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## **PRESS RELEASE**

### **First Scheduled Execution Ending National Moratorium Is Based on False Evidence**

#### **Earl Lynd in Georgia Faces May 6 Execution After Bungled Autopsy**

On May 6, the State of Georgia is planning to carry out the country's first execution in nearly 8 months, following the Supreme Court's ruling upholding Kentucky's lethal injection procedures. The defendant is Earl Lynd and his case illustrates the types of problems that have been rampant in capital cases for many years and that are causing some states to re-think the entire death penalty system.

Lynd's conviction and death sentence were based on an autopsy performed by a man who called himself "Dr. Tillman," but who was, in fact, not a medical doctor. Tillman's testimony, and the state's evidence in support of the capital murder charge and death sentence, rested on the witness' unfounded opinion that the victim could have regained consciousness after receiving the first of two fatal gunshot wounds. A more recent review by a qualified pathologist found that Tillman's conclusion had "no basis in medical science." The jurors, however, heard only from "Dr." Tillman, and Lynd was convicted of capital murder and aggravated kidnapping and sentenced to death.

The peril of having non-physician state advocates perform autopsies and testify to critical issues with respect to time and manner of death is most acute in the context of capital murder trials. The State's theory was that, during a domestic dispute, Mr. Lynd shot Virginia Moore, put her in the trunk of her car and, when she regained consciousness in the trunk, he shot her again in cold-blood. In support of that theory, the State presented the testimony of Mr. Tillman, a medical examiner, who had conducted the autopsy.

We now know that Tillman's testimony "has no basis in medical science" and was entirely inconsistent with the physical evidence. Mr. Lynd was thus convicted of the aggravated kidnapping and murder of his girlfriend and sentenced to death based on the false, unreliable and misleading testimony of a fake "doctor."

Brian Frist, M.D., an eminently qualified and licensed physician and pathologist, reviewed materials relating to the injuries and death of Ms. Moore and concluded that “[c]ontrary to Mr. Tillman’s testimony about these injuries, *it is medically impossible that Ms. Moore may have regained consciousness from either of these two wounds.*” According to Dr. Frist, the State’s theory of the crime “has no basis in medical science and Mr. Tillman’s testimony as to the possibility of a lingering death from either of these wounds is patently erroneous.”

This tragic crime was hot blooded, without premeditation and fueled by substance abuse. On the day of the crime, Mr. Lynd and Ms. Moore were intoxicated on Valium, marijuana and alcohol. As was typical with the couple, substance abuse led to domestic fighting and, on this day, to Ms. Moore’s tragic death. The State’s presentation of false, unreliable and misleading evidence resulted in Mr. Lynd’s wrongful conviction for aggravated murder and kidnapping and a sentence of death.

Because of the clear potential for unreliable autopsy findings and other abuses, the Georgia Death Investigations Act was passed during the 1990 legislative session, after Mr. Lynd’s trial ended in February 1990. The Act requires that autopsies be performed by medical examiners who are licensed physicians, like Dr. Brian Frist. Had Mr. Lynd’s case occurred a few years later, a competent physician would never have provided the conclusions given by Tillman about the manner of Ms. Moore’s death. Absent Tillman’s unreliable and misleading testimony, Mr. Lynd could not have been convicted of aggravated kidnapping, may have only been convicted of voluntary manslaughter, and would not have been sentenced to death.

The State of Georgia must ensure that Mr. Lynd is not executed based on evidence that has “no basis in medical science.”

A separate challenge to Georgia's lethal injection procedures has also been filed.

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