

# Troy Davis Denied New Trial By Georgia Supreme Court

By JD Staff

Troy Anthony Davis was convicted in 1993 and sentenced to death for the murder of Savannah, Georgia police officer Mark MacPhail. Davis professed his innocence, but his conviction and sentence were affirmed on direct appeal and his federal habeas petition was denied.

Eight days before Davis' scheduled execution on July 9, 2007, he filed an extraordinary motion for a new trial based on evidence supporting his innocence. The trial judge denied the motion without conducting an evidentiary hearing. The Georgia Supreme Court agreed to review the denial of Davis' new trial motion and stayed his execution. On March 17, 2008 the Court affirmed the denial of a new trial by a majority 4 to 3 decision. (*Davis v. The State*, S07A1758, March 17, 2008) Davis' motion was based on four classes of evidence, and in a published opinion the Court rejected each one as materially insufficient to warrant a new trial. A brief summary of each rejected class of evidence follows.

## A. Recantations by Trial Witnesses

The Court rejected affidavits from four trial witnesses recanting their identification of Davis. The Court ruled that a trial witness' recantation of his or her trial witness must be disregarded unless "every material part is purest fabrication." (7) The Court recognized that "A recantation impeaches the witness' prior testimony. However, it is not the kind of evidence that proves the witness' previous testimony was the purest fabrication." (7)

## B. Statements Recounting Alleged Admissions of Guilt by Sylvester Coles

The Court ruled that Davis' new trial motion was not materially supported by the affidavit of three people who at different times were told by Sylvester "Red" Coles that he shot officer MacPhail.

## C. Statements that Coles Disposed of a Handgun Following the Murder

The Court ruled that Davis' new trial motion was not materially supported by the affidavit of two women who attested that they saw Coles possessing a handgun shortly after MacPhail's murder.

## D. Alleged Eyewitness Accounts

The Court ruled that the statement and affidavit of two eyewitnesses who did not testify at Davis' trial did not materially support

Davis' new trial motion.

In affirming the denial of a new trial, the Court stated, "we have chosen to focus primarily on one of the required showings for an extraordinary motion for new trial, the requirement that the new evidence be "so material that it would probably produce a different verdict.'" (19) In rejecting the value of Davis' new evidence provided by the eleven witnesses, the Court stated, "At trial, the jury had the benefit of hearing from witnesses and investigators close to the time of the murder ... We simply cannot disregard the jury's verdict in this case." (20)

The Court separately rejected Davis' "claim that his execution should be barred because his execution would be unconstitutional in light of the evidence of his alleged innocence. Because this claim was not asserted distinctly in the trial court, it will not be considered for the first time on appeal." (21)

## Three justices dissent

Three justices dissented from the Court's ruling, including Chief Justice Leah Sears, who wrote the dissent. The dissenters argued that Davis should be granted a hearing where the credibility of his eleven witnesses could be tested in open court, and their testimony subjected to cross-examination. Judge Sears wrote, "I believe 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." (Dissent 1)

Sears also wrote, "In this case, 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. (Dissent 4) ... But the collective effect of all of Davis' 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' guilt or at least sufficient residual doubt to decline to impose the death penalty." (Dissent 5)

## Aftermath

The Courts ruling will likely have an effect on the consideration of future extraordinary

motions for a new trial in Georgia. The Court justified denying Davis an evidentiary hearing by effectively establishing two new rules of law closing his (and future litigants) avenues to pursue a new trial. Decrying the Court's action, Justice Sears wrote in her dissent, regarding "extraordinary motions for new trial, I would hold that *recantations* and *confessions to third parties* are not categorically excluded." (Dissent 3 emphasis added) She wrote further, "If recantation testimony, either alone or supported by other evidence, shows convincingly that prior trial testimony was false, it simply defies all logic and morality to hold that it must be disregarded categorically." (Dissent 2)

One of Davis' lawyers, Chris Adams, said after the ruling, "I was very surprised by the decision. We felt that the proper course was to hear all the witnesses ... and then to make a judgment call." Adams was troubled by the decision because this is an "actual innocence case. The kind of case you go to law school for. You would hope all your cases would have this kind of significance — or that none of them would."

As of early April 2008 a new execution date for Troy Anthony Davis has not been set.

## Sources:

*Davis v. The State*, S07A1758, March 17, 2008  
Lethal injustice: no new trial for death row prisoner Troy Davis, By Liliana Segura, *Alternet*, March 20, 2008.

## State Judge Complains About "The 'Innocence' Myth"

In a *Wall Street Journal* commentary titled "The 'Innocence' Myth," Colorado state District Court Judge Morris B. Hoffman complains about the efforts of organizations (such as *Justice Denied*) to expose flaws in the criminal legal system. In addition to undermining confidence in the legal system, Hoffman claims that the educational effort of such organizations contributes to innocent people pleading guilty to a "lesser offense" rather than going to trial — because they don't believe they will get a fair trial.

**JD Comment:** In reading this article it is difficult not to think that the *WSJ* made a mistake and misidentified Hoffman as a judge, because his comments are indistinguishable from those of prosecutors who propound that the legal process in the United States is nearly infallible, and cite high conviction and low exoneration rates as proof.

Source: *The 'Innocence' Myth*, Comment by Morris B. Hoffman, *The Wall Street Journal*, April 26, 2007.