

PUBLIC

AI Index: AMR 51/099/2008

UA 250/08

Death penalty / Legal concern

09 September 2008

USA (Georgia) Troy Anthony Davis (m), black, aged 40

Troy Davis is scheduled to be executed in Georgia at 7pm local time on 23 September. He has been on death row for 17 years for a murder he maintains he did not commit. He has a clemency hearing before the state Board of Pardons and Paroles on 12 September. It is not known when the Board will make its decision.

On 28 August 1991 Troy Davis was convicted of the murder of 27-year-old Officer Mark Allen MacPhail, white, who was shot and killed in the car park of a Burger King restaurant in Savannah, Georgia, in the early hours of 19 August 1989. Davis was also convicted of assaulting Larry Young, a homeless man, who was accosted immediately before Officer MacPhail 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 MacPhail. 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, a majority of the state's witnesses have recanted or contradicted their testimony. In addition, there is post-trial testimony implicating another man, Sylvester Coles, as the gunman.

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 MacPhail. 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 MacPhail. 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 man who was accosted on the night of the murder, implicated Troy Davis as the man who had assaulted him. His 2002 affidavit offers further evidence of a coercive police investigation into the murder of a 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 MacPhail. 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."

On 17 July 2007, the state Board of Pardons and Paroles stayed Davis's execution less than 24 hours before it was to be carried out. The Georgia Supreme Court then considered whether a trial-level judge had been wrong to dismiss Davis's appeal for a new trial in 2007 without conducting a hearing. On 17 March 2008, in a 4-3 ruling, the state supreme court ruled that the lower court had not abused its discretion. The Chief Justice authored the dissenting opinion. She wrote that "this case illustrates that this Court's approach in extraordinary motions for new trials based on new evidence is overly rigid and fails to allow an adequate inquiry into the fundamental question, which is whether or not an innocent person might have been convicted or even, as in this case, might be put to death." "In this case", she wrote, "nearly every witness who identified Davis as the shooter at trial has now disclaimed his or her ability to do so reliably. Three persons have stated that Sylvester Coles confessed to being the shooter. Two witnesses have stated that Sylvester Coles, contrary to his trial testimony, possessed a handgun immediately after the murder. Another witness has provided a description of the crimes that might indicate that Sylvester Coles was the shooter." While she said that such testimony might be discovered to lack credibility if heard at an evidentiary hearing, "the collective effect of all of Davis's new testimony, if it were to be found credible by the trial court in a hearing, would show the probability that a new jury would find reasonable doubt of Davis's guilt or a least sufficient residual doubt to decline to impose the death penalty". The dissenters argued that the trial court should be ordered to conduct the evidentiary hearing it denied in 2007.

Amnesty International opposes Troy Davis's death sentence unconditionally, as it does all use of the death penalty. 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://www.amnesty.org/en/library/info/AMR51/023/2007>.

Since the USA resumed executions in 1977, 1,118 prisoners have been put to death, 42 of them in Georgia. 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.

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 MacPhail, or to downplay the seriousness of the crime or the suffering caused;
- noting that most of the witnesses whose testimony was used against Troy Davis at his trial have since recanted or contradicted their testimony, and that there is new evidence against another suspect in the case;
- noting that three members of the Georgia Supreme Court, including the Chief Justice, dissented against the court's refusal earlier this year to order a hearing on the post-conviction evidence of innocence;
- 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

Salutation: Dear Board members

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

PLEASE SEND APPEALS IMMEDIATELY. Please send as many appeals as possible before 12 September, but appeals may continue until 23 September.