

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

APR 30 1984

BENNIE DEMPS,
Appellant,

CLERK, SUPREME COURT

By *[Signature]*
Chief Deputy Clerk

-v-

CASE NO. 64,787

STATE OF FLORIDA,
Appellee.

_____ /

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR BRADFORD COUNTY, FLORIDA

BRIEF OF APPELLEE

JIM SMITH
Attorney General

GREGORY C. SMITH
Assistant Attorney General

COUNSEL FOR APPELLEE

The Capitol
Tallahassee, FL 32301-8048
(904) 488-0290

TOPICAL INDEX

	<u>Page</u>
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2, 3
ARGUMENT	3
<u>ISSUE I</u>	
WHETHER THE TRIAL COURT ERRED IN CONCLUDING THAT WILLIAM BEARDSLEY HAD NOT INDUCED MICHAEL SQUIRES TO REFRAIN FROM TESTIFYING ON BEHALF OF THE DEFENSE IN THE DEMPS CASE.	3-5
<u>ISSUE II</u>	
WHETHER THE TRIAL COURT ERRED IN SUSTAINING THE PROSECUTION'S OBJECTION TO THE TESTIMONY OF WILDA PASCHAL.	5, 6
CONCLUSION	6

TABLE OF CITATIONS

Cases

Abbott v. State, 334 So.2d 642 (Fla.3d DCA 1976)	4, 5
Alvord v. State, 322 So.2d 533 (Fla. 1975)	4
Tibbs v. State, 397 So.2d 1120 (Fla. 1981)	4

IN THE SUPREME COURT OF FLORIDA

BENNIE DEMPS,

Appellant,

-v-

CASE NO. 64,787

STATE OF FLORIDA,

Appellee.

_____ /

BRIEF OF APPELLEE

PRELIMINARY STATEMENT

Bennie Demps was the defendant in the court below and the State of Florida was the prosecution. Both parties will be referred to as they appear before this court.

References to the record on appeal will be made by the symbol "R" followed by appropriate page number. References to the transcript on appeal will be made by the symbol "T" followed by appropriate page number.

STATEMENT OF THE CASE AND FACTS

Appellee, the State of Florida, accepts the statement of the case and facts made by appellant in his initial brief with the exception of the following modifications and additions.

Bill Beardsley, prison inspector and investigator, was the chief inspector at the time of the Demps case. (T-32) The first contact with Michael Squires was when he came to tell Beardsley of a correctional officer who was introducing contraband into the facility. (T-35) A second contact involving possession of a derringer by an inmate occurred in the late fall of 1976. (T-39) During these incidents, Beardsley never offered Squires any promises. (T-41)

Beardsley did discuss the Demps case with Squires, but this was in reference to a problem with other inmates testifying falsely: perjury incorporated. (T-42) Beardsley stated that if there was a discussion with Squires about a transfer, it was for Squires' protection and not for anything he did in the Demps case. (T-43) Squires and Beardsley never had a conversation during which parole was promised if Squires refused to testify for Demps. (T-45) Beardsley never directed what Squires' testimony in the Demps case was to be. (T-97)

Larry Hathaway testified that he did see Demps kill Sturgis. (T-327) Hathaway said that he never told Squires he was being pressured by the state. Additionally, he said

that he never told Squires that he, Hathaway, knew nothing about the Demps case.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN CONCLUDING THAT WILLIAM BEARDSLEY HAD NOT INDUCED MICHAEL SQUIRES TO REFRAIN FROM TESTIFYING ON BEHALF OF THE DEFENSE IN THE DEMPS CASE.

Appellant's primary contention on appeal is that the trial court erred in failing to find that the state, through the person of William Beardsley, interfered with a defense witness, Michael Squires. Squires stated at the hearing below that Hathaway, a principal state witness, told Squires that the state was pressuring him to lie during the Demps trial.

It was this supposed testimony, Squires says, he was induced to suppress to the benefit of the state. This he claims, was in exchange for an early parole.

At the hearing below, Beardsley testified that Squires had been a useful informant and that his activities in this regard placed him in danger at the facility. It was this fact that caused Beardsley to "go to bat" for Squires for an early parole. Beardsley never offered Squires a parole for withholding testimony. Additionally, Beardsley never promised Squires anything.

Michael Squires testified in direct contradiction to Beardsley. However, the trial court resolved this conflict in favor of the state.

[T]his court, . . . finds that defendant has failed to prove his claim by any believable evidence. [Emphasis ours.]

(R-67)

It is interesting that in the extensive statement of facts found in appellant's initial brief, the testimony of Hathaway is missing. At the hearing below, Hathaway testified that he had spoken to Squires before the Demps trial, but that he never said he was being pressured into lying about the Demps case.

Appellant does not contend that there was insufficient evidence upon which to conclude that Beardsley never influenced Squires, he simply urges this court to find that Squires was influenced by Beardsley. In Tibbs v. State, 397 So.2d 1120 (Fla. 1981), this court stated:

[A]n appellate court should not retry a case or reweigh conflicting evidence submitted to a jury or trier of fact.

Legal sufficiency alone, as opposed to evidentiary weight, is the appropriate concern of an appellate tribunal.

Id. at 1123. See also Alvord v. State, 322 So.2d 533 (Fla. 1975); Abbott v. State, 334 So.2d 642 (Fla.3d DCA 1976).

It is clear that appellant has attempted to retry the evidence on appeal to this court. He has failed in his burden to demonstrate error. Abbott, supra. This court should affirm the lower court's denial of the motion for post-conviction relief.

ISSUE II

WHETHER THE TRIAL COURT ERRED
IN SUSTAINING THE PROSECUTION'S
OBJECTION TO THE TESTIMONY OF
WILDA PASCHAL.

As his final issue, appellant states that the trial court improperly sustained the prosecution's objection to the testimony of Wilda Paschal. Wilda Paschal, on proffer, testified that Mike Squires told her "he was trying to help frame a black guy for the state." (T-295) The state objected on the ground that the testimony was hearsay. The defense alleged that the evidence would rehabilitate Michael Squires who had earlier been the subject of state impeachment. Appellant says that Squires was impeached by testimony of his prior inconsistent sworn statement, and also by evidence that he was fearful of appellant. When the trial court sustained the state's objection, he stated:

THE COURT: He testified -- he is the one that, offered it. He is the one that told what an honest person he was, he placed it in evidence, and stated that everything previously said was a lie, and he didn't sway from that on cross-examination.

So, if that is the basis for it, the objection is still sustained.

(T-294)

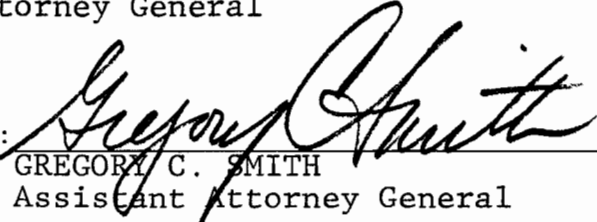
On p. 249 of the transcript, Squires openly admits on direct-examination that he lied under oath. Also, concerning the fear Squires may have experienced, Beardsley testified generally that Squires was at risk in the prison population as a result of the informant's activities.

Clearly, there was no impeachment of Squires, and the testimony was simply a self-serving attempt to bolster Squires' story. This court must affirm the lower court's ruling below.

CONCLUSION

For the above and foregoing reasons appellee would respectfully request that this Honorable Court affirm the ruling of the lower court.

JIM SMITH
Attorney General

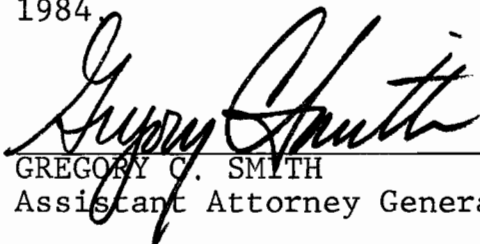
By: 
GREGORY C. SMITH
Assistant Attorney General

COUNSEL FOR APPELLEE

The Capitol
Tallahassee, FL 32301-8048
(904) 488-0290

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a copy of the foregoing Brief of Appellee to Mr. John L. Carroll, Mr. Dennis N. Balske, 1001 South Hull Street, Post Office Box 2087, Montgomery, Alabama 36103-2087, Attorneys for Appellant, by U.S. Mail, this 30th day of April, 1984.



GREGORY C. SMITH
Assistant Attorney General
of Counsel