

CASE PROFILE NANON WILLIAMS

Summary

Nanon Williams is 29 years old. In 1992, the 17 year old Californian was involved in a drug deal in Houston, Texas. Gunfire erupted during the transaction and 19 year old Adonius Collier was fatally wounded. The prosecution's trial theory alleged that Williams had shot the victim with a handgun and subsequently with a shotgun. Due to failure of his trial lawyer to use a firearms expert in his defense, Nanon Williams was unable to prove that he had not fired the fatal shot. He was convicted and sentenced to death in 1995.

The police were in possession of the gun fired by Vaal Guevara, one of the persons who was at the crime scene with Nanon Williams that night. The police had a tape recording from the first interrogation in which Vaal Guevara admitted to firing his gun at the victim. No firearms testing was conducted on Vaal Guevara's weapon before or during the trial by either the prosecution or the defense. During the trial, Vaal Guevara was the main witness for the prosecution and saw his charge for capital murder dropped in return.

Only in 1998, under pressure from Nanon Williams' new assigned counsel, was firearms testing carried out. The tests showed that it was Vaal Guevara who had fired the fatal shot at the victim, not Nanon Williams. The new evidence was so strong that hearings were held in 1998 and 2000. It became clear during the hearings, that the expert for ballistics, Robert Baldwin, now head of the Houston Police Department's crime lab, had given false testimony. In May 2001 the judge hearing the case agreed with Williams' attorneys and recommended to the Texas Court of Criminal Appeals (CCA) that a new trial should be held.

In April 2002, the CCA rejected the lower court judge's recommendation of relief without explanation. The CCA issued an unpublished two page order stating simply, "We do not believe, based on our review of the record presented, that some of the crucial fact findings and the recommendation based, at least in part, on them, are supported by the evidence presented at the evidentiary hearing.

One year later, a scandal developed involving the Houston Police Department's crime lab. The initial article in the Houston Chronicle used Nanon Williams' case among others to illustrate the misconduct. The lab is responsible for the false testimony and the absence of test firing concerning the shooting that led to Williams' conviction.¹

In March 2003, Nanon Williams's petition was filed in Federal Court². A petition regarding the juvenile issue was filed in the U.S. Supreme Court that declined to hear Williams' case in October 2003.

The following case profile is based on trial and hearing transcripts and based on Nanon Williams petitions filed in State Court and in Federal Court.

¹ Houston Chronicle, March 23rd 2003

² You find the Petition for a Writ of Habeas Corpus on www.nawisa.org - the case

The crime – the trial – the death sentence

Nanon, aged 17, was the youngest of six black males and two black females who met on the night of May 13th to 14th 1992 in Hermann Park, Houston, Texas, in order to carry out a drug deal. During an exchange of gunshots, Adonius Collier (19) was shot dead. A bag of crack cocaine was found next to his body by the police. Two shots hit him in the head: the first was from a small caliber pistol, the second from a shotgun. The other two men involved in the drug deal were Vaal Guevara (21), and Emmade Rasul (22), the victim's friend, who was shot in the neck and the foot.

In the car parked close to the scene were Elaine Winn – who had set up the drug deal – and a man who was acting as the driver known as “Xavier” at the time of trial and not found by the police, but now identified as Patrick Smith. (Many years later, Smith was granted immunity from prosecution in return for his testimony against Nanon Williams at Williams’ habeas evidentiary hearing.) That night Guevara was carrying a .22 caliber pistol, Williams a .25 caliber pistol.

The district attorney charged Guevara, who was arrested shortly after the shooting, with capital murder. The state offered Guevara a plea bargain: Vaal Guevara pleaded guilty to a lesser charge of “attempted illegal investment” which carried a 10-year sentence, of which he served approximately 4 years before being paroled in return for his testimony as the main witness in the trial against Nanon Williams. Williams was eventually arrested and charged with capital murder - first degree murder in the course of a robbery. Emmade Rasul who was shot twice but not fatally, identified Williams in a line-up as the person who had shot at him. The bullet from Rasul's neck was not found, but a .25 caliber bullet, the same size as the pistol that Williams had been carrying that night, was taken from Rasul's foot.

The trial took place in 1995, three years after Nanon Williams had been charged for capital murder. Before trial, the state offered Williams a deal to plead guilty in return for a 45-year sentence, but Nanon Williams who knew that he had not shot Collier, refused.

Misconduct of the state’s firearms experts and ineffective counsel

During the trial in 1995, Guevara and Winn testified that Williams was carrying a .25 caliber pistol. During Williams trial the state prosecutor argued that Williams shot Collier in the head with his .25 caliber pistol, and then fired a shotgun blast at close range to Collier's head as Collier lay on the ground. Evidence was only presented for the first shot, by the state's firearms expert, Robert Baldwin, head of the ballistic division of the HPD crime lab. He testified during the trial that the first shot was fired from the .25 caliber pistol (the pistol that the witnesses testified that Nanon Williams carried that night) and definitely not from the .22 caliber pistol (the pistol that Guevara admitted he carried that night, and the only gun that the police recovered in relation to the events).

The state did not test-fire the .22 caliber pistol recovered from Guevara's apartment in a search after the crime despite the fact he admitted firing it at the crime scene. The testimony of the state's firearms expert Robert Baldwin was based only on the testing of one bullet, that he identified as a .25 caliber missile. He did not conduct the widely used and very common procedure of test firing the gun in police possession and then comparing the test-fired bullet with the bullet taken from the victim.

Williams defense did not conduct an independent weapons test on Guevara's gun or the bullet taken from the victim's head. As a result Nanon Williams jury never knew that the bullet found in the victim's head was actually not a .25 caliber bullet, as the state's expert wrongly testified, but was actually a .22 caliber bullet fired from Guevara's gun, not from Williams' gun. Nanon Williams' trial counsel did not request funding for an expert for the defense and that the state conducted his own testing.

"It was a negligence on my part not to attempt to stop the trial at this point, after Mr. Baldwin had given evidence that the bullet could not possibly have come from Vaal Guevara's Deringer, but then admitted he had never checked the gun. (...). I missed the importance of the testimony. Loretta Muldrow also stated that she had presumed that the Deringer had already been test fired: "That is probably my failing, because as an ex-prosecutor that is the practice that I did. I mean, it's normal to presume, in a homicide case, that all missiles and all firearms are submitted for testing".

Loretta Muldrow did not investigate adequately either in terms of ballistic evidence but also in terms of witnesses, which would have uncovered readily available witnesses who were essential to demonstrate Nanon Williams' innocence. The complete investigation included only interviews of Nanon Williams and his grandmother.

Hearing proves Nanon Williams' innocence

After the trial in 1995, the Texas Court of Criminal Appeals denied Nanon Williams' direct appeal. In July 1997 the court appointed Williams' an attorney to file a writ of habeas corpus and she began an investigation in order to find evidence of Williams' innocence. She requested the court to order the state to release Guevara's gun to an independent firearms expert. The state objected, but the court released the firearms evidence to Nanon's independent firearms expert who conducted extensive testing. The state also conducted its own test firing.

Both sets of testing demonstrated that the bullet from Collier's head was a .22 caliber bullet fired from Guevara's gun and not from a .25 caliber weapon, as the same state's expert told the jury at Williams' trial years earlier.

The court ordered an evidentiary hearing which was first held in September 1998 (and again in December 2000). The state attorneys had won the trial against Williams based on the testimony of their own firearms expert, Robert Baldwin, who conclusively testified, without the benefit of any forensic testing, that Williams had shot Collier with his .25 caliber pistol. This new forensic evidence is so strong that it effectively nullifies the trial testimony that led to Nanon Williams' conviction for capital murder and at least one juror has stated that this evidence would have caused her to acquit Williams if she had heard it at his trial. The evidence that Val Guevara was the actual killer makes his trial testimony, and that of Guevara's girlfriend, Elaine Winn, highly suspect.

The jury of Nanon Williams' trial had based their verdict on evidence that is now proven to be false. Had the jurors known it was actually Vaal Guevara who had shot the first bullet, Nanon Williams would never have been found guilty of a capital crime:

"Had I known that the other bullet found in the head of the victim came from Val Guevara's .22 Deringer, that information would have raised a reasonable doubt that Nanon Williams was guilty of capital murder. Consequently I would have acquitted".

“As a juror, this information, had I known about it at the trial, would have changed the effectiveness of the defense and would have altered the jury’s deliberation. As we jurors were held to the high standard of “beyond a reasonable doubt”, this evidence might have changed our verdict.”

Robert Baldwin’s trial testimony in Nanon Williams case, viewed in the most favorable light, indicates gross incompetence. At worst, it suggests outright perjury. In March 2003 he was suspended for several days when a Houston Chronicle investigation raised serious doubts about the ballistic evidence that was used to convict Nanon Williams and about the accuracy of the crime lab’s firearms work.³

New state’s theory nullified at the hearings

Realizing the fading of the evidence that had led to Nanon Williams conviction, the state focused in the hearing on the second shot the night of the crime and tried to come up with new incriminating evidence. A new witness, Patrick Smith, formerly known in the police reports as “Xavier”, was presented at both the hearings. A witness who the police had been unable to locate before Nanon’s trial.

During Williams trial in 1995 the state prosecutor had argued that Williams shot Collier in the head with his .25 caliber pistol, and then fired a shotgun blast at close range to Collier’s head as Collier lay on the ground. The evidence for the state’s theory that Williams fired the shotgun was weak. It was based on testimony given by Guevara and Winn. Guevara testified he saw Williams standing over the victim with a shotgun, and Winn testified that she saw Williams carrying the shotgun. Rasul, however, testified that he had not seen a shotgun at all at the scene. Guevara and Winn’s testimony enabled the state to argue that Williams had shot Collier in order to rob him and therefore provided the element of the offense – robbery – that turned the murder into a capital murder (aggravated murder). The element of robbery was based on a statement given by Guevara who testified that he saw Williams go through the victim’s pockets and Winn testified that Williams had a pager, a baseball cap and a quantity of cocaine when he returned to the car (the police found a bag with cocaine next to the victim when they arrived at the crime scene and the pager was in possession of the victims’ father, as the defense was able to prove years later).

Patrick Smith (“Xavier’s” real name) testified at the hearing that he and Guevara were close friends from high school (both 21 at the time of the crime) and had met between the time of the crime but before Guevara was arrested. Patrick Smith testified at the hearing that he had never been known as “Xavier” and that Guevara knew his real name, but did not give it to police in order to protect Smith. The state granted Smith immunity from prosecution in return for his testimony for the state at Williams habeas evidentiary hearing. That means he can never be prosecuted for participating in the crime. Patrick gave testimony against Williams, supporting the state’s theory that Williams had killed Collier with a shotgun blast. Smith testified at the evidentiary hearing that Williams stood over Collier and held the shotgun to his head, while Collier cried out “don’t kill me!”. With that statement, Smith supported the position of the state’s pathologist witness, that the blast was shot at close range and that Collier was still alive by the time he was hit by the shotgun blast.

Nanon Williams’ habeas lawyers presented physical evidence to demonstrate that Smith’s

³ Houston Chronicle, March 23rd 2003

testimony at the hearing was false. This was easy to demonstrate by using the police officer's own reports about the conditions at the scene of the crime that night. They showed conclusively that Smith could not have observed the scene from where he himself described he was sitting in his car, first as it was much too dark in the area and secondly because a row of trees stood between him and the scene of the crime, blocking his view.

In addition, the testimony of the independent pathologist demonstrated that the shotgun blast could not have been fired at close range with someone standing over Collier how Smith described when the characteristics of the head wound were taken into consideration. The independent pathologist also testified that the .22 caliber bullet fired by Guevara was probably the cause of death and the characteristics of the wound indicated that Collier was probably already dead when the shotgun blast was fired. The victim was just as likely to have been killed by the bullet as the shotgun blast, and was already knocked to the ground by the first bullet. It was very likely that he was no longer conscious and was certainly not in a position to call out, scream or speak.

In conclusion, Patrick Smith's testimony was contradictory to all the facts presented by the pathologist and documented in the police report. It is worthy of note that Winn, who according to her own testimony and that of Smith was sat next to him in the car during the incident, never saw the scene described by Smith. The state's attempt to fill the sudden lack of evidence concerning the first shot with new evidence to strengthen the theory that Williams had killed the victim with a shotgun blast, failed.

During the hearing the defense found new witnesses to strengthen it's own theory, the involvement of Elaine Winn, who was not charged with any crime. She was – besides Guevara - the most important witness for the state and she testified against Williams at trial. Winn was the current girlfriend of Guevara and the ex-girlfriend of the victim.

According to Winn's testimony at trial, there was a shotgun in the car. Winn's testimony that Williams carried the shotgun into the park is highly incredible. Emmade Rasul, the friend of the victim Collier, did not see Williams with a shotgun in the Park. Winn and Smith are the likely suspects for firing the shotgun blast. A witness that the trial defense never interrogated, despite Williams request to do so, has signed an affidavit stating that he overheard Winn, the morning immediately after the shooting admitting that she fired a shot at Collier.

"While I was in the apartment, I saw a women there who I know to be Elaine Winn. At that time I knew her as Vaal Guevara's girlfriend. I heard her say: 'I can't believe I shot that nigger in the face.' She repeated this over and over. I also heard her say 'What if I have to go to jail, what will happen to my baby?'"

The possible motive of Elaine Winn to cover up her boyfriend by firing the shotgun, was never taken into account during the trial. Her testimony, Nanon Williams had been hiding a shotgun under his jacket is weakened through the possible motive but also through the testimony of Rasul, who testified that Williams was wearing a T-Shirt the night of the incident.

In 2002 during the preparation for the Petition for a writ of habeas corpus to the Federal Court, a second witness was found who stated in a affidavit that he had seen a shotgun (in the apartment) on several occasions before the incident in Hermann Park which belonged to Vaal Guevara. He stated to have Guevara returning home with the shotgun in his hand before. This testimony directly contradicts the trial testimony of Guevara who claimed that Williams owned the shotgun and brought it to Guevara's apartment.

State judge recommends a new trial – Texas Court of Criminal Appeals rejects

This judge heard all of the new evidence described above – the bullet was actually a .22 caliber bullet fired by Guevara, and the victim was not shot at close range with the shotgun as Guevara testified at Williams’ trial – and she was convinced that if the jury had heard this defensive evidence the result of Williams trial would have been different. She was in a position to judge the credibility of the witnesses and the effect that their testimony would have had on Williams jury. Unfortunately, the district court judge who presided over the taking of the witness testimony at the evidentiary hearing does not have the power to order a new trial, only to make a recommendation to the higher court. She issued a long and detailed written opinion stating the reasons that she thought that Williams should receive a new trial. She concluded that Williams trial attorney did not represent him effectively by failing to conduct the forensic firearms testing, and she concluded that the evidence would have resulted in a different verdict from the jury at Williams trial. She recommended to the Texas Court of Criminal Appeals (CCA) that “habeas relief be granted” which means she recommended that Nanon Williams should have a new trial based on his trial attorney’s failure to have firearms testing conducted.

On April 24, 2002, however, the Texas Court of Criminal Appeals rejected her recommendation and ruled that habeas relief was denied, that means no new trial will be held. The high Court issued a very short three paragraph order with no legal reasoning or explanation why it was overruling the judge who heard the evidence from the witnesses and experts at the hearing.

“I can’t believe a court could do something like this with so much evidence, support of judges, and all in accordance with the law. They had the nerve to rule “per curiam” which means there is no explanation, no dissent from a judge, and no judge signed it! That means no one wants to take responsibility for this action, but it is an action. That’s like them coming in here dressed in white sheets covering their faces, taking me to a field, and hanging me from a tree! They did exactly that on paper.”⁴

Mitigation factor ignored during the trial

At the evidentiary hearing, Nanon Williams habeas attorneys also demonstrated through the testimony of a psychiatrist that Nanon Williams trial attorney had not presented important mitigation evidence at Williams punishment trial. An independent psychiatrist has diagnosed that Williams suffers from a severe mental illness, Post Traumatic Stress Disorder (“PTSD”), which would have been mitigating evidence upon which his jury could have given him a life sentence rather than a death sentence if introduced at his trial.

During the punishment phase, Nanon Williams trial counsel failed to retain and consult a mental health expert, even though she was granted funding for it. Had she done so, the jury would have learned of Nanon Williams condition, PTSD and understood how this condition related back to the violent life-threatening events that colored his young life. At the hearing of 1998 and 2001 an independent Expert was called as a witness. Dr. Krouse demonstrated the impact of the PTSD on Williams actions and how it has been moderated while he was in prison.

Nanon Williams is 29 years old today. He holds friendships all around the world and is a dedicated writer. He started early to express himself through poems. A first book with poems was published in 2001. During the last 6 years he was further engaged with the production of a

⁴ Nanon Williams in a letter to NAWISA, April 2002

newsletter that shows the every day reality on death row and informs and reflects about political related questions. In 2002 Nanon Williams published a book with portraits and interviews of death row inmates to give the readers an insight to the human beings that are hidden behind numbers and cases. Writing has been one of the most important instruments for Nanon Williams to cope with reality on death row. November 2003 his newest book "Still Surviving" is published, generated out of hundreds of pages of diaries. Nanon Williams tells us about his growing up and struggling for survival on death row.

Claim for first degree murder was based on false facts

Based on the testimony of Elaine Winn (who claimed to have seen Nanon Williams returning to the Jeep with a beeper, cap and cocaine rocks) and Vaal Guevara (who claimed to have seen Nanon Williams searching the victim's pockets, the prosecution charged Nanon Williams with "aggravated murder", murder in the course of a robbery, which is a first degree murder and can be punished with death. The murder without a robbery could at the maximum be punished with a life sentence.

The police report holds that next to the victim there was a large bag with about 20 rocks of possible crack cocaine. The father of the victim called the police several days after the offense to inform them he found his sons' beeper at his house. A fact that was never revealed during the trial but could have weakened the state's position that the crime was actually a aggravated murder. The other question is, why would Nanon Williams rob only a small amount of cocaine, when there was a lot more to just pick up and take with him? A reasonable jury could certainly have convicted him of the lesser included offense of murder, finding lack of support for the alleged robbery.

17 – year old Nanon Williams was an easy target for the state of Texas

The new evidence presented at the hearings raised the question why the state dropped the original charge for capital murder against Vaal Guervara, to make him the key witness against Nanon Williams and charge Nanon Williams for capital murder instead? 21 year-old Guevara already had several years experience of the Texas justice system and had consulted a lawyer before his arrest. With Guevara as the main witness for the state, who had a large interest to shift the focus onto Nanon Williams and get his own murder charge dropped, the state had testimony -- but no physical evidence except for the state firearms expert's testimony which has now been proved to be wrong -- to present a case of capital murder against Nanon Williams.

17-year-old Nanon Williams was a much easier target for the state. Without Guevara's testimony and the testimony of the state's firearm's expert that the bullet that was recovered from the victim's head was a .25 caliber bullet (when in reality, as the state later admitted, it was a .22 caliber bullet fired from Guevara's gun) the state did not have any evidence on which to convict Nanon Williams of capital murder.

Conclusion: Nanon Williams did not have a fair trial and was deprived of his rights according to domestic and international law

The key questions are:

- Would the jury have found Nanon Williams guilty of first degree murder knowing that not he but the key witness in the trial had shot the fatal bullet? Would the jury have chosen the death penalty had they known about Nanon Williams history and his suffering from PTSD?
- Was there enough evidence for aggravated murder, murder in the course of robbery?
- Does the misconduct of the police and the ineffective counsel violate Nanon Williams constitutional rights?
- Is the execution of juvenile offenders a violation of international human rights and the U.S. Constitution that forbids “cruel and unusual punishment”?

Nanon Williams deserves a fair trial, with an effective counsel that he didn't have in his trial and with expert witnesses that tell the truth; a trial where the jury is correctly informed about the procedures.

Nanon Williams's death sentence like the ones of 81 other juvenile offender in the U.S. have to be lifted immediately, based on either a decision of the U.S. Supreme Court concerning the violation of the 8th amendment of the United States constitution and international law or based on a decision of the states in question to declare the execution of juveniles offenders unconstitutional.

NAWISA (Nanon Williams Support Association) calls upon the Federal Court to review Nanon William's case profoundly and consider that on the state level a judge recommended relief based on the shocking amount of facts presented by Nanon Williams lawyers, showing that he did not commit the crime he was accused of.

NAWISA calls upon the U.S. Supreme Court to revisit its decision from 1989 in *Stanford v. Kentucky*, that the execution of prisoners for crimes committed when they were 16 or 17 years old was acceptable under the Eight Amendment.