



STATE v. TONY HOPPS

90CF003270

DOB: 4/12/1965

Florida Department of Corrections

DOC: # 480313

TPD: 90-006584

State Attorney: Dale Sisco

Defense Attorney: Roy Gerard

Victims: Dunbar and Ruby Dyches

**I. Armed Burglary of a Dwelling/F1
810.02(1) & (2)(b)**

- (1) That the defendant unlawfully entered a dwelling**
- (2) Property of Dunbar Dyches and Ruby Dyches**
- (3) With the intent to commit an offense**
- (4) While Hopps was armed with a firearm**

**II. Robbery with a firearm, 1st degree felony with possibility of life
812.13(1) and (2)(a)**

- (1) Defendant**
- (2) Used force, violence, assault, or putting in fear**
- (3) To rob, steal and take away from Dunbar Dyches**
- (4) U.S. Currency and/or wallet**
- (5) With intent to deprive Dunbar Dyches of his property**
- (5) While carrying a firearm**

**III. Robbery with a firearm/F1
812.13(1) and (2)(a)**

- (1) Defendant**
- (2) Used force, violence, assault, or putting in fear**
- (3) To rob, steal and take away from Ruby Dyches**
- (4) U.S. Currency and/or wallet**
- (5) With intent to deprive Ruby Dyches of his property**
- (5) While carrying a firearm**

Note: Noticed as a Prison Re-release Offender. At sentencing, the defendant was sentenced to life as PRR.

VICTIM(S): **I. Dunbar Dyches DOB: 6/30/1919**
 II. Ruby Dyches DOB: 7/23/1921

DATE & TIME OF OFFENSE: **January 25, 1990, at 3:15 p.m. (Thursday)**

LOCATION OF OFFENSE: **601 S. Dale Mabry, Room 137, Tampa Florida**
 Tahitian Inn Motel

BRIEF OVERVIEW OF CRU PETITION CLAIMS

- 1) Claims misconduct due to the way the photo array was given to the victims and thus tainted the identification.**
- 2) Newly discovered evidence in reference to Vicki Hopps and Victoria Hopps.**
- 3) Police misconduct due to their faulty testimony that would have supported Hopps' alibi.**

FACTUAL SUMMARY OF THE CASE

On January 25, 1990, at about 3:15 p.m., Ruby and Dunbar Dyches returned to their motel room at the Tahitian Inn, located at 601 S. Dale Mabry. The couple had been out shopping and brought their purchased items back to the room. Within 10-15 minutes someone knocked on the motel door. Dunbar inquired as to who was at the door, but even though the person that knocked would not identify himself Dunbar opened the door anyway. At the door was a black male, muscular build, mustache, wearing camouflage pants and a cap pointed a gun at Dunbar, demanding his money. When suspect #1 (later identified as Tony Hopps) pulled the motel room door open, Dunbar came out into the hallway and was struck by a second black male. Inside the room was Ruby. Suspect #1 entered the motel room and demanded money from Ruby. Suspect #1 grabbed Ruby's blue handbag from the chair and fled. Two witnesses at the pool saw two black men running down the hall and get into a maroon car. These witnesses were able to provide a partial plate. It was determined that the vehicle was stolen and was recovered 2 hours later within one mile of the motel. During the same 3:00 p.m. hour, Tony Hopps was at home at 505 E. Francis Ave. At 3:49 p.m. Officer Mark Scott makes a stop of Hopps and detains him for Detective Strickland. Strickland then responded and took photographs of Hopps for an unrelated

investigation. Later on the 25th of January (11:30 p.m.) Hopps is arrested on an unrelated robbery and taken into custody. The next day on the 26th of January, a second stolen vehicle is pursued. Once the vehicle was stopped some of Ruby's personal belongings were found inside the vehicle (along with guns and ski masks.) Calvin Fisher was seen running near the stolen vehicle. Within a week or so, Detective O 'Nolan mailed a photo array to Ruby and Dunbar Dyches at their home in Augusta, Georgia. Included in the photo array were Tony Hopps, Calvin Fisher, and Willie Hopps. Both Ruby and Dunbar picked Tony Hopps as the robber (suspect #1) that had entered the hotel room. Both made in court identifications of Hopps. There were no other witnesses and no forensic evidence. Hopps presented alibi witnesses to the jury. Included in those witnesses was Officer Mark Scott and Detective Strickland. Both police officers were unable to testify as to date and time. Although defense had the computer records of the stop by Scott, defense counsel did not admit them at trial. Hopps was convicted of armed burglary of a dwelling and sentenced to life (as PRR).

WITNESSES-CIVILIAN

(1) Dunbar Dyches, victim

DOB: 6/30/1919

Witness summary

- Was staying at the Tahitian Inn Motel on S. Dale Mabry; visiting his son.
 - Staying in Room 137
- His wife Ruby was also present for the robbery
- At 3:15 p.m. on 1/25/1990 there was a knock on the motel room door
- Both Dunbar and his wife Ruby had just returned from shopping at a mall
 - Note: The knock on the door occurred about 10-15 minutes after Ruby and Dunbar had returned from shopping.
- Dunbar thought the knock on the door could be the maid because he had seen her down the hall
- Dunbar asked who was at the door and the male voice indicated he needed to speak to Dunbar
- Dunbar asked the male to identify himself but the male did not.
- Dunbar opened the motel room door to see who was outside
- Saw a black male with a pistol in his hand.
 - Dunbar thought the gun might have been a .45 caliber pistol (no indication whether it was a revolver or semi-automatic.)
- The black male pulled the door open which caused Dunbar to come out of the doorway
- The suspect threatened to kill Dunbar if he didn't give him the money
- As the door was pulled open a second black male was standing to the side and struck Dunbar in the head. This caused Dunbar to be dazed and fall to the ground
- The next action that Dunbar recalled was the two men running back out into the corridor and getting into a vehicle
 - Dunbar described the vehicle as maroon with dark tinted windows
- Both men were between 5'8" to 5'10" in height

- The first man that pulled the door open was dressed in camouflage pants with a cap and shirt. The suspect was “stacked” and had a mustache (no beard)
- Could not give any description of the second male (other than he was black)
- Dunbar and Ruby Dyches live in Augusta, Georgia
- After returning home, a detective mailed to Dunbar and Ruby a photo array that contained six photos.
 - Detective O’Nolan
- Dunbar states that Ruby was with him when they opened the envelope but that they did not speak about the photos
- Dunbar picked out Tony Hopps as the person that had a gun and pulled the door open.
- Denies that he told Ruby who he was picking out of the photo array.
- The following property was taken during the robbery:
 - Large leather bag, navy blue in color
 - Cash of \$1791
 - Large leather lady’s wallet with typical contents
 - Two sets of car keys; house keys; gold pen, checkbook and 20 tablets of Demerol
- Dunbar did make an in-court identification of Hopps.

(2) Ruby Dyches, Victim

DOB: 7/23/1921

Witness summary

- Had just returned from shopping and was in the motel room with her husband, Dunbar.
- Believes the robbery occurred around 3:00 p.m.
- Heard a knock on the motel room door and Dunbar went to see who was at the door
- Dunbar opened the door.
- Ruby could hear Dunbar tell the person that they didn’t want him in the room
- The door to the room flew open and a black male entered the room
- The suspect pointed a gun straight at Ruby and threatened to kill her
- The suspect grabbed Ruby’s purse from a chair and then ran out the door
- Ruby did not see the second suspect
- Ruby ran to the door yelling that the man had her handbag.
- Did see two males getting into a car and leaving.
 - The car was maroon in color
- Does not recall the color of the shirt that the suspect who pointed a gun at her was wearing. Does recall he had a cap on and camouflage pants.
 - States the suspect had a mustache but no beard
 - Described this suspect as 5’4” to 5’5”; very muscular
- Was at home when she and Dunbar received the photo array in the mail
- As she looked at the photo array she told Dunbar that she thought the suspect was in the photographs
- Dunbar then agreed with Ruby on who she thought the suspect was
- Ruby did make an in-court identification of Hopps

(3) Bill Claude Waddle

DOB: 10/28/1941

Witness Summary

- Had been swimming in the pool on 1/25/1990
- Heard arguing coming from somewhere at the hotel
- Saw 2 black males running west in the hallway outside the hotel room doors
- Both men got into a vehicle described as a 1984-85 Maroon Buick
- Obtained a partial plate of DWV070 or DVS70C
- The police did not show a photo pack to this witness

Bill Claude Waddle did not testify at trial

(4) Charles Gelfound

DOB: 4/10/1931

Witness Summary

- Saw two black males get into a maroon 4 door Oldsmobile or Buick with dark tinted windows
- One of the men was carrying a blue purse
- Vehicle left the scene at a high rate of speed
- The police did not show a photo pack to this witness.

Charles Gelfound did not testify at trial

[Tampa Police Department]

(1) Detective J.D. O’Nolan, Lead Detective

Witness Summary

- Determined that on 1/25/1990 at 5:45 p.m. a stolen 2 door maroon vehicle with license plate tag OSV70C was recovered at 3001 W. Deleon by Officer Palmira.
 - This address is approximately 1 mile from the Tahitian Inn.
- On January 26, 1990 Officer M.A. Yost was involved in a pursuit of a maroon Pontiac vehicle
 - 4 suspects fled on foot from the vehicle
 - One of the suspects that fled was recognized to be Calvin Fisher
 - Fisher was questioned and denied any knowledge of the robbery of Dyches
 - No fingerprints were lifted from the stolen vehicle
 - Note: Tony Hopps had been arrested and placed in jail at 11:30 p.m. on 1/25/1990 for an unrelated robbery. This would indicate that Tony Hopps could not have been any of the 4 men that fled from the stolen vehicle

- **Note:** The State declined to prosecute Hopps for the robbery that he had been arrested for at 11:30 p.m. See 90CF001407; TPD case number 90-007575.
- Created a photo array that included Tony Hopps, Jerome Hopps and Calvin Fisher and mailed it to the Dyches in Augusta, Georgia.
- Both Ruby and Dunbar positively identified Hopps as the man that forced his way into the hotel room and robbed them.
- Interviewed Hopps on February 20, 1990
 - Denied any involvement in a robbery
 - Stated that he was at Tampa General Hospital the afternoon/evening of the robbery (was with his girlfriend who may have been having a miscarriage.)

(2) Officer M. W. Bushell

Witness Summary

- On January 26, 1990, Officer M. A. Yost had pursued a stolen vehicle.
- At some point the 4 occupants of the stolen vehicle got out and fled on foot
- Bushell then secured the stolen vehicle for processing
- Inside the stolen vehicle the following items were found:
 - Blue purse with identification to Ruby Dyches
 - Revolver, Smith and Wesson, 357
 - Ruger .44 revolver
 - 3 masks, one glove and a L.A. Raider's cap
- Calvin Fisher was recognized as one of the four men fleeing the vehicle

(3) Officer C.W. Gievere

Witness Summary

- Interviewed Bill Claude Waddle at the hotel robbery scene
- Interviewed Charles Gelfound at the hotel robbery scene
- Recovered a black leather cigarette case in the hotel parking lot

Officer C.W. Gievere did not testify at trial

[CRIME LAB]--NONE CALLED TO SCENE OR INVOLVED IN INVESTIGATION

[EXPERTS]

NONE CALLED IN THIS TRIAL.

[DEFENSE CASE IN CHIEF]

Theory of defense: Mistaken identity with the defendant having an alibi.

DEFENDANT'S PRETRIAL STATEMENTS:

- Denied involvement and denied robbing anyone.
- Believed he was at Tampa General Hospital with his girlfriend that afternoon/evening.

DEFENDANT'S TRIAL TESTIMONY

Defendant did not testify.

[WITNESSES CALLED BY DEFENSE]

(1) Ellie Mae Fisher

Witness Summary

- Had seen Hopps earlier in the day on January 25, 1990.
- A little bit later in the day saw Hopps speaking with police
 - Believes it was between 3:00 p.m. and 4:00 p.m.

(2) Detective Gene Strickland

Witness Summary

- Per the dispatched records for January 25, 1990, Strickland encountered Tony Hopps outside of Hopps' residence at 3:49 p.m. on January 25, 1990.
- At trial Detective Strickland couldn't recall the date that he had encountered Hopps at Amelia and Central; also states he doesn't know what time.
- **Note: The dispatch records were never admitted at trial.**

(3) Lawshawn Galton (Gallon or Gatlin)

Witness Summary

- Knows Hopps and lives near him and his family
- Saw Hopps on 1/25/1990 while she was at the bus stop waiting on her child to get home from school.
- Knows it was 3:25 p.m. because she had to be at the bus stop every day at that time
- Saw two white police officers in a marked police car stop Hopps at Central and Frances

[POST-CONVICTION/3.850 MOTIONS/EVIDENTIARY HEARINGS]

Pertinent Claims of Innocence in 3.850 Motion

- Unreliability of eyewitness testimony
- Alibi witnesses that were not called at trial

(1) Roy Gerard, Defense trial counsel

Witness Summary

- Tony Hopps defense counsel at trial
- Was brand new in the felony division when he was assigned Hopps' case
- Hopps did tell Gerard that he had an alibi defense
- Hopps relayed the following information to Gerard, with regards to his alibi
 - Scott first stopped Hopps at 1:00 p.m. and then let Hopps go around 1:30 p.m.
 - At about 2:30 p.m. Scott returns and told Hopps that Detective Strickland wanted to speak to him.
 - Strickland showed up around 3:00 p.m. and took photos of Hopps
 - Hopps then went to his girlfriend's house and then went to Tampa General Hospital
- Hopps provided to Gerard 3 witnesses
 - Mary Wiggins
 - Lashawn Gatlin (Galton or Gallon)
 - Yula Mae Fisher
- Interviewed Mary Wiggins prior to trial
 - Was at work all day and didn't get home until 3:30 p.m.
 - Believes she saw Hopps later in the afternoon/evening
- Interviewed Lashawn Gatlin (Galton or Gallon)
 - Does not recall what Galton said at trial
- Hopps also mentioned Marian Anderson but defense did not call her as a witness due to her criminal records
- Didn't believe the computer print out of when Hopps was detained by Scott would have assisted because the suspects had fled in a car.

(2) Charles Hartzner

Witness Summary

- Investigator for Brown's Services
- Prior experience with the Tampa Police Department
- Measured the distance between the robbery scene and where Hopps was stopped by

Officer Scott

- Took 21 minutes to drive between the two locations

(3) Janet Pauley

Witness Summary from 3.850 testimony

- Works for the City of Tampa Police in the computer division
- In 1990 there were records available to document radio transmissions
- These records are only kept for 13 months

(4) TPD Officer Mark Scott

Witness Summary from 3.850 testimony

- Stops Hopps at Central and Frances on 1/25/1990
 - This was near where Hopps was known to live
- Detective Strickland had requested officers to watch for Hopps because Strickland wanted to get a photograph of Hopps
 - **Note: Strickland wanting a photograph of Hopps would not have been related to this robbery due to the timing. The robbery occurred at 3:15 p.m. and officers stopped Hopps at 3:49 p.m. There wouldn't have been enough time to develop Hopps as a suspect in the robbery of the Dyches.**
- Thought Hopps had a warrant but after a check it was determined Hopps did not have a warrant.
- Due to the stop, Officer Scott does an FIR on Hopps
- 15 minutes after Scott stopped Hopps, Detective Strickland arrives at the scene
- Strickland takes photos of Hopps.
- **At trial, no radio transmission logs were submitted to the jury.**

(5) Gene Strickland

Witness Summary

- At the time of the robbery was a police detective with Tampa Police Department
- Has no independent recall of what the date was when he spoke with Hopps
- Does recall taking Hopps' photo at Central and Francis
- Recalls that it was during daytime hours and that uniformed officers had been present prior to his arrival

(5) Tony Hopps, Defendant

Witness Summary

- Lived with his sister at 505 E. Francis Ave.
- Hopps had came out of the house and saw Lashawn Galton across the street from Hopps' home
- Hopps new it was near 3:25 p.m. because this was when Galton was always outside at the bus stop waiting on her child.
- Uniformed police officers approached Hopps while he was outside speaking with Galton.
- Officer Scott thought Hopps had a warrant but later it was determined there was no warrant.
- Detective Strickland responded to where Hopps was being detained
- Strickland took a photograph of Hopps
- Denies being involved in the robbery

[PROCEDURAL POSTURE OF CASE]

Criminal report affidavit:	2/26/1990
Information filed:	3/19/1990
Jury verdict/Sentencing:	7/13/1990
Direct appeal affirmed:	3/28/1992
1st 3.850 petition:	3/3/1994
Final 3.850 filed:	6/29/2018
Conviction Review Petition received:	5/12/2020

[CRU PETITION: NEW EVIDENCE/WITNESSES AFTER TRIAL]

Claims within the petition

- 1) **Claims misconduct due to the way the photo array was given to the victims and thus tainted the identification.**
- 2) **Newly discovered evidence in reference to Vicki Hopps and Victoria Hopps.**
- 3) **Police misconduct due to their faulty testimony that would have supported Hopps' alibi.**

[WITNESSES]

(1) Calvin Fisher **DOB: 7/28/1967**

Witness Summary

- At the time of the robbery Calvin Fisher lived at 503 E. Amelia Ave.
 - The address is next to the stop that the police conducted for Hopps at approximately 3:40 p.m. on January 25, 1990
- Can't recall what he was doing in January of 1990

- Good friends with Willie Hopps
- Ella Mae Fisher is Calvin's mother
- Claims no knowledge of any robbery at the Tahitian Inn
- Denies any knowledge of a stolen vehicle or being chased by police
- Has no opinion as to whether Tony Hopps committed the robbery or not

(2) Vickie Hopps

DOB: 8/21/1963

Witness Summary

- Biological sister to Tony Hopps
- Prior to being arrested for the robbery, Hopps was working for Detective George McNamara providing information on homicide investigations
- At some point Hopps declined to assist McNamara anymore
- Allegations that McNamara provided a recording device to Hopps and Hopps threw it away. This action by Hopps allegedly angered McNamara
- At the time of the robbery Tony Hopps lived with Vickie Hopps
- Was present when Tony was out front of their home on January 25, 1990, in the afternoon sometime.
 - Saw Hopps speaking with Ellie Mae Fisher, Calvin Fisher's mother
 - A marked police car pulled up and handcuffed Hopps
 - A few minutes later another police officer arrived and took photos of Hopps
 - Hopps was then released
 - When the photos were taken by police, Hopps was wearing only shorts, no shirt.
- Later on January 25, 1990, Hopps went to Tampa General Hospital with his girlfriend

(3) Victoria Hopps

DOB: 6/5/1968

Witness Summary

- Married to Jerome (Willie) Hopps.
- Willie was Tony's baby brother
- Willie Hopps is now deceased.
- At the time of the robbery, Victoria was only 16 years of age and still living with her parents
 - Note: Victoria's family lived across the street from the Hopps' brothers
- Hopps was good friends with a neighbor that had a special needs child.
- Hopps would stand at the bus stop everyday with the neighbor, Lashawn Gallon, and wait for Ms. Galton's child to come home from school.
- States the bus came every day between 3:00 p.m. and 3:25 p.m.
 - Note: Per Victoria Hopps, someone would always have to be waiting at the bus stop due to the child's special needs.

- The school bus would stop in front of Lee's Groceries, 2210 N. Central Ave.
- It wasn't uncommon for Detective McNamara to come to the house to speak to Hopps.
- Recalls the day that the police came by the house and detained Hopps and then took photos of him.
 - States that Hopps had been at the bus stop with Lashawn Gallon, waiting on her child.

(5) Jeanne Coleman, Defense counsel for 3.850 filings

Witness Summary

(6) Retired TPD Detective George McNamara

Witness Summary

- Was a Detective with TPD in January of 1990
- Was very familiar with Tony Hopps and his brother Jerome (Willy) Hopps
- Discussed the protocol for administering a photo array in 1990
 - The normal practice would never have been to include two suspects in the same photo pack
 - Further, if the witness was out of town or state the TPD detective should have contacted the local police agency and requested that they administer the photo pack.
 - A photo pack should not have been mailed to the witness directly.

(7) J.D. Nolan

Witness Summary

- The CRU attempted to locate and interview retired Detective Nolan who was the lead detective on the investigation
- Mr. Nolan has been diagnosed with dementia and is unable to be interviewed

Note: The CRU attempted to locate the following individuals and it was determined that they are deceased:

- Jerome (Willie) Hopps
- Ellie Mae Fisher
- Miriam Anderson
- Mary Wiggins
- Lashawn Gallon (per records shows she is deceased; however Victoria Hopps claims she is alive.)
 - **Note: Through out the police reports, depositions, trial transcripts and post-conviction writings Ms. Lashawn's last name was spelled in 3 different formats:**

Galton, Gallon and Galtin. The CRU has not been able to get one spelling to be consistent between any of the witnesses interviewed.

- Ruby and Dunbar Dyches (victims)

[EVIDENCE SUBMITTED OR RE-SUBMITTED FOR TESTING]

- No evidence was re-submitted for evaluation.
- Attempted to get school bus scheduling for January 25, 1990, however those records do not exist.
- Attempted to get records from TPD as to calls that would have been made near the time Tony Hopps was stopped by police at 3:49 p.m. on the day of the robbery. These records no longer exist.
- Color copies of the photo array sent to Ruby and Dunbar Dyches was retrieved from the evidence vault with the Clerk's Office.
 - It was verified that Willie Hopps was in position #1; Tony Hopps position #2 and Calvin Fisher position #3.
- A color photo that Detective Strickland had taken of Tony Hopps was also obtained from the Clerk's Office. It is of importance to note that Hopps does not appear to be "stacked" or muscular has both Ruby and Dunbar Dyches described him. Further, he had a beard at the time of the photo, which both Ruby and Dunbar specifically stated that suspect #1 did not have a beard, only a mustache.

[JAIL PHONE CALLS DURING THE PENDENCY OF THE CASE]

Summary of calls

None were found to review.

[CONVICTION REVIEW UNIT FINDINGS AND RECOMMENDATION]

[Findings]

- That the method used by Detective O'Nolan did not meet Tampa Police Department standards in 1990. That if this method had been used today the identification through the photo array would likely be suppressed. The CRU finds the following issues with the photo array:
 - That it was mailed to the victims instead of a local law enforcement agency
 - That there was some discussion between the two victims on the identification of suspect #1.
 - That TPD included two other suspects with Hopps, including his own brother.
- On 1/26/1990 some of the stolen items were found in a stolen vehicle that Calvin

Fisher had been seen running from. Tony Hopps could not have been one of the other suspects that ran from the car because he was in jail from being arrested on 1/25/1990 at 11:30 p.m.

- There was not a feasible amount of time between the robbery and when Hopps was detained by Officer Mark Scott at his home. The CRU comes to this conclusion based off of:
 - The testimony of Ellie Mae Fisher
 - The testimony of Lashawn Galton (Gallon or Galtin)
 - The timing of Officer Scott stopping Hopps at his home
 - The clothing that Hopps was wearing when he was stopped did not match the clothing that suspect #1 was wearing at the time of the robbery.
- The description that Ruby and Dunbar Dyches provided to the police does not match Tony Hopps. Discrepancies include:
 - The clothing he was wearing compared to what they reported the robber was wearing.
 - Tony Hopps had a beard and both victims stated the robber did not have a beard
 - Tony Hopps was skinny and would not have been considered “stacked” or muscular
 - Cross racial misidentification could have been a factor in the victim’s identification of Hopps.
- That Victoria Hopps has now come forward and provided an alibi for Tony Hopps at the time of the robbery. Ms. Hopps substantiates the previous testimony by LaShawn Galton that Hopps was with Galton at the bus stop waiting on Galton’s child to get home from school.

[Recommendation by the CRU]

- It is the recommendation of the CRU that the State can no longer stand behind the conviction of Tony Hopps. Although the State cannot produce clear and convincing evidence that Tony Hopps is innocent, the CRU does believe that the investigative techniques used by Detective O’Nolan is faulty. Further, there is newly discovered evidence not submitted at trial that calls into question the conviction. This includes issues with the time line of the robbery, the photo pack sent to the victims, and alibi witnesses that were not called at trial. For this reason, the CRU recommends that defense file a 3.850 motion based on newly discovered evidence and that the State stand silent and agree to the basis of the 3.850 motion.

[Recommendation by the Independent Review Panel]

On June 23, 2021, the Independent Review Panel met and agreed with the recommendation put forth by the Conviction Review Unit

[Final Decision by State Attorney]

On July 7, 2021, the Conviction Review Unit met with State Attorney Andrew Warren. Mr. Warren agrees with the recommendation made by the Conviction Review Unit.