

STATE SUPREME COURT: Davis set to make case for new trial

Up today: Lawyers for man condemned in officer's killing ask for a look at affidavits that contain new evidence.

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Condemned killer Troy Anthony Davis today will get another chance to try to win a new trial based on testimony that suggests he did not kill a Savannah police officer in 1989.

Yet, once again, none of the witnesses — including seven prosecution witnesses who have since recanted their trial testimony — will be heard in a courtroom.

Instead, the Georgia Supreme Court will hear arguments from lawyers on whether these witnesses will ever be allowed to take the stand and be cross-examined in court before Davis is put to death by lethal injection.

Davis' lawyers contend there is enough new evidence to cast doubt on Davis' guilt and warrant a new trial. The Chatham County district attorney's office argues that the new evidence is lacking and that Davis should be executed for the 1989 murder of Officer Mark Allen MacPhail.

Davis was scheduled to die by lethal injection July 17. But the evening before, the state Board of Pardons and Paroles, troubled by questions of his guilt, granted Davis a 90-day stay. That stay was lifted in August when the state Supreme Court decided to hear Davis' case. The appeal seeks a new trial or, at least, an order directing a trial judge to hold a hearing so the new evidence can be presented.

The state high court will review a ruling by Chatham County Superior Court Judge Penny Haas Freeseemann, who denied Davis' extraordinary motion for a new trial.

In her six-page ruling issued July 13, Freeseemann noted that most of the new testimony, in the form of sworn affidavits, was obtained more than five years ago and a few of the affidavits were obtained more than a decade ago.

The Georgia Supreme Court has "looked askance" at extraordinary motions years after new evidence was obtained, she wrote.

Freeseemann said she "exhaustively reviewed each submitted affidavit and considered in great detail the relevant trial testimony." Some affidavits contained inadmissible hearsay, others were barred because Davis' lawyers did not obtain the information earlier and some would not have produced a different verdict, she wrote.

Davis has been trying for years to get the new testimony heard in a courtroom. His lawyers have argued that almost all of the new testimony was obtained after Davis' initial

round of state court appeals were exhausted and that funding cuts for lawyers appealing capital cases stymied investigations that could have been conducted sooner. Beginning in 2001, Davis' lawyers unsuccessfully sought a hearing on the new evidence in federal court.

The state Supreme Court should order a hearing on the new evidence, Harvard University law professor Charles Ogletree said in a friend-of-the-court brief filed last week. Davis' lawyers presented "an overwhelming array of newly discovered evidence supporting his claim he was not the shooter and dismantling the thrust of the state's case," he wrote on behalf of Harvard's Charles Hamilton Houston Institute for Race and Justice.

But Chatham District Attorney Spencer Lawton and David Lock, his chief assistant, said this case has more to do with opposition to the death penalty than with Davis. If Davis' lawyers had any confidence in the new evidence, they should have brought it to the DA's attention years ago, they wrote.

"Can there be any reason on earth to believe late and secretly solicited testimony over more contemporaneous, open and scrutinized testimony?" they asked.

Davis, in a taped statement from death row released last week by Amnesty International, said he is innocent. "This killer is still out there," he said. "My family's still in mourning. The victim's family is in mourning. The truth is still locked in because I didn't get justice."