

IN THE SUPREME COURT OF GEORGIA

TROY ANTHONY DAVIS,)	
Applicant,)	
vs.)	App. No. _____
)	
CARL HUMPHREY, Warden,)	EXECUTION SCHEDULED
Georgia Diagnostic Prison,)	FOR SEPTEMBER 21, 2011
Respondent.)	AT 7:00 P.M.

MOTION FOR EMERGENCY STAY OF EXECUTION

TROY ANTHONY DAVIS, by and through undersigned counsel, respectfully requests that this Court stay the execution of his sentence of death by lethal injection currently set to be carried out today, the 21st day of September, 2011, at 7:00 p.m.¹ In support of this motion, Mr. Davis shows the following:

On August 28, 1991, Troy Anthony Davis was convicted of the murder of Officer Mark MacPhail, two counts of aggravated assault, two counts of obstruction of a law enforcement officer, and possession of a firearm during the commission of a felony. Mr. Davis, who has unwaveringly asserted his innocence of these charges, was sentenced to death on August 30, 1991. This court affirmed. Davis v. State, 263 Ga. 5 (1993).

Throughout the course of Mr. Davis's case, there have been significant questions regarding the identity of Officer MacPhail's assailant. No physical

¹ The execution warrant issued September 6, 2011, is attached as Exhibit A.

evidence has ever conclusively linked Mr. Davis to the murder and significant suspicion rests on the man who implicated Mr. Davis to the police originally – Sylvester “Red” Coles. Witnesses who purported at trial to have seen Mr. Davis shoot Officer MacPhail were subjected to a blatantly suggestive photo array and crime scene “reenactment” where Red Coles assumed the role of “bystander.” Massive public calls in newspapers and television media by law enforcement for Davis’s arrest immediately after Coles’s identified Mr. Davis as being involved in the shooting, and the placement of numerous large “wanted” posters bearing the same photo of Mr. Davis used in the photo array in the vicinity of the witnesses’ homes and workplaces further contaminated the identifications.

Because evidence previously unavailable to Mr. Davis, including new ballistics testing, requested by the Board of Pardons and Paroles, which contradicts the trial testimony of previously discredited firearms examiner Roger Parian,² reveals Mr. Davis’s capital conviction and death sentence to be based on false, misleading and materially inaccurate evidence, in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments, this Court must stay Petitioner’s imminent execution and grant the Certificate of Probable Cause to Appeal.

² See Nelson v. Zant, 261 Ga. 358 (1991); Appendix M (Final Order, Nelson v. Zant, Butts Co. Superior Court Case No. 5387).

The jury in this case was unaware that the testimony of Kevin McQueen, who testified that Mr. Davis had confessed not only to Officer Mark MacPhail's murder but also to a shooting earlier on the night of the crime, was "patently false," as Judge William Moore unequivocally found in his 2010 order in the Federal District Court in Savannah. The jury was also presented with what we now know, as a result of new ballistics testing, to have been false testimony on the part of a state ballistics examiner, Roger Parian, a former GBI forensic examiner previously discredited in the Nelson case by this Court, who claimed that the bullets fired in that previous shooting and at Officer MacPhail may have come from the same gun – testimony which became key to the state's theory of Mr. Davis guilt and the motivation for the murder of Officer MacPhail. Finally, the jury was presented with what we now know, through the recent testimony of the lead detective on the case, to be the false testimony of Harriet Murray that she identified Mr. Davis as the murderer of Officer MacPhail from a photo array shown to her by that same detective.

This newly available evidence negates three important state witnesses' trial testimony and fatally undermines the state's theory of the case, including the alleged motive driving the murder of Officer MacPhail: that Mr. Davis purportedly sought to avoid arrest for the prior shooting of Michael Cooper in the Cloverdale neighborhood in Savannah.

WHEREFORE, Mr. Davis requests that this Court stay his execution pending further Order of this Court.

Dated this 21st day of September, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian Kammer', with a long horizontal flourish extending to the right.

Brian Kammer (Ga. 406322)
Georgia Resource Center
303 Elizabeth Street, NE
Atlanta, GA 30307
404-222-9202

COUNSEL FOR MR. DAVIS

Exhibit A

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

FILED IN OFFICE

THE STATE OF GEORGIA,

v.

TROY ANTHONY DAVIS,

Defendant.

*
* CRIMINAL NO.
* 089-2467-H
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*
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*
*

2011 SEP -6 PM 3:53

Patricia H.
DEP. CLK. SUPERIOR CT.
CHATHAM COUNTY, GA

ORDER

The Court having sentenced Defendant, Troy Anthony Davis, on the 3rd day of September, 1991, to be executed by the Department of Corrections at such penal institution as may be designated by said Department, in accordance with the laws of the State of Georgia, and;

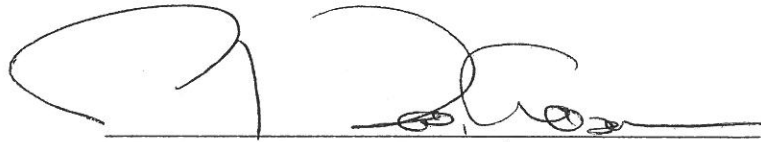
The date for the execution of said Troy Anthony Davis, having passed by reason of supersedeas incident to appellate review;

IT IS CONSIDERED, ORDERED, AND ADJUDGED by this Court, pursuant to O.C.G.A. § 17-10-40, that within a time period commencing at noon on the 21st day of September, 2011 and ending seven days later at noon on the 28th day of September, 2011, the Defendant, Troy Anthony Davis, shall be executed by the Department of Corrections at such penal institution and on such a date and time within the aforementioned time period as may be designated by said Department in accordance with the laws of the State of Georgia.

It is FURTHER ORDERED that the Clerk of the Superior Court of Chatham County, Georgia shall record this order on the

minutes of the court and shall cause a certified copy of this Order for execution of the original sentence to be served immediately to the Attorney General of Georgia, the Eastern Judicial Circuit District Attorney, the Commissioner of the Georgia Department of Corrections, the Warden of the Georgia Diagnostic and Classification Prison, and Defendant's last known attorney of record.

This 6th day of September, 2011.

A handwritten signature in black ink, appearing to read 'Penny Haas Freesemann', is written over a horizontal line.

PENNY HAAS FREESEMANN
JUDGE, SUPERIOR COURT
EASTERN JUDICIAL CIRCUIT

Prepared by:

David E. Perry
Chief Assistant District Attorney
Eastern Judicial Circuit
State Bar Number 572509
P. O. Box 2309
Savannah, Georgia 31402
(912) 652-7308

IN THE SUPREME COURT OF GEORGIA

TROY ANTHONY DAVIS,)	
Petitioner,)	
vs.)	Habeas Corpus
)	Application No.
CARL HUMPHREY, Warden,)	
Georgia Diagnostic Prison,)	
Respondent.)	

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing document this day by hand delivery and/or electronic transmission, on counsel for Respondent at the following address:

Beth Burton
Senior Assistant Attorney General
132 State Judicial Building
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300

This the 21st day of September, 2011.



Attorney