

After the issuance of additional stays of execution by the judge, Denton filed Thomas's appeal to the Court of Appeals on September 6, 1922. Both the grounds for the appeal and the result were similar to those in Jefferson Criminal Court before Judge Burgevin. The appellate court heard Thomas's case during the fall term. In an opinion written by Justice C. J. Hurt, the court stated that errors had been committed in the conduct of Thomas's trial, but that they had not been prejudicial to his case. On the more pressing issue of Thomas's alleged insanity, the court affirmed Judge Burgevin's ruling that the new evidence was not essentially different from that submitted in Thomas's behalf during his trial. According to Justice Hurt, a new trial could not be granted "unless the new evidence is of such prepondering and decisive character that it could be reasonably calculated that, if heard upon another trial, the result would be a different verdict from that rendered." Based upon its belief that the verdict in a new trial would be similar to that of the first trial, the Court of Appeals affirmed the judgment of the jury in Jefferson Criminal Court.¹⁹

Legal maneuvering to save Thomas's life continued for more than a year after the announcement of the appellate court's decision. Early in May, 1924, Ronald C. Oldham, who replaced Denton as Thomas's attorney, traveled to Washington, D.C., in a vain attempt to obtain a writ of error from an associate justice of the United States Supreme Court. He first contacted Justice James C. McReynolds, who presided over the federal circuit which included Kentucky. When that maneuver failed, he sought out Justice George Sutherland, who also refused to issue a writ. On May 8, with all avenues of appeal exhausted, Oldham sent the following telegram to the seventy-one-year old murderer:

After a full, patient, and fair hearing twice today before two separate justices of the highest court known to man, your appeal was denied by each. That exhausts the law of man available to you. We have done our best. May He who guides and directs the destinies of nations, and with whom you have made peace, absolve you of any sin that may be connected with your acts in this life.²⁰

Later the same day, Thomas and two other condemned murderers were baptized by immersion in a bathtub in Thomas's Eddyville prison cell. Thomas and one other man confessed their guilt, but the third insisted upon his innocence. At 12:30 A.M. on May 9, the

¹⁹ Transmittal slip, *Thomas vs. Commonwealth*, Kentucky Court of Appeals, September 6, 1922, Case File; *Southwestern Reporter*, pp. 165, 169.

²⁰ *Courier-Journal*, May 9, 1924.

gray-bearded slayer of Bird U. Skaggs, Edward H. Powell, and Lee J. Arbegust was strapped into the electric chair. The first shock pulsed through his body a few seconds later, followed by a second charge. The prison physician pronounced Thomas dead at 12:39 A.M. When the other two men were declared dead a few moments later, the first legal triple execution in Kentucky history was over.²¹

From the perspective of current law enforcement practices, the violent career of Frank Thomas raises two provocative questions. First, had he to pass through the same screening process required of a recruit today, would he have been accepted for the force? Second, had he been selected, could he have been promoted to command rank? The simplest answer to the first query is that Thomas would have been disqualified by age under today's standards. He was fifty years old when he became a patrolman in 1906; the maximum age for appointment to the department today is thirty. But this response begs the question. It is more to the point to consider the question as if Thomas had joined the force during his twenties. Unfortunately, we know too little about Thomas's early life to determine with assurance whether or not he would be accepted for the force at the usual age today. But if he had demonstrated any outward signs of or had any latent tendencies toward the kind of violent behavior which accompanied the killings of Skaggs, Powell, and Arbegust, it is likely that these would have been detected by contemporary screening processes.

The question of promotion is more problematic than that of recruitment. Again the matter of age must be considered. Thomas shot Skaggs at an age when most police officers today are retiring. He was fifty-seven when he became chief and nearly sixty when he shot Powell. But if we put aside the issue of age and assume that Thomas was of normal psychological health when he joined the force, then his behavior while an officer becomes of paramount importance. Especially significant in this respect is the killing of Skaggs. Although this shooting was committed in the line of duty, Thomas may have used excessive force. This judgment is strengthened by the fact that he was indicted for killing a Negro at a time when the use of official violence against blacks was not taken very seriously by the white public and its officialdom. Official records do not indicate if Thomas's departure from the force shortly after his acquittal reflected doubts about the appropriateness of his be-

²¹ *Ibid.*