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Graves murder re-trial delayed

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CALDWELL - The re-trial for a man who spent more than a decade on death row accused of capital murder will have to wait a little longer, attorneys for both sides agreed Tuesday during a pre-trial hearing at the Burleson County Courthouse.

District Judge Reva Towslee-Corbett told prosecutors and defense attorneys for Anthony Graves last month to tentatively plan for trial in early July.

But evidence used during the original trial in 1994 has just recently been found and sent to Department of Public Safety scientists "to be re-analyzed based on new and hopefully better techniques," special prosecutor Patrick Bachelor said Tuesday. The DPS Crime Lab agreed to test only five items, and officials there said they don't expect to have the results back until late June, he told the judge.

"They said they were swamped and didn't have time [to test more items]," Bachelor said, suggesting that it might be closer to January than July when the case is ready to be tried. "We may have to get together and take [the evidence] somewhere else.

"I think it pretty much was the consensus of everybody there's no way the trial would be able to start [in July] if new evidence was found."

Graves' attorneys agreed that it would be best to slow the process down so that evidence could be thoroughly tested, even if it means their client has to stay at the Burleson County Jail in the meantime, unable to post the \$600,000 bail.

"I've been there 15 years," Graves said when asked by the judge how he felt on the issue, indicating that a few more months of incarceration wouldn't make much of a difference at this point.

He and co-defendant Robert Carter were accused of brutally killing 45-year-old Bobbie Joyce Davis, her teenage daughter and four grandchildren at Davis' Somerville home in 1992 then burning the residence in an attempt to hide the slayings.

Graves' conviction came after Carter named him as an accomplice on the witness stand. But Carter recanted his testimony - stating that he acted alone - several times, including moments before he was executed in 2000.

Last year, a federal judge ordered Graves' guilty verdict to be invalidated. The decision was based in part on allegations the district attorney at the time didn't disclose a statement from Carter - on the night before he testified against Graves - that he acted alone.

Such a disclosure could have changed the course of the case, defense attorney David Mullin said Tuesday while asking the judge to suppress all of Carter's previous testimony for the upcoming trial because he is no longer alive to be cross-examined with the new information.

"Of all the protections in the Bill of Rights that are afforded to a defendant, I can't think of one that's more important than this one," Mullin said. "Being able to go after the witness right then and there is an invaluable right."

Mullin pointed to a 2004 U.S. Supreme Court decision stating, among other things, that for a transcript of previous trial testimony to be admitted in a criminal case there first has to have been an effort by the state to make the witness available. By allowing Carter to be executed, prosecutors didn't make that effort, he argued.

But it is "ludicrous" to think that there wasn't an opportunity for face-to-face confrontation during the first trial, prosecutor Chuck Mullin countered, adding that the defense knew of Carter's inconsistent statements long before the one made on the night before his testimony.

"Mr. Carter was subject to extensive cross-examination," he said.

The defense also asked Tuesday for a change of venue, arguing that the media coverage the case has received will make it impossible for Graves to get a fair trial in the Brazos Valley or the Houston area. Prosecutors disagreed, suggesting that they should at least attempt to select a jury locally before deciding if a change of venue is needed.

Judge Towslee-Corbett said she would rule on the two issues in about a month, after studying relevant case law. As for the trial scheduling, she indicated she would be flexible, but she "would like to get this tried this year, if at all possible."

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