

PUBLIC

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UA 188/07 Death penalty / Legal concern

USA (Texas) Lonnie Earl Johnson (m), black, aged 44

Lonnie Johnson is scheduled to be executed in Texas on 24 July. He was sentenced to death in 1994 for the murder of two white teenagers in 1990. He has consistently maintained that he acted in self-defence, and an appeal newly filed on his behalf alleges that the prosecution withheld evidence that supported his claim.

The bodies of Gunar Nelson Fulk, aged 16, and Leroy McCaffrey, aged 17, the latter with a knife in his hand, were found near a rural road in Tomball in Harris County, eastern Texas, on 15 August 1990. Both had been shot. Police interviewed a woman, Tammy Durham, who said that she had asked the teenagers to come to the store where she worked after she saw a black man, wearing cut-off jeans and a dirty shirt and carrying a rolled up newspaper, acting suspiciously near the store. After the teenagers arrived, she saw them approach a black man who was using a payphone outside the store and she said they left with him in their vehicle, after asking for a can of petrol.

The police identified Lonnie Johnson, a 27-year-old man with no criminal record, as a suspect. They obtained a statement from his girlfriend who said that he had arrived at her hotel room in the city of Austin in Gunar Fulk's vehicle in the early hours of 16 August 1990, and said that he had shot the two teenagers. They subsequently took Lonnie Johnson into custody, without a warrant, and obtained a statement which stated that he had acted in self-defence after a gun was pulled on him and that he had not known the two teenagers prior to that evening.

Lonnie Johnson was charged with capital murder. The defence lawyer sought to have Lonnie Johnson's police statement suppressed on the grounds that it was the product of an unlawful arrest. The trial judge agreed and ruled that the statement was not admissible. However, the state appealed and a higher court overturned the trial judge's ruling. The trial continued in September 1994. According to the appeal just filed, at the trial the prosecution "seemed to argue that either Mr Johnson did not know the men and feigned car trouble, or the men knew Mr Johnson in the context of drug dealing. The state argued that Mr Johnson either shot the men in order to steal Fulk's truck, or shot the men over money owed for a drug debt." Although Tammy Durham was unable to positively identify Lonnie Johnson, the prosecution argued that he was the man whom she had seen and suggested that he had been carrying a gun wrapped in the newspaper. Johnson was found guilty of capital murder and after the prosecution produced numerous witnesses to testify that the defendant was violent, had a bad temper, and hated whites, he was sentenced to death.

After the trial, one of the witnesses who had testified in support of the prosecution's argument that Lonnie Johnson would pose a future danger to society if allowed to live – a prerequisite for a death sentence in Texas – recanted his testimony. In an affidavit, the witness said that: "The statements that I made at trial about Lonnie displaying a handgun and wanting to kill a motorist were all false. These were statements made to make the District Attorney happy, so she would secure my early release from prison". However, the courts have ruled that this witness had not been promised anything in return for testifying, and that his testimony had not affected the outcome of the trial.

According to the appeal just filed in the state courts, Lonnie Johnson continues to maintain that he had been out running on the evening of the shooting. At the store in which Tammy Durham was working, he had accepted an offer of a lift from the two teenagers. He maintains that he was not wearing cut-off jeans or a dirty shirt or carrying a newspaper. He says that after a few miles in the truck, Leroy McCaffrey had produced a gun, saying something like "nigger, this is the end of the ride for you", and Gunar Fulk had pulled the truck over to the side of the road. Lonnie Johnson claims that he was ordered out of the vehicle, made to lie face

down on the ground, and that he was kicked, racially abused and urinated upon. He was then ordered to stand up. Johnson says that, although his memory of what happened next is not clear, he remembers managing to wrestle the gun from Gunar Fulk and shooting him and then Leroy McCaffrey, who was armed with a knife and had apparently begun to flee the scene. Lonnie Johnson says that he then took the truck and fled to Austin.

At the trial, the defence had little or no evidence that the two teenagers were the aggressors, or that the gun belonged to them rather than Johnson. However, according to the appeal just filed, Lonnie Johnson's lawyer claims that various documents found in the Harris County District Attorney's Office in two of four boxes of evidence to which she was permitted access in early June 2007 are exculpatory and yet were apparently not disclosed to the defence at the time of the trial. The appeal argues that these documents provide evidence of prosecutorial and investigative misconduct in the case; of the unreliability of the ballistics testing done on the alleged murder weapon (the ballistics expert who conducted the testing has been discredited in other cases); that the gun may have belonged to one of the two teenagers; that DNA was taken from under Fulk's fingernails but that any test results had not been released to the defence (any such testing, it is argued, could lend support to Johnson's claim that he struggled with Fulk and had been urinated on by McCaffrey); and that the black man whom Tammy Durham had seen outside the store was an individual other than Lonnie Johnson, potentially discrediting the prosecution's theory of Johnson having a gun in a newspaper. The appeal brief claims that the original trial judge, now in private legal practice, has been approached and agreed that such evidence could support Lonnie Johnson's claim of self-defence.

In another case in June 2007, a judge on the Texas Court of Criminal Appeals (TCCA) noted that the court had "repeatedly held that flight is evidence of a circumstance from which an inference of guilt may be drawn." Lonnie Johnson's newly filed appeal to the TCCA provides evidence of the racially charged climate and examples of racist violence in east Texas which could help to explain his flight from the crime scene. In this climate, the appeal argues, "common sense dictates that if a black person found themselves in a position where they needed to explain the deaths of two white 'boys', they may be scared that they would not survive long enough to exercise any due process rights afforded them by the United States Constitution."

Amnesty International opposes all executions unconditionally. Today, 129 countries are abolitionist in law or practice. In contrast to this, the USA has carried out 1,087 executions since resuming judicial killing in 1977. Texas accounts for 397 of these executions. If Lonnie Johnson is executed, he would become the 100th person convicted in Harris County to be put to death since executions resumed in Texas in 1982.

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 families of Gunar Nelson Fulk and Leroy McCaffrey, explaining that you are not seeking to downplay the suffering their deaths will have caused;
- opposing the execution of Lonnie Johnson;
- noting that an appeal just filed calls into question the reliability of the capital murder verdict against Lonnie Johnson, and alleges that defence counsel at trial were not provided evidence in the state's possession, which has only just come to light, and is said to be supportive of Lonnie Johnson's claim of self-defence;
- calling on the addressees to stop this execution in the event that the courts do not, and to commute the death sentence of Lonnie Johnson.

APPEALS TO:

Rissie Owens, Presiding Officer, Board of Pardons and Paroles, Executive Clemency Section
8610 Shoal Creek Boulevard, Austin, TX 78757, USA

Fax: +1 512 463 8120

Salutation: Dear Ms Owens

Governor Rick Perry, Office of the Governor, P.O. Box 12428, Austin, Texas 78711-2428, USA

Fax: +1 512 463 1849

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.