

**PUBLIC**

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**UA 06/08      Death penalty / Legal concern**

**USA (Ohio)      John George Spirko (m), white, aged 61**

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John Spirko is scheduled to be executed in Ohio on 24 January. He was sentenced to death in 1984 for the abduction and murder of Betty Jane Mottinger in 1982. John Spirko has consistently maintained his innocence of this crime and is seeking a pardon from the state governor or commutation of his death sentence to time served. He has been incarcerated for 25 years, 23 of them on death row.

On the morning of 9 August 1982, 48-year-old Betty Jane Mottinger went missing from the post office in the small rural community of Elgin in Van Wert County in north-western Ohio where she worked as postmistress. Six weeks later, her body was found in a field in a neighbouring county. She had been stabbed multiple times, was fully dressed, and was wrapped in a paint-splattered cloth tied with a rope. Government investigators found nothing that led them to John Spirko. Recent DNA testing conducted by the state has revealed nothing to link Spirko to the crime. In the words of Judge Ronald Gilman of the US Court of Appeals for the Sixth Circuit in 2004, "a striking fact about the record in this case is the complete absence of any forensic evidence linking Spirko to the crime. There are no fingerprints, footprints, fibres, blood, or stolen items to bolster the state's case. Nor is there any written or recorded confession of guilt by Spirko". Judge Gilman also noted that two jailhouse informants who claimed that Spirko had admitted to them his involvement in the crime have since recanted their testimony.

It was the words of John Spirko himself, however, which effectively put him on death row. On 9 October 1982, Spirko, who was on parole from Kentucky prison at the time, was arrested in Toledo (about 180 kms from Elgin) on an assault incident. Two weeks later, he was caught trying to escape from jail, and he and his girlfriend, who had aided his escape attempt, were facing the possibility of prison terms. John Spirko decided to contact the authorities in relation to the Mottinger murder, which was in the Toledo media at the time following the collapse of the case against the only suspect. Spirko told the authorities that he could provide information on the case in return for leniency for him and his girlfriend on the charges they were facing.

Over the following weeks, John Spirko proceeded to tell the lead investigator in the case, Paul Hartman, a series of shifting stories about the Mottinger crime. After each apparently false story led the investigator nowhere, Spirko would provide another version. Research conducted by the Cleveland Plain Dealer newspaper in 2004 concluded that Spirko's stories were "shot through with contradictions, fabrications and what appear to be wild guesses – many of them wrong – about the facts of the case... And there's not a shred of evidence that any of the stories ever happened". In his 2004 dissent, Judge Gilman noted that "the record leaves no doubt about Spirko's falsifications", adding that "lying is not a capital offence". In addition, the credibility of Paul Hartman – the state's lead witness – has been severely damaged in recent years.

In January 1983, Paul Hartman interviewed John Spirko for at least the 12<sup>th</sup> time. This time, after being prompted by Hartman, John Spirko named Delaney Gibson, with whom he had shared a prison cell in Kentucky, and who like Spirko had a violent criminal record. A resident of Elgin, Opal Siebert, who had seen a car pull up outside the post-office on the morning of Betty Jane Mottinger's disappearance and seen a clean-shaven man get out and stand by the car for a few minutes before driving away, identified Gibson as this man from a years-old photograph of Gibson that the investigators had obtained.

Armed with Opal Siebert's testimony and Spirko's story implicating Gibson and, according to the authorities, himself, in the murder, prosecutors indicted Gibson and Spirko for the capital murder of Betty Jane Mottinger. John Spirko was brought to trial in August 1984. Opal Siebert, who has since died, testified that Gibson was the man she had seen outside the Elgin post office. Another witness testified, but with only "70 per cent"

certainty, that a stranger he saw could have been Spirko, although the description the witness had given of the man did not match Spirko. The prosecutor argued that Spirko and Gibson had abducted and killed Betty Jane Mottinger. John Spirko was convicted and sentenced to death. Gibson neither appeared at Spirko's trial, nor was he himself ever brought to trial for this crime. His indictment was dismissed by Van Wert County two decades later on 17 May 2004, the same day that the Sixth Circuit rejected Spirko's appeal.

What neither Spirko's trial lawyers nor his jury knew was that investigators had discovered that Delaney Gibson had a very strong alibi. Photographic and other documentary evidence showed that Gibson was some 800 kilometres away in North Carolina, and fully bearded, at least until the evening before the Mottinger murder, and that he was on his job picking tomatoes in North Carolina on 10 August 1982. This alibi evidence remained hidden for the next 13 years until it was provided to John Spirko's appeal lawyers. They appealed on the grounds that prosecutors had knowingly presented false evidence and a false theory of the case at the trial, and had denied Spirko due process by withholding exculpatory evidence from him.

In its ruling on 17 May 2004, a three-judge panel of the Sixth Circuit upheld John Spirko's conviction and death sentence by a vote of two to one. The majority held that Spirko had not proved that he had been prejudiced by the state's failure to disclose Gibson's alibi evidence. It concluded that Spirko's statements to Hartman had contained information about the crime not in the public domain, and therefore demonstrated intimate knowledge of the case. Both the research by the Cleveland Plain Dealer and Spirko's lawyers repudiate this, arguing that the details of the crime that John Spirko relayed to investigators had already appeared in the Ohio media. In addition, numerous details of the crime and victim that he provided were wrong. Judge Gilman, dissenting, said that "the case against Spirko is far from overwhelming" and based on evidence that has a "foundation of sand". He argued that the withheld alibi evidence was favourable to Spirko and that he should receive a full evidentiary hearing on that issue.

In addition, there is compelling evidence that John Spirko was in Toledo for a meeting with his parole officer at the time the abduction of Betty Jane Mottinger was taking place.

Amnesty International supports John Spirko's bid for clemency. Indeed, on the basis of the information contained in his clemency petition and in the Cleveland Plain Dealer's research, the organization believes that the governor should seriously consider granting John Spirko at least a conditional pardon, which is allowed under Ohio law and which would allow the state to retry him for the Mottinger murder if it has the evidence to do so. As the case currently stands, his execution would contravene international standards which require that the death penalty not be carried out in any case where the conviction is in doubt.

Amnesty International opposes the death penalty in all cases. There have been 1,099 executions in the USA since 1977, 26 of them in Ohio. There appears to be a *de facto* moratorium on lethal injections in the USA while the US Supreme Court considers a challenge to that method of execution. However, no announcement of a judicial moratorium has been made, and any scheduled lethal injection has to be challenged.

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

- explaining that you are not seeking to excuse Betty Jane Mottinger's death or to downplay the suffering caused, but opposing the execution of John Spirko;
- expressing serious concern about the reliability of his conviction and the fact that neither his trial lawyers nor the jury had access to evidence that contradicted the prosecution's theory of the case;
- urging the governor to grant clemency to John Spirko, and to give serious consideration to at least granting a conditional pardon which would allow the state to retry him if it has the evidence to do so.

**APPEALS TO:**

Governor Ted Strickland, Governor's Office, Riffe Center, 30th Floor, 77 South High Street  
Columbus, OH 43215-6108, USA

**Fax:** +1 614 466 9354

**Email:** <http://apps.das.ohio.gov/govpublic/contact.aspx>.

**Salutation:** Dear Governor

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

**PLEASE SEND APPEALS IMMEDIATELY.**