

IN THE SUPREME COURT OF FLORIDA

BENNIE DEMPS )

Appellant )

vs. )

STATE OF FLORIDA, )

Appellee )

CASE NO. 64,787

**FILED**

SID J. WHITE

APR 6 1984

CLERK, SUPREME COURT

By *[Signature]*  
Chief Deputy Clerk

INITIAL BRIEF OF APPELLANT

On appeal from the Circuit Court of the 8th Judicial Circuit  
In and For Bradford County Florida

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## STATEMENT OF THE CASE

Appellant, Bennie E. Demps was tried, convicted and sentenced to death in March of 1978 in Bradford County, Florida. His conviction and death sentence were affirmed by this court, Demps v. State, 395 So.2d 501(Fla.1981), and the Supreme Court denied his timely petition for writ of certiorari, Demps v. Florida, 454 U.S. 933 (1981).

In June of 1982, appellant initiated post-conviction proceedings through the filing of a 3.850 motion which was summarily denied by the trial judge. An appeal followed and this court, on June 24, remanded the case to the trial court for an evidentiary hearing on appellants claim that the state interfered with a defense witness. It affirmed the trial court's denial of relief on all other claims. Demps v. State, 416 So.2d 808 (Fla. 1982).

On December 13-14, 1983, the trial court conducted the evidentiary hearing. On December 20, 1983, the trial court issued a short order denying relief. A timely notice of appeal was filed.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I.

WHETHER THE STATE OF FLORIDA INTERFERED WITH A DEFENSE WITNESS THEREBY VIOLATING APPELLANT'S RIGHT TO DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

II.

WHETHER THE TRIAL COURT ERRED IN EXCLUDING THE TESTIMONY OF WILDA PASCHAL AND THE EXCLUSION VIOLATED FLORIDA EVIDENCE LAW AND APPELLANT'S RIGHT TO DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

## STATEMENT OF FACTS

The issue before the judge at the evidentiary hearing concerned the question of whether the State of Florida, through a prison investigator named William Beardsley interfered with a defense witness named Michael Squires. Because the evidence concerns a broad range of facts, the statement of facts must necessarily be segmented. Of necessity, certain facts containing the backgrounds of the main characters, Beardsley and Squires must be stated first.

### MICHAEL SQUIRES

In 1958, Michael Squires was sentenced to serve 2 years in the Florida State Prison system for armed robbery. He was released in 1960, but was convicted in 1961 of another armed robbery for which he was sentenced to life imprisonment. (T.230-232)<sup>1</sup> While serving his ten year sentence, Squires became a habitual escapee. In 1962, he escaped from the Sumter County jail. He later escaped from the West Palm Beach County Jail and in 1966 escaped from the Walton County Jail.

In 1970, Squires was paroled from his life sentence after serving ten years. He returned to Florida State Prison, in 1971,

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<sup>1</sup> The following designations shall be used herein: (T.\_\_\_\_) shall be the designation of references to the testimony adduced at the evidentiary hearing in this cause held on December 13-14, 1983. (R.\_\_\_\_) shall be the designation of references to the clerk's record concerning the 3.850 motion and hearing. (Tr.T\_\_\_\_) shall be the designation of references to the trial transcript and (Tr. R.\_\_\_\_) shall refer to the clerk's trial record.

after violating the terms and conditions of his parole. (T.232). He served 3 more years and was subsequently transferred to the Cross City Correctional Institution where, in July of 1973, he escaped. While on escape from Cross City, Squires kidnapped a state trooper named Barney Stallwoth and committed various other crimes. As a result of the crimes committed while on escape, Squires was sentenced to life for a robbery in Marion County, received another life sentence for the commission of a crime in Jefferson county, received a 15 year sentence for kidnapping Trooper Stallwoth and 5 years each for stealing Trooper Stallwoth's gun and automobile. (T.233) In late 1976 or early 1977, Michael Squires met Bill Beardsley. Bill Beardsley, in late 1979 and early 1980 would appear before the Florida Parole Commission on Squires behalf. He would also write a confidential memorandum which stated, inter alia that the state trooper whom Squires kidnapped now "supports Squires parole plan." (T.320). As a result of Bill Beardsley's efforts Squires was scheduled to be paroled in August of 1980, less than seven years after his crime spree following his escape from Cross City. Before he could be paroled, Squires escaped from Lake City Work Release and went on another crime spree. On March 15, 1982 Squires was sentenced to death in Hillsborough County for the robbery murder of a service station attendant.<sup>2</sup>

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<sup>2</sup> The information concerning Squires post-parole crime spree and his subsequent death sentence are taken from Squire's DOC institutional file which was entered into evidence as Defendant's Exhibit 1.

### BILL BEARDSLEY

Bill Beardsley is an inspector and investigator employed by the Florida Department of Corrections. From February of 1977 to April of 1978, he was the Chief Inspector. In that role, he became involved in this case. In his role as chief inspector, he conducted an additional investigation over and above the initial investigation that had occurred. He apparently knew the appellant as the result of some of his prior work. (T.33).

### SQUIRES AND BEARDSLEY- PRE DEMPS

Beardsley's first contact with Squires came in 1976, when, according to Beardsley, Squires came to him and told him that there was a correctional officer bringing contraband into the prison system. Through Squires efforts, the correctional officer was brought to justice (T.35-36; 235 -236). On another occasion, Squires supposedly fed Beardsley information concerning the introduction of a weapon into the Florida State prison.(T.39). Squires denies participating in that case. (T.251-252).

On August 27, 1977, a classification team at Florida State Prison (FSP) recommended that Squires be transferred to Lake Correctional Institute. (T.50). That transfer, however, was disapproved by Cecil Sewell, the population and movement control officer who stated in a memo to J. C. Combs, dated October 4, 1977, that "In a review of the inmate file, we feel that Florida State Prison is the appropriate assignment." (T.52, Defendant's exhibit 13). On January, 8, 1978, Squires wrote a letter to Bill Beardsley recounting certain problems and seeking his help in



obtaining a transfer. (T.57-58, Defendant's exhibit 10). On February 1, 1978, the institutional classification team at FSP again recommended Squires for a transfer, this time to Avon Park Correctional Institute (APCI). On February 22, 1978 Bill Beardsley then wrote a memorandum to Cecil Sewell, the official who had previously turned down Squire's request for parole, recommending that Squires be given a transfer. (T.58-59). The memorandum states in pertinent part:

I certainly have mixed feelings about the transfer but do support it after talking to Assistant Superintendent J. C. Combs. He relates that he supports the transfer and that Squires has a good record at FSP. There are two considerations; each is weighty. Certainly, Squires is in some jeopardy at FSP because of his helping the administration. On the other hand, he has an escape on his record and he is a heavy. That leaves his demeanor as the deciding factor. At this time, it is very favorable and therefore, I recommend the request for transfer to APCI.

(T.60)

Two days later, Cecil Sewell approved Squires transfer.

#### SQUIRES AND BEARDSLEY - THE DEMPS CASE

In early 1977, Squires was assigned to the Union Correctional Facility and while there encountered Larry Hathaway, an inmate who would later be the key witness at Appellant's murder trial. Hathaway approached Squires and said that his "...fanny was in a crack" because a state's investigator named Walmsley was trying to get him to testify as a witness against appellant. Hathaway told Squires that he knew nothing about the Sturgis murder, which was the crime with which appellant was charged, and that, in fact, he was in a dayroom on another wing

of the prison when that homicide occurred.<sup>3</sup> (T.236-238) Hathaway admitted, at the post - conviction hearing, that he and Squires had a conversation with Squires at UCI (T.330) but denied telling him that he knew nothing about appellant's case. (T.327).

On February 27, 1978, appellant's counsel filed his response to the state's demand for discovery and listed Squires as a witness (Tr.R.53) The co-defendant's counsel filed similar responses.<sup>4</sup> Following the filing of the witness list, Beardsley and Squires had some important contact regarding this case. What actually happened, though, is the subject of some dispute. Squires testified at the post conviction hearing that some time in late February or early March of 1978, the wing officer came to him and said that he had an attorney call out. (T.244-245). While the officer was taking Squires to the visiting area, he was stopped by Bill Beardsley who wanted to know where Squires was going. Squires said that he did not know, whereupon Beardsley dismissed the officer and took control of Squires. (T.244). Beardsley then took him to a conference room in front of the colonel's office where a conversation ensued. Beardsley asked Squires why he was siding with the defense in the Demps case and Squires replied that he was not siding with anyone but was

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<sup>3</sup>Hathaway testified as an eyewitness at appellant's trial. He told the trial jury that he had personally observed appellant and his co-defendants kill Alfred Sturgis.

<sup>4</sup>The response lists "William Squires" as a witness which is the name contained in Squires institutional file. He is known throughout the system as "Michael" or "Mike" Squires, however.

simply telling the truth. (T.245) Beardsley asked what the truth was and Squires told him that he had had a conversation with Larry Hathaway, while he was at UCI wherein Hathaway had told him that he was being pressured into testifying for the state in the Demps case but in reality knew nothing about the case and had, in fact, been somewhere else when the homicide occurred. (T.246).

Beardsley responded to Squires statement by offering him a transfer to any institution in the state if Squires would "...go with him on the Demps case." Squires rejected Beardsley's offer. In his words

I rejected it, I turned it down, and I told him that I had already had some of his transfers, that i had just come back on one, and I was tired of getting shuffled around in the system.

(T.246).

Faced with Squires rejection, Beardsley made a counteroffer. In Squires words:

He (Beardslsey) said that, if I would switch over on the Demps case and would put myself in a predicament with a counterstatement where the defense couldn't subpoena me as a witness, that he would make sure that I was quickly transferred to Avon Park and, if I would give him two years with a good record at Avon Park, that he would get me a parole.

(T.247).

Squires agreed to "switch over and give a counter-statement" in exchange for Beardsley's promise to get him a parole. (T.248). On March 1, 1978 Squires gave the promised counterstatement, under oath, to the state's attorney. Bill Beardsley and Wiley Clark, an

investigator for the state's attorneys office were also present.<sup>5</sup> The counterstatement, as promised, contradicts the signed and notarized statement which Squires gave to the counsel for one of appellant's co-defendant's named Harry Mungin. The statement which Squires gave to Harry Mungin and his defense counsel is similar to his hearing testimony concerning the conversation he had with Larry Hathaway wherein Hathaway continued to assert that he knew nothing about the Demps case and was being pressured into testifying. (State's Exhibit 1, p. 5-6). In his counter statement given on March 1, 1978 Squires said that one of Appellant's co-defendants made up that story for him and that it was untrue. (State's Exhibit 1, p.6)

At the post-conviction hearing, Squires stuck by his original story which he had given to Harry Mungin that Hathaway knew nothing and was responding to pressure from a prison inspector. When asked why he gave the sworn statement of March 1, 1978, Squires replied "...I got parole for that statement." (T.249).

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<sup>5</sup>The counterstatement was entered into evidence as State's Exhibit 1. The trial court and the state's attorney characterize the Squires counterstatement as a "deposition". The face of the document however says it is the "Sworn Statement" of Michael Squires, not his deposition.

Bill Beardsley, as could be expected, denies offering Squires parole. He does remember having some conversations with Squires about the Demps case prior to March 1, 1978 which "led me to direct Mr. Squires to the State Attorney." (T.42) He does not remember any conversations with Squire's wherein Squire's status as a defense witness was discussed. He denies having promised Squires parole in exchange for his counterstatement and commented "I have no ability to get people parole". (T.45)

Squires remained at the Florida State Prison for a week following his March 1 counterstatement but on March 8, 1978 he was transferred to the Reception and Medical Center at Lake Butler (RMC). Appellant's trial concluded on Friday, March 17, 1978. On Monday, March 20, 1978 Squires was sent from RMC to Avon Park (APCI).

#### SQUIRES AND BEARDSLEY AT AVON PARK

Avon Park Correctional Institution, like many similar institutions under the supervision of the Department of Corrections has excellent vocational and educational programs. When Squires was at Avon Park, the Institution had an academic program which would allow an inmate to progress from illiteracy to a junior college diploma. They also had 11 vocational programs which were to teach trades. Inmates were encouraged to participate in these programs because they would help them upon their release. (T.118)

Under the system in effect while Squires was at Avon Park, inmates were given a progress review by a Classification Team

every 6 months.<sup>6</sup> Squires first progress report is dated August 29, 1978. The review showed that Squires was "...not enrolled in any vocational training program nor does he participate in any organization or recreational department activities at APCI." (T.119). Moreover, the report contained the following language

Subject states that he recieves anywhere from a hundred to eight hundred dollars per month from the family members and openly admitted to the team that he participates in gambling as his only extracurricular activity.

(T.120)

At the time of the progress report, Squires was a close custody inmate. In the words of a classification specialist from the Department of Corrections:

Close custody inmates are those inmates that are considered as escape risks or are a threat to the other inmates in a lesser custody setting or the lesser institutions. To be taken outside of an institution, they have, of course, to be monitored and under armed guard.

He remained in that status throughout his stay at APCI. (See defendant's exhibits 5,6,7 and 8). His status changed only after Beardsley obtained a parole for him.

Squire's second progress report prepared in February of 1979 showed a similar lack of rehabilitation. As the report notes:

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<sup>6</sup> The progress reports of Michael Squires at APCI were accepted into evidence as defendant's exhibits 5,6,7, and 8.

At APCI, Squires has maintained a clear disciplinary record. However, he is rumored to be extensively involved in loan sharking and narcotics introduction to the institution. Squires participates in no known rehabilitative programs nor is he a member of any clubs or organizations at APCI.

(T.123)

The rumors about Squires being involved in loan sharking and narcotics were turned out to be more than just rumors. Paul Sheffield, the prison inspector for APCI, confirmed at the post-conviction hearing that while Squires was at APCI he was involved in loansharking and drugs. As Inspector Sheffield noted in his testimony "...Mike has been involved with drugs, money. Any way that he can manipulate anybody, he does it for his own personal gain." (T.145 ).

Further, Squires was clearly not afraid of anyone while at Avon Park, a fact best illustrated by the testimony of W. W. Cornell, who was one of Squires' classification officers at APCI:

Q. There is a statement in defendant's Exhibit I (one of Squires' progress reviews)...which says "This subject is known to be a manipulator and thinks of himself as a big shot among the inmate population."

Do you recall the source of that information?

A. Well, it was common knowledge that Squires was a big influence over other inmates. He wasn't afraid of the staff or the inmates.

Q. He wasn't afraid?

A. No, he has never been. At that point, he was a big shot and a tough guy on the compound.

(T.124-125).

Squires describes his stay at Avon Park thusly

Q. And what did you do while you were at Avon Park?

A. I stayed high and had a good time and waited till that parole got through.

(T.250)

Squires continued to have extensive contacts with Beardsley while Squires was at APCI. W. W. Cornell mentioned one specific incident:

As I recall, there was one instance where he (Squires) wanted to talk to, I believe it was Mr. Beardsley. Of course, this is all a long time back. He said that he had something that he needed to talk to him about. I checked it out with my superior before making any such call, and all I did was to call Mr. Beardsley and tell him that Squires wanted him to contact him. He said "Thank You." Whether or not he ever did or whatever they talked about, I don't have any idea.

(T.125)

Inspector Sheffield's experience is similar:

Q. And what was your experience with him (Squires) after he came to Avon Park?

A. Well Mike still wanted to be a manipulator and informant. I was receiving interview slips. He would call my family at home, he would try to call me at home. Then, you see, I would be on the road and he would leave messages for just any and every reason. You see, some of the reasons that he wanted to get in touch with me was to have Mr. Beardsley call him, or he wanted to get in touch with Mr. Beardsley. I finally just sat him down one day and told him to write him some letters or call him by phone.

Q. I take it that, each time he requested you personally to get in touch with Mr. Beardsley that you refused to do that?



A. I didn't have any reason to. I told him if it was an emergency, you see, I didn't have any problem with it. He never did tell me that it was an emergency and he never did tell me why.

(T.143-144)

SQUIRES AND BEARDSLEY - THE PAROLE

On February 4, 1980 Squires received another progress review from the classification staff at APCI. Prior to this review, Squires had requested that his custody be reduced from "Close" to a less restrictive classification. The classification team rejected the request, noting:

At the time of this interview, inmate Squires had but one request of the classification team and that was the possibility of a custody reduction. Institutional prognosis for inmate Squires is fair due to the fact that subject has maintained adequate adjustment at this facility. Post-release prognosis however is poor due to inmate's Squires extensive criminal history and his sentence structure at this time.

(Defendant's Exhibit 8).

At the time of the February 1980 progress review, Squires had a presumptive parole release (PPRD) date of February 13, 1990. That date had originally been 1997, but was corrected by the parole commission because there had been an error in calculating that 1997 date. (T.197- 198). In order for Squires to be paroled in 1980, the presumptive parole release date would have to be changed to sometime in 1980. Enter Beardsley.

At about the same time, the institutional classification team at APCI was refusing to change Squires close custody status, Beardsley was appearing in front of the Florida Parole Commission

on Squires behalf. He appeared personally and sent the Commission a "Confidential Memorandum" which was received into evidence as Defendant's Exhibit 4.<sup>7</sup>

Beardsley personally appeared before the parole commission on December 5, 1979. This was the only time that Beardsley had ever appeared in front of the parole commission on behalf of an inmate. He did not even do it for Larry Hathaway, the inmate who was the chief witness against Appellant. Beardsley, in fact, told Hathaway that it wasn't his policy to intervene in parole matters for inmates and that there wasn't much that he could really do about such things. (T.337)

The confidential memorandum lists four instances wherein Squires provided assistance to DOC officials. The first is the Shealey case which involved a weapon that had been smuggled into the Florida State prison. Squires denied that he had anything to do with that case and testified that he told Beardsley to put it in the confidential memorandum "because I figured that no one would know the difference." (T.252). The second incident also involved the recovery of a weapon. There is no dispute that Squires provided that assistance. The third case involved

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<sup>7</sup>A state's attorney named Whiteacre also sent a letter on behalf of Squires since Squires had been a potential state witness in a murder case that Mr. Whiteacre was prosecuting. Mr. Whiteacre agreed to write the letter after talking with Bill Beardsley. Beardsley had been involved in getting Squires to testify for Whiteacre. (State's Exhibit 3, p.6).

assistance to William Whiteacre, an assistant state's attorney in Orlando. Squires did provide some assistance and Whiteacre wrote a letter for Squires. Last, but by no means least, Beardlsey told the parole commission about the assistance that Squires provided in appellant's case. He stated in his memorandum that Squires provided information which allowed Beardsley" to defuse a conspiracy intimidation ring within the prison and reassure the witnesses" which resulted in returning Bennie Demps to death row. (Defendant's Exhibit 4). Squires, of course, denied that he provided such assistance. Beardsley concluded his memorandum with a plea for Squires parole.

From my official position, I believe that the State of Florida owes immediate release to Squires. My personal viewpoint is that he has matriculated into society's school and passed all the tests necessary. I both request and recommend approval of his parole.

On January 16, 1980, the parole commission voted to grant Squires a parole. In order to do so, the commission had to reduce Squires presumptive parole release date by 114 months or ten years. (T.182) This ten year reduction occurred after Beardsley appeared in front of the Commission. Prior to Beardsley's appearance Squires had a PPRD of 1990. It was then changed to August 13, 1980.

#### SQUIRES AND BEARDSLEY - WORK RELEASE

On April 11, 1980, Squires was recommended for work release because his PPRD had been chamnged from 1990 to 1980. Had that change not occurred, he would not have been eligible for that program. (T.132). Squires was assigned to Lake City work release and

placed at a service station called Coker's Chevron which was owned and operated by Jerry Coker. Carl Davis was the job placement coordinator at Lake City Work Release when Squires appeared there for placement. When the station manager at Coker's Chevron sought information about Squires from Davis, Davis told him that "Squires was or did have a college education and that he was well polite and a courteous type person." (T.153) The first statement, that Squires had a college education was patently untrue. Mr. Davis also did not reveal all of the details of Squires prison record. (T.156)

Mr. Coker, the owner of the Chevron Station, was under the impression, from a conversation with Carl Davis"... that Squires was just a good old boy, got drunk and while under the influence, he kidnapped that highway patrolman but hadn't harmed him and I think handcuffed him to a pine tree, something like that." (T.162) Coker was also informed that the highway patrolman that Squires kidnapped was instrumental in getting Squires sent to work release. (T.161) Mr. Coker was not told the truth about Squires record. Had he been told the truth he would never have hired him at his station. (T.164)

While Squires was on work release, Bill Beardsley continued to have contact with him. Beardsley came to Lake City to meet with Squires which he did. While there, Beardsley talked with the man at the service station where Squires was employed. (T.77-78).

After Squires had been in Mr. Coker's employ for a little better than a month, he stole Mr. Coker's wrecker and escaped from work release. (T.164) Some three weeks later, Squires returned to another one of Mr. Coker's service stations and

robbed his wife of a week's receipts. His wife tried to flee from Squires into one of the restrooms and Squires shot through the door at her. Nonetheless, she did not surrender the receipts until Squires threatened to kill one of the station attendants whom he had taken hostage. (T.162-163). After robbing Mrs. Coker, Squires then went on his crime spree through several states which culminated in the serious wounding of a law enforcement officer and his subsequent conviction for capital murder.

Squires was captured during his crime spree, returned to Lake City and subsequently pled guilty to the robbery of Mrs. Coker and the theft of Mr. Coker's wrecker and received an additional 80 years. He was represented on those charges by Julian Collins, an attorney in Lake City. In January or February of 1981, Squires told Mr. Collins to contact the attorneys of appellant and his co-defendant's to tell them what Squires had done concerning his case. He also wrote appellant a letter dated June 29, 1981 which explained in detail Squires participation in his case. (See Defendant's Exhibit 11). In late 1981, appellant's counsel interviewed Squires in the Hillsborough County Jail.

#### TROOPER BARNEY STALLWORTH

Trooper Barney Stallworth is a veteran Florida Highway Patrol officer. He first met Michael Squires some ten years ago while he was on patrol in the middle of the night on U.S. 90 just out of Monticello, Florida. At that time he noticed a vehicle which appeared to be broken down and in need of assistance. Squires was in the vehicle. When Trooper Stallworth asked for his registration, Squires

...[o]pened the door with his right hand. He said, "Here it is," and held out his wallet like this (demonstrating) in the light, and opened the door with his right hand and exited from the vehicle. I whirled and walked around to the car and he thrust the wallet out at me and, at this time looking down, he put a pistol to my head and said, "I will kill you. I am going to blow your head off right at this moment."

And to make a long story short and get to the point, I was made to drive, I was covered with my pistol, carried into a swamp between Perry and Cross City, handcuffed to a tree, and I was threatened several times by Squires at that time. And I think, personally, the only thing that saved me, at that time, was I started talking to him about money in my wallet. He started counting the money in my wallet walking away and, as he walked away, he lost me and I laid down beside the tree.

(T.319)

At sometime in 1978 or 1979, Trooper Stallworth again heard from Squires. Trooper Stallworth was home at lunch when Squires called him from Avon Park. Squires wanted Trooper Stallworth to recommend that he be put into a minimum security facility and Trooper Stallworth advised him at this time that he could make no recommendation, because "...I felt like he was a danger to himself and society, and I could not make any recommendation." (T.320).

Trooper Stallworth was later contacted by William Whiteacre, the Assistant State's Attorney who with Bill Beardsley's assistance had recommended Squires for parole. Whiteacre asked Trooper Stallworth to recommend Squires for minimum security or parole. Stallworth's response was "No way". (T.320)

When Beardsley filed his "confidential memorandum" with the parole commission, he unequivocally stated that Trooper Stallworth, the Trooper whom Squires kidnapped and left in a swamp "supports Squires parole plan." That statement about Stallworth, contained in Beardsley's confidential memorandum to the parole commission was, to be blunt, a lie. As Trooper Stallworth testified at the post-conviction hearing, he never at any time supported Squires parole plan. (T.321).

## ARGUMENT

### THE STATE OF FLORIDA INTERFERED WITH A DEFENSE WITNESS THEREBY VIOLATING APPELLANT'S RIGHT TO DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The issue before the lower court and this court is an extremely narrow one. Was Michael Squires, a defense witness, interfered with by the State of Florida? If the answer is yes, then appellant is due to have his conviction reversed with no further showing. Demps v. State, 416 So.2d 808,810 (Fla.1982). The circuit court found that appellant had not shown that he was entitled to relief. The circuit court erred and should be reversed.

The success or failure of appellant's contention rises and falls on the facts surrounding Michael Squires parole. The facts are undisputed that Michael Squires was listed as a defense witness and was prepared to testify as a defense witness. Squires says he did not testify because Beardsley offered him a parole if he did not. Thus, the facts surrounding Squires parole are outcome determinative.

As is to be expected, the testimony of Squires and Beardsley on this crucial issue are diametrically opposed. As previously noted, Squires says that Beardsley interfered with appellant's defense and offered him parole if he would back out as a defense witness and give a false counterstatement. Beardsley, on the other hand, says Squires deserved parole because "Squires is targeted for murder and surely will be killed if he stays in the system long enough", because the "system will attempt to aggravate Squires circumstance and I, nor anyone else will be



able to prevent it" and because Squires has "matriculated into society's school and passed all the tests necessary" (Defendant's Exhibit 4.) The record plainly supports Squires version because the reasons proffered by Beardsley for Squires parole are transparent.

A. SQUIRES DID NOT NEED ANY PARTICULAR PROTECTION FROM OTHER INMATES OR THE "SYSTEM" PRIOR TO HIS PAROLE

As the record in the case indicates, Squires had been an informant for the Department of Corrections for many years and had been in prison almost continuously since 1958. He certainly had not been killed in the 22 years prior to his parole. Moreover, his activities are hardly the activities of a man afraid for his life. As previously noted, the correctional officials at APCI, Squires last assignment before his parole, stated that "Squires wasn't afraid of staff or inmates" and had never been. (T.125). While at APCI, Squires was not in danger at APCI but on the contrary was the "Tough guy on the compound".

Moreover, there was no reason to parole Squires in order to protect him. Contrast the treatment given Larry Hathaway with that given Michael Squires. Hathaway actually testified as a state's witness at appellant's trial. Moreover, he had cooperated with the state in the prosecution of another murder trial. (T.333). However, Hathaway was not paroled, he was merely transferred out of state on interstate compact where he remains today. The possibility of Hathaway being paroled after testifying in appellant's case had been discussed, but Beardsley told Hathaway that he couldn't do anything about parole.

(T.337). Beardsley could have easily protected Squires without paroling him, if in fact he really needed protection. The Department of Corrections had protected him for 22 years and could have continued to protect him. If Beardsley's concern about Squire's safety was so great, he could have had him transferred out of state just as he did Hathaway. The bottom line is that Squires did not need protection and Beardsley's assertion of that interest before the parole Commission was pretextual.

**B. SQUIRES DID NOT DESERVE TO BE PAROLED AND HAD NOT  
"MATRICULATED INTO SOCIETY'S SCHOOL AND PASSED ALL THE TESTS"**

Beardsley told the parole commission the State of Florida that Squires deserved immediate release. That statement is ludicrous in view of Squires activity and record.

At the time Beardsley appeared in front of the parole commission, Squires was serving 3 life sentences for armed robbery, a 15 year sentence for kidnapping a state trooper and various other sentences for larceny.<sup>8</sup> He had previously served sentences for breaking and entering and escape. Two of the life sentences, the 15 year kidnapping sentence and 2 five year sentences for larceny were all imposed in 1974 following Squires' escape from Cross City Correctional Institute. In addition, Squires had once been paroled but had been quickly revoked. (T.232). Squires redefines the term habitual offender.

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<sup>8</sup>The life sentences were imposed as follows: armed robbery Walton County (1961), armed robbery Marion County (1974), armed robbery Jefferson County (1974).

Squires record is bad enough but his conduct while at Avon Park, supposedly while he was being rehabilitated, is outrageous. Rather than behave like a model inmate in the hope that his good behavior would eventually gain him custody reduction or parole, Squires continued his criminal activity. As Inspector Paul Sheffield testified, Squires continued to be involved in drugs and loansharking while at APCI. His activities at that institution were not the activities of a man diligently seeking parole but rather the activities of one who had been guaranteed parole.

The time frame surrounding Squires parole speaks a great deal about the issue of whether or not Squires and Beardsley had a deal about parole. Beardsley came to the parole commission in December of 1979. That was 5 years and 10 months from the date in February of 1974 that Squires had received 2 life sentences for armed robbery, 15 years for kidnapping a state trooper, and two five year sentences for larceny. At the time he was to be paroled in August of 1980, he would have served a little more than 6 years on those sentences and would have still been serving the life sentence for robbery imposed in 1961. It took Squires 9 years to get his first parole on his first life sentence. It only took him 6 years to get his second, despite the fact that at the time of his second parole his life sentences had increased to 3, and he had added a 15 year sentence and two 5's to his list of credits. Also at the time his parole was approved, he was still engaged in illegal activities like dope dealing and loansharking.

Bill Beardsley told the parole commission that Squires had matriculated into "society's school and passed all the tests." Squires record shows that to be false.

C. BILL BEARDSLEY WAS UNTRUTHFUL TO THE PAROLE COMMISSION

Any person with even limited experience in the criminal justice system understands the importance of having the victim of a crime support your parole. Similarly, any person understands that parole commissions, and rightly so, treat crimes against law enforcement officers as particularly serious matters. Thus it is not surprising that, in his confidential memorandum, Bill Beardsley deemed it necessary to tell the parole commission that the state trooper whom Squires had kidnapped supported his parole. That was very important information for the parole commission to have and may well have been decision - determinative. Unfortunately, it was untrue. As Trooper Stallworth made plain at the evidentiary hearing, he never supported Squires parole plan. Bill Beardsley told the parole commission a blatant lie.

In summary, the reasons offered by Beardsley as evidence as to why Squires should be paroled were totally pretextual. Their pretextual nature is underscored by the fact that Beardsley had to resort to falsity in order to get the parole commission to parole Squires. The Squires case is the first and only time that Beardsley appeared on behalf of an inmate. He did so because he had offered Squires parole as part of a deal in the Demps case. Appellant has, by the relevant legal standard, demonstrated that a defense witness was tampered with and he is entitled to a new

trial.

II. THE TRIAL COURT ERRED IN EXCLUDING THE TESTIMONY OF WILDA PASCHAL AND THE EXCLUSION VIOLATED FLORIDA EVIDENCE LAW AND APPELLANT'S RIGHT TO DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

At the evidentiary hearing, the appellant presented the testimony of Wilda Paschal.<sup>9</sup> Mrs. Paschal testified that she had known Squires since 1976 and was his girl friend. In her preliminary questioning, Mrs. Paschal testified as follows:

Q. And during the course of your relationship, do you know whether or not he (Squires) assisted the prison authorities on matters involving inmate crimes?

A. Yes, sir.

Q. Okay, do you know whether he helped them on a murder case?

A. Yes, sir.

Q. Okay, How do you know that?

A. He told me.

At that point the state's attorney objected on the grounds that it was "hearsay, self serving and also bolsters the

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<sup>9</sup>In the record of trial, the name of the witness is reported as Wilda Baschal.

credibility of their own witness." (T.293). Appellant's counsel argued that Squires had obviously been impeached by the state during his cross - examination and that he was entitled to present evidence of prior consistent statements. The court sustained the state's objection. Appellant then proffered Mrs. Paschal's further testimony:

Q. Ma'am, what did he tell you or how did you know that he helped them on a murder case?

A. Well, he told me that he was trying to help frame a black guy for the state.

Q. Okay. Do you have any idea when that was or where he was when he told you that?

A. He was here when he told me that but I don't know the date.

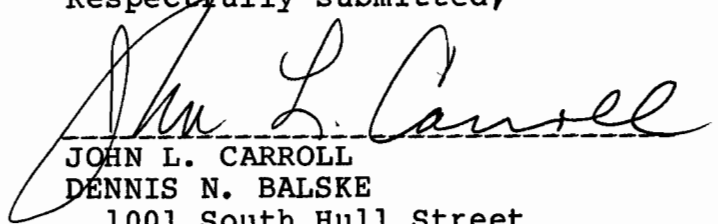
(T.295).

The state attempted to impeach Squires in two principal ways. First, the state attempted to show that Squires had decided to give testimony favorable to appellant's case because he was afraid of appellant. (T.270). Squires of course denied that allegation. (Id.) The state also tried to impeach Squires by showing that Squires had lied on several previous occasions including in his March 1, 1978 statement. (T. 265-271). Given the state's attack on Squires credibility and his motivation for testifying, the appellant should have been allowed have the testimony of Wilda Paschal received into evidence. See generally Hughes, Florida Evidence Manual §197 (1982) and the authorities listed therein.

CONCLUSION

For the foregoing reasons, this court should reverse the judgment of the circuit court and remand the case with instructions to grant the appellant's Motion for Post-Conviction Relief. In the alternative, the ruling of the court refusing to admit certain testimony of Wilda Paschall should be reversed and the case remanded to the circuit court for that court to reconsider its ruling in light of her testimony.

Respectfully submitted,

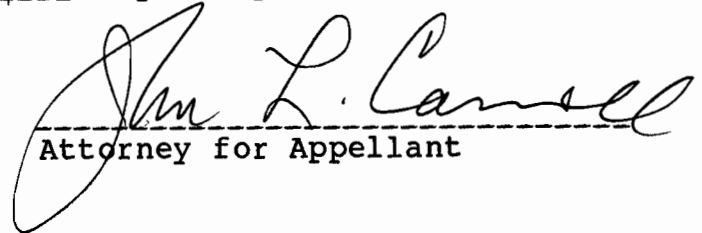


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Brief of Appellant have been served upon Greg Smith, Assistant Attorney General, State of Florida, by U. S. Mail, postage prepaid, properly addressed to him this 4 day of April, 1984.

  
Attorney for Appellant