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FOR 14 YEARS, JUSTICE FAILED A MAN CONDEMNED TO DIE

BY DANIEL de VISE

The death sentence handed down to Frank Lee Smith surprised no one.

An 8-year-old girl had died - raped, sodomized, beaten and strangled with her pajama bottoms in her bed.

Her mother had seen the killer. Asked to identify him at trial, she pointed to Smith and sobbed, "My baby, my baby."

Jurors voted unanimously for the electric chair.

Fifteen years later, the Smith conviction stands as a stunning miscarriage of justice, on par with the case of Jerry Frank Townsend of Hallandale Beach, just released after serving 22 years for murders he didn't do.

This time a police officer could be held accountable.

A special prosecutor is examining allegations that Richard Scheff, former chief of the Broward Sheriff's Office homicide bureau, lied on the witness stand and presented false, concocted evidence to shore up a weak case against Smith. Findings are expected in a matter of days.

Smith died of pancreatic cancer in January 2000 at 52. Late that year, genetic testing proved him innocent and pointed to a different killer: Eddie Lee Mosley, the victim's cousin.

Smith is the first American to be exonerated by DNA after dying on Death Row.

"He knew he didn't do it. They knew he didn't do it. I knew he didn't do it," said Bertha Irving, Smith's aunt.

COURT RECORD

A review of the court record suggests the Smith debacle is bigger than one man or a single purported lie.

Smith languished through 14 years of distortions, delays, omissions and misrepresentations. The entire justice system failed him.

His troubles began just before midnight on April 14, 1985, when Dorothy McGriff returned from work to find a man lurking outside her Fort Lauderdale home. She leapt from her car, grabbed a sling blade lawn cutter and chased the intruder off her property.

Inside, Shandra Whitehead, McGriff's daughter, lay comatose on her bed. She died nine days later.

Detectives found two eyewitnesses besides the mother. One was teenager Gerald Davis, who said a scruffy man had propositioned him on the street nearby. The other was Chiquita Lowe, 20, who said a "delirious" man had stopped her car near the crime scene and asked for 50 cents.

They helped an artist work up a composite sketch of the intruder. Deputies papered the community with drawings. Some men playing dominoes said the

picture looked a lot like a local guy named "Frank L." Detectives ID'd that man as Smith and made their arrest.

Smith seemed a likely suspect. At 13, he had stabbed a classmate to death at a Dillard High School basketball game, serving out his 11-month juvenile sentence in a reform school. Five years later, he had shot a man during a robbery. Sentenced to life, he earned parole in 1981.

When Scheff and partner Phil Amabile sat down to question Smith about Whitehead, they made little headway. So Scheff said he resorted to an old detective ruse: He told Smith that Shandra's brother had seen the killer. In fact, the boy had slept through the slaying.

According to Scheff's handwritten notes, Smith protested: "No way that kid could've seen me, it was too dark."

At trial, prosecutors presented that statement as Smith's fatal slip-up.

Today, with Smith proven innocent, the account seems hard to fathom.

"All I can say is, the quote-unquote confession is definitely suspect," said Andrew Washor, who defended Smith at trial. "Just the wording of it - I was with Frank for maybe a year, and I can count the number of times he said a coherent sentence."

No physical evidence linked Smith to the slaying.

But prosecutor William Dimitrouleas built a convincing case out of Smith's purported admission and the powerful eyewitness accounts.

Scheff testified that when he showed a picture of Smith to Dorothy McGriff, the mother shrieked, "This is the man that did my baby."

Scheff said, "It was without question the most powerful identification I had ever witnessed by any witness."

McGriff broke down again when she pointed out Smith in the courtroom.

But on cross-examination, McGriff conceded she had not seen the perpetrator's face.

The plot thickened at a post-conviction hearing when McGriff revealed that Eddie Lee Mosley, a lingering suspect in the case, was her cousin.

Mosley had grown up with McGriff and lived a few doors down the street. By the time of Shandra's death in 1985, police suspected Mosley in several murders around northwest Fort Lauderdale.

Detectives considered Mosley in the Whitehead slaying, but abandoned the lead when McGriff insisted Mosley was not the man she had seen outside her window that night.

TROUBLED COUSIN

McGriff swore she was not protecting her troubled cousin.

While McGriff's questionable testimony provided an emotional high point at the Smith trial, the most legally compelling statements came from Chiquita Lowe. Only she got a good look at the culprit's face.

Lowe, who would later recant, identified Smith in a photo lineup and pointed him out in court. It wasn't hard: According to courtroom testimony, Smith was the only black adult male in the room.

In 1989, Gov. Bob Martinez signed an execution order for Smith. Defense attorneys scrambled for new evidence.

Defense investigator Jeff Walsh asked for pictures of all the original suspects in the Whitehead slaying. When he saw Mosley, with his striking resemblance to the police sketch and the eyewitness descriptions, Walsh believed he had found the real killer.

Walsh took the photograph to Lowe, the star witness.

"When I looked at the picture, everything came back to me," Lowe said in an affidavit. "I swear on my mother's grave that the man in the photo is the man I saw on the street the night when the little girl was raped and killed."

From the beginning, the man Lowe had described sounded more like Mosley than Smith. She said he had a pockmarked face and a droopy eye, Mosley's defining facial traits. Smith, in contrast, wore thick glasses and had a scar on his face. Lowe reported neither detail.

Smith had 20-400 vision and could not function without his coke-bottle-thick glasses. Yet, Lowe and Davis said the man they saw had no glasses.

Faced with Lowe's recantation, the Florida Supreme Court stayed the execution and ordered a new hearing on her claims.

Lowe now said detectives, prosecutors and neighbors had pressured her to identify a man she knew to be innocent. Davis, too, had said police cajoled him into identifying Smith.

Scheff, the lead detective, needed a miracle to firm up his crumbling case. He found one.

At the 1991 hearing on Lowe's change of heart, Scheff announced that he had shown Mosley's picture to all three eyewitnesses before the trial. None had identified Mosley.

Amabile, Scheff's partner, corroborated the story. So did the dead girl's mother.

But Scheff's new testimony contradicted his words at trial, when he said he had not shown Mosley's picture to anyone. His handwritten notes did not mention a Mosley picture.

Even Dimitrouleas, who had prosecuted Smith at trial, disputes Scheff's account.

"I have no recollection of my ever seeing a photo lineup containing Eddie Lee Mosley," Dimitrouleas, now a federal judge, said last week.

Broward Circuit Judge Robert Tyson believed Scheff over Lowe. He found her recantation "not to be credible," critiquing her testimony as "extremely hesitant, slow and evasive" in a 1991 order.

"Additionally, this court finds absolutely no credible evidence to support the defendant's claim that it was Eddie Lee Mosley who committed the murder of Shandra Whitehead," Tyson wrote.

LEGAL WRANGLING

Defense attorneys accused Tyson of carrying on improper one-on-one conversations with prosecutors. That accusation stalled the case for seven years of legal wrangling.

In 1998, the Florida Supreme Court agreed that improper conversations had taken place and ordered another hearing on Lowe's recantation before a different judge.

This time, Scheff produced an actual series of photos and said it was the one he had shown to the witnesses.

Defense attorneys, Lowe and prosecutor Dimitrouleas all said they had never seen the photos.

Lowe testified that when she went home from court after identifying Smith, "I told my grandmother I sent an innocent person to jail and she told me, she said get on your knees, sweetheart, and pray to God and ask for your forgiveness."

Once again, the court rejected Lowe's story.

Smith's attorneys turned to a new strategy: DNA testing.

The medical examiner had recovered two sperm cells from Shandra's body, but genetic testing was not available in the 1980s. Defense attorneys requested testing on the sperm sample at the 1998 hearing. The test did not proceed until after Smith's death, two years later.

Each side blames the other for the delays.

Prosecutors contend Smith could have sought testing as early as 1991 and had results long before his death.

"They dropped the ball," said Assistant State Attorney Carolyn McCann.

Defense attorneys counter that testing was not precise until the late 1990s.

Smith died in January 2000. In December, test results proved him innocent.

"It's a nightmare," McCann told The Herald at the time. "I was sure of his guilt."

"It's like a epiphany," Scheff told The St. Petersburg Times. He now declines to comment on the case.

It was no epiphany for Bertha Irving, Smith's aunt.

"They knew they had the wrong man. They knew, they knew, they knew he was innocent," she said. "But they were too nasty, just too plain nasty."