

A State of Denial:

Texas Justice and
the Death Penalty

Texas Defender Service

David Wayne Spence

I do not think David Spence committed this offense.

Lt. Marvin Horton, supervisor of the Waco Police Department's investigation into the Lake Waco murders, during sworn testimony in 1993.

I have really never been convinced [of David Spence's guilt].

Larry Scott, Waco Chief of Police at the time of the Lake Waco murder investigation, during sworn testimony in 1993.

In separate trials conducted in 1984 and 1985, David Spence was convicted of kidnaping and murdering 16-year-old Jill Montgomery, and Kenneth Franks, age 17. Montgomery and Franks, together with a third teenager, Raylene Rice, were stabbed to death July 13, 1982, in Waco, Texas.

The State's case against Spence was rife with official misconduct. The prosecution failed to disclose exculpatory evidence that contradicted the testimony of its key witnesses, implicated another suspect in the crimes, and exonerated Spence. Several jail inmates, as well as two of Spence's co-defendants, were induced to testify falsely against Spence in exchange for leniency in their own cases and extraordinary jailhouse privileges, including conjugal visits with their wives and girlfriends. Finally, the State relied on suspect "forensic odontology" evidence that has since been discredited.

I. Key Facts

- A. The physical evidence failed to link Spence to the murders. The FBI compared pubic hairs and head hairs (found on the victims' clothing and bindings) with samples from Spence and his co-defendants, with negative results. Palm prints and fingerprints taken from the victims' car also did not come from Spence or his co-defendants.
- B. The prosecution failed to disclose information that strongly incriminated Terry Harper, a convicted felon with a lengthy history of violence, in the triple homicide. Several independent groups of witnesses told police that Harper had bragged about the crimes *before the bodies had been found or news stories of the crimes had publicly aired on television or radio*. Harper's boasts included highly specific details

about the murders that were unknown even to law enforcement officials at the time, including the fact that one of the victim's nipples had been severed during the attack.

- C. According to police reports hidden from Spence's attorneys until after his second trial, as many as 20 witnesses saw either the victims or their car in Koehne Park, where the victims were last seen alive. None of these witnesses saw anyone resembling David Spence or his co-defendants; yet several people *had* seen Harper together with the victims.
- D. To counter the evidence implicating Harper, the State later claimed he had an airtight alibi for the night of the murder, but failed to specify what it was. Deposed by Spence's lawyers in 1993, Harper said he had been watching "Dynasty" on television. "Dynasty" did not air that night. The State also said Harper's criminal history did not suggest he could have committed such a brutal murder. In fact, in the eighteen years preceding the Lake Waco murders, Harper had been arrested and charged twenty-five times for assaultive offenses, including assault with intent to murder and assault on a minor child. In sworn post-trial testimony, a local deputy recalled that Harper liked to "cut people," and "had a reputation" for "us[ing] the knife." Harper committed suicide in 1994 when police came to arrest him for the fatal stabbing of an elderly man during a robbery.

II. The Crime

The victims were last seen alive on the evening of July 13, 1982, driving into Koehne Park, a small public park on Lake Waco; Raylene Rice's orange Pinto was found abandoned there the next morning. Later that day, their bodies were found in a brushy, somewhat wooded area of Speegleville Park, another public park located directly across Lake Waco from Koehne Park. The girls apparently had been sexually assaulted; all three victims had been bound and gagged, and had been stabbed repeatedly in the chest and neck.

Despite an early and vigorous investigation that developed substantial evidence implicating several suspects, including Harper, in the murders, the Waco police proved unable to close the case. After the investigation was formally declared "inactive," Truman Simons, a patrol officer who previously had not been involved in the investigation, persuaded the police chief to assign him to the case, boasting that he could solve the murders in a week. Assigned to do a "follow-up investigation" on Friday, September 11, 1982, Simons declared *the next morning* that he had already "developed [a] possible suspect." That "suspect" was Muneer Deeb, a foreign national who owned a local convenience store.

Simons arrested Deeb three days later and charged him with the triple murder. Other police officers were gravely concerned that Simons had acted too quickly, and on too little evidence. Deeb had no prior criminal record and adamantly denied any involvement in the crimes. Six days later, Deeb exhibited "no deception at all" and passed a three-hour polygraph examination administered by police. The Chief of Police ordered Deeb released from custody that same day. The following

week, Simons resigned from the police department.

Within two weeks, Simons had accepted a job as a deputy sheriff and resumed his investigation into the case. Reasoning that Deeb was incapable of committing the triple homicide alone, Simons focused his attention on Deeb's acquaintance David Spence, who, together with Gilbert Melendez, recently had been arrested in connection with another charge. After numerous meetings with Spence's cellmates, Simons eventually secured a series of statements from inmates who claimed Spence had told them he committed the murders.

III. The Trials

McLennan County Trial: June, 1984

In Spence's first trial, the State's case depended on two types of evidence: the testimony of jail inmates, who claimed Spence confessed while in custody awaiting trial; and the testimony of a forensic odontologist, who claimed that Spence's teeth matched marks on the victims' bodies.

The testimony of the jail inmates was vague, internally inconsistent, and inherently incredible. One inmate, for example, testified that Spence chose Speegleville Park as the place to deposit the victims' bodies because he knew the area "like the back of his hand;" a second inmate, however, testified that Speegleville was chosen "because none of them ever went out there, so nobody would suspect them." Yet another inmate claimed to have talked to Spence in jail before Spence had even been taken into custody. After Spence was convicted, three inmates admitted they had fabricated their testimony against Spence with the help and encouragement of Truman Simons, and that they had testified in return for favors or promises of favorable treatment in their own cases.

As for the State's bitemark evidence, after trial, a "blind panel" of five nationally eminent forensic odontologists conducted their own examination of the evidence. To guarantee the credibility of the panel's findings, no member of Spence's legal defense team had any contact with the experts, who were not told the purpose of their study. After reviewing the evidence and comparing it with dental models of five unidentified persons (including Spence), all five experts independently concluded that no reliable identification of any of the dental models could be made and that, most importantly, Spence's teeth were not even minimally consistent with the bite marks on the victims' bodies.

Brazos County Trial: October, 1985

By the time of Spence's second trial, the prosecution had managed to extract cooperation from Gilbert and Tony Melendez, each of whom had other serious felony charges – in addition to the capital murders – pending against him. Taking full advantage of the co-defendants' determination to avoid the death penalty, the prosecution induced each co-defendant to give a self-incriminating statement in exchange for leniency on all pending charges. Both co-defendants' statements, however, were promptly recognized as fabrications, containing accounts of the crimes that were indisputably inconsistent with objective facts. Tony Melendez's brief statement, for

example, claimed that the victims were killed in Koehne Park and that the defendants left them there; it entirely failed to account for the fact that the victims' bodies were found in Speegleville Park. Similarly, Gilbert Melendez's original statement claimed that the victims' bodies had been loaded in the back of Spence's "white old model station wagon," a vehicle that Spence did not own until several weeks after the murders. Rather than reject the Melendezes' statements as outright fabrications, however, Simons simply collaborated with each of them to amend the statements by removing the inconsistencies and transparent factual errors.

Further, the State concealed critical information that would have explained why the co-defendants falsely incriminated themselves, as well as Spence, in the crimes. For example, the State never disclosed the extraordinary fact that Gilbert Melendez originally incriminated himself and Spence in the crimes only because he had been promised complete immunity from prosecution if he did so, a promise the State subsequently retracted after Melendez provided the prosecution with the self-incriminating statement. Similarly, the State concealed a handwritten note on the trial prosecutors' official stationery which indicated that Gilbert Melendez had told another inmate "he did not know anything [about the triple homicide] but was going to make up a story to get off of [the] sexual abuse case."

Both Gilbert and Tony Melendez later recanted their testimony against Spence, even though they knew that by doing so they exposed themselves to prosecution for the death penalty for charges related to the death of Raylene Rice. (In his own post-trial testimony, Truman Simons acknowledged that these charges were intentionally left open by the prosecution as an "insurance policy" against recantations by either of the co-defendants.) As Gilbert Melendez testified, subject to cross-examination by the State: "I didn't commit these crimes and anything I said about anybody else [is] just a lie. I can't say that because I wasn't there." Tony Melendez gave a similar sworn statement renouncing his testimony: "I did not murder Jill Montgomery, Kenneth Franks or Raylene Rice. I do not know who killed them. . . . I was not present during the crimes. The statements and testimony that I gave in the past that implicated me, David Spence, and Gilbert were not true."

IV. The Appeals

Spence's state post-conviction proceedings were conducted under the pressure of an imminent execution date, which the courts refused to modify to permit his new attorneys to review the thousands of pages of relevant documents they recently had obtained. Not only did the state courts refuse to conduct an evidentiary hearing on any of Spence's substantial claims of state misconduct, but each trial court adopted the State's responsive pleading as its own "findings" in the case, without changing so much as a comma. The Court of Criminal Appeals refused to grant Spence a stay of execution and denied habeas corpus relief in a perfunctory, one-page order. The state habeas proceedings in Spence's case lasted fewer than 60 days.

The federal district court initially denied relief without even requiring the State to file a response to Spence's petition. Although it subsequently permitted Spence to depose witnesses and present documentary evidence, it ultimately reaffirmed its original denial of relief in a one-page

order, without addressing the significance of the new evidence Spence had developed. The Fifth Circuit affirmed in an opinion that uncritically accepted the State's evidence at trial. Shortly before Spence's execution, he asked the state courts to consider his extensively documented claim of factual innocence. The state courts refused to do so, dismissing the petition in a summary one-page order.

V. Conclusion

The only credible physical evidence at the crime scene not only failed to link David Spence to the Lake Waco murders, it strongly suggested that someone else was responsible for the crimes. The prosecution concealed extensive evidence of its own misconduct, suppressed extensive evidence that strongly pointed to someone other than Spence, and manufactured evidence against Spence by cultivating jailhouse snitches.

The State of Texas executed David Wayne Spence on April 3, 1997.

For more information about Mr. Spence's case, see Sara Rimer and Raymond Bonner, Bush Candidacy Puts Focus on Executions, New York Times, May 14, 2000, at A1; Alan Berlow, The Hanging Governor, Salon.com, May 11, 2000, at <http://www.salon.com/politics2000/feature/2000/05/11/bush/index1.html>; and the court files in: Ex parte Spence, (CCA No. 15,346-03); and Spence v. Scott (5th Cir. Nos. 94-20212 & 94-20213).