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David Bush

Cheyenne Herald readers should remember the case of David Bush.

He is the guy who was arrested and convicted for the murder of his wife - a woman whose body has never been found and clear cut evidence was not presented at trial to link David Bush to either her disappearance or murder.

This is a case that my review convinced me he had displayed the behavior of an innocent person. Authorities did not charge him with any crime for more than 15 years and behaved more like the guilty ones.

I won't rehash everything here - you can go to the Cheyenne Herald website and search for "David Bush" and read the stories that have appeared in the past on these pages.

I have never taken the position here, or to David Bush or his current wife directly, that I believe Bush is innocent. I cannot know that. My role is to review case files such as this one to determine if I can reach a conclusion about whether evidence and testimony presented against the accused at trial should have led a jury of reasonable and attentive people to convict him/her. In this case, I reviewed a few thousand pages of trial transcripts, appeal transcripts, witness statements, Bush's statements, other involved persons' affidavits and statements from interviews, interrogations, etc.

If has been, and continues to be, my belief that David Bush should not have been convicted of any crime involving his wife's disappearance. Should not have been. I am equally convinced that, based on the same source material, David Bush was a cad. An unfaithful husband who was carrying on with several women at the time of his wife's disappearance.

Could he have played a role in her disappearance and likely murder? Yes, he could have. But, even with all the advantages on his side, the Natrona County DA did not prove

that "beyond a reasonable doubt."

In Natrona County at the time, the DA was prosecuting multiple "cold case" murders. He gained convictions on all - years after the murders and/or disappearance had taken place. A Natrona County jury will convict anyone the DA charges and anyone the judge seems to indicate is guilty - by virtue of rulings, etc.

The Wyoming Supreme Court usually gets it right. But they seldom will interfere with a jury verdict. They are trusting enough to believe that 12 people who sit through a trial, hear the testimony and view the evidence, are in a better position to determine guilt or innocence than they are. When jurors are seated who have babysat for the DA, impartiality may be suspect.

David Bush has always proclaimed his innocence. He never "lawyered up" during the 15 years he was a suspect and always submitted to interviews, lie detector tests and faced law enforcement's accusations. I have recently reviewed a new sworn statement from one of the members of the Natrona County law enforcement who contributed to the conviction (for which Bush was sentenced to 45 years to life in prison) and I believe she perjured herself.

Bush now has some legal assistance and his appeal is crawling through the federal courts. He recently won on a couple points and will have the long overdue right to confront a witness whose testimony could have made a difference at trial. He will not be able to pursue the "confession" of a fellow prisoner who implicated himself by swearing he was with Bush's brother when the abduction and murder took place. That would exonerate David Bush. That guy was in the federal witness protection program when he committed a murder in Cheyenne. He was also in the process of being hired as a paid informant for the CPD. His credibility is nil. But, finally, David Bush has a glimmer of hope. More to come.

Forced blood draws from suspected drunk drivers

Interesting that Wyoming judges are only now speaking out against the State's recent violation of your constitutional right of refusing to incriminate yourself by approving a bill that was introduced as House Bill 29, and enacted at Enrolled Act No. 93. The judges, however, do not object to the law for being unconstitutional - in violation of a suspect's Fifth Amendment protection - but rather because of the additional work it could create for them and the fact that search warrants are supposed to be based on more than a telephone call or text message.

Few despise the act of drunk driving more than this writer. And I know the Supreme Court has ruled that forcibly taking DNA evidence from an accused does not violate their right of silence, which seemingly is the only right against self-incrimination provided by the Fifth Amendment to the U.S. Constitution. Verbal silence. Hair can be removed from an unwilling suspect and other forms of DNA testable secretions can also be taken involuntarily.

One of the problems I have with this drastic action is the recognition that the Wyoming Highway Patrol has employed the likes of Joe Ryle. He was not the only one from the WHP to be involved in illegal acts and/or knowledge of planned illegal acts, but he was the only one to make front page news and be prosecuted for the kidnapping and planned murder of a Walmart truck driver. And, of course, local municipal and county law enforcement agencies have terminated "peace officers" for violations of the law or upon being charged with violations. These guys and gals who are the peace officers are not always angels themselves. They are not all above violating the law.

Here is the "title" of the law passed by the Wyoming Legislature - by roll call vote in the Senate of 20-10 and in the House by 40-18 with two not voting.

ENROLLED ACT NO. 93, HOUSE OF REPRESENTATIVES SIXTY-FIRST LEGISLATURE OF THE STATE OF WYOMING 2011 GENERAL SESSION

AN ACT relating to driving under the influence; eliminating the driver's right to refuse to undergo a test to determine the alcohol or controlled substance concentration in his body as specified; providing for issuance of a remotely communicated search warrant; conforming provisions; restricting use of test results as specified; repealing conflicting provisions; and providing for an effective date.

I have a number of concerns about the bill that was passed.

(d) When a peace officer has probable cause to believe that a person may be violating or has violated subsection (b) of this section, the peace officer may ~~request~~ require that the person submit to a chemical test or tests ...

Probable cause? That can mean a lot of things - not only the odor of alcohol. And a violation is directed primarily toward alcohol, not the use of illegal substances. Alcohol, of course, is not only a legal product but is pushed by the same municipalities and counties whose "peace officers" will now be required to force blood tests on unwilling motorists.

Another thing I disagree with is the State can go to such lengths to compel the drawing of blood from a driver for which they have "probable cause" to SUSPECT of driving drunk, but that blood cannot be used for any other purpose. Two things about that. First, if a person can involuntarily and forcibly have his/her blood taken for testing, it seems that the same DNA should be placed on file for comparison to unsolved crimes or future crimes. And, the blood should also be tested for communicable diseases, diseases like HIV.

Again, I don't agree with judges issuing search warrants to facilitate the blood draws with nothing more to go on than a request by a peace officer who can always defend his/her actions as having probable cause. And, I don't agree with forcibly drawing blood from any American. Some will have religious reasons. They will lose their license for refusing the test - what more will be done when it is confirmed that they have a BAC of .08 or higher?

The new law: A remotely communicated search warrant shall be valid only for purposes specified in this subsection.

(iii) The test or tests results shall only be used for the purposes of determining the chemical concentration as provided by this section and shall not be used for any other purpose.

Here's what I read into this law: Legislators found the idea of a text-issued search warrant so distasteful that they limited it to being available ONLY for this involuntary blood draw but voted for the bill anyway. That admission alone should have made the law unacceptable to most. In other words, drawing blood for a possible DUI has a higher priority than a search warrant for drugs or suspected violent crimes? Beam me up, Scottie. (Cont'd on p. 8)

More on the forced blood draw bill and editor comments ...

On (B) below, it seems that even when drunk drivers (not suspected drunk drivers) were arrested in the past, they were also "subject to criminal penalties, his Wyoming driver's license or his privilege to operate a motor vehicle shall be suspended ...". So, what's tougher about this new law? Will those who plead guilty to drunk driving or are convicted in a court of law of drunk driving be placed on double secret probation?

(B) If a test is taken and the results of the test indicate the person is under the influence of alcohol or a controlled substance, he may be subject to criminal penalties, his Wyoming driver's license or his privilege to operate a motor vehicle shall be suspended for ninety (90) days.

About (C) below, isn't that magnanimous of the State to "allow" an arrested person to "go to the nearest hospital or clinic and secure any additional tests at his own expense"? What if the accused does not go to the "nearest" clinic or hospital? Shouldn't the law read "timely" tests at their own expense? In other words, if the clinic or hospital of their choice isn't the nearest one but the blood draw is within an hour or so, shouldn't that also be permissible by the State? Seriously, do residents of the State of Wyoming really need the approval of the State to do something so basic to their own protection?

(C) After submitting to undergoing all required chemical tests requested required by the peace officer at a place and in a manner prescribed by and at the expense of the agency employing the peace officer, the arrested person may go to the nearest hospital or clinic and secure any additional tests at his own expense;

About (c) below, interesting that even a dead person does not escape the State's clutches. It seems like a peace officer could move the head of an unconscious or dead person up and down to constitute acquiescence to drawing blood. It was interesting that in the Dwayne Sells death in Outlaw Saloon, his blood was drawn that night but blood was not drawn from the four guys who played a role in his death. It is also bizarre that the law has to point out that a dead person or one unconscious cannot "cooperate" with "the administration of the tests." Oh, really?

(c) Any person dead, unconscious or otherwise in a condition rendering him incapable of refusal to submit to cooperating with the administration of the tests is deemed to have given his consent provided by subsection (a) of this section and the tests may be administered subject to the provisions of this act.

And, Wyoming residents wonder why State Statutes are so easy to challenge in court and why so many of us talk and write about the absurdities, contradictions and inconsistencies that are so prevalent in Wyoming law?

I had heard that this draconian behavior was intended to be perpetrated only on multiple offenders - in other words, one who already had a DUI record. In that case, I would feel anything goes. But, "suspected" DUI drivers are not "guilty" of DUI. That is a process that takes some time and legal action. The presumption of guilt here for first-time offenders, who maybe are not offenders at all, is more than I am comfortable placing in the hands of peace officers like Joe Ryle and his conspirators in the Wyoming Highway Patrol. There was more than one bad apple.

This law has been passed and the governor gleefully, likely while rubbing his hands together, signed it. In fairness to Wyoming's innocent drivers, in the next Session another paragraph should be added. Keep this law as is if that is how legislators felt they had to act under pressure from diminishing daily newspapers in the State. That addition would simply be this:

"Any Wyoming driver suspected of drunk driving and forced, against their will, to have blood drawn in an effort to prove a peace officer's "probable cause" assertion and a judicial official's erroneous remote approval of the necessary search warrant to require this blood draw, shall be paid by the State of Wyoming general treasury an amount of \$25,000.00 if that blood draw indicates a BAC of .02 or less. No lawsuit shall be necessary on the part of the wronged motorist. Payment shall be made, uncontested by the State, within 60 days of the results being known, to the motorist whose blood was drawn against his will and subsequent tests proved the driver was not drunk according to the definition of the State of Wyoming."

Drunk driving is reprehensible. It is beneath contempt. But there are far too many persons in jail and prison for crimes they did not commit. Innocent until proven guilty is a nice line but it is not a legal reality in the U.S. Peace officers would be given no "get out of jail free" card under my proposal. Requiring a non-drunk driver to submit to a blood draw, forcibly if necessary, would cost the State money and possibly the peace officer his/her job. The innocent should have recourse. An apology won't do. Money will help. By the way, I don't drink, either while driving or stationary.

Millionaire slave?

Adrian Peterson, star running back for the Minnesota Vikings, has a hard time holding things. Like the football. And his tongue.

Before coming to Cheyenne, I was CEO of a national sporting goods franchise. During that time, I met several active professional athletes and former professional athletes.

And, before that, I used some Minnesota Twins players to sign autographs at a new store opening. Also, the entire Minnesota Strykers soccer team for a similar purpose.

Professional athletes are an interesting group of people.

Some are not celebrities, per se, because they play positions or sports where their faces are not seen or remembered. There is no correlation between success and personality. And, there is often no correlation between their public persona and their private personality.

I once retained Bobby Douglass as our national spokesman. He did ESPN franchise solicitation commercials and made appearances. He is a great guy and had a beautiful (Playboy model, as I recall) wife. Had. Ernie "Big Cat" Ladd once told me in Monroe, Louisiana that he was the second most famous athlete in the world. To Muhammed Ali. Butch Wynegar, then a 19 year-old rookie catcher for the Minnesota Twins, was a no-show on his first scheduled date. Rod Carew, he of Hall of Fame credentials and pedigree, was on time both days of his schedule.

I met and made a franchise presentations to a then-active Minnesota Vikings interior lineman who had never made a decision on his own in his life. And, he didn't about the franchise. He was incapable of it.

These guys (I never met a female professional athlete that I can recall) have been led by the hand all their lives. They were almost always known as terrific athletes from a very young age and mollycoddled through junior high, high school and college. Every part of their life was planned

for them. That is why, I believe, so many squander the huge sums of money they are paid during their playing days. They have no experience with responsibility. Some are very insecure. One former baseball player was concerned about making an appearance at a store that we were opening near his home - afraid that people wouldn't come because they didn't know who he was or had forgotten him. People did come to see him and get his autograph and his self-confidence grew a mile.

Some of the guys I met, like Larry Hisle and Rod Carew of the Twins and James Harris, former NFL quarterback and Keith Fahrhorst, former NFL left tackle, were nice guys - capable and confident. They have been successful past their playing days.


Others, though, were more like Adrian Peterson of the Vikings. Injured in college, the Vikings took a major gamble on the running back and drafted him seventh overall in the 2007 draft. He has proven to be a very good investment for the Minnesota Vikings. Except for his penchant for fumbling at critical junctures of a game, he may be the best running back in football.

Brett Favre will be forever remembered for, among other things, the interception he threw in the fourth quarter against the New Orleans Saints in that NFC championship game. Less well remembered are Peterson's three carries on that final drive for no gain, two yards and no gain. Nor his two fumbles earlier.


Now, as the NFL strife heats up, Adrian Peterson compares the league to slavery. He evidently thinks a team should take a chance by drafting and signing a player like him after an injury-plagued college career, provide him with the best possible facilities, provide him a first-class lifestyle in the NFL, pay \$12 million a season to bring in a QB to try to take the Vikes to the Super Bowl, fumble the ball too often, and still think he's a "slave?" That's not my memory of American history. Adrian Peterson's base salary for 2011 is \$11 million. A slave? Hardly.

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