

Prosecution's Timeline Makes Crime Impossible - The Mickey Davis Story

By Mickey Davis

Edited by Karyse Phillips, JD Editor

My name is Mickey Davis. On April 23, 1996 a jury convicted me of first-degree murder and felony firearm in the Circuit Court of Berrien County, Michigan.

My conviction was in connection with the shooting death of my wife, Priscilla Davis, in her parent's home on the evening of October 6, 1995. The prosecution's theory was that I had broken into the home with my alleged girlfriend, Melissa Peters, and that I fatally shot Priscilla when she returned home and encountered us in her home. The alleged motive was I wanted custody of our daughter Alyssa. My defense countered that I was not in the area at the time of the offense and suggested that the prosecution's chief witness — Melissa Peters — had killed Priscilla out of jealousy.

Background

I had been working as a maintenance supervisor for a property management company and on June 1, 1994 I was transferred from Benton Harbor to Lansing. I worked in Lansing during the week and was home on the weekends. Priscilla did not want to move to Lansing, about 130 miles away from her parents, and as a result we were separated in August of 1994. We had a daughter together named Alyssa and a son, Troy, from my previous marriage. Priscilla filed for a divorce and was granted temporary custody of Alyssa and they lived with her parents in Benton Harbor, while Troy lived with me in Lansing. Priscilla was granted child support and I was given custody of our daughter every other weekend. In December of 1994, Priscilla called and said that I did not have to come to pick Alyssa up. She said that she would drive our daughter to Benton Harbor because in order to talk to me. Priscilla asked me if I would take her back. She wanted our marriage to work and said that she was sorry for everything that had happened, but that her parents had wanted us divorced and it may take some time. In January of 1995, I filed a motion to stop child support and Priscilla filed a response in the Berrien County court. My motion was granted on January 26, 1995, and any arrears were forgiven. Due to the pressure on Priscilla by her parents she continued to live with them. Priscilla and I agreed that Alyssa would live with me in Lansing for the summer and that I would return her a week before preschool started in the fall. Priscilla and I would usually meet in Kalamazoo to exchange custody of our daughter at 6:00 p.m.

In February 1995, I took a week vacation and picked up Alyssa. I tried taking her to a licensed babysitter, dropping her off for a couple of hours and then picking her up, but she was not happy with that, so I knew that I was going to have to come up with something else for the summer. In April, I was introduced to Melissa Peters, who was seventeen and had a six-month old baby. She watched Alyssa for a couple of hours the following Saturday and everything went fine. Peters and I reached an agreement. She and her baby would move in for the summer. She would watch Alyssa while I was at work. Troy or I would watch her baby while she worked, and I would buy whatever the baby needed. The next time I went to pick up Alyssa, I took Peters and her baby with me to meet Priscilla so that she would know who was watching our daughter while I was at work.

Pre-Trial Events

After my arrest, Mr. Renfro was appointed to represent me. A preliminary examination was held on October 24, 1995. The prosecution requested that the autopsy reports, prepared and submitted by Dr. Cohle, be admitted into evidence in lieu of his live testimony and they were admitted. Officer Lange testified

that upon arriving at the crime scene he was directed to the bedroom where he observed a white female lying kind of face up next to a bed. He also testified that he had checked the exterior of the house and found no sign of forced entry. Peters took the witness stand and was to present her testimony in accordance with a plea agreement with the Berrien County prosecuting Attorney's Office. Peters stated, "Before we begin I would like to say something. Mickey Davis over there (indicating me) had nothing to do with this. Okay? I'm sorry, everything that I have said has not been the truth. I have to now say everything that has happened. Every one of my statements need to be removed. They are not true." The hearing was stopped at this point. Even though my lawyer objected, the judge granted the prosecution a two-week continuance.

On November 7, 1995, a second preliminary examination was held. Peters testified for the prosecution that I drove her to Benton Harbor and dropped her off down the street from Priscilla's house. She was not sure what time it was. I was supposed to meet Priscilla in Kalamazoo at 6:00 pm to pick up Alyssa for the weekend. Peters testified that I returned to Benton Harbor and picked her up at 6:45 pm. She was sure of the time because she had looked at her watch. Peters testified that Alyssa was asleep when she was picked up and we parked the car, leaving Alyssa in the car asleep. She testified that she and I walked to the house and I used a pry bar to open the south door of the house. According to her, several minutes after we were in the house searching it, Priscilla arrived and we hid. Priscilla unlocked the south door, entered the house, set her keys and purse down, then went to the phone and made a call, but did not talk and then hung up the phone. After Priscilla went into her bedroom, Peters further testified that she headed towards the south door to leave when she heard 3 or 4 shots fired. She went back to the bedroom and saw Priscilla lying on the floor and I was standing there holding a gun. She testified that I handed her the gun and told her to shoot Priscilla and that when she refused, I struck her above her left eye. After she shot Priscilla in the leg, she went into Priscilla's bathroom to retrieve her coat. According to Peters, she was driving Priscilla's car, dropped me off at my car, and then followed me to a rest area by Exit 72 on I-94. She said we stopped there before continuing to where she had parked, and that is where she left Priscilla's car.

After being bound over to circuit court, I filed a pro per Motion for Substitute Counsel and a Motion for Discovery. My attorney had refused to file any motions, refused to investigate and obtain exculpatory evidence, and never talked to me about the case. On January 30, 1996, 28 days before trial, the judge granted the motion for substitute counsel, but ruled the motion for discovery "moot." Renfro was removed from representing me, and replaced by his law firm's partner, Mr. White.

After asking White several times, I wrote him a letter requesting that he subpoena the phone records of (616) 9**-6***, showing the local and long distant calls made on October 6, 1995, between 6:30 p.m. - 7:15p.m. White did submit a written request to subpoena the phone records and Peters' criminal history. Also, an oral request was made for her criminal history at a hearing held on April 8, 1996. Although White filed a motion for discovery, he withdrew it on that same day and failed to follow through with the subpoena requests. White also filed a motion to withdraw due to a conflict of interest that the judge denied. The judge also ruled that Renfro could not be called as a witness by the defense.

Before my trial, a hearing was held to consider the prosecution's request to admit evidence of prior acts. The trial judge ruled against admitting statements made by Priscilla to friends or associates. The judge stated, "Statements made by the deceased to friends or associates will not produce a fair trial by allowing the jury to consider those as evidence, so I'm not letting it in, I guarantee a reversible error if I did."

The Trial

Officer Neal testified at my trial that after he arrived, he was directed to the bedroom where he observed Priscilla lying on her back. Officer Lange testified he had prepared the search warrant and that he had checked the house for any signs of forced entry and found nothing that appeared to be new. Officer Reeves testified he executed the search warrant for my apartment and car with the help of other officers. Several items were seized from my apartment and car. A device was found in the car that consisted of a clear pop container wrapped in duct tape, with steel wool and cloth wadding inside of it. Also, a photo was taken to show all the ammunition lying around my bedroom.

Two of Priscilla's friends, Mr. Hirsch and Mr. Bryant, testified they and Priscilla left Benton Harbor in two separate vehicles (Priscilla & Alyssa in one, the two of them in the other one) about 4:15 p.m. and arrived in Kalamazoo about 5:15 p.m. I was already there, parked in my car when they arrived. They left Kalamazoo about 6:20-6:25 p.m. and arrived at the Petro Station in Benton Harbor about 7:30 p.m. At about 7:35-7:40 p.m. Priscilla headed home and the two men stopped for beer and then proceeded to Hirsch's house, arriving there at about 7:45-7:50 p.m. Hirsch went to Priscilla's house at about 10:00 p.m., where he found her on her bedroom floor. He said she was lying on her back and he did not move her. Mr. Hirsch testified that PX #14, a photo of the Priscilla, reflects how he saw her when he entered the bedroom. In August of 1998 I obtained a copy of Priscilla's Certificate of Death which indicates the time of death at 1915 hours (7:15 p.m.). Also, police reports, the autopsy report, and affidavits of three search warrants all state that Priscilla was last seen alive at about 7:00 p.m. None of those documents were offered as evidence at my trial by my lawyer.

... it took a police officer 24 minutes to drive from Paw Paw to the Benton Harbor Exit 33, on I-94, traveling at 71 mph, which was still 5-6 miles, 4 stop signs, and reduced city speed limits from the crime scene. ... It is physically impossible for Mr. Davis, or anyone, to drive from Paw Paw to the crime scene in 12 minutes, half the time it took the police to just drive from Exit 60 (Paw Paw) to Exit 33.

Peters testified she had never previously been in trouble, never been arrested, or convicted of any crime and was testifying as part of a plea agreement. In July of 1999, I obtained a report that shows, contrary to her testimony, Peters has a criminal history in several states (juvenile record) which was not provided to the defense before or during trial. An oral request was made at a hearing on April 8, 1996, and a written request was made before trial for Peter's criminal history.

In her now changed testimony, Peters omitted retrieving her coat from Priscilla's bathroom, or stopping at the rest area, and she had no idea what time I picked her up, but she was sure that she was dropped off at 5:15 p.m. because she had looked at her watch. The time differs from the time of her original testimony. There were numerous other discrepancies between her testimony and what she said at the preliminary examination. She testified that neither she nor I left my apartment the following day (Saturday) before the police arrived. After saying she was feeling sick, the judge granted a short recess. That was at 1:56 p.m. She left the courtroom, but at 1:59 p.m. she returned to the witness stand. When she resumed testifying, she changed her testimony of a few minutes earlier by stating that she had left the apartment on that Saturday to go shopping. However, this was contradicted by Mr. and Mrs. Hernandez, who testified that Alyssa and I were at their house on Saturday for a few hours. Peters also claimed that she was scared of me and could not get away from me and that I would not allow her out of my sight after Priscilla's murder, which contradicted her claim that she went shopping. She also said there was no ammunition lying around the apartment, but a police photo shows differently. Peters and the jurors were given a floor diagram of the crime scene (PX #53) that shows a body in the bedroom. She indicated on the diagram where she stood when she supposedly shot Priscilla in the leg.

Dr. Cohle, the prosecution's medical expert, testified that he performed the autopsy on Priscilla. He stated that the most remarkable thing about the wound to the left leg was the path of this bullet was from left-to-right, from back-to-front, and

Mickey Davis continued on page 13

Justice For All Act continued from page 12

Another part of the JFAA that cosmetically looks like a step forward is Section 431's increase in compensation for an unjustly imprisoned federal prisoner from a flat \$5,000 payment, to a maximum of \$50,000 per year of "unjust imprisonment" in non-capital, and \$100,000 per year of "unjust imprisonment" in capital cases. However that change will likely mean little in actual practice, because a microscopic percentage of federal prisoners will be found to have satisfied the compensation requirement of having been "unjustly imprisoned."

Still another provision of the JFAA, Section 204, could prove ominous if applied to cases that don't involve DNA evidence, since it alters the tolling of the statute of limitations from the date of a crime's commission, to the date a suspect is implicated by an inculpatory DNA test.

Furthermore, there is one glaring omission from the JFAA that would have provided meaningful assistance to innocent death row prisoners: Reestablishment of state level Death Penalty Resource Centers, for which funding was cut in 1996.

One the other hand, a glaring inclusion in the JFAA that can harm an innocent person, is Section 411's specific exclusion of its provision acknowledging the exculpatory value of DNA evidence from being applicable to a habeas corpus proceeding. A provision in the JFAA mandating that Federal courts consider the exculpatory value of DNA evidence in a habeas petition by a federal or state prisoner would have provided an additional measure of protection for the innocent. Particularly since there is no consensus in Federal court as to the evidentiary value of exculpatory DNA evidence.

The JFAA does however, have several provisions that may help the innocent. Section 202 provides for funding the testing of DNA samples at the state level, particularly in several hundred thousand untested rape kits, that could potentially prove to include exculpatory evidence for a wrongly accused or convicted person. Section 411 establishes clear and important guidelines for the preservation, testing, and consideration of DNA evidence in Federal cases. Section 412 authorizes a nominal amount of money (\$5 million per year) "...to help States to defray the costs of post-conviction DNA testing."

The miracle that the JFAA has any teeth at all is indicated by the fact that when the House of Representatives passed it, the White House (President Bush), the U.S. Department of Justice (Attorney General John Ashcroft) and two influential Republican Senators (Jeff Sessions and Jon Kyl) were adamantly opposed to its enactment. Given the overwhelming support for the JFAA in both the House and Senate, the Bush Administration's determined efforts to block it failed. However President Bush did wait until the last day that he had available to sign the bill, which he might have vetoed if he hadn't known Congress would have overridden it.

The Justice For All Act of 2004 can be read, downloaded or printed (34 pgs) from *Justice:Denied's* website at: <http://justicedenied.org/jfaa.pdf>

Endnotes:

¹ Justice For All Act of 2004: Section-By-Section Analysis, U.S. Senator Patrick Leahy, <http://leahy.senate.gov/press/200410/100904E.html>

² *Id.*

³ Justice For All Act of 2004. Sec. 411. Federal post-conviction DNA testing.

⁴ *Id.*

⁵ *Id.*

⁶ Justice For All Act of 2004: Section-By-Section Analysis, *supra*.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Justice For All Act of 2004. Sec. 432. Sense of Congress regarding compensation in State death penalty cases.

Convictions Tossed For Talking Suggestively On Telephone

Seventeen year-old Anthony McKenzie made several collect phone calls in June and July 2003 from Georgia's Forsyth County jail to a 14-year-old girl he met over the Internet. During the jail monitored calls the couple carried on sexually suggestive conversations.

McKenzie was then prosecuted and convicted of two counts of violating a Georgia state law (OCGA § 46-5-21(a)(1)) that criminalizes "indecent, lewd, lascivious, and filthy, as well as obscene, telephonic communication made by private individuals or commercial entities regardless of the speaker's intent." (*McKenzie v. State*, No. S05A0298 (Ga. 04/26/2005); 2005.GA.0000544 ¶ 9 <<http://www.versuslaw.com>>).

On April 25, 2005 the Georgia Supreme Court tossed McKenzie's convictions when it unanimously ruled:

"Instead of applying only to obscene speech, it [the statute] applies to speech that is merely indecent. Instead of making illegal such speech only when directed at minors, it makes such speech illegal when heard by adults. Instead of applying only to speech not welcomed by the listener and spoken with intent to harass, it applies to speech welcomed by the listener and spoken with intent to please or amuse. Because the statute is an overbroad infringement on the First Amendment's guarantee of freedom of speech, appellant's convictions for violating the unconstitutional statute must be reversed." (*Id.* at ¶ 11)

Source: *McKenzie v. State*, No. S05A0298 (Ga. 04/26/2005)

Mickey Davis continued from page 6

from below-upward. Dr. Cohle was then given PX #14 (a photo of the victim lying on the floor) and asked if the path of the bullet would be consistent with that photo, if a person was standing at the victim's feet and shooting her. He replied that it was consistent with what he previously said. He stated that there was little bleeding from this wound, which would indicate that it was one of the last or the last wound. He was told that Priscilla had last been seen alive about 7:00 p.m. and found dead at 10:00 p.m., so he determined that she was shot about 7:15 p.m. Dr. Cohle's testimony was used to corroborate Peters' testimony. But, Dr. Cohle's testimony is contrary to the physical facts contained in Autopsy Reports (A-95-480) which state the path of direction of this bullet is slightly from above-downward and testimony and physical evidence shows Priscilla was lying on her back. Therefore, this wound could not have been inflicted as was testified to, nor could it have been one of, or the last shot fired. The autopsy reports were not offered into evidence by either my lawyer or the prosecutor. Evidence shows that this wound would have been the first or one of first inflicted, before Priscilla ended up on her back.

Detective Renhawitz testified that he saw a bruise under one of Peters eyes and that was contrary to Peters' testimony. Her mug shot, taken at the time of her arrest, showed there was no bruise, but the mug shot was not offered into evidence by my lawyer.

Several of Priscilla's neighbors testified to seeing Peters in the neighborhood of Priscilla's house, and around the house itself. Several forensic experts testified that the fingerprints and footwear impressions found at the crime scene and in the victim's car did not match mine, nor was the murder weapon traceable to me. The fabric, tape, plastic, and steel wool samples from the crime scene did not match the items taken from my apartment or the device from my car. No physical evidence links me to Priscilla's murder. The prosecution's case hinged on its star witness — Peters. The judge observed, "If Ms. Peters didn't testify against him, I wouldn't think the prosecution would have an awful lot of case." The judge added, "The prosecution would have a real tough time convicting you without that evidence."

Mr. Hanner, a co-worker of Priscilla's, alleged that Priscilla told him that I had called her the morning of this homicide, and threatened to kill her. The judge ruled prior to my trial that his testimony concerning the phone call was inadmissible, but during the trial he changed his mind and decided to allowed it under MRE 803(2), as an excited utterance. When my lawyer tried to elicit Hanner's entire statement, the prosecution objected that it was hearsay. The judge ruled the jury couldn't hear, "Ms. Peters might kill her," because it was neither material nor relevant. However the judge did allow the statement, "Mr. Davis threatened to kill her." After Hanner left the stand, the judge told the jury the reason he allowed this testimony was because it served to identify the perpetrator. At that point the judge effectively expressed to the jury the belief that I was the perpetrator, and the prosecution capitalized on that in his closing argument. Hanner's handwritten statement and his police interview support that his alleged conversation with Priscilla was not an excited utterance. The statements also conflict with his testimony and indicate he told the jury his own words and not those of Priscilla. My lawyer didn't present Hanner's previous statements to strengthen his objection to the judge's ruling allowing Hanner's testimony.

I took the stand on my own behalf and testified that I did not kill my wife, nor was I involved in her murder. I was with our 4-year-old daughter when I received a page on my pager. I then made a phone call from the town of Paw Paw at 7:01 p.m. for 2 minutes to Priscilla's house. That call was answered by the answering machine. I was not even in Berrien County that evening. The only corroborating evidence my lawyer presented was the phone bill showing the call I made from Paw Paw. Also, I had not seen Peters since about 1:00 p.m. until I picked her up at about 8:20 p.m.

On rebuttal, testimony was given that it took a police officer 24 minutes to drive the 27 miles from Paw Paw to the Benton Harbor Exit 33, on I-94, traveling at 71 mph, which was still 5-6 miles, 4 stop signs, and reduced city speed limits from the crime scene. The undisclosed phone records for (616) 927-6068 would have established that Priscilla was home before 7:00 p.m., and that she paged me. That is critical because Priscilla's Certificate of Death states her time of death was 1915 hrs. (7:15 p.m.). It is physically impossible that I, or anyone, could drive from Paw Paw to the crime scene in 12 minutes, which is half the time it took the police to just drive from Exit 60 (Paw Paw) to Exit 33.

The prosecutor misstated crucial evidence and testimony in his closing argument and presented his own version of the alleged phone conversation between my wife and I that was not in evidence or testified to at trial.

My conviction was affirmed by the Michigan Court of Appeals on June 5, 1998. The Michigan Supreme Court denied an application for leave to appeal on March 30, 1999. A Motion for Relief from Judgment was denied on October 24, 2000, by my trial judge, who indicated that I failed to satisfy the "actual prejudice" and "good cause" requirements set forth in MCR 6.508(D)(3)(A). My trial judge denied a Motion for Subpoena for Phone Records stating that there was no meritorious basis for granting the motion, even though it is exculpatory evidence that would help establish my innocence. On September 30, 2002 the U.S. District Court, Eastern District denied a habeas corpus petition. On April 9, 2002 the federal Sixth Circuit Court of Appeals denied my appeal of the District Court's decision. On August 5, 2004 the U.S. Supreme Court rejected my petition for a writ of certiorari. To date, no state or federal court has considered the importance of my claims of actual innocence.

Thank you for reading about my case and my current legal predicament. I can be contacted at:
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