

EXTRA 30/02

Death penUSA (South Carolina)Richard Charles Johnson, aged 39, white

Richard Johnson is scheduled to be executed in South Carolina on 3 May 2002. He was sentenced to death for the murder of a police officer in 1985.

On 25 September 1985, Richard Johnson and Daniel Swanson, who had just met, left North Carolina in Swanson's recreational vehicle (RV), heading for Florida. The next day, they picked up two hitchhikers, Connie Hess and her boyfriend Curtis Harbert. A few hours later, Daniel Swanson was shot dead, after having sex in the back of the RV with Hess and Harbert. The following day, State Trooper Bruce Smalls stopped the vehicle, as Richard Johnson was drunk and driving erratically. The officer was shot and killed.

Johnson, whose blood alcohol was more than double the legal limit, had no gunpowder residue on his hands. The police failed to test Harbert - who was on the run from pending criminal charges in West Virginia - within the requisite time frame for such testing. Hess was never tested at all. After Harbert and Hess initially placed the blame on Richard Johnson, and Johnson stated that he had no memory of the events, Harbert and Hess were advised by the state that they would not be prosecuted if they testified against Johnson. This apparent deal was not disclosed to Johnson's lawyers.

Although Connie Hess gave varying versions of who shot Trooper Smalls, at Richard Johnson's 1986 trial she gave the version that he had been the gunman. Johnson was convicted and sentenced to death. Three days later, all charges against Harbert and Hess were dropped. Richard Johnson, on the advice of his lawyer, subsequently pleaded guilty to the murder of Daniel Swanson in order to avoid another death penalty trial. He was sentenced to life imprisonment for that murder.

At the 1986 trial, the prosecution also produced a jailhouse informant, Ronnie Stevenson, to testify that Johnson had admitted to him in jail that he had shot Trooper Smalls. Unbeknownst to the jury, Stevenson was a serial jailhouse informant with a history of giving false testimony.

In 1987, the state Supreme Court overturned the conviction on the basis of legal questions unrelated to the issues set out above. Harbert and Stevenson both testified at Johnson's 1988 retrial. Connie Hess was in a mental health care facility in Nebraska at the time. At the suggestion of the prosecutor, her testimony from the 1986 trial was simply read out to the jury. What the state had not told the defence, however, was that since the first trial, Connie Hess had recanted her testimony and stated that Curtis Harbert had shot both Swanson and Smalls. Unaware of this, the 1988 jury convicted Johnson and sentenced him to death again.

Richard Johnson was scheduled to be executed on 29 October 1999. On 22 October, Connie Hess signed an affidavit stating that her testimony at the 1986 trial had been false. She said that Curtis Harbert had shot Daniel Swanson in the back of the RV while she and Johnson were in the front. She stated that when Trooper Smalls stopped the vehicle, "Richard opened the door and asked the officer if he wanted to come inside the RV. I had become upset because I was afraid for Curtis. Curtis handed me the gun. When the officer started up into the RV, I shot him. The officer grabbed for his holster, but I shot him twice more." Connie Hess continued: "I lied about what happened because I did not

want to die. The solicitor told me I would fry if I had anything to do with it. I did not want to die. I am telling the truth now because I cannot let Richard Johnson die for something he did not do or have anything to do with at all."

Judge William P. Keesley was appointed to look into Hess's claims. He found that while Hess was unquestionably competent when she signed the affidavit, due to her mental illness and previous inconsistent statements, she was not a credible witness. In June 2001, the state Supreme Court agreed, by a 3-2 vote. Two justices dissented. One wrote: "I believe that to deny Johnson a new trial in the face of a confession by someone who was admittedly present when the murder was committed would constitute a denial of fundamental fairness shocking to the universal sense of justice." The second dissenter wrote that Johnson should get a new trial because the "the confession would probably change the result on retrial".

On 26 October 1999, three days before Richard Johnson was due to die, Bruce Smalls's mother signed an affidavit in which she said: "My son was precious to me. Why take an innocent man's life? Such a thing would dishonor my son's memory... Killing Mr Johnson, even if he is guilty, will not bring my son back and serves no purpose. Killing Mr Johnson if he is innocent would be an abomination."

Amnesty International opposes all executions unconditionally. It also points out that the United Nations Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty 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." This execution would clearly flout this safeguard. Indeed, as the state Supreme Court noted, even Judge William Keesley admitted that "the crime may have happened differently" from the scenario used to convict Richard Johnson.

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

- expressing sympathy for the family of State Trooper Bruce Smalls, explaining that you are not seeking to excuse the manner of his death;
- expressing deep concern that the state intends to kill Richard Johnson, despite continued doubts about his guilt, noting the dissents in the state Supreme Court, and the United Nations safeguards;
- expressing concern that the 1988 jury never knew that Connie Hess had recanted her 1986 trial testimony;
- pointing out that co-defendant and jailhouse informant testimony is notoriously unreliable, and that such testimony has been the source of many errors around the country in death penalty cases;
- urging the Governor not to participate in an irrevocable injustice, but to commute Richard Johnson's death sentence.

APPEALS TO:

Governor Jim Hodges
 Office of the Governor
 PO Box 11829, Columbia, SC 29211, USA
Fax: + 1 803-734-9413
E-mail (via website): <http://webform.govoepp.state.sc.us>
Salutation: Dear Governor

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

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

The State newspaper, Letters to the Editor, P.O. Box 1333, Columbia, SC 29202,
USA

Fax: + 1 803 771-8639

E-mail: stateeditor@thestate.com

PLEASE SEND APPEALS IMMEDIATELY.