



Court orders new trial for Ala. death row inmate

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ATLANTA (AP) — An Alabama death row inmate convicted of killing his ex-wife and another nursing student in 1985 won a new trial Wednesday with a federal appeals court ruling that blacks were unconstitutionally excluded from his jury.

Citing what it called an "astonishing pattern" of discrimination, a three-judge panel of the 11th U.S. Circuit Court of Appeals found Alabama violated Earl Jerome McGahee's 14th Amendment rights.

McGahee, who is black, was convicted in Dallas County Circuit Court for killing his ex-wife, Connie Brown, and Cassandra Lee, a student at George C. Wallace Junior College in Selma, a city of historic civil rights clashes two decades before.

The appeals panel noted "the total exclusion of African-Americans in this county in which they comprised 55 percent and the strong evidence of race-based decision making" in choosing the 1986 jury.

The opinion was written by Circuit Judge R. Lanier Anderson, joined by Judges Gerald Bard Tjoflat and Stanley Marcus.

Dallas County District Attorney Michael Jackson said the county today is 66 to 70 percent black. He said it would be "very unusual to have an all-white jury."

He said he wasn't in Selma at the time of the McGahee conviction but recalled the killings.

"Of course, we'll look at the evidence now and try as best we can to retry the case," said Jackson, who became district attorney in January 2005.

Bryan Stevenson of the Montgomery, Ala.-based Equal Justice Initiative represented McGahee in the appeal.

"The evidence of racial bias during jury selection in this case is pretty remarkable and is a terrible reflection on criminal justice in Alabama," Stevenson said via e-mail Wednesday. "An all-white jury in a majority black county was accomplished after the prosecutor excluded every black person qualified for jury selection. The derogatory explanations offered by the prosecutor to justify the exclusion of African-Americans presented a serious issue, especially in a death penalty case."

Alabama's Court of Criminal Appeals overturned McGahee's death sentence based on improper introduction of victim impact testimony during the sentencing phase of his trial. But the court denied McGahee's claims under *Batson vs. Kentucky*, a 1986 Supreme Court decision that excluding jurors based on race violates the equal protection guarantees of the 14th Amendment.

After a second sentencing hearing, a new jury returned a 10-2 verdict for life imprisonment with no parole. The trial judge rejected the jury verdict and sentenced McGahee to death, and the sentence was upheld on direct appeal.

Following other unsuccessful bids, McGahee filed a petition for writ of habeas corpus in the Southern District of Alabama in 2005, including his Batson claim. The district court denied the petition, a decision that was reversed by the 11th Circuit ruling.

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