

**PEEK, Anthony Ray (B/M)**

DC# 850039

DOB: 03/18/58

Tenth Judicial Circuit, Polk County, Case # 78-445

Sentencing Judge: The Honorable Gordon MacCalla

Trial Attorney: Frederick R. Replogle, Assistant Public Defender

Attorney, Direct Appeal: Paul C. Helm, Assistant Public Defender

Retrial Attorney: Dale Jacobs, Assistant Public Defender

Attorney, Direct Appeal after Retrial: Edward S. Stafman, Private

Date of Offense: 05/22/77

Date of Sentence: 05/02/78

Date of Retrial: 10/24/84

**Circumstances of the Offense:**

On May 22, 1977, at 8:30 a.m., Erna L. Carlson's body was found in the bedroom of her Winter Haven, Florida, home. Ms. Carlson's robe and part of her bedspread had been tied around her neck. Her pajama bottoms contained blood and semen fluid stains. Inspection of the house revealed that the screens on two doors leading into the house had been cut. In the garage, remnants of a stocking were found that contained a strand of hair that is consistent with hair belonging to a black individual. The telephone wires outside of the house had been cut.

Ms. Carlson's car was found beside Lake Martha, which is approximately one mile from the victim's home. The driver's side door was locked, but the passenger side was open. The keys were found in the glove compartment, and fingerprints were found on the inside of the driver's side window.

Law enforcement had been informed that Anthony Peek had gone door to door in Ms. Carlson's neighborhood in attempts to find odd jobs. The police interviewed Peek a couple of days after the murder. At the time of the murder, Peek lived in a supervised halfway house. Peek told the officers that he had returned to the halfway house before 11:00 p.m. on the night of May 21, 1971. Peek voluntarily submitted his fingerprints and hair samples.

At the trial, experts testified that Ms. Carlson died of strangulation. She had two broken ribs and had been raped. The crime lab advocated that the hair samples provided by Peek were microscopically similar to the one found at the crime scene, although it was never stated that they were identical. The hair samples were lost following the testing. The blood and semen found in Ms. Carlson's pajama bottoms originated from an individual with Type O blood, which was consistent with Peek's blood type. The fingerprints found in Ms. Carlson's car matched Peek's fingerprints.

Peek's testimony at the trial was consistent with the statement that he had previously given to law enforcement officers, with the exception of the admission that he had been inside the victim's car. Prior to the trial Peek had stated that he had not been in the area where the car had been found on May 22, 1977. During the trial, Peek stated that he rode his bike to the lakeside park and noticed the car. He saw that the door was unlocked, so he searched the glove compartment. He then rode his bike back to the halfway house.

When the murder was committed, Peek was out on bond for a burglary and grand theft charge.

### **Trial Summary:**

- 02/16/78      Defendant was indicted on the following charges:  
                  Count I:     First-Degree Murder  
                  Count II:    Sexual Battery  
                  Count III:   Grand Larceny
- 03/23/78      Motion for consolidation of Case# 78-445 and Case# 77-2567.
- 04/12/78      The Defendant was found guilty of all of the charges in the indictment in addition to a Burglary Charge from Case # 77-2567
- 04/13/78      A majority of the jury recommended a death sentence for Count I.
- 05/22/78      The defendant was sentenced as follows:  
                  Count I:     First-Degree Murder - death  
                  Count II:    Sexual Battery – life, run consecutive to the sentence in Count I  
                  Count III:   Grand Larceny – 5 years
- Case #77-2567:  
Count I:   Burglary – 5 years

### **Retrial Information:**

- 08/24/84      Defendant was found guilty of all of the charges in the indictment.
- 09/05/84      The jury recommended a sentence of death by a vote of nine to three.
- 10/24/84      The defendant was sentenced as follows:  
                  Count I:     First Degree Murder - death  
                  Count II:    Sexual Battery – 30 years, run consecutive to the sentence in Count I  
                  Count III:   Grand Larceny – 1 year, to run concurrent with Count I and Count II
- Case #77-2567:  
Count I:   Burglary – 15 years, to run consecutive with the sentences in Case # 78-445

**Second Retrial Information:**

04/17/86      FSC remanded the case for a new trial  
01/19/87      Defendant found not guilty on all counts.

**Appeal Summary:**

**Florida State Supreme Court, Direct Appeal**

FSC# 54226  
395 So. 2d 492

05/30/78      Appeal filed  
10/30/80      FSC affirmed the conviction and sentence.  
01/27/81      Rehearing denied

**United States Supreme Court, Petition for Writ of Certiorari**

USSC# 806369  
451 U.S. 964

03/19/81      Petition filed  
04/27/81      Petition denied

**State Circuit Court, 3.850 Motion**

CC# 78-445

03/08/83      Motion filed  
11/02/83      Motion granted

**Florida State Supreme Court, Direct Appeal after Retrial**

FSC# 66,204  
488 So. 2d 52

11/29/84      Appeal filed  
04/17/86      FSC remanded for a new trial.  
06/04/86      Rehearing denied  
07/03/86      Mandate issued

**Case Information:**

Peek filed a Direct Appeal with the Florida Supreme Court on 05/30/78. Peek raised three issues to contest his conviction. Two of the issues revolved around the hair samples and their subsequent misplacement; The Florida Supreme Court did not find an error. The issues challenging his sentence revolved around the aggravating and mitigating factors. The Court found that there were sufficient aggravating factors to justify the imposition of

the death penalty. The Florida Supreme Court affirmed the conviction and sentence of death on 10/30/80. The rehearing was denied on 01/27/81.

Peek filed a Petition for Writ of Certiorari with the United States Supreme Court on 03/19/81. The Petition was denied on 04/27/81.

Peek filed a 3.850 Motion in the Circuit Court on 03/08/83. After an evidentiary hearing, the trial judge found that false expert testimony pertaining to the hair samples inhibited Peek from a fair trial. The motion was granted, thereby vacating the judgment and sentence on 11/02/83. The State filed an appeal of the trial court's decision with the Florida Supreme Court and the appeal was dismissed on 03/22/84 with the stipulation that the State could retry Peek.

Peek was granted a new trial and found guilty of all counts on 08/24/84. The jury recommended the death penalty by a vote of nine to three on 09/05/84. Peek was sentenced to death on 10/24/84.

Peek filed a Direct Appeal with Florida Supreme Court on 11/29/84. In the previous retrial, the State offered the same evidence it had presented in the original trial, in addition to evidence displaying that Peek admitted to raping a young girl after the murder of Ms. Carlson. Peek's main claim in regard to the Direct Appeal was the admission of this other criminal offense denied his constitutional right for a fair trial. The Florida Supreme Court found that the collateral crime evidence was prejudicial, but stated that, minus this evidence, sufficient evidence still remained for the conviction. In addition to this ruling, the Florida Supreme Court discussed the disqualification of the trial judge who made racial comments during the interim between the guilt phase and the penalty phase of the trial. Peeks conviction and sentence was vacated, and the case was remanded for a new trial on 04/17/86. The rehearing was denied on 06/014/86.

Peek was retried in the Circuit Court and found not guilty of on all counts on 01/19/87.

#### **Prosecution/Law Enforcement Statement:**

Comment provided by Robert Nettleton, prosecuting attorney, on 04/30/02 via phone.

A witness gave erroneous statistics regarding the hair evidence, which was not material enough to warrant a reversal. There was enough additional circumstantial evidence without the hair evidence statistics to obtain a conviction. There was a severity and conclusiveness in the case, which both the jury and judge concurred with. The state proved the guilt, and the judge and jury agreed. In regard to the retrial, the passage of time, number of appeals, and loss of evidence contributed to the not guilty verdict. The not guilty verdict was due to missing evidence and not innocence. There was no reasonable doubt that Peek was guilty at the conclusion of the first trial.

Jerry Hill, the State Attorney for the Tenth Circuit, provided the following comment on 01/28/02:

Mr. Peek is also on the list, as are several others from other circuits who got new trials and then were acquitted. I fail to see the rationale for including these people. Juries found them guilty; they got new trials; and, juries found them not guilty. I spoke to Assistant State Attorney Hardy Pickard who prosecuted Mr. Peek. Hardy continues to believe he was guilty. That's why he tried him. The jury disagreed. It doesn't make him innocent.

- 04/08/02 Letter sent to Polk County Sheriff's Department requesting comment.  
05/23/02 A telephone call was placed to Polk County Sheriff's Department. No information had been received to date.

#### **Defense Statement:**

Comment provided by Dale Gardner Jacobs on 04/10/02 via fax.

"Defendant was tried three times after two successful appeals and was found not guilty on the third trial. Supreme Court case of *State of Florida vs. Anthony Ray Peek* is very interesting because of prejudicial racial remarks by the circuit court judge."

#### **Current Status:**

Peek is currently incarcerated in Florida Department of Corrections for the following offenses:

| Offense Date | Offense                           | Sentence Date | County | Case No. | Prison Sentence      |
|--------------|-----------------------------------|---------------|--------|----------|----------------------|
| 09/21/1976   | BURGUNOCCSTRUC/CV<br>OR ATT.      | 05/12/1978    | POLK   | 7601842  | 5Y 0M 0D             |
| 09/22/1976   | GRAND THEFT,\$300<br>LESS &20,000 | 05/12/1978    | POLK   | 7601842  | 5Y 0M 0D             |
| 07/06/1977   | SEX BAT/THREAT<br>W/DEADLY WPN.   | 04/04/1978    | POLK   | 7701658  | SENTENCED<br>TO LIFE |
| 07/06/1977   | BURGUNOCCSTRUC/CV<br>OR ATT.      | 04/04/1978    | POLK   | 7701658  | 15Y 0M 0D            |
| 07/06/1977   | ROBBERY W/FIREARM<br>OR D/WEAPON  | 04/04/1978    | POLK   | 7701658  | 15Y 0M 0D            |

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Report Date: 05/08/02 NMP  
Updated: 10/05/06 JFL