

# URGENT ACTION

## EXECUTION STAYED TO REVIEW INNOCENCE CLAIM

**The Texas Court of Criminal Appeals has stayed the execution of Larry Swearingen, who was due to be put to death in Texas on 18 August. He maintains his innocence. Since his trial, a number of forensic experts have ruled him out as the murderer.**

The Texas Court of Criminal Appeals (TCCA) granted **Larry Swearingen** a stay of execution on 28 July. He claims innocence of the murder of Melissa Trotter in 1998, and the stay was granted in response to his appeal to be allowed back into court to argue his claims. His petition was filed on 22 June and supplemented on 11 and 25 July.

Melissa Trotter went missing on 8 December 1998. Larry Swearingen, who was seen with her that day, was arrested on 11 December 1998, and has been incarcerated ever since. Melissa Trotter's body was found by hunters in a forest on 2 January 1999 and Larry Swearingen was charged with her murder. In the absence of a confession or eyewitnesses to the crime, the state built a circumstantial case against him.

At the trial, Dr Joye Carter, then Chief Medical Examiner of Harris County in Texas who had performed the autopsy on Melissa Trotter's body, testified that in her opinion, death had occurred approximately 25 days before the body was found. In 2007, Dr Carter recanted her trial testimony, stating that she had reviewed the autopsy evidence, and had concluded that it was "incompatible with exposure for a longer period of time" than two weeks.

In the supplementary briefing of 11 July, lawyers for Larry Swearingen argued that he was "deprived of a fundamentally fair trial because the State sponsored false forensic testimony that resulted in a wrongful conviction". The brief points to a decision handed down on 29 June by the TCCA in another case that "addressed due process issues identical to those arising in Mr Swearingen's case". The brief argues that the factors the TCCA had in that other case said were necessary to establish a due process violation were all present in Larry Swearingen's case: "Dr Joye M. Carter's testimony at Mr Swearingen's trial left a false impression about the critical issue of the post mortem interval, it omitted the most important forensic details, and it rested upon a improper forensic analysis and methodologies. Furthermore, numerous experts have refuted all aspects of Dr Carter's trial testimony".

In its order on 28 July, the Court of Criminal Appeals stated that Larry Swearingen had met the requirements under Texas law for such an appeal to be heard, stayed the execution and remanded the case to the trial court for it to "review and resolve" the claims raised.

**No further appeals requested at present. Many thanks to all who sent appeals.**

This is the first update of UA 233/11. Further information: [www.amnesty.org/en/library/info/AMR51/066/2011/en](http://www.amnesty.org/en/library/info/AMR51/066/2011/en)

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### ADDITIONAL INFORMATION

Five forensic pathologists, including four current or former Chief Medical Examiners from Texas have reviewed the case and concluded that the body had been in the forest for far less than 25 days. After tissue preserved since autopsy for microscopic examination was located in December 2008 at the Harris County Medical Examiner's morgue, the forensic specialists who reviewed it concluded that Melissa Trotter died very close to the date her body was found, and long after Larry Swearingen was jailed. The Chief Medical Examiner of Galveston County, Texas, concluded that Melissa Trotter had been killed "between five to seven days prior to her discovery" putting the date of death "on or about December 26, 1998". In 2010, the Director of the Center for Human Identification and of the Forensic Anthropology Laboratory of the University of North Texas concluded that Melissa Trotter "had been dead no more than ten days, and likely fewer, prior to discovery." Two other experts – both of them current deputy Medical Examiners in Texas – examined tissue samples preserved from the autopsy under a high powered microscope and concluded that Melissa Trotter died no more than three days before her body was found. In their words, "it isn't possible that Melissa Trotter was killed and her body left in that location by Mr Larry Swearingen, who had been in jail for 23 days when the body was found."

Name: Larry Swearingen

Gender m/f: M

Affiliation:

Further information on UA 233/11 Index: AMR 51/068/2011 Issue Date: 01 August 2010

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