

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

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

Original Trial Information:

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

Retrial Information:

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

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

Circumstances of the Offense:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Additional Information:

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

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

Trial Summary:

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

Retrial Summary:

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

Appeal Summary:

Florida State Supreme Court, Direct Appeal

FSC# 32981 and 33022
166 So. 2d 131

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

United States Supreme Court, Petition for Writ of Certiorari

USSC # 535
380 U.S. 917

03/01/65 Petition denied

Circuit Court, Rule 1.850 Petition

CC # 519 and 520

04/29/69 Motion denied

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

DCA # T-146, T-147

307 So. 2d 473

05/13/73 Appeal filed
02/03/75 DCA affirmed judgment and sentence.

Clemency:

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

Case Information:

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

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

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

Pitts and Lee filed another petition based on the 1.850 rule with the Circuit Court on 12/19/67. The petition was granted on 05/13/69 because the trial judge found for the petitioners on the issues of innocence and the State knowingly or negligently withheld evidence favorable to the defendants. The judge found for the State on all of the other issues raised in the petition; specifically, that the confessions were not coerced but that the guilty pleas may have been. The State filed an appeal with the District Court of Appeal of Florida, First District, and the appellees filed a cross-appeal on 06/02/69. The District Court of Appeals found that the trial judge erred as a matter of law with respect to the burden of proof applicable in collateral proceeding, but stated that, if the conclusions made by the judge hold up when the correct measure of proof is utilized, and

then his findings should be affirmed. The District Court of Appeal made the following rulings: (a) the trial court erred in finding that the guilty pleas reasonably may have been the result of fear, (b) the trial court was correct in finding that there was no evidence displaying incompetency of counsel, (c) The evidence supposedly withheld was immaterial because the defendants chose to plead guilty and went to trial only on the issue of punishment, and (d) that the trial court erred in finding for the appellees on the issue of innocence. The District Court of Appeal of Florida reinstated the original judgments of guilty and the original sentences of death on 12/03/70.

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

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

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

Pitts and Lee filed an appeal of judgment and sentence in the District Court of Appeals, First District, on 05/13/73. Some of the issues that were raised in the appeal were that the Grand Jury was unconstitutionally composed because black individuals were systematically excluded from the list from which it was drawn, the defendant’s right to a fair trial was denied because of the media coverage of the case in Jackson County, Florida, for several years prior to the trial, and the trial judge’s refusal to permit persons to testify about Adams’ alleged confessions. The District Court of Appeal found no error in regard to the above-mentioned issues, in addition to the remaining issues. Pitts’ and Lee’s judgments and sentences were confirmed on 02/03/75.

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

Prosecution/Law enforcement Statement:

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

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

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

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

It is my opinion after having participated in the case for almost 15 years that Pitts and Lee were not innocent; that the jury properly found them guilty of first degree murder based on the testimony of Willie Mae Lee, who testified at trial and at the House hearing but who Askew didn't bother to talk with prior to concluding they were innocent; that the pardon was granted solely for political reasons

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

Defense Statement:

04/08/02 Letter sent to Irwin Block requesting comment.

05/24/02 Telephone called placed Irwin Block and left a message. No comment has to date.

Current Status:

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

Report Date: 04/02/02 NMP