need for further discovery and investigation:</p> <ul style="list-style-type: none"> <li>• Prosecution's suppression of exculpatory evidence and subordination of perjured testimony.</li> <li>• Failure to preserve meritorious claim re: hearsay testimony</li> <li>• Failure to object to prosecution's use of applicant's post-arrest silence.</li> <li>• Objection to State innuendo that McFarland was involved with Wilson's murder</li> <li>• Possibility one of State's witnesses – BAKER – was offered deals by the State on his theft case (pending at time of McFarland's trial) in return for his testimony against McFarland</li> <li>• Prosecution didn't make statements of Rich and Mires available to defense (although Warrant was given)</li> <li>• Police Officer Oringderff who took statements from dying victim did not testify at trial even though he was available to do so.</li> <li>• Another witness – PARSONS – who also worked at club later identified the two men seen on the night of the murder and got boss to card them – one of them was Timothy Todd Tickle.</li> <li>• Meyers – police officer on the crime scene omitted to put in report boy's apparent mention of "blue" car, and said boys didn't refer to white thunderbird with red top – (referred to in boys statements)</li> <li>• Timothy Todd Tickle testified he didn't know victim – but was at the club on the night of the murder.</li> </ul>
<b>Writ Judge</b>	Don Leonard District #3, Tarrant County, TX
<b>Date of Decision</b>	November 15, 1995 – denied first Writ of habeas corpus; April 29, 1998 –denied; Second Writ of habeas corpus
<b>Decision</b>	Denied
<b>Cert to S.Ct.?</b>	Yes – filed Feb. 13, 1996 – placed on docket Feb 21 <sup>st</sup> 1996 – denied April 29 1996.
	<b>NEW EVIDENCE OF INNOCENCE</b>
<b>Developed by:</b>	Defense counsel and Texas Resource Center
<b>Presented to:</b>	TX C.C.A.
<b>Summary:</b>	<p>Case based on:</p> <ul style="list-style-type: none"> <li>• Hearsay evidence – alleged statements of a dead man</li> <li>• Circumstantial evidence</li> <li>• DNA evidence which only limited semen donor to 6% of the Caucasian population.</li> </ul> <p>Post-trial investigation</p> <ul style="list-style-type: none"> <li>• Revealed Noblett (prosecution star witness) offered perjured testimony about Wilson pointing a gun at him.</li> </ul>

	<ul style="list-style-type: none"><li>• State suppressed Noblett’s history as police “snitch” and Noblett’s criminal history.</li><li>• York – man present in motel room at time of alleged confession by Wilson to Noblett could have testified as to his lack of knowledge of it.</li><li>• Victim stated she hadn’t met assailants before and evidence that she already knew McFarland and Wilson.</li><li>• Sworn statements from Mires and Rich were not given to Defense – that victim said she didn’t know guys who killed her and she got in the car and took off – not that she met them at a club. “She thought she recognized them” were her words – not “she thought she <i>knew</i> them.” Suggests mistaken identity – statements are exculpatory and refute states theory of the case.</li><li>• Constitutional obligation and Brady violation by prosecution for not disclosing these statements.</li><li>• Boys (Warran, Mires and Rich) could also have testified they saw a white (not a blue) car at the crime scene. (not a blue car – McFarland’s car was blue and the prosecution’s theory of the case involved a blue car)</li><li>• No evidence the boys ever said they saw a blue car – perjured testimony of PO (previously mentioned)</li><li>• Applicant’s girlfriend owned a rabbit hair jacket that could have explained the presence of rabbit hair in McFarland’s car</li></ul>
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## Roger Keith Coleman (VA)

<b>Name/DOC #</b>	Roger Keith Coleman
<b>Address</b>	Grew up in Grundy, Buchanan County, VA; resided there at time of crime. Executed at Virginia's Greensville Penitentiary
<b>Date of Birth</b>	November 1, 1958
<b>Race</b>	White
<b>Date of Crime</b>	March 10, 1981
<b>Age Time of Crime</b>	22
<b>Date Sentenced</b>	April 23, 1982
<b>Victims</b>	Wanda Fay McCoy
<b>Race of Victims</b>	White
<b>Relationship to Defendant</b>	Sister-in-law: Roger Coleman was married to victim's sister at time of crime.
<b>Facts Alleged by State</b>	Coleman was allegedly admitted to victim's home, where he allegedly attacked her, raped her, sodomized her, and cut her throat, thus causing her death.
<b>County of Trial</b>	Buchanan County, VA
<b>Trial Judge</b>	Buchanan County circuit judge Nicholas Persin
<b>Trial Attorney</b>	Terry Jordan and Steven Are
<b>Prosecutors</b>	Commonwealth's Attorney (prosecutor) Michael G. "Mickey" McGlothlin, assisted by Tom Scott, private practitioner
<b>Trial By</b>	Jury
<b>Race of Jurors</b>	
<b>Convicted of</b>	Rape and capital murder
<b>Confession</b>	No
<b>Accomplice Testimony</b>	No accomplice testimony; no accomplice found or named
<b>Eyewitness Testimony</b>	No witnesses
<b>Forensic Testimony</b>	<ul style="list-style-type: none"> <li>• Two hairs recovered from the victim's body were said to be "unlikely" to have come from anyone but Mr. Coleman.</li> <li>• Semen samples recovered from the victim's body were of same blood type as Mr. Coleman. Blood on Mr. Coleman's pants was of same type as victim.</li> <li>• Blood and semen samples were not subjected to all available tests.</li> <li>• Subsequent DNA analysis of samples supported original matchups; dispute continues over further testing of remaining samples with newly improved DNA analysis, with state opposing further tests.</li> <li>• Soil on Ms. McCoy's hands, sleeves, legs, was never compared to soil around house: Thus, chance was missed to challenge prosecution theory of attack inside house by person known to victim.</li> <li>• Fingerprint on front door was apparently never analyzed; this may have meant losing a chance to identify intruder(s).</li> <li>• Wounds in victim's chest were said to have been made by Coleman's pocketknife.</li> <li>• Other experts challenge state's analysis of wounds as insufficient to establish link.</li> </ul>
<b>Jailhouse Snitch</b>	<p>Yes:</p> <ul style="list-style-type: none"> <li>• Roger Matney, a convicted felon awaiting sentencing in Buchanan County Jail when Coleman was held there following his arrest, testified that Coleman had confessed to him.</li> <li>• In Matney's account, Coleman reported visiting McCoy's house with another man, where the other man attacked her and both the other man and Coleman raped her.</li> <li>• Matney's allegations that Coleman reported having sketched the murder scene, and that a weapon was discarded under a bridge, were apparently never followed up for</li> </ul>

	verification.
<b>Defendant Testimony</b>	Yes: Coleman denied involvement in the crime and denied having "confessed" to Roger Matney. He recounted his whereabouts the night of the crime.
<b>Principal Exculpatory Evidence</b>	<ul style="list-style-type: none"> <li>Well-supported alibis. Coleman had gone to work at the coal mine the evening of the crime, found that his entire shift had been laid off unexpectedly, and spoken with several acquaintances and co-workers before returning home.</li> <li>DNA testing shows involvement of two assailants, and other assailant never identified.</li> <li>Unexplained physical evidence does not fit into prosecution theory that Coleman was willingly admitted to house and attacked McCoy inside.</li> </ul>
<b>Sentencing Authority</b>	Jury; judge had authority to overturn sentence in favor of life term.
<b>Statutory Aggravating Factor</b>	<ul style="list-style-type: none"> <li>Virginia death sentences require finding by jury that defendant's likely future commission of violent acts constitutes a threat to society,</li> <li>OR that murder in question was "outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim." Coleman's jury found both conditions to obtain death sentence(based on prior felony conviction and on circumstances of McCoy killing).</li> </ul>
<b>Non-Statutory Aggravating Factor</b>	
<b>Mitigating Factors</b>	Testimony on Coleman's recent religious conversion
<b>Mental Illness, retardation or neurological damage</b>	No
<b>Criminal History</b>	<ul style="list-style-type: none"> <li>Felony conviction for attempted rape in 1977.</li> <li>State's case against Coleman in that case was based on victim's identification of Coleman's picture in high school yearbook.</li> <li>High school superintendent, who knew Coleman personally, reported having been talking with Coleman elsewhere at time of attack.</li> </ul>
<b>Appellate History</b>	<ul style="list-style-type: none"> <li>Original habeas corpus petition in state court was ruled to have been filed one day late.</li> <li>Federal and state review of trial was therefore effectively denied, this denial being affirmed by U.S. Supreme Court.</li> <li>New information discovered by Coleman's lawyers and by independent investigators was not heard.</li> </ul>
<b>Ineffective Assistance?</b>	In his state and federal habeas corpus petitions, Coleman alleged ineffective legal counsel. His lawyers were inexperienced, and unfamiliar with the appropriate avenues of attack against the state's analysis and assessment of the physical evidence that was presented at trial.
<b>Police Misconduct</b>	
<b>Prosecutorial Misconduct</b>	Habeas corpus petition claimed trial flawed because state did not provide defense with exculpatory documents, including report of pry mark on front door molding, and the report of police interviews with a couple who had seen Coleman the night of the crime.
<b>Appellate Counsel</b>	Kitty Behan, Arnold & Porter, Washington, D.C.; Johnny Farmer, Norton, Virginia; John Hall, Debevoise & Plimpton, New York City. The work of Jim McCloskey, an investigator with Centurion Ministries of Princeton, New Jersey, was also central to Mr. Coleman's appeals efforts.