

**PUBLIC**

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**Death penalty/Legal concern**

**24 November 2006**

**USA (Florida)**

**Angel Nieves Diaz (m), aged 55**

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Angel Nieves Diaz is scheduled for execution in Florida on 13 December 2006. He was sentenced to death in 1986 for the murder during a robbery of bar manager Joseph Nagy in Miami in 1979.

Joseph Nagy was the bar manager of the Velvet Swing Lounge. He was shot dead on 29 December 1979, when a group of three men robbed the bar. There were no eyewitnesses to the shooting. Angel Diaz and Angel Toro were charged with first-degree murder in 1984, but the trial was delayed until December 1985. By that time, Angel Toro had pleaded guilty to second-degree murder in return for a life sentence.

Puerto Rican native Angel Diaz was represented by a lawyer until shortly after the jury had been selected. Just before the opening arguments of his trial began, and against the advice of his lawyer, he decided to conduct his own defence. The lawyer informed the judge that Angel Diaz had "exhibited rather bizarre tendencies" in previous days, including not responding to the lawyer's questions or responding to them with irrational answers. The lawyer said that in the previous 24 hours, Angel Diaz had rejected the defence they had developed over the previous months.

The judge questioned the defendant about his decision. Through an interpreter (his English was limited), Angel Diaz said that he had never read a law book, had "no idea" about how a trial in Florida was conducted or about "what I may be able to argue". The judge advised him that "since you have no ability to speak the English language in this court, you have no knowledge of the law, you did not [finish high school], it would appear to this Court that it would be impossible for you to act as an attorney in your own defence". Angel Diaz kept to his decision and the judge ruled that it had been freely and intelligently made.

The judge arranged for two psychiatrists to evaluate Diaz after proceedings that day on his competency to stand trial. Meanwhile, the trial began with Diaz making an opening statement and the state presenting five witnesses before the trial recessed for the day. The two doctors evaluated Angel Diaz that evening. The following morning, a "competency hearing" was held, without Angel Diaz or his stand-by counsel present. The record of the hearing consists of a few sentences. One of the doctors told the judge: "Angel Diaz is competent. But he did express to me that he would like some technical legal help in defending himself". The judge then said that he had had a report from the other doctor, who was not present, that Angel Diaz was "very competent". The trial was then allowed to proceed.

Post-conviction assessments by two mental health experts concluded that Angel Diaz suffers from certain mental disorders which contributed to his decision to represent himself and undermined his ability to do so competently. The lawyer who represented him until the opening of the trial signed an affidavit stating that "I do not believe Angel Diaz was competent to represent himself. As a result, Mr Diaz asked questions he should not have asked and could not object to certain questions and evidence after my advising him to through the interpreter. I do not believe he adequately understood the legal system and the conduct of the trial due to cultural differences and language barriers, among other reasons".

Throughout the trial, Angel Diaz was made to wear shackles. During jury selection, his lawyer had objected to the shackles, but the judge responded that Diaz could cover them with his trousers or the lawyer could place his brief case in front of Diaz's legs. However, once Angel Diaz was representing himself, the shackles were visible to the jury, raising concerns about their prejudicial effect on the presumption of innocence. In addition, a defendant's perceived dangerousness has been shown to be highly aggravating in the minds of US capital jurors deciding between life and death sentences.

Angel Diaz's former girlfriend testified that on the night of the robbery, he had told her that Angel Toro had shot a man during the robbery. The testimony of two other witnesses, who had been in the bar at the time of the robbery, indicated that Angel Diaz was not the gunman. However, a jailhouse informant testified that when they had been held in the same jail, Angel Diaz had indicated that he had shot Joseph Nagy. Jailhouse informant testimony is notoriously unreliable. The Commission on Capital Punishment, set up by the Governor of Illinois after he imposed a moratorium on executions in 2000, examined the question of such testimony. The Commission's April 2002 report concluded that, even with stringent safeguards on the use of such evidence, "the potential for testimony of questionable reliability remains high, and imposing the death penalty in such cases appears ill-advised."

The jury retired to deliberate on the question of guilt. During their deliberations, they requested copies of the testimony of the former girlfriend and the jailhouse informant, but the judge refused to provide it, instructing the jury to rely on its recollection of what the witnesses had said. The jury returned a guilty verdict.

The sentencing was held two weeks later. At the beginning of the sentencing, although demanding to represent himself, Angel Diaz admitted to the court that he was not capable of representing himself adequately. The court subsequently appointed his stand-by lawyer to represent him at the sentencing. Angel Diaz refused to permit the lawyer to question the first few prosecution witnesses. The lawyer argued in mitigation that Angel Diaz had only been an accomplice to the crime, but presented no new evidence of this. The jury recommended a death sentence by eight votes to four.

In post-conviction proceedings, evidence not raised at the trial has been raised about Angel Diaz's childhood of abuse and mental problems, and his addiction to drugs from the age of 16. It has also been claimed that the prosecution failed to disclose evidence that it was Angel Toro who shot Joseph Nagy. In a memorandum dated 6 February 1984, the prosecutor wrote: "At some point, all three subjects pulled out guns and announced a robbery. Shots were fired. Defendant Toro apparently grabbed Gina Fredericks around the neck and took her back to the area of the office where the safe was located. Apparently, victim Nagy came out of the office at that time. Defendant Toro shot Nagy once in the chest causing his death".

A recent study conducted under the auspices of the American Bar Association's Death Penalty Moratorium Implementation Project identified serious problems in Florida's capital justice system, including the high number of people released from death row on the grounds of innocence (22 since 1973), the continued existence of racial and geographic disparities, the fact that unanimity is not required in jury sentencing decisions, and the failure to give sufficient weight to the mitigating effects of serious mental disability.

**RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:**

- expressing sympathy for the family of Joseph Nagy, who was killed in 1979, and explaining that you are not seeking to downplay the seriousness of this crime or the suffering caused;
- opposing the execution of Angel Nieves Diaz, noting evidence calling into question his competency to stand trial and represent himself;
- noting the disparity in sentencing in this case, with one defendant receiving a life sentence and another death, despite conflicting evidence about who was the gunman, and expressing concern at the use of jailhouse informant testimony against Angel Diaz, a notoriously unreliable form of testimony;
- noting that four of the jurors did not vote for the death penalty;
- noting that recent research has found serious problems with Florida's capital justice system, including geographic and racial disparities, and the lack of a requirement for unanimity in jury sentencing decisions;
- calling on the Governor to intervene to stop this execution.

**APPEALS TO:**

Governor Jeb Bush, The Capitol, 400 South Monroe Street, Tallahassee, FL 32399, USA

**Email:** [jeb.bush@myflorida.com](mailto:jeb.bush@myflorida.com)

**Fax:** +1 850 487 0801

**Salutation:** Dear Governor

**COPIES TO:** diplomatic representatives of the USA accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.**