

PUBLIC

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Further information on EXTRA 35/03 (AMR 51/100/2003, 10 July 2003) and follow-up (AMR 51/109/2003, 30 July 2003) – Death penalty / Legal concern

USA (Indiana)

Darnell Williams (m), black, aged 36

Recent DNA testing supports Darnell Williams's claim that he was not present at the murders for which he was sentenced to death. The late Governor, Frank O'Bannon, had stopped Williams's execution shortly before it was due to be carried out on 1 August, in order to allow modern DNA testing on blood evidence. The results of these tests, released on 12 December, support the claim that the blood did not come from the murder victims as the jury was led to believe. However, a spokeswoman for the Attorney General has said that the State of Indiana will continue to pursue Williams's execution.

Henrietta Rease and John Rease were shot dead in their home in Gary, Indiana, on 12 August 1986. Darnell Williams and Gregory Rouster were tried together for the crime, with each claiming that the other had fired the fatal shots. Both were sentenced to death. There were two other defendants in the case. One was acquitted, and the case against the other was dropped after he testified for the state.

Darnell Williams has maintained that while he was involved in the crime, he was not present when the shooting occurred. His defence at trial was based on his lawyers' belief that no blood had been found on his clothing. For the state, however, a serologist (blood expert) had found three blood spots on Williams' shorts which were consistent with that of the murder victims, Gregory Rouster, and 45 per cent of the population. The serologist's report had been given to the defence before the trial, but the lawyers had failed to notice that the expert had found blood on the shorts. The prosecutor argued to the jury that the blood was key evidence pointing to the participation of Darnell Williams in the murders.

The trial prosecutor now opposes Darnell Williams's death sentence. On 28 July, appealing for clemency, Thomas Vanes told the state Parole Board: "I was there. I saw every bit of that trial, I heard every word spoken and from where I was in the courtroom, the blood evidence was critical... [it] was critical in getting Mr Williams the death sentence". John Gnajek, the foreman from Williams's trial jury, also opposes the death sentence. He wrote to Governor O'Bannon in July that "the blood was the key evidence that convinced me that Williams was a shooter. In fact, the blood was the only evidence presented by the state that actually placed Williams in the room at the time of the murders. During deliberations, I emphasized the blood evidence to persuade other jurors that Williams was in fact a triggerman and thus deserving of the death penalty".

Governor Frank O'Bannon, who died in September after suffering a stroke, had stepped in to stop the execution after the state Supreme Court had refused to do so. Two of the Court's Justices had dissented against the majority's decision. Justice Boehm said: "If Williams is correct that the blood was not from one of the victims, I would find the death penalty sufficiently unreliable that it should be set aside..." Justice Rucker wrote: "Should forensic testing reveal that the blood on Williams' clothing is not that of the victims, I would remand this case [for a new trial]".

As well as refusing to allow DNA testing, the courts were unwilling to consider evidence from a witness who says that Williams left the victims' house at the time of the murders. This witness was interviewed by the prosecution before the trial, but the defence lawyers did not listen to the interview tape despite knowing of its existence. The witness did not therefore testify at the trial. In addition, new evidence has undermined the credibility of an important prosecution witness presented at the trial. Derrick Bryant was the only witness who

claimed that Williams threatened the victims and participated in the murders. Psychiatric records and testimony from his relatives support the claim that he lied.

In June 2003, a judge ruled that Gregory Rouster could not be executed on the grounds that he has mental retardation. This follows the US Supreme Court's 2002 decision that it was unconstitutional to execute people with mental retardation. While Darnell Williams does not have such a claim, he was brain damaged at birth and at school was placed in special education classes for the "educable mentally retarded." Appeals against Williams's death sentence on the grounds of his trial lawyer's failure to prepare for the sentencing phase and to present the jury with evidence of his traumatic birth, his hyperactivity, his special education needs, his violent and abusive father, and his chaotic and impoverished upbringing have been unsuccessful.

Since the results of the DNA testing, jury foreman John Gnajek has said: "I am sad for the jury members because lack of technology and incomplete information led us to make what now is almost certainly a wrong decision... There has been an abundance of additional information revealed since the trial. This information includes the next door neighbour's taped statement that Williams was outside the house when the shots were fired, statements regarding the unreliability of the Derrick Bryant testimony and information regarding his mental incompetence, and mitigating circumstances in Mr Williams's background... I feel distraught that while I was confident then with my decision (given the information available), there is now a mountain of doubt about what degree of culpability should be levied on Mr Williams."

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

- expressing sympathy for the family and friends of Henrietta and John Rease, stating that you are not seeking to condone the manner of their deaths or to minimize the suffering they will have caused;
- noting that DNA testing ordered by the late Governor Frank O'Bannon supports Darnell Williams's claim that he was not present at the murders;
- noting that the trial prosecutor and the jury foreman support clemency, holding that the blood evidence was central to the death sentence;
- noting that two state Supreme Court Justices held that exculpatory DNA results should require a new trial or new sentencing;
- noting that one witness not heard at trial supports Darnell Williams's claim that he was not present at the shootings, and that the credibility of a key prosecution witness at the trial is in doubt;
- noting the failure of Darnell Williams's trial lawyers on the question of the blood evidence, and to present mitigating evidence;
- urging the Attorney General not to pursue Darnell Williams's execution, but to support clemency.

APPEALS TO:

Attorney General Steve Carter, Office of the Indiana Attorney General, Indiana Government Center South, 302 W. Washington St., Indianapolis, IN 46204, USA

Email: <http://www.in.gov/attorneygeneral/about/contact.htm>

Fax: +1 317 232 7979

Salutation: Dear Attorney General

COPIES TO: Diplomatic representatives of USA accredited to your country.

You may also send brief letters (not more than 250 words) to:

Letters to the Editor, *Indianapolis Star*, PO Box 145, Indianapolis, IN 46206-0145, USA

Fax: +1 317 444 6800

Email via website: <http://www.indystar.com/help/contact/letters.html>

PLEASE SEND APPEALS IMMEDIATELY.