

**PUBLIC**

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**Death Penalty/Legal concern**

**28 June 2005**

**USA (ALABAMA)**

**Anthony Ray Hinton (m), black, aged 49**

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Anthony Hinton has been on death row in Alabama for 19 years for crimes he may not have committed. Three leading experts have concluded that the state's crucial ballistics evidence at the trial was wrong. Hinton's lawyers have recently filed an appeal in the Alabama Court of Criminal Appeals seeking to get his conviction and death sentence overturned. If this fails, the case will go to the federal courts. Because of the deference that federal courts are required to give state court decisions in the USA, the current appeal is seen as his best chance to obtain a judicial remedy for his claim of innocence.

In 1985, there were several robberies of fast food restaurants in and around Birmingham, Alabama. During one, in February 1985, night manager John Davidson was fatally shot. An assistant manager of another restaurant, Thomas Vason, was shot and killed on 2 July 1985. Then, on 25 July, Sidney Smotherman, the night manager of Quincy's restaurant, was shot, but survived. He later identified Anthony Hinton as his assailant from a police photo line-up. However, there are serious questions about the reliability of this identification. Smotherman had originally described to police someone substantially smaller than Hinton. Furthermore, on the night of the crime, he had initially thought that a passing driver who offered help was the assailant. He later misidentified this man's car, described his attackers as "they", and gave varying descriptions of the weapon used to shoot him. Research shows that eyewitness identifications, especially where the circumstances are traumatic and the identification cross-racial, as in this case, are unreliable.

Police took a .38 revolver belonging to Anthony Hinton's mother, Beulah Hinton, from her home, and sent it to the state Department of Forensic Sciences (DFS) to be tested against the six bullets recovered from the three crime scenes. The DFS concluded that the gun had fired the bullets. Anthony Hinton was charged with the murders of John Davidson and Thomas Vason. The only evidence linking Hinton to those two crimes was the DFS ballistics evidence. The trial court only approved \$500 for the defence to do its own ballistics investigation. The defence lawyer was forced to hire a visually-impaired civil engineer with no firearms identification expertise.

Anthony Hinton had no history of violent crime, maintained his innocence, and even passed a police lie detector test. On the night of the Quincy's shooting, he had been at his workplace, a secure warehouse, 15 miles (24km), or at least 20 minutes' drive from the crime scene. His employer and co-workers confirmed that he had arrived at the security gate at 11.57pm, clocked in to work at midnight, been given a work assignment at 12.10am, checked by his supervisor at 12.40am, and again at least once every hour during the six-hour shift. The Smotherman crime began at 12.14am. However, the jury convicted Anthony Hinton and sentenced him to death.

Alabama provides no legal assistance to indigent death row prisoners so it took Anthony Hinton years to obtain volunteer counsel to challenge his conviction. Finally, in June 2002, an evidentiary post-conviction hearing was held in the trial court. Three of the USA's leading gun experts, who had examined and tested the state's evidence, testified at the hearing. They concluded that the bullets recovered from the three crime scenes could not be matched to Beulah Hinton's gun. They also concluded that the bullets could not be linked to a single weapon. Anthony Hinton's appeal lawyers have also discovered work reports contradicting the DFS examiners' contention that they were able to match the bullets to Beulah Hinton's gun. These reports were not provided to Hinton's trial lawyer.

At the trial, Sidney Smotherman had said that he had left Quincy's shortly after midnight, bought food at a nearby store, and soon after leaving there had been forced at gunpoint to return to Quincy's where the shooting occurred. At the June 2002 hearing, a Quincy's employee who was working with Smotherman on

the night of the robbery testified that the time the restaurant was locked varied from night to night, and sometimes occurred as early as 11pm. This further undermined the state's theory that Anthony Hinton had planned the crime and its timing, and had left his work to wait for Smotherman to close Quincy's. The state's theory suggests that Hinton drove from the warehouse to Quincy's in less than five minutes, was away from work for at least an hour and was not missed.

Two and a half years after the June 2002 hearing, the trial court ruled against Anthony Hinton. That decision is now on appeal to the state Court of Criminal Appeals. The state has been repeatedly asked by Anthony Hinton's lawyers to re-examine its evidence against him, but it has so far refused to do so.

The United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (1984) 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." On the current evidence, Anthony Hinton's death sentence clearly violates this standard.

The US capital justice system is marked by arbitrariness, discrimination and error. Since executions resumed in the USA in 1977, more than 100 people have been released from death rows around the country on grounds of innocence, five of them in Alabama. Other people have been executed despite serious doubts about their guilt in the crimes for which they were sentenced to death.

**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 John Davidson and Thomas Vason;
- expressing deep concern, however, that the state continues to seek the execution of Anthony Hinton despite serious doubts about the reliability of his conviction;
- noting that three of the USA's leading gun experts have concluded that the state's ballistics evidence at trial was wrong, and noting that this evidence was the only evidence linking Hinton to the two robberies at which the two murders occurred;
- noting the evidence against Anthony Hinton was only ever circumstantial, and now it appears to be entirely unreliable;
- urging that the state re-examine its evidence against Anthony Hinton as the defence has requested;
- urging the Governor to ask the Attorney General to drop his opposition to judicial relief for Anthony Hinton, on the grounds that serious error occurred at the trial.

**APPEALS TO:**

Governor Bob Riley, State Capitol, 600 Dexter Avenue, Montgomery, Alabama 36130, USA

**Fax:** +1 334 353 0004

**Email:** [http://www.governor.state.al.us/contact/contact\\_form.aspx](http://www.governor.state.al.us/contact/contact_form.aspx)

**Salutation:** Dear Governor

Please copy all your letters to: Attorney General Troy King, Office of the Attorney General, Alabama State House, 11 South Union Street, Third Floor, Montgomery, AL 36130, USA

**Fax:** +1 334 353 3637

If possible please also send a copy to the following US Senator (from Alabama) asking him to use his influence to seek to prevent a possible miscarriage of justice in his home state:

United States Senator Jeff Sessions, Office of Senator Jeff Sessions, 335 Russell Senate Office Building, Washington, D.C. 20510-0104, USA

**Fax:** +1 202 224-3149. **Email:** <http://sessions.senate.gov/contact.htm>

Copies also to diplomatic representatives of the USA accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.**