

BROWN, Joseph Green (B/M)

DC # 042546

DOB: 10/02/50

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

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

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

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

Date of Offense: 07/07/73

Date of Sentence: 07/03/74

Circumstances of Offense:

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

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

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

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

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

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

Trial Summary:

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

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

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

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

Appellate Summary:

Florida Supreme Court, Direct Appeal

FSC # 46,925
381 So. 2d 690

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

Florida Supreme Court, Petition for Writ of Habeas Corpus

FSC # 59,732
392 So. 2d 1327

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

United States Supreme Court, Petition for Writ of Certiorari

USSC # 80-5708
449 U.S. 1118

12/17/80 Petition filed.
01/19/81 Petition denied.

United States Supreme Court, Petition for Writ of Certiorari

USSC # 80-6434
454 U.S. 1000

04/03/81 Petition filed.
11/02/81 Petition denied.

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

CC # 73-2180

05/18/83 Motion filed.
10/04/83 Motion denied.

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

FSC # 64,348
439 So. 2d 872

10/07/83 Appeal filed.
10/12/83 Denial affirmed.

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

USDC # 83-1287-Civ-T-10

10/14/83 Petition filed.
03/06/85 Petition denied.

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

USCA # 85-3217
785 F.2d 1457

03/26/85 Appeal filed.
03/17/86 USCA reversed the denial reached by the USDC, ordering the Habeas to
be issued.

Warrants:

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

Clemency:

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

Case Information:

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

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

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

Brown subsequently filed a Motion to Vacate Judgment and Sentence (3.850) in the State Circuit Court. Brown alleged ineffective assistance of counsel during the guilt and penalty phases of his criminal trial. Following an evidentiary hearing on the issue, the State Circuit Court denied all relief. Brown filed an appeal of that decision in the Florida Supreme Court, which affirmed the denial on 10/12/83. Brown concurrently filed a *Petition for Writ of Error Coram Nobis*⁹. Brown obtained a videotape deposition of Ronald Floyd's recanted testimony. In the video, Floyd outlined his motivation for testifying against Brown, primarily his fear that the State Attorney's Office would prosecute him for the same crimes that Brown was charged with. Floyd stated, that in exchange for his testimony against Brown, he was promised that he would not be charged with murder and would receive "favorable consideration" in another criminal case. Brown presented this new evidence as the basis for his Petition for Writ of Error Coram Nobis. He argued that, had this information been known to the trial court, "it conclusively would have prevented entry of the judgment." Having examined the issue

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

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

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

of Floyd's recantation in a previous evidentiary hearing, the Florida Supreme Court noted that Floyd reaffirmed his trial testimony. Brown claimed that Floyd's retraction was caused by fear of prosecution for perjury. Since his counsel failed to object to the issue during the hearing and did not raise the issue on appeal, the Florida Supreme Court opined that Brown did not have credible grounds for his Petition for Writ of Error Coram Nobis.

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

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

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

Law Enforcement/ Prosecution Statements:

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

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

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

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

Defense Statements:

Defense counsel J. Michael Shea commented:

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

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

Current Status:

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

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