

# Hearing on new evidence in case of Mumia Abu-Jamal

Helen Halyard, Bill Vann  
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For the first time since 1997, political prisoner Mumia Abu-Jamal will appear in a Philadelphia state court to demand the right to present evidence of his innocence in the December 9, 1981 shooting death of policeman Daniel Faulkner.

In the nearly two decades since his trial, the prosecution's case against Mumia has been exposed as a state frame-up involving the coercion of witnesses, false claims of a confession and naked political bias against the defendant by the presiding judge, Albert F. Sabo, who has sentenced more people to death than any other judge in the country.

Abu-Jamal joined the Black Panther Party as a teenager and became a radio journalist who sought through his broadcasts to expose social injustice in Philadelphia. Since his conviction he has spent over 19 years on Pennsylvania's death row, continuing to write and speak out against the death penalty and the political and social conditions that have led to the incarceration of millions of workers and the poor and have placed more than 3,700 individuals on death rows throughout the country.

On three separate occasions Governor Tom Ridge has signed death warrants to kill Mumia by lethal injection. The drive to execute this impassioned critic of the existing social system, who has steadfastly maintained his innocence, is aimed at intimidating all those who oppose capital punishment and the right-wing assault on basic democratic rights by both major political parties.

Abu-Jamal will appear on August 17 before Common Pleas Judge Pamela Dembe on a new state post-conviction petition filed before the court last month. The 270-page brief includes five new affidavits, one of which is a statement from Abu-Jamal, where he explains for the first time what actually transpired on the evening of December 9, 1981. He states categorically that he did not kill policeman Daniel Faulkner.

The brief also contains the sworn affidavit of one Arnold Beverly who says that he, and not Jamal, shot Faulkner to death. Beverly originally made his confession in June 1999, but Abu-Jamal's legal team did not use it. Beverly said that he was hired by the mob to kill Faulkner because the police

officer had run afoul of protection rackets run by corrupt Philadelphia cops in the center city area where the shooting took place.

A third affidavit, from a former confidential informant for the FBI, detailed an undercover investigation that had rocked the Philadelphia Police Department at the time of the shooting, resulting in the firing and criminal indictment of a number of cops for taking payoffs from prostitutes, pimps and proprietors of after-hours joints.

One of those targeted by the FBI was Inspector Alphonse Giordano, who was the ranking officer who responded to the shooting scene. He was one of the witnesses—along with a prostitute well known to the police—who provided the initial testimony leading to Mumia's indictment on murder charges. His testimony to an alleged confession by the journalist could not be used at trial, however, because by then the senior cop had already been charged in the corruption probe.

The legal brief filed on behalf of Abu-Jamal argued that Beverly's testimony buttressed claims made earlier by his attorneys that ostensible eyewitnesses to the shooting were induced by the police to lie on the witness stand, while others who would have testified to seeing another gunman flee from the shooting scene were systematically excluded from the trial.

Abu-Jamal's appearance in state court is part of two separate legal filings by a new defense team consisting of two American attorneys, Marlene Kamish and Elliott Grossman, and British barrister Nicholas Brown.

Mumia dismissed his former attorneys, Leonard Weinglass and Dan Williams, following the publication of Williams's book, *Executing Justice: An insider's account of the case of Mumia Abu Jamal*. Williams was opposed to using Beverly's testimony and claimed to have written the book as a "preemptive strike" against those advocating its introduction.

Abu-Jamal has charged Williams and Weinglass with suppressing Beverly's testimony, while accusing Williams of flagrantly violating his obligations as an attorney by

publishing his book in the midst of critical and potentially final appeals that could determine whether Mumia lives or dies. The legal brief filed on his behalf charges his former attorneys with “ineffective counsel” for failing to utilize Beverly’s confession.

In response to Mumia’s motion, the Philadelphia District Attorney vehemently opposed the introduction of Beverly’s testimony. The prosecution rested its arguments heavily on the book written by Williams, asserting that his description of disputes within Mumia’s legal team made it clear that Beverly’s account did not substantiate earlier claims made in the original federal habeas corpus appeal. Williams, “the principal author” of this appeal, the state declared, in his book had described the proposal to use Beverly’s testimony as “bona fide lunacy” and “an absurd account.”

On July 19, Judge William H. Yohn Jr. rejected a motion seeking to add the Beverly confession to the grounds for Mumia’s federal appeal and to allow a hearing on it and other suppressed evidence. The motion concluded by calling on the federal court to throw out the frame-up conviction by Judge Sabo.

The judge issued an eight-page ruling that was founded legally on two of the most reactionary developments in death penalty law over the past decade—the Anti-Terrorism and Effective Death Penalty Act (AEDPA) signed by President Clinton in 1996, and the 1993 Supreme Court decision in *Herrera v. Collins*.

AEDPA, which the Clinton administration and Congress passed on the pretext of curbing domestic terrorism in the wake of the Oklahoma City bombing, severely restricts the ability of death row prisoners to gain a federal review of state convictions. In all but a handful of cases, the law bars federal judges from disputing findings of fact by the state courts. In order for a federal court to call into question the judgment of a state court, a defendant must essentially prove his or her innocence first.

The draconian law also limits the time that death row inmates have to file petitions in the federal courts to 180 days after a state judgment. It also establishes a one-year statute of limitations on filing appeals based on the discovery of new evidence. It further limits inmates to no more than one review by a federal court, and requires that a lower federal court issue a “certificate of appealability” before a case can be taken to a higher court.

The clear aim of the law is to accelerate the execution of the thousands of prisoners now sitting on death row across the US.

In its infamous *Herrera v. Collins* decision, the US Supreme Court upheld the principle that innocence is not a Constitutional question requiring that it intervene to halt an execution. Whether the wrong man has been convicted at

trial is not the issue, as long as the forms of due process have been observed.

Like Mumia, Leonel Herrera was convicted of killing a police officer in 1981. He claimed to have evidence that the shooting, which took place near the Mexican border, was the work of his brother. The high court responded to the last-minute appeal for Herrera by agreeing to hear the case, but declined to halt the execution. While the state of Texas delayed the execution, the Supreme Court ultimately ruled against Herrera, expressing the concern that federal courts reviewing whether those facing the death penalty are guilty or innocent could create a “judicial logjam.” Herrera was put to death, despite the belief of many that he never committed the crime for which he had been convicted.

In a dissenting opinion, the late Justice Harry Blackmun noted, “The execution of a person who can show that he is innocent comes perilously close to simple murder.”

Yohn not only rejected the introduction of Beverly’s testimony, his ruling also contained a virtual instruction to the state court to do so as well. This decision strongly suggests that the judge intends to bar Mumia’s right to a hearing where new evidence gathered to establish his innocence could be heard. If the judge restricts his decision solely to the record established by the state courts, a successful federal appeal is highly unlikely.

The exclusion of new evidence by Yohn comes just weeks after a federal appeals panel in New York City allowed highly questionable testimony to be introduced into evidence in the appeal on behalf of a cop convicted in connection with the brutal stationhouse torture of Haitian immigrant Abner Louima. A police Sergeant—four years after the fact and after his own retirement from the NYPD—came forward to dispute the testimony of a key witness against the cop, Charles Schwarz.

The most obvious difference between the treatment of Schwarz’s appeal and that accorded to Mumia’s is that the first involves a policeman accused of brutalizing a defenseless man, while the other concerns someone wrongfully accused of shooting a policeman.



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