

Ex-cellmate: 'Nissen pulled trigger on Brandon'

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FALLS CITY (AP)- A former cellmate of Marvin Thomas Nissen, whose testimony led to the triple-murder conviction of death-row inmate John Lotter, claims Nissen told him he was the trigger man.

The cellmate's sworn deposition recently was filed in Richardson County District Court with requests by Lotter's attorney for a new trial and a new sentence. Lotter's latest motions for a new trial and sentence will be heard Tuesday in the district court.

Lotter and Nissen were convicted of killing Teena Brandon, a woman who posed as a man, and two witnesses, Lisa Lambert and Philip Devine, inside a farmhouse near Humboldt on New Year's Eve 1993.

The two men killed Brandon after she reported to police that they had raped her a week earlier. They had attacked Brandon because she had dated a female friend of Nissen and Lotter.

Lotter was sentenced to die in the state's electric chair. Nissen, who is serving three life sentences, struck a deal with prosecutors to avoid the death penalty in exchange for his testimony against Lotter.

"You have to remember that Nissen cut a deal and said anything that would save his life," said Jerry Soucie, Lotter's attorney. "Mr. Lotter has long said Nissen's account of what transpired is not true." In a Dec. 1 affidavit, Nissen's former cellmate, Jeff Haley, said Nissen confided to him that he, not Lotter, pulled the trigger in the three murders. Haley said Nissen talked after becoming upset with published and television talk-show accounts that focused on Lotter as the killer.

Haley and Nissen lived in the same cell at the Lincoln Correctional Center for about six weeks in early 1997. Haley is serving a 10-year sentence for automobile theft.

According to the affidavit, in interviews with investigators on Nov. 24 and Nov. 30, Haley said Nissen showed him autopsy photos of the three victims and explained in detail how he shot each one as Lotter stood by and shouted, "What are you doing?" Haley also claimed Nissen stabbed Brandon because "he always wanted to stab somebody." Haley, who is now an inmate at the state penitentiary, said Nissen also provided details on the rape of Brandon, and the disposal of the gun and knife used in the murders.

If found credible by the courts, the cellmates's deposition could lead to a new sentence for Lotter but should not affect his conviction, said Assistant Attorney Nebraska General L. Kirk Brown, who prosecutes death-row cases. "His guilt of first-degree murder doesn't have anything to do with whether he was the trigger man or not," Brown said "There was certainly enough evidence that these two planned this crime together." The Attorney General's office helped convict Lotter of the crime.

This type of evidence may not be relevant as to whether he received a fair trial, but is something he could offer in a clemency proceeding," Brown said.

Soucie said he has tried unsuccessfully to interview Nissen, who remains at the Lincoln Correctional Center.

Nissen could not be reached for comment Friday. He does not have an attorney since he has no pending appeals.

Soucie said he first contacted Haley two weeks ago after receiving a tip that Nissen had confessed the killings to a former cellmate.

He said it was not unusual that Haley waited nearly three years before talking to authorities.

"You have to understand the pressures on an inmate within an institution not to assist in the prosecution of an individual," Soucie said. "Sometimes it takes a significant passage of time before someone will come forward." Soucie said Haley was not offered an early release or anything for his testimony.

"Mr Haley will get absolutely nothing for coming forward," Soucie said. "There is nothing I can or would promise him for exchange for his testimony. He is doing the right, moral thing." Richardson County attorney Jeffery Goltz did not immediately return telephone messages left at his office Friday by The Associated Press.

END

Note: The hearing has been postponed until August, 2000