

PUBLIC

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EXTRA 02/03

Death penalty / Legal concern

10 January 2003

USA (Texas)

John "Jackie" Elliott (m), aged 42, British national

John "Jackie" Elliott is scheduled to be executed in Texas on 4 February 2003.

Jackie Elliott was sentenced to death in 1987 for the murder of a 19-year-old woman, Joyce Munguia, in Austin, Texas, on 13 June 1986. According to the evidence at trial, four men were present on the night of the crime, Jackie Elliott, Pete Ramirez, Ricky Elizondo and Danny Hanson, who had been drinking with Joyce Munguia. The latter two men testified at Elliott's trial. Hanson said that Elliott, Elizondo and Ramirez had raped Joyce Munguia. Elizondo said that the sex had been consensual. He said that Elliott left him at the scene with Joyce Munguia and that Elliott then returned with a bike chain with which he beat the young woman to death.

Jackie Elliott, who was represented at trial by two lawyers who had never handled a capital case before, has consistently maintained that he did not kill Joyce Munguia. There are aspects of the case which give rise to concern about the reliability of the conviction and sentence.

Key to the prosecution's case was the testimony of Ricky Elizondo and Danny Hanson. Accomplice testimony is notoriously unreliable. The Commission on Capital Punishment which studied the Illinois capital justice system because of the number of wrongful convictions there stated in its 2002 report that "there are enough concerns about the reliability of accomplice testimony that premising the death penalty on such a foundation is extraordinarily unwise".

Ricky Elizondo, originally charged with capital murder, was allowed to plead guilty and receive a 10-year prison term for sexual assault in return for his testimony against Elliott. Reportedly, Elizondo was a member of a group known as the "Chain Gang" who wore a motorcycle chain as a belt, which he had used in prior assaults. The jury did not know this. Elizondo had initially indicated that the prosecution's other key witness, Danny Hanson, had had sex with Joyce Munguia under the bridge, but dropped this part of his version of events. Danny Hanson was not charged. He claimed not to have been present at the murder. His clothing was not tested, but blood was found on his shoes, which Hanson claimed was his own from an earlier incident when he had been stabbed. Pete Ramirez pleaded guilty to sexual assault and was sentenced to 15 years in prison. He was not called as a witness because the prosecution said that he had failed a lie detector test.

The prosecution also presented expert testimony. An expert in blood splatter evidence testified that blood on Elliott's shorts was consistent with his being the murderer, but had been unable to find any blood on the shirt that he was wearing. Another blood splatter witness, Sergeant Dusty Hesskew, an employee of the local police department, gave testimony that appeared to support Ricky Elizondo's version of events. Hesskew's expertise has been called into question. Also in 1987, he gave evidence in the trial of a woman accused of the murder of her husband. Hesskew testified that blood splatter evidence showed that she was the murderer. The woman was eventually acquitted at a retrial at which Hesskew was forced to admit that he had been mistaken. A renowned expert in this field testified that in fact the blood evidence indicated that the husband had committed suicide.

Jackie Elliott's current lawyers are seeking DNA testing of evidence from the crime, including the blood on Danny Hanson's shoes. DNA techniques have advanced since 1986 so that such evidence should now be testable. The defence are also seeking review of the prosecution's blood splatter evidence.

The aspect of the murder that made the crime punishable by the death penalty was the jury's finding that Jackie Elliott had killed Joyce Munguia in the course of an aggravated assault. The only evidence that there had been a rape came from Danny Hanson. If the reliability of his testimony fell into doubt, for example, if it was shown by further testing that he had himself had sex with Joyce Munguia or that the blood on his shoes was hers, then the aggravating factor which allowed the jurors to pass a death sentence could be called into question.

Jackie Elliott holds dual US/British nationality. He was born in 1960 in Suffolk, England, where his father was stationed at a US Air Force base.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases. Today, 111 countries have abolished the death penalty in law or practice. In contrast, 820 people have been put to death in the USA since executions resumed there in 1977. Texas accounts for 289 of these executions, and has violated international law or standards in its pursuit of the death penalty. This includes the execution of people who were under 18 at the time of the crime, the mentally impaired, those who did not receive adequate legal representation, foreign nationals denied their consular rights, and people whose guilt was in doubt. The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty 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".

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

- expressing sympathy for the family and friends of Joyce Munguia, explaining that you are not seeking to excuse the manner of her death or to minimize the suffering it will have caused;
- opposing the execution of John Elliott;
- noting that John Elliott has consistently maintained that he did not kill Joyce Munguia;
- expressing concern that serious questions have been raised about the reliability of the evidence used to convict Elliott, and noting that accomplice testimony and unreliable scientific testimony has contributed to numerous wrongful capital convictions in the USA;
- calling on the Board of Pardons and Paroles to recommend clemency for John Elliott and at least to recommend a reprieve to allow DNA testing to be conducted;
- calling on the Governor to accept a recommendation of clemency, and if that is not forthcoming to issue a reprieve to allow DNA testing to be conducted.

PLEASE INCLUDE JOHN ELLIOT'S PRISONER IDENTIFICATION NUMBER IN APPEALS -- (TDCJ#861).

APPEALS TO:

Texas Board of Pardons and Paroles
Executive Clemency Section
PO Box 13401, Capitol Station, Austin, Texas 78711, USA

Fax: + 1 512 467 0945

Salutation: Dear Board Members

Governor Rick Perry
Office of the Governor
PO Box 12428, Austin, Texas 78711-2428, USA

Fax: + 1 512 463 1849 / 463 0039 / 463 1932

Salutation: Dear Governor

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

You may copy your appeals to, or write brief letters (under 250 words) to:

Letters to the Editor, *Dallas Morning News*, Box 655237, Dallas, Texas 75265, USA. **Fax: +1 972 263 0456.**

E-mail: letterstoeditor@dallasnews.com

PLEASE SEND APPEALS IMMEDIATELY.

