

PUBLIC

AI Index: AMR 51/023/2008

30 April 2008

UA 116/08

Death penalty/imminent execution

USA (Georgia)

William Earl Lynd (m), white, aged 52

William Earl Lynd is scheduled to be executed in Georgia at 7pm on 6 May. He was sentenced to death in 1990 for the murder of his friend Virginia ("Ginger") Moore on 23 December 1988. He has a clemency hearing at 9am on 5 May before the Georgia Board of Pardons and Paroles.

William Lynd and Virginia Moore lived together at her home in Georgia's Berrien County. On the day of the murder, both were allegedly intoxicated on valium, marijuana and alcohol. They argued; Lynd shot Moore and buried her body in a shallow grave in a neighbouring county. He went to Ohio, but later returned to Georgia and turned himself in to the Berrien County authorities. Virginia Moore's body was found using information he provided. William Lynd was sentenced to life imprisonment for kidnapping and to death for murder.

In his recent announcement that a week-long "execution window" had been set by the Berrien County Superior Court (the Department of Corrections has since set the precise execution time), the Georgia Attorney General emphasized the prosecution's evidence at the 1990 trial that William Lynd had shot Virginia Moore three times in the face and head. According to this evidence, after the couple had argued, "Lynd got his pistol and shot the victim in the face. The unconscious victim fell across the waterbed. Lynd went outside, sat on the front porch, and smoked a cigarette. The victim eventually regained consciousness and staggered outside toward Lynd. Lynd turned and shot the victim a second time and the victim collapsed onto the porch." Lynd then put Moore into the boot of her car and drove away from the house. When he heard her "thumping around" in the boot, Lynd opened it "and shot the victim a third and final time."

The Attorney General's statement recalled that at the trial, "forensic pathologist Warren Tillman testified that the victim died as a result of gunshot wounds to the head and face. Dr Tillman explained that the first shot fired into the victim's face would not have been fatal. After the second gunshot wound, which was fired into the victim's brain, the victim would have been able to regain consciousness and could have moved her arms and legs. Even after all three shots were fired, the victim may have been able to achieve consciousness for a period of time prior to her death."

William Lynd's appeal lawyers have challenged the reliability of Warren Tillman's testimony and his qualification to provide it. They have also pointed to legislation passed shortly after Lynd's trial requiring that autopsies be performed by medical examiners who are licensed doctors, which they say Warren Tillman was not. Dr Brian Frist, a medical doctor and pathologist who has since reviewed the materials relating to the shooting, concluded that "contrary to Mr Tillman's testimony about these injuries, it is medically impossible that Ms Moore may have regained consciousness from either of [the wounds caused by the second two shots.]" According to Dr Frist, the state's version of the murder "has no basis in medical science and Mr Tillman's testimony as to the possibility of a lingering death from either of these wounds is patently erroneous." In Dr Frist's opinion, the second gunshot wound "immediately resulted in brain death and caused a cessation of all life processes most likely within a matter of seconds, but certainly no longer than within a minute and a half."

The defence lawyers have also raised the conclusions of Robert Tressel, a former homicide detective with nearly 30 years of experience in crime scene analysis, who has reviewed the state's investigative files of the Moore murder. He believes "the totality of the evidence supports the scenario that Mr Lynd fired two shots in rapid succession causing wounds No. 2 and No. 3 to the left side of Ms Moore's head." These wounds were "forensically consistent with Mr Lynd's statement, i.e. he shot Ms Moore over his left shoulder after she

attacked him from behind on the front porch," where he was apparently contemplating suicide after the first shot. Like Dr Frist, Robert Tressel believes Virginia Moore was dead when she was put in the trunk of the car.

If Virginia Moore was indeed dead at this point, not only would it call into question the charge of kidnapping, it would also diminish the aggravating circumstances of the crime that were presented to the jury as a part of the prosecution's pursuit of conviction for capital murder and which the state is still using to justify William Lynd's execution. His lawyers are seeking judicial review of their claim that false evidence was presented at the trial in the form of the testimony of the state's expert witness. However, his ordinary appeals have been exhausted. The appeal courts have rejected claims that Lynd's trial lawyers failed to conduct a reasonable investigation into his background, mental health and substance abuse problems.

The last execution in the USA was on 25 September 2007. Executions were put on hold pending the US Supreme Court's review of the constitutionality of lethal injection. On 16 April, in *Baze v. Rees*, the Court upheld the constitutionality of Kentucky's lethal injection procedures, and Chief Justice John Roberts indicated that in future cases a stay of execution on the lethal injection issue would probably only be granted if "the condemned prisoner establishes that the State's lethal injection protocol creates a demonstrated risk of severe pain. He must show that the risk is substantial when compared to the known and available alternatives." A state with a lethal injection protocol "substantially similar" to Kentucky's "would not create a risk that meets this standard." Justice John Paul Stevens nevertheless suggested that litigation on the lethal injection issue would continue. William Lynd's lawyers have filed such a challenge.

Since the USA resumed executions in 1977, 1,099 prisoners have been put to death. In the *Baze* ruling, Justice Stevens, who has been on the Supreme Court since 1975, revealed that his experience had led him to the conclusion that "the imposition of the death penalty represents the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State is patently excessive and cruel and unusual punishment."

In late 2007, the UN General Assembly passed a landmark resolution calling for a worldwide moratorium on executions. Amnesty International opposes the death penalty in all cases, unconditionally, regardless of the method chosen to kill the condemned prisoner. There is no such thing as a humane, fair, reliable or useful death penalty system (see *'The pointless and needless extinction of life': USA should now look beyond lethal injection issue to wider death penalty questions*, <http://www.amnesty.org/en/library/info/AMR51/031/2008/en>).

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

- expressing sympathy for any family of Virginia Moore, and explaining that you are not seeking to excuse the manner of her death or to downplay the suffering it will have caused;
- opposing the execution of William Earl Lynd, and noting the global abolitionist trend;
- noting that the trial testimony of the prosecution's expert witness has been called into question, with post-conviction defence experts casting serious doubts on the reliability of this testimony and on the aggravating circumstances of the crime which the state continues to emphasise in its pursuit of this execution;
- urging the Board of Pardons and Paroles to grant clemency to William Earl Lynd.

APPEALS TO:

State Board of Pardons and Paroles
2 Martin Luther King, Jr. Drive, SE
Suite 458, Balcony Level, East Tower
Atlanta, Georgia 30334-4909, USA
Fax: +1 404 651 8502
Email: Webmaster@pap.state.ga.us
Salutation: Dear Board members

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

PLEASE SEND APPEALS IMMEDIATELY.