

## Closing Arguments in Punishment

### Defense – Doug Mulder

THE COURT: Let the record reflect

2 that all parties in the trial are present and the jury is  
3 seated.

4 Mr. Mulder.

5 MR. DOUGLAS MULDER: Yes, sir. May it  
6 please the Court?

7 THE COURT: Yes, sir.

8 **MR. DOUGLAS MULDER:** Ladies and  
9 gentlemen, I'll be the first to visit with you on behalf  
10 of the defendant. And I think it would be less than  
11 candid of me not to tell you that I am extremely  
12 disappointed in your verdict.

13 But I believe in the system. And, you

14 are good people and you went through this evidence  
15 sincerely, and you did your dead-level best, and for that  
16 I certainly appreciate it. And it's not my position, or  
17 anyone else's position to quarrel with your verdict.

18 The State's position is, at what we

19 call the punishment hearing, to bring you evidence upon  
20 which they will later contend that you are to base your  
21 verdict that Darlie should die. And I want to discuss  
22 with you a little bit that testimony that they brought,  
23 and then I want to answer Ms. Wallace's argument, if I  
24 can, and then I want to point out some things that I  
25 think are important and should be considered by you in  
Sandra M. Halsey, CSR, Official Court Reporter

5668

1 arriving at a proper verdict in this case.

2 The first witness they called was a

3 young lady by the name of Allison Hennessey. And, she

4 basically told you that she is a friend, or up until

5 January of 1995, was a friend of Rene Stanley's, the

6 little girl who lived down the street. And Rene Stanley

7 would babysit for the Routiers from time to time, and

8 that she would go over there to the Routiers' house, and

9 she told you basically three things. She said that

10 Darlie bought cigarettes for Rene. This is a 16 year

11 old. That one time she gave her a Zima, and another time

12 she gave her a small quantity of marijuana.

13 But you know, it's curious to me, that

14 if the thrust of their proof is to show that these things

15 actually happened. And I would caution you that this

16 young lady is kind of kin to the case through Glenn Mize.

17 She is the stepdaughter of Glenn Mize, who has this

18 circuitous relationship with Basia, who is woven

19 throughout this whole mystery.  
20 But if, in fact, the object is to  
21 prove that these things occurred, why don't they bring  
22 Rene Stanley? I mean, doesn't that make sense? Where is  
23 Rene Stanley? I'll tell you where she is. They know --  
24 and neither one of them are going to get up here with a  
25 straight face and deny it. They know that Rene Stanley  
Sandra M. Halsey, CSR, Official Court Reporter  
5669

1 denies those allegations, you see.  
2 Now, the next lady to come in here and  
3 testify was Eileen Schirmer.  
4 Remember, she is the one that lives  
5 some two blocks away and quarrels with the way the little  
6 bike riders are supervised. She didn't like the fact  
7 that they didn't wear life preservers on the dock, and  
8 that has, you know, the birthday party with the cake in  
9 the face and the water gun and that.  
10 She is what we call a volunteer. You  
11 see? She is somebody who wants to get into the act. She  
12 doesn't really have anything to bring to the party. But  
13 you know, when you call and you volunteer, it doesn't  
14 take long to figure out something that you can testify  
15 to, and you can get into the act, and you can become a  
16 star.  
17 There is no way on God's green earth  
18 that they found her during some neighborhood canvas. She  
19 simply volunteered.  
20 Now the next witness was Nelda Watts.  
21 And you know the interesting thing about her, she's the  
22 lady who heard the scream and saw the little black car  
23 out in front, at her mailbox. And then when she heard  
24 the sirens and the emergency vehicles, she looked out  
25 there and it was gone. And nobody knows, to this day,  
Sandra M. Halsey, CSR, Official Court Reporter  
5670

1 what became of -- or how that black car fit into this  
2 mystery.  
3 I don't know why they weren't asking  
4 her about that. You know, she has been there some three  
5 years, and she has never spoken to Darlie, and obviously  
6 doesn't even know what she looks like to be able to  
7 identify her at a distance. I mean, this is an obvious  
8 case of mistaken identity.  
9 But I wonder why she wasn't asked  
10 about the little black car, instead of this other  
11 business that doesn't make a whole heck of a lot of  
12 sense.

13 At any rate, the next witness called  
14 was also a volunteer. Kay Norris. And basically, she  
15 said she is trashy, and she is rude, and she doesn't  
16 approve of the language that she used to correct her  
17 children.  
18 I mean, I don't either. If, in fact,  
19 she used that language. But I suggest to you that if, in  
20 fact, that is what they set out to prove, they could  
21 bring somebody who doesn't have an obvious ax to grind.  
22 And I think Ms. Norris does.  
23 But enough said about her. Halina,  
24 Halina is traceable back to Basia, and I think Rebecca  
25 sufficiently rebutted anything that she had to say.  
Sandra M. Halsey, CSR, Official Court Reporter  
5671

1 I think that -- of course, I'm a  
2 little bit curious that the only time she has ever in her  
3 time here in the United States needed an interpreter was  
4 when she comes down here to testify in Court, and that  
5 strikes me as somewhat unusual.  
6 I think you know from your common  
7 experiences that by using an interpreter it's, of course,  
8 to her advantage, and she can find out where Mr. Mosty is  
9 going when he asks the questions.  
10 She is Basia's mother, and you have  
11 seen Basia, and I suggest to you that the apple doesn't  
12 fall far from the tree. But, be that as it may. If they  
13 were intent and wanted to bring you information of how  
14 she acted, and how she treated those children, they have  
15 that information from the canvas that they did of that  
16 neighborhood.  
17 You know they talked to the fellow  
18 behind the house who saw Darin working on the fence that  
19 night.  
20 They have talked to everybody in that  
21 neighborhood. They can pay ten grand to have some guy do  
22 that business on the 911 tape, and you know they have  
23 canvassed that neighborhood, and this is the best that  
24 they can come up with, that she has not been a good  
25 mother. And, I'll tell you, it's absurd. If this is all  
Sandra M. Halsey, CSR, Official Court Reporter  
5672

1 they can come up with, and they have had her under a  
2 microscope for some seven months.  
3 I think basically when you analyze a  
4 capital murder case with the idea of punishment, and what  
5 should be, or ought to be the proper punishment. And I  
6 would remind you again in this case that the law says

7 that your decision should be the decision of twelve  
8 jurors, not 6 or 8 or 10 or 11, but it must be unanimous.  
9 So each of you is one hundred percent responsible for the  
10 verdict, and that's the way it's supposed to be under our  
11 law.

12 The law says that with respect to this  
13 first issue, it must be proven to you beyond all  
14 reasonable doubt. And that means simply this: That if  
15 you have any reasonable doubt, the law says that you  
16 resolve that doubt in favor of Darlie. Each and every  
17 time. It doesn't make any difference whether it's once  
18 or 10 times or 21 times or 101 times. Each time you have  
19 a reasonable doubt, the law says you give her the benefit  
20 of that reasonable doubt.

21 Now let's see if this makes sense: I  
22 suggest to you that there are three considerations in  
23 determining whether or not you've got a capital murder  
24 case that warrants the death penalty.

25 The first one is, is the consideration  
Sandra M. Halsey, CSR, Official Court Reporter  
5673

1 of the victim. Who is the victim in this case?

2 The second consideration should be  
3 the proof. Okay?

4 And the third consideration should be  
5 the defendant.

6 To have a capital murder case that  
7 warrants death you have got to have an innocent victim,  
8 who did not provoke the killing. Does that make sense?  
9 You have got that here, no question about that. Nothing  
10 more innocent than a five year old child, and I dare say  
11 there is absolutely nothing that a five year old child  
12 could ever do, under any circumstances, to provoke his  
13 death.

14 Now what about proof? Well, you  
15 should want the proof to be so clear, so convincing,  
16 evidence that is so compelling, evidence that satisfies  
17 you in your heart of hearts that the defendant, to the  
18 exclusion of all other people, is solely responsible for  
19 the death of the victim. Does that make sense to y'all?  
20 Absolute proof. You know it in your  
21 heart of hearts, the evidence is so clear and convincing  
22 that you are convinced of her guilt to the exclusion of  
23 all others.

24 Now, I think the third consideration  
25 should be the defendant. Is the defendant beyond  
Sandra M. Halsey, CSR, Official Court Reporter  
5674

1 redemption?  
2 Okay. Let's talk a little bit about  
3 the proof in this case. And I think if Mr. Davis, and  
4 you know he talked last last time, so I didn't have an  
5 opportunity to get up and answer him, and I would have  
6 liked to have answered him on a number of things. But  
7 again, I believe in the system, and that is the way the  
8 system operates.  
9 But if Mr. Davis is going to get up  
10 here with a straight face and ask you to set her  
11 punishment at death, then you are entitled to some  
12 answers and some explanations.  
13 I suggest to you that right now you  
14 don't have a clear picture on what exactly happened, how  
15 it happened, why it happened, or the timeframe in which  
16 it happened.  
17 And I suggest to you that if they have  
18 proven their case to such an extent that they expect you  
19 to render a verdict of death, you would have those  
20 answers. You have held her responsible. I don't quarrel  
21 with that.  
22 I am surprised, but that is your  
23 prerogative. But, for example, and I thought Ms.  
24 Wallace, when she got up here, was finally going to take  
25 a position as to what they thought happened out there,  
Sandra M. Halsey, CSR, Official Court Reporter  
5675

1 but they won't do it. They want you to guess what  
2 happened.  
3 Let's talk about the blood, for  
4 example.  
5 Let's talk about the blood.  
6 That may have been important in your  
7 decision. You had the blood spatter man that came down  
8 from Oklahoma City. Tom Bevel. The blood may have been  
9 important. But I'll tell you what is missing in the  
10 blood is the chain of custody.  
11 You remember they got the clothing  
12 worn by Damon to the hospital, just like they got the  
13 T-shirt worn by Darlie, to the hospital. But then it  
14 jumps from the hospital to the fire station number 2 over  
15 here, where Mayne picks it up. You see.  
16 You don't have Zimmerman. We objected  
17 and the judge overruled our objection. I still don't  
18 understand it, but the obligation is on them to prove  
19 what we call the chain of custody.  
20 And that is, that they have to prove  
21 how the evidence was handled from the inception where it  
22 was first observed and gathered, down to where it was

23 analyzed, and they have got a missing link, in the  
24 clothing worn by Damon and the T-shirt worn by Darlie.  
25 We know that when that evidence was  
Sandra M. Halsey, CSR, Official Court Reporter  
5676

1 gathered, it was soaking wet in blood. And what we don't  
2 know, and what they haven't brought us, is Paramedic  
3 Zimmerman, who picked up the clothing. Y'all remember  
4 Paramedic Zimmerman? He is the one that picked up the  
5 clothing at the hospital, put it all together and took it  
6 to Station 2, you see.  
7 Was the clothing of Damon permitted to  
8 contaminate the T-shirt of Darlie and the T-shirt of  
9 Darlie to contaminate the clothing of Damon? I suspect  
10 it was. It was all soaked in blood. But you don't know.  
11 They haven't called Paramedic Zimmerman.  
12 And I suggest to you the reason they  
13 haven't called him, was because he will tell you, "I put  
14 it all in a sack, you know." Kind of like Mayne out  
15 there, "If I found it together, I put it all together."  
16 But they haven't brought Paramedic Zimmerman. They have  
17 not explained those fingerprints that we talked about  
18 with consultant Cron, as coincidental.  
19 If they have been compared with Glenn  
20 Mize, he never told me. I don't know whether they have  
21 or not. If they have been compared with Gary Austin down  
22 the way, they have never told me.  
23 If they were compared with the man who  
24 was turned in or phoned in by the used car lot, some, he  
25 said that afternoon, I thought it was that morning of the  
Sandra M. Halsey, CSR, Official Court Reporter  
5677

1 6th, but I'll give him the afternoon. Wearing the same  
2 clothes that Darlie had described, you know, I don't know  
3 anything about it. And I would think that as part of his  
4 proof when he comes to you and asks for death, that he  
5 would cover that.  
6 We don't know anything about the black  
7 car, we don't know anything about Angelia Rickels.  
8 No follow-up on that. They don't tell  
9 us about it until November. Well, what can we do in  
10 November? Thank you, but, you know. And then when I go  
11 out there, they tell them, "Don't talk to anybody. Don't  
12 talk to anybody."  
13 What about Dr. DiMaio, who says these  
14 are defensive wounds? And again, any doubts that you  
15 have must be resolved in favor of Darlie. Again, I'm not  
16 fussing with your verdict, but I am saying that if they

17 expect you to answer the ultimate question, then you are  
18 entitled to some answers and some explanations.

19 Lisa Clayton told you that she has  
20 looked at her for some 12 and a half hours. And she is  
21 inconsistent with a mother who would harm or kill her  
22 children. She has none of the psychiatric make-up that  
23 she would expect to find in a mother who had killed her  
24 children.

25 Dr. Townsend-Parchman says that that  
Sandra M. Halsey, CSR, Official Court Reporter  
5678

1 youngster would have lasted five or six minutes, maybe  
2 eight or nine minutes. And I noticed that Mr. Davis, in  
3 some hour that he had to answer our arguments back on  
4 Friday, totally ignored that time line. Because there is  
5 no answer to that. If she is accurate, you know that  
6 it's inconceivable that she had the time and the ability  
7 to do those things. And again, you must resolve those  
8 doubts in her favor.

9 She has no history of abuse. There is  
10 no motive. There is absolutely no reason. And we know  
11 at this stage that this wasn't a money type of deal.

12 You know, it's curious to me, and I  
13 have never for a minute doubted the innocence of Darin  
14 Routier. But, you know, he of all people, had the most  
15 to gain here. She had a couple of hundred thousand  
16 dollars worth of insurance on her.

17 She doesn't gain anything monetarily.  
18 Five thousand a piece for those children, you know. But  
19 they cleared him like that. What did they clear him on?  
20 They cleared him on what she said. They can pick and  
21 choose what she says. They can believe part of what she  
22 says and just discount, for no rhyme or reason, the other  
23 things that she says.

24 But there is no -- there is no reason  
25 or motive that has been demonstrated. And we all know  
Sandra M. Halsey, CSR, Official Court Reporter  
5679

1 that people don't do things without a reason or motive.  
2 Under Bevel's account, and Ms. Wallace  
3 takes the position that the children were killed first.  
4 But again, we have got these spots of blood and if it's a  
5 spot on a spot, and they're about one millimeter in  
6 diameter, so the chances of those being spots on top of a  
7 spot, three times would be about the same as your chance  
8 of hitting the lottery.  
9 But either way. If the blood is  
10 mixed, that knife had to be wet with her blood for her to

11 get those blood stains on her T-shirt. Either she cut  
12 her throat first and then attacked the boys. And that  
13 doesn't make sense, because how is she going to get the  
14 sock down the alley? That won't work.  
15 I mean, how she is going to get the  
16 sock down the alley without bleeding all over everything?  
17 That will not work. But it doesn't make sense that she  
18 stabbed them both first, and then stabbed herself, and  
19 then go back and stab them again either. I mean, that  
20 doesn't make sense. I mean, that won't work either.  
21 It doesn't make sense that she would  
22 cut her throat, and then go over and lay down on the sofa  
23 and get blood on this pillow. That doesn't make sense.  
24 Or at least to me. And you resolve those doubts, when  
25 you think about the proof in this case, and think about  
Sandra M. Halsey, CSR, Official Court Reporter  
5680

1 whether or not you have got death penalty proof here, you  
2 resolve those doubts in Darlie's behalf.  
3 The third consideration is the  
4 defendant herself in this case.  
5 She must be beyond redemption. I  
6 mean, what easier way, or what better way to prove this  
7 than to show that she has a history, you know, a track  
8 record of anti-social behavior. But you don't have that  
9 in this case. You have no anti-social behavior on the  
10 part of Darlie Routier. In fact, the evidence is to the  
11 contrary.  
12 She has no police record of any sort  
13 whatsoever. And there is absolutely no basis to believe  
14 from what you have heard that she would be capable of  
15 violence in the future.  
16 You know, why else -- and in all my  
17 years of doing this, and I have been doing it a long,  
18 long time. And I feel like it too. But I have never, in  
19 all of the capital murder cases that I have tried, that I  
20 have prosecuted and defended, I have never seen a  
21 situation where all of the victims' relatives have  
22 rallied around the defendant.  
23 Obviously, they think they know her  
24 better than any of us do. I mean, I don't know her much  
25 better than you-all do.  
Sandra M. Halsey, CSR, Official Court Reporter  
5681

1 But they have rallied around her  
2 because they believe that she is incapable of any act of  
3 violence of this magnitude.  
4 And as we think back and reflect on



5 this, you know, the people that we have known, or the  
6 people that we have read about who have committed an  
7 unthinkable act of violence, such as this, have had that  
8 common thread, where they have had a history of violence.  
9 They have had difficulties with the  
10 police. They have had problems at work, and problems at  
11 home, and problems in their family relationships.  
12 And you don't have that here. You  
13 don't have anything that suggests some maniacal, devious  
14 Darlie in this particular case.  
15 In his closing argument to you, Mr.  
16 Davis told you that this is simply another Susan Smith  
17 case. Do you remember that? Do you remember that? On  
18 Friday?  
19 He said this is simply another Susan  
20 Smith case. Susan Smith, if you don't remember, is the  
21 mother from South Carolina who was sentenced to life  
22 imprisonment for drowning her two children. And let's  
23 compare this case with Susan Smith's.  
24 Susan Smith didn't have a stable  
25 marriage. In fact, the evidence was that she --  
Sandra M. Halsey, CSR, Official Court Reporter  
5682

1  
2 MR. GREG DAVIS: Excuse me, I'll  
3 object, that's outside the record.  
4 THE COURT: Gentlemen --  
5 MR. DOUGLAS MULDER: Judge, he brought  
6 it up.  
7 MR. GREG DAVIS: No, I didn't.  
8 THE COURT: Gentlemen, both sides are  
9 instructed to stay within the record. The jury is  
10 instructed to remember the testimony as they heard it,  
11 and be guided by the Charge of the Court.  
12 Mr. Mulder, you may continue.  
13 MR. DOUGLAS MULDER: Darlie has a  
14 stable marriage. She does not have a history of  
15 separation and divorce.  
16 Darlie has a record that is not --  
17 that she does not have a record of anti-social behavior.  
18 She has not had problems with coworkers. She has not had  
19 problems with family and friends.  
20 Her family supports her. I would  
21 suggest to you that many of the positions that Mr. Davis  
22 and the prosecution have taken are either flawed or  
23 faulty. I would suggest to you that at this time you  
24 still don't know how it happened, or why it happened, or  
25 the time restraints that were involved here.

Sandra M. Halsey, CSR, Official Court Reporter  
5683

1 Simply put, I guess, their proof is  
2 just not so positive as to be infallible. And I would  
3 urge you not to make a decision based on this type of  
4 proof that is so final, that it can't be undone.  
5 Tradition has it that the Indians  
6 believed, that before they sat in judgment of one, that  
7 they would first walk in their moccasins. And as one  
8 last request, I would ask you that before you begin your  
9 deliberations on this most, most important issue, that  
10 you first read aloud in the jury room Darlie's journal, a  
11 very private documentary that reflects her very private,  
12 inner-most thoughts.  
13 You have been most attentive, and I  
14 thank you for your time and for your attention.  
15 Thank you, Judge.  
16 THE COURT: Thank you, Mr. Mulder.