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Death penalty / Legal concern

03 March 2004

USA (South Carolina)

David Clayton Hill (m), white, aged 39

David Hill is scheduled to be executed in South Carolina on 19 March 2004. He was sentenced to death in 1995 for the murder of a police officer in 1994.

On 7 March 1994, Major Spencer Guerry, the 37-year-old Deputy Police Chief of Georgetown on the South Carolina coast, was shot after he stopped the car David Hill was driving. Despite being shot in the face, the officer managed to radio for help. A tape recording of his call revealed that he muttered a few words only, including “-eh shot me”. Major Guerry died two days later, becoming the first police officer to die in the line of duty in Georgetown for almost a century. The crime gained a high profile in this small community – the officer’s memorial service was attended by 1,000 law enforcement officers and hundreds of residents. There was also wide spread local media attention of the case.

According to David Hill’s current lawyers, the investigation of the crime was at times amateurish. For example, a police officer drove his patrol car through the victim’s blood at the crime scene. A photo line-up contained not David Hill’s photograph, but one of a Michael Hill from Mississippi who was several hundred miles away at the time of the shooting. According to the appeal lawyers, suggestive procedures by the police led several witnesses to identify Michael Hill as the driver of the car. When the mistake was realised, the same witnesses identified David Hill as the driver. The prosecutor acknowledged in post-conviction proceedings that the crime had led to “a very emotional time”, and that investigators were “not very orderly [or] organized at the beginning” and “mistakes were made”.

David Hill was brought to trial for the murder. At times, three television stations had crews in the courtroom, leading the defence to seek their removal on the grounds that a “media circus-type atmosphere” would interfere with jury selection. The judge denied the motion. It then emerged that one of the jurors selected had lied about his mental health history because of the presence of the cameras. He was disqualified as a juror. When another prospective juror similarly suggested he did not want to reveal personal details on camera, the judge told the juror that “I have to do it in this setting... You know, [the media] do their own thing”. Another juror had not revealed that he knew at least five of the state’s witnesses, as well as the defendant. He remained on the jury, without there being a hearing into whether his relationships jeopardized the defendant’s constitutional right to a fair and impartial jury.

The media noted that there was a large law enforcement presence in the courtroom. A local newspaper, for example, described the “extra security” in place, and that the courthouse was “unusually populated with uniformed county deputies and state troopers and in an unprecedented step a State Law Enforcement Division Agent [was] posted behind [the judge]”. Although the US Supreme Court ruled in 1986 that “the conspicuous, or at least noticeable, presence of guards in a courtroom during trial is not [an] inherently prejudicial practice”, it added that “We do not minimize the threat that a roomful of uniformed and armed policemen might pose to a defendant’s chances of receiving a fair trial.” That decision related to a case involving the presence of four additional uniformed police in the courtroom. In David Hill’s trial, there are believed to have been a police presence 10 times as large.

The only evidence that the jury heard in David Hill’s defence was the defendant’s own testimony that he was not the gunman, but that another man in the car had shot Major Guerry. The jury heard no other evidence that there may have been two people in the car, despite the reported existence of other eyewitness testimony to this effect and of evidence that the state’s investigators had initially believed that another person was in the vehicle.

In opening arguments, the defence lawyer told the jury that the defence would bring in an expert witness – a forensic tape analyst to enhance the recording of Major Guerry’s final transmission – with a view to showing that the officer had said “they shot me”. However, on the day that the expert witness was due to fly down from Nevada, his assistant became seriously ill. The defence asked for a postponement (continuance) of proceedings from the Saturday to the following Monday so that he could testify. The judge refused to grant their motion. The US Court of Appeals for the Fourth Circuit admitted to being “troubled” by the judge’s decision, which it said “appears to have been made arbitrarily” and out of “a myopic insistence upon expeditiousness in the face of a justifiable request for delay”. It said the decision displayed “an apparent inequity in the court’s treatment of the parties. Where the prosecution asked for a continuance, it was granted, but when Hill requested one, it was denied.” Nevertheless, the Fourth Circuit said that there had been no prejudice, as it had since transpired that the expert would not have been able to make a definitive conclusion from the enhanced tape. The Fourth Circuit did not address the possible impact on the jury of the defence’s failure to fulfil its promise to present the witness.

The jury convicted David Hill and the trial moved into the sentencing phase. Arguing for execution, the prosecutor urged the jury to consider the lives of prison guards and police officers if David Hill were allowed to live: “what about those other police officers, those hundreds of guards in those prisons? What about them? Do they have to die too?” In contrast to this inflammatory prediction, David Hill is reported to have had an exemplary prison record. He has pursued further education and has had articles published in various publications.

Amnesty International opposes the death penalty in all cases, regardless of the gravity of the crime, the guilt or innocence of the condemned, or the method used to kill the prisoner. The death penalty is an affront to human dignity and a symptom of a culture of violence, and consumes resources that could otherwise be used towards constructive strategies to combat violent crime and to offer assistance to its victims and their families. In addition, capital justice system in the USA is marked by arbitrariness, discrimination and error. Since 1973, 113 people have been released from death row on the grounds of innocence. The latest case occurred on 18 February 2004 in North Carolina, the fourth such case in that state, where the legislature is considering a moratorium on executions. There have been three cases in South Carolina, which accounts for 28 of the 899 executions in the USA since 1977.

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 colleagues of Major Spencer Guerry, explaining that you are not seeking to excuse the manner of his death or minimize the suffering caused;
- opposing the execution of David Clayton Hill;
- expressing concern about the reliability of the investigation and the conviction, and expressing concern at the possible impact of the large media and law enforcement presence at the trial;
- noting the contrast between the prosecutor’s inflammatory predictions of David Hill’s future dangerousness and the prisoner’s record on death row;
- urging the governor to grant clemency.

APPEALS TO:

Governor Mark Sanford, Office of the Governor, PO Box 12267, Columbia, SC 29211, USA

Fax: +1 803 734 5167

Email via: <http://www.scgovernor.com/Contact.asp?sitecontentid=33>

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY. All appeals must arrive by 19 March 2004.