

PUBLIC

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UA 89/07 Death penalty / Legal concern

USA (Ohio) **James J. Filiaggi (m), white, aged 41**

James Filiaggi is scheduled to be executed in Ohio on 24 April. He was sentenced to death in 1995 for the murder of his former wife, Lisa Huff Filiaggi, who was shot on 24 January 1994.

James Filiaggi pleaded not guilty by reason of insanity for his trial in 1995. While he was being transported from the jail to the court for the start of the proceedings on the morning of 11 July 1995, James Filiaggi was made to wear an electro-shock stun belt. On the way to the courthouse, the stun belt was activated, apparently by accident. The trial was suspended until later the same day. When it resumed, James Filiaggi waived his right to a trial by jury, meaning that under Ohio law he would be tried by a three-judge panel instead.

On the following day, at the request of the defence lawyers, the court ordered an evaluation of James Filiaggi's competence to stand trial, to determine if he understood the proceedings against him, and was able to consult with his lawyers and assist in his defence. At a hearing on 13 July 1995, Dr Thomas Haglund, a forensic psychologist, testified that he believed Filiaggi was competent to stand trial, but also testified that shortly after his examination of Filiaggi the previous afternoon, he had told the defence lawyers that he believed their client was not competent. Dr Haglund testified that his uncertainty about the defendant's competence warranted further evaluation. However, the court rejected this recommendation, and denied a request by the defence lawyers, who were having difficulty communicating with their client, that Filiaggi receive a psychiatric evaluation. Over the course of the trial, the defence lawyers, one of whom was a doctor, repeatedly requested this further examination. Their requests were rejected, along with their motion for mistrial. With this latter motion, the defence lawyers filed an affidavit from a psychiatrist who had examined James Filiaggi on 15 July 1995. He stated his "unequivocal opinion" that Filiaggi had been incapable of participating in his own defence for "at least two days" after the incident. He described Filiaggi as "aggressive, confused, disoriented and often non-responsive to simple verbal questions".

At the trial, the defence presented testimony from three psychiatrists and a psychologist to support the insanity plea. All four testified that in their opinion, James Filiaggi suffered from bipolar disorder, and intermittent explosive disorder (an impulse control disorder). For the state, a forensic psychiatrist testified that on the day of the crime, the defendant was not suffering from any mental disorder that would meet the legal test for insanity under Ohio law. He concluded that while Filiaggi had been contemplating suicide at the time, he had decided to kill his former wife instead. The judges rejected the insanity defence, finding that the defendant "knew of the wrongfulness of his acts in this case", and sentenced James Filiaggi to death.

In April 2006, a three-judge panel of the US Court of Appeals for the Sixth Circuit upheld the conviction and death sentence, by two votes to one. The dissenting judge called into question the trial court's repeated denial of defence motions for further evaluation of their client. He stated: "The court's predominant rationale was that Filiaggi was malingering, evidenced by the court's observation of Filiaggi and the statements of several guards. This conclusion is surprising, given that the aforementioned psychologist [Dr Haglund] who evaluated Filiaggi, and whose evaluation formed the basis for the court's determination of competence, testified specifically that Filiaggi was not malingering. The psychologist credited Filiaggi's belief, for instance, that he was being shocked by electricity even after the belt had been removed."

The dissenting judge noted that while there was some evidence that James Filiaggi was competent, such evidence does not absolve a trial court of its constitutional obligation to hold a competency hearing in response to evidence coming to light during the proceedings. The judge argued that, in a case such as this

where two lawyers, a medical doctor (the other lawyer), and a court-appointed forensic psychologist “all agree that a further competency evaluation is in order, and when such an evaluation is requested again and again on very specific bases..., a trial court judge is not free to focus exclusively upon whatever evidence suggests competence and otherwise turn a deaf ear. Such conduct directly contradicts [constitutional law], and denies a fundamental tenet of due process to a defendant facing the severest sanction known to the civilized world”.

James Filiaggi has given up further appeals against his death sentence. He had a clemency hearing in early 2007 before the Ohio Parole Board, as every condemned Ohio inmate receives such a hearing whether or not they request one. James Filiaggi did not submit a clemency petition, and instructed his counsel not to say anything on his behalf at the hearing. The Board rejected clemency.

BACKGROUND INFORMATION

The stun belt, as worn by James Filiaggi at his 1995 trial, is a remote controlled device that on activation delivers a 50,000 volt, three to four milliampere shock, lasting eight seconds. This high-pulsed current enters the wearer’s body at the site of the electrodes, near the kidneys, and passes through the body, causing a rapid electric shock. The shock causes incapacitation in the first few seconds and severe pain rising during the eight seconds. Amnesty International has called for the stun belt to be banned (USA: Cruelty in control?, June 1999, <http://web.amnesty.org/library/index/engamr510541999>). In its findings in 2000 on the USA’s compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Committee against Torture also called on the USA to abolish this device.

Amnesty International opposes the death penalty in all cases, unconditionally. Today, 128 countries are abolitionist in law or practice. In contrast, there have been 1,070 executions in the USA since it resumed judicial killing in 1977, 24 of which have been carried out in Ohio. If this execution goes ahead, it would be the first in Ohio under the governorship of Governor Ted Strickland.

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 Lisa Filiaggi, explaining that you are not seeking to condone the manner of her death or to downplay the suffering caused;
- opposing the execution of James Filiaggi, and the death penalty in general;
- expressing concern at the use of the electro-shock stun belt in this case and evidence of its contribution to doubts about the defendant’s competency to stand trial;
- calling on Governor Strickland to stop this execution, and to support a moratorium on executions in Ohio.

APPEALS TO:

Governor Ted Strickland
Governor’s Office, Riffe Center, 30th Floor, 77 South High Street, Columbus, OH 43215-6108, USA

Fax: +1 614 466 9354

Email via: <http://www.governor.ohio.gov/Default.aspx?tabid=101>.

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.