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## **DID GEORGIA EXECUTE AN INNOCENT MAN? (PART I)**

***Deconstructing the murder of a Savannah police officer,  
with no axe to grind***

*By Julius (Jay) Wachtel.* During the early morning hours of August 19, 1989 Savannah police officer Mark MacPhail was in uniform working an off-duty security job at a Burger King when he came to the aid of a citizen who was reportedly being mugged. Officer MacPhail was shot and killed.

Two years ago, in [“With Some Mistakes There’s No Going Back,”](#) we concluded that Troy Davis, the man whom Georgia authorities executed three days ago, was more likely than not responsible. Our less-than-ringing endorsement reflected a verdict whose factual basis had been eroded by a string of post-conviction witness recantations, including accusations that the man who fingered Davis later confessed to being the shooter.

Davis’ voluble throng of supporters, led by [Amnesty International](#) and the [ACLU](#), never expressed any doubts. ACLU called the execution “unconscionable and unconstitutional,” and not just because they oppose the death penalty, a position with which we happen to agree. Davis, they insist, was at the very least a victim of mistaken identification. He was an innocent man.

In our criminal justice system what really counts is what the courts think. And none counts more than the Supreme Court. By 2009 Davis had been turned away by the [Georgia Supreme Court](#) and the [Eleventh Circuit](#). His final option was to apply directly to the Supreme Court for a Writ of Habeas Corpus. Normally the justices brush off such applications. But this case was all but “normal.” Facing formidable national and international pressures to insure that justice was done. the high court punted. In what two dissenting justices (predictably, Scalia and Thomas) called an “extraordinary” move, [the Court accepted the petition](#) and assigned a trial judge to “receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of the trial clearly establishes [Troy Davis’] innocence.” Observers said no such step had been taken in fifty years.

Unraveling the merits of the petition fell to United States District Judge William Moore, sitting in Savannah. Prosecutors and Davis’ lawyers presented their evidence on

June 23 and 24, 2010. (Click [here](#) and [here](#) for news accounts.) Two months later the judge filed his opinion. It ran a startling 172 pages. (Click [here](#) for Part I, and [here](#) for Part II). Davis, the judge ruled, hadn't come close to meeting his burden. Calling him "not innocent" and slamming much of his evidence as "smoke and mirrors," Judge Moore effectively sealed the man's fate. Thirteen months later Davis lay on a table, poison coursing through his veins.

How did the judge reach his damning conclusion? We'll start by summarizing Judge Moore's account of the state's case as told in police reports, the preliminary hearing and trial.

## **Investigation and Preliminary Hearing**

The incident began in a pool hall and spilled over into a Burger King parking lot. There is general agreement that it began with an argument between Sylvester Coles and Larry Young in the pool hall, and that as they moved outside they were joined by two of Coles' associates, Troy Davis and Darrell Collins. That's where Davis allegedly struck Larry Young with a gun butt. Young ran off and his yelling drew the attention of officer MacPhail, who came to intervene.

**Larry Young** told police that he had bought beers for himself and his girlfriend. A man demanded one of the beers, and when he refused the man kept arguing and followed him outside. Young was then accosted by two other men. One struck him on the head with a gun butt. Young ran for help. Several days later police showed him photo arrays. Young couldn't identify his assailant. But he tentatively identified Davis as the man who demanded the beer. Three weeks later, at Davis' preliminary hearing, Young said that man was actually Sylvester Coles. Young said that he couldn't identify the man who struck him, but that he was wearing a white shirt with printing, black pants and a white baseball cap.

**Sylvester Coles** and his lawyer went to the police one day after the murder. Coles told officers that he was the one who argued with Young, and that Davis struck Young with a small, black gun with a wood handle. Darrell Collins was present but not otherwise involved. Coles said that Davis ran off when a police officer showed up, and that the cop chased him. Coles then heard a gunshot, saw the officer on the ground and fled. Coles admitted that he had been carrying a chrome long-barreled revolver, but said he left it behind while playing pool. Coles gave essentially the same account at Davis' preliminary hearing.

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**Darrell Collins** told police that on the day preceding the murder he, Davis and a friend Eric Ellison were at a party when rival gang members shouted slurs from a passing car. Davis pulled a small black gun and fired once. That evening they drove to a gas station. On arrival Davis walked to an adjacent pool hall to see Coles. An argument broke out between Coles and another man, and as it moved outside Davis “slapped” the man on the head. Collins was on his way to join them when a police officer appeared, so Collins returned to the car. He heard a gunshot and he and Ellison left. Collins said that Davis was wearing blue or black shorts and a white t-shirt with writing on the front. He didn’t testify at the preliminary hearing.

Many of Davis’ associates were interviewed. **Jeffrey Sapp** told police that Davis said he slapped a man who argued with Coles and then shot the cop who responded. **Monty Holmes** told police that Davis said he shot the officer in self-defense when he reached for his gun. Both Sapp and Holmes testified at Davis’ preliminary hearing. Two others spoke with police but didn’t testify at the hearing. **Eric Ellison** said that he didn’t see the shooting. **Craig Young** also said he saw nothing. However, he heard that Davis had shot at a vehicle and killed a cop.

There were nine citizen witnesses. Two, Harriet Murray (Young’s girlfriend) and Dorothy Ferrell testified at the preliminary hearing.

**Harriet Murray** told police that the gunman was wearing a white shirt and dark pants. Ms. Murray could not identify the gunman from the first photo lineup, but picked Davis from another lineup the next day. She also identified Coles as the one who argued with her boyfriend. At the hearing she said that Davis was the man who struck Young and shot officer MacPhail. Davis’ gun misfired the first time, and when the officer reached for his gun Davis fired again, striking the officer’s face, then shot the officer two or three more times as he lay on the ground.

**Dorothy Ferrell** supposedly told police that she saw officer MacPhail order the gunman from the area hours earlier. She described the shooter as wearing a white t-shirt with writing, dark shorts and a white hat. Ms. Ferrell later said that she had seen Davis’ photo in a patrol car while speaking with an officer on an unrelated matter and told the officer that he was the gunman. She had seen Davis’ photo on TV and was eighty to ninety percent certain he was the one. She repeated this account at the preliminary hearing.

Witnesses Antoine Williams, Anthony Lolas, Matthew Hughes, Eric Riggins, Steven Hawkins, Steven Sanders and Robert Grizzard apparently didn’t testify at the hearing. **Antoine Williams** told police that the suspect on a wanted poster (Davis) was the one

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who “slapped” Young and shot the officer. He was apparently shown photographs and said he was “sixty percent sure” that Davis was the gunman.

### **Trial**

Davis was charged with the murder of officer MacPhail and the wounding of Michael Cooper, an occupant of the vehicle that Davis allegedly fired on. Davis pled innocent to everything and was tried in August 1991.

**Larry Young** admitted his original mixup in identifying Davis. He reiterated that Coles was the man in the yellow shirt who demanded the beer, and that a man in a white shirt struck him on the head.

**Sylvester Coles** testified essentially as at the hearing. He admitted that he had been carrying a gun, but not when the shooting occurred, and said he didn’t see Davis shoot the officer.

**Darrell Collins** recanted his testimony about Davis shooting at the vehicle. He said that police pressured him to say so under threat of being charged as an accessory. Collins said that he didn’t see Davis with a gun that day, only in the past. As for the shooting of officer MacPhail, he saw Davis slap the man with whom Coles argued then saw the officer head in their direction. He heard gunshots and ran away. He said that Davis had been wearing a white shirt with writing and blue or black shorts. He also confirmed that Coles put his gun away before entering the pool hall.

**Jeffrey Sapp** testified that Davis told him he shot the officer but didn’t fire at the car. Sapp admitted that he had lied to police and at the preliminary hearing when he said that Davis went back to finish off the officer so he couldn’t be identified. Sapp said he had made that up to get back at Davis over an ongoing dispute.

**Harriet Murray** reprised her testimony from the hearing. She reaffirmed her identification of Davis as the shooter. Ms. Murray conceded that when she first picked Davis she said he was one of the three men, not specifically the gunman. She admitted giving inconsistent accounts of the shooter’s physical description.

**Dorothy Ferrell** testified to essentially the same effect as at the hearing. She identified Davis as the shooter in court. Ms. Ferrell said that she did not see pictures of Davis before spotting his photo in the police car. Contrary to the police report, Ms. Ferrell said that she had only seen officer MacPhail run off someone who looked like Davis. Like Ms. Murray, she conceded giving conflicting descriptions of the shooter.

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Three citizen witnesses who apparently didn't testify at the hearing did so at trial. **Antoine Williams** said he saw the shooting. He confirmed his "sixty-percent certain" identification of Davis as the man who shot the officer and struck Young, but admitted that he had viewed a wanted poster. **Steven Sanders said** that he witnessed the shooting. Although he told police that he wouldn't be able to identify the shooter he nonetheless identified Davis in court. Sanders conceded that he had seen Davis' photo in the paper. **Robert Grizzard** testified that he saw the shooting but could not identify the gunman. However, he was sure that it was the same man who struck Young. He described the murder weapon as dark with a short barrel.

Cole's sister, **Valerie Coles Gordon**, also testified. She said that she heard gunshots from her home. About fifteen to twenty minutes later her brother came in gasping for breath and changed out of his yellow shirt. He explained that someone was trying to kill him. Davis then arrived, shirtless. Coles gave him his shirt, which Davis donned. But Davis left without it.

Prosecutors called several witnesses to testify about the earlier shooting. **Michael Cooper**, the victim, said that he rode to a party in a vehicle driven by a friend. His friend got into an argument with rival gang members, Davis among them. When they left their vehicle came under fire and he was struck in the jaw. He didn't know Davis or the man who fired the gun. **Craig Young** recanted a prior statement to police, that Davis told him he had argued with "Mike-Mike." He said officers had pressured him and that he was also trying to get back at Davis over a disagreement. **Eric Ellison** confirmed that he saw Davis walking back from a direction where shots had just been fired. He said that Davis was wearing a white t-shirt with writing and dark shorts. Ellison testified that he later drove Davis, Collins and another man to the pool hall. He heard gunshots and drove away with Collins and the other passenger, leaving Davis behind.

And what would a case be without a jailhouse informer? **Kevin McQueen**, an inmate, said that Davis admitted killing officer MacPhail to avoid being arrested for the earlier shooting. McQueen admitted he had seen a news story about the events and discussed them with other inmates. He denied that his testimony could help him as he had already been sentenced.

In following weeks we'll summarize Judge Moore's account of the defense case and review the conclusions that placed Davis on the fast track to execution. It will then be up to readers to decide whether Georgia killed the wrong man.