

Texas prisoner executed despite debunked forensic evidence pointing to his innocence

By Kate Randall
24 August 2019

Texas carried out the execution of Larry Swearingen Wednesday evening despite serious doubts surrounding virtually every piece of forensic evidence in his case. Swearingen, 48, was convicted in the murder of 19-year-old college student Melissa Trotter, who disappeared from her community college in December 1998 and was later found dead.

Swearingen's defense attorneys had argued for more nearly two decades that scientific evidence in his case—DNA evidence under Trotter's fingernails that was not his, pantyhose allegedly used in the murder, blood specks that were not a match for Swearingen, and inconsistencies in the timeline of the victim's murder—exonerated him.

Before the execution, Houston-based attorney James Rytting said, "They may put Larry Swearingen under, but his case is not going to die."

Swearingen had five previous dates with death, which had all been stayed. His final motion was to the US Supreme Court, which denied his appeal shortly before 6 p.m. local time. He died by lethal injection at the state prison in Huntsville, Texas, stating in the execution chamber: "Lord forgive them. They don't know what they are doing."

The *Houston Chronicle* reported that he spoke with his eyes closed, strapped to the gurney, as the lethal chemicals were injected: "I can hear it going through the vein — I can taste it," describing a burning feeling in his right arm. "I don't feel anything in the left," he added. At 6:35 p.m., he began snoring, and at 6:47 p.m. local time he took his last breath.

One of Swearingen's attorneys, Bryce Benjet of the Innocence Project, stated on news of the Supreme Court's rejection of their client's motion for a stay of execution, "We are heartbroken by today's Supreme Court decision. It is a tragic conclusion to Mr.

Swearingen's fight to prove his innocence."

"Mr. Swearingen has maintained his innocence from the beginning of this case nearly 20 years ago and the substantial evidence of his innocence has been accumulating with each passing week," he said. "The Supreme Court's decision prevents Mr. Swearingen from proving his innocence. It is unconscionable that Mr. Swearingen or anyone else should be executed based on science known to be false."

Physical evidence debunked

Swearingen was convicted and sentenced to death for the rape and murder of Trotter in 2000 by a jury in the 9th District Court. Earlier in August, he sought authorization from the United States Court of Appeals for the Fifth Circuit to file a successor petition for a writ of habeas corpus. This was based on new information provided to Swearingen's defense by the Texas Department of Public Safety Crime Laboratory (DPS) stating that he had been provided with inaccurate testimony at his trial.

DPS stated that their expert had an "insufficient basis" for her testimony and had "no direct knowledge" that the only male DNA identified on the murder victim was contaminated. The DNA, in fact, excluded Swearingen.

The DPS also conceded that its expert, technician Sandy Musialowski, should not have provided testimony that two half pieces of pantyhose—one used as the means of strangling the victim, the other found in Swearingen's home—were a "unique" match, or a match "to the exclusion of all other pantyhose." Musialowski had in fact initially found "no physical match between ligature [strangling evidence] & pantyhose."

An expert that examined the evidence for the defense,

Deborah Young, a professor of textile science at Cal Poly Pomona, wrote, “At first glance” the pieces of fabric from the ligature and the pantyhose “appear to connect, but once the deliberate space between them is removed, it becomes quite clear that they do not match ... My opinion is that while both pantyhose were cut in the same basic silhouette, they were not cut from the same piece.”

A DPS lab technician had testified that blood found under Trotter’s fingernails probably came from contamination during the collection or testing process. However, the DPS stated this month that the technician had no grounds for this testimony, and that the blood found under Trotter’s fingernails was from a man, but not from Swearingen.

At Swearingen’s trial, the medical examiner testified that Trotter probably had been dead for 25 days, the amount of time between when she disappeared from her community college and when her body was found. However, numerous forensic experts have since testified that she had probably been dead for about two weeks or less. Since Swearingen had been arrested three days after Trotter disappeared, and three weeks before her body was found, these experts’ testimony would exclude him as the perpetrator.

Execution of the innocent

Despite the clear doubt placed over the forensic evidence, leaving only circumstantial evidence against Swearingen, Kelly Blackburn, the assistant district attorney who had handled Swearingen’s case since 2010, said, “I’ve never been more confident of the guilt of Larry Swearingen than I am today.” The Supreme Court also ruled against a stay to allow the condemned prisoner to present his case in light of the discredited forensic evidence.

“Mr. Swearingen’s case exemplifies the potential for a miscarriage of justice when invalid scientific evidence is used to convict,” said Benjet of the Innocence Project. “Without meaningful judicial remedies for addressing junk science in criminal cases, how can we have confidence that people convicted and executed based on this scientifically invalid evidence are actually guilty?”

According to the Death Penalty Information Center (DPIC), 166 people have been exonerated from death row since 1972. A 2014 study published in the National

Academy of Sciences by Michigan law professor Samuel Gross and his coauthors estimated that 4.1 percent of people on death row in the US have been wrongfully convicted. The DPIC estimates that as of April 1, 2019, there were 2,673 people on death rows across the US.

The most recent exoneree is Charles Ray Finch, who was convicted and sentenced to death in 1976 based on false forensic testimony and an eyewitness identification manipulated by police misconduct. He was resentenced to life in prison after the US Supreme Court declared mandatory death sentences unconstitutional.

On January 25, 2019, the US Court of Appeals for the Fourth Circuit found Finch “actually innocent” of the murder and remanded his case to the federal district court to consider the prosecution’s withholding of exculpatory evidence in his case. On June 14, 2019, the Wilson County District Attorney dismissed all charges in the case. He was released after spending 43 years in prison for a crime he did not commit. He was 81.

Since the Supreme Court reinstated the death penalty in 1976, 1,503 individuals have been sent to their deaths. The executions have included the mentally impaired, those sentenced for crimes committed as juveniles, and foreign nationals denied their consular rights. Any critical examination of the unscrupulous practices of prosecutors and the manipulation of evidence in capital cases—and the willingness of the highest court in the land to uphold death sentences based on these practices—points to the conclusion that many innocent people have been sent to their deaths.

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