

PUBLIC

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23 August 2005

UA 217/05 Death Penalty/ Legal concern

USA (Texas) Frances Elaine Newton (f), black

Frances Newton is scheduled to be executed in Texas on 14 September 2005. She was convicted in October 1988 of the murder of her husband and two children in April 1987. She was convicted on circumstantial evidence and maintains that she did not commit the murder.

Frances Newton's attorneys have filed a motion for a stay of execution. They claim that evidence used to convict her, which could potentially prove her innocence, was destroyed by the state; that at her trial, prosecutors improperly withheld information; and that she had ineffective legal assistance during her trial from a lawyer who failed to investigate fully her claims of innocence. She had been due to be executed on 1 December 2004, but was granted a 120-day reprieve by Texas Governor Rick Perry, to allow time for the retesting of the physical evidence used to convict her (see UA 313/04, AMR 51/163/2004, 19 November 2004, and follow-up).

On 7 April 1987, a police officer responding to a report of a possible shooting in a Houston apartment complex found 21-year-old Frances Newton in her apartment with her cousin, Sondra Nelms. Also in the apartment were the bodies of Frances Newton's husband, Adrian Newton, her seven-year-old son, Alton, and 21-month-old daughter, Farrah. All three victims had been shot.

At the trial, Sondra Nelms testified that on the night of the shootings Frances Newton had placed a bag in another house shortly before the two of them went to the Newtons' apartment where they found the bodies. The bag was later found to contain a gun, and testimony at the trial indicated that it was the murder weapon. An expert testified that the lower front part of Frances Newton's skirt contained nitrites, consistent with a gun having been fired close to it. However, forensic experts testified that the nitrites found on Frances Newton's skirt could have come from fertilizer. During the day of the murder, Farrah Newton had stayed with her uncle while her mother was at work. The uncle had a large garden, which could account for the transfer of fertilizer particles to the lower front side of Frances Newton's skirt. One of the jurors subsequently stated that, had it been determined that the nitrites on the skirt came from fertilizer, she would have found it important in her deliberations as a fact supporting Newton's innocence. The juror's statement was included in the successful motion for a stay of Frances Newton's execution in December 2004.

The reprieve granted in December 2004 was designed to allow sufficient time for the retesting of her skirt and of the gun thought to be the murder weapon. However, when Frances Newton's current attorneys petitioned the courts to allow retesting of her skirt earlier this year, the request was denied because the state's initial tests had destroyed the nitrite evidence on the skirt, and the skirt had also become cross-contaminated after it was stored with the victims' clothing. Retesting of the gun found it to be the murder weapon. However, in their latest appeal, Frances Newton's lawyers claim that trial prosecutors withheld information relating to the discovery of a second gun at the crime scene which may have been the murder weapon.

Frances Newton was prosecuted in Harris County, where the city of Houston is located. In March 2003, an independent audit of the Houston Police Department (HPD) crime laboratory revealed serious defects in the lab's DNA analysis section, including poorly trained staff relying on outdated scientific techniques. Several cases suggest that the laboratory's problems extended beyond its DNA section, for example into its ballistics expertise. On 21 October 2004, a judge on the Texas Court of Criminal Appeals said that there should be "a moratorium on all executions in cases where convictions were based on evidence from the HPD crime lab

until the reliability of the evidence has been verified". A Texas Senator and the Houston police chief have made similar calls. An independent investigation of the laboratory is in progress.

Testimony of the state's trial witnesses, taken together, suggests that either Frances Newton was not in the apartment at the time of the shooting, or that if she was she would have had, at most, 20 minutes to shoot her husband and children, clean herself up, compose herself, and leave the apartment to go to her cousin's home. There was no blood found on Frances Newton's clothing, hands, or car, despite the fact that the victims had been shot at close range. No gunpowder residue was found on her hands or sweater. There was also no evidence that someone had cleaned up the apartment.

Amnesty International opposes all executions, regardless of issues of guilt or innocence. One of the most compelling arguments against the use of the death penalty is the risk that innocent people may be executed. The United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty prohibit the execution of anyone whose guilt is not based on "clear and convincing evidence leaving no room for an alternative explanation of the facts". Serious miscarriages of justice in capital cases have already occurred in the USA. Since 1973, 121 people have been released from US death rows on the grounds of innocence. Others have gone to their deaths despite serious doubts about their guilt.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words, including Frances Newton's prisoner number, #922, in your appeals:

- expressing concern that Frances Newton is scheduled to be executed on 14 September 2005, despite doubts over the reliability of her conviction which have not been dispelled since her previous stay of execution;
- noting that Frances Newton was prosecuted in Harris County and ballistics evidence central to the state's case was processed at the troubled Houston Police Department crime laboratory;
- expressing concern that retesting of crucial physical evidence on Frances Newton's skirt, ordered by Governor Perry, has proved impossible due to the mishandling of the evidence by the authorities;
- calling on the Presiding Officer of the Board of Pardons and Paroles to convey your concerns to all the members of the Board;
- citing the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which prohibit the execution of anyone whose guilt is not based on "clear and convincing evidence leaving no room for an alternative explanation of the facts";
- urging that the Board and Governor Perry stop the execution and commute the death sentence of Frances Newton immediately.

APPEALS TO:

Rissie Owens, Presiding Officer, Board of Pardons and Paroles, 1300 11th St., Suite 520, P.O. Box 599, Huntsville, TX 77342-0599, USA.

Fax: +1 936 291 8367

Salutation: Dear Ms Owens

Governor Rick Perry, Office of the Governor, PO box 12428, Austin, TX 78711-2428, USA

Fax: +1 512 463 1849

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.