

Guilty or Not Guilty?

It can be a roll of the dice



"Guilt beyond a reasonable doubt."

The level of proof in American criminal trials is supposed to require the State (prosecution) to prove guilt beyond a reasonable doubt.

Not beyond a shadow of a doubt and not beyond any doubt. Beyond a reasonable doubt.

Without a confession, eyewitnesses or video, that burden must be met with circumstantial evidence and/or testimony, often conflicting. Oftentimes, the testimony does not link the accused to the crime, it only serves to somewhat justify a jury's preconceived notion that the accused wouldn't be on trial if he/she hadn't committed the crime.

Those at the top of the Wyoming legal food chain have told me that innocent people are convicted "because they are sitting there." In other words, the presumption of guilt is stronger than the assumption of innocence.

There are legal myths that are hard, if not impossible, to disprove.

The strongest misconception prosecutors can plant in jurors minds is one that leads to many guilty verdicts, whatever the evidence or testimony is. That is: "Well, who else could have done it?" That defies the substantial proof that strangers do commit abduction crimes. But, as in the case of O.J. Simpson, after the murder of his ex-wife and her friend, Los Angeles police officers sought him out because he was the logical suspect - in spite of their trial testimony to the contrary.

When a spouse is murdered, or in the case I will be writing about here and later, disappears, the husband or ex-husband is always the first suspect unless police have witnesses to the contrary.

Celebrities get off. Ordinary citizens seldom do.

A recent fad in Natrona County was to resurrect "cold cases" and gain convictions on the basis of, "well, who else could have done it?"

In the David Labon Bush case, his wife disappeared in December of 1990 and no body had been found but there has been no proof of her still being alive. In 2006, after years of gathering and storing evidence against him, the Natrona County attorney charged David Bush with first degree murder of Lynn Bush, his missing wife. Nothing had changed in

intervening 15 1/2 years. Her body was not found. DNA still not link him to her disappearance. No new evidence was found pointing to him being responsible for Lynn's disappearance and/or death. No new witnesses had come forward with damning evidence against him. And, a review of reports and/or interviews written or conducted when the disappearance was fresh only served to confuse the issue further - reports had been lost, tape recordings were no longer available, etc.

There was nothing more incriminating against David Bush in 2006 than there was in 1991, days and weeks after his wife's disappearance. In fact, the most valuable prosecution witness toward the

[David] Bush never "lawyered up." He never refused to be interviewed, including an 8-hour session the day after finding his wife's empty pickup in a Buttrey's parking lot in Beverly Plaza in Casper. He signed a "Consent to Search" for both the truck and his house - before police sought a search warrant of their own. He never shielded his daughter from relatives nor law enforcement - you'll see why that was critical as the story moves along. And he never inquired nor tried to claim life insurance proceeds on his wife even though he had not been charged with any crime . . .

conviction of David Bush, his and Lynn's daughter, could not remember anything a counselor claimed the 2 1/2 to 4 1/2 year old child had told her years earlier. At the trial in 2007, the then 18 year-old daughter said she remembered nothing about the event and remembered nothing about what she may or may not have told the counselor or a subsequent child psychiatrist who testified to damning accusations made in the early 1990's by the little girl. The defense could not cross examine the daughter. She said she had no memory of anything she may or may not have seen nor of anything she may or may not have told the professionals.

How valuable was it for the prosecution to wait 15 1/2 years before charging this child's father with her mother's murder? Immeasurable. Had he been charged nearer the time of the disappearance, the young daughter would have remembered what she had or had not seen or said and could have been cross examined on those. In 2007, others were allowed to testify to what she had said and what she had meant by her words as a toddler.

The first article I presented on this story was done after limited communications from David Bush's current wife, a review of some documents, including the Wyoming Supreme Court's denial of Bush's appeal, and after receiving a copy of a letter from a Rawlins inmate in which he implicated himself and another in the murder and disappearance of Lynn Bush. The other person is the same person David Bush tried to introduce as an alternate suspect but was not allowed to

- and before I reviewed the trial transcript.

After approximately 12 1/2 hours of reading - of the trial transcript and attendant material - I am now in a much better position to render an opinion as to whether I believe David Bush should have been convicted of second degree murder. The jury found him not guilty of first degree murder, another great contradiction in this story. I am not in a position to state an opinion as to whether he is innocent - just whether I believe the evidence and/or testimony was sufficient to convict him.

I do not believe the evidence and/or testimony reached the threshold of proving his guilt "beyond a reasonable doubt."

I do believe that the jury reached its verdict of guilty of second degree murder, even though the prosecution's case was built around premeditation which would prove first degree murder, because of "well, who else could have done it?" Because the defense was not allowed to introduce the alternate suspect, in spite of witness testimony to support that defense, the jury must have concluded, "it must be him, who else could it be?"

There are twelve volumes to the trial transcript and several other spiral bound volumes of Motions and the Hearing about an alternate suspect, stacking well over two feet high. The trial transcript itself contains 2,821 pages. The prosecution called 57 witnesses, the defense called six, including David Bush.

Before presenting some of the testimony heard at the trial, let me say that, in many ways, David Bush conducted himself like a guy who did not murder his wife nor was responsible for her disappearance - at and after the time she disappeared.

Bush he never "lawyered up." He never refused to be interviewed, including an 8-hour session the day after finding his wife's empty pickup in a Buttrey's parking lot in Beverly Plaza in Casper. He signed a "Consent to Search" for both the truck and his house - before police sought a search warrant of their own. He never shielded his daughter from relatives nor law enforcement - you'll see why that was critical as the story moves along. And he never inquired nor tried to claim life insurance proceeds on his wife, even

though he had not been charged with any crime related to her disappearance.

David Bush was a cad. He was a lousy husband. He was selfish about his own needs, wants and desires. He was unfaithful during the first years of his marriage to Lynn. Not once. Not twice. But, at least three times. The third girl moved in with Bush within weeks of Lynn's disappearance. Bush said he was not intimate with until later - not while his wife was alive. He said he had befriended this young gal from Douglas because she was in a troubled relationship and her parents had kicked her out of the family home.

Incredibly, all three of his mistresses met and became friends with his wife. Only one of them was believed by Lynn Bush to be involved with her husband - the one David Bush said he was only "helping." The other two did not tell her and carried on a friendship with her while carrying on an affair with him.

The prosecution used his infidelity as "evidence" that he had murdered his wife and was responsible for her disappearance.

Basically, here is the case in a nutshell:

Prosecution: David Bush murdered his wife, Lynn, in front of his 2 year-old daughter Misty sometime Friday night, December 7, 1990 and disposed of her body near Kaycee the following morning. Bush abandoned Lynn's black pick-up truck in the Buttrey parking lot sometime Saturday and then pretended to discover it with his younger half-brother in tow on Sunday morning. His motive was that she was going to leave him and he feared he would lose custody of his daughter.

Defense: David and Lynn Bush went to a movie at the Mall on Friday night - they saw *Dances with Wolves* with Misty. They then drove around the area to look at Christmas lights with Misty and later drove back to their house and switched vehicles (to Lynn's truck) and planned to "camp out" by Alcova that night. On the way toward Alcova, they stopped at a drive-by liquor window and bought a pint of vodka and also stopped at a Mini Mart for gas and orange juice to mix the vodka. They decided it was getting too windy and changed their plans. After "parking" for awhile, they went home. Saturday early evening, Lynn went to the store for milk. David had a poker party planned and had visitors. Lynn did not return and David thought it was retaliation for his infidelity or staying out overnight himself. He was unworried that night. Saturday morning, he began his search and found the truck.

State v. Bush

Wyoming Supreme Court 2008 WY 108, 193 P.3d 203



David Bush called the Casper Police Department when he located his wife's black pickup in the Buttrey parking lot. He testified that he found the truck's ignition keys on the ground by first stepping on them, noticed the driver's side door to be slightly ajar (not open), and saw two items of groceries in the box of the truck.

The responding Casper police officer gave the truck a cursory look, saw nothing or at least noted nothing of importance and offered to David Bush that "she left your ass," then told Bush to fire up the truck - perhaps thinking that it might be sitting there without its driver because it wouldn't start. It started as normal.

The police officer gave permission for David Bush to climb into the truck because he (the officer) had already quickly looked inside and, even though it was only hours after the prosecution later asserted that foul play had occurred in the cab with blood "everywhere," he noticed no blood or other indications a crime had been committed. The police officer told David Bush to take the truck home.

The police officer may have been told by Bush that he thought Lynn might be "getting back" at him for his licentious behavior by making him worry about her whereabouts before he made the remark to Bush about Lynn "leaving his ass."

In the next few days, David Bush would be interrogated, his in-laws would make accusations against him in the disappearance of their daughter, his house would be searched and the black truck his wife drove would be searched and impounded.

The "investigation" would go on for a very long period of time. Casper police and the prosecution would try to build a case against David Bush but no arrest was made for a decade and a half - of him or anyone else - for the disappearance of Lynn Bush or her presumed murder.

Three weeks after the disappearance, two and a half year-old Misty Bush, daughter of Lynn and David, would be removed from her family home and placed with her maternal grandparents.

She would become the prosecution's most important witness even though she was too young to fully understand the ramifications of her words or lack thereof. The truck was held in police custody for several years, then released to Lynn's parents, not to David Bush. Perhaps they co-signed for Lynn. I did not see that.

The Trial

From opening statement to closing arguments, a major component of the prosecution's case was to demonize David Bush - to make the jury hate him. In particular about his affairs and his alleged multiple boasts of disposing of a body where it could never be found.

From Day One of Lynn's disappearance and for well over 15 years, the Casper police department and the DA's office worked to gather evidence and arrange testimony in their quest to convict David Bush of the murder - not the disappearance, but the murder - of his wife, Lynn Knievel Bush.

While David Bush didn't rush into the police station immediately and say, "I have had several affairs during my marriage to Lynn and should probably be considered the prime suspect in her disappearance because I was unfaithful," he quickly "fessed up to his infidelity, naming names and providing specifics. And, while he didn't show the best judgment by having one of those women move into the house he and Lynn shared with their little girl, being a cad and a lousy husband doesn't necessarily make you capable of, nor guilty of, murder.

Disgraced former Natrona County DA Kevin Meenan first handled the case. No charges were brought under his watch but extensive investigation was undertaken - without considering any other suspect.

A cold case like this one must be hard on those involved, not just the accused. For example, the three women with whom he had admitted affairs, they moved on and built new lives. Years later, their past is dredged up for Casper and all of Wyoming to read about. For a successful prosecution, harm to reputation is not a concern. Innuendo, insinuation, inference and intimidation finds a home in many prosecutions and this one, 15 1/2 years after a disappearance where no body was ever found, had to be built around circumstantial evidence, altered stories and faulty memories. Who can remember as clearly 15 1/2 years later?

The prosecution has a tremendous advantage over a suspect who becomes the accused because they can regularly interview witnesses, refresh their memories and plant suggested testimony in their minds. A suspect who has no reason to believe charges will be filed a decade and a half later, does not take the

same care to build or preserve a defense.

One flaw in our justice system is that attorneys are not bound by the same oath of truth-telling that witnesses are. They should be. If an attorney deliberately lies at trial, he/she should be subject to perjury charges. That might change things.

In his opening statement, Natrona County DA Michael Blonigen promised jurors that there would be evidence (remember, the DA cannot testify in his statement, he can only promise what he will present the jurors) proving that there was "DNA and physical evidence of the defendant's involvement in this murder".

That was not true. Any DNA or physical evidence of the defendant being in the truck would not prove he murdered his wife. Nothing presented at trial proved *anyone* murdered Lynn Bush. In his opening statement, Blonigen also said that two and a half year-old Misty Bush was "an eyewitness" to the murder of her mother. Nothing remotely close to that was presented.

While the prosecution never attempted to present a scenario for a murder, in his opening statement, Blonigen referred to 13 places in the truck where blood was found. There was no testimony how old the blood was nor how it may have come to be in the places it was found. He somehow felt that the existence of a half pint of vodka (which David Bush had said he and Lynn purchased the night before her disappearance and that it was in the truck) pointed to David's guilt. He never offered testimony about blood splatter or how a half pint of vodka might have come in contact with Lynn's blood or how it may have been used in any way in her murder.

Circumstantial evidence introduced ranged as insignificant as pieces of missing luggage, (which the defendant refuted), a luggage strap, and whether there was or was not a certain "pocketbook" of Lynn's on a counter in the house when photographed after the disappearance. Missing photos and lost tape recordings were commonplace in this case - when it

might have hurt the prosecution's case or helped the defendant's. Police reports were rewritten - from memory - fifteen years later when originals could not be found.

The DA was allowed to tell the jury that, when a single police officer was looking at Lynn's truck outside the Bush house the day after the disappearance, David Bush supposedly said to this officer, out of the blue, "I don't know what you're doing all this for, you know who the murderer is." This officer did not know that Bush had already signed a Consent to Search the truck and the house. Using that alleged "admission," the PD was able to get a search warrant they did not need.

The DA told the jury that there was a \$50,000 life insurance policy on Lynn Bush but did not tell them David Bush never tried to collect on it. He did not even inquire of an agent what he would have to do to make such a claim. Nor was the jury told that the policy was bought three years before the disappearance.

Blonigen also told the jury that David Bush had "motive, opportunity and means" (to murder his wife), even though there has never been any proof that Lynn was murdered by anyone. Lynn Bush had told friends - friends that testified against David Bush at trial - that she knew about David's affairs but "would never leave him." If she would never leave him she would also never divorce him - a reason the prosecution claimed David killed her. They insinuated that he feared Lynn would take the little girl he so much wanted a part of his life so he would kill her mother to keep her. Yet, he supposedly killed her mother in front of her and dismembered her mother's body and dumped it into two holes - in full view of this little girl both he and Lynn undeniably loved so much. And then, after committing this heinous act in the presence of the little girl, he gave his in-laws and the police full access to her the next day.

Much of the testimony was absurd. Much of it was contradictory. Some of it was troubling. Was guilt proven beyond a reasonable doubt? More in the next issue.

Testimony that troubled me most about whether David Bush may be guilty

From the trial transcripts, there was testimony from a handful of people who independently stated that they saw the Bush pickup in or near Kaycee around the time of the disappearance. One couple (allowed to testify by video because of the man's failing health) testified that they had seen the black pickup with the unique personalized plates (1-BUSH) pass them going northbound on I-25 near the Kaycee exit on the Saturday morning hours BEFORE her reported disappearance. The prosecution presented testimony that the pickup had been sighted at different spots around Kaycee to suggest that David Bush had taken Lynn Bush's body to the Kaycee area to dispose of it. Some testimony was impeached - it did not agree with statements made at the time of the disappearance in 1990. This couple knew the Bush's from working with both at Casper College and were familiar with the black truck. In their original, independent statements, neither stated there were black "garbage bags" in the box of the pickup, as they did at trial. This would be important because the prosecution wanted the jury to believe Bush was driving to the Kaycee area to dispose of the body and that's what the garbage bags were about. The man had also said there was a "small head" in the center of the seat next to the driver - his wife said there were two adults in the truck. The little girl would have been in a car seat and her head would not have been visible from behind (and if she were sitting on the seat, her head would be below the seat back at two and a half years old). Both testified that the truck passed them at "a high rate of speed." Bush would have had to be incredibly stupid to be speeding up I-25 in 1990 when the speed limit was 65 mph, at the risk of being stopped with his wife's body in the open back of the pick-up. He would also have had to be incredibly reckless to drive a truck with personalized plates to make a trip that he hoped no one saw, noticed or would remember. He had another vehicle he could have used - with a trunk to shield a body. *(David Bush has denied to me that he had been in that area at that time but had been many other times.)*

Much of the prosecution's case was built around David Bush's infidelity. His infidelity was used to suggest premeditation. As was his allegedly frequent statements about being able to dispose of a body where no one would ever find it. Yet, the jury found him Not Guilty of first degree murder but Guilty of second degree murder. Contradictorily, the jury dismissed the prosecution's argued "motive" and suggestion of planning and premeditation yet found Bush guilty of something the prosecution did not argue. Wyoming Statutes define the two: **6-2-101. Murder in the first degree;** (a) Whoever purposely and with premeditated malice -- kills any human being is guilty of murder in the first degree. **6-2-104. Murder in the second degree;** (a) Whoever purposely and maliciously, but without premeditation, kills any human being is guilty of murder in the second degree.