

PUBLIC

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EXTRA

Death Penalty/Legal Concern

15 December 1998

USA (NORTH CAROLINA) David Junior BROWN (also known as Dawud Abdullah MOHAMMED)

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David Junior Brown, black, is scheduled to be executed by the state of North Carolina on 22 January 1999. He was sentenced to death in 1980 for the murder of Diane Chalflinch, white, and her nine-year-old daughter.

Amnesty International is not in a position to know whether Brown (who has no previous record of violent behaviour) is innocent or guilty of the murders. However, the police investigation appears to have been conducted solely on the basis that Brown was guilty and to have ignored all other possible suspects, including David Ray Martin (see below). While there is other evidence against Brown, most of it appears to be circumstantial and could be plausibly explained in other ways.

The trial was moved from the county where the crime took place because of inflammatory media coverage of the crime and public outrage at the brutal murders. Prior to the start of the trial, the defence attorneys requested funds to hire an investigator, and a delay in the start of the trial to allow them more time to prepare. The trial-judge denied both requests. The trial took place before an all-white jury.

Brown's defence lawyers requested to inspect the crime scene on four separate occasions before and during the trial but were denied access.

The time frame that Brown had to commit the murders appears totally unrealistic. The prosecution contended that Brown committed the murders on Monday 25 August 1980, sometime between 3am, after he was observed in a hotel lobby, and 6am, when he was recorded at his place of work. At all other times, Brown was in the company of witnesses who could provide him with an alibi. However, the prosecution withheld evidence that a witness spoke to both the victims at 4.45am on the day of their murders, six miles from the crime scene. This would have left Brown with a mere one hour "window" in which to commit the crime, clean himself of the victims' blood (the victims were stabbed over 100 times) and get to his place of work.

At trial, the defence presented evidence from two witnesses who at 11pm on the Monday night drove near to the apartment building where the murders occurred (the bodies were discovered on the Tuesday morning). Both testified that they heard "hollering" from the apartments, and one also heard a young girl's voice say "leave her alone". Shortly after, one of the witnesses saw a white male with shoulder-length blond hair jump from the balcony adjacent to the Chalflinch apartment. Both witnesses reported this testimony to the police upon hearing of the murders.

The District Attorney (DA) prosecuting the case appears to have obstructed the defence attorneys finding any evidence that could have exonerated their client both before and during the trial. The trial judge found "as a fact" that the DA instructed law enforcement investigators not to discuss evidence with the defence attorneys.

Another witness stated he had seen Diane Chalflinch park her car near her apartment at 11pm on the Sunday. When he went to work at 5.15am the following day he noticed the car had been moved. The DA instructed the witness not to discuss this observation with the defence attorneys. The DA acknowledged during

the trial that he repeatedly moved this witness to different hotels for the purpose of hiding the witness from defence counsel.

After the trial, defence lawyers located David Ray Martin, who admitted that he had arranged to go out with Diane Chalflinch on the weekend she was killed, but that she "stood him up" and that he left a "terse note" on her door. Martin, white, further acknowledged that he had shoulder-length blond hair at that time. Martin has subsequently been convicted of another murder.

Successive appeal courts have refused to grant legal relief to David Brown, while continually acknowledging the faults in his trial. The Court of Appeals for the 4th Circuit found that the DA's denial of pre-trial access to the crime scene and to witnesses was an error of a constitutional nature, but determined the error was "harmless". A judge for the District Court concluded that the conduct of the DA was "inexcusable", "based on personal animosity" (towards the defence attorney) and that the DA's gamesmanship was "especially abhorrent when a person's life is at stake", but that it was also harmless (in that it would not have affected the outcome of the trial).

Amnesty International is alarmed at the attitudes of the appeal courts. To acknowledge that there was misconduct by the prosecuting authorities but that this somehow was "harmless" is an absurd and deeply flawed judgement. It allows the prosecutor to "win" the case by breaking the legal rules (thereby setting a dangerous precedent) and begs the question whether other prosecutorial misconduct went undiscovered.

The execution of David Brown would clearly be in contravention of numerous international laws and standards, including Article 4 of the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which states: "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."

In North Carolina the governor has sole authority to grant clemency.

**RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language:**

- expressing concern that David Junior Brown is scheduled to be executed on 22 January 1999 despite serious doubts about his guilt for the crime for which he was sentenced to death;
- pointing out that the courts have found the prosecuting authorities to be in violation of various rules of law but have allowed those violations to go unaddressed;
- requesting Governor Hunt to prevent the execution of a possibly innocent man by commuting the death sentence of David Junior Brown.

**APPEALS TO:**

The Honorable James B. Hunt, Jr.  
Office of the Governor of North Carolina  
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**Salutation: Dear Governor**

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and to the diplomatic representatives of the USA accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY**