



E48 “Drew’s Law:” The Prosecution of Drew Peterson

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After attending this presentation, attendees will understand the principles and consequences of new hearsay legislation, the details of the Peterson trial, and the pathology of drowning.

This presentation will impact the forensic science community by serving to illustrate the legal concepts surrounding admission of hearsay evidence as well as the investigation of deaths in bathtubs.

In 2007, following the disappearance of his fourth wife, Stacey Drew Peterson, a former suburban Chicago police officer, was charged with murder in the 2004 death of his third wife, Kathleen Savio. Savio had been found nude in a bathtub. She received an autopsy and her death ruled an accident. As a result of the disappearance, detectives were accused of botching the initial investigation by not collecting fingerprints, hair, or any other physical evidence at the Savio death scene. Savio was exhumed and the body subjected to two additional autopsies, one videotaped by a news team.

The first autopsy demonstrated foam exuding from the nose and mouth, pulmonary edema, water in the nasal sinus, and “washerwomen” changes to the hands — all typical of drowning. There was a small, 1.0 inch laceration to the back of the head. The lividity pattern and rigor were consistent with the terminal position of Savio in the tub. There were bruises on the lateral abdomen, anterior thigh, and buttocks with abrasions on the elbow, wrist, and finger. The heart was of normal size with a thickened mitral valve. The brain revealed edema but no additional injury. The toxicology analysis was negative. The death was attributed to drowning and the scalp laceration was consistent with a fall.

In 2008, the Illinois legislature created a new exception (“Drew’s Law”) that permitted hearsay statements into evidence if they were sufficiently reliable and were made by someone who was more likely than not murdered by the person being prosecuted.¹ The legislature used the common law doctrine of “forfeiture by wrongdoing,” which allowed for the admission of some types of statements without any showing of reliability under the theory that a defendant gives up the protections of the hearsay rules and the Sixth Amendment confrontation clause by wrongfully causing the people who made statements to be unavailable as witnesses. Following an initial evidentiary trial in January 2010, Peterson went to trial in August 2012.

At trial, prosecutors attempted to construct evidence in support of homicidal injuries and proposed a variety of questions. Were the physical surroundings capable of causing anterior and posterior injuries? Was there sufficient force to cause deep anterior bruising and posterior head laceration? Was there any physical evidence of impact or transfer on the tub? Was the position of the body consistent with a fall?

All of the pathologist experts agreed that Savio died of drowning. Prosecutor’s pathologist witnesses argued that a fall from a standing height in a tub would not be sufficient to cause unconsciousness and that the laceration on the head should be vertical or stellate not horizontal, which suggests wounds are from impacts with blunt objects against the head. Finally, they argued that the numerous injuries could not be sustained in a fall.

Defense pathologist witnesses maintained that the death was accidental in that all of the external bruises were unilateral, could be caused by a single fall, and corresponded to the terminal position of the body in the tub. They also argued that a person could be rendered unconscious after a simple fall without any identifiable injury to the brain. Additionally, they contended that an initial impact frequently would not produce blood splatter and would have “stunned” Savio, or possibly knocked her unconscious. There were numerous sites in and around the tub area, they argued, where the decedent could have sustained a head injury. The buttock injury is a postmortem drying artifact.

Peterson was eventually convicted and sentenced to 38 years in prison.

Some defense attorneys worry that the trial — the first in Illinois history to rely so heavily on hearsay — could fundamentally alter how prosecutors and defense attorneys handle murder cases in this state and around the country. The fervor to convict Peterson had unintended consequences. “The legal issues here are extraordinary,” said Phil Turner, a Chicago defense attorney and former federal prosecutor. “If this sets a precedent, more people will get convicted because someone testifies that someone told them something.” This presentation will discuss the pathological findings of the Drew Peterson trial and the future repercussions of the enabling legislation and precedent-setting prosecution.

Reference:

1. 725 ILCS 5/115-10.6 (West 2008).

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