

Does Innocence Matter in Criminal Appeals?

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ABSTRACT: *This article examines the importance of innocence in criminal appeals through the lens of Benjamine Spencer's murder case history and its development through the appeals process. Spencer's case shows how innocent people can easily be convicted with false evidence and a flawed criminal justice system. Criminal appeals should provide a true path to resolve faulty convictions and fixed flawed aspects of the criminal justice process.*

Benjamine Spencer was tried for the murder of Jeffery Young in October of 1987 despite claims of innocence. He was convicted and sentenced to 35 years in prison. He maintained his innocence and filed for a new trial, which he was then granted. In his second trial, he was convicted of aggravated robbery, and was now sentenced to life in prison. Spencer continued to assert his innocence and appealed his case. In 1989, this conviction was upheld.⁵⁹ In 2008, Judge Rick Magnis, after spending eight months reviewing information presented in an evidentiary hearing, declared that Spencer should be granted a new trial “on the grounds of actual innocence.”⁶⁰ However, in 2011, the Texas Court of Criminal Appeals ruled that the new evidence did not unquestionably establish the applicant's innocence, and since the threshold for proving actual innocence was not met, habeas relief was denied.⁶¹ If Spencer was serving the original sentence he'd been granted in 1987 for murder, he would be released in 2022. However, after his second trial and conviction for aggravated robbery, he is still expected to serve life in prison, and has been denied parole at every opportunity.⁶²

According to Colin Miller, a professor and Associate Dean at the South Carolina School of Law, there have historically only been two routes of obtaining post-conviction relief: presenting newly discovered evidence of innocence and/or evidence of a constitutional violation. Every state has enacted a statute establishing post-conviction relief based on DNA testing, though not every state allows defendants to bring “freestanding claims of actual innocence.”⁶³ Texas is actually one of those states that allows actual innocence claims outside of those with DNA evidence, and yet, Spencer remains imprisoned. This is due to the fact that, when seeking post-conviction relief based on a freestanding claim of actual innocence, the standard for a new trial is incredibly high and almost unattainable.

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⁵⁹ “Ex Parte Spencer, 337 S.W.3d 869 – CourtListener.Com,” CourtListener, accessed April 17, 2021, <https://www.courtlistener.com/opinion/2279756/ex-parte-spencer/>.

⁶⁰ Story by Barbara Bradley Hagerty, “Can You Prove Your Innocence Without DNA?,” *The Atlantic*, accessed April 17, 2021, <https://www.theatlantic.com/magazine/archive/2018/01/no-way-out/546575/>.

⁶¹ “Ex Parte Spencer, 337 S.W.3d 869 – CourtListener.Com.”

⁶² Colin Miller, “Why States Must Consider Innocence Claims After Guilty Pleas,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, August 6, 2018), <https://doi.org/10.2139/ssrn.3226915>.

⁶³ Miller, “Why States Must Consider Innocence Claims After Guilty Pleas.”



According to court documents, Jeffrey Young was found by police unconscious and bleeding in the street on March 22, 1987. He died after being transported to the hospital, and it was later determined that his death occurred as a result of severe skull fractures. There was no physical evidence linking Spencer to the crime and the police were unable to link him to any of the items stolen from Young, but several neighbors then testified that they had either seen Spencer getting out of Young's car or standing by the car, and one witness even testified that he saw Young getting pushed out of the car before it pulled into an alley and he was allegedly able to see Spencer exiting the car before jumping over a fence to go through a neighbor's backyard.⁶⁴

In the second trial, a woman named Gladys Oliver whose house overlooked the alley where the car pulled into was the star witness for the prosecution. She claimed to have seen Spencer get out of Young's car and saw Spencer's car parked in the street before it disappeared. She said the street was well lit and she could identify Spencer as one of the men getting out of the car.⁶⁵ According to former prosecutor Andy Beach: "[t]here's no question that Gladys Oliver's testimony convicted Ben Spencer."⁶⁶ He continues: "[i]n the 25 years I tried criminal cases, she was one of the top three or four eyewitnesses of all time. Just her physical presence and her ability to clearly answer questions, and to stand up to cross-examination, it carried the day for us, there's no question."⁶⁷ When the evidentiary hearing was opened by Judge Magnis in 2007, Oliver held firm, though other witnesses backtracked. Spencer's team called a "forensic visual scientist," who testified that no witness would be able to identify a face from over twenty-five feet away under conditions similar to as they were on the night of March 22, 1987. The closest eyewitness was ninety-two feet away. Even the state's expert agreed that at best, the witness would have been able to see a silhouette, not an identifiable face and whether the witness seemed sure or unsure of the fact.⁶⁸

In Texas, the standard used when looking at appeals based on DNA evidence is often cited as whether "**any** rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt," as is displayed in *Skinner v. State*.⁶⁹ The new evidence brought forth by Spencer's team was enough to convince Judge Magnis: "[w]hen you have two [experts] that

⁶⁴Johnathan Silver, "Inmate Declared Innocent Is Still in Texas Prison," The Texas Tribune, March 17, 2016, <https://www.texastribune.org/2016/03/17/inmate-convicted-murder-pursues-parole-exoneration/>; "Why A Man Declared Innocent Can't Get Out Of Prison," NPR.org, accessed April 18, 2021, <https://www.npr.org/2017/12/06/568314351/why-a-man-declared-innocent-can-t-get-out-of-prison>; "Ex Parte Spencer, 337 S.W.3d 869 – CourtListener.Com."

⁶⁵ "Ex Parte Spencer, 337 S.W.3d 869 – CourtListener.Com."

⁶⁶ "Why A Man Declared Innocent Can't Get Out Of Prison."

⁶⁷ "Why A Man Declared Innocent Can't Get Out Of Prison."

⁶⁸ "Why A Man Declared Innocent Can't Get Out Of Prison"; Hal Arkowitz Lilienfeld Scott O., "Why Science Tells Us Not to Rely on Eyewitness Accounts," Scientific American, accessed April 18, 2021, <https://doi.org/10.1038/scientificamericanmind0110-68>.

⁶⁹ "Skinner v. State."



say none of these three witnesses could have seen what they said they saw," Magnis said, "I felt that was very, very compelling."⁷⁰ It was even enough to convince the foreman of the second jury, the one which sentenced him to life in prison: "[w]e worked with what we had, but we were very wrong."⁷¹ So why was Spencer's request for habeas relief denied? Surely both a criminal court judge and the foreman of the jury who convicted Spencer to life in prison would fall under the standard of "any reasonable trier of fact." However, when evaluating freestanding actual innocence claims, the State doesn't use the same test it used in *Skinner v. State*. Instead, the appellate judge cites a threshold established in *Ex Parte Franklin* and cites a that "[e]ven if we determined that the evidence here was new, it does not **unquestionably** establish Applicant's innocence."⁷²

It's easy to make a claim of actual innocence, but incredibly difficult for that claim to be recognized in court. The fact that it is broad and largely unspecified means that anyone who is looking to be released could hypothetically raise a claim of actual innocence and, in a system already straining under the number of cases it has to hear, arguing that each case of actual innocence should be given large deference would injure the integrity of the legal system. However, reading about cases like Spencer's demands that some room be made for appeals that may not comfortably fit under the usual grounds for appeal, but are nonetheless important and need to be heard. The fact that standard is so incredibly high means that, for people like Spencer, it's unlikely that he will ever be able to find relief save for some miracle. The integrity of the legal process should be protected, but not at the expense of keeping an innocent man imprisoned. Such action not only ruins the life of the person improperly convicted of the crime due to procedural reverence, but allows the actual perpetrator to remain free, turning out a result that cannot claim to hold justice for any of those involved.

Benjamin Spencer was 22 when he was arrested, recently married and expecting a child.⁷³ The Texas Department of Criminal Justice lists his age now as 55.⁷⁴ Spencer has spent over half his life behind bars in a maximum security prison with no release date in sight despite a trial judge determining his sentence should be overturned due to actual innocence over twelve years ago. Our post-conviction system is meant to give relief to those who did not receive justice in their initial trial, but has little room for granting relief based on actual innocence, resulting in innocent people spending time behind bars while guilty perpetrators are not held accountable for their crimes. Obviously, someone who is convicted of a crime can't simply be released due to a

⁷⁰ "Why A Man Declared Innocent Can't Get Out Of Prison."

⁷¹ "Why A Man Declared Innocent Can't Get Out Of Prison."

⁷² "Ex Parte Franklin, 72 S.W.3d 671 – CourtListener.Com."; "Ex Parte Spencer, 337 S.W.3d 869 – CourtListener.Com."

⁷³ "Why A Man Declared Innocent Can't Get Out Of Prison."

⁷⁴ "Texas Department of Criminal Justice Offender Search," accessed October 23, 2020, <https://offender.tdcj.texas.gov/OffenderSearch/start.action>.



claim of innocence, but surely we have to have a better system for being able to evaluate claims of actual innocence following conviction so that the momentum of the system doesn't overtake the importance of obtaining justice not just for those who have been convicted, but also for those who may be the victims of a crime which doesn't see the guilty party or party be held accountable. Striking the proper balance between protecting the legal system and its results and reevaluating those results based on evidence is incredibly difficult, but also incredibly necessary. For a case to be reexamined due to new evidence, our system has to allow for reexamination of evidence that has been cast in a new light in order to maximize the chance of producing a just outcome for all those who are involved.



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