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# Death penalty hearing begins in Harris County courtroom

By BRIAN ROGERS  
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 Dec. 6, 2010, 11:55AM

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Melissa Phillip Chronicle

John Edward Green Jr. is awaiting trial on charges he fatally shot a Huong Thien Nguyen, 34, of Houston, and wounded her sister My Hong Nguyen during a June 2008 robbery.

Defense lawyers for John Edward Green said in a Harris County courtroom this morning that Texas has executed two innocent defendants and the procedures surrounding the death penalty in Texas are unconstitutional.

"He is at risk of being wrongfully convicted, wrongfully sentenced and wrongfully executed," said defense lawyer Richard Burr.

Green, 25, faces the death penalty, accused of a 2008 robbery and murder in southwest Houston.

Burr said Green is innocent.

Prosecutors argued that the law surrounding the death penalty is well settled and should be left alone. They also argued that Green, has not been convicted of anything, and therefore lacks standing to argue against the death penalty.

Harris County Assistant District Attorney Alan Curry argued that a hearing to collect evidence is unnecessary.

"This is a legal issue, not an evidentiary issue," Curry said.

"I believe I need to hear evidence," State District Judge Kevin Fine answered.

Curry, the head of the appellate division of the district attorney's office, also lodged at least 19 other objections in writing before today.

Today's arguments kicked off what is expected to be an unusual two-week hearing, in which Fine is reviewing capital punishment in Texas.

Witnesses expected to testify include former Texas Gov. Mark White, who last month spoke in Houston with New York lawyer Barry Scheck of the Innocence Project.

White has called for legislative changes citing problems with the capital cases of Claude Jones and Cameron Willingham, both of whom have been executed.

Scheck is seeking a moratorium on executions. He is expected to try to convince the judge that Jones and Willingham were actually innocent and that Texas has almost certainly executed other innocents.

In March, Fine declared the procedures surrounding the death penalty in Texas unconstitutional, then rescinded his ruling and asked attorneys on both sides to present more evidence.

Burr said three factors in Green's case — eyewitness identification, partial fingerprint evidence and information provided by informants - were also used to convict Jones and Willingham.

Andrea Keilen, executive director of Texas Defender Service, a nonprofit that represents death row inmates, has said the hearing is the first time a court will consider the constitutionality of the Texas death penalty in the context of analyzing whether there is a substantial risk of convicting the innocent.

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