

# OPINIONS

BOB BLALOCK

## Why won't state take innocence claim seriously?

Two weeks ago, the state of Alabama — that means you — moved another step closer to killing Anthony Ray Hinton.

For those of us troubled by the unfair arbitrary way the death penalty is applied, the Alabama Court of Criminal Appeals' 3-2 vote denying Hinton a new



trial was disappointing, disturbing news. For those who support capital punishment, the court's ruling could be even worse news. Hinton, you see, may be innocent.

I cannot know with certainty Hinton didn't pull the trigger of his mother's rusted, pitted .38-special and murder two fast-food restaurant employees and shoot another, who identified Hinton as his attacker. But it's hard to believe Hinton is guilty beyond a reasonable doubt — the standard the law requires. If only anyone arguing the state's side of the case would notice.

Among the most serious claims questioning Hinton's capital conviction put forward by his lawyer, Bryan Stevenson:

► **Conflicting ballistics evidence.** At trial, state forensics experts matched the six bullets to the gun at Hinton's home, the only physical evidence linking him to the crime. Hinton's expert at trial, hired in desperation by his court-appointed lawyer, testified the bullets didn't match. But prosecutors ridiculed him as a one-eyed "charlatan" who didn't even know how to turn on the state Department of Forensic Sciences microscope.

Three nationally known ballistics experts working for Hinton years later testified they couldn't match the bullets to a single gun, nor could they match the Hinton weapon to any of the six recovered bullets. They offered to meet with the former state forensics department director who testified at Hinton's trial to see if they could resolve their differences of opinion — as required by the Association of Firearm and Toolmark Examiners' ethical rules — but were rebuffed.

► **A plausible alibi.** According to trial testimony and court filings, Hinton clocked in to work at midnight at the Bruno's warehouse in Ensley and received his work assignment 10 minutes later on the night the third victim, Sidney Smotherman, was shot but survived. Smotherman left the restaurant at 12:14 a.m. and drove to a nearby grocery store. The restaurant was 15 miles from the warehouse, yet Hinton supposedly was at the restaurant four minutes after he got his work assignment.

The attorney general's office, instead of investigating those inconsistencies, has argued that even if Hinton's claims are true, he didn't make them in time.

I am not making this up. For example, the attorney general's office in a proposed order (later adopted word for word by the circuit court judge) for what is known as a Rule 32 hearing wrote of Hinton's ballistics evidence, "This claim is dismissed as time-barred."

... And this is justice? Stevenson, who already has freed an innocent man from Alabama's Death Row, correctly argues that "nothing is more crucial than making sure that an innocent person is not executed."

The attorney general's office has dismissed Hinton's claims as "wrapping an old defense in a new cover."

It must be nice to be so sure. I don't pretend to understand ballistics, with all its talk of striations and lands and grooves and twists. But if I were the attorney general, I would demand to know why the state's ballistics expert wouldn't meet with the defendant's experts.

And I would want someone, anyone, to explain how Hinton could clock in at midnight, get his work assignment 10 minutes later, sneak away from the warehouse and drive 15 miles to Bessemer, follow Smotherman from Quincy's to Food World, wait for him inside while Smotherman shopped for a few items, and leave when Smotherman paid for his groceries at 12:26 a.m., according to the cash register receipt. Then, bump Smotherman's car from behind, force him to drive back to the restaurant, rob and shoot him, and drive 15 miles back to the warehouse in time to be seen by his supervisor at 12:40. No one from the state has offered me a convincing explanation for how Hinton could have pulled off this feat without a Star Trek transporter.

It is at least encouraging that two of the appeals judges also have doubts. Judge Sue Bell Cobb in her dissent wrote:

"Because a man's life hangs in the balance and because I am convinced that this case will not withstand the many additional levels of review in state and federal courts, the only remedy for these violations of Hinton's rights is to grant the relief requested . . . a new trial."

The alternative? The attorney general's office and courts can keep ignoring the possibility prosecutors and the jury got it wrong, and Hinton will move ever nearer to a date with death.

"You don't want to be a party to murder," Stevenson said. "That's what the state is flirting with in this case."

No one, no matter how fond he is of the death penalty, should want that.

---

*Bob Blalock is editorial page editor of The News. E-mail him at [bblalock@bhamnews.com](mailto:bblalock@bhamnews.com).*