

Tyler cont. from p. 3

and prevent the execution of an innocent man. Keep in mind: *There can be no valid assertion of the Fifth Amendment by Head unless he is going to change his testimony.* If he testifies as he did at trial, the situation would be that the shooter was Arthur Tyler and there would not be a basis for criminal proceedings against Head. It would only be that if under oath Head changed his story back to his original version where he was the shooter, that he would be potentially exposed to criminal charges. Were Head to do that, the new evidence of Tyler's actual innocence would furnish a basis to avoid his execution and challenge the validity of his conviction.

No one has ever offered a reasonable basis for Head's recantation of his many confessions, other than that the prosecutor told him that if he did not recant and point the finger at Tyler, they would seek the death penalty for him.

In a last ditch effort to obtain Head's truthful testimony, Tyler filed a complaint for a writ of mandamus in the Cuyahoga County Common Pleas Court, requesting an order compelling Ohio's Attorney General and the Cuyahoga County Prosecutor to grant immunity to Head. The judge granted the defendant's motion to dismiss and Tyler appealed to Ohio's Court of Appeal. On March 15, 2007 the Court affirmed dismissal of the writ on the technical ground that the court lacked jurisdiction to order a grant of immunity. However, in its ruling the Court suggested that what Tyler was asking the prosecutor to do was reasonable, and that the prosecutor "should seek justice in this case by granting Head immunity." *Tyler v. Petro*, 2007-Ohio-1160 (3-15-2007) at ¶19.

The truth of Leach's murder

The circumstances of the case are simple and not at all what the jury was led to believe by Head's testimony. Tyler did not know Head before they met at a friend's house. They came up with the idea of robbing a nearby meat market, which happened to be next to the van from which Leach sold his vegetables.

The plan was that Tyler, who knew the meat market was operated by its owners, would go in and present a check to cash. The check was in a sufficiently large amount that they felt the owners would have to open the safe. When they did that Head was to swing into the room with a pistol and "clean out" the safe, while Tyler acted like an innocent bystander.

With Head outside, Tyler went in, only to find that the owners were both absent leaving

the business in the control of someone who was unable to open the safe. While Tyler was in the market trying to figure out what to do next, Head saw the old man selling vegetables and went over to rob him. As Tyler was leaving the market, he heard a shot come from the van and found that Head had killed Leach. They both then ran from the scene.

Reflect on the day of Head's arrest. He is surprised by the police and taken to the station. He becomes nervous. He asks that his mother be allowed to speak with him. She is brought to the station. In a few minutes, she leaves the interview room in tears stating that "he did it." Why would Head lie to his mother about being the shooter? And it is known that he has repeated what he told her at least ten times – including to the Cleveland police.

Tyler is on track for execution

Yes, Tyler had a criminal record, but not for anything involving violence. He was a petty con man. He hustled pool. Yes, it was stupid for him to get mixed up with Head in the scheme to steal money from the meat market. But the murder Head committed occurred during his attempted robbery of the vegetable vendor that Tyler knew nothing about until after it happened. Head's nearly dozen confessions mirror Tyler's unwavering assertion for the past 26 years that he had nothing to do with Leach's murder.

Right now the State of Ohio is sealing the lips of the actual murderer – a man who can save Tyler. Tyler's writ of certiorari to the U.S. Supreme Court was denied in the spring of 2008, and he is running out of avenues for legal redress.

Ohio Governor Ted Strickland has the authority to stop the injustice of Tyler's case by pardoning him or commuting this sentence.

Arthur needs your help. Without it, Ohio will execute an innocent man. Wendy Alford and Karen Torley are coordinating the campaign to stop Arthur Tyler's execution. They can be emailed at, justiceforarthurytler@gmail.com

For more information about Arthur Tyler's case see the following websites:

<http://torley.org/Arthur-Tyler/Arthur-Tyler>
<http://justiceforarthurytler.blogspot.com>
<http://www.gopetition.com/petitions/investigate-the-case-of-arthur-tyler.html>

About the author: Richard Kerger is the Toledo, Ohio defense and appellate attorney representing Arthur Tyler. He can be emailed at: rkerger@kergerlaw.com

Conviction Tossed Against "Lyrical Terrorist"

Samina Malik was a 24-year-old woman living in London, England when she attracted attention to herself by writing poetry glorifying terrorism on the back of some sales receipts at the shop where she worked. When concerned people asked her about the rhymes, she told them she was the "lyrical terrorist."



When questioned by police, Malik, a Muslim, denied that she was an actual terrorist, but she thought it sounded "cool" to call herself the "lyrical terrorist." British authorities approached her case as one involving national security, and the search of her apartment resulted in the discovery of some documents, including an al-Qa'eda manual. Although all of the seized documents are publicly available over the Internet and there was no evidence that Malik was involved in terrorism, she was charged with storing material intended to further terrorism in violation of Section 58 of the United Kingdom's Terrorism Act of 2000.

Free speech activists in England were alarmed at Malik's prosecution that they described as based on her alleged thought crimes.

When she was convicted by a jury in December 2007, Malik became the first female convicted of a Section 58 terrorism offense in England. She was given a nine-month suspended sentence.

On appeal her lawyer, John Burton, argued that contrary to the intent of Section 58, there was no connection between any of the documents seized from Malik and any actual or planned terrorist act, and in fact a first-aid manual was one of the documents the government claimed could be used for a terrorist purpose. Burton also argued that the intent of Parliament was for Section 58 to criminalize actions intended to provide material assistance in the furtherance of terrorism — not possibly thinking about it.

On June 17, 2008 the UK's Court of Appeal quashed Malik's conviction on the basis that her writings and the documents in her possession did not constitute a violation of Section 58. She was ordered released from custody without a retrial. She was jailed for about six months prior to her trial.

Sources:

Wicked thoughts are not a crime – yet, *The Telegraph* (London), June 19, 2008.