

NO. 87-1674

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellee

-vs.-

ROMELL BROOM

Defendant-Appellant

MOTION TO SET DATE FOR EXECUTION

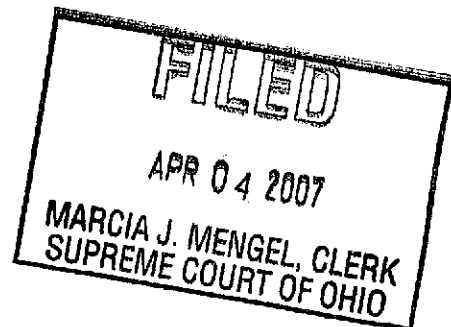
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Appellant Romell Broom (“Broom”) is an Ohio death row inmate. Broom received the death penalty for the 1984 murder of Tryna Middleton who was fourteen at the time. Now, over two decades after this murder, Tyler has exhausted all of his state and federal remedies. Thus, the State of Ohio respectfully requests that this Court set an execution date for Romell Broom.

In 1984, a Cuyahoga County jury found Romell Broom appellant guilty of aggravated murder with capital punishment specifications. Broom was sentenced to death. In affirming Broom’s conviction and sentence on direct appeal, this Court described the facts of this case as follows:

In the fall of 1984 in the Cleveland area, three separate but related incidents occurred involving five young girls. The first incident occurred on September 18, 1984 between 8:15 and 9:00 p.m. Twelve-year-old Venita McKenney was walking to her home on East 120th Street, Cleveland, after visiting her cousins, when a car drove past her, turned around and parked. After Venita walked past the car, the driver got out of the car, grabbed her from behind, and threatened her with a knife. When she struggled and fell, he said, “Get up bitch, shut * * * up bitch, get up bitch.” Fortunately, two

residents in a nearby home overheard the incident, and opened their door allowing Venita to escape from her assailant. One of these residents identified appellant as the assailant in a lineup and at trial. She said his car was a four-door brown car. Also, an investigating police officer testified that a witness reported the car as a four-door brown "possibly a Ford Granada."

The second incident resulted in the rape and murder of fourteen-year-old Tryna Middleton late Friday and in the early morning hours of Saturday, September 21 and 22, 1984. Tryna, a ninth-grade student at Shaw High School, attended a Friday night football game accompanied by her friends and neighbors, Tammy Sims and Bonita Callier.

Tammy had a midnight curfew, so after the game the girls started to walk home to Henderson Avenue, where they all lived. They went from Terrace Road, which runs alongside Shaw High, and southeast up Oakhill Road, where they saw a parked car which they thought looked suspicious because of the way it was parked "between the streets." Neither Tammy nor Bonita could identify the make or color of the suspicious car. The girls retraced their steps down Oakhill to Terrace Road and then they went southwest on Terrace Road and then south onto Lee Road which, like Oakhill, goes up an incline. At the top of the hill, the girls stopped to rest for a few minutes. The time was between 11:20 and 11:30 p.m. From Lee Road the girls turned east onto Glynn Road, which is a lighted, level, tree-lined street of homes situated on large lots.

As the girls proceeded eastward along Glynn on the sidewalk, a car without its lights on came toward them and parked about two houses in front of them. The driver got out of the car and ran past the girls to a spot a couple of houses behind them. The girls had walked past the parked car when they heard footsteps from behind, and the assailant tried to grab all three girls. During the struggle, the assailant said, "[c]ome here bitch" and pulled a knife. Tryna, who was five feet tall and slightly built, could not get free. Tammy and Bonita ran across the street where a homeowner let them in to call the police and their mothers.

The girls were unable to get the license number of the car, but they described the car as "brown," "tan," or "a goldish color," and as a four-door Ford Granada, with a light-colored top. They described the assailant as a young black male, possibly in his early twenties, weighing approximately one hundred sixty pounds and five feet nine inches in height, with a light to medium complexion and a thin mustache.

Approximately two hours later Tryna's body was found in a parking lot adjacent to an abandoned swimming pool in Forest Hills Park in Cleveland. Sperm cells were found in her rectum and vagina. She had been stabbed seven times in the chest and abdomen. Five of the stabbings

perforated Tryna's heart and lungs causing almost instantaneous death. Tryna had also incurred an incised wound on her right forearm which the coroner testified was the result of Tryna's efforts to defend herself.

Tammy and Bonita each examined hundreds of photographs, but they were unable to identify any suspect until after the third incident described hereafter.

On December 6, 1984 around 6:30 p.m., eleven-year-old Melinda Grissom had gone to a corner store close to her home on Chamberlain Avenue in Cleveland. The day before it had snowed and the side streets, such as Chamberlain, were still slippery. On her way home Melinda noticed a car following her. The car pulled onto Chamberlain. As Melinda turned the corner from East 74th onto Chamberlain, a man who was "going down in his pocket" as if to get something walked past her and without a word grabbed her neck from behind and started hitting her. She struggled and screamed as she was thrown into the assailant's car. Once inside the car the assailant said, "[b]itch, get your feet off of me."

Melinda's younger sister witnessed the beating and abduction and called to her mother. Mrs. Grissom, who was barefoot, ran outside to the car, and grabbed the locked door of the driver's side of the car in which Melinda had been thrown. Mrs. Grissom hung on to the door while screaming for help and for her daughter to jump from the car. The icy road made the car's wheels spin and slowed its travel, thus allowing Mrs. Grissom to hold on to the door and to pound the window and push the car with her hip so that the car bumped into a parked car. Melinda followed her mother's entreaties, and unlocked the door on the passenger's side and jumped out. The commotion was witnessed by two young men who got the license number of the departing car and gave it to Mrs. Grissom. Melinda was taken to the hospital because her leg had been injured. Within an hour the car, a 1973 Buick, had been traced to its owner, the father of the appellant. The engine was still warm when the police arrived. The appellant, who was at his father's house, admitted that he had been driving the car. He was read his *Miranda* rights and voluntarily accompanied the police to the hospital, where he was positively identified by Mrs. Grissom and her daughter. The two other witnesses to the incident later picked appellant out of a lineup and at trial.

Police noticed the similarities between the three incidents, which occurred within several miles of each other. All the victims and witnesses of the two September incidents independently picked the appellant out of lineups after Tammy and Bonita first identified his photograph in a photo array. Police investigation revealed and defendant's witnesses confirmed that prior to November 6, 1984, when he wrecked it, appellant drove his girlfriend's car, a goldish-brown Ford Granada with a light top. Tammy identified the car at the police impound lot. Bonita said the car in the

impound lot was the same kind and color of car as that used by her assailant.

Tests determined that the sperm found in Tryna came from a person whose blood was type B, which approximately twelve percent of the national population possesses. The appellant has type B blood, while the victim had type O blood. In addition, two hairs were removed from Tryna's hand. One matched her hair and the other one could not be excluded as belonging to the appellant. According to Detective Svekric, appellant voluntarily advised police during questioning that "he couldn't admit to anything, because he didn't want to go to jail for something that he couldn't remember."

A police officer testified that "we asked him * * * if we were wrong in believing that he was responsible for these crimes. His response to that was No." Appellant also admitted that he drove a used, gold 1978 Ford Granada. Finally, another prisoner testified that after appellant was identified in a lineup, appellant referred to Tryna and asserted that the state could not prove anything.

State v. Broom (1988), 40 Ohio St.3d 277.

In addition to his direct appeal, Broom also filed a state petition for post-conviction relief. The trial court dismissed the petition and the Eighth District affirmed the dismissal. *State v. Broom*, (May 7, 1998), Cuyahoga App. No. 72581. Thereafter, this Court declined jurisdiction on September 23, 1998. *State v. Broom* (1988), 83 Ohio St.3d 1430.

After his state appeals were completed, Broom, on June 21, 1999, filed a petition for writ of habeas corpus in federal court. Judge Kathleen O'Malley denied his petition. Broom appealed to the Sixth Circuit Court of Appeals, which unanimously affirmed the denial of Broom's petition on March 17, 2006. *Broom v. Mitchell* (2006), 441 F.3d 392.

Broom thereafter filed a petition for a writ of certiorari to the United States Supreme Court. The U.S. Supreme Court denied Broom's petition for certiorari on March 1, 2007 (attached).

Accordingly, because Broom has exhausted his state and federal court review of his conviction and sentence and has not asked for a stay of execution from this Court, the State of Ohio respectfully asks that this Court set an execution date in this matter.

Respectfully Submitted,

WILLIAM D. MASON
Cuyahoga County Prosecutor



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Motion to Set Date for Execution* was sent via ordinary U.S. Mail, postage prepaid this 21st day of April, 2007, to:

TIMOTHY F. SWEENEY,
820 W. Superior Ave.
Cleveland, Ohio 44113

Counsel for Defendant-Appellant



JON W. OEBKER (0064255)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 03-4370

Filed: March 1, 2007

ROMELL BROOM

Petitioner - Appellant

v.

BETTY MITCHELL, Warden

Respondent - Appellee

MANDATE

Pursuant to the court's disposition that was filed 3/17/06
the mandate for this case hereby issues today.

A True Copy.

COSTS: NONE

Attest:

Filing Fee\$
Printing\$
Total\$

Nancy Barnes
Deputy Clerk