

**PUBLIC**

**UA 170/07**

**USA (Georgia)**

**Death penalty / Legal concern**

**Troy Anthony Davis (m), black, aged 38**

**AI Index: AMR 51/116/2007**

**03 July 2007**

Troy Davis is scheduled to be executed in Georgia at 7pm local time on 17 July. He has been on death row for more than 15 years for the murder of a police officer which he maintains he did not commit. Many of the witnesses presented by the prosecution at the trial have since recanted or contradicted their testimony.

On 28 August 1991 Troy Davis was convicted of the murder of 27-year-old Officer Mark Allen McPhail, white, who was shot and killed in the car park of a Burger King fast food restaurant in Savannah, Georgia, in the early hours of 19 August 1989. Troy Davis was also convicted of assaulting Larry Young, a homeless man, who was accosted and struck across the face with a pistol immediately before Officer McPhail was shot. At the trial, Troy Davis admitted that he had been at the scene of the shooting, but claimed that he had neither assaulted Larry Young nor shot Officer McPhail.

There was no physical evidence against Troy Davis and the weapon used in the crime was never found. The case against him consisted entirely of witness testimony. In affidavits signed over the years since the trial, all but three of the state's non-police witnesses have recanted their testimony. One of the three non-recanting witnesses is a man who has not been located for interview by Davis' appeal lawyers. Another, while not recanting, has contradicted her trial testimony. The third non-police witness who has not recanted his testimony is Sylvester Coles, who was the principle alternative suspect, according to the defence at the trial, and against whom there is new witness testimony implicating him as the gunman.

Others have recanted their testimony against Troy Davis. In 1989, Kevin McQueen was detained in the same jail as Davis. McQueen told the police that during this time Troy Davis had confessed to shooting Officer McPhail. In a 1996 affidavit, McQueen retracted this statement, saying that he had given it because he wanted to "get even" with Davis following a confrontation he said the two of them had had. Monty Holmes testified against Troy Davis in a pre-trial hearing, but did not testify at the trial because, according to a 2001 affidavit, he did not want to repeat this false testimony. Jeffrey Sapp testified that Troy Davis had told him that he had shot the officer. Recanting his testimony in a 2003 affidavit, he stated that under "a lot of pressure" from police, he had testified against Troy Davis.

At the trial, eyewitness Dorothy Ferrell identified Troy Davis as the person who had shot Officer McPhail. In a 2000 affidavit, she stated that she had not seen who the gunman was, but testified against Davis out of fear that if she did not, because she was on parole at the time, she would be sent back to jail. In a 2002 affidavit, Darrell Collins, 16 years old at the time of the crime, said that the day after the shooting, 15 or 20 police officers came to his house, and "a lot of them had their guns drawn". They took him in for questioning, and "after a couple of hours of the detectives yelling at me and threatening me, I finally broke down and told them what they wanted to hear. They would tell me things that they said had happened and I would repeat whatever they said .I testified against Troy at his trial... because I was still scared that the police would throw me in jail for being an accessory to murder if I told the truth about what happened ..".

Larry Young, the homeless man who was accosted on the night of the murder, implicated Troy Davis as the man who had assaulted him. His affidavit, signed in 2002, offers further evidence of a coercive police investigation into the murder of their fellow officer: "After I was assaulted that night . . . some police officers grabbed me and threw me down on the hood of the police car and handcuffed me. They treated me like a criminal; like I was the one who killed the officer . . . They made it clear that we weren't leaving until I told them what they wanted to hear. They suggested answers and I would give them what they wanted. They put typed papers in my face and told me to sign them. I did sign them without reading them." In his 2002 affidavit he said that he "couldn't honestly remember what anyone looked like or what different people were wearing."

Antoine Williams, a Burger King employee, had just driven into the restaurant's car park at the time the shooting occurred. At the trial, he identified Troy Davis as the person who had shot Officer McPhail. In 2002 he stated that this was false, and that he had signed a statement for the police which he could not and did not read: "Even today, I know that I could not honestly identify with any certainty who shot the officer that night. I couldn't then either. After the officers talked to me, they gave me a statement and told me to sign it. I signed it. I did not read it because I cannot read. At Troy Davis's trial, I identified him as the person who shot the officer. Even when I said that, I was totally unsure whether he was the person who shot the officer. I felt pressured to point at him because he was the one who was sitting in the courtroom. I have no idea what the person who shot the officer looks like."

Due to the procedural obstacles facing a death row inmate seeking a hearing on post-conviction evidence, Troy Davis has had no such hearing on the current state of the witness testimony. At oral arguments in front of a three-judge panel of the federal 11th Circuit Court of Appeals in September 2005, one of the judges expressed concern that Troy Davis had not been granted a federal hearing to present the post-conviction evidence. She asked, "If these people say, 'I was coerced by the police,' how could [the lower federal judge] reject that without a hearing?" She reportedly suggested that without the testimony of the various trial witnesses who had now recanted, the state appeared to have no case. However, in September 2006, the 11th Circuit Court upheld

the federal judge's ruling, and on 25 June 2007 the US Supreme court refused to intervene. For a full report on this case, see *USA: 'Where is the justice for me?' The case of Troy Davis, facing execution in Georgia*, February 2007, <http://web.amnesty.org/library/index/engamr510232007>.

#### **BACKGROUND INFORMATION**

Since the USA resumed executions in 1977, 1,086 prisoners have been put to death, 40 of them in Georgia. Since the US Supreme Court approved new death penalty laws in 1976, more than 100 people have been released from death rows around the country on grounds of innocence, many of them in cases in which witness testimony has been shown to have been unreliable. This rate of error is one factor that has contributed to a waning in public support for the death penalty in the USA, with some opinion polls now registering majority support for a moratorium on executions.

Amnesty International opposes the death penalty regardless of the guilt or innocence of the prisoner. At the same time, it also seeks to ensure that international standards are at least adhered to in those countries which still resort to judicial killing. As the case against Troy Davis now stands, Georgia's pursuit of the death penalty contravenes international safeguards which prohibit the execution of anyone whose guilt is not based on "clear and convincing evidence leaving no room for an alternative explanation of the facts".

#### **RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:**

- explaining that you are not seeking to condone the murder of Officer Mark Allen McPhail, or to downplay the seriousness of the crime or the suffering caused;
- noting that many of the witnesses whose testimony was used against Troy Davis at his trial have since recanted their trial testimony, and that there is new evidence against an alternative suspect in the case;
- noting the large number of wrongful convictions in capital cases in the USA since 1976, and noting that unreliability of witness testimony has been a contributing factor in many of these cases;
- noting that the power of clemency in capital cases exists as a failsafe against irreversible error that the courts have been unable or unwilling to remedy;
- calling on the Board to commute the death sentence of Troy Davis.

#### **APPEALS TO:**

State Board of Pardons and Paroles, 2 Martin Luther King, Jr. Drive, SE, Suite 458, Balcony Level, East Tower, Atlanta, Georgia 30334-4909, USA

**Fax:** +1 404 651 8502

**Email:** [Webmaster@pap.state.ga.us](mailto:Webmaster@pap.state.ga.us)

**Salutation:** Dear Board members

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

**PLEASE SEND APPEALS IMMEDIATELY. \*\*\*\*\***