

1 IN THE CRIMINAL DISTRICT COURT NO. 3
2 DALLAS COUNTY, TEXAS
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6 THE STATE OF TEXAS }
7 VS: } NO. F-96-39973-J
8 DARLIE LYNN ROUTIER } & A96-253 (Kerr Co.)

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14 STATEMENT OF FACTS
15 JURY TRIAL
16 TRIED IN KERR COUNTY, TEXAS
17 VOL. 28 OF 53 VOLS.
18 Trial beginning January 6, 1997
19 Monday

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1 C A P T I O N

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4 BE IT REMEMBERED THAT, on Monday, the 6th day of
5 January, 1997, in the Kerr County Courthouse, this case
6 being transferred from Criminal District Court Number 3 of
7 Dallas County, Texas, the above-styled cause came on for a
8 trial before the Hon. MARK TOLLE, Judge Presiding, for the
9 Criminal District Court No. 3, of Dallas County, Texas,
10 with a jury, and the proceedings were held, in open court,
11 as follows:

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1 A P P E A R A N C E S

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4 HON. JOHN VANCE,

5 Criminal District Attorney

6 Dallas County, Texas

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8 BY: HON. GREG DAVIS

9 Assistant District Attorney

10 Dallas County, Texas

11

12 AND:

13 HON. TOBY L. SHOOK

14 Assistant District Attorney

15 Dallas County, Texas

16

17 AND:

18 HON. SHERRI WALLACE

19 Assistant District Attorney

20 Dallas County, Texas

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22 APPEARING FOR THE STATE OF TEXAS

23

24

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1 ADDITIONAL APPEARANCES:

2 HON. DOUGLAS D. MULDER

3 Attorney at Law

4 2650 Maxus Energy Tower

5 717 N. Harwood

6 Dallas County, Texas 75201

7 AND:

8 HON. CURTIS GLOVER

9 Attorney at Law

10 2650 Maxus Energy Tower

11 717 N. Harwood

12 Dallas County, Texas 75201

13 AND:

14 HON. RICHARD MOSTY

15 Attorney at Law

16 Wallace, Mosty, Mchann, Jackson & Williams

17 820 Main Street, Suite 200
18 Kerrville, Texas 78028
19 AND:
20 HON. S. PRESTON DOUGLASS, JR.
21 Attorney at Law
22 Wallace, Mosty, Machann, Jackson & Williams
23 820 Main Street, Suite 200
24 Kerrville, Texas 78028
25
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1 AND:
2 HON. JOHN HAGLER
3 Attorney at Law
4 901 Main Stree, Suite 3601
5 Dallas, Texas 75202
6 AND:
7 MR. LLOYD HARRELL
8 Private Investigator
9 Dallas, Texas
10 APPEARING FOR THE DEFENDANT

11 AND:
12 HON. ALBERT D. PATILLO, III
13 Attorney at Law
14 820 Main Street, Suite 211
15 Kerrville, TX, 78028
16 APPEARING FOR WITNESS:
17 Detective Jimmy Patterson

18 AND:
19 HON. STEVEN J. PICKELL
20 Attorney at Law
21 620 Earl Garrett Street
22 Kerrville, TX 78028
23 APPEARING FOR WITNESS:
24 Officer Chris Frosch
25
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1 P R O C E E D I N G S

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3 January 6, 1997
4 Monday
5 9:30 a.m.
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7 (Whereupon, the following
8 proceedings were held in
9 Open court, in the presence
10 And hearing of the

11 Defendant, being
12 represented by her attorneys
13 and the representatives of
14 The State of Texas, but
15 outside the presence of the
16 jury, as follows:)
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19 THE COURT: All right. Let's go on the
20 record.
21 All right. This is Cause A96-253, the
22 Kerr County Number, formerly F-96-39973-MJ, the Dallas
23 County number. Styled the State of Texas versus Darlie
24 Lynn Routier, who is present in court with her attorneys.
25 Let the record reflect that these
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1 proceedings are being held outside the presence of the
2 jury, and all parties to the trial are present.
3 We will now arraign the defendant.
4 Mr. Davis, do you wish to do that?
5 MR. GREG DAVIS: Yes, sir.
6 MR. DOUGLAS MULDER: Judge, would you
7 like to have her stand, in as much as this is not before
8 the jury?
9 THE COURT: Yes, whatever --
10 MR. DOUGLAS MULDER: What is your
11 pleasure?
12 THE COURT: -- whatever she wishes to
13 do. If you care to stand up, that will be fine. You may
14 be seated if you wish. That's fine.
15 MR. GREG DAVIS: "True bill of
16 Indictment. In the name and by the authority of the State
17 of Texas, the Grand Jury of Dallas County, State of Texas,
18 duly organized at the January Term A. D. 1996 of the 194th
19 Judicial District Court of Dallas County, in said court,
20 at said Term, do present that one Darlie Lynn Routier...."
21 Is that your true name?
22 THE DEFENDANT: Yes, it is.
23 MR. GREG DAVIS: "... the Defendant, on
24 or about the 6th day of June, A. D., 1996, in the County
25 of Dallas, and said State did unlawfully, then and there,
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1 intentionally and knowingly cause the death of Damon
2 Christian Routier, an individual, hereinafter called the
3 deceased, by stabbing said Damon Christian Routier with a
4 knife, and the deceased was, at the time of the offense

5 under 6 years of age.
6 "Against the peace and dignity of the
7 State.
8 "Signed, John Vance, Criminal District
9 Attorney of Dallas County, Texas. Ray W. Paul, Senior,
10 Foreman of the Grand Jury."
11 THE COURT: Mr. Mulder, how does your
12 client plead?
13 THE DEFENDANT: Not guilty.
14 THE COURT: All right. Thank you,
15 ma'am.
16 All right. We have before the Court
17 two motions filed this morning: A motion for continuance
18 and a motion to examine the jurors.
19 The Court will take up the motion for
20 continuance first. Who is going to address that?
21 MR. RICHARD C. MOSTY: Your Honor, I
22 will address the motion for continuance.
23 THE COURT: All right.
24 MR. RICHARD MOSTY: And let me preface
25 this by saying we are asking for a one day continuance.
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1 During the course of our investigation,
2 over the last few weeks, we have determined, for instance,
3 that as late as December 20th of 1996, that additional DNA
4 testing was requested by the State. We presume, since we
5 do not have those results, that the State does not have
6 them.
7 So, there is DNA testing that is
8 outstanding, on-going, that has not been provided to us,
9 and we move for a continuance on that basis. Or in the
10 alternative, to exclude that DNA testing, whatever the
11 results may be, precluding the State from introducing
12 those.
13 THE COURT: Well -- go ahead.
14 MR. RICHARD MOSTY: The second part of
15 the motion for continuance, is that we have -- that the
16 evidence has been at various places: The District
17 Attorney's office, the Rowlett P.D., SWIFS, Gene Screen,
18 various places. And Mr. Douglass and Mr. Harrell went up
19 last week to look at that, and they weren't able to look
20 at all of the evidence even. Some of it was being put
21 together to be moved down here.
22 So, presumably, all of the evidence is
23 here now. I think it came in on the 2nd. So, we need one
24 day, or part of a day, to examine all of the evidence that
25 the State has down here, which we have not had that

1 opportunity to do up to this time.
2 The third item is, that as of Friday
3 afternoon, Mr. Mulder received another report from the
4 State. I didn't receive it. It was not sent to me. And
5 Mr. Mulder was actually in transit at the time, or getting
6 ready to head to Kerrville and picked up a copy of it and
7 brought it down.
8 So, Mr. Mulder got it Friday evening as
9 he was travelling. I got it over the weekend. And this
10 is additional testing done by SWIFS that we just got
11 Friday. So we needed at least a bit of time to evaluate
12 that.
13 So, for all of those, other things,
14 such as the photographic contact sheets that were to be
15 available, I filed a motion before Christmas that Mr.
16 Davis immediately responded to that said this information
17 will be available. And then when we went up there, it in
18 fact wasn't. And, of course, we were all dealing around
19 the holidays, so I don't fault anyone for that, it just
20 couldn't -- it just hasn't been done. And we have not
21 seen all of the photographic contact sheets.
22 By contact sheets, what I mean is the
23 log of what photograph goes to what --
24 THE COURT: I am familiar with that.
25 MR. RICHARD C. MOSTY: -- location or
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1 what time frame.
2 In connection with this, we have also
3 filed a motion to examine the witness, which also, in
4 terms of a one-day continuance, we think makes sense, in
5 that we think that the Court ought to briefly, and within
6 some agreed upon question areas, inquire of the jury just
7 to make sure that nothing has happened to them, either
8 through the media, or in their personal life that would
9 cause them to be anything other than fair and impartial.
10 So, we're not talking about a real
11 delay here, in that the Court, and some of the attorneys
12 could be examining the jurors, while other of the
13 attorneys were looking at the evidence. And, so, and
14 quite frankly, I think that in the long run, this will
15 speed up the trial process.
16 If we're having to, one by one, look at
17 documents, or boards, or whatever they might be. If we
18 have done that in advance, then we will be in a far better
19 position to understand what the State is offering, and to

20 either know that we have an objection or not. And then,
21 in the long run, the trial will really run smoother if we
22 have this day.

23 THE COURT: Okay. Well, have you given
24 the defense everything that they're entitled to, Mr.
25 Davis?

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1 MR. GREG DAVIS: Yes, sir. I -- when I
2 contacted Mr. Mosty, when I received his motion on
3 December the 20th, I told him that I was a little bit
4 surprised because all of this stuff has been available
5 since they got hired on October the 21st.
6 Now, I have never received a single
7 phone call, I have never got a single letter, not a single
8 personal contact, from anybody here at the defense table
9 asking to see anything.
10 The first thing I get is the motion on
11 December the 20th, "can we see photographs," and, of
12 course, they have been available for over two months for
13 them.

14 All of the physical evidence has been
15 out at Rowlett for two months available to them. All of
16 the other evidence at SWIFS, and Gene Screen, has been
17 available. So, I'm not quite sure why they waited until
18 the late part of December to try to make an attempt to
19 view all of this stuff.
20 The court appointed attorneys that you
21 had on this case previously, prior to October the 21st,
22 had already had a chance to go out, in fact, twice to
23 Rowlett, and view everything, video tape everything.
24 I've got to assume that the video tape
25 they made of all of that physical evidence was handed over
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1 to Mr. Mulder or Mr. Mosty. So I'm a bit bewildered, I
2 guess, about why all of this is occurring in late
3 December.
4 Now, the only DNA testing that's
5 outstanding concerns the T-shirt, it probably consists of
6 no more than 10 to 12 samples that were taken off the
7 T-shirt. That's the only DNA that we have outstanding.
8 I have asked Sherri Wallace to call
9 Gene Screens to talk to Judy Floyd or Robert Giles. I
10 would assume that this morning, that I will have those
11 results back from Gene Screen, and I will certainly convey
12 those to the defense at that time.
13 I would also notify the Court, that I

14 know that Mr. Mulder has been out to talk to Charles Linch
15 of SWIFS at least twice. He talked with him the first
16 time for three hours about the case. He talked with him
17 again -- I know the defense attorneys talked with Charles
18 Linch again for over three and a half hours on New Year's
19 Eve.

20 The defense has had DNA experts
21 available to them since October the 21st that have already
22 been hired by the court appointed attorneys.

23 In talking with them last week, they
24 indicated that they haven't done any testing on any of the
25 samples that they took back in August of 1996.

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1 So that's where we stand on the case at
2 this point, your Honor.

3 THE COURT: All right. Thank you.

4 MR. RICHARD C. MOSTY: May I respond
5 briefly, your Honor?

6 THE COURT: You may indeed.

7 MR. RICHARD C. MOSTY: Well, it's not
8 the photographs we're asking for, it's the contact sheets,
9 whereby you can make sense of the photographs. And as we
10 sit here right now, and they were in -- Mr. Douglass and
11 Mr. Harrell were in the D.A.'s office the 27th, and those
12 were not available. They were not available to them. I
13 don't know where they were, but they were not available to
14 them, so we haven't see them.

15 MR. GREG DAVIS: They were -- I'm
16 sorry.

17 MR. RICHARD MOSTY: The second thing
18 is, that as Mr. Davis suggests, if we get the Gene Screen
19 information today, then we can look at it today, and we
20 would be in a position to be prepared. If it comes in
21 today, that will be great, and then we'll know.

22 The third item he addressed -- well, I
23 think I have covered the main two. The one is the contact
24 sheet -- Well, the third item is that even after we talked
25 to Linch, and this was on the 31st, even after we talked
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1 to Mr. Linch, two days later, on January 2nd, we get a new
2 report, dated January 2nd, from Mr. Linch's organization.

3 So, that's the kind of thing that's
4 happening. We go to talk to somebody, and then after that
5 happens, then we get a new test.

6 MR. GREG DAVIS: Well, the contact
7 sheets, again, I indicated to Mr. Mosty that he could

8 check with SWIFS, or he could check with the Rowlett
9 Police Department. They would be in possession of those
10 items. I wouldn't.
11 So, as to reasons why they didn't see
12 those at those departments, I don't know.
13 THE COURT: All right. Thank you.
14 The Court denies the motion for
15 continuance, and denies the motion to examine the jurors.
16 All right.
17 MR. DOUGLAS MULDER: Judge, just one
18 thing. Will you instruct them to give us the contact
19 sheets of those photographs?
20 THE COURT: Whatever you're entitled
21 to, you will get.
22 MR. DOUGLAS MULDER: Well, I understand
23 that, Judge, but that doesn't do me any good. We want the
24 contact sheets.
25 THE COURT: Well, you are instructed to
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1 give -- do you have the contact sheets? If you have the
2 contact sheets, let Mr. Mulder, or one of the defense
3 attorneys have them.
4 MR. GREG DAVIS: Yes, sir.
5 MR. DOUGLAS MULDER: When can we have
6 them?
7 THE COURT: Well, I imagine as soon
8 they can get them for you. It is 9:07 now, I imagine
9 sometime this morning you will get them.
10 MR. DOUGLAS MULDER: By noon?
11 THE COURT: Well, I don't know, but I
12 think we can handle that.
13 Do you have the contact sheets?
14 MR. GREG DAVIS: I don't know. I will
15 have to check. I don't know if they are down here or not.
16 I know that Rowlett brought extra copies of all of their
17 photographs down here.
18 THE COURT: Well, we can work that out.
19 MR. DOUGLAS MULDER: We have got the
20 photographs. We aren't concerned with the photographs.
21 We're concerned with the contact sheets, and there's a big
22 difference.
23 That's what we've been trying -- we
24 understand what the photographs are. We have had the
25 photographs forever. We want the contact sheets.
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1 THE COURT: Well, as soon as you get
2 the contact sheets, give them to the defense.
3 MR. GREG DAVIS: Yes, sir, I will do
4 that.
5 MR. DOUGLAS MULDER: Well, can't we
6 have a deadline on that, Judge, as to when we can get
7 them?
8 THE COURT: Well, why don't we find out
9 when they can get them first, and then I will rule on that
10 part of it again.
11 MR. GREG DAVIS: All right. I will
12 have Miss Wallace go back right now and talk with them.
13 Also, Miss Wallace has now talked with
14 Gene Screen. All of the samples that were taken from the
15 T-shirt, Dr. Giles has indicated to her, are that of the
16 defendant. And those are the samples that are taken from
17 the large, bloody area here on the front of the T-shirt.
18 And there were some additional, I believe three samples
19 off the right shoulder. Those were all the defendant's.
20 THE COURT: All right, thank you.
21 Is the jury here? All of them are
22 here?
23 DEPUTY SHERIFF JAN BIGGERSTAFF: We
24 lack one.
25 THE COURT: Well, let's check and see
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1 if that one has come in yet.
2 DEPUTY SHERIFF JAN BIGGERSTAFF: All
3 right.
4 MR. JOHN HAGLER: Excuse me, your
5 Honor, while we're waiting for the jury, could I make a
6 statement to the court?
7 THE COURT: Oh, sure.
8 MR. JOHN HAGLER: Judge, I anticipate
9 they will be making an opening statement at this point in
10 time. I understand that the statement itself isn't
11 evidence, but the problem we have, of course, is we don't
12 know what they're going to say. And we're going to notify
13 the Court now, that we're going to object to some of their
14 expert testimony.
15 And, specifically the validity of some
16 of their expert testimony, the tests, the foundation for
17 the validity of the qualifications and what have you.
18 We would object to them going into the
19 specific nature of their expert testimony because of the
20 prejudicial effect before this Court has had an
21 opportunity to review that testimony and rule on it.
22 And secondly, as far as in terms of the

23 Motion in Limine, we will object at this time. We have
24 already made some reference to it in the pre-trial
25 motions, but in this case, there are some matters
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1 regarding sexually orientated materials and what have you,
2 and we're going to object to those.
3 I won't go into specific details at
4 this time, but specifically materials, and specific
5 matters regarding the defendant's background, and what
6 have you. We're going to object to any reference to
7 those. During the trial, we will want a hearing on it
8 before the State is going to offer any of this testimony.
9 But the reason I mention it at this
10 point in time, your Honor, is the fact that once this
11 comes out in front of the jury, it is just going to be
12 very difficult for the Court to instruct the jury to
13 disregard.
14 So, I would ask that the Court instruct
15 the State one, not to go into any type of sexually
16 orientated materials, or background matters regarding --
17 or collateral matters regarding the defendant.
18 And secondly, I know they can make an
19 opening statement, and give an overview as to their
20 testimony, but we're going to object to any specific
21 references or statements during their opening statement
22 regarding the nature of the expert testimony and its
23 contents.
24 THE COURT: Well, the Court will
25 instruct both sides, when they make their opening
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1 statements, if both sides intend to make opening
2 statements, to make the opening statements without any
3 testimony being given. Thank you.
4 We're still waiting for a juror, so
5 everybody relax.
6
7 (Whereupon, a short recess
8 was taken, after which time
9 the proceedings were resumed
10 on the record, outside the
11 presence of the jury as follows:)
12
13 MR. GREG DAVIS: Judge, if we could
14 make a statement on the record.
15 THE COURT: Sure.
16 MR. GREG DAVIS: I spoke with the

17 Rowlett Police Department and determined that they have no
18 contact sheets. They don't use contact sheets.

19 We have also talked to SWIFS, the same
20 thing. They don't use contact sheets. They simply go
21 from the slides directly to photographs, and so we have
22 none.

23 THE COURT: All right. There are no
24 contact sheets available.

25 MR. DOUGLAS MULDER: Well, that clears
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1 it up. But, of course, it could have been cleared up a
2 long time ago. Apparently they didn't know what contact
3 sheets were.

4 MR. GREG DAVIS: Well, this could have
5 been cleared up a long time ago if he had asked us.

6 MR. DOUGLAS MULDER: But we did ask for
7 them. They said they had them. In fact, he said ten
8 minutes ago they had them.

9 THE COURT: All right. Gentlemen,
10 let's cease the bickering. There are no contact sheets,
11 so there will be none given. Thank you.

12 MR. DOUGLAS MULDER: Judge, could we
13 find out if they have a photographic log in lieu of the
14 contact sheets?

15 THE COURT: Do you have a photographic
16 log in lieu of the contact sheets?

17 MR. GREG DAVIS: We'll find that out.

18 THE COURT: We will find that out.

19 MR. DOUGLAS MULDER: What we would
20 like -- and let me just tell you where I'm going on this:
21 You know, when you look at the photographs, you will see
22 the various items of evidence have moved in the
23 photographs. And you can't tell, without the contact
24 sheets, or without a photographic log, as to when the
25 photographs were made. But the evidence moves.

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1 MR. GREG DAVIS: Well, that's not true,
2 because the photographs have the date stamp on them.

3 MR. DOUGLAS MULDER: Well, some do and
4 some don't.

5 MR. GREG DAVIS: When they show June
6 6th, and when they show June 8th.

7 MR. RICHARD C. MOSTY: So we can be
8 clear, what we're looking for is any piece of paper,
9 handwritten, called a log, a contact sheet, any scrap of
10 tangible, personal property that can somehow identify what

11 photographs are taken when.

12 MR. GREG DAVIS: Okay. We're going

13 back right now to find that out. I have never seen one,

14 but we are going to double check again.

15 THE COURT: All right. I think that

16 both sides have had adequate time to prepare for this

17 case. And whatever the State has that the defense is

18 entitled to, the State is ordered to give it to them.

19 We will now await the arrival of the

20 final juror.