

Time is running out for inmate

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The question isn't whether Larry Ray Swearingen is a liar, or a cheater, or a schemer, or even a rapist.

There is ample evidence to suggest he is all of these things.

The question is whether he is a murderer. Or, more precisely, whether he is guilty of the 1998 capital murder for which he is set to die in five days.

There is ample evidence to suggest that he is not.

For starters, Swearingen was sitting in a jail cell on an unrelated charge at the time Melissa Trotter's lifeless body was dumped in the Sam Houston National Forest.

Trotter, a 19-year-old student at Montgomery College in Conroe, went missing on Dec. 8, 1998. After an extensive search, her body was found in the forest Jan. 2. She'd been strangled with one leg of a torn pair of panty hose.

Swearingen, a convicted rapist from Willis, became an obvious suspect. The married electrician had been spotted with Trotter. Some

of his co-workers said she had angered him a couple of days before her disappearance when she stood him up for a lunch date.

Montgomery County prosecutors built a case based largely on circumstantial evidence.

Evidence surfaced

The smoking gun seemed to be a second leg of torn panty hose prosecutors said matched the half used to strangle Trotter. The hose mysteriously surfaced at Swearingen's trailer after it had been thoroughly searched twice by deputies.

Although Swearingen had maintained his innocence from the start, he didn't help his defense. Early on, from jail, he concocted a ridiculous confession letter in Spanish, supposedly from the real killer. Swearingen's Spanish was unintelligible. During the trial in 2000, he was caught lying on the witness stand about other things.

The jury quickly convicted him and sentenced him to death.

But, since then, Swearingen and his appellate attorneys have discovered glaring inaccuracies in the forensic evidence presented to the jury.

From the beginning, prosecutors had based their case on the theory that Trotter had been killed and dumped in the forest on the same day she went missing, Dec. 8. That theory was supported by the testimony of then-Chief Harris County

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Medical Examiner Joye Carter.

Well-preserved body

But Trotter's body was remarkably well-preserved for having been in the woods nearly a month before it was found.

To date, a total of six physicians and scientists have agreed that Trotter's body was left in the woods well after Dec. 11, the day Swearingen was arrested on traffic warrants.

The experts include Carter, who reversed her earlier findings after reviewing all the evidence, and an entomologist, who determined the earliest that bugs found in Trotter's body could have begun colonizing was Dec. 18.

All of this is on top of DNA testing on blood found under Trotter's fingernails and a pubic hair found in a vaginal swab that showed no connection to Swearingen.

The Texas Criminal Court of Appeals stayed Swearingen's first execution date a year ago, but shockingly, has denied appeals based on the new forensic findings.

In the waning days before Tuesday's scheduled execution, Swearingen's attorney, James Rytting, is working on a new appeal based on even more forensic evidence that he says proves his client is innocent. He says he located preserved cardiac tissue from Trotter's autopsy that shows well-defined cells that could have only come from a body dead less than two or three days.

No help from new DA

Attorneys with the New-York based Innocence Project are also working feverishly on requests for DNA testing on the panty hose, Trotter's clothing and more blood scrapings. They plan to appeal to Gov. Rick Perry's office for a stay, and have unsuccessfully tried to get newly elected Montgomery County District Attorney Brett Ligon to support a request for DNA testing.

Ligon didn't return my call. Marc Brumberger, who handles the office's appeals, said the new evidence doesn't prove Swearingen didn't kill Trotter. It only "throws in the prospect" that Swearingen may have initially refrigerated or frozen her body, then had help from an accomplice moving it into the woods while he was in jail.

Rytting calls that far-fetched theory "guilt by imagination." He said the DA's office is grasping for explanations now that their case is crumbling.

"Their case is a lie and they're going to kill him anyway," Rytting says.






Swearingen should be granted another stay so that, at least, the new evidence and requests for DNA testing can be considered.

Yes, it will be another painful delay for the victim's parents. But it could also keep the state of Texas from executing a man who could very well be innocent while the real killer escapes justice.

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