

PUBLIC

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UA 17/09 Death penalty / Legal concern

USA (Texas) **Larry Ray Swearingen (m), white, aged 37**

Larry Swearingen is scheduled to be executed in Texas on 27 January. He was sentenced to death in 2000 for the murder of Melissa Trotter in 1998. He maintains his innocence of the murder. Several forensic experts have provided statements and testimony supportive of his claim.

Melissa Trotter went missing on 8 December 1998. Larry Swearingen was arrested three days later, and has been incarcerated ever since. The body of Melissa Trotter was found in a forest on 2 January 1999. Larry Swearingen was tried for her murder, and sentenced to death.

On 14 January 2009, Larry Swearingen's lawyers filed an appeal in the US Supreme Court to stay his execution on grounds of innocence. The petition argues that "the State's only theory of guilt, which was that Mr Swearingen killed the victim and left her body in the forest on December 8, 1998, twenty-five (25) days before the corpse was recovered on January 2, 1999, is not just implausible, it is utterly impossible." The Supreme Court has not yet ruled on the motion for a stay of execution.

In support of this innocence claim, the petition cites the opinions of three current or former Chief Medical Examiners and another forensic pathologist. One of these experts, Dr Joye Carter, is the former Chief Medical Examiner of Harris County in Texas who performed the autopsy of Melissa Trotter and testified at Larry Swearingen's trial. At the trial she had testified that in her opinion, Melissa Trotter's death had occurred 25 days before her body was found. In an affidavit signed in 2007, Dr Carter stated that she had looked again at the case and changed her opinion. She stated that she had reviewed the autopsy report and photographs and also "several pieces of forensically important information that, to the best of my recollection, were not made available to [me] during trial or pretrial proceedings." This information included video footage of the crime scene taken on the day Melissa Trotter was found, medical records giving Melissa Trotter's weight immediately prior to her disappearance, and the temperature data for the area in which she was found for the period 8 December 1998 to 2 January 1999.

In her affidavit, Dr Carter concluded that Melissa Trotter's body had been left in the forest within two weeks of it being found. If accurate, this would mean that the body was dumped at a time when Larry Swearingen was already in custody. Another forensic pathologist, and former Chief Medical Examiner for Nueces County, Texas, Dr Lloyd White, has given a written statement that he supports Dr Carter's conclusions based on her 2007 re-evaluation of the evidence. He also agrees with Dr Gerald Larkin, another forensic expert, who concluded that "Ms Trotter's body was exposed in the wood for several days only, and not for two or three weeks". Dr White states that there is strong support for the conclusion that the body was left in the woods "at least one week after Mr Swearingen was incarcerated on December 11, 1998, and probably more than two weeks after".

The petition to the Supreme Court argues that the post-conviction expert evidence amounts to "uncontested forensic pathology showing that Mr Swearingen could not possibly have been the person who killed the victim. The only way to convict would be for the jury to conclude that Mr Swearingen had an accomplice who stored the body so it would not decompose and disposed of it later. That, however, is speculation so rank that the State has never even proposed it. Indeed, it collides with the State's insistence at all stages of proceedings that no one but Mr Swearingen killed the victim and threw her into the woods".

Larry Swearingen has repeatedly sought full DNA testing of crime scene evidence. According to the appeal before the US Supreme Court, "the DNA analysis that the State has conducted so far is compelling evidence that Mr Swearingen is innocent. State examiners found male blood under the victim's fingernails. Testing excluded Mr Swearingen as the donor." The petition also notes that at an evidentiary hearing in 2008, a co-worker of Melissa Trotter had testified that, only weeks before her disappearance, another man had "made serious threats to rape and strangle the victim".

BACKGROUND INFORMATION

Texas continues to account for a large number of the USA's executions. Of the 1,138 people put to death nationwide since 1977 when executions resumed in the USA, 424 have been in Texas. There have been two executions in the USA so far this year: one in Texas, one in Alabama.

Amnesty International opposes the death penalty in all cases, unconditionally. To end the death penalty is to abandon a destructive, diversionary and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly, to the public purse as well as in social and psychological terms. It has not been proved to have a special deterrent effect. It tends to be applied in a discriminatory way, on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it. It is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity. It should be abolished.

Today, some 138 countries are abolitionist in law or practice. In 2007, the UN General Assembly called for a moratorium on executions worldwide and for retentionist countries to work towards abolition.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, using the above information as you see fit (please include Larry Swearingen's prisoner number, #999361, in appeals):

- expressing sympathy for the family and friends of Melissa Trotter and explaining that you are not seeking to condone the manner of her death or to downplay the suffering caused;
- opposing the execution of Larry Swearingen;
- noting that several forensic experts, including the former Harris County Chief Medical Examiner, who performed the autopsy of Melissa Trotter and testified at the trial, have provided expert opinion supportive of Larry Swearingen's claim of innocence;
- calling for Larry Swearingen's execution to be halted and his death sentence to be commuted;
- at a minimum calling on the Governor to stop the execution and allow full DNA testing to be conducted.

APPEALS TO:

Rissie L. Owens
Presiding Officer, Board of Pardons and Paroles, Executive Clemency Section
8610 Shoal Creek Boulevard
Austin, TX 78757, USA
Fax: + 1 512 467 0945
Salutation: Dear Ms Owens

Governor Rick Perry
Office of the Governor
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Fax: + 1 512 463 1849
Salutation: Dear Governor

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY