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DID GEORGIA EXECUTE AN INNOCENT MAN? PART II – JUICING IT UP

Prosecutors wanted a slam-dunk case. They figured out how to get one.

By Julius (Jay) Wachtel. Jurors didn't convict Troy Davis only for killing a cop. What's been virtually ignored about this intriguing case is that the jury also found him guilty of aggravated assault in the wounding of a rival gangster a few hours earlier. How these incidents came to be tried together, and most importantly, *why*, we'll get to in a moment.

As we mentioned in [Part I](#), Davis and his homies went to a party several hours before officer MacPhail's murder. Members of a rival gang were also present. While exactly what happened is muddled, a vehicle occupied by the rivals was later fired on. One round struck an occupant, Michael Cooper, in the jaw. Darrell Collins, an acquaintance of Davis, later told police that he, Eric Ellison and Davis had left the party and were on foot when the car drove past and its occupants shouted slurs. Davis pulled a small, black gun and fired. At Davis' trial Collins recanted, saying that he wasn't present at the shooting and that officers had pressured him to finger Davis. Ellison also denied being there; however, he did testify that he saw Davis walk back to the party from the direction of gunfire.

Cooper, the victim, also took the stand. He said he didn't know Davis and had no idea who shot him, or why.

Evidence that Davis murdered officer MacPhail seemed far more substantial. Five eyewitnesses, Sylvester Coles, Harriet Murray, Dorothy Ferrell, Antoine Williams and Steven Sanders testified that they were in or near a Burger King parking lot where the incident happened and saw Davis shoot the officer.

Each account had its issues. Coles, the man who originally turned in Davis, was one of three gang members (the other two were Davis and Collins) connected with the incident, so his identification of Davis was an act of self-interest. On the other hand, Murray and Ferrell were ordinary bystanders. However, as we pointed out in [Part I](#), their memories were far from impeccable. When Murray was first questioned by police she couldn't identify Davis, and she later suggested it was Coles before correcting herself. Ferrell was positive of her identification, but she had seen Davis' photo on the seat of a patrol car, so her memory was likely contaminated. Williams was only "sixty percent certain" that Davis was the shooter. And while Sanders was sure it was Davis, he had told officers that he wouldn't be able to identify the shooter.

Two persons testified that Davis told them he killed the officer. One, Jeffrey Sapp, admitted that he and Davis had a falling out; the other, Kevin McQueen, was a jailhouse informer whose account was riddled with inconsistencies.

Considerable circumstantial evidence pointed to Davis. For example, the mugging victim was pistol-whipped, most likely by the same man who later shot the officer. The victim (he ran off before the

shooting) and several passers-by who saw the pistol-whipping but not the shooting said the assailant wore a white shirt and dark pants or shorts, attire that matched Davis but not Coles.

Last week we summarized the trial evidence. Now let's turn to the defense case. As before, our source document is Judge William Moore's ruling on Davis' application for a Writ of Habeas Corpus. (For the pertinent section click [here](#) and go to page 74. For the full document see "Related Articles and Reports," below.)

Joseph Washington. A local gangster, then in jail for robbery, Washington testified that he saw Davis at the party but not Coles. Washington said he later went to a location near the Burger King to meet his friend "Wally," whose last name he couldn't recall. While there he saw Coles and two other men arguing. Coles hit one of the others. A cop then appeared and Coles fired at him. Washington then returned to the party but didn't say anything for fear of getting involved.

Tayna Johnson. She saw Davis and Coles at the party. After leaving she heard gunshots coming from the Burger King. She ran into Coles and a man named "Terry." Coles was nervous and asked her to find out what had happened. She reported back that police were investigating a shooting. On cross-examination Johnson conceded that Coles didn't act as though he had known. She also said that he was wearing a white shirt.

Jeffery Sams. He saw Davis at the party. He later went with Davis, Collins and Ellison to the pool room. Coles came by and put a shiny gun on the car's front seat. Sams didn't want the gun in the car so he placed it outside the pool room. After spending a short time in the pool room he returned to the car. He didn't see Davis with a gun.

Virginia Davis. Davis' mother said that her son wore a multicolored shirt to the party. He acted normally when she woke him for breakfast the next morning.

Troy Davis. The defendant testified that he was at the party for twenty or thirty minutes. On leaving he saw a speeding vehicle and heard a gunshot. He went home, changed from his pink and blue polo shirt into another garment (he didn't specify its color) and accompanied Collins, Ellison and Sams to the pool hall. Coles was already there. Coles later tried to coerce a man into giving up one of his beers. Coles followed the man into the Burger King parking lot, threatened his life and slapped him on the head. The man ran off and Davis left. He then noticed that Collins was running from the area so he did, too. Davis saw a police officer walk into the Burger King parking lot. There was a gunshot, then several more. Coles ran by and didn't respond when Davis called out.

Davis denied ever speaking with McQueen, the jailhouse informer.

It was a weak defense. Looking back to our first posting and considering the eyewitnesses and such, the prosecution's case was on balance much stronger. But was it so compelling that a jury should be able to find Davis guilty in *two hours*? So yes, we've left something out. There was physical evidence. A forensic examiner – indeed, the director of the Georgia Crime lab – testified that bullets recovered from Michael Cooper's head were similar to those taken from officer MacPhail's body, and that cartridge casings recovered at both scenes were close to identical, thus strongly suggesting that the same weapon

was used in both crimes (for the pertinent section of Judge Moore's opinion click [here](#) and go to page 162.) Here is a snippet from the State's closing argument:

And then there are the silent witnesses in this case. Just as Davis, wearing a white shirt, pistol-whipped Larry and murdered Officer MacPhail, so also did Troy Anthony Davis, using the same gun, shoot Michael Cooper and murder Officer MacPhail.

You will recall the testimony of Roger Parian, director of the Crime Lab, when he was discussing the bullets. He was talking about the bullets from the parking lot of the Burger King and from the body of Officer MacPhail, and he was talking then about comparing that with the bullet from – that was recovered from Michael Cooper's head when he'd been shot in the face. And what Roger Parian told you is that they were possibly shot from the same weapon. There were enough similarities in the bullets to say that the bullet that was shot in Cloverdale into Michael Cooper was shot – was possibly shot from the same gun that shot into the body of Officer MacPhail in the parking lot of the Burger King.

But he was even more certain about the shell casings. He was quite more certain about that, and he said in fact that the one that was recovered from the Trust Company Bank right across from the Burger King parking lot was fired from the same weapon that fired four other shell casings that were recovered in Cloverdale right down the street from the pool party, Cloverdale and Audubon.

By juicing things up prosecutors fashioned a whole that was considerably greater than the sum of its parts. Supposedly scientific testimony by a highly credible witness linked two frightening events, lending the impression that the accused had been on a murderous rampage and assuring that jurors returned the one verdict that anyone really cared about: murder in the first degree, with aggravating circumstances. That the panel did so in record time only proved the thesis.

Ballistics evidence also piggybacked a weak case on one that was far stronger. Without physical evidence it's unlikely that the aggravated assault could have been charged. Still, considering the abundant (albeit, imperfect) witness testimony, the murder case would have undoubtedly gone forward and most likely been won.

Of course, a lot can change in two decades. In this series' third and final post we'll review what took place at last year's evidentiary hearing and analyze Judge Moore's decision to overlook the flaws and let the trial outcome stand.