

Hinton Death Row appeal gets lively

Judges pepper both sides about dueling experts

By CARLA CROWDER
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MONTGOMERY — A judge on the Alabama Court of Criminal Appeals listened Tuesday to arguments that Death Row prisoner Anthony Ray Hinton is innocent and said, "It's amazing to me that a conviction was received at all."

Judge Sue Bell Cobb's comment came after Hinton's attorney, Bryan Stevenson, explained that three national firearms experts working for the defense had found that the pistol used to convict Hinton — the only physical evidence in the 1985 killings — was incapable of producing the fatal bullets.

The Alabama attorney general's office urged the court to ignore Hinton's claims, saying a jury and two courts previously rejected them. "He has brought absolutely nothing new 15 years later," Assistant Attorney General Corey Maze said.

To which Judge Greg Shaw asked: "What do we do as a court when we've got much better experts who say, 'It can't be like that, can't be like that,' and we've got a man sitting on Death Row?"

Judges peppered both attorneys with questions during a lively 90-minute hearing before a packed Montgomery courtroom.

Hinton, 49, has maintained his innocence since arrest. Sixteen of his relatives and friends attended the hearing, wearing purple ribbons they said symbolize justice.

HINTON: One judge finds conviction amazing

Afterward, on the courthouse steps, a sister said she believed that Hinton, had he been allowed to attend, would have been "overwhelmed" by the efforts of his attorneys and by the judges' responses. "A lot of things that came out, we already knew, but it wasn't presented (at trial) and we didn't have the money to have it presented," said Hinton's sister Darlene Gardner, 52, of Birmingham.

Mary Davidson Dawson, the widow of slain Mrs. Winner's restaurant assistant manager John Davidson, attended with her daughter and husband but declined comment.

Also slain was Captain D's assistant manager Thomas Vason. Lawmen nabbed Hinton after a third victim, Bessemer Quincy's manager Sid Smotherman, survived being shot and identified Hinton as his assailant.

Alibi witnesses put Hinton at work in a secure Bruno's warehouse that night.

Tuesday's discussion included worksheets that Alabama firearm examiners used to link the killings and a .38-caliber revolver found in the home Hinton shared with his mother.

The worksheets show that examiners could match half of the 12 characteristics needed to link bullets to a gun, but left the other half blank or filled in with question marks.

"There were profound questions," said Stevenson, director of the Equal Justice Initiative, which represents poor people on Death Row. Hinton's attorneys did not discover the existence of the worksheets until after his conviction, an omission they said was unfair and should be considered in the appeal.

"Of course (examiners) ... couldn't tell all the class characteristics," prosecutor Maze responded, because the recovered bullets were so damaged from passing through people.

The judges seemed particularly concerned with finding out whether the appeal was based on dueling experts.

"What I'm trying to figure out right here is what we do in a situation where we have ... conflicting evidence," Shaw said. "I'm seeing a new set of experts who disagree with the first set."

'You don't have them?'

Stevenson told him that ethical rules governing firearm and toolmark examiners require them to work out their differences in cases of conflict, though the Alabama examiners have declined to do so.

Stevenson told the judges that the Hinton experts, a retired chief of the FBI firearm and toolmark identification unit and two Texas firearm examiners, could not link the recovered bullets to a single weapon. Nor could they force the Hinton weapon to fire bullets like the ones fired at Smotherman, even with manipulation.

"This is essentially like DNA evidence that comes in and says this man didn't do it," Stevenson argued.

Maze countered, "I am 100 percent sure the bullets did match in 1986 and I can tell you why." Oxidation, the result of an old gun being allowed to rust over the years, changed the way it fired, he said.

Bullets that the Alabama examiners fired in 1986 to establish the link are no longer available for examination, Maze said.

"You don't have them?" Cobb asked.

"No, ma'am," Maze answered.

"Where are they?" she asked.

"Nobody knows," the assistant AG said.

Interested observer

Bob McGregor, who prosecuted Hinton for the Jefferson County district attorney's office, watched from the attorney general's corner.

Cobb looked his way toward the end of the arguments. "I just sit here and think that Mr. McGregor must have been one of the finest prosecutors in the State of Alabama," she said, before raising a potential hole in the case that Hinton's attorneys had not mentioned. "Where was the evidence, any evidence at all, that Mr. Hinton fired the weapon?"

Both sides are asking for an expedited decision. The court could order a new trial, order Hinton released or deny his claim for relief.

After 19 years, his family still believes he'll go free. "Faith, faith is the substance of everything," Gardner said. "If you don't have faith, you don't have nothing."

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