

PUBLIC

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Further information on UA 317/06 (AMR 51/177/2006, 24 November 2006) – Death penalty / Legal concern

USA (Florida) Angel Nieves Diaz (m), aged 55

A key prosecution witness at the 1985 trial of Angel Nieves Diaz has recanted his testimony, which had been a key part of the evidence that convicted Diaz of murder. On 27 November, lawyers for Angel Diaz filed a new motion in court on the basis of this new evidence.

Angel Diaz remains scheduled for execution in Florida on 13 December. He was sentenced to death in 1986 for the murder during a robbery of bar manager Joseph Nagy in Miami.

Joseph Nagy was the bar manager of the Velvet Swing Lounge. He was shot dead on 29 December 1979, when a group of three men robbed the bar. There were no eyewitnesses to the shooting. Angel Diaz and Angel Toro were charged with first-degree murder in 1984, but the trial was delayed until December 1985. By that time, Angel Toro had pleaded guilty to second-degree murder in return for a life sentence.

Angel Diaz's former girlfriend testified that on the night of the robbery, he had told her that Angel Toro had shot a man during the robbery. The testimony of two other witnesses, who had been in the bar at the time of the robbery, indicated that Angel Diaz was not the gunman. However, a jailhouse informant, Ralph Gajus, testified that when they had been held in the same jail, Angel Diaz had indicated to him that he had shot Joseph Nagy.

Ralph Gajus has now provided a sworn affidavit stating that his testimony at the trial was false; that Angel Diaz never told him that he was the gunman; and that he did not know from his communication with Diaz who had shot Joseph Nagy. He states that his testimony to the contrary was motivated by anger at Angel Diaz and a desire to gain favour from the state on his own murder charge. Ralph Gajus had testified at the trial that he had not been promised anything in return for his testimony. However, at his own sentencing a police officer had testified about the assistance Gajus had provided to the state in the Diaz case.

During the jury's deliberations at the trial of Angel Diaz, the jurors requested copies of the testimony of Ralph Gajus, but the judge refused, instructing the jury to rely on its recollection of what he had said. The jury returned a guilty verdict. Ralph Gajus's recantation further calls into question the reliability of their verdict.

At the sentencing, it was argued in mitigation against a death sentence that Angel Diaz had only been an accomplice to the crime, but no new evidence of this was presented. Research in the USA has shown that residual doubt about guilt is a highly mitigating factor in the minds of capital jurors. Although the jury recommended a death sentence for Angel Diaz, they did so only by eight votes to four, indicating possible residual doubt in the minds of the jurors even with the testimony of Ralph Gajus. Without it, it is possible that more of the jurors would have voted against a death sentence.

In post-conviction proceedings, evidence not raised at the trial has been raised about Angel Diaz's childhood of abuse and mental problems, and his addiction to drugs from the age of 16. It has also been claimed that the prosecution failed to disclose evidence that it was Angel Toro who shot Joseph Nagy. In a memorandum dated 6 February 1984, the prosecutor wrote: "At some point, all three subjects pulled out guns and announced a robbery. Shots were fired. Defendant Toro apparently grabbed Gina Fredericks around the neck and took her back to the area of the office where the safe was located. Apparently, victim Nagy came out of the office at that time. Defendant Toro shot Nagy once in the chest causing his death".

Testimony given by people who are themselves in custody or facing criminal prosecution has been shown to be frequently unreliable. Research at Northwestern University in Illinois has revealed that the use of such informants was among the three most prevalent factors in wrongful capital convictions in the United States. A review of 111 such cases from 1973 to 2004 in the USA found the use of false testimony in 46 per cent of the cases. The Commission on Capital Punishment, set up by the Governor of Illinois after he imposed a moratorium on executions in 2000, examined the question of such testimony. The Commission's April 2002 report concluded that, even with stringent safeguards on the use of such evidence, "the potential for testimony of questionable reliability remains high, and imposing the death penalty in such cases appears ill-advised."

The California Commission on the Fair Administration of Justice has recently issued its recommendation on the use of informant testimony. The Commission, established by the California State Senate to examine the causes of wrongful convictions, and to make recommendations to ensure the fair and reliable administration of criminal justice in California, has recommended that the legislature adopt a law barring the use of in-custody informant testimony in criminal trials without independent corroborating evidence.

A recent study conducted under the auspices of the American Bar Association's Death Penalty Moratorium Implementation Project identified serious problems in Florida's capital justice system, including the high number of people released from death row on the grounds of innocence (22 since 1973 – more than Illinois, where a moratorium resulted), the continued existence of racial and geographic disparities, the fact that unanimity is not required in jury sentencing decisions, and the failure to give sufficient weight to the mitigating effects of serious mental disability.

FURTHER RECOMMENDED ACTION: Please continue to send appeals based on the original UA and this new information, to arrive as quickly as possible, in English or your own language:

- expressing sympathy for the family of Joseph Nagy, who was killed in 1979, and explaining that you are not seeking to downplay the seriousness of this crime or the suffering caused;
- opposing the execution of Angel Nieves Diaz, noting evidence calling into question his competency to stand trial and represent himself;
- noting the disparity in sentencing in this case, with one defendant receiving a life sentence and another death, despite conflicting evidence about who was the gunman;
- noting that Ralph Gajus, a key prosecution witness at the trial, has now recanted his testimony against Angel Diaz, calling into further doubt the reliability of the jury's verdict;
- noting that four of the jurors did not vote for the death penalty, indicating a possible residual doubt in their minds about the defendant's guilt, and suggesting that without the testimony of Ralph Gajus more of the jurors might have voted against a death sentence;
- noting that recent research has found serious problems with Florida's capital justice system, including geographic and racial disparities, and the lack of a requirement for unanimity in jury sentencing decisions;
- calling on the Governor to intervene to stop this execution.

APPEALS TO:

Governor Jeb Bush
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Salutation: Dear Governor

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.