

New science panel chief fights DNA - CASEY: Defense hopes DNA will exonerate inmate

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John Bradley, the Williamson County district attorney whom Gov. Rick Perry recently appointed to head the Texas Forensic Science Commission, is fighting to keep a man convicted of murdering his wife - mostly on circumstantial evidence - from getting a DNA test of a bloody bandanna found about 100 feet from the couple's home near Round Rock.

Houston lawyer John Wesley Raley, a civil litigator asked by the national Innocence Project to handle the case pro bono, says the issue is simple. If DNA testing shows a convicted person is innocent, that means the guilty person may still be on the loose.

"It's about seeking the truth," Raley said.

Bradley says it's not that simple: "There are 155,000 inmates in Texas prisons. Every single one would like to be somewhere else, and every single one under the standard (Raley) proposes would have the ability to test any piece of evidence they want. That's why the Legislature set up standards for post-conviction tests."

Michael Morton was convicted of brutally murdering his 31-year-old wife, Christine, in a rage in 1986.

The state convinced a jury he did it after the two went out to dinner to celebrate his birthday, then returned to put their 3-year-old to bed.

Morton had amorous ideas and put on a pornographic movie to watch with his wife. But she fell asleep.

Sometime before going to his job as an early-shift department head at a grocery store, Morton put what might be called a "passive-aggressive" note on their bathroom mirror.

It began, "Chris, I know you didn't mean to, but you made me feel really unwanted last night," and ended: "I just wanted you to know how I feel without us getting into another fight about sex. Just think how you might have felt if you were left hanging on your birthday. I L Y (signed) M."

Testimony at trial indicated Morton complained to friends in unflattering tones that his wife had gained weight and showed little interest in sex.

But he had no history of violence and there was no evidence of previous domestic disturbances.

Key testimony

Before going to work, prosecutors told the jury, Morton brutally beat his wife, crushing her skull, masturbated over her dead body, then stacked suitcases and a basket over her so their son wouldn't find her.

A key piece of evidence was testimony by Travis County chief pathologist Dr. Roberto Bayardo that Christine Morton died about 1:15, before the time Michael was scheduled to go to work. (His co-workers said he was on time and acted normally.)

Other experts testified at trial that Bayardo erroneously based his finding solely on the stage of digestion of food in the dead woman's stomach. Neither her body temperature nor its level of stiffness was measured at the scene the

next morning.

Two experts testified she could have died hours later, after Morton was at work.

Three jurors later told the Austin American-Statesman that Bayardo's opinion was important in deciding the case. The defense argues that Bayardo, who resigned amid controversy three years ago, had a career riddled with errors, including a 1989 case in which he "ruled the death a suicide, despite the fact that (the victim) had been stabbed 16 times in the chest and back, including nine stab wounds to his own heart."

The masturbation theory, pressed by the prosecutor when Morton took the stand and in closing arguments, was based on DPS serologist Donna Stanley's finding that a semen stain on the sheet included only male cells. Years later, Morton's lawyers got a court order to run a DNA test not available at the time of the trial. They hoped it would identify the "real" killer.

Questionable stain

It didn't, but it did show that the stain contained Christine Morton's cells as well as her husband's, which is normal after intercourse. The indications were it was several days old.

The lawyers were unable to win an order to test the bandanna. Their hope is that it would prove to be her blood, and also contain some hairs or skin cells of a man other than Morton. They would run that DNA through a database hoping for a match.

DA Bradley quoted a federal judge, from whom Raley also sought an order, as saying Morton was "grasping at straws."

Arguments next month

U.S. District Judge Sam Sparks didn't exactly say that in his ruling.

"Despite multiple trips to the proverbial well where the State of Texas has, time and again, granted Morton additional access to and testing of most of the evidence in his case, none of which has uncovered any evidence exonerating him, Morton is still not satisfied," the judge wrote.

But he also wrote: "While the Court questions (the state's) rationale for rejecting the Plaintiffs' offer to conduct DNA and other testing at their own expense, particularly in light of (its) duties to uphold the Constitution and seek and provide fair and impartial justice, those misgivings do not create federal jurisdiction over Plaintiff Morton's claims."

Oral arguments in the case are set for Nov. 18 in Austin's 3rd Court of Appeals.

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Caption: Rick Casey

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