

1989 DEATH-PENALTY CASE: New questions cast doubt on conviction. 08/05/07
With witnesses recanting, and the ballistics report deemed flawed, the execution planned for Troy Anthony Davis in a cop's slaying is on hold.

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There wasn't much for crime scene analysts to pore over after Savannah police Officer Mark Allen MacPhail was fatally shot in a Burger King parking lot on Aug. 19, 1989. There were no fingerprints, murder weapons, tire tracks, bloody footprints or other basic clues that help detectives track down killers. Only the bullets extracted from MacPhail and empty shell casings found on the ground provided the tiniest bit of physical evidence. Troy Anthony Davis was eventually sentenced to death for the murder, mostly on the testimony of eyewitnesses who identified him as the shooter.

Most of those witnesses have since recanted. And now his defense team, seeking to save him from execution, is challenging the conclusions drawn from the ballistics analysis done in the Davis case. They've hired one of the state's leading firearms experts, who concluded the analysis done soon after the killing was deeply flawed.

The questions they've raised have bought Davis time. Last month, the State Board of Pardons and Paroles temporarily halted his execution, just 24 hours before it was to be carried out. And on Friday, the Georgia Supreme Court granted Davis a rare opportunity to make his case for a new trial.

The state parole board is scheduled to take up Davis' case again Thursday. Parole board members want to hear directly from the witnesses who now say they made up testimony that implicated Davis. And they have asked for new tests on the bullets found at the scene.

Police collected at least 20 bullets and shell casings from two areas the night of MacPhail's murder: the Burger King parking lot where he was killed and a nearby bank, and the site of a pool party where two men were injured in separate drive-by shootings just a short time apart that same night.

Prosecutors believed Davis was responsible for at least one of the shootings at the party and for MacPhail's murder at a Burger King across from the Yamacraw public housing project. A GBI crime analyst linked bullets from all three shootings, concluding they could have come from the same gun, either a .38 Special or .357 Magnum revolver.

During the trial, prosecutor Spencer Lawton told the jury that Davis was carrying a .38 that night and that bullets he fired at the party could be matched with those fired into the body of Officer McPhail.

But Jason Ewart, one of Davis' lawyers, said the evidence doesn't support that conclusion. "The ballistics do not connect Troy to any crime," he said. Ewart was not Davis' attorney during the trial.

Lawton, the Chatham County district attorney, has not commented publicly on the case. But in court filings, his office dismissed Davis' recent claims as a baseless, last-minute delay tactic.

Roger Parian, director of the GBI crime lab in Savannah at the time, indicated in a report that bullets and empty shell casings found at the different crime scenes were similar,

meaning the gun used to kill Officer MacPhail could have been the same one used to shoot Michael Cooper and Sherman Coleman, the two men injured at the pool party earlier.

Davis was in both places that night, although witnesses have said others were at both crime scenes.

Analysis 'wrong at worst'

In a report written for Davis' defense team in 2003 and submitted to the state parole board, retired GBI ballistics expert Kelly Fite concluded that Parian's analysis was "shoddy and questionable at best and patently wrong at worst." Fite concluded his analysis by stating, "As it appears now, the [ballistics] testing already conducted in this case is wholly lacking in reliability."

Fite also notes in his affidavit that Coleman was shot shortly after Cooper at approximately the same time as MacPhail. Fite writes that Parian and the prosecution "conveniently discarded" the timing of events that would make it difficult, if not impossible, for the same weapon to have been used in both crimes.

"At best, the ballistics states that the same people who were at the Cloverdale party were also at Yamacraw . . . area of town later that evening," attorney Ewart said. "Yamacraw was the Wild West back then — everyone had a gun."

Prosecutors are dismissive.

"[Davis] waited to present this affidavit, based on faulty assumptions, until the eve of his execution solely to thwart justice," Lawton's office wrote in a July 13 court filing seeking to allow Davis' execution to proceed.

Lawton's office also states in the filing that Fite misinterpreted the ballistics report, claiming that Parian linked only the MacPhail and Cooper shootings, not Coleman's. Fite worked as a firearms examiner for the GBI for 31 years and has provided expert testimony about 2,700 times in state and federal courts throughout the Southeast, according to his resume. He was Parian's teacher at the GBI. Parian retired in 1999 after 28 years with the state.

"He's been going around the state testifying adamantly against GBI examiners," said Parian, who was reached at his home in Savannah. "Even the ones he trained."

Parian said his only concern at the time was examining the ballistics in the Davis case, and he did not take any timelines into account.

"I knew there was some question about his guilt," Parian said. "That's not for me to decide. I tried to render a ballistics opinion."

Work questioned before

This is not the first time Parian's work has come under question, however.

His testimony in another death-penalty case led, in part, to the reversal of a murder conviction. Gary Nelson was sentenced to die for the 1978 rape and murder of a 6-year-old girl.

Parian testified at the trial that a limb hair found on the girl had similar characteristics to an arm hair taken from Nelson. He went on to say that the hair was a potential match with only 120 African-Americans in Chatham County.

But Parian and prosecutors failed to mention that FBI analysis of the hair concluded the sample was "not suitable for significant comparison purposes." In other words, there was no way to link the hair to Nelson using credible scientific methods.

The withholding of the FBI report and Nelson's inability to counter Parian's testimony was cited in the Georgia Supreme Court's 1991 decision reversing his conviction. Nelson was eventually freed from prison.

Parian said recently he couldn't recollect the details of the Nelson case. But he said he did not positively identify Nelson as the killer. "If anybody based a decision on that [testimony], that was not my intention," he said.

Emmet Bondurant, a veteran Atlanta lawyer who handled Nelson's appeal, was alarmed when he learned from Davis' lawyers that Parian was involved in analyzing evidence in Davis' case.

He believes Davis' lawyers are right to question Parian's work.

"It would certainly make me far more guarded and skeptical of his testimony," Bondurant said.