

Testimony of Detective Jimmy Patterson (2)

THE COURT: Mr. Mosty, are you ready?

20 MR. RICHARD C. MOSTY: Well, that
21 depends on what we're getting ready to do.

22 THE COURT: Well. All right. Where
23 is Mr. Mulder?

24 MR. RICHARD C. MOSTY: I don't know,
25 your Honor.

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1 THE COURT: All right. Let the record
2 reflect that these proceedings are being held outside the
3 presence of the jury and all parties in the trial are
4 present.

5 Mr. Mosty, you will be representing
6 Mrs. Routier for this hearing. It's past 8:30 and I have
7 told everyone to be here at 8:30.

8 MR. RICHARD C. MOSTY: Yes, sir, I
9 will represent Mrs. Routier.

10 THE COURT: I figured that is what we
11 will do.

12 MR. RICHARD C. MOSTY: If that is okay
13 with the Court?

14 THE COURT: That is fine with the
15 Court. Fine with the Court. All right. The purpose of
16 this hearing today is we're discussing the microphones
17 that were put out at the cemetery. And Officer -- let
18 the record reflect that Officer Patterson is present, and
19 he has been appointed an attorney for this purpose, Mr.
20 Albert Patillo, from Kerrville; and Officer Frosch has
21 been appointed Mr. Steve Pickell, P-I-C-K-E-L-L, of
22 Kerrville.

23 And, Mr. Patillo, you have conferred
24 with your client?

25 MR. PATILLO: Yes, I have, your Honor.
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1 THE COURT: And, what is the result of
2 that conference?

3 MR. PATILLO: We will decline to
4 testify further in this matter. And my client, on my
5 advice, will take the Fifth.

6 THE COURT: As regards to the
7 microphones at the cemetery?

8 MR. PATILLO: Yes, sir.

9 THE COURT: All right. Will you, have
10 Mr. Pickell, and his client, step in, please.

11 And, let the record reflect that
12 Officer Frosch -- and I am embarrassed, I have forgotten
13 your first name.
14 OFFICER CHRIS FROSCH: Chris.
15 THE COURT: Officer Chris Frosch,
16 F-R-O-S-C-H, is present, and with his attorney, Mr. Steve
17 Pickell.
18 And you have conferred with your
19 client, Mr. Pickell?
20 MR. PICKELL: Yes, your Honor.
21 THE COURT: Okay. What is the result
22 of that conference?
23 MR. PICKELL: Your Honor, Detective
24 Frosch would assert his Fifth Amendment right.
25 THE COURT: Concerning the testimony
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1 as regards to the recording devices or the microphones,
2 or whatever, that were put up at the cemetery, and only
3 regards that, concerning only that portion; is that
4 correct?
5 MR. PICKELL: That is correct, your
6 Honor.
7 THE COURT: All right. Fine.
8 Anything, Mr. Davis?
9 MR. GREG DAVIS: Yes, sir. At this
10 time, the State would indicate that we believe this
11 testimony is not relevant, it's improper impeachment.
12 And, again, I'm talking about the subject of the mike on
13 the grave site. And we would ask that the Court instruct
14 Mr. Mulder not to go into these matters any further in
15 front of this jury, because again, we feel the
16 prejudicial effect here, of having to inform the jury
17 that these officers have taken the Fifth Amendment.
18 Again, we believe that the matters are
19 irrelevant and that they are improper impeachment.
20 THE COURT: The State is not going to
21 use anything that came out of that?
22 MR. GREG DAVIS: That is correct. We
23 are not going to go into that matter. We're not going to
24 offer any of those recordings, video or otherwise, so we
25 did not intend to talk about that matter in front of this
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1 jury.
2 THE COURT: Was there any exculpatory
3 material in that?
4 MR. GREG DAVIS: No, sir, but in all,

5 in caution, I did turn over those matters to the defense.

6 THE COURT: So the defense has those

7 tapes? You gentlemen have those tapes?

8 MR. DOUGLAS MULDER: Judge, they are

9 the ones that first went into this matter. We didn't go

10 into anything at the grave site. They did.

11 THE COURT: All I want to know right

12 now, Mr. Mulder, is: Do you have those tapes?

13 MR. DOUGLAS MULDER: Well, I have some

14 tapes. I don't know whether I have those.

15 THE COURT: Did you listen to them?

16 MR. DOUGLAS MULDER: Yes, sir.

17 THE COURT: When were they given to

18 the defense?

19 MR. DOUGLAS MULDER: Well, we didn't

20 get into the case until --

21 MR. GREG DAVIS: Probably sometime in

22 November, I believe.

23 MR. DOUGLAS MULDER: So, if it's like

24 everything else, it came in at the last minute or

25 sometime in January.

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1 MR. RICHARD C. MOSTY: Well, let me

2 describe that, your Honor. There is a video tape, that

3 is obviously taken from a vehicle near the grave site,

4 that you can see it panning on various people. And, then

5 you hear the audio.

6 Sometimes the audio -- it depends on

7 how close they were to the mike, on whether or not you

8 could hear it. But that video is -- it starts off with

9 some gentleman out there watering the grave sites,

10 apparently an employee, and is, I am guessing, it covers,

11 maybe, as much as 14 hours that day.

12 THE COURT: Well, then the video

13 does --

14 MR. RICHARD C. MOSTY: So it's hard to

15 say, and our copy -- I don't know what the State's copy

16 is like -- our copy is not all so great on the video

17 part.

18 MR. DOUGLAS MULDER: Judge, I would

19 like to point out to the Court, that I think felonious

20 conduct on the part of the police officers during an

21 investigation is always material.

22 It goes to the integrity of the

23 investigation. And, you know, whether they like it or

24 not, they are the ones that opened this up. We didn't go

25 into anything at the grave site. The prosecution did.

1 And, you know, they have to take the
2 bad with the good. They were smiling and telling jokes
3 when this video was on for the jury. And now they have
4 got to take the corresponding responsibility of what this
5 has brought.
6 So, any time the investigation has
7 been compromised by felonious conduct on the part of the
8 officers, it's always admissible to the jury. And, I
9 would certainly caution the Court, or remind the Court,
10 that they can't take the Fifth on part of their
11 testimony.
12 They are like everybody else when it
13 comes to getting on the witness stand. They can't assert
14 the Fifth just to a certain matter. And say, "I don't
15 want to talk about that, and I want to hide behind the
16 Fifth Amendment."
17 MR. RICHARD C. MOSTY: And not only on
18 the relevance issue, the Court has got to remember, that
19 Cron has testified that he decided within 20 minutes
20 that -- of the defendant's guilt, that the Rowlett Police
21 Department was informed of that, that Mr. Davis was on
22 the job within five days after that, and that this -- and
23 this whole focus, as I said in my opening statement, she
24 became the target in the rifle scope, at the beginning,
25 and the methodology and how Rowlett went about
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1 investigating this, and choosing not to investigate other
2 things, is directly shown by going out and putting an
3 illegal bug out in a graveyard.
4 THE COURT: Okay. So you're using
5 this to impeach the officers; is that correct?
6 MR. RICHARD C. MOSTY: I don't know
7 that impeach is the right --
8 MR. DOUGLAS MULDER: Not exclusively.
9 MR. RICHARD C. MOSTY: We're using it
10 to show what they did. It's just a simple fact of how
11 they investigated it.
12 MR. DOUGLAS MULDER: But, Judge, once
13 again, they brought it up. We didn't go into this
14 matter. And now they have got to take the bad with the
15 good.
16 THE COURT: Let Mr. Hagler make his
17 objections. These are the real objections.
18 MR. JOHN HAGLER: Well, your Honor, a
19 couple things as far as the facts. They are arguing

20 irrelevancy, your Honor.

21 Again, I think Mr. Mosty has already
22 stated, that certainly it's relevant, in the fact that
23 the defendant was targeted in this case within 20 minutes
24 as being the assailant.

25 And, certainly, this would have some
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1 relevancy as to the jury, in our showing that there is a
2 motive on the part of the police department to actively
3 pursue the defendant and to target her as the assailant
4 in this case.

5 Secondly, your Honor, they have --
6 again, they, of course, have offered the tape. They made
7 the issue of the grave site matter in this case. They
8 have injected this matter in front of the jury.

9 Certainly, we're entitled to bring out all of the
10 circumstances surrounding the grave, the grave site
11 matters, you know.

12 Furthermore, is the fact that they
13 have made the issue of lack of remorse at the grave side
14 an issue, and we're entitled to elicit all of the
15 testimony from these officers.

16 I might mention, they're talking about
17 tapes and the video. Now, to my understanding, and I
18 don't know all of the facts, obviously, but there was an
19 open wire on this grave side.

20 There may well be matters other than
21 that which appears on the tape, and on the video
22 surveillance. Of course, the tape is the intercept
23 problem we have here.

24 But we don't know what all transpired
25 out there. We don't know who was privy and overheard all
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1 of these oral conversations.

2 As I understand it, if the Court
3 denies us an opportunity to confront and cross examine
4 these witnesses, we're denied the opportunity of
5 eliciting all the facts and testimony surrounding the
6 grave side event, and incidents. And, I would further
7 submit to the Court, that the Court can't simply rely on
8 the blanket assertion by the State, that there is no
9 exculpatory statements made during any of these
10 intercepted conversations.

11 I think it's for the Court to make
12 that decision. It's for us to be able to elicit that
13 such information by means of cross examination and

14 confrontation.
15 Your Honor, but if the Court rules
16 that and prohibits us from cross examining the witnesses
17 concerning their knowledge, the conversations, the events
18 surrounding the illegal intercept of the conversations at
19 the grave side, that would constitute a violation of the
20 defendant's Fifth and Sixth rights under the U.S.
21 Constitution and the Fourteenth Amendment rights. And
22 Article 1, section 10 of the Texas Constitution, and
23 specifically the right to confront and cross examine the
24 witnesses concerning the events surrounding the illegal
25 intercept.

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1 Furthermore, your Honor, it would also
2 prevent us from going in, or offering in front of the
3 jury, the testimony regarding the credibility of the
4 witnesses, their motive and intent surrounding their
5 investigation in this case.
6 THE COURT: All right. Fine. The
7 Court finds -- that -- the Court holds this is improper
8 impeachment evidence.
9 The officers actions do not reflect
10 upon the officers -- the officer who has testified so
11 far. His actions do not reflect upon his character for
12 truthfulness or untruthfulness regarding his testimony in
13 this case.
14 Any recordings that may have been made
15 were not admitted as evidence, nor was there an attempt
16 to admit them as evidence.
17 For these reasons, I find that the
18 potential prejudice outweighs the probative value of this
19 evidence, and the defense is ordered not to go into it,
20 should these officers be recalled to the stand.
21 Now, if you want a running objection
22 on that, you may have it.
23 MR. JOHN HAGLER: Yes, your Honor.
24 MR. RICHARD C. MOSTY: Your Honor, we
25 can go into, for instance, things that refute, on that
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1 tape, refute the inference that the State has done?
2 THE COURT: There was a videotape done
3 by Channel 5. I think everyone in the country has seen
4 out there.
5 MR. RICHARD C. MOSTY: Well, you know
6 what they didn't see, was the funeral service. The State
7 has illegally intercepted the funeral service where they

8 stand around and pray. The State offers the Silly String
9 part of the day, and they have the prayer there, where
10 the first part of it is the prayer where they illegally
11 intercept a prayer at a grave side. And we can't offer
12 that?

13 THE COURT: Well, I think that has
14 already been offered.

15 MR. GREG DAVIS: You know, your
16 Honor --

17 MR. RICHARD C. MOSTY: We have a video
18 of it.

19 MR. GREG DAVIS: I don't think there
20 is any problem with Mr. Mosty or Mr. Mulder offering that
21 videotape. I mean, whatever was visually recorded out
22 there, we certainly don't have a problem with them doing
23 that. It's just the circumstances under which that was
24 gathered. You know, if they can show what happened out
25 there, if they want to show that videotape.

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1 MR. DOUGLAS MULDER: But we can't ask
2 the --

3 MR. GREG DAVIS: So they have that
4 option. And they still get to show what they feel is
5 important for them to show to this jury.

6 THE COURT: Well, anyway, that is
7 fine. If you want to do that, that will be fine, but
8 that is the Court's ruling, and the Court will note your
9 objection.

10 You don't have to object in front of
11 the jury for any purposes. You will have a running
12 objection. And, at 9:00 o'clock we will proceed.

13 MR. GREG DAVIS: Yes, sir.

14 MR. DOUGLAS MULDER: Just so I am
15 abundantly clear on this, are you telling me that if I
16 recall Detective Jimmy Patterson, that I can't go into
17 this matter at all?

18 THE COURT: That's correct.

19 MR. DOUGLAS MULDER: Okay.

20 MR. RICHARD C. MOSTY: And we can't
21 even go into the motive of how they conducted their
22 investigation?

23 It's been a central theme of this case
24 from the beginning, is that these men went to the -- went
25 to the stage of illegal activities, to try to target in

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1 on this lady. That has been the beginning of this case,
2 and it is exactly what this case is about, in it's
3 entirety. Is that they never did anything, other than
4 focus on Darlie Routier, and they wanted to do it so bad,
5 that they would violate state and federal law to do so.

6 And we are not allowed to go into that?

7 THE COURT: Well, the Court ruling
8 stands. Thank you.

9 MR. DOUGLAS MULDER: Judge, let me ask
10 this just for a little direction from the Court. Does
11 the Court intend to give the jury any explanation or
12 clarification, or just let it --

13 THE COURT: Well, we will go over the
14 charge at the appropriate time. I'm happy to do that.

15 MR. DOUGLAS MULDER: I mean, you don't
16 intend to say anything to the jury. You know, he was
17 plucked from the witness stand, rather inappropriately,
18 and I take it the Court doesn't --

19 THE COURT: Well, I think both sides
20 agreed with that. I don't think he was plucked from the
21 witness stand.

22 MR. DOUGLAS MULDER: Well, he refused
23 to answer any questions, Judge, until he had a chance to
24 talk to his lawyer.

25 THE COURT: I understand that.

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1 MR. RICHARD C. MOSTY: Well, if --

2 MR. DOUGLAS MULDER: If they call -- I
3 understand if I call the officers, I can't go into it.

4 If they call them, can I go into it as impeachment?

5 THE COURT: Well, certainly if any
6 door is opened. I don't think they will be calling the
7 officer, but they may very well do it. But we want to
8 stay out of that, because I am holding that that is not
9 relevant in this particular case.

10 MR. DOUGLAS MULDER: Well, I'll
11 suggest to the Court, that the door is opened if they
12 talk about any part of the investigation, because this
13 was part of the investigation.

14 THE COURT: Well, let's take that up
15 at the appropriate time.

16 MR. DOUGLAS MULDER: Well, you know,
17 Judge, it kind of depends on -- it has interrupted our
18 strategy in this case. And you know, I can go with it
19 either way. I don't care what the rules are, just as
20 long as I know what they are. If I understand what the
21 rules are, I can play by anybody's rules.

22 THE COURT: Well, the rule now is

23 this: Don't go into it.

24 MR. DOUGLAS MULDER: All right. I

25 understand that. But, are they going to call -- if they

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1 are going to call the officers, I will be allowed to go

2 into it?

3 THE COURT: Well, anything, Mr.

4 Mulder, that is opened up by any examination, you will be

5 allowed to go into. That is correct.

6 MR. DOUGLAS MULDER: Well, I would

7 suggest to the Court, that if they go into anything,

8 about an investigation, that this is part of the

9 investigation.

10 THE COURT: Well, we'll cover that at

11 the time that it comes. That may very well be the case.

12 MR. RICHARD C. MOSTY: Is the Court

13 going to allow, for instance, Mr. Frosch to get up and

14 testify about some things, and then in the middle of it,

15 prohibit -- or take the Fifth?

16 THE COURT: The Court is going to

17 allow -- if Mr. Frosch is called, Mr. Frosch will

18 testify.

19 MR. RICHARD C. MOSTY: Pardon me?

20 THE COURT: If Mr. Frosch is called,

21 he will testify. If the door is opened to anything,

22 certainly, you will be able to get into it.

23 MR. RICHARD C. MOSTY: So the Court is

24 going to let him get up and testify about some things,

25 and prohibit us from going into the full investigation?

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1 THE COURT: We are not going to go

2 into whatever happened at the grave side as regards to

3 the alleged recordings out there.

4 MR. RICHARD C. MOSTY: Well, what

5 about the other officers who did it? Can we call them?

6 THE COURT: We will go each one

7 individually at the time.

8 MR. RICHARD C. MOSTY: All right.

9 THE COURT: Anything else?

10 MR. JOHN HAGLER: Just so I'm clear,

11 your Honor. You stated that, of course, we cannot

12 question them in front of the jury, but we also are

13 prohibited from questioning them during the hearing, as

14 to any and all statements.

15 THE COURT: You may question them

16 during the hearing. Do you want to question the officers

17 now?

18 MR. RICHARD C. MOSTY: Well, we
19 want -- one thing we want to know is we want to know
20 everyone who was involved in this.

21 THE COURT: Well, can you give them
22 that information?

23 MR. RICHARD C. MOSTY: And who knew
24 about it, participated in it, planned it.

25 MR. GREG DAVIS: That I don't know. I
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1 don't know those facts.

2 MR. DOUGLAS MULDER: Well, maybe Mr.
3 Davis needs a lawyer.

4 MR. GREG DAVIS: Maybe you do.

5 THE COURT: Well, I doubt that.

6 MR. DOUGLAS MULDER: I've got one.

7 THE COURT: I doubt that. I think
8 both sides -- all right, gentlemen, fine. Excuse me, go
9 ahead, Mr. Davis.

10 MR. GREG DAVIS: I was just going to
11 say, in this matter, so that we can all be clear, if Mr.
12 Mulder believes that the door has been opened, would you
13 please instruct him to approach the bench, discuss this
14 matter with you, before he begins to go through that
15 "open door," because we both know what he is going to do
16 here. He has done it in the past.

17 MR. DOUGLAS MULDER: Judge, I'll know
18 when the door is open.

19 THE COURT: Both sides are so
20 instructed to approach the bench before you do that, if
21 that is necessary.

22 MR. DOUGLAS D. MULDER: Yes, sir.

23 MR. GREG DAVIS: Thank you. Yes, sir,
24 so we won't have a repeat of what he did on Friday.

25 MR. DOUGLAS MULDER: Judge, I'll do
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1 that if it's not clear. And there wasn't anything
2 Friday. There wasn't anything said Friday about this
3 business.

4 MR. GREG DAVIS: No, I'm talking about
5 the other agreement that we had that he broke on Friday..

6 MR. DOUGLAS MULDER: There wasn't any
7 agreement Friday, not to go into the fact that Patterson
8 was --

9 THE COURT: Gentlemen, Friday has
10 passed. Friday has passed, and what occurred, occurred.

11 MR. RICHARD C. MOSTY: Yeah, well,
12 yesterday --
13 MR. DOUGLAS MULDER: Well, I didn't
14 make any agreement with them, not to mention that, Judge.
15 THE COURT: All right, Mr. Mulder,
16 fine.
17 MR. DOUGLAS MULDER: Y'all may have
18 had an agreement among yourselves, but I wasn't a party
19 to it.
20 THE COURT: Mr. Mulder. We do not
21 have any agreements with the Court. Is that clear?
22 MR. DOUGLAS MULDER: Right. Well, I
23 wasn't a party to that agreement. I didn't have any
24 agreement with them.
25 THE COURT: We understand. Would you
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1 please modulate your voice. I can hear you.
2 MR. DOUGLAS MULDER: I understand. I
3 didn't have any agreement with them. The only agreement
4 I had with them, was that their witnesses would be
5 present until -- the ones under subpoena -- until I
6 agreed to excuse them. And I never made that agreement.
7 I told them I would exercise that agreement Friday.
8 THE COURT: The Court understands what
9 happened last Friday, and that is over and passed and
10 done with. We're not going to discuss that.
11 MR. RICHARD C. MOSTY: Well, there is
12 also, for instance, a motion in limine prohibiting going
13 into breast implants that Mr. Davis went right through
14 yesterday without bothering to say, "Is the door open?
15 Can I go into this?"
16 And now we're supposed to abide by
17 these things and the State doesn't have to?
18 THE COURT: No. You all abide by
19 whatever motions are in the file.
20 MR. DOUGLAS MULDER: Well, Judge,
21 would the Court address that now?
22 THE COURT: Both sides are instructed
23 to stay within the motions of limine that are in there.
24 MR. DOUGLAS MULDER: Well, they
25 understood that, Judge. We went into it before the
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1 Court. You understood it, they understood it, but they
2 barged right in.
3 THE COURT: All right. Well, the
4 Court will instruct both sides to remain within the

5 motions in limine. You both know what they are. Let's
6 stay with it. If anybody does anything against it, well,
7 let's stand up and object. There was no objection
8 yesterday.

9 MR. RICHARD C. MOSTY: Well, of course
10 not.

11 MR. DOUGLAS MULDER: All that would do
12 is call attention to it. That is why we filed the motion
13 in limine, so we don't have to object.

14 THE COURT: All right.

15 MR. RICHARD C. MOSTY: And that is why
16 Mr. Davis did it that way.

17 THE COURT: Gentlemen, gentlemen, we
18 are here this morning on the hearing on Officer Patterson
19 and Frosch.

20 MR. RICHARD C. MOSTY: Well, may I go
21 back to my question?

22 THE COURT: Yes.

23 MR. RICHARD C. MOSTY: I would like to
24 know who all was involved in this?

25 MR. DOUGLAS MULDER: Well, he said you
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1 can go into that. Let's call Patterson --

2 THE COURT: Just a minute. Just a
3 minute. Calm down, Mr. Mulder. I can only talk to one
4 attorney at a time.

5 If the State knows who was involved in
6 it, you may please find out, and please advise the
7 defense.

8 MR. GREG DAVIS: Yes, sir.

9 MR. RICHARD C. MOSTY: May we call one
10 of these gentlemen and find out?

11 THE COURT: You may indeed.

12 MR. RICHARD C. MOSTY: Mr. Patterson
13 is under oath, isn't he?

14 THE COURT: He is indeed.

15 MR. RICHARD C. MOSTY: May I
16 inquire --

17 THE COURT: You may. Who was
18 involved -- I'll inquire. Who was involved in it?

19 MR. PATTERSON: I don't want to answer
20 that.

21 MR. DOUGLAS MULDER: Judge --

22 THE COURT: Well, all right.

23 MR. DOUGLAS MULDER: Well, he either
24 answers or goes to jail, doesn't he?

25 THE COURT: Mr. Mulder, if I want

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1 anything from you, I will ask you. Is that clear?

2 MR. DOUGLAS MULDER: Well, yes, sir.

3 THE COURT: Thank you very much. You

4 are refusing to answer that on the grounds that it may

5 tend to incriminate you; is that correct?

6 MR. PATTERSON: Yes, sir.

7 THE COURT: All right. Fine.