

THE STUPIDEST LAWYERING EVER

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Last Wednesday and Thursday, June 23 and 24, 2010, Georgia death row inmate Troy Davis finally got what he has been seeking for over a decade—a court hearing allowing him to present newly discovered evidence he is innocent of the murder of off-duty policeman Mark MacPhail. That hearing was a disaster, however, because of the cataclysmic blundering of his own attorneys. As he sat in the federal district courtroom in jail garb and leg irons watching events unfold, Davis must surely have come to the sickening realization that his lawyers were guilty of some the stupidest lawyering on record.

Davis' newly discovered evidence, consisting of witnesses and affidavits, points to one Sylvester Coles as the person actually guilty of the murder. Yet Davis' attorneys failed to subpoena Coles, and Coles never appeared at the hearing. Putting Coles on the stand would have been a win-win situation for Davis: if Coles admitted being the murderer, Davis would be cleared; if Coles pled the Fifth Amendment, this would reflect unfavorably on Coles and permit numerous inferences in favor of Davis's innocence; and if Coles denied everything, he would still be subjected to rigorous questioning that might trip him up or damage his credibility. Furthermore, failing to put him on the stand would reflect badly on Davis's innocence claims. Why wouldn't an innocent convict seize the opportunity put the real killer on the stand and grill him?

Only attorneys whose guiding policy is stupidity would fail to subpoena Coles in advance of the hearing, but Davis' lawyers did. The harm this stupidity caused to Davis was apparent at the hearing. At the end of Wednesday's hearing, according to the AP reporter who was present,

the presiding judge, William Moore, “said he’s highly skeptical of testimony that another man had admitted to shooting MacPhail because Davis’ attorneys did not subpoena the man they say is the real killer.” As for the Thursday hearing, AP reports: “Davis’ lawyers did not call Coles to the stand, and Moore made them pay for it. He ruled out testimony by a number of witnesses who would have said Coles told them he killed MacPhail, on the grounds it was inadmissible hearsay. Moore told Davis’ lawyers they could have gotten around that by calling Coles to the stand and giving him a chance to rebut that testimony. ‘Here’s one of the most critical witnesses to Davis’ defense,’ Moore said. ‘Mr. Coles is available to testify and you don’t call him. Mr. Coles should have been called by you.’ [O]ne of Davis’ lawyers said the legal team tried unsuccessfully to serve Coles with a subpoena Wednesday, soon after Moore said he might not give any weight to hearsay evidence. Too late, Moore shot back, noting the hearing had been set months in advance.”

It is impossible to predict what ruling the judge will hand down when he decides the case, but because of the gross incompetence of his attorneys it seems doubtful that Davis will be found to have satisfied his heavy burden of clearly establishing his innocence. If the judge concludes that there has been no demonstration of innocence, it is almost certain that sooner or later Davis will be put to death. This means that if Davis is innocent—and most unbiased persons familiar with the evidence believe he is—his execution would be due in large part to the startling stupidity of his own attorneys, whose ineptness prevented production in court of the evidence establishing his innocence. An innocent man might die on account of the stupidity of his own lawyers: lethal, fatal, unpardonable stupidity.