

Breast implants and a girl's night out at a male strip club are not inherently indicative of homicidal tendencies. But those details were used by prosecutors in the Dallas County District Attorney's office when they convinced a jury that Darlie Routier deserved to die.

Jezebel

Some legal experts see sex bias in capital murder trial of Darlie Routier

By Kathy Cruz
Texas Center for Community Journalism

It was January 1997 and, in the Kerr County courthouse, Dallas County Assistant District Attorney Greg Davis had Dr. Janis Townsend-Parchman on the stand.

Davis was questioning Townsend-Parchman, a medical doctor and a Dallas County medical examiner, about the injuries she observed on Darlie Routier when the Rowlett homemaker was in Baylor Hospital with a slash across her throat and other injuries. Routier's two sons, Devon and Damon, were dead. They had been killed, Routier said, by a man who broke into the family's home in the dead of night and then fled, leaving carnage in his wake.

Townsend-Parchman had testified about the differences between "cut" and "stab" injuries. She had been quizzed about "rapid ooze" and about what types of wounds cause blood to gush as opposed to spurt. She had been asked to detail the depth of the slash on Routier's throat, and whether the injury could have been self-inflicted.

Then, Davis asked Townsend-Parchman this question:

"At the time that you saw Mrs. Routier, did you know whether or not she had had breast implants?"

It was not the only time during the trial that Davis would raise the issue of Routier's breast augmentation surgery. He quizzed Routier's husband Darin about the plastic surgery during the punishment phase of the trial, when the jury was to determine whether the Rowlett homemaker should spend the rest of her life in prison or die by lethal injection. Routier's lead defense attorney, Doug Mulder, objected to the relevance of the breast implants. However, District Judge Mark Tolle overruled the objection after Davis explained that the implants were important in showing why Routier's injuries were not in her chest area.

It was also during the punishment phase that Davis interrogated witness Melanie Waits

about a Mother's Day weekend girls night out that had involved a trip to LeBare, the only male strip club in Dallas.

The Texas Center for Community Journalism enlisted several legal experts to evaluate Davis' opening statements in the Routier trial for fairness and relevance to the charge against her. All but one said they believed that sexism and stereotyping was at play in the trial of the 26-year-old mother who had been dubbed "Dallas' Susan Smith." Davis did not respond to phone, Fax and email messages seeking his comment.

In his opening statements, Davis detailed high-dollar purchases by both Darlie and Darin: a big house with a fountain, jewelry, a jaguar and a boat. But he characterized Darin as "a hard worker," while Darlie was "materialistic" and "self-centered." Darlie, he insinuated, was motivated to butcher her children out of frustration over not being able to lose weight from her recent pregnancy.

At the time of her arrest, the 5-foot-4 Darlie weighed 133 pounds.

"This whole thing was just crazy to me," said Sandy Aitken of Springtown, an aunt of Darin's who was in the courtroom every day during the month-long trial. "Oh, their spin was bad."

But "spin" may often be the name of the game when defense lawyers and prosecutors are competing to win in a courtroom.

And, as with any game, there are losers.

Tactics on trial

The public should be shocked at Davis' courtroom behavior, according to Geoffrey Hazard, who is considered a leading national expert on ethics in the legal profession. Hazard is a professor at the University of California's Hastings College of Law.

Hazard said that, had Davis tried the same tactics in California where judges have exceptionally high professional standards, "he wouldn't have gotten into the second sentence with that."

"You've got a zoo there," he said, referring to the Routier trial.

Nevertheless, Davis' tactics went largely unchallenged by the judge -- perhaps because at times he may not even have been aware of them. Aitken detailed in more than 400 pages of copious, handwritten trial notes that Tolle appeared to sleep at least 16 times as Routier was on trial.

Mary Penrose, a professor at Texas Wesleyan School of Law who teaches on gender

discrimination, agreed with Hazard that judges in California are different from judges in Texas. But she doesn't necessarily believe that Tolle should have reined in Davis when he brought up breast implants and male strippers. Penrose, who is a court-appointed attorney on death penalty cases, said she does not particularly agree that sexism was at play in Routier's prosecution.

"Death penalty cases have a very different flavor. You might see language that's very inflammatory and that, standing alone, could be considered classist and gender-biased," Penrose said. "The judge may give greater latitude, not only to the prosecution, but to the defense."

Penrose, who stressed that she does not have an opinion as to whether Routier is guilty or innocent, said that the prosecution's focus on the strip club outing likely fit into the overall theme of the case they were trying to make against her.

It was a theme that helped send Darlie Routier to death row, despite claims from friends and family members that she was nothing like the picture painted by the prosecutors who had never so much as spoken to her.

Kathryn Kase, executive director of Texas Defender Service, had strong words when she spoke to TCCJ after reviewing Davis' opening statements in the trial.

"This is a troubling prosecution all the way around, and this opening encapsulates what's so troubling about it," she said. "It does not logically follow that a woman would kill her children because she has breast implants or because her husband doesn't make enough money. This opening statement seems calculated to demonize Darlie Routier in the jury's eyes as a vain, grasping woman – and, in the end, that doesn't tell us anything at all about whether Darlie Routier actually committed capital murder."

Brian Stull, senior staff attorney for the American Civil Liberties Union's (ACLU) Capital Punishment Project, also criticized the courtroom portrayal of Routier, and the focus on things that were not related to evidence.

"The stereotype here -- that moms are more worried about their mummy tummy than the kids -- that's offensive," he said. "And that's a male prosecutor making these comments about a woman. I don't think prosecutors are supposed to be in there appealing to the worst of us. They should be appealing to our better angels when we look at the facts. A lot of people harbor prejudices -- even good people who wish they didn't. But I don't think prosecutors should try to appeal to that. Let's stick with the facts, especially when the prosecutor is asking for a death sentence."

The American Bar Association's standards for prosecutors "specifically say that prosecutors should never appeal to prejudice of any kind – they flat-out say that," said Andrea Lyon, associate dean for clinical programs and director of the Center for Justice

in Capital Cases at DePaul College of Law. Lyon was the first woman in the U.S. to be lead counsel in a death penalty case and has authored a memoir titled "Angel of Death Row."

Lyon said that one of the problems with the type of prosecutorial behavior exhibited in Routier's case is that courts often write it off as "harmless error" that had no effect on a trial's outcome.

"The lesson to prosecutors," said Lyon, "is you can get away with it."

Waits feels that Davis' tactics were not "harmless" -- especially in Kerrville, the seat of one of the most conservative counties in the state. Several of those familiar with the case mentioned to the TCCJ that Kerr County was tough on death penalty defendants back in the late 1990s.

"It was such a conservative town that they didn't like her from the beginning," said Waits. "It was not (a jury of) her peers, let's just put it that way."

Lyon said that another problem with holding prosecutors accountable is that appellate courts do not name prosecutors when the courts agree with defense counsel that an error occurred.

"There's no personal price to it," she said. "And I believe that if a prosecutor knew that if they crossed the line they would be named in an appellate opinion, they'd watch it because there would be a personal price to pay."

Said Waits: "Their whole premise was that she had blonde hair, tattoos and fake boobs. It was just slander."

Penrose said that sometimes zealotry becomes self-righteousness, and when that happens, justice suffers.

Richard Mosty, a Kerrville lawyer who was a member of Routier's defense team, said that then-Dallas County Assistant District Attorney Toby Shook, who assisted in the prosecution, was "very professional" and "an outstanding prosecutor." Of Davis, he said: "I think he let his righteousness get in front of his professional responsibilities."

The fact that for more than 15 years the Routier case has left a bad taste in some people's mouths may have something to do with colliding views of what the courts say is fair game, and what the public believes is dirty pool that can lead to wrongful convictions.

Mosty believed then – and still believes – that the jury got it wrong, reaching a conclusion based on a deceptive image that prosecutors deliberately created of Routier. He said that the case still has a place in his heart.

"It became a lot more than just a case you went out and tried. My entire family got personally involved," he said.

After Routier was found guilty and was sentenced to die by lethal injection, Mostly for a time hung up his law practice and went to the corporate world.

He took a position with Gatti's Pizza.

Justice stripped

Waits had been friends with Routier for about six years when June 6, 1996 happened. Their friendship has weathered regular long distance drives from Waits' home in Roysse City to women's death row in Gatesville.

They had met at a going away party for a couple from Lubbock, where Darin and Darlie had lived before moving to the Metroplex. The two women bonded instantly.

"She just had a great, bubbly personality. She was fun to be with - a very fun person," Waits said. "We exchanged numbers, then we met for lunch and went Christmas shopping together, things like that."

And they went on a girl's night out together at LeBare. Routier's night of letting off steam with the girls was used by Davis as evidence against her when her life was on the line.

Lyon said that there is still often a double standard in the justice system regarding what is acceptable behavior for a man and what is acceptable behavior for a woman.

"Sexual behavior unnoticed or unimportant in a man becomes extremely important in a woman," she said.

The strip club, which opened in 1978, is still doing a thriving business today. Though male dancers do strip, the club does not feature full nudity. LeBare's website advertises party packages, private parties, bachelorette/birthday parties -- and girls' night out.

On deaf ears

On the afternoon of Saturday, Nov. 3, spunky, 65-year-old Sarilda Routier stood on the south steps of the capitol in Austin and shouted "Greg Davis, I'm callin' you out!"

Davis wasn't there to hear it. It appeared as if Gov. Rick Perry wasn't either when several hundred death penalty protestors marched to the governor's mansion and shouted at the gates.

Sarilda Routier had driven to Austin from Lubbock to defend the woman that she said she will always consider her daughter-in-law, even though Darlie and Sarilda's son, Darin, finally divorced in late 2011. Standing behind Sarilda at the microphone was Darlie's mother, Darlie Kee; Darlie Routier's sister, Danelle Fugate; and Danelle's two young daughters, Brooklynn and Payton. The adults were wearing black, long-sleeved T-shirts bearing Darlie's photo. Sarilda, sweltering from the march in temperatures that were in the upper 80s, had stripped to a tank top, tying the shirt with Darlie's picture around her waist like an apron.

Shortly after Sarilda's tongue-lashing of Davis, the crowd dispersed with pledges to meet again in 2013 for the 14th annual March to Abolish the Death Penalty.

Kee and Fugate decided to forego a barbecue for the families of death row inmates in the best interest of Brooklynn and Payton. The little girls were crying for their Aunt Darlie and could not be consoled.

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