

Troy Anthony Davis Executed For A Crime There Is Reasonable Doubt He Committed

Troy Davis would not have been convicted in 1991 of the 1989 murder of Mark MacPhail in Savannah, Georgia if his jurors had known the evidence that is available today. How do we know that? Because four jurors who voted to convict Davis in 1991 and then voted to sentence him to death have signed affidavits that they have doubts about his guilt based on evidence they now know that they didn't consider in finding him guilty. Brenda Forrest is one of those jurors and she said in a TV interview, "If I knew then what I know now, Troy Davis would not be on death row...the verdict would be 'not guilty'."

In the United States the standard for being found guilty is not that a defendant must prove their innocence, but that the State must prove their guilt beyond a reasonable doubt. In Georgia if only one juror has a reasonable doubt then a person cannot be convicted. There is no question that Troy Davis' jury found him guilty based on a flawed prosecution case.

No murder weapon was ever found, no DNA evidence or fingerprints tie Davis to the crime, and other witnesses have since said the murder was committed by Sylvester Coles — who testified as a prosecution witness against Davis. Seven out of nine witnesses who gave evidence at his trial in 1991 have recanted or changed their testimony, and one of the two who hasn't is Coles.

In addition two witnesses have come forward directly implicating Coles as MacPhail's killer, and neither one has any connection to Davis or his family. Benjamin Gordon testified at a 2010 evidentiary hearing in federal court that he saw Coles shoot MacPhail. Quiana Glover has sworn that she heard Coles confess in 2009 to MacPhail's murder.

It is known that Coles was at the scene of the shooting, and he was the person who implicated Davis in the killing. Based on what is known today he may have done that to cover his tracks. In fact based on the evidence known today not only would Davis be acquitted, but it appears there is a possibility that Coles could be convicted if he was fairly tried with all the evidence aired in public.

Yet even though it is known that the State's case against Davis has been decimated to the point that jurors who convicted him no longer



Troy Anthony Davis

believe he is guilty, he is scheduled to be executed on September 21, 2011.

Davis wasn't able to get any traction in the state or federal courts until August 2009 when the U.S. Supreme Court ordered the U.S. District Court in Atlanta to hold an evidentiary hearing to consider Davis' new evidence. However, the judicial attitude of indifference to Davis' claim of innocence was clearly expressed in Justice Scalia's dissent in which he wrote:

"Even if the District Court were to be persuaded by Davis's affidavits, it would have no power to grant relief. ... This Court has never held that the Constitution forbids the execution of a convicted defendant who has had a full and fair trial but is later able to convince a habeas court that he is "actually" innocent. Quite to the contrary, we have repeatedly left that question unresolved, while expressing considerable doubt that any claim based on alleged "actual innocence" is constitutionally cognizable." *In Re Troy Anthony Davis*, 130 S. Ct. 1, 2-3, 557 US __ (2009)

Scalia didn't mince words — Davis' innocence is irrelevant and the only way to uphold the law is to execute him. Clarence Thomas was the only other justice that agreed with Scalia.

After conducting the evidentiary hearing U.S. District Court Judge William T. Moore Jr. denied Davis' habeas corpus petition on August 24, 2010. In his 172-page ruling Judge Moore ruled that Davis had not proven by "clear and convincing" evidence that he is innocent of MacPhail's murder. Judge Moore's ruling was largely based on a logical incongruence — the witnesses testified under oath during his trial, so they can't now be truthful in their sworn affidavits/testimony that benefit Davis. In his ruling Judge Moore relied heavily on the fact that Davis had been convicted in 1991, and he seemed confused about the purpose of the evidentiary hearing because he discounted the value of Davis new evidence of his innocence precisely because it hadn't been presented at trial. (*In Re Troy Anthony Davis*, No. CV409-130 (DC SDGA, 08-24-10, Order Denying Writ Of Habeas Corpus)

Although doubts about Davis' guilt were so substantial that even former FBI Director William S. Sessions wrote an Op-Ed article for the *Atlanta Journal Constitution* opposing his execution, the federal 11th Circuit Court

of Appeals and the U.S. Supreme Court subsequently declined to review Moore's ruling.

On September 6, 2011 Davis' execution was scheduled for September 21. His last best hope resided with the five members of Georgia's Board of Pardons and Paroles. On September 19 Davis' lawyers finished their presentation for commutation of his sentence in a last ditch effort to stave off his execution. The Board denied clemency for Davis on the 20th, and he was executed the next day at 7 pm.

U.S. Supreme Court Justice Blackmun wrote in 1992, "The execution of a person who can show that he is innocent comes perilously close to simple murder." *Herrera v. Collins*, 506 U.S. 390, 446 (1993) In light of the evidence that Davis was legally innocent because the State no longer had a credible case for his guilt, it may be that the State of Georgia murdered him in the name of the law.

Troy Davis' website has a lot of information about his case at, <http://troyanthonydavis.org>.

There is a good summary of Troy Davis' case on the NAACP's website at, <http://www.naacp.org/pages/troy-davis-a-case-for-clemency>.

Claims of Innocence: An introduction to wrongful convictions and how they might be challenged

Claims of Innocence is an 80-page booklet by Michael Naughton with Gabe Tan. Published in 2010 by the University of Bristol, it can now be downloaded for no charge [by clicking here](#). Michael Naughton is founder and director of the [Innocence Network UK](#), and although *Claims of Innocence* is specific to the United Kingdom, much of its information, particularly in "Part 3: [Proving your innocence](#)," is applicable to the United States and other countries.

