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TIBBS, Delbert (B/M)

AKA: Delbert Johnson

DC # 046450

DOB: 06/19/39

Twentieth Judicial Circuit, Lee County, Case # 74-254 CF

Sentencing Judge: The Honorable Thomas W. Shands

Attorney, Criminal Trial: George W. Howard, Esq.

Attorney, Direct Appeal: George W. Howard, Esq.

Date of Offense: 02/03/74

Date of Sentence: 03/24/75

Circumstances of Offense:

Delbert Tibbs was convicted and sentenced to death for the 02/03/74 rape of Cynthia Nadeau and the murder of Terry Milroy.

At trial, Cynthia Nadeau recalled the following information concerning the alleged crime:

On the evening of 02/03/74, Cynthia Nadeau and Terry Milroy were hitchhiking from St. Petersburg to Marathon, Florida. A man driving a green truck picked up the pair in Fort Myers. The truck reportedly had a rounded hood, black vinyl seats, no door handle, and an oil light that sporadically blinked on and off. The driver then pulled off road into a field and stopped the truck. The driver exited the truck and asked Milroy for some help. After a short time, Nadeau got out of the truck and saw the driver holding a gun on Milroy. The driver ordered Nadeau to undress and then he shot Milroy. The assailant walked over to the place where Milroy lay pleading for his life and shot him again. Nadeau was raped and then ordered to redress. The two got back into the truck and, upon reaching the highway, Nadeau was forced to get out and walk in front of the truck. At that point, Nadeau was able to run and successfully escape her captor.

Delbert Tibbs was convicted of the rape and murder based solely on the testimony of Cynthia Nadeau, which was never corroborated. At trial, Gibbs, a jail cellmate, testified that Delbert Tibbs confessed to the murder of Terry Milroy. Gibbs was given a polygraph test, which indicated that he was telling the truth. Subsequently, the Florida Supreme Court ruled that Gibbs' testimony was not credible. Tibbs was sentenced to life imprisonment for the rape of Cynthia Nadeau and to death for the murder of Terry Milroy.

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Trial Summary:

03/27/74 Defendant indicted on the following:

Count I: Rape

Count II: First-Degree Murder

Count III: Felony Murder

12/14/74 The jury found the defendant guilty of Rape and First-Degree Murder, as charged in the indictment.

12/14/74 Upon advisory sentencing, the jury voted by majority for the death penalty.

03/24/75 The defendant was sentenced as followed:

Count I: Rape – Life Imprisonment

Count II: First-Degree Murder – Death

07/28/76 Upon Direct Appeal, the Florida Supreme Court reversed Tibbs' convictions, vacated his death sentence, and remanded for a retrial.

09/03/82 The State dropped the charges against Tibbs.

Appellate Summary:

Florida Supreme Court, Direct Appeal

FSC # 47,258

337 So. 2d 788

04/23/75 Appeal filed.

07/28/76 FSC reversed Tibbs' convictions, vacated his death sentence, and remanded for a retrial.

09/28/76 Rehearing denied.

Case Information:

Tibbs filed a Direct Appeal in the Florida Supreme Court on 04/23/75. Tibbs' main argument was that there was insufficient evidence to place him at the scene of the rape and the murder at the time that they occurred. Tibbs asserted that the uncorroborated testimony of Cynthia Nadeau was insufficient to establish his identity as the assailant beyond all reasonable doubt.

The Florida Supreme Court noted a Florida law, which dictates that no corroborative evidence is required in a rape case where the victim can testify directly to the crime and identify the perpetrator. The same law, however, requires extreme scrutiny of the victim's testimony if she is the only witness for the prosecution. As such, the Florida Supreme Court carefully examined the testimony of Cynthia Nadeau and found the following weaknesses in Tibbs' convictions. First, no other evidence, besides Nadeau's testimony, placed Tibbs anywhere near Fort Myers at the time of the crimes. In fact, there was evidence to the contrary. Tibbs presence had been established in Daytona Beach on February 2nd and 3rd. He was also known to have been in Leesburg on February 6th and in Ocala on February 7th. Second, the perpetrator's green truck was never found,

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even with all the details Nadeau provided the police one hour after the attack. A car and helicopter search of the area never produced a match either. Third, Tibbs was never found with a gun or car keys in his possession, nor was a gun ever found. Fourth, police stopped Tibbs on three separate occasions based on Nadeau's description of the perpetrator. He cooperated with police all three times and there was never any evidence to cast doubt on his credibility. Fifth, since the crime happened at night and Nadeau had been smoking marijuana all day, her ability to accurately identify her attacker was seriously diminished.

Based on all the aforementioned information, the Florida Supreme Court opined, "Rather than risk the very real possibility that Tibbs had nothing to do with these crimes, we reverse his conviction and remand for a new trial." As such, Tibbs' convictions were reversed, his death sentence vacated, and his case remanded for retrial.

Facing retrial, Tibbs filed a motion to dismiss the indictment against him. The trial court granted the motion, concluding that to retry Tibbs would be in violation of the double jeopardy clause of the Fifth Amendment.

The State filed an appeal of the trial court's decision in the Court of Appeal of Florida,

Second District. The high court agreed with the State that to retry Tibbs would not be double jeopardy, as the conviction reversal was based on the weight, not the insufficiency of the evidence against him. As such, they reversed the decision and remanded for retrial.

Tibbs then appealed the decision of the Court of Appeals to the Florida Supreme Court. He asked the court to rule that their previous reversal of his convictions was based on evidentiary insufficiency, not evidentiary weight. The Florida Supreme Court noted that Tibbs' convictions were based solely on the testimony of Cynthia Nadeau. If it were not for several infirmities, the testimony alone would have been sufficient for conviction. Since there was doubt about Nadeau's credibility, however, Tibbs' conviction was reversed and remanded for retrial.

Tibbs then filed a Petition for Writ of Certiorari in the United States Supreme Court, which was granted on 11/02/81. Tibbs argued that to retry him would, in fact, be a violation of double jeopardy. The United States Supreme Court noted that a reversal based on weight, rather than the sufficiency of the evidence would allow the state to initiate a new prosecution. On 06/07/82, The United States Supreme Court affirmed the decision of the Florida Court of Appeals, Second District.

On 09/03/82, the State dropped the charges against Tibbs.

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Law Enforcement/ Prosecution Statements:

A letter requesting comment was sent to the Lee County Sheriff's Department on 05/01/02. On 05/06/02, Lt. Allen of the Lee County Sheriff's Department responded indicating that both the investigators who worked on Tibb's case have since passed away. State Attorney Joseph Alessandro commented:

By the time of the retrial, witness/victim Cynthia Nadeau had progressed from a marijuana smoker to a crack user and I could not put her up on the stand, so I declined to prosecute. Tibbs, in my opinion, was never an innocent man wrongfully accused. He was a lucky human being. He was guilty, he was lucky and now he is free. His 1974 conviction was not a miscarriage of justice.

Assistant State Attorney Dean Plattner also stated:

I can definitely tell you that no one else was ever prosecuted for this crime. To the best of my knowledge, there was never any evidence which ever pointed to anyone else as a suspect. The eyewitness said it was Tibbs, but apparently became unavailable or incapable of giving testimony before a retrial could occur after the lengthy appeal process.

Raymond Marky of the Attorney General's Office commented:

Tibbs' alibi that he was in Daytona Beach continuously during the time the crime was committed was impeached by the receipt from a Salvation Army that Tibbs stayed in Orlando the night prior to the murder. The record also demonstrated that the victim's testimony was corroborated by an inmate who was in a cell with Tibbs who testified the latter confessed to him.

The Tibbs case had racial overtones to it. Several South Florida politicians had written letters to the Attorney General wanting us to confess error in the case because Tibbs was a prominent black minister from Chicago. It had generated complaints from Black organizations before that was standard

operating procedure.

As an aside, I will never forget reading the record particularly the testimony of Nadeau's testimony which carried with it its own credibility. Defense counsel suggested that she was lying because her own boyfriend had raped her and she was just blaming Tibbs. She responded, "you have to be kidding, I've been raped so many times by men that I feel like a pin cushion. If this was only a rape case I wouldn't even be here -- but he murdered my boy friend." I called the prosecutor and asked if that testimony was as powerful as it sounded and he told me that all of the jurors looked at Tibbs and as far as he was concerned the case was over at that point.

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The Tibbs case was the most outrageous example of judicial corruption I ever experienced in the 25 years that I spent in the Attorney General's Office as a criminal appellate attorney and I lost all respect for the judges who participated in the majority opinion. I would love to know the behind the scenes story on this one but like Joe D'Alessandro Tibbs was not innocent of the rape and murder -- he was the unworthy recipient of intellectually dishonest judicial officers.

Defense Statements:

Defense Attorney George W. Howard is no longer a member of the Florida Bar and could not be reached for comment.

Current Status:

According to NCIC, Delbert Tibbs has had no arrests subsequent to release.

Report Date: 05/01/02 ew

Approved: 05/07/02 ws

Updated: 05/29/02 ew