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Declared Innocent in a Killing, but Still in a Cell

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TENNESSEE COLONY, Tex. — In 2008, Ben Spencer’s family bought him clothes in preparation for a day they had prayed for since 1987. A Dallas County judge had declared Mr. Spencer innocent of the robbery and killing that sent him to prison for life.

“I really thought once he made his ruling, I was finally going to get out and be free,” Mr. Spencer, 48, said in an interview nearly five years later from the Coffield Prison here. This month marks 26 years behind bars.



Photo: Callie Richmond for The Texas Tribune

Ben Spencer

Mr. Spencer’s 1988 conviction in the killing of Jeffrey Young was based primarily on the testimony of a jailhouse informer and three witnesses who claimed to have seen Mr. Spencer, who was then 22, and an accomplice in a dark alley. An expert hired years later by Mr. Spencer’s lawyers reviewed the crime scene and said that the witnesses could not have seen him. The informer has recanted his testimony.

Dallas County State District Judge Rick Magnis concluded that the conviction should be overturned. But three years later, in an unusual move, the Texas Court of Criminal Appeals rejected those findings, saying in part that the expert evaluation of the crime scene had not been reliable.

To get Mr. Spencer’s case back into court, his lawyers must find new evidence of his innocence.

His advocates remain baffled by the ruling and the reticence of the Dallas County district attorney, Craig Watkins — widely known for investigations that have led to dozens of exonerations — to investigate the man they believe committed the killing. Russell Wilson, the assistant prosecutor who leads the district attorney’s [Conviction Integrity Unit](#), said that if new evidence were discovered, his office would pursue it.

“All I can really tell you on that is we’re always open for business,” Mr. Wilson said. In 2008, a Dallas County assistant prosecutor told The Dallas Morning News that the office stood by the testimony of the witnesses.

On the night of March 22, 1987, residents of a gritty West Dallas neighborhood found Mr. Young, a businessman, lying in the street, barely alive. He had been abducted from his office in an industrial complex, beaten, shoved into his BMW and dumped on the street before he died. A few blocks away, officers found his abandoned car in an alley.

Two days later, Gladys Oliver, who lived near the place where the car was found, contacted the [Crime Stoppers](#) organization. She had told the police the previous day that she had not seen anything.

After Mr. Young's company had offered a reward, she told police officers that she had seen Mr. Spencer and a friend get out of the BMW. She also suggested other neighbors who might have seen something.

The police interviewed Jimmy Cotton, who lived across the street from where the BMW was found. He said he had seen Mr. Spencer and the friend from his kitchen window as they got out of the car.

Investigators also interviewed Charles Stewart, who said that from more than half a block away on that moonless night he saw the two get out of the car.

Officers arrested Mr. Spencer on March 26, 1987. He was placed in a county jail cell with Danny Edwards, who testified that Mr. Spencer had confessed to the killing.

At the trial, Mr. Spencer's lawyers argued that he had been at a park on the night of the crime, talking with a 16-year-old girl, who corroborated his alibi.

But jurors rejected his claim of innocence.

Jim McCloskey, the founder of [Centurion Ministries](#), which works to free the wrongfully convicted, took up Mr. Spencer's case in 2000. He is convinced that Michael Hubbard, a convicted robber, killed Mr. Young and that Mr. Spencer was wrongfully convicted. (Mr. Hubbard, known by the nickname the Batman, is serving a life sentence for an aggravated robbery in which he assaulted his victim, who was leaving an industrial park, with a baseball bat.)

"This guy is totally innocent," Mr. McCloskey said of Mr. Spencer.

Centurion Ministries filed a writ on Mr. Spencer's behalf in 2004. At a 2007 evidentiary hearing in Mr. Spencer's case, Kelvin Johnson, an ex-convict who said he had committed crimes with Mr. Hubbard, told Judge Magnis that he informed the police in 1987 that Mr. Hubbard had told him he had stolen items that matched those stolen from Mr. Young. Mr. Johnson said he told officers that Mr. Hubbard had robbed and assaulted Mr. Young.

"Michael had explained to us how he did it," Mr. Johnson said in a recent interview.

Mr. Hubbard declined to be interviewed for this article. At the 2007 hearing, he refused to testify.

Paul Michel, an expert in forensic visual science whom Mr. Spencer's lawyers hired, said during the hearing that on the night of the crime, the witnesses would have to have been within 25 feet of Mr. Spencer to identify him. The closest of the three witnesses who claimed to have seen Mr. Spencer was Mr. Cotton, who was about 100 feet away.

At the hearing, Mr. Edwards, the jailhouse informer, admitted that Mr. Spencer had not confessed to him.

After Judge Magnis ruled that Mr. Spencer was innocent and recommended a new trial in 2008, the case went to the Court of Criminal Appeals, which must approve such findings. Usually, it is a matter of rubber-stamping the finding of the judge who heard the evidence.

But Mr. Spencer waited three years for a ruling. “It started to get depressing,” he said in the interview.



Photo: Callie Richmond for The Texas Tribune

Andrew Wattlely, the son of Ben Spencer’s lawyer, Cheryl Wattlely, demonstrates the distance at which witnesses said they identified Mr. Spencer in 1987.

In 2011, the court found that Mr. Michel’s crime scene evaluation was unreliable because he could not replicate the lighting conditions. Even if the court accepted the findings, the opinion stated, it would not prove Mr. Spencer’s innocence.

“I thought they would have done the right thing,” Mr. Spencer said. “They did the opposite.” Mr. McCloskey and Cheryl Wattlely, a lawyer for Mr. Spencer, said they would never give up, but they are running out of options. They have met with prosecutors in Mr. Watkins’s office, asking for assistance.

Mr. McCloskey said the prosecutor’s resistance in Mr. Spencer’s case mystifies him.

“They don’t want to see what is evident to all who look at this case,” he said.

Mr. Wilson, the assistant prosecutor in the Conviction Integrity Unit, said his predecessors had reviewed the case and found no new evidence. Whether or not he agrees with the appeals court’s decision, Mr. Wilson said, that is the last word unless new evidence is discovered.

Mr. Spencer and his lawyers say his best hope for freedom is a parole hearing scheduled for July. His last two applications were denied by the parole board, which typically asks convicts to express remorse before consenting to release.

“It’s hard to have remorse for something you didn’t do,” Mr. Spencer said.

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http://www.nytimes.com/2013/03/10/us/declared-innocent-in-a-killing-but-still-behind-bars.html?ref=texas&_r=0

Note: This article did not appear in all print editions of the New York Times.