

URGENT ACTION

GEORGIA EXECUTION SET 40 YEARS AFTER CRIMES

Carlton Gary, aged 67, is due to be executed in Georgia at 7pm on 15 March after 32 years on death row. He was convicted in 1986 of the murders of three women which the jury was told were part of a series of similar killings committed in 1977 and 1978.

After less than an hour of deliberation on 26 August 1986, a jury convicted **Carlton Gary**, a 35-year-old African American man, of the burglary, rape and murder of 89-year-old Florence Scheible, Martha Thurmond, 69, and Kathleen Woodruff, 74, who were killed in their homes in late 1977. The prosecution alleged that the defendant – dubbed in the media as the ‘Stocking Strangler’ – had committed these and six other attacks against women in the same neighbourhood of the city of Columbus, western Georgia, between September 1977 and April 1978. He was not charged in the other cases, but the state used as evidence against him the similarities between the crimes – such as all the victims were white women, all were aged 55 or over, all were strangled in their homes. The state’s key witness was the only surviving victim of the attacks, Gertrude Miller, who identified Carlton Gary in court as the man who had raped her on 11 September 1977. The prosecutor emphasised her identification in closing arguments to the jury. The state’s theory was and continues to be that there was only one ‘Stocking Strangler’ and that it was Carlton Gary. After a short sentencing hearing on 27 August 1986, the jury sentenced Carlton Gary to death.

Execution was eventually set for December 2009. Hours before the execution, the Georgia Supreme Court issued a stay and ordered DNA testing. Testing in 2012 of semen from Gertrude Miller’s night clothing was found not to match Carlton Gary’s DNA profile, indicating that her dramatic identification of him in front of the jury had been mistaken. The only one of the three women he was charged with murdering and from whom a viable DNA sample was obtained was Martha Thurmond. The state had claimed the biological evidence had been destroyed, but it was located during appeals. However, the crime laboratory tasked with the DNA testing after the 2009 stay of execution contaminated the sole sample available, resulting in the complete destruction of potentially exculpatory evidence.

In 2012, pointing to this and other problems with the state’s evidence against their client, Carlton Gary’s lawyers filed a motion for a new trial. After evidentiary hearings, the trial court denied the motion in 2017. On 1 December 2017, the Georgia Supreme Court declined to review the case, and on 16 January 2018, denied a motion to reconsider. On 9 March 2018, the lawyers filed a petition in the US Supreme Court seeking review of constitutional questions raised since the motion for a new trial, which have not had any federal judicial review. They are seeking a stay to allow consideration without the pressure of an execution date.

The death warrant is valid from 15 to 22 March 2018. The Commissioner of Corrections has set the execution for 15 March at 7pm. The parole board will consider the case for clemency on 14 March. Carlton Gary’s lawyers are asking for commutation of his death sentence, asserting that the current state of the evidence means that the prosecution’s theory against him at trial “was not in fact true”.

Please write immediately in English or your own language, in your own words:

- Calling on the Board to commute the death sentence of Carlton Gary;
- Expressing concern at the destruction of potentially exculpatory DNA evidence and noting that other DNA testing has indicated that the state’s key witness at the trial was mistaken in her identification of the defendant;
- Explaining that you are not seeking to downplay the seriousness of the crimes.

PLEASE SEND APPEALS BEFORE 15 MARCH 2018 TO:

State Board of Pardons and Paroles

2 Martin Luther King, Jr. Drive SE, Suite 458, Balcony Level, East Tower, Atlanta, Georgia 30334-4909, USA

Email: webmaster@pap.ga.gov

Fax: +1 404 651-6670

Salutation: Dear Board members

Also send copies to diplomatic representatives accredited to your country. HIS EXCELLENCY WOODY JOHNSON, U.S. Embassy London, 33 Nine Elms Lane, London, SW11 7US, United Kingdom, Phone: (0)20 7499-9000

Please check with your section office if sending appeals after the above date.

**AMNESTY
INTERNATIONAL**



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ADDITIONAL INFORMATION

The series of killings of women in the Wynnton neighbourhood of Georgia's second largest city of Columbus began in late 1977 and ended in April 1978. By 1984, no-one had been charged, until Carlton Gary was arrested in May 1984. His jury was told that he made statements to police implicating himself in the crimes, although there is no signed or recorded statement. A prior suspect had made a false confession with details of the crimes; it had only been when the murders continued after his arrest that he was released from custody. Carlton Gary's appeal lawyers have called into question their client's supposed confession as well as fingerprint evidence used against him. They have also pointed to the "inequality of arms" at this complex trial. Their recent petition to the Supreme Court notes that Carlton Gary was represented at his trial by a "volunteer attorney who was not paid one cent for his representation of Mr Gary and was not provided with one cent for expert assistance, or for investigation, prior to or during Mr Gary's trial". In contrast, "the State relied upon a number of experts prior to trial and at trial".

Testing of semen obtained from the Scheible and Thurmond murders was used at trial to implicate Carlton Gary as the person who killed the women. Prior to the advent of DNA testing, "secretor" testing was used (a person who is a "secretor" passes his blood group into other bodily fluids such as saliva or semen). In these cases, the semen had been left by a person who was a non-secretor with blood type O, whereas testing showed that Carlton Gary has blood type O but is a normal secretor. During appeal proceedings, the trial lawyer said that he had not seen the work papers associated with this testing. A DNA expert retained by the appeal lawyers concluded from these papers that the semen was left by a non-secretor in both the Scheible and Thurmond cases, and called into question the trial testimony of the state's expert who equivocated on this issue. The defence expert has also described as "egregious" the contamination and destruction of the DNA evidence from the Thurmond murder.

The state was in possession of a shoeprint from the scene of one of the murders with which Carlton Gary was not charged, but which like the other uncharged murders was used against him in securing the conviction and death sentence. The footprint, which was not provided to the defence at the time of the trial, was made by a size 10 shoe. Carlton Gary's shoe size is 13 and a half, and a podiatrist has testified that it was not possible for his feet to fit into a size 10 shoe.

During the trial, the prosecution also introduced testimony about bite marks on the final victim, killed on 19 April 1978, another of the murders with which Carlton Gary was not charged. A medical examiner testified that during the autopsy, he had observed what appeared to be tooth marks on the victim's breast. He testified that a reliable comparison between the bite mark and the defendant's teeth could not be made because Carlton Gary had had dental work done between the time of the murder and his arrest six years later. However, it was not disclosed to the defence that a model of the bite mark had been made. During state appeals, Carlton Gary's lawyers learned of its existence, but were unable to locate it. However during federal appeals in 2005, it was found. It was revealed that the prosecution had consulted with an expert forensic dentist prior to the trial, but had not provided any information about that consultation to the defence. It has since been revealed that after this expert told the prosecutors that it might be possible to exclude a suspect based on a comparison between their teeth and such a mould, they left and did not contact him again. On appeal, this expert testified for the defence that Carlton Gary was "probably not the biter".

Since 1973 in the USA, more than 160 wrongful convictions in capital cases have been discovered, including six in Georgia. There have been 1,469 executions since 1976, when the Supreme Court approved new capital statutes. Of the 70 executions in Georgia, 64 (91 per cent) were for crimes involving white victims. A third of those executed were African American. Seventeen of these 23 executions were for crimes involving white victims. None of Georgia's 70 executions were of white defendants convicted of killing black victims. There have been four executions in the USA so far this year. Amnesty International opposes the death penalty, unconditionally. Today 142 countries are abolitionist in law or practice.