

PUBLIC

AI Index: AMR 51/163/2004

19 November 2004

UA 313/04 Death penalty / Legal concern

USA (Texas) **Frances Elaine Newton (f), black, aged 38**

Frances Newton is scheduled to be executed in Texas on 1 December 2004. She was convicted in October 1988 of the murder of her husband and two children in April 1987.

Frances Newton, convicted on circumstantial evidence, maintains that she did not kill her husband and children. Her current lawyers, who have only recently taken the case, are appealing for a 120-day reprieve of execution in order to be able to properly investigate her claim, an investigation they say has not been carried out to date because of the inadequacy of her prior legal representation.

On 7 April 1987, a police officer responding to a report of a possible shooting in a Houston apartment complex found 21-year-old Frances Newton in her apartment with her cousin, Sondra Nelms. Also in the apartment were the bodies of Frances Newton's husband, Adrian Newton, her seven-year-old son, Alton, and 21-month-old daughter, Farrah. All three victims had been shot.

At the trial, Sondra Nelms testified that on the night of the shootings Frances Newton had placed a bag in another house shortly before the two of them went to the Newton's apartment where they found the bodies. The bag was later found to contain a gun, and testimony at the trial indicated that it was the murder weapon. An expert testified that the lower front part of Frances Newton's skirt contained nitrites, consistent with a gun having been fired close to it. An insurance agent testified that in March 1987 Frances Newton had purchased a life insurance policy on herself, her husband and her daughter.

The petition for a 120-day reprieve argues that the testimony of the state's trial witnesses, taken together, suggests that either Frances Newton was not in the apartment at the time of the shooting, or that if she was she would have had, at most, 20 minutes to shoot her husband and children, clean herself up, compose herself, and leave the apartment to go to her cousin's home. There was no blood found on Frances Newton's clothing, hands, or car, despite the fact that the victims had been shot at close range. No gunpowder residue was found on her hands or sweater. There was also no evidence that someone had undertaken a cleanup at the apartment.

Frances Newton was prosecuted in Harris County, where the city of Houston is located. In March 2003, an independent audit of the Houston Police Department (HPD) crime laboratory revealed serious defects in the lab's DNA analysis section, including poorly trained staff relying on outdated scientific techniques. Several cases suggest that the lab's problems extended beyond its DNA section, for example into its ballistics expertise. (see *Dead wrong: The case of Nanon Williams, child offender facing execution on flawed evidence*, <http://web.amnesty.org/library/Index/ENGAMR510022004>). The ballistics evidence central to the Newton case was processed at the HPD. On 21 October 2004, a judge on the Texas Court of Criminal Appeals said that there should be "a moratorium on all executions in cases where convictions were based on evidence from the HPD crime lab until the reliability of the evidence has been verified". A Texas Senator and the Houston police chief have made similar calls.

At the trial, forensic experts testified that the nitrites found on Frances Newton's skirt could have come from fertilizer. During the day of the murder, Farrah Newton had stayed with her uncle while her mother was at work. The uncle had a large garden, which could account for the transfer of fertilizer particles to the lower front side of Frances Newton's skirt. Her lawyers argue that a 120-day reprieve could be used to conduct further forensic testing to establish whether in fact the gun was the murder weapon or the nitrites on the skirt were derived from a source other than gunpowder residue.

According to the reprieve petition, Adrian Newton was a drug user and drug seller and there is evidence that some sort of trouble in this regard was brewing before the murder. This was the reason Frances Newton gave for removing the gun she had found in their apartment. However, the police apparently did not investigate the possibility that the murders were drug-related.

Sondra Nelms, who was with Frances Newton immediately after she was supposed to have shot her husband and children, has signed an affidavit expanding on her trial testimony. She describes Frances Newton's shock and horror at finding the bodies (a reaction confirmed by the police at the scene) and concludes that "I know in my heart that after watching the reaction of Frances upon discovering her husband and children, there is absolutely no way she had any involvement in their deaths."

Texas accounts for 336 of the 944 executions carried out in the USA since 1977, 81 of whom were prosecuted in Harris County. Amnesty International opposes the death penalty in all cases, regardless of guilt or innocence. Since 1973, 117 people have been released from US death rows after evidence of their innocence emerged. Others have gone to their deaths despite serious doubts about their guilt.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words, including Frances Newton's prisoner number, #922, in your appeals:

- expressing concern about the reliability of Frances Newton's conviction;
- noting that Frances Newton was prosecuted in Harris County and ballistics evidence central to the state's case was processed at the troubled Houston Police Department crime laboratory;
- calling on the Board and the Governor to stop this execution;
- calling for, at minimum a 120-day reprieve to allow Frances Newton's claim of innocence to be properly investigated;
- calling for commutation of the death sentence.

APPEALS TO:

Rissie Owens, Presiding Officer, Board of Pardons and Paroles, 1300 11th St., Suite 520, P.O. Box 599, Huntsville, TX 77342-0599, USA.

Fax: +1 936 291 8367, Salutation: Dear Ms Owens

Elvis Hightower, Board Member, Board of Pardons and Paroles, 1300 11th St., Suite 520, P.O. Box 599, Huntsville, TX 77342-0599, USA.

Fax: +1 936 291 8367, Salutation: Dear Mr Hightower

Charles Aycock, Board of Pardons and Paroles, 5809 S. Western, Suite 237, Amarillo, TX 79110, USA

Fax: +1 806 358 6455, Salutation: Dear Mr Aycock

Linda Garcia, Board of Pardons and Paroles, 1212 N. Velasco, Suite 201, Angleton, TX 77515, USA

Fax: +1 979 849 8741, Salutation: Dear Ms Garcia

Juanita Gonzalez, Board of Pardons and Paroles, 3408 S. State Hwy. 36, Gatesville, TX 76528, USA

Fax: +1 254 865 2629, Salutation: Dear Ms Gonzalez

Jose L. Aliseda, Board of Pardons and Paroles, 1111 West Lacy St., Palestine, TX 75801, USA

Fax: +1 903 723 1441, Salutation: Dear Mr Aliseda

Governor Rick Perry, Office of the Governor, PO Box 12428, Austin, Texas 78711-2428, USA

Fax: +1 512 463 1849. Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.