

I have handled habeas petitions for five death row prisoners. Only in one has evidence of the condemned person's innocence been overwhelming. That person is Arthur Tyler. He is an innocent man literally at the door of Ohio's death chamber.

Arthur Tyler Is Awaiting Execution When The Actual Murderer Is Being Protected By Ohio Law Enforcement

By Richard Kerger, Esq.

Sanders Leach was shot to death on March 12, 1983 in the van from which he was selling vegetables on Cleveland's east side. Tyler was convicted of Leach's aggravated murder and sentenced to death.

Yet the police and prosecutors have known since days after Leach's death that his murderer is Leroy Head and that Tyler wasn't present.

Leroy Head confesses six times to Leach's murder

A few days after Leach's murder, the police brought Head and two of his friends into the police station to question them concerning another murder. The police believed the three men were witnesses to the other murder, as opposed to suspects. During the questioning, Head began to look nervous. The police asked his friends why, and they told the officers that Head had shot Leach. A police report states: "In these statements they both stated that Head came to there (sic) house right after the shooting and told them that he just kill (sic) the old man who sold produce on East 66th."

When told about his friends' statements, Head asked to speak with his mother. The police transported her to the station to speak with her son. The police recorded that after meeting with Head for "approx (sic) 3 minutes, she came out of the room crying and saying that he did it."

Head then confessed to the police that while Tyler was outside Leach's van, unaware of what was taking place inside, Head had gotten into a struggle with Leach and then shot him. Head reduced his oral confession to writing: "At the first shot I starting (sic) falling over towards him, and that's when the gun went off a second time." (Police report.)

Leroy Head Paroled June 3, 2008

Leroy Head has confessed at least ten times to murdering Sander Leach and that Arthur Tyler wasn't present. For testifying that Tyler committed the murder and pleading guilty to only being a participant, Head was given a parolable sentence — while Tyler was sentenced to death. Head was released on parole June 3, 2008 after 25 years imprisonment.

Ten days after those confessions, Head confessed again, this time to an investigator working for Tyler's lawyer. After orally confessing Head wrote out a statement admitting he shot and killed Leach: "I grabbed (the gun) and it went off — the old man fell back and I fell on top of him — the gun went off again." (Investigator's report.)

So within ten days of Leach's murder Head confessed at least six times to shooting Leach: to two friends, to his mother, orally and in writing to the Cleveland police, and to an investigator for Tyler's lawyer.

Head recants after meeting with prosecutor

Then two-and-a-half months after the murder Head and his lawyer met with the prosecutor. Head suddenly and for the first time claimed that Tyler was the shooter. Up to that point Head had without exception said that Tyler had nothing to do with the murder and that he didn't know anything about it until afterwards. Tyler was charged with Leach's murder based on Head's revised statement.

Tyler had two carbon copy trials, the first in 1983, and the second in 1985 after his 1983 conviction was overturned because of ineffective assistance of counsel. The prosecution's theory was that since he was older than Head, he was the one who directed their activities and was the shooter. Head was the prosecution's star witness at both trials and the jury relied on his testimony to convict Tyler of aggravated murder that allowed him to be sentenced to death.

In exchange for his testimony Head pled guilty to first-degree murder and was given a sentence a life in prison that allowed for his eventual release on parole.

Head confesses four more times after Tyler's conviction

After Tyler's conviction Head once again began repeatedly stating that he was the lone murderer — and Tyler had nothing to do with the crime. Post-conviction affidavits establish the following:

- April 27, 1986 — Head states in his own handwriting: "I shot and killed him" and that Tyler was unaware the crime was taking place.

- May 16, 1989 — Head tells Tyler's lawyers that he lied when he testified that Tyler killed Leach. Head said the prosecutor told him that if he did not testify he would be tried for capital murder, sent to a less secure prison, and the prosecutor would make sure the other inmates knew he was a snitch. (Lawyer note.)

- July 27, 1991 — Head confirms in an affidavit that he and not Tyler killed Leach: "Leach pulled a gun out and he was shot while we scuffled."

During the state post-conviction process, it was learned that Head also confessed to still another friend. On April 25, 1991, Luther Aldridge, a half-brother of Head's friend Anthony Gillis, stated in an affidavit that he had gone to Gillis' house around 6 p.m. on the day of the murder. Head was present and told Aldridge that "he had robbed and shot the vendor." (Aldridge Affidavit.) Aldridge later encountered Head in prison and asked him why he was letting Tyler remain on Death Row. Head told Aldridge that he was going to confess to the crime. (Aldridge Affidavit.)

Federal court grants Tyler permission to depose Head

After Tyler exhausted his state post-conviction remedies in 1999, he filed a federal habeas corpus petition in 2000. The district court judge granted Tyler permission to take Head's deposition. However, Head refused to testify, citing his rights to avoid self-incrimination. A lawyer was appointed to represent Head. The deposition was rescheduled, but again Head invoked his rights under the Fifth Amendment. Tyler's counsel asked that the State grant immunity to Head so that his testimony could be obtained. The request was refused. The federal court sustained Head's assertion of his right not to testify, and subsequently denied Tyler's habeas corpus petition.

On September 20, 2005, I wrote to the Ohio Attorney General's office asking that it take steps to assure that immunity would be granted to Head so he could truthfully testify without fear of being prosecuted for capital murder or perjury. That request was greeted with silence by Ohio's Attorney General.

Tyler files writ to compel granting Head immunity

Having obtained the side of the story they wished, Ohio's top law enforcement officials are effectively sealing the lips of the only witness who can establish Tyler's innocence

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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 Alsford and Karen Torley are coordinating the campaign to stop Arthur Tyler's execution. They can be emailed at, justiceforarthurtyler@gmail.com

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

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

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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.

