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USA: Georgia Supreme Court upholds Troy Davis death sentence despite innocence concerns

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Amnesty International regrets that on 17 March 2008, the Georgia Supreme Court, in a 4-3 decision, denied death row inmate Troy Davis a new trial or an evidentiary hearing on post-conviction evidence of innocence. He has been on death row for more than 16 years for the murder of a police officer which he maintains he did not commit. Many of the witnesses presented by the prosecution at the trial have since recanted or contradicted their testimony. It now looks like his case will head back to the state clemency board.

On 28 August 1991 Troy Davis, black, was convicted of the murder of 27-year-old Officer Mark Allen MacPhail, white, who was shot and killed in the car park of a Burger King fast food restaurant in Savannah, Georgia, in the early hours of 19 August 1989. Troy Davis was also convicted of assaulting Larry Young, a homeless man, who was accosted and struck across the face with a pistol immediately before Officer MacPhail was shot. At the trial, Troy Davis admitted that he had been at the scene of the shooting, but claimed that he had neither assaulted Larry Young nor shot Officer MacPhail.

There was no physical evidence against Troy Davis and the weapon used in the crime was never found. The case against him consisted entirely of witness testimony. In affidavits signed over the years since the trial, all but three of the state's non-police witnesses have recanted their testimony, amidst allegations that some of the statements against Davis had been made under police duress. One of the three non-recanting witnesses is a man who has not been located for interview by Davis's appeal lawyers. Another, while not recanting, has contradicted her trial testimony. The third non-police witness who has not recanted his testimony is Sylvester Coles, who was the principle alternative suspect, according to the defence at the trial, and against whom there is post-trial witness testimony implicating him as the gunman.

On 16 July 2007, less than 24 hours before Troy Davis was scheduled to be executed, the Georgia Board of Pardons and Paroles issued a stay of execution "for the purpose of evaluating and analyzing" the information submitted to it during the clemency hearing earlier in the day. In its order staying the execution, the parole board wrote that its members "will not allow an execution to proceed in this State unless and until its members are convinced that there is no doubt as to the guilt of the accused". Among the thousands of people who had appealed for clemency were Archbishop Desmond Tutu, former FBI Director William Sessions, and the Secretary General of the Council of Europe.

Meanwhile, Troy Davis's lawyers had filed an extraordinary appeal for a new trial in the trial-level court. That court rejected the appeal without conducting a hearing. On 3 August 2007, however, by four votes to three, the Georgia Supreme Court agreed to hear arguments on the case.

On 17 March 2008, the Georgia Supreme Court released its decision. Four of the Justices wrote that the trial-level court had not abused its discretion by denying Troy Davis's motion for a new trial without conducting a hearing. They took the view that witness recantation testimony should be assigned a "general lack of credibility" in the context of a last-minute appeal. Testimony given at trial, the Justices said, "is closer in time to the crimes, when memories are more trustworthy". The majority continued: "Particularly in this death penalty

case where a man might soon be executed, we have endeavoured to look beyond bare legal principles that might otherwise be controlling to the core question of whether a jury presented with Davis's allegedly-new testimony would probably find him not guilty or give him a sentence other than death." The majority nevertheless found that "we simply cannot disregard the jury's verdict in this case".

Three of the seven Justices dissented in an opinion authored by the Chief Justice. She wrote that: "I believe that this case illustrates that this Court's approach in extraordinary motions for new trials based on new evidence is overly rigid and fails to allow an adequate inquiry into the fundamental question, which is whether or not an innocent person might have been convicted or even, as in this case, might be put to death." Despite the majority's stated endeavour to "look beyond bare legal principles", Chief Justice Leah Ward Sears wrote that she believed they had weighed the new evidence "too lightly". "In this case", she wrote, "nearly every witness who identified Davis as the shooter at trial has now disclaimed his or her ability to do so reliably. Three persons have stated that Sylvester Coles confessed to being the shooter. Two witnesses have stated that Sylvester Coles, contrary to his trial testimony, possessed a handgun immediately after the murder. Another witness has provided a description of the crimes that might indicate that Sylvester Coles was the shooter." While she said that such testimony might be discovered to lack credibility if heard at an evidentiary hearing, "the collective effect of all of Davis's new testimony, if it were to be found credible by the trial court in a hearing, would show the probability that a new jury would find reasonable doubt of Davis's guilt or a least sufficient residual doubt to decline to impose the death penalty". The Chief Justice and the other two dissenters stated, therefore, that the trial court should be ordered to conduct the evidentiary hearing it denied in 2007.

During the period that the Georgia Supreme Court has been considering Troy Davis's case, the United Nations General Assembly has voted for a moratorium on executions. In this landmark resolution passed in December 2007, the General Assembly pointed to the fact that "any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable", and called upon all states that still have the death penalty to "respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards". One of these standards is the prohibition on the execution of anyone whose guilt is not based on "clear and convincing evidence leaving no room for an alternative explanation of the facts".

Amnesty International opposes Troy Davis's death sentence, as it does all use of the death penalty. It further considers that Troy Davis's execution would contravene this international safeguard.

More than 120 people have been released from death rows in the USA since 1975 on the grounds of innocence. In numerous cases, witness testimony against the defendant at trial was later shown to be wrong. The inescapable risk of executing the wrongfully convicted was one of the reasons cited in the recent decision taken by New Jersey to abolish the death penalty.

For Amnesty International's full report on this case, see *USA: 'Where is the justice for me?' The case of Troy Davis, facing execution in Georgia*, AI Index: AMR 51/023/2007, February 2007, <http://www.amnesty.org/en/library/info/AMR51/023/2007>.

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