

PUBLIC

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Further information on UA 144/04 (AMR 51/062/2004, 14 April 2004) - Death penalty / Legal concern

USA (Ohio)                      Gregory Lott (m), black, aged 42

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Gregory Lott has received a stay of execution from a federal court. He was scheduled to be executed in Ohio on 27 April 2004. He was sentenced to death in 1987 for the murder of 84-year-old John McGrath in 1986.

A three-judge panel of the US Court of Appeals for the Sixth Circuit stayed the execution, by two votes to one, so that Gregory Lott's claim of innocence could be further examined. The majority opinion held that there was enough evidence of prosecutorial misconduct at the original trial to warrant further review:

*"Lott has made a prima facie showing through documents that the prosecutor of Lott's case fraudulently failed to disclose at trial that the murder victim, before dying, identified a person with a different skin color from Lott as his assailant. The petitioner Lott has also made a prima facie showing that the victim identified his assailant as someone whom he had seen at his local barber shop and that the prosecutor at trial fraudulently refused to reveal this fact as well. In addition, the petitioner Lott has made a prima facie showing that the prosecutor at trial falsely stated to the court that the instrumentality that caused the victim's death – namely, kerosene lamp fluid – was not present in the victim's house and had to be brought into the house for the purpose of killing the victim by the petitioner Lott. The petitioner Lott has made a prima facie showing that the victim had a kerosene gas lamp in his home which he used, a lamp that would have used the type of kerosene lamp fluid which caused the victim's death. Lott has made a prima facie showing that the prosecutor made statements to the court at trial directly contrary to these facts which he knew to be true in order to use the lamp fluid to prove premeditation, an element required in order for the prosecutor to secure the death penalty. Through the citation and quotation of many Ohio opinions, Lott has also made a prima facie showing that the prosecutor has been guilty of similar misconduct in more than ten other cases. Taking the evidence as a whole, we conclude that petitioner's application makes a prima facie showing of constitutional... error that, if proved in the district court, may be sufficient to cause the fact finder to reach the conclusion beyond a reasonable doubt that the petitioner was not guilty of premeditatedly murdering the victim. Obviously, the egregious prosecutorial misconduct alleged here, if proved, must be deterred. So long as we value the rule of law, such conduct, if it occurred, cannot be tolerated in any kind of case – much less in death penalty cases."*

The state appealed to the US Supreme Court to overturn the stay, but the Court declined to intervene.

In an interview with a local newspaper last week, Gregory Lott continued to maintain his innocence. He said that he had burgled the home of John McGrath on two occasions, one of them shortly before McGrath was fatally wounded, but that he had not killed the elderly man.

Governor Bob Taft had not announced a clemency decision when the stay of execution was granted.

**No further action is requested at present. Many thanks to all who sent appeals.**