

URGENT ACTION

OKLAHOMA EXECUTION DELAYED AS DOUBTS PERSIST

Jeffrey Matthews, a 37-year-old man, is scheduled to be executed in the US state of Oklahoma on 20 July. He was sentenced to death for the murder of his great-uncle in 1994.

Earl Short, aged 77, was shot dead and his 75-year-old wife Minnie Short was knifed during a burglary of their home on 27 January 1994. Minnie Short survived and told police that there had been two white male intruders, but could not identify them. She said that the one who had wounded her had made a telephone call from the house. Police traced the call as having been made by Tracy Dyer, a 20-year-old man, who told them that he and Jeffrey Matthews, Earl Short's 21-year-old great-nephew, were the burglars and that Matthews had shot Earl Short. Dyer later pleaded guilty to murder under a plea agreement. He was sentenced to life imprisonment and will be eligible for parole in 2011.

Unlike Tracy Dyer, whose fingerprints were found at the crime scene, there is no physical evidence – hair, fibre, blood, DNA, fingerprints, or gunshot residue – linking Jeffrey Matthews to the crime. In 2007, one of the police officers involved in investigating the crime signed a sworn statement saying that he believed “there is a reasonable likelihood that Matthews is innocent” (see overleaf).

Jeffrey Matthews was tried in 1995, Tracy Dyer testified against him, and the jury voted that Matthews be sentenced to death. In 1998, the Oklahoma Court of Criminal Appeals ordered a new trial because of an error in relation to the admission of evidence. Meanwhile in 1996, Tracy Dyer had retracted his trial testimony and asserted that Matthews had not been involved in the murder or burglary at all. He said that he, Dyer, had attacked Minnie Short and that his accomplice, whom he did not name, had shot Earl Short. Dyer alleged that he had lied at the trial because he had been beaten in jail and threatened by guards with further violence or death if he did not cooperate in the case against Matthews. In his signed statement, he added that, by reaching his plea agreement, he was assured of being transferred out of the jail and of avoiding the death penalty. Jeffrey Matthews was retried in 1999. This time, despite the threat that the prosecutor would revoke the plea agreement, Tracy Dyer testified that Matthews was innocent. He said that he had lied at the original trial, saying: “I’ve lived with a guilty conscience for this whole time. I ain’t going to live with it no more”. Nevertheless, the jury convicted Jeffrey Matthews and sentenced him to death.

Jeffrey Matthews was scheduled to be executed on 17 June 2010. On 26 May, the state Pardon and Parole Board voted by three votes to two to deny clemency. On 16 June, Governor Brad Henry granted a stay of execution until 20 July to allow the defence lawyers to examine fingerprint evidence. The lawyers had sought to have unidentified fingerprints obtained at the crime scene compared to those of other possible suspects. In 2008 they were told that the prints had been lost or destroyed. However, 10 days before the execution, they were located.

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Explaining that you are not seeking to excuse the murder of Earl Short or to downplay the suffering caused;
- Noting that Jeffrey Matthews was convicted on entirely circumstantial evidence and that Tracy Dyer, who was indisputably involved in the crime, has long said that Jeffrey Matthews was not present and did not shoot Earl Short;
- Welcoming the stay of execution granted by the Governor, and calling on him to extend this reprieve and to do all within his power to have the Oklahoma Pardon and Parole Board reconsider their vote against clemency.

PLEASE SEND APPEALS BEFORE 20 JULY 2010 TO:

Governor Brad Henry, State Capitol Building, 2300 N.
Lincoln Blvd., Room 212, Oklahoma City, OK 73105, USA
Fax: +1 405 521 3353
Salutation: Dear Governor

Also send copies to diplomatic representatives of the USA accredited to your country. Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

At Jeffrey Matthews' 1999 trial, the jury handed down a guilty verdict in the early hours of Saturday 10 April. The sentencing was set for the following Monday, and the judge sent the jurors home with the order that they not discuss the case with anyone. It was revealed after the trial, however, that one of the jurors (Juror #2) had telephoned an alternate (substitute) juror who had earlier been discharged from service in the case. Juror #2 told him of the verdict, and the length of the deliberations, to which he responded that the jury had done the right thing and added that articles in the newspapers supported a finding of guilt. The defence filed a motion for a new trial. The judge held a hearing at which two other jurors reported that Juror #2 had told them of her conversation with the alternate juror. One of these jurors (Juror #8) added that this information had not altered her sentencing decision because she had already made up her mind to vote for the death penalty before the sentencing phase began. Upholding the death sentence in 2009, the US Court of Appeals for the 10th Circuit found that Juror #2 had "undoubtedly engaged in misconduct implicating the defendant's constitutional due process right to a fair trial". However, the federal court ruled that it could not conclude that Juror #2's conversation with the alternate juror, "however inappropriate, substantially influenced the jury's sentence of death". On the question of Juror #8's admission, the state courts had earlier ruled that this information was inadmissible under Oklahoma law. The 10th Circuit ruled that it could not say, under the "deferential standard" owed by federal to state courts under US law, that this was "reversible error".

The appeal courts have also rejected claims that Jeffrey Matthews' legal representation at trial was inadequate. For example, the defence presented no witnesses at the innocence/guilt phase of the trial, including possible alibi witnesses. In addition, they did not cross-examine or call as a defence witness Tracy Dyer to elicit from him information that might have helped explain incriminating circumstantial evidence used against Jeffrey Matthews. For example, a medicine bottle belonging to Minnie Short was found in Matthew's home the day after the crime. Dyer had allegedly given Matthews the bottle after the crime. Another key piece of evidence was that five months after Jeffrey Matthews was arrested, the murder weapon and another gun stolen in the burglary were found buried in the ground just beyond the backyard of his home. In a sworn statement signed in 2007, Michael Mars, a former Deputy Sheriff who was involved in the 1994 investigation of the crime at the Short's home, said that he found this evidence "suspicious", and suggested that "if the guns had been planted by Matthews, the signs of fresh digging would have been much more apparent when the premises were searched upon his arrest as opposed to half a year later." He added that, in his view, it was plausible that others had planted the weapons there after Matthews was arrested.

In his statement, Michael Mars described the police handling of the case as "sloppy", claiming that officials had been "very quick to target Matthews" to the exclusion of other possible suspects and that some of the officers appeared "highly motivated from the outset to pin Matthews with this crime". He claimed that after Tracy Dyer was brought into the police station, the Sheriff had taken the "highly unusual" step of telling 10 deputies, including Mars, to leave and go for dinner. Upon their return they were informed that Dyer had identified Matthews as his accomplice, but that his statement had not been tape recorded as was normal policy. In addition, Mars stated that he found Tracy Dyer's allegations of abuse in pre-trial custody to be "plausible", adding that "I can attest that I have seen a detention deputy both physically and verbally abuse prisoners many times".

International safeguards require that the death penalty not be imposed if guilt is not "based upon clear and convincing evidence leaving no room for an alternative explanation of the facts". Amnesty International opposes the death penalty, regardless of guilt or innocence. The USA has carried out 1,217 executions since resuming judicial killing in 1977, during which time more than 125 people have been released from death rows around the country on grounds of innocence. Oklahoma accounts for 92 of these executions, and 10 of the wrongful convictions. There have been 29 executions in the USA this year, one of them in Oklahoma.

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