

Yogurt Shop Murder New DNA evidence spells trouble for state

A lawyer for yogurt shop defendant **Robert Springsteen** says that retested DNA evidence proves his client is not guilty and should be released from prison. In a writ filed Wednesday, attorney **Joe James Sawyer** argues that “new” DNA testing of a vaginal swab taken from victim **Amy Ayers** at the crime scene in 1991, requested by prosecutors, has revealed a previously undetected male DNA profile that does not match any of the four identified defendants. “This exonerates Defendant Springsteen and makes it clear someone else committed these murders,” Sawyer wrote. (See the full writ with this story at austinchronicle.com.)

The motion was filed less than 24 hours after a court hearing Tuesday in which Travis Co. District Judge **Mike Lynch** said he would order prosecutors to turn over for additional DNA testing a raft of physical evidence collected in the infamous murder case. Dexter Gilford, part of the defense team representing **Michael Scott** – one of four then-teenage boys accused of the grisly 1991 quadruple murder – argued that the defense should be afforded the same ability to test key pieces of physical evidence that the state has enjoyed for nearly 17 years. “[We want] equal access to testing of evidence that the state saw fit to test, as well,” Gilford said.

On Dec. 6, 1991, four teen girls were found inside a North Austin yogurt shop, stripped, bound, gagged, shot in the head, and burned, in a fire that police said was set to cover up the crime. Indictments were not brought until eight years later, when Travis Co. District Attorney **Ronnie Earle** announced that the perpetrators had finally been nabbed. Four young men, he proclaimed, were responsible for the brutal crime, including Springsteen, who was tried and convicted of the murder of 13-year-old Ayers in 2001, and Scott, convicted in 2002. A third defendant, **Maurice Pierce** – whom prosecutors said was the “mastermind” behind the murders – was indicted by a grand jury, but after he spent years in jail, Earle finally dismissed the charges against him in 2003, citing a lack of evidence. The case against the fourth, **Forrest Welborn**, was also dropped after two grand juries failed to indict him.

The state’s case against the four is almost entirely circumstantial, relying heavily on two “confessions” provided by Springsteen and Scott, obtained by Austin police in 1999 after lengthy, and arguably coercive, interviews during which the two, separately, incriminated not only themselves but also each other for the crime. (To be clear, Springsteen and Scott were not the only two to confess; police collected at least 50 confessions – some far more compelling in detail than those of the defendants.) But the state fudged the law by using portions of one man’s confession as evidence in the

trial against the other, denying each defendant’s Sixth Amendment right to confront witnesses against him. In 2004, the U.S. Supreme Court, in an unrelated case, ruled that confrontation was the only way to satisfy the Sixth Amendment, and eventually the courts overturned both Springsteen’s and Scott’s convictions, booting the cases back to Travis Co. for further proceedings – but without the ability to bolster their cases by placing into evidence the confession of a nontestifying co-defendant. (Both men recanted the substance of their statements and maintain their innocence.)

Importantly, there was no physical evidence found at the crime scene directly linking any of the defendants to the murders. There are fingerprints, for example, that have never been matched to anyone. The existence of physical evidence belonging to persons unknown has long been a key to the defense and was at the center of arguments during a pretrial hearing Tuesday.

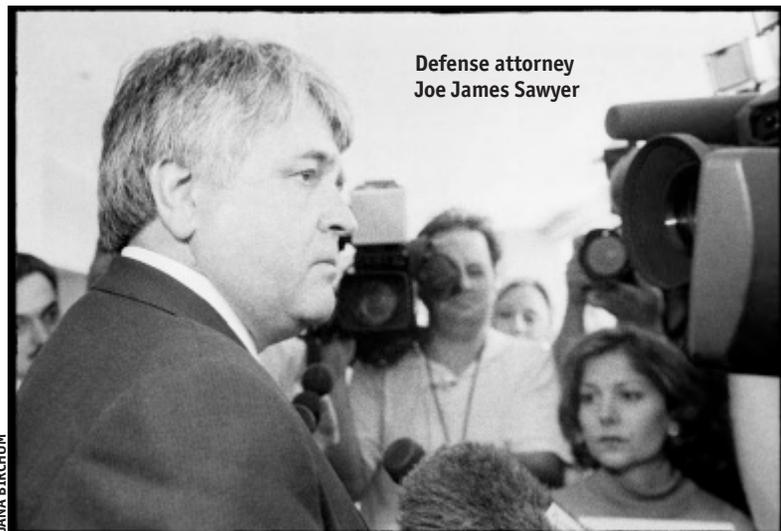
At issue now are eight pieces of clothing found on or near the bodies of the four murdered girls – including two shirts, several socks, a pair of underwear, and a brassiere, items identified by investigators as having been used as ligatures or gags. Previous testing on the items appears to have been minimal and, perhaps, dated – Assistant D.A. Darla Davis, who prosecuted both Springsteen and Scott, testified Tuesday that possible biological evidence was found on several items but that analysts were not then able to obtain any conclusive DNA from that evidence. Still, it is hard to tell if the state simply didn’t pursue the testing to an end (after all, they were adamant that they had their men) or if the science was not then evolved enough to provide any definitive result – for example, a pink turtleneck tested positive in a presumptive test for semen, but analysts did not perform tests to confirm that result.

Clearly, neither the state nor the defense knows what, if anything, might be found from additional testing. But the state has been vociferous against further testing. According to the state’s argument – made by assistant district attorneys Efrain De La Fuente and Gail Van Winkle, who are handling Scott’s retrial – the minute that evidence in state custody is actually admitted as evidence during trial, it is suddenly degraded, because so many people have handled it. (Notably, none of the reporters in court this week could recall colleagues being allowed to paw through the evidence.)

In short, the state appears to be arguing that the only reliable evidence is their evidence – including DNA tests dating back, in some instances, to the early Nineties. The argument is troubling for numerous reasons – not least of which is that under their theory, it would seem impossible for the D.A.’s office ever to agree to post-conviction testing, as allowed by law, to correct miscarriages of justice. Davis told the *Chronicle* that there is no official policy concerning additional testing and that prosecutors consider these things on a case-by-case basis.

Of course, there is, perhaps, one additional explanation for the state’s position in this particular case: The fact that the retesting of the vaginal swab collected from 13-year-old Ayers has revealed a DNA profile of an unknown male – a piece of evidence that would seemingly further erode the already wobbly case against Springsteen and Scott. Indeed, if additional testing of other pieces of evidence happened to reveal the same unknown profile, the state’s case might completely unravel. Ultimately, Judge Lynch rejected the state’s argument, allowing defense attorneys access to the list of physical evidence they requested, though it’s uncertain whether any as-yet-unrevealed evidence would be admissible at trial. Meanwhile, Scott’s new trial, which was slated to begin next month, will be postponed until testing is complete.

– Jordan Smith



Defense attorney Joe James Sawyer

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