

GREEN, Joseph Nahume (B/M)

DC# 091882

DOB: 01/10/56

Eighth Judicial Circuit, Bradford County, Case # 92-633

Sentencing Judge: The Honorable Robert P. Cates

Trial Attorneys: Jeffrey Leukel and F. Reed Replogle, Esq.

Direct Appeal Attorney: David A. Davis, Assistant Public Defender

Date of Offense: 12/08/92

Date of Sentence: 11/30/93

Circumstances of Offense:

At 10:10 p.m. on 12/08/92, Judy Miscally was using a public phone at the Mapco convenience store in Starke, Florida, when she was approached by a man who demanded money. When she refused and screamed, the man shot her and fled the scene. Miscally later died.

Three people witnessed the shooting – John Goolsby, Katrina Kintner and Lonnie Thompson. Miscally described the shooter as a skinny, black man in his mid-twenties, and described the gun as a small, semiautomatic pistol. Goolsby was in his car at a stoplight near the Mapco store when he heard the shot, and he saw two people in front of the store. Goolsby was not wearing his glasses at the time and could not determine the sex or race of either person. Kintner was sitting in her car in a convenience store parking lot across the street from the Mapco store when she heard the shot. Kintner said she saw three black men surrounding a white woman but could not describe them in any detail. Thompson was near the convenience store across the street from the Mapco store when he heard the shot. Thompson said he saw Green and Miscally struggle and saw Green shoot Miscally before fleeing behind the store.

Green's alibi was that on the night of the murder, he and his girlfriend, Gwen Coleman, were walking around Starke. During that night, Green helped Donald Laverly and David Padgett take a muffler off of Laverly's car in the parking lot of the Pizza Hut restaurant. Green returned to the motel where he and Coleman were staying sometime after 11:00 p.m., when Green was reminded by the motel owner that the rent was due the next day.

Trial Summary:

01/15/93	Indicted on one count of First-Degree Murder
10/05/93	Jury returned a guilty verdict
10/25/93	Jury recommended a death sentence by a vote of 9-3
11/30/93	Sentenced to death

Retrial Summary:

03/16/00 Acquitted at retrial

Additional Information:

Prior to his trial for the murder of Judy Miscally, Green had a criminal record in the State of Florida. The following is his prior prison history in Florida:

Offense Date	Offense	Sentence Date	County	Case No.	Prison Sentence
07/28/1983	2ND DEG.MURD,DANGEROUS ACT	10/31/1983	MIAMI-DADE	8316923	3Y 0M 0D
06/29/1985	BATTERY LAW ENFORCEMENT	01/13/1986	MARTIN	8500729	2Y 6M 0D
02/03/1989	BURG/DWELL/OCCUP.CONVEY	04/17/1989	MIAMI-DADE	8904489	1Y 0M 1D
01/14/1990	BURG/DWELL/OCCUP.CONVEY	08/08/1990	MIAMI-DADE	9024005	3Y 6M 0D

Appeal Summary:

Florida Supreme Court – Direct Appeal

FSC# 83,003
688 So.2d 301

01/10/94 Appeal filed
11/27/96 FSC vacated conviction and sentence and remanded for retrial

Case Information:

Green filed a Direct Appeal with the Florida Supreme Court on 01/10/94, citing twelve trial court errors. The FSC found two trial court errors harmful enough to warrant a new trial and chose not to comment on the other ten issues. The FSC found that errors were committed by allowing the State to cross-examine a defense witness about her prior alcohol abuse and by admitting evidence seized pursuant to a bad search warrant. Additionally, the FSC found that Lonnie Thompson’s trial testimony was often inconsistent and contradictory. On 11/27/96, the FSC vacated the conviction and sentence and ordered a new trial.

On 03/16/00, Green was acquitted of the charge of First-Degree Murder. The trial court judge found that there was a lack of witnesses or evidence tying Green to the crime.

Law Enforcement/Prosecution Statements:

Curtis French, who was the Assistant Attorney General for the Direct Appeal to the Florida Supreme Court, had the following statement regarding the Green case:

French noted that once the testimony of the State witness (Thompson) had been excluded as unreliable, “the prosecution could not prove its case,” thus Green was acquitted at retrial.

According to French, Green had not been cleared of the crime, but instead, he “had been given the benefit of the doubt” in the case due to the nature of the testimony and evidence against him. French stated that the evidence pointed to Green because Green “certainly had both the motive and opportunity to commit the crime,” and, additionally, problems existed with his alibi that was given to police.

To French, Green had not been cleared of the crime and French “would tend to dispute his innocence.”

Additional comments were received from William Cervone, State Attorney for the Eighth Circuit:

As to Joseph Green, I can provide my comments since I tried the case. In essence, the ultimate acquittal was because the trial court suppressed the identification testimony of witness Lonnie Thompson after the original remand from the Florida Supreme Court. Thompson was the only eyewitness linking Green to the murder and when his testimony was disallowed the remaining circumstances were insufficient to secure a conviction.

Interestingly, the same judge who ultimately suppressed the identification after the remand had conducted extensive hearings before the first trial as to the competency of Thompson and had allowed him to testify. While the Supreme Court Opinion questioned Thompson's competency as a witness, it did not rule on that or find the original admission of his testimony to be error. It being my belief that the trial court had improperly invaded the province of the jury in ruling on the credibility that should be given to a witness' testimony, the suppression of the identification was appealed but that appeal was not successful. Additionally, even before the first trial the trial court had suppressed evidence showing the presence of gun powder residue in the pockets of the defendant's clothing, and the Supreme Court Opinion suppressed the seizure of the clothing itself. I remain convinced of Green's guilt, as was the jury that originally heard the testimony of Thompson, evaluated it, and convicted Green based on it.

Defense Statements:

David Davis, who was Green’s defense counsel for the Direct Appeal to the Florida Supreme Court, had the following statement regarding the Green case:

Davis cited competency issues of the State’s witness, Thompson, as the primary reason for the acquittal of Green at the retrial. According to Davis, “the case died when Thompson was declared incompetent to testify.”

Davis commented that, due to the exclusion of Thompson’s testimony and the lack of other compelling evidence that Green committed the crime, Green had a “strong claim of innocence,” probably “the strongest claim of innocence that I have seen in a long time.”

Davis attributes the suspicion and prosecution of Green to “community uproar” and a small town trying to get revenge for the murder of a popular citizen.

According to Davis, Green was acquitted due to bad police practices, most notably the bad search warrant and use of Thompson as a witness, and the overall weakness of the case against him.

Current Status:

After acquittal, Green was sentenced in 2001 to one-year terms for two cocaine possession charges that occurred in 2000. He was released from prison on 11/05/01.

Green was sentenced to a three-year term for cocaine possession in 2003 and was released on 07/27/06.

Report Date:	05/14/02	JFL
Approved:	05/17/02	WS
Updated:	10/05/06	JFL