

KEATON, Dave Roby (B/M)
DC# 030350
DOB: 02/05/52

Second Judicial Circuit, Leon County, Case # 6366
Sentencing Judge: The Honorable Guyte P. McCord, Jr.
Trial Attorney: Harry L. Michaels, Private
Attorneys, Direct Appeal: Kent Spriggs, Paul L. Ross, James Reif, Morton Stavis,
Margaret Ratner, Private

Date of Offense: 09/18/70
Date of Sentence: 05/11/71

Circumstances of the Offense:

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

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

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

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

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

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

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

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

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

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

Additional Information:

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

Codefendant Information:**Quincy Five:**

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

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

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

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

Jacksonville Three:

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

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

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

Trial Summary:

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

Retrial Information:

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

Appeal Summary:

Florida State Supreme Court, Direct Appeal

FSC# 41231
273 So. 2d 385

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

Case Information:

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

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

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

Prosecution/Law Enforcement Statement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Johnny Lee Burns is reported incurably insane and has been committed to the State Hospital at Chattahoochee since early 1971.
5. Jessie Damon is currently serving a sentence of life in the State prison from Leon County for the murder of Mr. Revels.
6. John Allen Mitchell is currently serving a sentence of life in the State prison from Leon County for the murder of Mr. Revels.
7. James Fussell is currently serving a sentence of life in the State prison from Leon County for the murder of Mr. Revels.
8. Johnny Frederick is currently serving a sentence of life in the State prison imposed May 1, 1971, for the murder of Mr. Revels, he has been granted a new trial and this nolle prosequi will have the effect of releasing him. It as noted, however, that Johnny Frederick has not been identified as a member of the gang that Smith, Keaton, Burns and Figgers were associated with. He has no known criminal record. In his confession he declared he was outside in the car and was not actually participating in the robbery as such which resulted in the death of Mr. Revels. There is no evidence that his release at this time would necessarily be against the public interest.

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

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

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

Law Enforcement Statements:

04/08/02 Letter sent to Leon County Sheriff's Department requesting comment.
04/12/02 Received case information; however no statement was provided.
05/23/02 Placed telephone call to Leon County Sheriff's Department. Receptionist will have an individual who is familiar with the case return the call. No comment had been received to date.

Defense Statement:

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

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

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

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

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

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

I followed the "Jacksonville Three" case with great interest. The fact that not any of the "Quincy Five" were on the premises all were innocent of that robbery and

murder, shows how our criminal justice system just fails us at times. The confession should not have been admitted into evidence. The death penalty should not be given on shaky eye witness testimony.”

Current status:

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

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