

Frame-up cont. from page 25

No matter where they got their ideas or if it was on their own, it was a lie.

With this and with all the other new evidence I pray and hope that the board members realize that he is innocent and grant his requests.

....
Sincerely,
Benjamin G. Kent

Current events are showing that anyone can be convicted of molesting a child many years after the alleged molestation occurred, even if the alleged "victim" didn't say anything to anyone for 20 years. So it is only right to exonerate an innocent person such as Bill, who was wrongly convicted years ago due to my admittedly false testimony and the prosecutors misconduct of eliciting false testimony from me (the alleged victim) and condoning perjury by other prosecution witnesses. The prosecutor was given considerable aid by the gross ineffective assistance of Bill's defense counsel, who worked hand in glove with the prosecutor. There is also the special circumstance in Bill's case that I've been telling people since before his court martial 14 years ago that his alleged abuse of me is a lie, and my letter to Naval officials 12 years ago when I was 14 was ignored. I hope that the person or persons with the power to correct Bill's conviction will be mature, and say, "hey, we made a mistake," so both Bill and I can have closure to this horrifying ordeal.

As of April 2006, Bill's application to correct his Naval record is pending.

Thank you for the opportunity to unburden myself from the terrible wrong I committed against my friend Bill, that caused him and his family great suffering.

I can be contacted by writing:
Ben Kent
PO Box 4252
St. Augustine, FL 32085
Or email: benkent79@yahoo.com

Bill can be emailed at: wjc725@yahoo.com

* At Bill L.'s request, *Justice:Denied* is taking the unusual step of not publishing his last name. *Justice:Denied* agreed to this because he was convicted out of the public eye by a military court martial, his case has not received any press, and he has built a life after his release from military prison. If the Navy declines to "correct" Bill's conviction and he pursues his exoneration in federal court, his full name will then become a matter of public record.



Florida Supreme Court Acquits John Robert Ballard From Death Row

By Hans Sherrer

Jennifer Jones, 17, and William Patin, 22, lived together in a duplex apartment in Golden Gate, a small city in southwestern Florida's Collier County. John Robert Ballard lived across the street from their apartment, and he regularly socialized with them.

Jones supplemented her regular job by dealing marijuana around the area where she lived. It was known that she usually conducted drug deals in her bedroom. The last week in February 1999, a car drove by the couple's apartment and fired bullets through her bedroom window. Ballard witnessed the shooting and described the vehicle and several occupants to a Collier County Sheriff Deputy. Based on Ballard's information, the vehicle was stopped. Five people were in the car, and one person was charged with the shooting. The accused shooter and another man in the car were known street gang members. The shooting was attributed to a drug dispute with Jones.

A week later, on Saturday, March 6, 1999, Ballard and at least three other people attended a small going away party at Jones and Patin's apartment. The two were planning to move on Monday (the 8th) to Texas where Patin was going to start a job working with his father. A woman attending the party said she saw Jones with what she later estimated was \$1,000.

Jones and Patin Found Dead

Jones and two of the people at the party arranged to go boating at 11 a.m. on Sunday. After Jones didn't show up, both people separately went to the couple's apartment on Sunday to check on them. No one answered the door and Jones' car wasn't in the driveway, so they assumed the couple wasn't home.

On Monday at 9 a.m., someone reported to the Collier County Sheriff's Office that a car was parked in a vacant lot. The deputy who responded ran a license plate check. After learning the car was registered to Jones, the deputy drove by her residence, which was about a mile from where her car was parked. He didn't stop because he didn't notice anything suspicious.

Although the couple had planned to leave for Texas that Monday, no one had heard from them since the party Saturday night. So late Monday afternoon one of the people

Jones had arranged to go boating with on Sunday went to the couple's apartment with Jones' father. The front door was locked so they popped out the sliding glass patio door in the back of the apartment.

They found Jones' body in the master bedroom and Patin's body in the spare bedroom. The friend went to a neighbor and called 911.

Murders Investigated

Sheriff investigators collected evidence from the apartment. In addition to blood evidence, they found one hundred and eighteen latent fingerprints and collected hundreds of hair samples, along with nail scrapings and clippings. Officers found no large amount of money on the victims or in their apartment.

They also examined Jones' car for fingerprints, blood, and hair samples.

The medical examiner determined that Jones and Patin had been brutally bludgeoned to death, and that Jones had not been sexually assaulted. It was determined both victims were standing when attacked, and they had defensive injuries consistent with vigorously resisting their attacker, or attackers. A sustained and simultaneous attack on Jones and Patin by multiple perpetrators was suggested by extensive blood splatter evidence in the bathroom, hallway, spare bedroom, and in the master bedroom around Jones' body. The medical examiner could not determine the murder weapon, except that it was likely a blunt object. Sheriff investigators found no murder weapon at the crime scene nor in Jones' car.

Ballard was investigated as a suspect because he lived near the victims and he had provided eyewitness information to the Sheriff's Office about the shooting into Jones' bedroom a week before the murders. Ballard denied any involvement. None of the evidence collected from Jones' car was matched to Ballard, and no evidence was found in his car when it was searched and examined with his consent.

Out of the many hundreds of evidence samples collected from the crime scene that were identified as originating from several different people, Sheriff investigators eventually keyed on two pieces of evidence samples:

- Of the more than one hundred fingerprints of numerous people found in the apartment, one fingerprint on the headboard of Jones' bed was identified by a Florida Dept. of Law Enforcement (FDLE) crime lab technician as being Ballard's print.

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The fingerprint was not imprinted in blood and there was no blood around it.

- Of the hundreds of hairs originating from numerous people found in Jones and Patin's apartment, one of the six hairs found on Jones' palm was identified by a FDLE crime lab technician as being microscopically consistent with Ballard's arm hair.

Ballard Prosecuted

Prosecutors relied on the analysis of the headboard fingerprint and the arm hair to charge Ballard in May 2001, with the robbery of \$1,000 from Jones and the capital murder of Jones and Patin. Ballard was alleged to be the lone assailant, and his alleged motive was to steal Jones' money.

During Ballard's trial that began in April 2003, the prosecution relied on the fingerprint and hair to place him in the victim's apartment, and they tied him to Jones' car by claiming it was incriminating that it was found in the same neighborhood where he had lived with his father-in-law for several months in 1994 – five years before the murders.

Ballard's defense relied on the fact that he was a frequent guest at the victim's apartment, even being there at their going away party the night before their murders, and that he was known to have access to all the apartment's rooms. Consequently it would have been unusual if one or more of his fingerprints and hairs had not been found in the apartment. On cross-examination a FDLE crime lab technician testified that Ballard's arm hair found in Jones' palm could have been shed from his skin naturally, and that "it is possible for hair to be transferred from one surface to another, such as from carpeting to someone's hand."¹ Ballard's arm hair was only one of six hairs found on Jones' hand.

A neighbor of Ballard's testified that on the Sunday of the couple's murder Ballard and his family were at his house for a barbecue and he acted normally.

Ballard moved for a judgment of acquittal when the government rested its case, and again when he completed presenting his defense. He argued that the government had failed to prove his guilt beyond a reasonable doubt, because "there was a reasonable hypothesis of innocence in that the only evidence that linked Ballard to the case is equally consistent with the fact that he was often a guest in Jones and Patin's apartment."² Circuit Court Judge Lauren Miller denied Ballard's motions.

The jury convicted Ballard of both murders and robbery. After a sentencing hearing the jury voted 9-3 for the death penalty. On May 23, 2003, Judge Miller sentenced Ballard to 15 years in prison for the robbery and sentenced him to death for the murders. Judge Miller told Ballard, "You have not only forfeited your right to live among us, but under the laws of the state of Florida, you have forfeited your right to live at all."³

Ballard Appeals Conviction

In his appeal to the Florida Supreme Court, Ballard's primary issue was the insufficiency of the evidence. He argued that the prosecution failed to prove beyond a reasonable doubt that he had committed the crimes. Ballard outlined that the prosecution's case against him was entirely circumstantial. There was no witness, no murder weapon, no confession, no informant, no incriminating evidence in Jones' car, no recovered stolen money, no crime scene evidence establishing he was in the victim's apartment at the time of the murders, no incriminating evidence in his vehicle, and no physical or forensic evidence suggesting he committed or otherwise participated in the murders.

Ballard also argued that contrary to the prosecution's contention, the discovery of Jones' car a mile from the crime scene, in the general area of where he had lived five years prior to the murders, did not support an inference of his guilt. Particularly considering there was no eyewitness, or physical or forensic evidence that he had driven or even been in Jones' car after the murders. In addition, testimony by prosecution witnesses established that the lot "served as the location for activities involving numerous individuals."⁴ Ballard was not identified as being one of those individuals.

Ballard further argued that while the prosecution proved Jones and Patin had been murdered and possibly robbed, even if one accepted their contention that his hair and fingerprint was found in their apartment, it merely proved that at some time he had been in their apartment. That wasn't incriminating because it was common knowledge they were friends, and he had been in their apartment as recently as the party the night before their murders. The strength of Ballard's argument was indicated by the fact it was valid, without even considering that a fingerprint expert testified for the defense that the headboard fingerprint was inconsistent with Ballard's print.

Ballard contended his conviction should be reversed because the prosecution's circumstantial case based on non-incriminating fingerprint and hair evidence and an unsubstantiated supposition about Jones' car sup-

ported his innocence as much or more than it supported his guilt.

Florida Supreme Court Reviews Ballard's Conviction

The Florida Supreme Court opened its analysis of the law governing the facts of Ballard's case by acknowledging that its "fundamental obligation [was] to ascertain whether the State has presented sufficient evidence to support a conviction,"⁵ and that his case was based on "purely circumstantial evidence."⁶

In analyzing the sufficiency of circumstantial evidence, the Court explained:

Evidence which furnishes nothing stronger than a suspicion . . . is not sufficient to sustain conviction. It is the actual exclusion of the hypothesis of innocence which clothes circumstantial evidence with the force of proof sufficient to convict. Circumstantial evidence which leaves uncertain several hypotheses, any one of which may be sound and some of which may be entirely consistent with innocence, is not adequate to sustain a verdict of guilt. Even though the circumstantial evidence is sufficient to suggest a probability of guilt, it is not thereby adequate to support a conviction if it is likewise consistent with a reasonable hypothesis of innocence.⁷

The Court also noted that in a previous case it had clearly set forth the consequence of insufficient circumstantial evidence, "If the State's evidence is not inconsistent with the defendant's hypothesis of innocence, then no jury could return a verdict in favor of the State."⁸

The Court explained Ballard's defense:

Ballard's hypothesis of innocence at trial was that he was not guilty, and that another individual, including perhaps a member of the gang that had shot into Jones and Patin's apartment a week prior to the murders, or some other unknown assailant, committed the murders. He further contends that any evidence of his presence in the apartment, such as a hair or fingerprint, is equally as susceptible to an inference that it was left there during one of his numerous innocent visits to the premises as it would be to an inference that it was placed there while he was committing the charged crimes. He similarly notes the countless other hairs and fingerprints in the premises and in Jones' car that were not traced to him and could have belonged to the unknown perpetrator.⁹

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The Court then analyzed Ballard's contentions:

Given the evidence of Ballard's frequent and personal access to the premises, the State simply did not refute the possibility of his prior innocent presence in the bedroom as accounting for the hair and print. The fingerprint and hair evidence only serves to prove that Ballard was in Jones and Patin's apartment at some point in time, which Ballard readily admits because he was a long-time friend of the couple and socialized regularly with them.¹⁰

The Court also recognized that experts gave conflicting testimony about whether the fingerprint found on the headboard was actually Ballard's print. They noted though, that even if it was assumed to be his, it didn't mean he had anything to do with the murders because he had been a frequent guest at the apartment, and a Florida Department of Law Enforcement crime lab analyst testified, "that it is impossible to scientifically determine the age of a fingerprint or how long it has been in place."¹¹

In regards to the State's reliance on the finding of Jones' abandoned car near where Ballard had lived years earlier as circumstantial evidence of his involvement, the Court stated,

[T]here was no evidence presented to connect Ballard to the car. Testimony at trial established that this vacant lot served as the location for activities involving numerous individuals. There was blood found in the car, but it was Patin's and not Ballard's. Further, fingerprints were found in the car but were not matched to Ballard.¹²... There were also some seventy hairs found in Jones' car, and none of them were consistent with Ballard's profile.

¹³

In its consideration of Ballard's arguments that members of the gang that shot through Jones' window might have been responsible for the murders, the Court wrote:

[T]here was evidence presented by the defense at trial concerning a drug-related gang shooting into Jones and Patin's apartment a week prior to the murders. However, despite having full knowledge of this event, the State did not present definitive evidence ruling out members of the gang as the perpetrators of the murders. ... [T]he defense established that the gang has

approximately eighty members total; none of these other members were ruled out by the State's presentation of evidence regarding its investigation of the murders. Whether a member of this gang or someone else committed these terrible crimes is simply not known.¹⁴

In summarizing its analysis of Ballard's case, the Court concluded:

[I]t is ... the duty of the courts to ensure that the State is held to its burden of proof when someone is charged with a serious crime and liberty and life are at risk. ... because this case is purely circumstantial, we must determine whether competent evidence is present to support an inference of guilt "to the exclusion of all other inferences." Our discussion of the evidence outlined above leads us to conclude that the State has not met this standard and has not performed its duty to prove this case against John Robert Ballard beyond a reasonable doubt.¹⁵

The Court then ordered the reversal of Ballard's convictions, the vacation of his sentences, and his case was remanded to the trial court with an order that a "judgment of acquittal be entered."¹⁶ The Florida Attorney General's Office promptly announced they would not seek a rehearing, so the Court's ruling was final.

The February 23, 2006, decision by the Florida Supreme Court was significant not only because it found the evidence against Ballard was insufficient to support his conviction, but it was so woefully inadequate that for only the third time in the last thirty years the Court ordered a judgment of acquittal, and not a retrial. The Court's opinion left no doubt that Judge Miller had not performed her obligation to follow the law when she denied Ballard's two motions for a judgment of acquittal.

Ballard's Release

Less than 48 hours after the Florida Supreme Court ordered his acquittal, Ballard was released from Union Correctional Institution's death row. He was quietly picked-up at the Raiford prison after dark by his sister. When interviewed about 24 hours later, she told a reporter, "He's nowhere near Florida. I'm not even going to tell you if he's in the United States."¹⁷

After Ballard's release, his trial public defender, Michael Orlando, said he was wrongly convicted because of the pressure put on jurors to convict caused by intense media coverage of the crime and trial, tight courthouse security, a crowded courtroom, and the families of

both victims demanding justice, "You're dealing with the intensity of the courtroom in this particular case. All these things tend to put a lot of pressure on jurors."¹⁸

Two public defenders, James Moorman and Paul Helm, represented Ballard in his appeal. Helm said he was very pleased with the Court's ruling, and "Mr. Ballard has always said he was innocent of the murders of his two neighbors."¹⁹

Abe Bonowitz, director of Gainesville based Floridians for Alternatives to the Death Penalty, said after Ballard's release, "Here's a guy who survived death row, who was wrongly convicted."²⁰ He also noted, "This is one of those cases where Supreme Court scrutiny on the first appeal has actually worked."²¹ Bonowitz also expressed empathy for Ballard's desire to lay low and avoid the knee-jerk negative reaction of people who didn't bother to understand that the Florida Supreme Court overturned his conviction and ordered his release because there was absolutely no evidence he was guilty. Bonowitz said Ballard's relatives were trying to protect him from "a witch hunt" of the same sort that resulted in his wrongful conviction in 2003.²²

If you are concerned about death penalty issues in Florida, write:

Floridians for Alternatives to the DP
2603 Dr. Martin Luther King Jr. Hwy. #335
Gainesville, FL 32609
Or email: fadp@fadp.org

Endnotes and sources:

1 *Ballard v. State*, No. SC03-1012 (Fla. 02/23/2006); 2006.FL.0001488 ¶32 <<http://www.versuslaw.com>>

2 *Id.* at ¶42.

3 Supreme Court acquits 3-year death row inmate, *Miami Herald*, February 24, 2006.

4 *Id.* at ¶57.

5 *Id.* at ¶44.

6 *Id.* at ¶45.

7 *Id.* at ¶46, quoting *Davis v. State*, 90 So. 2d 629 (Fla. 1956).

8 *Id.* at ¶47, quoting *State v. Law*, 559 So. 2d 187, 189 (Fla. 1989).

9 *Id.* at ¶52.

10 *Id.* at ¶53.

11 *Id.* at ¶54.

12 *Id.* at ¶57.

13 *Id.* at ¶58.

14 *Id.* at ¶59.

15 *Id.* at ¶61.

16 *Id.* at ¶62.

17 Relative of John Ballard wants to clear the air, *NBC 2 News*, Fort Myers, Florida, February 26, 2006.

18 John Ballard's release raises questions, Leonora LaPeter, *St. Petersburg Times*, March 6, 2006.

19 Supreme Court acquits 3-year death row inmate, *supra*.

20 John Ballard's release raises questions, *supra*.

21 Supreme Court acquits 3-year death row inmate, *supra*.

22 John Ballard's release raises questions, *supra*.

