

ADVERTISEMENT

Not Just Rodney Reed: New Evidence Taints More Death Row Convictions

A Texas court suspended Rodney Reed's execution. But researchers say other current cases raise similar doubt about the guilt of the accused.



Rodrick Reed at a rally for his brother, Rodney Reed, whose execution was stayed last week. Tamir Kalifa for The New York Times

By **Richard A. Oppel Jr.**

Nov. 19, 2019

The number of executions in the United States remains close to nearly a three-decade low. And yet the decline has not prevented what those who closely track the death penalty see as a disturbing trend: a significant number of cases in which prisoners are being put to death, or whose execution dates are near, despite questions about their guilt.

Rodney Reed, who came within days of execution in Texas before an appeals court [suspended his death sentence](#) on Friday, has been the most high-profile recent example, receiving support from Texas lawmakers of

both parties and celebrities like Rihanna and Kim Kardashian West, who urged a new examination of the evidence.

Mr. Reed has long maintained that he did not commit the 1996 murder for which he was convicted. And in recent months, [new witnesses came forward](#) pointing toward another possible suspect: the dead woman's fiancé, a former police officer who spent a decade in prison for kidnapping and sexual assault. (He denies committing the murder.)

Since the Supreme Court temporarily halted executions in 1972, at least [166 condemned inmates](#) have been exonerated before their death sentences could be carried out. (Executions resumed in 1977 after states began revising their laws to comply with the high court ruling.) Advocates say that some innocent men have also been executed since then, including [Cameron Todd Willingham](#), whom Texas put to death in 2004.

Lawyers for death row prisoners frequently argue that their clients did not receive a fair trial, or file appeals on other procedural grounds. Yet researchers say there now are a striking number of cases in which significant doubts have been raised about the condemned man's guilt.

“This year has had an extraordinarily high percentage of cases in which there is very serious evidence that people who did not commit the killing are being subjected to death warrants,” said Robert Dunham, executive director of the Death Penalty Information Center, a nonprofit group that tracks executions.

In at least one case, lawyers and family members have continued to push for new evidence long after an execution took place. On Monday, a Tennessee judge [declined to allow DNA testing](#) requested by the daughter of Sedley Alley, who was put to death in 2006 but claimed his confession was coerced. The daughter, April Alley, will continue to appeal and ask the State Supreme Court to grant permission.

Bryce Benjet, Mr. Reed's lawyer, said he doubted that there were a higher

proportion of innocent people on death row than in the past. But efforts to vigorously contest death sentences now reveal dubious convictions more frequently, he said, bringing to the fore examples of bad forensic science and other prosecution evidence that wilts under close examination.

“I don’t think the nature of the cases have changed,” said Mr. Benjet, a senior staff attorney at the Innocence Project who has represented dozens of death row inmates. “The nature of representation has changed.”

Here are other current cases in which significant new evidence has surfaced. In each of them, prosecutors continue to argue that the accused was rightly convicted.

Larry Swearingen

Mr. Swearingen was convicted of the 1998 rape and strangulation of Melissa Trotter, a [19-year-old first-year student](#) at a community college north of Houston.

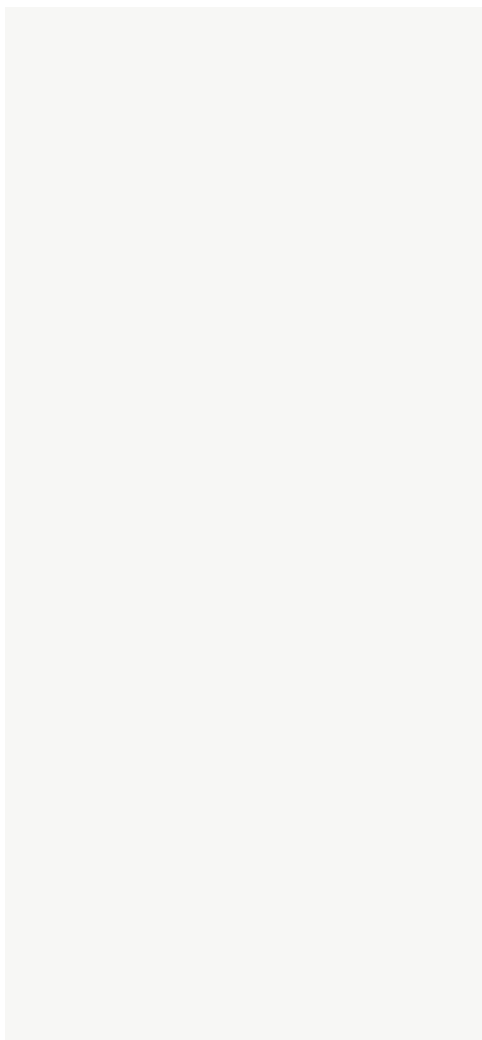
Evidence at trial

The authorities immediately suspected Mr. Swearingen, who was seen talking to Ms. Trotter on Dec. 8, the day she disappeared. He was [arrested three days later](#) on unrelated warrants and charged with murder after her body was found on Jan. 2, 1999.

There were no witnesses to the abduction or killing. But prosecutors amassed circumstantial evidence that they said pointed to his guilt, including an anonymous letter he later admitted to have written from jail that contained information they said only the killer could have known. (Mr. Swearingen [later said](#) he had obtained the information from an autopsy report.)

The prosecution’s key evidence was one half of a pair of panty hose recovered from Mr. Swearingen’s property. The [state said it was a perfect](#)

[match](#) for another portion of hose that was used to strangle Ms. Trotter.



Larry Swearingen was executed by lethal injection in August.
EPA, via Shutterstock

New for the defense

Blood was found under Ms. Trotter's fingernails, raising the possibility that she and the killer had engaged in a violent struggle. DNA tests determined that the blood was not Mr. Swearingen's and had come from another man who could not be identified. But a prosecution witness [explained that away](#) during trial testimony, saying contamination had probably muddied the results. This year, though, a state crime lab director [questioned that explanation](#).

The timing of the death established at trial has also been called into question. The medical examiner testified that Ms. Trotter had been killed [about 25 days](#) before her body was found, placing the murder date on

roughly the same day she disappeared. Since then, other experts have said the body was found within two weeks of death. The medical examiner [also later said](#) after reviewing additional evidence that she believed Ms. Trotter's body had been dumped in the woods [within two weeks](#) of its discovery. Mr. Swearingen had already been in jail for 22 days when the body was discovered.

Doubts emerged, too, about the pantyhose. Other experts determined that the hose recovered from Mr. Swearingen's property — [found only after the police had already searched twice](#), and after Ms. Trotter's body was discovered — [did not match](#) the hose used to kill her.

Status of the case

Texas [executed Mr. Swearingen](#) on Aug. 21. His final statement was: "Lord forgive them. They don't know what they are doing."

James Milton Dailey

Mr. Dailey was convicted and [sentenced to death](#) for the killing of Shelly Boggio, 14, whose body was found floating in the water near St. Petersburg, Fla., in 1985. She had been [repeatedly stabbed and choked](#) before drowning.

Evidence at trial

No witnesses or physical evidence tied Mr. Dailey to the killing. His co-defendant, Jack Percy, [told the police](#) that Mr. Dailey had committed the murder. Mr. Percy is [serving a life sentence](#) for his role in Shelly's death. The case against Mr. Dailey, now 73, leaned heavily on the testimony of [jailhouse informants](#) who said Mr. Dailey had incriminated himself.

New for the defense

In 2017, Mr. Percy stated in an affidavit that he had killed Shelly alone. ["James Dailey was not present when Shelly Boggio was killed,"](#) Mr. Percy

wrote.

At a later hearing, Mr. Percy admitted that he had signed the affidavit, but said some of it was untrue. He refused to testify about its specific contents, invoking the Fifth Amendment.

An inmate who was once incarcerated with Mr. Dailey [also stated](#) that he had heard two of the jailhouse informants who had testified against Mr. Dailey plotting to provide prosecutors with false information about him so that they would get reduced sentences.

A third jailhouse informant, Paul Skalnik, is a former police officer whose credibility has been called into question. The [Tampa Bay Times](#) [characterized](#) him as a “prolific informer” who had been used to help send four men to death row even though he had racked up more than 20 convictions, including for grand larceny by fraud.

Status of the case

Mr. Dailey was set to be executed on Nov. 7 in Florida, but last month a federal district judge [granted a stay](#) until Dec. 30, to allow newly appointed federal public defenders to research the case and file petitions.

Richard Glossip

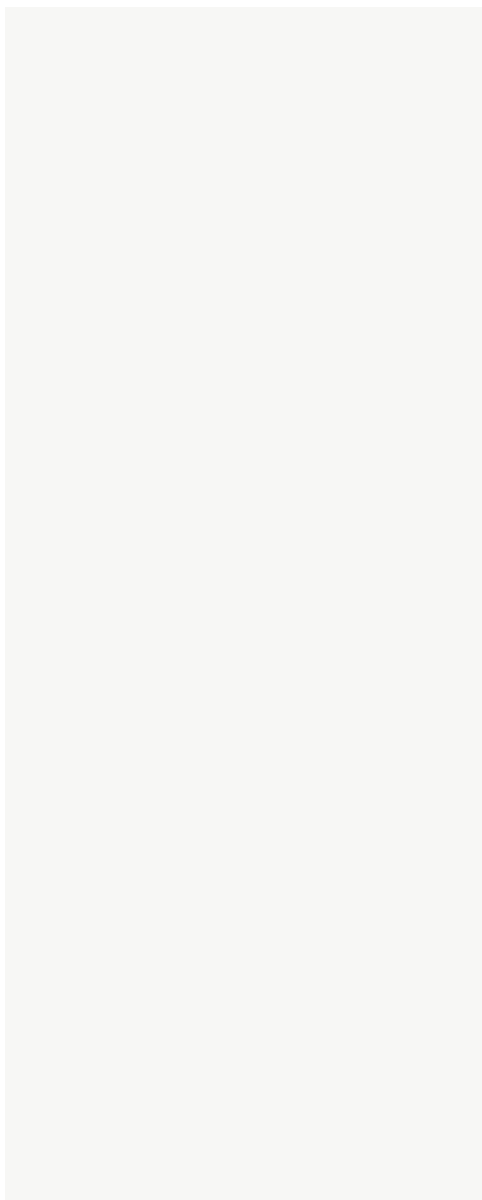
Mr. Glossip was convicted of arranging the 1997 murder of Barry Van Treese, the owner of a run-down motel in Oklahoma City that Mr. Glossip managed.

Evidence at trial

Prosecutors said Mr. Glossip had been stealing from the motel till and [was afraid that he was about to be fired](#). They said he had enlisted Justin Sneed, a 19-year-old drifter doing maintenance work at the motel, to murder Mr. Van Treese in return for money.

The state's case hinged on [Mr. Sneed's testimony](#) against Mr. Glossip, in return for which Mr. Sneed, who admitted that he had committed the murder with a baseball bat, received a life sentence.

Prosecutors also highlighted Mr. Glossip's behavior after the murder: In his first interview with police officers, for example, Mr. Glossip did not mention that Mr. Sneed had awakened him and told him about the killing. Mr. Glossip [later said](#) that he did not believe Mr. Sneed at the time.



Richard Glossip in 2014.
Janelle Stecklein/Community Newspaper
Holdings Inc., via Associated Press

New for the defense

No physical evidence tied Mr. Glossip to the murder, and [his lawyers noted](#) that Mr. Sneed had repeatedly changed his story before implicating Mr. Glossip. The lawyers later [presented evidence](#) that they said demolished Mr. Sneed's credibility.

For example, Mr. Sneed's cellmate before trial said Mr. Sneed talked extensively about the murder but never mentioned Mr. Glossip. Another inmate said that he had heard Mr. Sneed say he set Mr. Glossip up, and that he was "happy and proud of himself" for doing so.

Richard Leo, an expert on false confessions, also reviewed the case and stated that investigators had fed Mr. Sneed the theory that Mr. Glossip had masterminded the killing and that Mr. Sneed would be the scapegoat for the crime if he did not confess.

The state [dismissed the statements by inmates who knew Mr. Sneed](#), saying "no one should believe the sworn word of 'an admitted liar, drug abuser, and thief.'" Defense lawyers said it was [hypocrisy](#) to cite that rationale when so much of Mr. Glossip's prosecution hinged on an admitted murderer testifying to avoid death row.

Status of the case

Shortly before Mr. Glossip's scheduled execution in 2015, an Oklahoma appeals court [voted 3 to 2 to deny a hearing to examine new evidence](#). One of the dissenting judges said that Mr. Glossip's original trial was "[deeply flawed](#)."

Mr. Glossip was about to be executed days later when Oklahoma's governor granted a last-minute stay because the state had the wrong execution drugs. Oklahoma hasn't executed anyone since as the state revamps its procedures.

ADVERTISEMENT

[Go to Home Page »](#)

NEWS

OPINION

ARTS

LIVING

LISTINGS & MORE

© 2019 The New York Times Company

[Contact Us](#) [Work with us](#) [Advertise](#) [T Brand Studio](#) [Your Ad Choices](#) [Privacy](#) [Terms of Service](#) [Terms of Sale](#) [Site Map](#) [Help](#)
[Subscriptions](#)