

Ginny Rivera

CAUSE NUMBERS 8269A & 8270

THE STATE OF TEXAS	§	IN THE 32ND JUDICIAL
VS.	§	DISTRICT COURT OF
SHAWN ADKINS	§	MITCHELL COUNTY, TEXAS

STATE'S MOTION TO DISMISS PROSECUTION WITHOUT PREJUDICE

TO THE HONORABLE GLEN HARRISON:

The State of Texas, by and through her District Attorney, pursuant to Art. 32.02, Texas Code of Criminal Procedure, seeks to dismiss the prosecution in these causes because further investigation is needed in order to prove the elements of the offenses beyond a reasonable doubt. This motion to dismiss is submitted without prejudice. The State hereby gives notice to Defendant that the State has the right to re-file these charges at a later date.

THE PROSECUTION'S DUTY UNDER THE LAW

“It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done.” Tex. Code Crim. Proc. art. 2.01. The prosecutors in this case are bound by this principle, and it is a longstanding rule that is a pillar in upholding the U.S. Constitution, the Texas Constitution, and the rule of law.

As United States Supreme Court Justice Sutherland eloquently wrote,

The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Berger v. United States, 295 U.S. 78, 88 (1935).

BASIS OF DISMISSAL IN THIS CASE

Pursuant to the State's duty to see that justice is done, the prosecution in this case believes that further investigation is needed for the State to proceed to trial. To be clear, the prosecution views Shawn Casey Adkins as the primary suspect in the Hailey Dunn murder on or about December 27, 2010, in Mitchell County, Texas. However, additional work must be done before the case can proceed to a jury trial.

RELEVANT FACTS SUPPORTING DISMISSAL

This is a complex circumstantial case. The State of Texas has spent the last year collecting, organizing, and reviewing the voluminous amount of discovery in this case. Moreover, the State has met with and interviewed nearly fifty witnesses associated with this case. Through the course of its preparation, and reviewing the discovery currently available, it is clear that additional time is needed to fully investigate the veracity all of the issues that have arisen during the course of this case and during trial preparation. A summary of some, but not all, of the issues are as follows.

The State's *Brady* Notice

The State has provided Defendant, by and through his attorney, a 16-page, comprehensive *Brady* notice detailing potential exculpatory, impeachment, and mitigating evidence in this case.¹ That *Brady* notice explains, in greater detail, the information contained in this motion.

Tips, Leads, and Alternate Suspects

The investigation of Hailey Dunn's murder spanned over a decade and involved an array of law enforcement agencies, including, but not limited to, the Colorado City Police Department, the Mitchell County Sheriff's Office, the Texas Department of Public Safety, the Texas Rangers,

¹ Pursuant to the seminal United State Supreme Court case *Brady v. Maryland*, criminal defendants are entitled to the timely disclosure of exculpatory and mitigating evidence. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Impeachment evidence is within the scope of the evidence that must be disclosed. *United States v. Bagley*, 473 U.S. 667, 676 (1985). *Brady* is codified in the Texas Code of Criminal Procedure. See Tex. Code Crim. Proc. Ann. art. 39.14(h).

the FBI, the Texas Department of Criminal Justice, the 32nd Judicial District Attorney's Office, the 132nd Judicial District Attorney's Office, the Snyder Police Department, the Abilene Police Department, the Ector County Sheriff's Office, and more. During the investigation, hundreds of tips, leads, and potential alternate suspects were provided to law enforcement.² Some of these tips and leads were investigated and cleared. However, many of the tips and leads were not properly vetted, investigated, or cleared. This is important in any criminal case, but it is critical in a case such as this that relies exclusively on circumstantial evidence.

Geological Forensic Science Evidence

One of the critical pieces of evidence for the State involved a soil analysis conducted by a soil expert for the State of Texas. During the initial investigation surrounding Hailey Dunn's disappearance, law enforcement collected a pair of work boots belonging to the Defendant. Hailey Dunn's remains were discovered in Scurry County, Texas, in 2013. This expert used a testing method known as Near Infrared Spectroscopy or "NIRS" in her analysis. Using NIRS, the expert concluded that soil samples obtained from the Defendant's boots had a high degree of chemical similarity with soil samples collected from the remains site.

Prior to the expert conducting a soil analysis, these same soil samples had been sent to the FBI Crime Lab in Quantico, Virginia. Using a methodology peer-reviewed and recognized by the geological forensic science community, the FBI forensic scientists determined that the soil sample from the Defendant's boots did not match the soil samples collected near Hailey Dunn's remains.

During the course of preparing this case for trial, the State of Texas sought out and met with the FBI Crime Laboratory and asked them to review the soil expert's report. After the FBI

² For example, one witness claimed to have seen Hailey Dunn on the evening of Monday, December 27, 2010. Another witness claimed that Hailey Dunn stated that she was leaving town the day before she disappeared. To the State's knowledge these witnesses were never formally interviewed.

analyzed and reviewed the soil expert's report, the State of Texas met³ with the FBI and learned that NIRS is not a testing methodology sanctioned by the forensic science community for soil analysis. Moreover, in the context of forensic science, NIRS has not been peer-reviewed, subject to rigorous study, nor has it previously been used to forensically test soil in the manner that was done in this case. The FBI stands by their original testing and does not believe that the testing done by the soil expert should be relied on in a criminal trial.

The Forensic Anthropology Report

Hailey Dunn's remains were recovered in March 2013 and sent to the University of North Texas, where they were analyzed by a forensic anthropologist. The forensic anthropologist observed blunt force injuries to Hailey Dunn's skull and determined that the injuries were perimortem, meaning that they were inflicted at or near the time of death. These injuries are catastrophic and likely would have resulted in significant bleeding. While multiple searches of the house were conducted by law enforcement, the State of Texas is not aware of any forensic testing that was done in the house in the immediate aftermath of Hailey's disappearance on December 27, 2010.

In addition, multiple searches of the vehicle at issue in this case, as well as the location of Hailey Dunn's remains, were conducted by law enforcement. As a result of those searches some evidence was collected that was never forensically tested. Before this case proceeds to trial, that evidence should be thoroughly tested to determine if it has any probative value.

Cell Tower Data / Timeline

Another central piece of evidence in this investigation and case involves cell records and cell tower records for the Defendant and Hailey Dunn. Those cell tower records were analyzed by

³ The State met with the FBI regarding this report on June 20, 2023.

a cell phone analyst with the FBI's Cellular Analysis Survey Team or "CAST" Team. Among other things, the records show that on December 27, 2010, Hailey Dunn's cell phone sent an outgoing text message at 2:16 PM and another at 2:27 PM. During this same time, the Defendant's cell connected to a cell tower in Big Spring, Texas, at 1:53 PM and at 2:40 PM. Moreover, the records reveal that the Defendant placed an outgoing call at 2:56 PM on December 27, 2010, that connected to a cell tower along I-20 east of Big Spring but west of Colorado City. The records also show that one minute later an incoming call to Hailey Dunn's cell phone connected to a cell tower in Colorado City, Texas. These two facts, taken together, while not conclusive, lend support to the proposition that Hailey Dunn may have been alive prior to 2:57 PM on December 27, 2010.

The evening of December 26, 2010, Hailey Dunn's brother spent the night with two friends. He returned home on December 27, 2010, at approximately 5:00 PM. Upon his arrival, he saw and spoke with the Defendant. Hailey Dunn was not there. At approximately 6:00 PM, the Defendant left the home to pick up Hailey Dunn's mother from work in Snyder, Texas. The Defendant was not alone again until the following morning.

Viewing the evidence collectively, if Hailey was alive when the Defendant arrived back at the house, he would have been alone with Hailey Dunn for at most approximately two hours (from approximately 3:00 PM to approximately 5:00 PM). This means that the Defendant would have had to kill her, clean up any blood and other incriminating evidence in the home, and hidden her body in a relatively short amount of time. While this is not impossible, it presents additional challenges given the preceding issues.

CONCLUSION

This is a complex circumstantial evidence case. There is no known direct eyewitness to Hailey Dunn's murder. Nor is there any known current forensic science evidence directly linking

Shawn Adkins to her murder. In addition, Hailey Dunn's remains were not located until March of 2013. During this period, many leads and tips were provided to various law enforcement agencies.

In light of the above, while the Defendant remains the primary suspect, the current state of the evidence is not sufficient for the prosecution to proceed to trial. For these reasons, the prosecution believes that additional investigation is needed in this case and, as such, recommends to this Honorable Court that the above styled and numbered causes be dismissed, subject to re-file pending further investigation.

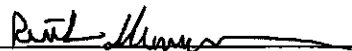
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the attorney of record for the defendant via the Texas E-File System and/or via E-Mail on **June 26, 2023**.



Richard Thompson

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Joshua Somers on behalf of Joshua Somers
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Envelope ID: 76968897
Filing Code Description: Motion
Filing Description: Motion to Dismiss signed copy
Status as of 6/27/2023 10:11 AM CST

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