

Reeling from serious prosecutorial misconduct allegations, the Burleson County District Attorney's Office quit Anthony Graves' murder case in December 2006. A special prosecutor was appointed to take over Graves' case.

Capital Conviction Tossed Because Prosecutors Concealed Evidence — The Anthony Graves Story

By Erika McDonald

In March 2006 the federal Fifth Circuit Court of Appeals overturned Graves' 1994 murder conviction and death sentence. The Court ruled that prosecutor's egregious *Brady* violations of failing to turn over exculpatory witness statements deprived Graves of his right to a fair trial. (*Graves v. Dretke*, 442 F.3d 334 (5th Cir. 03/03/2006)) The appeals court ordered the state to retry Graves or release him outright. Graves had been convicted, along with another man, Robert Carter, of killing a family of six in Sommersville, Texas in 1992.

Pretrial proceedings were underway in Burleson County, where the case was originally tried, when, at a hearing on November 30, 2006, defense lawyers argued for the removal of Assistant District Attorney Joan Scroggins. Scroggins was on Graves' original prosecution team. In their effort to have Scroggins recused, Graves' lawyers cited the federal appellate court's finding that Burleson County prosecutors suppressed exculpatory witness statements in the 1994 trial. County Judge Reva Towslee-Corbett, whose father presided over Graves' first trial, granted the recusal motion one week later. Burleson County District Attorney Renee Mueller then filed a motion stating she could not proceed without Scroggins' and voluntarily disqualified her entire office from the case.

A court-recognized expert on state laws governing professional ethics called the Graves case the most "outrageous" case of prosecutorial misconduct he had seen in 30 years of practicing law in Texas. Bob Bennett, a Houston attorney, testified for the defense at the November 30 hearing. "[Scroggins] knew what was going on. She knew false testimony was being offered. She knew that subornation was happening and she decided to ignore it," Bennett said at the hearing.

In response to the prosecutorial misconduct, Graves' attorneys have argued their client would never receive a fair trial in Burleson County, but the same judge presides over four counties, and a change of venue outside the local area would not likely be granted. Burleson County is 95 miles northwest of Houston.

The state's evidence against Graves consisted of Carter's eyewitness testimony that Graves helped him commit the murders. There was no other evidence linked Graves to Carter or the murder scene. The night before he was to testify, Carter told prosecutors he lied about Graves' involvement and admitted to killing all the family members himself. Carter said, "I did it all myself, Mr. Sebesta. I did it all myself." Scroggins' trial partner was then-District Attorney Charles Sebesta, and neither prosecutor disclosed to Graves' lawyers that Carter recanted *before* those prosecutors elicited Carter's trial testimony implicating Graves. Carter was eventually executed, insisting on Graves' innocence right up to the time his lethal injection was administered.

The special prosecutor appointed to take over Anthony Graves' case, Navarro County Criminal District Attorney Patrick Batchelor, is experienced in securing a wrongful conviction based on shaky evidence. He was the prosecutor of Cameron Todd Willingham, convicted of setting a fire that killed his three children in 1991. As Willingham's execution date approached the *Chicago Tribune* reported that his conviction was based on outmoded theories used to identify arson. Five arson experts signed a report that found the trial testimony the jury relied on to convict Willingham was based on out-of-date assumptions. In spite of the new evidence supporting Willingham's possible innocence, Governor Rick Perry declined to intervene and he was executed in 2004.

A decade after the Sommersville murders, Professor Nicole Casarez's investigative journalism class at the University of St. Thomas in Houston took an interest in the Graves case. The journalism class constitutes the UST Innocence Project, which is a part of the Texas Innocence Network. Casarez and her students uncovered the constitutional violations by the Burleson County prosecutors after several years of digging. The new evidence attracted the attention of Houston media, and eventually led to the appeals court order that Graves be released or retried.

After Graves' conviction was overturned by the federal court, Sebesta made frequent appearances in the local media to defend his reputation. Sebesta claims he never told Graves' lawyers about Carter's exculpatory statement because he did not believe him. Sebesta has explained he thought Carter simply had "cold feet" about testifying at Graves' trial.

However, testimony at the November 30 hearing contradicts DA Sebesta's story. Former St. Thomas students of Casarez who attended the hearing said they



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were stunned when one of Graves' primary accusers changed his story after more than a decade. Senior Captain Ray Coffman of the Texas Rangers, admitted he heard Carter confess sole responsibility for the murders numerous times. Coffman, who lead the 1992 investigation against Graves, originally testified that, although Carter frequently changed his story about what happened the night of the murders, he claimed to have acted alone only once.

At the November 30 hearing one of Graves' attorneys asked Coffman if Carter told prosecutors that Graves was innocent. According to transcripts, Coffman answered, "Oh, sure. Several times." Coffman also testified that he always informed Sebesta when Carter told him that Graves was innocent, but said he never documented the statements in any of his written reports.

In the appellate ruling issued even before Coffman's latest disclosure, the Fifth Circuit Court questioned his involvement in DA Sebesta's misconduct.

"Although there is no factual finding regarding whether Ranger Coffman knew of Carter's statement that he committed the crimes alone, Sebesta clearly knew of the statement and used Ranger Coffman as well as Carter to present a picture of Carter's consistency that Sebesta clearly knew was false," the court stated.

One of Casarez's former students, Gia Gustilo, who first began investigating the Graves case five years ago, said she was not surprised that Coffman knew of Carter's statements but said she was surprised that Coffman finally decided to tell the truth. She said that by presenting false testimony in Graves' trial, Coffman and Sebesta "cheated" Graves out of his right to properly defend himself.

"It should have been the jury's job, not Ranger Coffman's, to say if Robert Carter's statements were credible. And it should have been Mr. Graves' right to have that information so that he could show the jury that Carter was lying on the stand," Gustilo said. "But then again, a lot of things hap-

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Two Men Awarded \$1 Million Each After False Arrest For Baseball Game Explosion — Third Man Fights Wrongful Conviction

By James F. Love

Clinton Oliver, Donald Krieger and Andrew Mendez, felt they had a stroke of luck when Oliver's younger sister gave them three tickets to attend a June 2002 Cleveland Indians baseball game at Jacobs Field. Oliver's sister had won the tickets for being the MVP on her softball team at Elyria High School. Unable to attend the game, she gave the tickets to her older brother. Little did her brother and his friends know, as they bounced into the stadium, that they would be subjected to a false arrest, wrongful prosecution, and for at least Mendez, what now appears to be a wrongful conviction.

On June 11, 2002, Oliver, Krieger and Mendez entered Jacobs Field and began watching the game from the upper level. After the game began Oliver and Krieger moved to box seats at ground level, while Mendez stayed in the upper deck. In the top of the ninth inning, an

explosion in the lower-level smoking area shook the stadium and injured four people. Witnesses provided contradictory statements about the device causing the explosion. One witness described it as a "small soup can," thrown from the upper level. No one saw who threw it,

but Mendez was seated in the upper deck above the explosion. Stadium authorities arrested all three young men because their tickets had adjoining upper level seat numbers.

Oliver and Krieger were held for four days in the Cuyahoga County Jail in Cleveland, Ohio before a stadium security camera tape showed that they were seated at ground level when the explosion occurred. They were released, but Mendez wasn't as fortunate. Even though no one saw him throw the explosive device, he was charged and convicted after a bench trial of aggravated arson, assault, three counts of negligent assault, and sentenced to spend three years in the Ohio prison system. He was paroled after seven months.

Krieger and Oliver filed a civil suit in the Cuyahoga County Common Pleas Court against the city of Cleveland that alleged

malicious prosecution, false arrest and intentional infliction of emotional distress.

During the trial in November 2006, Oliver testified he was a Marine home on medical leave when he was arrested, and he was prevented from re-enlisting because of the charges. Now an auto salesman, Oliver told the jury, "I was devastated. They took my career." Testimony at the trial was the three men were kept in a holding cell that smelled like urine and they had to sleep with toilet paper in their ears to keep roaches from entering their ears. In addition they were deprived of showers, toothbrushes, soap, mattresses, blankets or pillows, and given paper coveralls to wear. They slept on bare steel bunks, and the cell they were held in was so filthy their feet stuck to the floor when they walked. Oliver testified that the time he spent in the holding cell was the longest 96 hours of his life.

John Spellacy, Krieger's attorney, told the jury that the men "were falsely accused, but what happened to them in jail compounded this miscarriage of justice." Oliver's attorney, John Chambers, compared the men's jail stay to a "prisoner of war situation" that the police hoped would squeeze confessions out of them.

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opened in this case that shouldn't have and that's why Anthony Graves has been on death row for more than a decade."

After the state did not act to retry Graves or move for a bond hearing within 120 days of the 5th Circuit's decision, in October 2006, U.S. District Judge Samuel Kent set Graves bond at \$50,000, with a \$5,000 cash payment. His pro bono attorneys posted the bond, but the Texas Attorney General's Office appealed to the 5th Circuit Court of Appeals. Although the appeals court upheld Kent's authority to set the bond, they stayed Graves' release until January 4, 2007, to give the AG the opportunity to request a state court bond hearing. On December 20, without holding a hearing, Burleson County District Judge Reva Towslee-Corbett set Graves' state bond at \$1 million. One of Graves' attorneys, Jeff Blackburn, said the bond was, "a ridiculous amount designed to do nothing but keep him locked up."

Graves attorneys petitioned the U.S. District Court to order his release on the grounds that the federal bond had been paid and the state bond was excessive. On January 5, 2007, U.S. Magistrate John Froeschner decided that the federal court lacked

jurisdiction to interfere the state bond, "I can agree with you that it sounds pretty excessive and pretty oppressive, but that's the business of the state court."

Graves is being held in Burleson County's jail awaiting a decision by the special prosecutor on whether he will be retried, or released of a crime that he has unwaveringly claimed he didn't commit, and that Carter went to his grave insisting he was innocent of committing.

- This article is primarily based on the first-hand information of Erika McDonald, a former student of Professor Nicole Casarez's investigative journalism class at the University of St. Thomas that researched Anthony Graves case.

Secondary sources:

Judge calls bond for former death-row inmate 'excessive', by Harvey Rice, *Houston Chronicle*, January 5, 2007.

New prosecutor named to retry anthony graves, by Melissa Phillip, *Houston Chronicle*, January 10, 2007

Texas prisoners claiming innocence can write the Texas Innocence Network at:

Texas Innocence Network
University of Houston Law Center
100 Law Center
Houston, TX 77204

On November 9, 2006, the jury deliberated for an hour and a half before awarding both Oliver and Krieger \$400,000 in compensatory damages and \$600,000 in punitive damages. The jury forewoman said of the eight person jury as she left the courthouse, "We were all in agreement that the plaintiffs were wronged." Spellacy expressed his thoughts, "The jury spoke loud and clear about how these innocent guys were treated. Obviously, they were disgusted and wanted to send the message so this doesn't happen to other people."

Ohio's Court of Appeals affirmed Mendez's conviction in June 2004. Among Mendez's many arguments was that a stadium surveillance video filmed the explosive device falling 16 feet in one second. In his brief Mendez included physics calculations that if it had been thrown from the 63' height of the upper level where he was sitting, it would have been falling at four times that velocity – thus it had to have been thrown from the level below where he was sitting. The Court rejected that science based argument without even considering it, stating that the calculations Mendez provided "requires explanation in order to apply. It contains terms that are not generally known such as "final velocity," "average velocity," and the "acceleration of gravity." The Court then stated, "Judicial notice

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