Clarence Brandley

State:	Texas
County:	Montgomery
Most Serious Crime:	Murder
Additional Convictions:	Rape
Reported Crime Date:	1980
Convicted:	1981
Exonerated:	1990
Sentence:	Death
Race:	Black
Sex:	Male
Age:	29
Contributing Factors:	Perjury or False Accusation, Official Misconduct
Did DNA evidence contribute to the exoneration?:	No

On August 23, 1980, two custodians – Clarence Brandley and Henry Peace – found the body of 16-year-old Cheryl Dee Ferguson in a loft above the auditorium of Conroe High School in Conroe, Texas. She had been raped and strangled. In a case of egregious police and prosecutorial misconduct and unvarnished racism, one of these custodians, Clarence Brandley, was framed for the crime.

Texas Ranger Wesley Styles led the police investigation. Soon after the body had been found, he conducted a joint investigation of Brandley and Peace, during which he said, “One of you is going to have to hang for this” and, turning to Brandley, added, “Since you’re the nigger, you’re elected.”

Brandley was one of five school custodians, and the only African-American. In interviews with police, the other four all made statements implicating Brandley in the murder. Two claimed they saw him follow Ferguson up the stairs to the loft and did not see him again until the search for her had begun. There was no physical evidence linking Brandley to the crime, and semen recovered from Ferguson was inexplicably destroyed.

Brandley went on trial in December 1980 before an all-white jury. One juror found the evidence insufficient to establish guilt, forcing the judge to declare a mistrial.

Brandley’s second trial was held in February 1981 before another all-white jury. One of the original witnesses – custodian John Sessum – was not called because he was no longer willing to support the other custodians’ version of events. In closing arguments, the district attorney mentioned that Brandley had a second job at a funeral home and suggested that he was a necrophiliac and had raped Ferguson after she was dead. The defense objected to this as inflammatory, but was overruled. Brandley was convicted and sentenced to death.

Eleven months after the conviction, appellate lawyers discovered that in addition to the semen, other exculpatory evidence had disappeared from the custody of the prosecution – including a Caucasian pubic hair and other hairs that matched neither the victim nor Brandley, and photographs taken on the day of the crime showing that Brandley was not wearing the belt that the prosecution claimed had been the murder weapon. Brandley’s appeal emphasized the willful destruction and disappearance of this potentially exculpatory evidence, but the Texas Court of Criminal Appeals affirmed the conviction and death sentence without mentioning the issue.

Then a woman named Brenda Medina saw a television broadcast about the Brandley case, and contacted the district attorney to tell him that her former live-in boyfriend – Dexter Robinson – had told her in 1980 that he had committed such a crime. The district attorney later claimed he found Medina to be unreliable, and therefore, he had no obligation to inform Brandley’s lawyers. However, a private attorney Medina also consulted put her in contact with the defense, who obtained Medina’s sworn statement and petitioned the Texas Court of Criminal Appeals for a writ of habeas corpus. The court ordered an evidentiary hearing. In addition to Medina, John

Sessum took the stand, now claiming he had seen another custodian, Gary Acreman, follow Cheryl Ferguson up a staircase leading to the auditorium, and then heard her screaming. Acreman warned Sessum not to tell anyone what he had seen, but Sessum did tell someone – Ranger Styles. Styles responded by threatening him with arrest if he told a story inconsistent with Acreman's. Despite this new evidence, Brandley was denied a new trial.

By now, the Centurion Ministries in Princeton, New Jersey, had taken on the case. Working with a private investigator, advocates for Brandley obtained a video-taped statement from Acreman stating that Robinson had killed Ferguson. Acreman soon recanted that video statement, but two new witnesses came forward and swore that they had heard Acreman say he knew who killed Ferguson, and that it was not Brandley. Based on these statements, six days before his execution date, Brandley was granted a stay.

After further investigation, Brandley's lawyers petitioned for another evidentiary hearing, which the Court of Criminal Appeals granted in June 1987. Robinson, Acreman, and Styles testified for the prosecution, and helped, rather than hurt Brandley's case. Robinson admitted he had told Brenda Medina in 1980 that he had killed Ferguson, but claimed he had said that only to frighten her. Acreman made a stunning admission that Robinson had been at the victim's high school on the morning of the murder. (Ferguson did not attend Conroe High, but was there for a volleyball game.) Ranger Styles, while denying he had done anything improper, acknowledged that even before he had interviewed any witnesses, Brandley was his only suspect, and was unable to explain why he had not obtained a hair sample from Acreman to compare with the Caucasian pubic hair and other hairs found on the victim.

On October 9, 1987, the judge recommended that the Court of Criminal Appeals grant Brandley a new trial. The Court accepted this recommendation in a sharply split en banc decision on December 13, 1989. The prosecution appealed, delaying disposition of the case another ten months, but dropped all charges on October 1, 1990, within hours after the U.S. Supreme Court declined to review the case, and Brandley was released. A few months later, he was ordained as a Baptist minister. He filed lawsuits against several agencies of the State of Texas, but received no relief.

– Alexandra Gross

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15. Clarence Lee Brandley, an African American janitor, was convicted and sentenced to death for the sexual assault and murder of a 16 year old white female student who was at the highschool where Brandley worked with a visiting volleyball team. Racism and fear in the community, despite the paucity of evidence, lead to Brandley's arrest and prosecution. Prosecution witnesses were coached by the prosecution. Some exculpatory evidence disappeared and other exculpatory evidence was intentionally suppressed by the prosecution. A witness with evidence favorable to the defense was threatened by the prosecution. Brandley came within days of execution. He was ultimately completely exonerated. Radelet, Bedau, and Putnam, *In Spite of Innocence*, pp. 119-36 (1992 Northeastern University Press). (crime 1980 - exoneration 1990)

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Clarence Brandley

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Clarence Brandley is an African-American who, in 1981, while a janitor at a high school in Conroe, Texas, was wrongly convicted of the rape and murder of Cheryl Dee Ferguson, a 16 year-old student. Brandley was held for nine years on death row. After lengthy legal proceedings and community outcry, that eventually ended in the Supreme Court of the United States, Clarence Brandley was freed in 1990. After his release, Brandley was involved in further legal proceedings over child support payments that had accrued over his time in jail, and ultimately with an unsuccessful $120 million dollar lawsuit against various agencies of the State of Texas.

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[edit] Chronology of Events

Cheryl Dee Ferguson, a 16-year-old junior at Bellville High School, was murdered on August 23, 1980. Ferguson was part of a school volleyball team playing a match against another high school in Conroe, Texas. Her body was found in the loft above the school auditorium.

In 1987 a judge agreed with Brandley's attorneys that he had not received a fair trial. In fact, State District Judge Perry Picket wrote that, "no case has presented a more shocking scenario of the effects of racial prejudice, perjured testimony, witness intimidation (and) an investigation the outcome of which was predetermined" than Brandley's case.

In 1990, the Texas Court of Criminal Appeals upheld Picket's ruling and Brandley was freed from jail—but not freed from his child support payments.

Brandley had been divorced in 1977 and ordered to pay $190/month in child support payments. After being sent to jail, he did not make those payments, having no source of income.

After being released from jail, he apparently agreed in 1993 to make the back payments, but subsequently hired a lawyer to contest the payments for the time during which he was in prison and the state of Texas did not attempt to collect the child support.

It renewed collection efforts, however, after Brandley filed an ultimately unsuccessful $120 million lawsuit against various Texas state agencies over his wrongful imprisonment. Those lawsuits were all rejected on the grounds of sovereign immunity (a legal doctrine denying citizens the power to sue governments for wrongful acts).

Dianna Thompson of The American Coalition of Fathers and Children told the *Houston Chronicle* that federal law makes it illegal for states to forgive child support payments regardless of circumstance.

[edit] Details

Suspicion immediately fell on two of the custodians, Brandley and Henry (Icky) Peace, who had found the body. During their joint interrogation — as Peace would recount — Texas Ranger Wesley Styles told them, “One of you is going to have to hang for this” and then, turning to Brandley, added, “Since you’re the nigger, you’re elected.”[1]

[edit] Co-workers’ stories

When Brandley passed polygraph tests the day after the crime, Styles was not dissuaded. The other three custodians — Gary Acreman, Sam Martinez, and John Sessum — provided alibis for one another and made statements casting further suspicion on Brandley, although it appeared later that Styles had coached them for consistency.

The three claimed to have seen the victim enter a girls’ restroom near the school gymnasium, and then to have seen Brandley walking toward the restroom with an armload of toilet paper. They claimed that they told Brandley there was a girl in the restroom, and that he replied that he was taking the toilet paper to the boys’ restroom. They did not see him again until about 45 minutes later, after a search had begun for the missing student. The fourth white custodian, Peace, subsequently added that Brandley was insistent on immediately searching the loft and, when they found the body, calmly checked for a pulse and then notified the authorities. And all four said that only Brandley had keys to the auditorium where the body was found.[2]

[edit] Brandley’s story

Before an all-white Montgomery County grand jury on August 28, 1980, five days after the crime, Brandley professed innocence. Although he contradicted his white co-workers in several respects, he acknowledged that he had disappeared for perhaps 30 minutes about the time the murder was believed to have occurred. He said he was in the custodian's office smoking and listening to music alone.[3] He also testified that a number of other persons had master keys that would open the auditorium and, in any event, that doors near the stage usually were propped open with a two-by-four.

[edit] A hung jury

Brandley went on trial in December 1980 before an all-white jury. There was no physical evidence linking him to crime. Spermatozoa recovered from the victim's body had been destroyed — without having been tested to determine whether Brandley could have been its source. Moreover, a fresh blood spot had been found on the victim's blouse that had not come from her and could not have come from Brandley. The spot was Type A, but Brandley had Type O blood. One juror found the evidence insufficient to establish guilt, forcing Judge Sam Robertson Jr. to declare a mistrial. The name of the holdout juror — William Shreck — became public knowledge, leading to anonymous harassing telephone calls.[4] One man, whose anonymous communication was monitored by police, threatened Shreck, "We're going to get you, nigger lover."

[edit] Damning testimony

At Brandley's second trial in February 1981 before another all-white jury but a different judge, one of the original witnesses — John Sessum — was not called. Later it was discovered that the prosecution had decided not to use Sessum because he no longer was willing to support the other custodians' versions of events, even though he had been threatened with being charged with perjury if he refused to go along. However, the prosecution came up with a witness who had not testified previously. He was Danny Taylor, a junior at the school, who had worked briefly as a custodian but was fired before the crime. Taylor claimed that Brandley once had commented — after a group of white female students walked past them — "If I got one of them alone, ain't no tellin' what I might do."

[edit] Inflammatory argument

Dr. Joseph Jachimczyk, medical examiner for Harris County, testified that the victim had died of strangulation and that a belt belonging to Brandley was consistent with the ligature used in the crime. In closing argument, District attorney James Keeshan mentioned that Brandley had a second job at a funeral home and suggested that perhaps he was a necrophiliac and had raped Ferguson after she was dead — an argument that could not have been made in good faith because Keeshan had a report stating that Brandley only did odd jobs at the funeral home and had never been involved in the preparation of bodies for burial. The defense objected to Keeshan's remark as inflammatory, but Judge John Martin overruled the objection.

[edit] Loss or destruction of evidence

Eleven months after Brandley was convicted and sentenced to death, his appellate lawyers discovered that exculpatory evidence had disappeared while in the custody of the prosecution — including a Caucasian pubic hair and other hairs recovered from Ferguson's body that were neither hers nor Brandley's.[5] Also missing were photographs taken of Brandley on the day of the crime showing that he was not wearing the belt that the prosecution claimed had been the murder weapon. The missing evidence was all the more troubling in light of the pretrial destruction of the spermatozoa.

Much was made of the willful destruction and disappearance of the potentially exculpatory evidence in Brandley's appellate briefs, but the Texas Court of Criminal Appeals affirmed the conviction and death sentence without mentioning the issue. "No reasonable hypothesis is presented by the evidence to even suggest that someone other than [Brandley] committed the crime," said the court. Brandley V. Texas, 691 S.W.2d 699 (1985).

[edit] A new suspect emerges

Brenda Medina, who lived in the nearby town of Cut and Shoot, Texas, saw a television broadcast about the Brandley case. Saying she had been unaware of the case until then, she told a neighbor that her former live-in boyfriend — James Dexter Robinson — had told her in 1980 that he had committed such a crime. Medina said

she had not believed Robinson at the time, but now it made sense.[6] At the neighbor's suggestion, she went to see an attorney, who took her to see District Attorney Peter Speers III, who had succeeded Keeshan in the job when Keeshan ascended to the Texas District Court bench. Speers quickly concluded, or so he said, that Medina was unreliable — and, therefore, that he had no obligation to inform Brandley's lawyers. The private attorney she had consulted thought otherwise, however, and brought her to the attention of the defense.

[edit] State habeas corpus sought

After obtaining Medina's sworn statement, Brandley's lawyers petitioned the Texas Court of Criminal Appeals for a writ of *habeas corpus*. The court ordered an evidentiary hearing, which was conducted by District Court Judge Ernest A. Coker.

Before calling Medina to testify at the evidentiary hearing, Brandley's defense team called Edward Payne, father-in-law of Gary Acreman, one of the school custodians who had testified at both Brandley trials and who was now suspected by the defense of having been a co-perpetrator of the crime with Robinson. Payne testified that Acreman had told him where Ferguson's clothes had been hidden two days before the authorities found them.

After Medina related details of Robinson's purported confession, Brandley's lawyers called John Sessum, the custodian who had testified at the first trial but not the second. Sessum's testimony was in sharp contrast to what he had said at the first trial. He now said he had seen Acreman follow Cheryl Ferguson up a staircase leading to the auditorium and then heard her scream, "No" and "Don't." Later that day, Acreman warned Sessum not to tell anyone what he had seen. But Sessum said he did tell someone — Wesley Styles, the Texas Ranger who was leading the investigation. That was a mistake. Styles, according to Sessum, responded by threatening him with arrest if he did not tell a story consistent with Acreman's.

[edit] Community Activism and Result

Despite the accumulation of new evidence, Judge Coker recommended that Brandley be denied a new trial — a recommendation perfunctorily accepted by the Court of Criminal Appeals on December 22, 1986. But by now civil rights activists, including Reverend Jew Don Boney, had coalesced and raised $80,000 to help finance further efforts on Brandley's behalf. The Rev. Boney was the Chairman of the Houston, Texas-based "Coalition to Free Clarence Lee Brandley" and spearheaded community efforts to have Brandley receive a fair trial. Boney was interviewed on numerous national news outlets and brought significant media and community attention to the case. National Advocate James McCloskey, of Centurion Ministries in Princeton, New Jersey, also took on the case.

Working with a private investigator, McCloskey soon obtained a video-taped statement from Acreman stating that Robinson had killed Cheryl Ferguson and that he had seen Robinson place her clothes in a Dumpster where they were found; that is how Acreman knew where the clothes were before they were found. Although Acreman soon recanted that video statement, two witnesses had come forward attesting that they had heard Acerman say he knew who killed Ferguson, that it was not Brandley, but that he would never tell who did it. Based on these statements, with Brandley's execution only six days away, Coker granted a stay.

[edit] A fair hearing

After further investigation, Brandley's lawyers petitioned for another evidentiary hearing, which the Court of Criminal Appeals granted on June 30, 1987. The new hearing was conducted by Special State District Judge Perry Pickett. Robinson, Acerman, and Styles testified for the prosecution, each seeming to help rather than hurt Brandley's case.

Robinson admitted he had told Brenda Medina in 1980 that he had killed the young woman in Conroe, but claimed he had said that only to frighten Medina. She had been pressuring him because she was pregnant, he said, and he simply wanted her to stop pestering him. Acreman stuck by what he had said at both trials, although he admitted that Robinson had been at Conroe High School the morning of the murder. Incidentally, Robinson and Acreman, unlike Brandley, had Type A blood — consistent with the spot on Ferguson's blouse.

Texas Ranger Styles, while denying he had done anything improper, acknowledged that even before he had interviewed any witnesses, Brandley was his only suspect. When pressed about why he had not obtained a hair sample from Acerman to compare with the Caucasian pubic hair and other hairs found on the victim, Styles stammered, "Let's say I didn't do it and it wasn't done, and why it wasn't done, I don't know."

On October 9, 1987, Judge Pickett recommended that the Court of Criminal Appeals grant Brandley a new trial, declaring: "The litany of events graphically described by the witnesses, some of it chilling and shocking, leads me to the conclusion the pervasive shadow of darkness has obscured the light of fundamental decency and human rights." The Court of Criminal Appeals, after sitting on the case for 14 months, finally accepting Picket's recommendation with a sharply split en banc decision on December 13, 1989. Ex Parte Brandley, 781 S.W.2d 886 (1989).

[edit] No apologies

The prosecution appealed, delaying disposition of the case another 10 months. But within hours of the U.S. Supreme Court's denial of certiorari on October 1, 1990, Texas v. Brandley, 498 U.S. 817 (1990), dropped all charges. A few months later, Brandley was ordained as a Baptist minister, and a few months after that he was married. The officials involved in the case were not disciplined, nor did they apologize. Prosecutors in the case still insist they convicted the right man.

[edit] See also

- List of exonerated death row inmates

[edit] Notes

1. ^ "Innocence and the Death Penalty" 9.
2. ^ Radelet 121.
3. ^ Radelet 122.
4. ^ Applebome 26.
5. ^ Haines 88.
6. ^ Gordon 18.

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