

Larry Swearingen's Execution Is Stayed So His Actual Innocence Claim Can Be Considered

Texas is one of at least eight states that allows a free-standing claim of actual innocence. The Texas Court of Criminal Appeals issued a stay of Larry Swearingen's execution based on Swearingen's writ of habeas corpus that raised a single claim: he is actually innocent of murdering Melissa Aline Trotter because at the time of her death he was in the Montgomery County Jail. The Court ordered the stay so the due process violation alleged in his petition — that he is actually innocent — could be reviewed and resolved by the trial court.

Swearingen was convicted in 2000 of murdering Ms. Trotter, a 19-year-old freshman at Montgomery College in Conroe, Texas. Ms. Trotter was last seen by family and friends on December 8, 1998, and her clothed body was found on January 2, 1999 by hunters in the Sam Houston National Forest north of Conroe.

Swearingen was a friend of Ms. Trotter's and he was seen with her on the college campus the day she disappeared, but he wasn't seen leaving with her. Three days after she was last seen the 27-year-old Swearingen was arrested on December 11 for outstanding traffic tickets. He was in custody from then until Ms. Trotter's body was found three weeks later. He was subsequently charged with kidnapping, raping, and murdering her.

The prosecution's case during Swearingen's trial was circumstantial because there was no direct evidence he was Ms. Trotter's assailant and DNA tests excluded him as the source of blood under her fingernails and of a pubic hair recovered from a vaginal swab. The prosecution's speculation that Swearingen abducted and killed her was supported by the testimony of Harris County Chief Medical Examiner Joyce Carter: She testified Ms. Trotter's body was placed in the forest approximately 25 days prior to its discovery. That estimate matched the day she was last seen on December 8.

Swearingen's convictions were affirmed on direct appeal and his state and federal post-

conviction petitions were denied.

Then, more than seven years after Swearingen's conviction Dr. Carter recanted her trial testimony about Ms. Trotter's time of death. Dr. Carter explained in an affidavit dated October 31, 2007 that the condition of Ms. Trotter's torso, her internal organs, her body weight that was only 4 pounds less than several weeks prior to her disappearance, and the weather in the weeks before discovery of her body "supports a forensic opinion that Ms. Trotter's body was left in the woods within two weeks of the date of discovery on January 2, 1999." The earliest date Ms. Trotter could have been left in the forest based on Carter's analysis is December 19.

In addition to Carter six other experts — two forensic entomologists and four forensic pathologists — have provided an affidavit, report or testimony during an evidentiary hearing opinions ranging from December 18 to December 29 as the *earliest* Ms. Trotter's body could have been placed in the forest. Two of the pathologists opined that the minimal deterioration of her pancreas and other internal organs suggests she wasn't left in the forest until *after* December 28.

The most compelling evidence of when Ms. Trotter died was discovered in January 2009 when heart, nerve and vascular tissue taken from Trotter's body during her autopsy were discovered preserved in a paraffin block. There was no mention of the preserved tissue in Ms. Trotter's autopsy report. Analysis of those tissues provides the most accurate determination of when Ms. Trotter died, because within a few days after a person dies enzymes begin to digest the cells in their major organs such as the heart and liver. Ms. Trotter's tissue samples were microscopically examined by Dr. Lloyd White, Tarrant County Deputy Medical Examiner who reported in April 2009, that "the microscopic evidence permits only one forensic conclusion, and that is that Ms. Trotter died no sooner than December 29 or December 30, 1998. ([Pathological Opinion](#) of Dr. Lloyd White, Tarrant County Deputy Medical Examiner, April 14, 2009) Dr. Stephen Pustilnik, Chief Medical Examiner of Galveston County, Texas also microscopically examined the new tissue evidence and reported, "... the deceased was killed within reasonable certainty between five to seven days prior to her discovery. This would put



Larry Swearingen during prison interview (Justin Dehn)

the *date of death on or about December 26, 1998.* ([Findings of Dr. Stephen Pustilnik](#), Chief Medical Examiner of Galveston County, Texas, April 14, 2009)

The new medical evidence in 2009 narrowed the date of Ms. Trotter's death to no earlier than December 26 — which was 15 days after Swearingen was jailed.

The Montgomery County DA's Office has not provided any evidence countering the medical and scientific evidence by the seven experts that the earliest Ms. Trotter's body could have been left where it was found was a week after Swearingen was jailed on December 11 -- so based on the opinions of the seven experts it is physically impossible he abducted and murdered her.

Swearingen jurors convicted him in 2000 without being aware of the new medical and scientific evidence that provides him with the perfect alibi of being in the Montgomery County Jail when Ms. Trotter was murdered.

In spite of the fact there is no direct, eyewitness or confession evidence that Larry Swearingen murdered Melissa Trotter, while there is un rebutted medical and scientific evidence proving she was placed in the national forest when he was incarcerated in the Montgomery County Jail, the State of Texas was prepared to go ahead with his execution scheduled for August 18, 2011 until the appeals court issued its stay.

During an interview with [The Texas Tribune](#) on July 27, a day before the stay of his execution was issued, Swearingen said he had lunch with Ms. Trotter before she disappeared later that day, and that "The district attorney took evidence of a friendship and turned it into a murder."

Sources:

[Ex parte Larry Ray Swearingen](#), Nos. WR-53,613-10 and WR-53,613-11 (TX Court of Criminal Appeals, 7-28-2011).

Larry Swearingen's website that has extensive information about his case. See, <http://www.larry-swearingen.com/>

See also,

[Justice Denied's](#) Editorial in July 2011, "The State of Texas Prepares To Execute Larry Swearingen For A Murder That It Knows He Didn't Commit" at, <http://justicedenied.org/wordpress/archives/1359> And, [Justice Denied's](#) Editorial in January 2009 when Larry Swearingen was previously scheduled to be executed: "Larry Swearingen Scheduled For Execution Based On "Seat Of The Pants" Evidence" at, <http://justicedenied.org/wordpress/archives/287>

