Death row inmate’s race wrongly cited at trial, lawyers say

By Michael Graczyk Associated Press

HOUSTON — A jury took only 17 minutes to convict parolee and former mechanic Duane Buck of gunning down his ex-girlfriend and a man at her Houston apartment, then deliberated about four hours before deciding he should be put to death.

Now nearly two decades later, the U.S. Supreme Court is being asked to look for a third time at whether the death sentence the jury gave Buck was tainted by testimony and evidence related to the fact he is black.

“Injecting race into a capital sentencing proceeding is not only wholly improper, it poses a special risk of harm to the defendant, and one that, respectfully, this Court cannot — and must not — tolerate,” Buck’s lawyers said in briefs submitted ahead of Wednesday’s scheduled arguments before the high court. They have been fighting for years to get a new punishment hearing.

Buck’s case doesn’t present a broad challenge to the death penalty but draws attention due to Texas’ standing as the nation’s leader, by far, in carrying out 537
executions since the Supreme Court in 1976 allowed capital punishment to resume.

At issue is whether the New Orleans-based 5th U.S. Circuit Court of Appeals was correct when it refused attempts by Buck’s attorneys to reopen a judgment against Buck. That ruling blocked his lawyers from moving forward with an appeal contending Buck’s constitutional rights were violated when his defense lawyers put on an expert witness who referred to Buck’s race during his testimony.

In Texas death penalty trials, one of the “special issues” jurors must consider when deciding punishment is whether the defendant they’ve convicted would be a continuing future danger.

A psychologist, Dr. Walter Quijano, one of two defense experts hired by Buck’s lawyers for his 1997 trial, compiled a report listing race as among several statistical factors like age, sex and criminal past that influenced the probability Buck would commit a violent act in the future.

“It’s a sad commentary that minorities, Hispanics and black people, are overrepresented in the criminal justice system,” Quijano testified, according to court records. He also said based on his interview and testing of Buck, the defendant was unlikely to commit future violent criminal acts although Quijano said he could “never rule out any probability.”

During the course of cross-examination, a Harris County prosecutor asked him once about race and sex being a factor in future dangerousness and Quijano replied, “Yes.”

Defense attorneys submitted his report into evidence, and over the objection of prosecutors it was admitted.

The prosecutor referred to Quijano during closing arguments to jurors but did not mention race.

Buck’s current lawyers contend his trial attorneys were deficient for using Quijano and for not objecting to his testimony during the cross-examination and that lawyers early in the appeals process were deficient for not raising the issue of trial attorney ineffectiveness.