

# Why a man serving life for murder could go free

LEE ROOD DES MOINES REGISTER

---

*This is the first of numerous stories written from 2008 to 2012 re-examining the controversial conviction of 19-year-old David Flores, who was serving a life sentence in connection with one of Des Moines' most high-profile murder cases. Rood interviewed at least seven people who contested the case as presented by prosecutors. She also identified another key suspect who was ignored during the initial investigation. Flores was released in 2013 after 15 years behind bars.*

David Flores was told not to testify. So he sat in silence 10 years ago while prosecutors convinced a jury that he had murdered an innocent woman caught in a gang-related gunbattle during rush-hour traffic.

Stunned at his sentence of life without parole, the 20-year-old Flores lashed out at the trial judge and prosecutors when he was sentenced: "While you're having your Thanksgiving dinner ... or opening presents with your family on Christmas, you may not even pass a thought about me. But I will surely be thinking about what you have done to me."

Now, Flores and his new attorney claim to have new evidence that he was not responsible for the shooting death of Phyllis Davis, a beloved bank executive who was arguably the most high-profile victim of Des Moines' gang wars at the time. The two have persuaded a Polk County district judge to set a June hearing to consider new facts in the case that neither his defense nor jurors knew about.

A national expert says the most powerful revelation uncovered by Flores' defense could set him free: A gang member told the FBI and Los Angeles police before Flores' trial that another man, Raphael Robinson, shot Davis.

"The test in these kinds of cases is: Would this new evidence have made a difference" in his trial, said Rob Warden, director of Northwestern University's Center on Wrongful Convictions. "This certainly appears to be exculpatory evidence that the defense didn't know about. It would be hard for anybody to argue that this is a harmless error that wouldn't have changed the outcome of his case. It's powerful grounds for relief."

In the June hearing, Flores' defense will not have to prove who killed the 42-year-old Davis in April 1996. Rather, Judge Don Nickerson must be convinced that the evidence is accurate and likely would have made a difference in the outcome of his trial.

If Nickerson finds the new facts would have made a difference in the trial, he could vacate Flores' conviction and the prosecution would have to retry what was already a difficult-to-prosecute case.

"All I want is for people to keep an open mind," Flores, now 30, said recently during a tearful interview from his maximum-security cell at the state penitentiary in Fort Madison. "I have been saying all along that a great injustice happened, and if anybody out there can help me, please do so, because I want the truth to come out."

The judge's consent to hear the new evidence already has reopened wounds for the victim's family. Davis' mother, Delores, suffered a heart attack the last time she relived the day she lost her daughter. Now, she says, she is shocked to learn she must relive the nightmare again.

“It just makes me sick to my stomach with all I’ve gone through,” the 79-year-old widow said.

## **Flores: A suspect from the start**

The errant .22-caliber bullet hit Phyllis Davis about 5:25 p.m. April 8, 1996, during a rolling gunbattle between an Oldsmobile Cutlass and a sport utility vehicle. Davis lost consciousness within seconds as the bullet pierced her lungs and aorta, and she died as her car rolled into the intersection of University Avenue and Ninth Street at rush hour.

The Federal Home Loan Bank executive was shot during one of Iowa’s worst sprees of gang violence. Her death came after three killings and numerous gunbattles police blamed on gangs. The Oakridge Neighborhood, the city’s most notorious low-income housing project at the time, was besieged by violent crime.

As suspects go, David Flores was a solid one: A longtime delinquent, he spent most of his youth at Oakridge. He had been friends with Jody Stokes, a reputed Crips leader whose shooting death the previous fall triggered an outbreak of violence. Police investigating Davis’ death tied Flores to gangs and found letters that suggested he wanted revenge for Stokes’ murder.

Initially, Flores was one of four suspects charged with first-degree murder in Davis’ death. Two others, who were in the Cutlass, pleaded guilty of lesser crimes before Flores’ trial. The trial of the fourth, who was also in the Cutlass, came later.

Flores was known to drive his girlfriend’s vehicle, a black 1995 Chevrolet Blazer with a gold grille, similar to the one described by some of the witnesses as being involved in the gunfight.

Even after he was charged with murder, Flores was so sure he would be found not guilty that he turned down a plea agreement offered to him by prosecutors before his conviction, family members said.

## **No lack of witnesses -- or confusion**

No one could prove Flores was at the scene of the shooting.

Instead, prosecutors had to rely on one key piece of circumstantial evidence and overcome witnesses’ often twisted accounts to prove he was guilty.

Flores was with Tina McGarey, the girlfriend who would become his wife, on the day of the shooting. According to court testimony, the two stopped downtown about 4:30 p.m. to pick up keys to her mother’s south-side house, and then Flores dropped Tina there with their year-old child.

He left the south-side house about 4:45 p.m., and then, he said, returned to their new home on 47th Street.

Because Flores said he was alone, no witnesses at the trial could substantiate his alibi.

About 5:50 p.m., according to testimony, Flores called Tina’s mother’s house and asked if he could talk to Tina. He said he had locked the keys in her Blazer, and he asked Tina to come get him in her mother’s car at the house on 47th. She did.

This meant Flores would have had slightly more than an hour to have been involved in the gunfight on his way home, flee the scene and make the call.

No murder weapon was found. But a ballistics expert testified that the bullet that killed Davis shared key characteristics with a spent bullet found at Flores' house.

John Wellman, Flores' defense attorney, who has since died, contended that the bullet was actually one the family kept after a drive-by shooting in the mid-1990s.

For whatever reason, Wellman didn't call a ballistics expert during Flores' trial.

It was never proven who was inside the sport utility vehicle -- described as dark in color, and most often as black -- from which prosecutors believed the deadly bullet was most likely fired.

The driver of the Oldsmobile Cutlass, the other car in the gunfight, alleged early in the investigation that he saw Flores, a light-skinned Hispanic man, driving a Blazer.

Later, in Flores' trial, the Cutlass driver recanted. His girlfriend -- who got out of the Cutlass just before the gunfight -- also changed her story. At first, she said, she saw three white men in the Blazer. Later, she told the jury that Flores was not in the SUV but that there was a black passenger, court records show.

During the two-week trial, at least three other witnesses -- including a young man who was grazed by gunfire in the melee and a bus driver who was supposed to be a star witness for the prosecution -- told the jury that the driver of the Blazer was black.

The day Flores was convicted in 1997, Phyllis Davis' father, Torcie, breathed a sigh of relief that her killer had been found.

"The memories won't go away, but some of this other stuff will," he said at the time. "We needed closure."

Torcie Davis went to his death two years ago believing Flores would never be set free. His wife, Delores, never once doubted that prosecutors had found the right man.

"I can't tell you why," she said. "There was no doubt in my mind he was the one."

Samuel McCrorey, the jury foreman in Flores' case, felt just the opposite. On the day of the sentencing, he went public with his belief that Flores was actually innocent.

McCrorey said most jurors believed that Flores may have been riding in the sport utility vehicle involved in the crime, but that they did not know whether he fired a gun as the state contended. He also said the jury placed great importance on Tina's sister's testimony that Tina told her Flores was in the Blazer.

"To us, that spoke volumes," he said at the time. "Why would Tina lie to her sister?"

But McCrorey said he had doubts Flores was even at the scene.

McCrorey, who was harshly chastised by the judge for going public with his regrets, declined to comment for this article.

## Suspicious silence, years of regret

Lawyers would later say that the erratic behavior of Flores' girlfriend and now wife, Tina Flores, and her refusal to answer some questions during the trial cinched Flores' conviction and botched his argument for an appeal.

Tina, who was 21 at the time, had tried to convince her mother and sister right after the shooting that she was in the SUV and accidentally shot Davis. They knew she was lying; Davis was likely dead by the time Tina left her mother's house to pick up Flores.

Later, Tina, her 17-month-old son with Flores, and another key witness disappeared from Des Moines. Once found, Tina refused to cooperate with prosecutors and would not testify about most facts having to do with Flores' actions.

"But you can help David," Flores' lawyer told her.

"The welfare of my son is more important," Tina said, hinting, like other witnesses, that she feared retribution if she talked.

District Judge Richard Blane II jailed Tina for 8 months for refusing to cooperate with prosecutors.

Shortly after the trial, Tina and Flores were married in what she now calls a "pathetic" ceremony at the Polk County Jail, separated by glass. At times after that, she contemplated suicide because she blamed herself for Flores' situation.

"Try living with that," Tina said tearfully last month in an interview. "Try living with the fact that you had a hand in your husband's conviction. I just don't even know what I was thinking."

Now 33, she said she was "playing a game" trying to protect David, who was named as a suspect in the crime almost immediately.

She said she acted the way she did because she was young and full of fear. Child-welfare lawyers threatened to take her child -- and eventually did take away her custody -- because they had linked her to Flores.

Most of all, she said, she feared retribution from gangs and police.

"Sitting here now, I don't know who that girl was," said Tina, who sells insurance and raises the couple's now-12-year-old son. "I should have never speculated about what really happened that day, or talked about things I didn't know about."

## Flores' lawyers learn of FBI interview

David Flores' family members never ceased believing in his innocence or fighting for a new trial. For years, David's father, Angel, and his brother, Anthony, combed through the testimony, following leads, trying to help defense lawyers look for new evidence and errors made during his trial that might help set him free.

"You know, if David really would have been guilty, we would have done our best just to make him

comfortable,” Angel Flores said. “But he wasn’t, and so ever since, we’ve been fighting for the truth to come out.”

An appeals court denied Flores’ appeal in 1998, and for years, little more happened. Then, in July 2003, David Flores received a letter that revived his hope.

Paul Rosenberg, the attorney who represented Flores in his appeal, wrote to him about something he learned working on another case.

Rosenberg said in the letter that he learned the FBI interviewed another man, Calvin Tyrone Gaines, who said he helped Davis’ killer after the shooting.

“This FBI interview is in the custody of the Polk County Attorney and has been for some time,” Rosenberg wrote.

Flores would learn that in May 1996, a month after Davis’ death, Gaines was interviewed separately by the Los Angeles Police Department and an FBI agent in the Polk County Jail.

Gaines was asked to describe what he knew about the gang violence in Des Moines.

Facing charges in connection with several bank robberies, Gaines told authorities his story of who shot Davis.

Mary Kennedy, Flores’ current lawyer, later traveled to a California prison to hear Gaines’ story. He told her during a sworn deposition that he met Raphael Robinson at the home of a mutual friend after Davis was killed.

Gaines gave detailed testimony about Robinson, and he described guns that Robinson owned.

“I remember him telling me, ‘I got to get out of here, man,’ “ he told Kennedy. “I just told him to go to L.A. I told him I’ll make some calls, and then I’ll get back at him.”

“And why did he say -- or did he say -- that he had to get out of here?” Kennedy asked during the deposition.

“Because they had a shootout with some Bloods and some lady ended up in the middle of it, got shot,” he said.

But Gaines said he was never contacted after the 1996 FBI and LAPD interviews by Wellman or anyone from the Polk County attorney’s office.

When Flores gets his hearing in June, Kennedy will argue that revelation -- that there was another strong suspect -- would have changed the outcome of his trial.

She also intends to argue that Flores’ constitutional rights were violated because he received an inadequate defense.

Among other things, she said, the defense should have produced its own ballistics expert to challenge the prosecution’s argument that the ammunition could be linked to Flores.

Motor vehicle records obtained by Kennedy after she met Gaines show Robinson’s brother drove a dark blue

1985 Ford Bronco similar to the sport utility vehicle driven by Flores.

Whatever Robinson knew about Davis' murder never will be known. He was shot to death in the Oakridge Neighborhood two months after the FBI's interview with Gaines.

Authorities said his was a gang-related revenge killing. His killer was never found.

## **Prosecutor, Flores look to June hearing**

Polk County Attorney John Sarcone insists prosecutors in his office have never convicted an innocent man.

While he believes Flores should be able to present the newly discovered findings in court, Sarcone said the jury made the right decision when it convicted Flores.

"If there's some credible evidence the family wants to present, we'll certainly consider it. I don't want someone in prison who's innocent," he said. "But we'll have to see what's presented. It's pretty easy to blame a dead guy."

But Sarcone said when interviewed that he hadn't heard all of the new evidence allegations. He also conceded that the prosecution's case heading into the trial was "skinny."

Flores said he knows his new case will stir a lot of old emotions, but he said he's hoping the judge seeks the truth.

"I really am hopeful. I want to go home," he said from prison. "I want to be a good husband and a great father to my son. ... But I'm also scared. Scared of the people downtown, scared of what happened in the past. I don't trust people a lot anymore. It's hard even to say I have faith."

## **He said he regrets not testifying in his original trial.**

"(Wellman) told me that if I did, the prosecutors would bring up my juvenile record," Flores said. "I've regretted that more than anything, because in retrospect, I can see he put too much confidence in the case he put forth."

Flores said he would have told the jury that he was no innocent, but that he was not a murderer. He had just become a father, started a business and bought a house at the time of the shooting. His juvenile record included burglary and assault charges, but no crimes involving guns.

Flores said he doesn't know who killed Davis or who was in the sport utility vehicle the day she died.

He said he was at home that day until Tina came to get him.

Both he and Tina were unwilling to answer more specific questions about their actions that day until the hearing, saying they do not want to jeopardize one of their last chances to set him free.

"I believe a lot of it will come out then," Flores said.