

Terry Lenamon on the Death Penalty

Sidebar with a Board Certified Expert Criminal Trial Attorney



Terence M. Lenamon is a Florida Bar certified expert in the area of criminal trial law. With over 17 years experience he has built a reputation as one of Florida's most respected criminal defense lawyers. His defense has been sought by many high-profile clients and has led him through 20 first-degree murder trials and eight death penalty cases. That experience has brought him national recognition as a go-to commentator on death penalty issues. He is the force behind both deathpenaltyblog.com and Florida Capital Resource Center (floridacapitalresourcecenter.org), and can be reached at terry@lenamonlaw.com.

Georgia Death Row's Troy Davis Evidentiary Hearing Concludes - What Next?

Posted on June 26, 2010 by [Terry Lenamon](#)

Troy Davis may well be an innocent man sitting on Georgia's Death Row, and things came closer to Davis proving his innocence as [U.S. District Court Judge William T. Moore heard two days of evidence this week](#).

Judge Moore did so because the United States Supreme Court mandated that the district judge *had* to hold an evidentiary hearing. That's not something that happens every day.

Background of the Troy Davis Case

Troy Davis has consistently maintained his innocence ([more background here](#)), and at trial, there was no physical evidence connecting him to the murder. Nine of the ten witnesses who pointed the finger at Mr. Davis have recanted, and over 60,000 people signed a petition demanding that Davis get a new trial. Among them, the Pope, Desmond Tutu, and former President Jimmy Carter.

Nineteen at the time of the crime, Troy Davis is now 41 years old. His entire adult life has been focused on a fight to prove his innocence and avoid the penalty of death by lethal injection that has been imposed upon him.

The Two Day Hearing This Week: What Happened June 23 - 24, 2010

Judge Moore skipped opening statements, and went directly to presentation of evidence. Troy Davis's defense attorneys faced a high burden: pursuant to the Supreme Court's dictate, they had to legally show - "[clearly establish](#)" - that Mr. Davis was innocent of the August 19, 1989, shooting of Savannah police officer Mark MacPhail.

Key to their arguments: the appellate reviews of the first trial consistently dealt with legal technicalities, but never considered evidence

that simply was not available at that trial. They are fierce in their position that this new evidence, once considered, inevitably leads to a determination of innocence. The State of Georgia, of course, maintains that the new evidence doesn't change a thing.

If you're thinking that this seems a bit hinky, the defense having to prove innocence, you're right. Usually, defense counsel works in an arena where someone is innocent until proven guilty. Apparently the Supreme Court was swayed enough to allow Troy Davis a chance to present evidence, but did not go so far as provide him a true, 100% new trial of the matter.

What Was Presented This Week

The defense team prepared 14 witnesses for testimony, among them several of the first trial's eyewitnesses who have changed their testimony, [blaming coercion by the police](#) for first pointing the finger at Troy Davis. Davis' attorneys also presented 24 documentary exhibits to substantiate their argument that this was a case of mistaken identity - the police got the wrong guy at the get-go, mistaking Troy Davis for the true killer.

Judge Moore did not allow those witnesses prepared to testify that Sylvester "Redd" Coles had confessed to them that he was the man who killed MacPhail.

The strongest piece of evidence brought by the State? Among 61 pieces of evidence, documents regarding a pair of black shorts taken from Troy Davis' mother's dryer on August 19th, purportedly spotted with human blood. This evidence didn't make it into the first trial, because the trial judge ruled that the police didn't have a proper warrant when they searched the dryer.

Judge Moore did allow closing arguments, although he skipped opening. Defense attorneys summed up their rush to judgment analysis of the Troy Davis trial long ago. Prosecutors stuck by their story that there wasn't enough evidence to change anything. Troy Davis, they argued, should still die as punishment for the shooting because he had not met the evidentiary burden otherwise.

What's Next? Legal Briefs and a Ruling

This fact-finding phase of this new hearing took two days, but that is not the end of things. Judge Moore has given each side until July 7, 2010, to file their legal briefs with him. He promise to rule as soon as possible thereafter.

Of course, Judge Moore's determination is probably months and months down the road. After that, little is left for Troy Davis: he could be found innocent, or he could face execution for the 4th time.

Let us keep watch and pray.