

DNA testing could clear a dead man's name – and point to a serial killer

Over 34 years in prison, Shawn Tanner maintained he was not guilty of murder. A legal battle over whether the dead can clear their names will grant his final wish.

Just now



By Joanna Slater

Over his 34 years in prison, Shawn Tanner always maintained his innocence right up until his death in 2022.

Now a years-long legal battle will grant his final wish: for I evidence in his case.

The prosecutor's office that obtained his conviction fought invalidated his request and that the results wouldn't prove his innocence anyway.

His advocates disagreed, arguing that the results could not only lead to his exoneration but also offer a clue in the unsolved case of an infamous serial killer.

The result: A debate over whether the dead can clear their names that eventually reached the Massachusetts Supreme Judicial Court, testing legal boundaries and fundamental notions of justice along the way.



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Every state now has a legal avenue where people can request DNA testing of evidence after being convicted. But in many cases, it's not clear if those statutes apply once convicts have died, said Brandon Garrett, a law professor at Duke University.

Posthumous exonerations based on DNA testing are exceedingly rare. There are only seven such cases across the nation over the past three decades, according to a database maintained by Garrett.

But there is always the possibility of more, and Tanner's case could help pave the way. The advent of DNA testing "upended all these traditional notions of finality," Garrett said. "As long as it's kept in a dry place, you can test it 60 days later or 10 years later."

'Test it with science'

In 1988, Tanner was working as a bouncer at a nightclub when he was arrested for the murder of Mary Harris.

Harris, a dancer at the nightclub, was found strangled in a motel room in Dartmouth, a town on the southern coast of Massachusetts. At trial, Tanner told jurors that he paid Harris for sex the night she was killed but she was alive when he left. On his way out, he testified, he saw another man at the door.

In a similar case today, DNA testing would be standard practice, with investigators submitting evidence to state-run crime labs that check for matches in a federal database. But in 1988, DNA testing was not widespread, and it would not be routinely available for nearly another decade. So prosecutors focused on the testimony of a key witness.

Steven Almeida, a friend of Tanner's, testified that Tanner confided that he strangled Harris with his hands and then a sock after forcing her to have sex with him. Tanner showed him several pieces of jewelry taken from Harris, Almeida testified, and told him the location of two other rings, which police later recovered.

A jury convicted him of first-degree murder, and a judge sentenced him to life in prison. Tanner appealed, but in 1994, the state's highest court declined to order a new trial. Tanner would spend the next 28 years in prison, mostly at a medium-security penitentiary in Shirley, Massachusetts, working as a janitor and attending Catholic Mass.

During those same years, a number of high-profile exonerations based on DNA testing — spearheaded by the New York-based Innocence Project — focused nationwide attention on the issue of wrongful convictions, prompting states to enact new laws. In 2012, Massachusetts passed a law allowing people to request post-conviction DNA testing of evidence.

In late 2020, lawyers at the New England Innocence Project took on Tanner's case, which raised several red flags, said staff attorney Laura Carey. The prosecution relied heavily on the testimony of a single witness, she said, and also cited two potentially misleading forensic techniques — hair and blood type analysis — that have contributed to erroneous convictions.

Meanwhile, the evidence collected at the scene — including scrapings from beneath the victim’s fingernails as well as from the bedsheets and towels — had never been subjected to DNA testing. “Why rely on what somebody said Shawn told them after the murder when you can test it with science?” Carey asked.

In 2022, after a hearing, a judge granted Tanner’s motion for DNA testing. But by then, Tanner had been diagnosed with terminal brain cancer. He died in September of that year at the age of 57 after being released on medical parole.

The private laboratory conducting the testing did not receive an approval needed to start the process from the state crime laboratory until 2023. That’s when it discovered that a key sample — the fingernail scrapings — were missing from the materials previously sent by state police.

Meanwhile, the Bristol County District Attorney’s Office decided to fight the judge’s order. It filed a motion arguing that Tanner’s death meant the court no longer had any jurisdiction. The order becomes “null and void once the defendant has passed away,” a prosecutor said during a September 2023 hearing.

The legal debate would escalate to the Massachusetts Supreme Judicial Court.

For Tanner's family, the question is simpler. Cheryl Kirby, his older sister, declined to answer questions about her brother's life, saying her goal is to honor his dying wish. "I want to continue his fight," Kirby said. "I want the testing to move forward to get to the truth."

Turn every 'pebble'

It wasn't just Tanner's sister and lawyers pushing for the testing.

Among the groups that filed briefs in the case: the relatives of women who were victims in a notorious serial murder case in the same area that remains unsolved. The so-called New Bedford Highway Killer is believed to have murdered at least nine women, many by strangulation, starting in 1988, the year of Tanner's arrest.

Jill Paiva's mother, Nancy, was one of the victims murdered that year. Paiva said she met with Bristol County prosecutors last November to press for an update on the case. She asked them why they were opposed to DNA testing in Tanner's case, urging them to leave no stone unturned.

“It doesn’t matter if it’s a pebble,” Paiva remembers saying. “You don’t know what you’ll find under it if you don’t look.” The prosecutors told her that they had ruled out any connection between the serial murders and Tanner’s case, Paiva said, and reiterated that the case against Tanner was strong.

But at the appellate hearing late last year in Boston, a panel of seven judges echoed Paiva’s query. “We’re dealing with, potentially, evidence that everyone would care about,” Justice Scott Kafker said. “What is the Commonwealth’s interest in not finding out what’s under those fingernails?”

David Mark, a lawyer at the Bristol County District Attorney’s Office, said at the hearing that no matter what the DNA testing showed, it would not prove Tanner’s innocence.

“This is not a case where testing alone can produce a definitive result of exoneration,” Mark told the judges. It’s “simply not possible on these facts.” Even if DNA results show that a third person was present in the room, prosecutors have argued, it does not diminish the strength of the other evidence against Tanner, particularly Almeida’s testimony.

Last month, the Massachusetts Supreme Judicial Court ruled in Tanner’s favor, saying a valid order to conduct post-conviction DNA testing does not automatically expire after a defendant’s death. It also noted that there was a “societal interest” in these results since there “remain nine unsolved murders from the same period and region.”

In a statement, the Bristol County District Attorney’s Office said it would comply with the ruling. It did not respond to further questions.

Paiva welcomed the court’s decision. She said her 11-year-old grandson has begun asking questions about her mother’s death, questions that she cannot answer. Why would someone do something like that? How come they don’t know who did it?

Like several of the serial killer’s victims, Paiva’s mother, Nancy, struggled with drug use. But she was a devoted and loving parent, Paiva said, remembered for her elaborate Christmas decorations and blueberry picking expeditions.

“Do I expect that this is going to be a miracle, we’re going to find out who did it? No,” Paiva said. But Tanner’s family “deserves to know,” she continued. “Even though he’s passed, his family deserves an answer.”

What readers are saying

The comments express strong criticism of the legal system, particularly focusing on the reluctance of prosecutors to allow DNA testing that could potentially exonerate Shawn Tanner posthumously. Many commenters argue that the pursuit of truth and justice should take precedence... [Show more](#)

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