

A State of Denial:

Texas Justice and
the Death Penalty

Texas Defender Service

Odell Barnes, Jr.

Odell Barnes was convicted and sentenced to death for the 1989 murder of Helen Bass in Wichita Falls. From the beginning, Barnes insisted he was innocent. His trial attorneys, however, had little experience with capital cases and conducted virtually no investigation into his innocence claim. Years after the trial, experienced capital litigators reinvestigated the trial evidence and testimony, attacking and discrediting each element of the prosecution's case. New evidence uncovered by the defense clearly implicated other suspects and cast serious doubt on the reliability of the results obtained from the original crime scene investigation.

I. Key Facts

- A. The investigation by the Wichita Falls Police Department focused exclusively on Barnes. Although the police found a number of unknown fingerprints at the scene, they made no attempt to check these prints against the witnesses who implicated Barnes.
- B. Eyewitness testimony used at trial to place Barnes at the scene of the crime on the night of the murder was misinterpreted: the witness actually saw Barnes 90 minutes before the victim arrived home, not at the time of the crime.
- C. Barnes told his trial lawyer that he and the victim had been having a consensual sexual relationship, a fact later confirmed by other witnesses. His lawyer failed to develop this evidence, which contradicted the prosecution's theory of the crime and explained the physical evidence found at the crime scene.
- D. Witnesses claimed at trial that Barnes had given them a gun similar to one owned by the victim. Years later, a number of people swore these same witnesses had confessed to the crime.
- E. The key physical evidence against Barnes was later found to have been adulterated or misinterpreted. Stains of the victim's blood found on Barnes's clothes contained a forensic preservative, leading one expert to conclude that the blood had been planted on the clothing. Retesting of samples of Barnes's semen that had been taken from the victim revealed that the semen most likely had been deposited between one to two days prior to the crime.

II. The Crime

The physical evidence indicated that Helen Bass had been stabbed twice, shot in the head, and struck in the head with a blunt object. The crime scene was horrific: blood was spattered on the ceiling, floor, and three walls of the bedroom where the victim was killed, and there were blood

transfer patterns throughout the home. Semen was later recovered from the victim's vagina.

III. The Trial

In many respects, Odell Barnes appeared to be the perfect suspect. Barnes lived in the same area as Helen Bass, and an eyewitness testified he saw the defendant jumping the fence behind the victim's home on the night of the murder. Police testified they had recovered Barnes's fingerprint from the base of a bedroom lamp; the prosecution claimed Ms. Bass had acquired the lamp only shortly before her death and that Barnes had used it to strike her. Police also told the jury they had recovered a pistol from other witnesses who claimed they got it from Barnes; the pistol was similar to one owned by the victim. Prosecutors produced a pair of Barnes's coveralls with two small blood stains on the sleeves, matching the blood of the victim. Semen found in her vagina also matched Barnes. The jury convicted Barnes and sentenced him to death.

IV. The Appeals

The Texas Court of Criminal Appeals affirmed Barnes's conviction and sentence. The same court later denied the petition for post-conviction relief prepared by the Wichita Falls Public Defender – an organization with virtually no experience in capital post-conviction litigation.

Only years later, when experienced capital litigators took over the appeal, did the truth begin to emerge. These lawyers learned from the victim's son that the lamp, which the prosecution claimed had been acquired only recently, had in fact been in the victim's home for many years. They reinvestigated the eyewitness and established that he had seen Barnes approximately 90 minutes before the victim arrived home from work. In other words, when the witness saw Barnes in the vicinity of the victim's home, Helen Bass was still alive.

But what of the blood stains on Barnes's coveralls? The appellate lawyers sent them to a nationally known chemist, who made a shocking discovery. One of the stains contained a citric acid blood preservative, of the type typically found in forensic or medical laboratories. According to this expert, the stains either were accidentally or deliberately planted on the pants at some time other than the commission of the crime and were not legitimate crime scene evidence.

Barnes had informed his trial attorney that he and the victim had a consensual sexual relationship – a fact confirmed by other witnesses. In one of the great tragedies of the case, however, his original lawyer failed to develop this crucial evidence, which challenged the entire prosecution theory of the crime and shed an entirely new light on the physical evidence. Experts retained by the new defense team performed special protein testing of the semen sample. The testing revealed that the sperm most likely had been deposited 24 to 48 hours prior to the victim's death.

Barnes's post-conviction team also retained crime scene investigation experts who reviewed the credibility and reliability of the original investigation conducted by the Wichita Falls Police

Department. These experts concluded that the investigation protocol used by the police was so poor that it called into question any resulting findings. For example, although the police found a number of unknown fingerprints at the scene, they made no attempt to check these prints against other potential suspects, including the witnesses who implicated Barnes.

The defense team also investigated the credibility of the witnesses who claimed that Barnes had given them a gun allegedly taken from the victim's home. Their inquiries produced sworn statements from several people who had heard those same witnesses confess to the murder. The only fingerprint found on the pistol given to the police came from one of the witnesses who alleged that Barnes had given it to him. In addition, one of these incriminating witnesses had pending criminal charges for drug possession and delivery. Although the Wichita County prosecutors had a written policy forbidding probation plea offers in drug cases, this witness received ten years probation on both cases after he testified against Barnes.

None of this compelling new evidence moved the appellate courts to intervene.

V. Conclusion

The case against Odell Barnes is a classic example of prosecutorial tunnel vision. Faced with crime scene evidence that seemed to implicate one person, police and prosecutors excluded all other possibilities and went after Barnes. His trial attorney failed to investigate and develop his client's protestation of innocence – and the jury drew mistaken inferences from what appeared to be undisputed evidence of guilt. Even though the case against Barnes was thoroughly discredited by careful reinvestigation years later, neither the courts, the Texas Board of Pardons and Paroles, nor Governor Bush saw any need to halt his execution.

The State of Texas executed Odell Barnes, Jr. on March 1, 2000.

For further review of Mr. Barnes's case, see Bob Burton, Killing Time, Houston Post, , January 27, 2000; Sara Rimer & Raymond Bonner, Bush Candidacy Puts Focus on Executions, New York Times, May 14, 2000, at A1; and the court files in: Barnes v. State (CCA No. 70,858); Barnes v. State (CCA No. 71,291); Ex Parte Barnes (CCA No. 30,357); Barnes v. Johnson (5th Cir. 98-20504).