

***Emma's Journey: A case study on the death penalty and
some inequalities in the criminal justice system***

Ruth Johnson Carter, Georgia College State University, USA

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Abstract

The murder on January 1, 1979 of a prominent white business man in the small southern American community of Lincolnton, GA led to the arrest, trial and death row sentence of a young African American woman named Emma Cunningham. After an appeal and plea bargain, her sentence was commuted to life with parole. Altogether, she spent almost 12 years in prison for a crime that considerable evidence, including the trial transcripts, indicates that she did not commit. Writing about Emma's experience converges around cultural, ethical, social and legal issues. Although Emma's survival is a personal story of tragedy and courage, her experiences are illustrative of generally significant human behavior. Stunningly, during the most ill-fated and often ominous situations, Emma unlike many others was motivated by "ordinary" genius to transcend, through her creative energy and ethnic strength. This paper places Emma's specific experiences into the larger framework of the legal and political issues to provide a matrix for examination of the death penalty and the inequalities of the criminal justice system.

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Introduction

This paper is an abridged selection from *Emma's Journey*, a 600 page manuscript which recounts the experiences of an African American woman, Emma Ruth Cunningham. Convicted in 1979, for an alleged murder of a prominent white business man, William Beal Crawford, Emma spent more than three years on death row in a Georgia prison. After an appeal and plea bargain, her sentence was commuted to life with parole. Altogether, she spent 11 years in prison for a crime that considerable evidence, including the trial transcripts, indicates that she did not commit.¹

Writing about Emma's life converges around cultural, ethical, social, and legal issues. Although Emma's survival is a personal story of tragedy and courage and redemption, her experiences are illustrative of generally significant human behavior. Stunningly, during the most ill-fated and often ominous situations, Emma, unlike many others, was motivated by "ordinary" genius to transcend, through her creative energy and ethnic strength.

The Murder

On the evening of January 1, 1979, the horribly battered body of William Beal "Bill" Crawford was discovered by his long-time housekeeper, Mary Alice Tutt, who had become concerned when her boss did not answer his phone. Walking from her own house, situated nearby, she let herself in with the key she had been given. She located Mr. Crawford in the storeroom at the back of his house lying dead in drying pools of blood. His head had been beaten almost beyond recognition and his arms were bent at odd angles from his body, each broken in several places. Stifling her screams, Mrs. Tutt ran to the phone and called the Lincolnton Police.² Chief Lawrence Peeler arrived within a few minutes with several officers from his headquarters located only a few streets away at 148 Ward Street. Peeler was unaccustomed to dealing with homicides. He immediately called for assistance from the Thomson Seventh District Office of the Georgia Bureau of Investigation. Two GBI officers, Special Agents Mike Siegler and Jim Carver, took control of the crime scene.³

The agents reported that Mr. Crawford was known to keep large sums of money in his house. The officials presumed that this cash was the likely "motivation for the murder." Although an autopsy was immediately scheduled, the preliminary analysis indicated that Mr. Crawford "had put up a terrific struggle," which led to his being killed by the killer striking him many times with a blunt object all over his head and body.⁴

The front page of the January 2, 1979 *Lincoln Journal* newspaper described the scene at Mr. Crawford's house: Blood was reported by lawmen to be "scattered all over the place." The intruder "tracked blood over portions of the house." Crawford's body was presumably turned over after it fell to the floor since there were two pools of blood on the storeroom floor.

Crawford owned a profitable Frito-Lay snack franchise and lived in the house he inherited from his parents. The house, a one-story Victorian with gingerbread trimming and a wrap-around porch, was located on Humphrey Street, ironically, directly across the street from the Lincoln County Courthouse. In a town with a

population of less than 2,000 the discovery of the murder of Bill Crawford in his own house was horrifying to the white population, most of whom knew Mr. Crawford at least casually, and many were his life long friends.

Emma Cunningham

For Emma Cunningham, January 1, 1979, was a Monday like any other. Had she known, she would not have cared that this was the day that diplomatic relations were re-established between the United States and China after 30 years of disruption and the Secretary General of the U.N. announced the International Year of the Child.

Emma had never been as much as 100 miles from where she was born in Hartwell, Georgia. Her concerns were local and specific. She needed to go to the Laundromat. Washing machines and dryers for home use were too expensive for people on a limited income, so most of the African American community had no choice except to use the only facility open to them. She and her husband James "Snowball" Cunningham caught a ride with a friend to what they called the wash house. Emma wanted to be sure that her two small children had clean clothes for a trip planned to New Jersey for a family funeral.

Since they had no way to get home after the clothes were washed and folded, Emma relates, "I had to leave my baskets of clothes and walk with James over to my Daddy's house to get him to give us a ride home." When asked after her arrest, "Which way did you walk?" Emma responded, "We came right by the Shell station, past the Milky Way Freeze Bar to my daddy's house, off the 378/ McCormick Highway."⁵

"We don't go way 'round by Mr. Crawford's house," Emma said. "My daddy live about a mile away from the Laundromat off N. Washington Street." Despite Emma's statement, it was certainly possible to go to her father's house by way of Mr. Crawford's home and then walk the internal streets and pick up the highway from Goshen Street. Either way was about a mile.

"After Daddy drives us home," Emma recounts, "James leaves again. Somebody pick him up in a car. I never saw who it was. I stay up watching *Wheel of Fortune* and other game shows. Then I go to bed." Emma remembers, "I get waked up around 1:00 a.m. New Years night with James shakin' me like a dice cup and sayin', 'Get up! Get up! We goin' to leave now.' I say, 'You crazy!' I get up anyhow. *Tha's* always how Snowball was. We always leavin' anyway, which way and whenever. I say, 'I thought we was leavin' tomorrow.' He say, 'Wrap up the children real good, it cold out. I got Junior Williams outside. He gonna drive us to Augusta right now' ".⁶

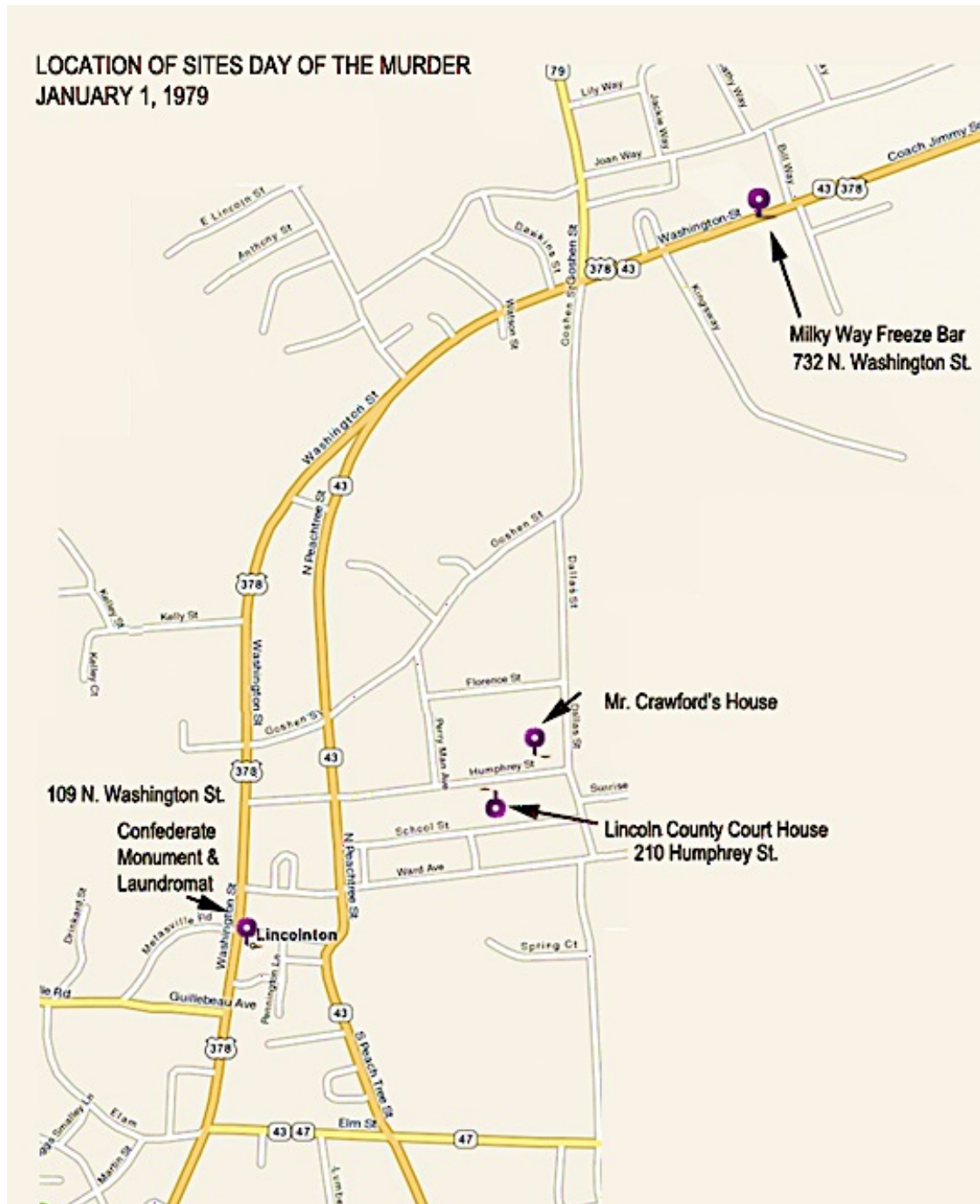


Fig. 1. Locations of sites the day of the murder.

The Arrests

Alex (Junior) Williams was a cousin of James Cunningham. Although at first reluctant, he had driven James, Emma, and their two children before dawn on January 2, 1979, to the bus station in Augusta, Georgia, to buy tickets to New Jersey. After hearing about the murder, Williams reported the curious circumstances of his late-night trip to the Sheriff's office. The GBI located James at a bus stop in Durham, North Carolina.

James was arrested read his Miranda rights and questioned. Eventually he signed a confession admitting to the murder and indicating that Emma had nothing to do with the crime. Emma was not charged or questioned and she returned to Lincoln with her children.⁷

After his extradition to Georgia, James led GBI agents and the Lincoln County sheriff to the location of the bloody clothes he had discarded and to a location where he had thrown the murder weapon, a 12 inch long wrench. These articles and exhibits along with the men's clothing were admitted into evidence at James' trial. At this point James, in an effort to save himself, implicated Emma in the murder.

Emma had voluntarily returned to help James unaware that he had changed his confession to involve her in the crime. No forensic evidence ever placed her at the scene. Emma was arrested and incarcerated in the Lincoln County Jail in a cell near James. She was never formally booked for the crime even though she was indicted and brought to trial, until after her sentencing.⁸

"I remember January 5, 1979, as if it was yesterday," Emma says about the day of her arrest. "I knowed that I didn't kill nobody, but that don't seem to matter when people think I'm guilty. Each morning, even now when I wake up, the memory of my trial and the thought of life on death row is fresh in my mind."⁹

Emma's uncle, O.T. Morrison, heard that Emma and James did go by Mr. Crawford's, but only James went into the house to ask to borrow money. O.T. was told that James went back later. He killed Mr. Crawford and stole his money without Emma's knowledge. This information is from what O.T. called the "jungle drums." This is the story that was transmitted in the African American community and which was never shared with white people.¹⁰



Fig. 2 Wench similar to the murder weapon presented as evidence during the trials.

There is no proof of this scenario except if James had beaten Mr. Crawford to death his clothes would have been covered with blood when he left the scene. It is hard to believe that Emma or any sane person could have helped murder a man she knew and then walk in the rain with her blood soaked husband to her father's house. It is equally unlikely that anyone covered in blood could have walked more than a mile along a highway without being noticed. It is just as unbelievable that after picking up her baskets of clothes, Emma would have returned home, to watch games shows on TV, and peacefully fall asleep without any unusual emotional reaction. Only a psychopathic personality would be able to function that way. Emma has never shown

any violent characteristics. Psychological exams before and after Emma's trial indicated no signs of mental illness barring understandable situational depression and anxiety.

Emma has never deviated from her version of her behavior on the day of the murder or that after their return home James almost immediately left again in a car she never saw. It was James who was agitated and frantic when he returned late that night wearing different clothes and it was he, who when arrested, confessed to the murder, without incriminating her until after his return to Georgia.¹¹

James' Trial

The lock step movements of the law followed a well-worn path. James' culpability in the assault and death of William Crawford, given the attitude of the white community, seems to have been virtually decided even before his trial which began on October 23, 1979.¹²

The remaining issues were the penalty to be handed down for James and the degree of complicity, if any, of his wife, Emma, to be determined during her own trial.¹³

District Attorney, Kenneth Goolsby who prosecuted both cases said "I don't think I have ever seen a more senseless killing than this one." In his confession, James Cunningham said, "I did not intend to kill" Mr. Crawford.

Mr. Goolsby maintained, "It is not necessary that murder should be a part of the original design, but it is enough that it be one of the incidental and probable consequences..." "The law says that you are guilty of murder if this wrench, (indicating the tool admitted into evidence as the murder weapon) caused the death of Bill Crawford."¹⁴

"Is there any doubt in your mind about the facts in this case? Murder is the killing of a human being, and certainly, Bill Crawford was a human being, a good one. 'Snowball' could have robbed him and left him alive, but he wouldn't do that, there would have been a witness." The mostly white jury found James guilty and he was sentenced to death on October 25, 1979 after a trial which lasted less than two days.¹⁵

Man and Wife Indicted In Crawford Death

James "Snowball" Cunningham and his wife, Emma Ruth Cunningham, were both indicted on three charges in the death of William Beall Crawford by a Lincoln County grand jury Monday.

The pair were indicted on charges of Burglary, Armed Robbery and Murder of Crawford after being charged in warrants following the death of Mr. Crawford Monday night, Jan. 1. They are being held without bond. James is in the Lincoln County jail and Emma Ruth in the McDuffie County jail.

Cunningham was arrested in Durham, N.C., Tuesday, Jan. 2, when he disembarked

from a bus. An all points bulletin was issued for his arrest after Lincoln County law officers were told that Cunningham had hired another black man by the name of Williams to carry him to Augusta to catch a bus.

Mr. Crawford was murdered sometime between 6:00 and 9:00 p.m., Jan. 1. His wallet was missing, officials said, but a "large sum" of money was not taken by the intruder or intruders. This money was hidden in the house and found by officers while making an investigation of the robbery. Officers did not disclose the amount of cash found, saying only that it had been turned over to the family's attorney.

Sheriff B. C. Danner said Tuesday he was told that Cunningham and his wife walked to Crawford's home Monday night to buy a carton of cigarettes. Crawford, who was said to always keep his residence locked, was thought to have opened the door upon recognizing Cunningham and went into his store room for the cigarettes. His body was found later by his housekeeper

who called the city police.

After Cunningham was returned to Lincoln County, he carried officers where he had thrown the murder weapon. The approximately 12-inch open-end wrench was in the garden near the Wade Ashmore home on Goshen Street.

Cunningham, who was carried to Augusta later in the night by a black man named Williams, reportedly told officers that he only took \$330.00 from Mr. Crawford. Williams reported to the sheriff's department that he carried Cunningham to Augusta to catch a bus for a northern city.

The alleged attacker who lives off the Leathersville Road in a mobile home, discarded his bloody clothing and shoes and threw them into the well at his home, Sheriff Danner said. The clothing and shoes were retrieved from the well, Danner said.

Crawford, who was a Frito-Lay distributor, was noted for carrying large sums of money on his person.

The Cunninghams face trial by jury during the April Term of Superior Court.

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Fig. 3. The trials were postponed until October 1979

Emma's Trial

Built in 1915, in the Georgian style of architecture, the Lincoln County Courthouse sits on a large tree-filled lot on a pleasant street in Lincolnton, Georgia. Made of weathered red brick "that were made on site" from locally dug clay, the building is decorated with four white Doric columns. The grey roof is crowned by a clock tower with a small white painted cupola. Large black letters inscribed across the pediment label the building's function. The structure is typical of many courthouses all across the rural south.

The two glass paned front doors lead into a cream painted hallway lined with pictures of current and past officials and a colored sketch of the building itself. The heart of

the building, the courtroom is on the second floor, up a broad flight of polished hardwood steps.

The courtroom is immaculate. White painted wooden rails separate the observers from the tables and chairs arranged for the prosecution and defense lawyers. A similar railing divides the witness box and the space for the court reporter from the attorneys. When court is in session, the judge sits behind an imposing desk several feet higher than the witness box in a large black leather swivel chair. The American and Georgia flags hang from stands on either side. The jury is seated to the left behind another white rail in black leather armchairs. Despite a costly restoration, except for the addition of computers, microphones, and the new Georgia flag which no longer features a Confederate ensign, the room has not changed very much in nearly 30 years.

On May 16, 2008, the sky is a cloud filled blue and spring flowers are in bloom on the courthouse grounds, but the courtroom is shadowy and still. Emma sits in the witness box. She has not been back in this room since her trial for murder in 1979. She leans forward and rests her arms on the rail.¹⁶

Emma sits quietly for a few minutes, and then the memories about her murder trial and her death sentence verdict bring slow tears to her eyes. Emma says, " The day of my trial the people sittin' in the courtroom whisper among them while the lawyers and the judge talk to each other. The judge raps his little hammer and calls everyone to be quiet. They all hush up like kids in school when the principal come down the hall. When I was a chile', I hate bein' in school because I was teased for stutterin'. " ¹⁷

" It hurt my feelings when the teacher call out, 'Emma Ruth make 67 on a test.' I would put my head down on my desk because I usually know the answers, but I get so scared when they hand out the test that I kaint remember nothin'. After I leave school, I never done think a number could ever make me feel so bad. But when the assistant district attorney read out in a loud voice, "The State of Georgia versus Emma Ruth Cunningham, who by this indictment number 6757 is charged with the offense of burglary, armed robbery, and murder. That number made me want to hide. Six Seven Five Seven... Six Seven Five Seven.... It be like grades on a spellin' test. You make 67. You make 57. Six seven Five Seven. *Tha's* all I hear. The rest he read out don't make no sense to me anyhow. The man go on readin' and readin' and readin'. I look up when he say ... 'killed William B. Crawford by beatin' the said William B. Crawford with a certain wrench.' which had been introduced earlier as the murder weapon in James' trial. "

Emma says emphatically. "Til my trial, I ain't never seen a wrench that big. They say I take it in my pocketbook, and when Mr. Crawford won't give us no money, James and I kill him. *Tha's* another lie. That wrench more than a foot long. How it gonna fit in no regular pocketbook?" Them clothes they put into evidence in my trial were the things I give James for Christmas. Even the D.A., Mr. Goolsby, admit he don't have no evidence but me walking in the direction of Mr. Bill's house. They never can put me in that house when Mr. Bill murdered. *Tha's* 'cause I weren't there. I did not kill or help to kill that old man," Emma says scornfully. They say I confess to killing Mr. Crawford, but I only sign what they give me to protect my children and my parents.¹⁸

Decision for Bench Trial

Emma's court appointed lawyers, Roger Dunaway and Robert Cofer made the decision for her to have a Bench Trial because the death penalty had been introduced as a part of James' trial. Her lawyers had reason to believe that death would be a part of a guilty verdict in Emma's case as well. A Bench Trial is unusual for a murder trial because the judge makes all the decisions about the law and also acts as a one-man jury in evaluating the facts. The judge has control over the process of the trial as he normally would, but he is not supposed to make up his mind until he hears all of the evidence. It is one thing to believe the judge will be fair, and something else to have that always be true

The District Attorney Kenneth Goolsby was concerned about the possible legal issues, which might arise with a murder trial without a jury. Because of the DA's apprehensions, Judge Stevens looked sternly at Emma and demanded "Do you understand that without a jury this judge, myself, will be the only living person who will say whether you are guilty or not guilty?" Emma, who had been asked to stand, looked down at the floor and said in a barely audible voice, "Yes sir, I understands."

Stevens asked, "Do you understand all of your rights under both the Constitution of the United States and the laws of the United States and of the State of Georgia?" Since many college students could not answer this question with certainty, Emma's affirmative answer once again was based on her instructions rather than any real comprehension of what had been said to her. Then the signed and witnessed document of Emma's request for a non-jury trial was entered into evidence as proof that she was not influenced in her decision.¹⁹

"Mr. Dunaway and Mr. Cofer told me to say 'yes' to all of those questions," Emma relates. "I don't have no clue about what a Bench Trial was or what I say yes about or why the lawyers make that decision. Mr. Dunaway and Mr. Cofer have me write a letter that I sign. Them lawyers and my mama and daddy witnessed it on October 24, 1979, askin' for this kind of trial, They filed that letter at 12:15 p.m. on October 25, right before they start my trial."

County of Lincoln
 I, Emma Ruth Cunningham, do hereby
 authorize and direct my attorneys,
 Robert L. Cofer and Roger W. Dunaway, Jr.
 to waive a jury trial and agree to
 be tried by the judge of superior
 court without a jury in regard to
 murder charges pending against me in
 Lincoln Superior Court. I realize that
 I will be sentenced, if convicted,
 by Judge Robert S. Stearns, and, if
 convicted, I realize the sentence
 will be either life imprisonment or
 death.
 I have been advised that I am
 waiving my constitutional right to a
 jury trial, and I do this of my own
 free will, and under no one's influence,
 and do so after talking with my
 parents, Mr. & Mrs. Roy Jernmont.
 I also direct that a jury trial be
 waived as to armed robbery and burglary
 charges also pending in Lincoln Superior
 Court.

This the 24th day of Oct., 1979.
 Emma Ruth Cunningham

Annie Ruth Jernmont
 Rt 2, waco
 At 1 Box 417 km

R. H. Cofer
 Roger W. Dunaway, Jr.

At 12:15 P.M.
 filed Oct 25, 1979
 T. Stearns

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Fig.4. Copy of Emma's handwritten document agreeing to a Bench Trial

When asked about Emma's Bench Trial, the Honorable Roger Dunaway, now the Chief Judge of the Tombs Circuit, leans back in his swivel chair at his office in the McDuffie County Courthouse and reminisces about the attitude in Lincolnton toward Emma when he and the late Robert Cofer were appointed as her lawyers. Judge Dunaway, a distinguished jurist, who before his appointment to the bench, served as the county attorney, is a tall, slim man who, without any notion of a cliché, epitomizes the phrase "southern gentleman."

"We decided on the Bench Trial," the judge says, "because there was a lot of anger in the Lincolnton community. Mr. William Crawford was real prominent. He lived right across the street from the courthouse. Everybody was familiar with him."²⁰

"They were going for the death penalty [in James' case], and most of the community felt Emma was the one behind the murder. Everybody felt that she was the smarter of the two. They believed she had planned the whole thing, and that she was more responsible. Snowball's case was tried first. We were struck by the fact that when his attorneys asked the jury if any of them had heard anything about the case, not the first hand went up. This murder case was obviously the most talked about thing that had happened in years," and people behaved as if they had never heard of the crime."

"It was almost impossible to get a change of venue. Much harder than it is today," Judge Dunaway continues. "Then of course Snowball was convicted. We felt like that our best chance to avoid the death penalty was a Bench Trial. The issue, in this case, was whether or not a person who neither planned nor participated in a murder could be given the death penalty."²¹

"We decided our best chance was for the judge to look at the case unemotionally. Maybe we would come out with a better chance than before a jury. We had just seen what happened to Snowball and we knew everybody blamed her more than they did him."

Judge Robert L. Stevens, a WWII Army veteran who had served in the Pacific theater in Burma, India, and China,¹ was often an advocate for peaceful solutions when arbitration was possible. His devotion to legal orthodoxy and the exact wording of the law was a part of his legacy of succeeding his father into the practice of law. He followed some internal and often unpredictable logic in his decisions and would "show compassion in some cases, but [would] hammer you in other cases."²²

To the consternation of her attorneys Judge Stevens after a brief period of reflection returned to the court room and read his personally handwritten note into the record sentencing Emma to the death penalty.

State
 vs.
 Emma Ruth Cunningham } Lincoln County Superior Court
 Indictment # 6757

The Court has found the defendant, Emma Ruth Cunningham, guilty under Count two (2) Charging Armed Robbery and under Count three (3) Charging murder and the Court finds in the sentencing phase of said trial the following aggravating circumstances beyond a reasonable doubt:

1. The offense of murder and armed robbery was committed while the offenders were engaged in the commission of another capital felony or aggravated battery, and
2. The offense of murder and armed robbery was atrociously or wantonly vile, heinous or inhuman in that it involves: - depravity of mind or an aggravated battery to the victim.

The Court finds the punishment as to Counts two and three as death.

This the 26th day of October, 1979.

Robert L. Stevens
 Judge of Superior Court
 of Lincoln County, Ga.

Fig. 5. The last sentence reads: The Court finds the punishment as to counts two and three as death. The third charge of burglary was dropped since Mr. Crawford opened the door to his assailant. There was no "breaking and entering" which is a legal part of the definition of that crime.

Judge Stevens read the formal statement into the record: "It Is Considered, Ordered And Adjudged By The Court, that you Emma Ruth Cunningham, be taken from the bar of this Court, where you now stand to such place of confinement as the law provides, where you shall be safely kept and confined until you shall be removed and in the manner provided by law to such an institution where you shall be submitted to the penalty of death by electrocution, as provided by law, between the hours of ten o'clock in the forenoon and two o'clock in the afternoon on the 14th day of December, 1979, and may the Lord have mercy on your soul. This case is closed," the judge said and got up and disappeared through a door into his chambers.²³

A deputy handcuffed Emma for the first time since her arrest and escorted her back to the jail. The bright sky had faded to a washed out grey and the air was cold on her bare arms. She stumbled and the deputy caught her. She could feel tears on her face, but they seemed to belong to someone else. She was locked into her cell, and the jailer turned out the lights. Emma sat on her cot. There was a faint light in the outer office. She stared at the glow as if somewhere there would be an answer. She was not quite 28 years old and had spent her entire life just trying to survive. Even the GBI agents had said that she was very smart. She had worked as hard as she could. She took good care of her two children and loved them better than her own life. Her existence did not seem to matter at all. She had been given a death sentence for a murder she knew that she had not committed. A judge had said she was guilty of Mr. Crawford's homicide and had pronounced that she was to die on the 14th day of December 1979. She felt like a drop of water suspended from the rim of a dripping faucet. The fall was inevitable and had no outcome but chaos and destruction.²⁴

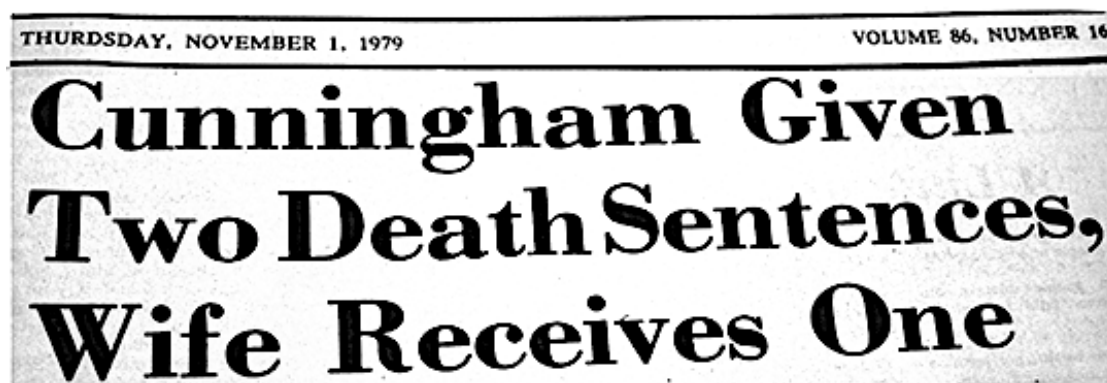


Fig. 6. Headline *Lincoln Journal*

Sitting in her immaculate living room thirty years later, Emma says, "Livin' on death row is pure hell!" Her voice shaking as she remembers, she adds, "No one else can know your circumstances. You don't really know when they are comin' to get you. You never know when they will. It's so hard on a person. It's hard not to think about your death and bein' killed for no reason. Every time I heard the keys rattlin' in the locks, I would think that they were comin' to tell me, 'Emma Cunningham get yourself up. They are ready for you. Your appeal was turn down.'" Emma sighs, "No one who ain't been there can imagine the agony of hopelessness and helplessness and loneliness." Emma adds, "In prison you are still treated the same way as you are on the outside because you black. Now we're in a new century, but 1979 for me is still a reminder of the holocaust of what many blacks still face today—injustice, discrimination, and violent death."



Fig.7. Emma and Judge Dunaway in his chambers May 16, 2008

I was stunned at Judge Steven's verdict," Judge Dunaway says. "I never believed what James Cunningham said about Emma," he adds emphatically. "I don't think he planned to murder Bill Crawford, either. When Crawford fought back, Snowball just panicked because he just kept beating and kept beating. The murder was horrible, bloody, and gruesome. I think the Lord was looking after Emma Ruth, when we finally got her death penalty sentence reversed on appeal. Her trial had a lot of bearing on how I looked at criminal cases. I think Emma's case really gave me a lot of sensitivity."²⁵

Emma, reflects on her life, "Ain't many people in this world ever had the experiences I had. Not many put on death row, and not many have the gate swing open. I done for real been in the 'valley of the shadow.' Don't make me no better nor no worse than you. But what happen to me do make me see. I see with my eyes the crack in the sidewalk and the red flower on the bush. I see the rust on the gate and the tear in the eye. When you faced with death—when you know you ain't done the killin' and God save you from your doom, then everything become important." Emma pauses, "...and then at the same time not important at all. You sees everything, because you might not never get to see with your eyes again—not by God 's choice but of the law. So I go out and speak against what I know is wrong. There ain't no way to argue with the fact like I say over and over that there more black people executed than white."²⁶

Conclusion

"Who gets the death penalty is largely determined, not [solely] by the severity of the crime, but by: the race, sex and economic class of the criminal and victim." Who ends up on death row is subject to "vagaries in the legal process. The death penalty is like a lottery, in which fairness always loses.

—*The Death Penalty: Questions and Answers*, April 29, 2005.

In the late twentieth century statistics indicated that the overwhelming majority of those on death row who were African American were, as Emma Ruth Cunningham was, convicted for killing white victims.²⁷ This is despite the fact that African Americans make up about half of all homicide victims. When African Americans commit crimes against white people, race becomes a more relevant issue, creating less objective sentencing decisions. Judges can be influenced by racial characteristics that "are influential in courtroom assessments of blameworthiness, dangerousness, and practical constraints."²⁸

Poor people are also far more likely to be given the death penalty than those who can afford the high costs of private investigators, psychiatrists, and expert criminal lawyers. Geography also plays a role. Since 1976, with the reinstatement of the death penalty after the Supreme Court Decision in the case of Gregg v. Georgia, 82% of all executions have taken place in the South.²⁹

As Senator Russ Feingold said in a speech on civil rights as a priority, "We simply cannot say we live in a country that offers equal justice to all Americans when racial disparities plague the system by which our society imposes the ultimate punishment."³⁰

Emma's trial and death penalty conviction is an almost perfect example of each of these issues. The examination of her trial transcript clearly illustrates, racial prejudice, jailhouse "snitch" testimony, introduction of misinterpretation of evidence, and community pressure for her conviction. Within the framework of her story, perhaps understanding may be gained about the plight of individuals who through cultural and social circumstances are deprived of the benefits of education and the full weight of equality under the law. Yet it is not Emma's "troubles" that make her memorable, it is her remarkable and continued evolution that makes her an embodiment of Maya Angelou's wonderful lines: "You have tried to destroy me and though I perish daily, I shall not be moved."²¹

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Endnotes

¹ *State v. Emma Cunningham*, No. 6757, 1979 Microfilm Reel 2532, Case 37779 , 4, 28 (Ga.L.C.S.C. Oct. 25, 1979). The murder was proved to be committed by Emma's then husband James "Snowball" Cunningham. At the time of James and Emma Cunningham's trials, state level cases were not printed. Although bound into volumes, most state cases are still not reported. Many earlier cases were also placed on microfilm. Since December 2005 significant trial court decisions (only) have been published in *West's Jury Verdicts: Georgia Reports*, which are available in print and at *Westlaw* online. http://web2.westlaw.com/signon/default.wl?vr=2.0&fn=_top&rs=WLW13.01&bhcp=1. Copies of both Cunningham cases on microfilm were purchased from the Georgia State Supreme Court. In this format, Emma Cunningham's case number is 37779, the reel number is 2532. James Cunningham's case number is 37736, the microfilm reel number is 2525. The cases are housed in the Georgia State Office Annex building in Atlanta, GA. Each page of both cases was photographed and then electronically scanned.

² Except for Mary Alice "Speekie" Tutt , who was the last person to see Mr. Crawford alive when she fixed his lunch no one else as far as is known witnessed his actions on the last day of his life until his murderer. E. Cunningham, No.6757 at 29, (Mary Alice "Speekie" Tutt said that Mr. Crawford called her). *State v. James Cunningham*, No. 6756, 1979 Microfilm Reel, 2525 Case 37736, 27,122-125 (Ga L.C.S.C. Oct. 23,24,1979). (These pages contain much of Mrs. Tutt's testimony, which she repeats as a witness at Emma's trial).

³ Special Agent Mike Seigler became the agent in charge of the Georgia. Bureau of Investigation's Thomson Office. *Athens Banner-Herald*, June 3, 2004.

⁴ J. Cunningham, No. 6756 at 129-163, 146 (performing the autopsy on Crawford), 131 (indicating time and place of autopsy). Randy Hanlick, MD, *Georgia Death Investigation History* <http://www.fcmeo.org/GAHistory.htm> February 2002.

⁵ The Milky Way Freeze Bar is a locally owned restaurant in Lincolnton, GA, which is rather like a clone of Dairy Queen. It is located on Highway 378 on a section of the road called Washington Street. Milky Way Freeze Bar, 732 N Washington St, Lincolnton, GA 30817. <http://start.cortera.com/company/research/k2j7prj2q/milky-way-freeze-bar/>

⁶ Emma Cunningham. Interviews by author on May 10 and 11, 2002.

⁷ James's Confession is labeled January 2, 1979 on the first page and January 1, 1979, on the other three pages. It is also identified as GBI case 07-0196-01-79 and is signed on each page by Detective Franklin and James.

⁸ Despite the warrant, the revocation of bail and the 1966 Miranda ruling Emma was apparently still not read her rights. The statement as recorded by Special Agent was later admitted into evidence, though later in court Emma denied most of the contents as inaccurate.

⁹ Emma Cunningham, "The Red Book" (unpublished personal manuscript 1979-1993), 55-57 Emma never deviated from these statements. She often took the offensive when asked the same questions repeatedly. Emma told me in an unrecorded conversation: " I begin to think them folks plain stupid. They did make up their minds and it like they ain't listening. They keep trying to catch me up but there ain't no trap when you telling the truth."

¹⁰ Another version told to Emma's Uncle O.T. indicated that James hit Mr. Crawford with a wrench while Emma was outside the house and took the money. Then afraid he would be found out he returned later to the house and beat Mr. Crawford to death. O.T. (Charles) Morrison, personal interview, May 10, 2006

¹¹ The behavior of the psychopath and the sociopath are similar. Both have "a complete disregard for the feelings and rights of others." This behavior may emerge as early as age 15 and may be accompanied by cruelty to animals. These behaviors are "distinct and repetitive, creating a pattern of misbehavior that goes beyond normal adolescent mischief." <http://www.wisegeek.com/what-is-the-difference-between-a-psychopath-and-a-sociopath.htm>.

¹² April 26, 1979 "Lincoln Journal page 1. Trial postponement until Fall Term"

¹³ Even if on the way to her father's house, James and Emma went by Mr. Crawford's house for James to ask for money, the murder itself was possibly committed at the later time. The unproved theory around town was that James had knocked Crawford over the head during the first visit and went back later and actually killed him. Emma says she was never there at all and even James said that she had no idea of what he had done, whatever the timeline.

¹⁴ *State v. James Cunningham*, No. 6756, 1979 Microfilm Reel, 2525 Case 37736, 27,122-125 (Ga L.C.S.C. Oct. 23,24,1979). *Id.* at Trial Transcript p. 325. In lay terms, Mr. Goolsby is describing the felony murder rule. A Rule of Law which holds that if a killing occurs during the commission or attempted commission of a felony (a major crime), the person or persons responsible for the felony can be charged with murder.

"<http://legal-dictionary.thefreedictionary.com/Felony-Murder+Rule>. These statements comes from the DA, Kenneth Goolsby's closing statement and it sums up the prosecutions case and was actually delivered on Oct. 25, 1979. James and Emma's trials were both in process on Oct. 25 so the chronology has been compressed for the sake of clarity .This was the day James' penalty was decided

and the only day of Emma's Bench Trial which is discussed below.

¹⁵ There's no "normal" length for a trial - "every case is based on its own facts" - but that the defense counsel would be more likely to call few, or even no, witnesses if it felt the prosecution failed to establish a strong case. <http://republicanherald.com/news/experts-short-trial-not-unusual-in-murder-case-1.6288> Shenandoah VA "If a defendant testifies, it creates an opportunity for the defense to call character witnesses as to the character's truthfulness and law-abidingness...

Character witnesses can be effective." "Trial Length - A Serious Problem "(Part I in a Series), http://www.gibbonsfowler.com/weblog/archives/2006/10/trial_length_a_serious_problem.html (2006). Note this site has been tagged as of 2013 with a "dangerous downloads" sign. The site had no such warning when examined in 2006. "It must surely be accepted that (criminal) trials are on average much longer today than they were twenty or thirty years ago. Talk to any defense lawyer, prosecutor or judge who practiced in those earlier times, and you will hear about murder trials that routinely took less than a week. The length of a fairly short murder trial today would be anywhere from 17 days to a month or so, and the average is probably much longer."

¹⁶ Description from a visit to the Court House by Emma Cunningham and the author May 16, 2008.

¹⁷ Emma Cunningham. Interview by author on May 10 and 11, 2002. "If a person has no experience with arrest and interrogation," they are "more likely to become upset and stressed by the interrogation." A study in England (Irving, 1980) reported, "anxiety and fear were most commonly observed in first-time offenders." Observations noted included trembling, shivering, sweating, hyperventilation [and] verbal incoherence. A substantial proportion of the suspects were not in a normal mental state during interrogation. Hollida Wakefield, M.A. and Ralph Underwager, Ph.D., eds. *Issues In Child Abuse Accusations*, The Institute for Psychological Therapies, <http://www.ipt-forensics.com>.

¹⁸ *J. Cunningham*, No.3756 at Trial Exhibit #11 (Confession January 1, 1979, 9:50 p.m., 3-4). Barbara Leckie, *Comparative Literature*, vol. 54, no. 2, 2002. *Troubling Confessions: Speaking Guilt in Law and Literature*. To be legal, a confession "must be the product of a free and rational will," and yet as amply demonstrated, drawing on psychoanalytic, philosophical, and literary examples, "confessions are rarely products of a free and rational will" *Journal of Criminal Justice and Popular Culture*, 7(3) (2000) 119-121 [pdf version]. Austin Sarat, *Review of Troubling Confessions: Speaking Guilt in Law and Literature*. Department of Law, Jurisprudence, and Social Thought, Amherst College.

¹⁹ *E. Cunningham*, No.6757 at 6-7.

²⁰ *E. Cunningham*, No.6757 at 6; (Jury Trial waived) 7 (Goolsby).

²¹ Despite the introduction of the wrench and clothes from James' trial there was nothing but circumstance connecting Emma to the murder. "Books, movies, and television often perpetuate the belief that circumstantial evidence may not be used to convict a criminal of a crime. But this view is incorrect. In many cases, circumstantial evidence is the only evidence linking an accused to a crime; direct evidence may simply not exist."

<http://legal-dictionary.thefreedictionary.com/Circumstantial+Evidence>. Video and audio interview with The Honorable Roger Dunaway, Chief Judge of the Tombs Circuit, May 2008.

²² The China, Burma, India (CBI) Theater of WWII only involved about 2% of American military personnel. Established in March of 1942, the goal was to provide supplies to China and combat the Japanese from Burma to Southeast Asia. Lord Louis Mountbatten (later Lord Mountbatten of Burma) was the Supreme Commander. Other noted individuals and groups included Gen Joseph Stillwell, Orde Wingate's Chindits, Merrill's Marauders and the Flying Tigers. Perhaps this "military singularity", which labeled the CBI participants "unique", also contributed to Judge Stevens' approach to the law. Melissa Hall, "Judge Stevens known for life on the bench," http://newstimes.augusta.com/stories/2002/05/19/new_124-1276.shtml (Sunday, May 19, 2002).

23 Id. "A piece of McDuffie County history was buried Tuesday when Judge Robert L. Stevens Sr. was laid to rest. Judge Stevens, who died Sunday, was the retired senior judge of the Superior Court of Toombs Circuit, after serving on the bench for over 32 years. He was the senior judge in Georgia before he retired in 1996 and a lifelong resident of McDuffie County."

24 Lawskills.com Georgia Caselaw CUNNINGHAM v. THE STATE.37779.(248 Ga. 835)(286 SE2d 427)(1982) MARSHALL, Justice. Murder, etc., Lincoln Superior Court. Before Judge Stevens. This is a companion case to Cunningham v. State, 248 Ga. 558 (284 SE2d 390) (1981) , against the appellant's husband, James. Appellant Emma Cunningham was indicted for burglary, armed robbery, and murder. She pleaded not guilty, waived jury trial and was tried and sentenced by the court. On motion of the appellant, the trial court dismissed the burglary count. The appellant was found guilty of armed robbery and murder. She was sentenced to death on both counts, upon a finding of two aggravating circumstances.

That the Judge was not impartial in his decision was illustrated by the outcome of the appeal made to the Georgia State Supreme Court. The state sought to introduce a certain wrench and clothing in evidence over objection. The evidence was tentatively admitted by the trial judge subject to being connected with the crime and properly identified. The appellant, at the close of the state's evidence, renewed the objection on the ground that the state had not connected up the evidence. The trial judge overruled the objection.

The appellant, in her 13th enumeration of error, contends that the trial judge erred in admitting this physical evidence. We agree. The wrench was not identified as anything other than having been found in a field. The clothing was also identified only as having been found in an old well. The witness identifying the clothing carefully avoided saying whether it was a man's or a woman's clothes, nor were any of these items connected to the crime or the defendant in any manner whatsoever.

The state contends that since this was a bench trial, the trial judge is presumed to consider only the admissible evidence and reject the inadmissible. However, in the present case, the trial judge, at the close of the evidence, expressly ruled on the admissibility of this evidence. Therefore, the trial judge necessarily considered the evidence to have been properly admitted and considered it in reaching his verdict. We are unable to say that it is highly probable that the error did not contribute to the judgment. Thomas v. State, 248 Ga. 247 (282 SE2d 316) (1981). Consequently, the defendant is entitled to a new trial. Hall v. State, 244 Ga. 86 (259 SE2d 41) (1979).

25 The fall of water drops and what happens when they hit a surface is not as predictable as once thought. Prof. S. Errede, "Chaotic Water Drop Experiment" Physics 403 Lab 1/11. Physics Dept, UIUC. (October 2004). Copyright @ 2001-2004 The Board of Trustees of the University of Illinois. All rights reserved.

26 Emma Cunningham. Interview by author on May 10 and 11, 2002. Video and audio interview with The Honorable Roger Dunaway, Chief Judge of the Tombs Circuit, May 2008.

27 Emma Cunningham, personal interview, August 9, 2006.² Between 1930 and the end of 1996, 4,220 prisoners were executed in the United States; more than half (53%) were black. Capital Punishment: Race and the Death Penalty <http://www.aclu.org/capital-punishment> (2012).

28 Brian Johnson, "Courtroom Discretion and Modes of Conviction," *Racial and Ethnic Disparities in Sentencing Departures Across Modes of Conviction* (2003), 455. This issue remains the same in the twenty-first century as well. "A 2007 study of death sentences in Connecticut conducted by Yale University School of Law revealed that African-American defendants receive the death penalty at three times the rate of white defendants in cases where the victims are white. In addition, killers of white victims are treated more severely than people who kill minorities, when it comes to deciding what charges to bring. " <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts>

29 Even though blacks and whites are murder victims in nearly equal numbers of crimes, 80% of people executed since the death penalty was reinstated have been executed for murders involving white victims. More than 20% of black defendants, who have been executed were convicted by all-white juries. <http://www.deathpenaltyinfo.org/notepad.gif>.

Akia. Stroud, "The Death Penalty in Georgia," Independent Study directed by Ruth J. Carter, Ph.D., GCSU Spring 2012.

30 United States General Accounting Office, Death Penalty Sentencing, <http://www.deathpenaltyinfo.org/G-DRbyRace.GIF>. (February 1990).

"In 82% of the studies [dealing with the death penalty], the race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found more likely to be sentenced to death than those who murdered blacks."

³¹ Former Senator Russ Feingold, (D-WI 1993-2011), "Civil Rights as a Priority for the 108th Congress," US Senate, January 2003 Clinton Duffy, (former warden at California's San Quentin Prison), "The Death Penalty: Questions and Answers: Death Penalty and Arbitrariness" <http://www.amnestyusa.org/> (n.d.). *Gregg v. Georgia*, 428 U.S. 153 (1976), reaffirmed the United States Supreme Court's acceptance of the death penalty in the United States, upholding, particularly, the death sentence imposed on Troy Leon Gregg. Referred to when cited in full with the concomitant cases by many leading scholars as the *July 2 Cases*. James S Liebman, "Slow Dancing with Death: The Supreme Court and Capital Punishment, 1963-2006," *Columbia Law Review* **107** (1), JSTOR 40041708 (2006:1-130).

Contact Email: writersblock0000@yahoo.com