

EXTRA 8/02

Death pen**USA (Texas) Windell Broussard, black, aged 41**

Windell Broussard is scheduled to be executed in Texas at 6pm on 30 January 2002. He was sentenced to death in 1993 for the murder of his ex-wife Dianna Fay Harris Broussard and her 10-year-old son, Corey Harris.

The victims were found outside their home in Port Arthur on 24 April 1992. They had been stabbed. Windell Broussard was identified as the assailant by his eight-year-old stepdaughter, Tocarra Harris, who survived the attack. Broussard has consistently maintained his innocence of the crime. He claims that Tocarra Harris, traumatized by the death of her mother, was mistaken in her identification of him as the perpetrator, of whom she caught only a glimpse in dim lighting. He is seeking to have biological evidence from the crime scene DNA tested under legislation which came into force in Texas last year. The prosecution is resisting this move and is pursuing Windell Broussard's execution without such testing.

Amnesty International does not know whether Windell Broussard did or did not commit this crime, and in any event opposes his execution unconditionally. It notes, however, the pattern of wrongful convictions in capital cases in the USA, in which contributory factors - also alleged in this case - have included inadequate defence representation, withholding of exculpatory evidence by the state, and the use of unreliable evidence. Although the organization believes that DNA testing cannot rid the death penalty of the risk of irrevocable error, it recognizes the potential of such testing to exonerate wrongfully convicted prisoners in the limited number of cases where DNA evidence is left at the scene of a crime.

Windell Broussard's lawyers are seeking a 180-day stay of execution so that blood stains from the crime scene and fingernail scrapings taken from Dianna Harris Broussard can be DNA tested. Amnesty International supports this move, while also appealing for the execution to be halted permanently.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases. It is a cruel and brutalizing punishment which offers no constructive contribution to society's efforts to combat crime. Since the USA resumed executions in 1977, it has put 752 men and women to death, more than 600 of them since 1990. Texas accounts for a third of the country's executions. See: *USA: Arbitrary, discriminatory and cruel: an aide-mémoire to 25 years of judicial killing* (AMR 51/003/2002, 17 January 2002).

Since 1973, 99 people have been released from death row in the USA after evidence of their innocence emerged. Others have been put to death despite serious doubts about their guilt. Such executions violate the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty which state: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts".

As the concern in the USA over the large number of wrongful convictions in capital cases has grown, particular attention has fallen on the potential for DNA testing techniques to exonerate or incriminate. Several states have enacted

legislation providing for DNA testing in criminal cases. During its 2001 session, the Texas legislature passed a bill, signed into law by Governor Perry, requiring the state to preserve all biological evidence in criminal cases and providing for post-conviction DNA testing.

DNA testing is undoubtedly an important forensic tool, and is to be supported. However, it provides no guarantee that irrevocable errors will be eliminated in capital cases. Only a relatively small number of murder cases produce any DNA evidence. Of the 99 people released from death rows since 1973, only 11 were found to be innocent on the basis of DNA testing.

Like any forensic techniques, DNA testing is vulnerable to human fallibility or misconduct. In the case of Charlie Alston in North Carolina, for example, the state lost potentially exonerating DNA evidence. The governor commuted his death sentence earlier this month hours before it was due to be carried out. Odell Barnes was executed in Texas in 2000. Among the most incriminating evidence against him was blood found on his clothing, identified by DNA testing as the victim's. Post-conviction investigation found that the blood contained a preservative using in the storing of blood, such as in laboratories. An expert concluded from the level of preservative that the blood did not come directly from the victim, but was deposited on the clothing *after* the crime.

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 Dianna Fay Harris Broussard and Corey Harris, and explaining that you are not seeking to minimize the gravity of the crime or the suffering it will have caused;
- opposing the execution of Windell Broussard and calling for clemency;
- noting the large number of wrongful capital convictions in the USA, and the growing national concern over this issue;
- noting that Windell Broussard has consistently maintained his innocence and has long been seeking DNA testing of evidence from the crime scene;
- noting the bill passed by the Texas legislature last year and signed into law by the governor, which requires the state to preserve all biological evidence in criminal cases and provides for post-conviction DNA testing;
- urging that, at the very least, in line with the intentions of the Texas legislature, Windell Broussard be granted a 180-day reprieve, so that DNA testing can be carried out.

APPEALS TO:

The Honourable Rick Perry
 Governor of Texas
 State Capitol, PO Box 12428, Austin, TX 78711, USA
Fax: +1 512 463 1849; or + 1 512 463 0039; or +1 512 463 1932
Salutation: Dear Governor

Gerald Garrett, Chairperson, Texas Board of Pardons and Paroles
 P.O. Box 13401, Austin, Texas 78711-3401, USA
Fax: +1 512 463 8120
Salutation: Dear Mr Chairperson

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

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

Letters to the Editor, *Dallas Morning News*, Box 655237, Dallas, Texas 75265, USA. Fax: +1 972 263 0456. E-mail: letterstoeditor@dallasnews.com

PLEASE SEND APPEALS IMMEDIATELY.