

£UNITED STATES OF AMERICA

@The case of Gary Tyler, Louisiana

Introduction

Gary Tyler, black, now aged 36, is serving a life prison sentence in Louisiana State Penitentiary. He was convicted in November 1975 for the murder of 13-year-old Timothy Weber, a white schoolboy who was shot during racial fighting in 1974. Tyler, who was 16 at the time of the incident, has consistently denied involvement in the crime. Since his trial, serious doubts have been raised about the evidence on which he was convicted. Nineteen years after his conviction he is again seeking a pardon.

Amnesty International is deeply concerned at evidence which suggests that a serious miscarriage of justice occurred either as a result of or exacerbated by his race and the racially charged atmosphere at the time of the events, the seriously deficient legal representation which Gary Tyler received at his trial before an all-white jury, and new evidence that has come to light over the years which suggests that Gary Tyler did not shoot the victim.

General Background

The United States Supreme Court ruled in 1954 that schools should no longer be racially segregated: in order to integrate schools black students were taken by bus from their living areas to schools in white populated areas. However, the authorities of Destrehan High School strongly resisted this policy and only in the 1960s - and as a result of a Court Order - the school finally started the process of integration. In 1974, the tensions created by the resistance of whites to desegregation resulted in frequent clashes in which the Klu Klux Klan, the white supremacist organization, played a leading role.

On 7 October 1974 students at Destrehan High School, St Charles Parish, Louisiana, were sent home earlier than usual due to racial disturbances during the day. As the buses carrying black students back to their homes were leaving the school they were attacked by a group of 100 to 200 white people throwing stones and bottles at the buses.

Timothy Weber was standing near the buses with his mother who had come to collect him. A shot was heard and he fell wounded; he died a few hours later in hospital. A man standing next to him was slightly scratched in the arm, allegedly by the same bullet.

Gary Tyler was one of the black students on the bus from which the shot was allegedly fired. This was not his regular bus but he had got into it as the situation had become increasingly dangerous. There were some 65 students on the bus, well over its normal capacity.

The police, who had been called by the school principal, ordered the bus to park around the corner. All students were ordered to get off the bus and male students were thoroughly searched immediately; girl students were searched later at the police station. The bus was searched on two different occasions for over three hours by approximately seven policemen and no gun was found. The bus was then taken to the police station along with the students.

Gary Tyler was taken in a police car as he had been charged with disturbing the peace (he had complained about the police harassment of a fellow black student).

At the police station the students were questioned and released. One of them, Nathalie Blanks, stated that she had been seating next to Tyler and had seen him fire a gun into the crowd; she indicated to the police the exact place where she had been seating. It was after Blanks' testimony that the police "found" a .45 automatic gun stuffed inside the seat, through a long, clearly visible tear in the seat. The seat had been previously searched, shaken and turned upside down several times and nothing had been found.

Gary Tyler was detained in the police station and reportedly badly beaten. However, he did not make any statement implicating himself in any way.

Charges and trial

Gary Tyler was charged with first degree murder, a capital crime. The first degree murder charge meant that his case had to be tried in the adult criminal court rather than the juvenile court. A lesser charge, including second-degree murder, would have been tried in juvenile court given Tyler's young age. The most severe punishment imposed would have been juvenile supervision until the age of 21 at a juvenile detention facility.

Gary Tyler was tried by an all-white jury with members of the black community deliberately excluded from the jury. The prosecution relied mainly on the testimony of one girl student, Nathalie Blanks, who was in the same bus with Tyler. She testified to having seen Gary Tyler fire the gun but after the trial she recanted her testimony. Other students who also testified against Tyler have later recanted, saying that they were coerced by the police to making the statements.

Gary Tyler was represented by a white lawyer who specialized in civil cases. He spent a total of about one hour with Gary Tyler during the whole year previous to the trial. Furthermore, he did not interview witnesses, present any expert witnesses or conduct tests on physical evidence offered by the state; he failed to object to gross errors committed at trial. His

failure to object to the judge's instructions to the jury meant that later appeals have been lost on this issue.

The forensic evidence presented by the prosecution was of questionable quality and did not clearly and definitely implicate Gary Tyler in the murder.

For example, the alleged murder weapon, a .45 automatic gun, had been allegedly stolen from a police firing range used by St Charles Parish policemen, who arrested Gary Tyler and were in charge of investigating the murder. It had no fingerprints and there was no evidence showing whether it had been recently fired. Despite a very thorough search by several policemen it had not been found until after Nathalie Blanks indicated on which seat she (and allegedly Tyler) was sitting. It was then found, hidden in a seat through a slit in the cover. However, Gary Tyler did not have a knife or any cutting instrument and none of the knives found in the bus had his fingerprints. There were no tests performed on the bullet to determine whether it was in fact the one that had killed Timothy Weber. Gary Tyler's gloves had, until the day before the trial, been deemed by the prosecution as not having any evidence on them relevant to the charge against him. On that day however, the state informed the defence that 3-4 particles of nitrates had been found in them. The gloves had been subjected to an unreliable testing procedure which the Federal Bureau of Investigation (FBI) had not used for years. Also, the alleged particles were so scarce that there was not enough left for the defense to carry out tests.

In order to get a conviction of first degree murder the state was required to prove that Tyler had acted "with a specific intent to kill or to inflict great bodily harm on more than one person". The slight injury suffered by the man standing next to Timothy Weber therefore became important.

Gary Tyler was convicted and sentenced to death on 14 November 1975.

Appeals

Louisiana's death penalty law was declared unconstitutional by the United States Supreme Court in 1976. In January 1977 the Supreme Court of Louisiana annulled the death sentence imposed on Gary Tyler as a result of this ruling. However, it affirmed his conviction for first degree murder. His death sentence was commuted to life imprisonment without eligibility for parole, probation or suspension of sentence for a period of 20 years.

As a result of a new appeal the US Court of Appeals, Fifth Circuit, held in June 1980 that "Tyler was convicted on the basis of an unconstitutional charge" and that his trial had been "fundamentally unfair". The court reached this decision on a finding that the trial judge had erred when he instructed the jury to find that the defendant, Tyler, had "intended the natural

and probable consequences of his act" ie to kill or inflict great bodily harm on more than one person.

After examining rulings in other cases the appeal court concluded that "the threshold issue for this court is whether the [judge's instruction] given here so infected the trial as to render it fundamentally unfair. We conclude that it did."

The court found that, as Tyler's lawyer had failed to object to the judge's erroneous instruction at the time of the trial, this error could not normally be redressed on appeal. However, they nevertheless vacated his conviction and ordered a retrial on the ground that the lawyer's failure to object was so serious that it led to a miscarriage of justice.

The state appealed against this decision and on 27 April 1981 the US Court of Appeals, Fifth Circuit reversed its previous decision. It did not dispute that the judge's charge to the jury was unconstitutional and reiterated its view that the trial had been "fundamentally unfair" but reversed its previous decision to order a new trial on the issue of the defense lawyer's failure to object to the judge's instruction at the appropriate time.

The US Supreme Court subsequently declined to hear the case. [NB The US Supreme Court receives thousands of appeals each year but selects only some for consideration. Others are not reviewed by the court]

Further proceedings in the case

In 1989 Gary Tyler petitioned the Louisiana Board of Pardons (LBP) to be granted pardon. This was the only means by which he could have his sentence reduced to one which gave him the possibility of parole. In October 1989 the LBP heard testimony for several hours but postponed acting on the case to allow time for the state Attorney General's office to answer questions raised about key evidence used in Tyler's trial.

On 14 December 1989 the LBP voted 3-2 to recommend then Governor Charles Roemer to reduce Gary Tyler's sentence from life imprisonment without parole for 20 years to a 60 year prison sentence. The reduction of the sentence would make the prisoner eligible for parole on completion of a third of the sentence, ie 20 years. This apparent contradiction comes from a Louisiana Statute which provides that no person who is serving a life sentence shall be eligible for parole unless the sentence is first reduced to a fixed number of years by the Louisiana Board of Pardons and the Governor. According to the Board, therefore, Gary Tyler will not be eligible for parole after he has served 20 years **unless** he has first received a pardon.

On 24 January 1990, however, Governor Roemer rejected the recommendation of the LBP. He argued that Gary Tyler had had a fair trial by all legal standards. This statement did not

acknowledge the finding by the Court of Appeal in two decisions that Tyler had been "convicted on the basis of an unconstitutional charge" which had "infected the trial" to the point of rendering it "fundamentally unfair".

He added that Tyler had not made serious efforts towards rehabilitation because he had not enrolled in educational programs while in prison (a charge Tyler strongly rejects). In May 1991 Gary Tyler passed his exams to obtain a secondary education certificate (General Education Diploma, GED). He has been very involved in the prison Drama Club and has taken a printing course in the prison; he has been offered a job in a printing company in California to be taken up on his release.

A new application for a full pardon was filed on 27 February 1991. In it Gary Tyler requested clemency "because he is innocent of the charge against him, trial was fundamentally unfair and he was denied the presumption of innocence, the Courts have refused to take action because of an error made by his trial attorney and his trial attorney was unable to remember why he made the error...". The LBP considered the case and on 4 December 1991 it unanimously recommended to reduce Gary Tyler's sentence to 50 years and to restore the benefit of reduction for good behaviour making him immediately eligible for parole.

Governor Roemer had two alternatives open to him regarding Tyler's case: to decide on the case (in favour or rejecting) or do nothing thus leaving the decision to his successor, Edwin Edwards. On 13 January 1992, shortly before leaving office, Governor Roemer denied clemency to Gary Tyler. Unlike previous occasions he gave no reasons for his decision and refused to talk to the press about it.

Roemer's denial meant that Governor Edwards could not consider Tyler's case for one year. The rules of the LBP state that after a petition is denied the prisoner cannot re-apply until a year later. The Board would then consider the case and make a recommendation which would then go to the Governor. This process takes around a year to be completed.

In 1989 and 1991 Amnesty International wrote to the Louisiana Board of Pardons and Governor Roemer urging them to grant a pardon in the interest of justice.

Latest developments

Gary Tyler has applied again for a pardon to the Louisiana Board of Pardons. This is his third attempt to be granted pardon. The hearing before the Board is likely to take place in late January 1995. The Board's recommendation would go to Governor Edwin Edwards for final decision. Governor Edwards' term of office ends in March 1995.

Gary Tyler's original sentence included eligibility for parole after serving 20 years. However, the state of Louisiana is now contesting this issue and denying that he will be automatically eligible for parole in November 1995, when he will have served 20 years in prison. His attorneys are currently pursuing litigation on this issue.

There are still sectors in Louisiana's society that strongly oppose the granting of a pardon to Gary Tyler but, on the other hand, his previous application elicited support from, among others, church groups, members of the City of New Orleans Council, Louisiana Senators and the National Lawyers Guild.

WHAT YOU CAN DO

Amnesty International believes that Gary Tyler was denied a fair trial and that racial prejudice played a major part in his prosecution. The racial and political context in which the offence and prosecution took place brings the case under Article 1(b) of Amnesty International's statute, by which the organization seeks a fair trial for political prisoners.

Write to the Louisiana Board of Pardons:

- ◆ Pointing out that the US Court of Appeal, Fifth Circuit, held in two decisions that Gary Tyler had had a fundamentally unfair trial. However, his conviction was upheld on a technical point: that his trial lawyer had failed to present an objection at the right time (about the judge's instruction to the jury)
- ◆ Urging the Louisiana Board of Pardons to make a unanimous recommendation in favour of granting a pardon to give Governor Edwards a clear signal to go along with the Board's recommendation
- ◆ Point out that AI believes that grave doubts about his guilt remain 19 years after his conviction at the age of 16 and that the interest of justice would best be served by granting his petition for pardon
- ◆ Express sympathy for the victim and his relatives

and to **Governor Edwin Edwards**, using some of the points above:

- ◆ call on him to grant a pardon to Gary Tyler, who has spent more than half his life in prison

- ◆ Send copies of your letter to the US Embassy in your country.

- Louisiana Board of Pardons*
504 Mayflower Street

Baton Rouge, LA 70804
U S A

* Members:

Cynthia Fayard - Chair
Lynise Kennedy
Nettie Millican
John Grasso
Larry Clark

- Governor Edwin Edwards
P O Box 94004
Baton Rouge, LA 70804
USA

