

The Dwayne Sells raised more questions

by Dave Featherly

After hearing more than three hours of contradictory and often confusing testimony, the three jurors in a rare Laramie County coroner's inquest took but five minutes to reach their decision that the manner of death of ABATE official Dwayne Sells was "accidental."

The other paper wrote that the jury took 15 minutes but that was inaccurate. The inquest broke at 2:20 pm on August 23 and juror Bob Rowland signaled from the open doorway to the commissioners of-fices that they were ready at 2:25 pm. By 2:30, those in attendance were back in their seats. It took another five minutes for the jury and Bill Ryan to re-enter the meeting room and announce the decision. There were no deliberations.

Had the testimony been consistently in support of one theory or another of what happened that early morning of April 23, 2005, at the Outlaw Saloon that led to the death of Dwayne Sells, it would have been possible to accept an immediate verdict from the three elderly men on the jury. But testimony was anything but consistent. *There were no deliberations.*

And, incredible as it is to imagine, no one but the young friend of Dwayne Sells, whom he was taking out that night in advance of a move to Tennessee, testified to having seen any part of the altercation between Sells and at least one other bar patron.

A bar crowded enough that the Outlaw was supposed to employ four bouncers that night - yet not a single witness was found who could verify or refute the testimony of Sells young friend. Not a one.

The testimony brought forward by the police department only dealt with what happened after the fight had ended and what happened when a non-employee of the bar was forcibly "escorting" Dwayne Sells to the exit. And when the investigating officer showed a brief video of the Outlaw Saloon surrounds, the only question he was asked was about what kind of floor was being shown.

The questions that were not asked and were not answered far exceeded the testimony which was presented. And the testimony, both in person and in the form of written statements, was all over the board.

Several bar patrons of that Friday night (early Saturday morning) testified and no two witnesses saw the same thing concerning what transpired on the way toward the exit. There were as many stories as there were tellers of the stories.

In fact, if two more bar patrons had not been allowed to testify after coroner Bill Ryan had already announced that all testimony had been taken and broke for lunch before "deliberations" - solely for the purpose of allowing a police officer to cue up a video of the bar - there would have been the same number of versions as there were witnesses.

I haven't used witness names in this story because I don't think they are necessary to report on the inquiry. I will mention some occupations because they are helpful in establishing credibility.

The first witness, who identified himself as an engineer, told of an individual backing another man with long gray hair toward the exit by grabbing his (obviously Dwayne Sells) lapels with both of his hands and rapidly advancing him backward toward the main exit door of the Outlaw. He said that Sells, being backed toward the door, either stumbled or tripped on something and fell backward onto his head. The sound, repeated by his wife, was described as that of a watermelon hitting the ground.

This witness, the first one called, also had his wife with him that night and she was identified by Bill Ryan as an attorney in the Attorney General's office. She did not testify but her statement was read into the record. She related the incident the same as her husband, right down to the sound. They both said they had a clear view of the advancing pair but lost sight as they neared - because there were other bar patrons between them and the two heading for the exit.

But not all witnesses saw it that way. Or heard the same noise from any fall onto a tile floor - if that is where the sound came from. No one testified that they both saw the fall and heard the noise and could link the two as a head hitting a tile floor. It was an assumption on the part of witnesses who described it that way - that the sound came from a head striking a hard surface. No one was asked if it could have been made in any other way.

Another witness, a Cheyenne attorney, was just as convinced that a long-haired guy preceded a group of four or five others walking forward toward the exit door and a second altercation took place near the exit door. His description of the lead person matched that of Dwayne Sells. He was recalled to testify a second time and it seemed the reason was that his story did not fit the predetermined conclusion of the jurors. It would be impossible to rationalize a skull fracture on the back of the head came as the result of a person advancing forward.

A statement from an Outlaw bartender (taken by the law firm representing the Sells family), was also contradictory to Sells being pushed toward the exit backward. He was working at the Outlaw that night and had been talking with Dwayne Sells, someone he had known for five years and said was "cool." "Laid back."

His statement, which was read into the record, said that he had been hit with a piece of glass - glass that had come, he said, from a beer bottle. Pictures of the person who had been in the altercation with Sells showed it was highly unlikely that HE had been hit with a beer bottle - especially one that broke - because he didn't have a serious or matching injury, cut or bump anywhere on his head.

That on-duty bartender stated that "the bouncer" was behind Dwayne after "they" (presumably the two in the fight) were separated and the bouncer was behind Sells and "in an arm lock" and "had Dwayne's arms behind him so he couldn't use his arms." He also said that "they were standing up - bouncer behind Dwayne - the bouncer could have been holding him up - they were upright."

Still another variation of how the bouncer, or former bouncer, depending on what is to be believed, held Dwayne Sells and directed him toward the exit door.

The guy who actually grabbed Dwayne Sells and took him toward the exit testified that he had not seen the fight and that he and his brother, both former employees of the Outlaw but no longer employed there that night according to both, had come out of the restroom together and had each grabbed one of the combatants and he had grabbed Sells in a reverse headlock and pushed him rapidly backward toward the exit. The hold that he described was one he could apply while Dwayne Sells was on his hands and knees, either trying to get back on his feet or in that position trying to get oriented after being hit on the head with a beer bottle and stomped by boot(s).

The ex-employee testified that he had put Dwayne's head between the crook of his arm and body - with Dwayne's body facing away from him. Like pushing a wheelbarrow.

His testimony was that he had pushed Dwayne Sells at a rapid pace toward the exit and that Dwayne had tripped or fallen. Somehow had flipped 180° backward to the floor. The impact on flipping was to have caused multiple skull fractures.

Still another witness testified that the ex-employee had advanced Dwayne backward toward the exit, by holding his arms,

extended with the palms toward Dwayne - but not grasping him - toward the exit. He described a situation wherein both men had their palms toward each other as though to indicate "stay back" and went toward the exit door in that fashion.

The young man with Dwayne Sells that night previously had told the Cheyenne Herald that two people (he thought they were bouncers) had somewhat carried Sells toward the door but, once realizing how injured he was, lowered him to the floor. Sells was basically being drug backward with one person on each side, holding under the arms of the limp person - heels dragging on the floor.

So, two witnesses (husband and wife) saw Dwayne being pushed backward rapidly with another's two hands grasping the front of his jacket or vest; another saw him being directed backward with two palms extended but not touching Dwayne; still another witness said that he personally had Dwayne Sells in a reverse headlock and was pushing him backward (rear end first) toward the exit; a bartender saw an armlock, and one witness saw two people advancing an unconscious Sells by grasping under each arm, with Sells backward and with his feet dragging behind him.

All of these witnesses saw parts of the eviction but only the young friend with Sells saw the fight. In a crowded bar, with many patrons nearby, no witness was brought forward or came forward on their own who saw the fight begin, commence, or end. Not one. There were three who were involved in the incident. Two fled to Florida and did not testify.

When asked by a juror if they would hear from the principal combatant in the fight with Sells, he was told that the guy was not in town. That he is now living in Ocala, Florida, and had been advised by his attorney that he did not have to return to testify at the inquest. No one can be compelled to testify against himself and can take the "fifth," just like in courtroom trials. But if the story was going to be that the injuries were sustained in a fall, not in the fight, why did witnesses flee?

Because no one else testified or provided a statement as to how the fight started or how it progressed, I must believe what the young friend of Dwayne Sells consistently has said happened.

If there is a witness in Cheyenne who saw any part of the fight who disagrees with what Dwayne's friend said happened that night, I would very much like to hear their version. Contact me at 637-2879 or CheyenneHerald@bresnan.net. I can guarantee confidentiality.

Coroner's Inquest than it could answer.

And even though juror Bob Rowland seemed confused and referred to "inconsistencies" in the testimony of Sells friend, I found no inconsistencies among what was told me during more than one interview by telephone, what was **WRITTEN** by him as a statement for the Cheyenne police department (attested to and signed), and his testimony at the coroner's inquest. I cannot be sure what Rowland was confused about and he did not attempt to clear up his confusion by recalling the witness as many times as it would take to get things straight in his mind. No one else seemed confused.

What Rowland seemed to be saying, in the view of this observer, was that for him to believe what he came in prepared to believe, this story about the fight and the source of the deadly injuries and how Sells was being taken from the bar had to be dismissed.

Rowland accepted an unsigned, informal, unreviewed brief write-up of comments made by Sells' companion to a police officer at the Eagle's Nest the same afternoon as the incident as a "statement." It was not. Once the witness read what the officer had typed up, he disagreed with some parts of it and corrected those mistakes in his handwritten statement - properly given to the Cheyenne police department on August 2, 2005. That formal statement was confirmed for accuracy by the witness and signed on every page - as well as having every page numbered sequentially.

Those first brief notes taken by the officer amounted to hearsay of the worst kind because they were not properly verified, signed and dated by the witness.

Attorneys for the Sells family have provided several invaluable witness statements that they took to assist the investigation and a videotaped interview with the attending neurosurgeon. But the Cheyenne police department will not provide any of the witness statements in their possession to those representing the Sells family. They should not consider themselves adversaries of these attorneys. Both are presumably seeking justice and the truth.

If that truth should turn out to be that Dwayne Sells was not badly injured in a fight in the Outlaw Saloon that night and that he was being escorted out of the bar by employees of that bar because of his unruly behavior, fell and was critically injured from that fall, I am prepared to accept that. But there is no way on God's green earth to reach that conclusion from the conflicted testimony of witnesses at the August 23rd inquest. Worse yet, questioning on the part of

of Cheyenne's well-meaning but unqualified and inexperienced inquirers was totally inadequate.

The truth is, I don't believe that the Three Wise Men could have elicited enough clear, concise and consistent testimony to reach an intelligent decision based on the investigation to date and inquest.

There was testimony from two doctors. One was the neurosurgeon who operated on Dwayne Sells as many as four different times. The other was the pathologist who conducted the autopsy.

The neurosurgeon, when questioned and recorded on videotape by the attorney for the Sells family, said he did not think it was possible that the number of skull fractures and damage to the brain could have been occurred in one event. In other words, a fall to the floor, even landing on a hard surface like a tile floor, with the body completely limp or unprotected to cushion the fall with a hand, elbow, etc., was insufficient to inflict the level of damage he found in the series of intrusions he had made into the skull of Dwayne Sells on the operating table.

The pathologist, on the other hand, testified briefly and was not challenged by the jury in any way. He responded with what appeared to this observer to be a prepared and rehearsed question and answer when he was asked if a single incident could have caused the multiple skull fractures which were present.

The neurosurgeon testified that skull fractures on opposite sides of the head and one on the back of the head could not have been caused from a fall where the victim landed on the back of the head.

The written autopsy report, prepared at the time of the autopsy on May 4, 2005 - some three and a half months before the inquest - stated that the cause of death was to be determined by the coroner at the conclusion of the investigation. At the inquest, he testified that the extensive skull fractures - both sides and rear and damage to the brain - could have resulted from a single incident.

Again, the jury had to dismiss this Cheyenne medical specialist's testimony and accept the Colorado pathologist's to reach the conclusion they did. Could one have been right and the other wrong? Certainly. But the doubt lingered as to whom was right and whom was wrong.

Laramie County District Attorney Jon Forwood was in and out of the inquest during the day and has some feel for the degree of conflicting testimony.

When I asked him what the future could hold, he responded with the following:

"The inquest formally stated the death to be accidental and not a homicide.

This is powerful evidence, but it can be overcome if new evidence comes to light that would conclusively prove otherwise. As you know from the hearing yesterday, the evidence from all but two witnesses support the notion that Dwayne was in a brief scuffle with Payne, that it was broken up by the Nath's, and they both were escorted from the bar, along with Price.

All evidence supports the fact Dwayne was walking backwards - was conscious and moving under his own power - as he shuffled his feet backwards down the pathway. The two exceptions to this were the statements from Dameon Cameron and Colt Price, whose versions differed not only from each other, they differed from their initial statements and were dramatically different from the other 20 or so witnesses, all of whom generally told the same and consistent version.

At this point, there is no one person or persons I could charge with any criminal offense, based on the evidence developed from all sources."

I attended the entire inquest - every minute and heard every witness. In fact, I have the witness testimony, jurors and Ryan questions, comments, etc., on tape - and I have a copy of the statements generated by the Sells family attorneys and investigator.

I also have a copy of the autopsy report, all medical records from United Medical Center, the ambulance records, and the Cheyenne Fire/Rescue report of the incident.

As I told Jon in a return e-mail, we must have heard different words that day - the day of the coroner inquest regarding the death of Dwayne Sells. The only thing consistent about witness testimony and statements was their inconsistency.

As I've written here, the statements of Dwayne Sells friend who was with him that night, identified above by Forwood as Colt Price, have been remarkably consistent throughout. For Jon to accept the typed notes of an officer who was unprepared to accept a statement in the Eagle's Nest that evening and hold subsequent corrections against any witness (when they were not afforded a chance to review, edit and correct an informal exchange), is unfair and unprofessional.

That police officer, by the way, is currently serving his country in Iraq and could not be questioned about whether there were discrepancies in his report or whether he had afforded the witness an opportunity to review it before it became part of the file. He hadn't.

I tried to interview the other witness Jon

referred to in his e-mail of August 26th. He did not seem anxious to clear up any changes in his story of which Jon Forwood accused him. All I - and the jurors - had to go on was his verbal testimony that day. If he had made earlier statements that were contrary to his testimony on August 23, it was not brought out into the open. And, obviously, the jurors - who did not have the statements in advance of the inquest - could not have considered them because they did not have considered them at all before voting and returning with their decision.

I cannot disagree with the DA about not being able to charge anybody at this point. The investigation and testimony at the inquest did not bring the matter to that point. More questions were raised

No one could follow the reasoning as to whom was subpoenaed and whom was not. Nor could one figure out why it required the family's investigator and attorneys to get statements (video or written) from such key witnesses as the neurosurgeon who cared for Dwayne Sells for the ten days he survived after the incident. Or the bartender who was on duty that night and had been talking with Dwayne just before the fight. Or the registered nurse who had tried her best to care for Dwayne on the floor of the Outlaw until the first responders arrived.

In fact, the investigation did **NOT** even include a statement from Dwayne's friend who was the single witness to the fight - **UNTIL** the investigator delivered that witness to the Cheyenne police department and insisted a formal statement be taken from him. On August 2nd.

The detective who co-chaired the inquest with Bill Ryan did not plan to read some statements into the record until so requested by family representatives.

Two statements had been taken from the registered nurse by the Sells investigator and the first, briefer one was read into the record and there did not appear any intention of reading the second and lengthier one until a request was made by the family attorney.

In between the two, the detective explained that the nurse had not been subpoenaed to testify because she had not seen the altercation - that she came onto the scene after Dwayne had gone to the floor by the exit. On the other hand, a second bartender who was on duty that night was called and her only input was that she had not seen the fight and had not seen anything as the victim was being taken out. She saw nothing but was called. Why her and not the nurse?

(Continued on page 11)

The Sells inquest

(Continued from page 7)

Also not called to testify were those who were on duty for American Medical Response (AMR) or Cheyenne Fire / Rescue. They were the first responders and they had written very interesting comments on their reports.

On the Patient Case Report of AMR, the beginning of the report stated: "Per bystanders, pt (patient) was grabbed by the head & had his head rammed into concrete floor. Bystanders state pt didn't move after that."

No one from AMR was called to testify, the patient case report was not introduced, and no statement was read into the proceedings. No mention was made of an attempt to identify the "bystanders" (plural) referenced in their report - which were meaningful witness statements made at the time of the incident, not hours or days later.

The Cheyenne Fire & Rescue Incident Report had a time line of Station 3 being dispatched to the Outlaw at 0126 hours (1:26 am on April 23rd). First unit was on scene at 0129, the ambulance was on scene at 0132, and on the way to the hospital at 0141 - arrival at the hospital was 0150. Patient was unconscious and unresponsive, according to this report. He was found bleeding from the back of his head and mouth. Written also was: "Laceration to back of head with moderate bleeding, obvious trauma to face with blood coming from nose and mouth."

No one from the fire department was called to testify nor was any statement, or this incident report, put into the record.

Among the several hundred pages of medical records from UMC, the principal diagnosis was "Closed skull fracture with subarachnoid/subdural/extradural hemorrhage, ..."

Secondary diagnoses included:

- Open wound to chest (wall), without complication
- Open wound to scalp, complicated
- Assault by unspecified means
- Open wound of face without complication, multiple sites

The emergency room record stated: "Pt reportedly in a bar fight and was hit in his head." A diagram of the front and back of a head is on the form and the diagram reflects lacerations on the front left going across half the forehead and, from the rear, smaller lacerations on the right top of the head. Nothing straight back.

While other reports reflect a major head wound on the back center, this ER diagram does not. It does state "trachea midline," but that is on the front of the neck. It also reflects that his pupils were unequal - the R being 6 mm and the L only 4 mm, which may indicate brain swelling.

Dr. Carrie Thoms completed an attending physician's ER consultation and reported, "On the night of the incident he, according to the Cheyenne Police officer, was being escorted out to the parking lot in a headlock when the bouncer tripped and both went to the floor. The patient struck his head on the floor and then became unconscious." Dr. Thoms was unclear whether the headlock she was told about was a front headlock or a reverse headlock, as the person applying it so testified. She also did not indicate the type of fall that the officer described - landing on the back, front or side of his (Sells) head.

She dictated that he "was noted to have a left step-off fracture in the mid face with blood coming from the left tympanic membranes" (ear drum). The fracture in the mid face could be cheek or jaw.

"He was noted to have significant cerebral contusion (bruising of the brain) and intercerebral bleeding ..."

The consultation report of Dr. Laura Brausch dictated: "The exact details of the altercation are not known."

Unfortunately, Dr. Brausch, they still are not.

Her report said: "he has numerous abrasions, small cuts, lacerations throughout, mostly on his face and right chest. There is a laceration on his left posterior head that is approximately 4-5 cm" (1.5 to 2 inches). Later, "the patient has bandages on the right side of his head."

Not being in the medical field, her description sounds more like a beating, perhaps with blunt objects like beer bottles or boots, than a fall backward onto a head.

The consultation report of Dr. Judson Cook, the neurosurgeon who operated on Dwayne several times, dated the day of admission to UMC, said: "There were several different reports in terms of what happened."

Everybody seems to have picked up on there being multiple accounts of just how the injuries to Dwayne Sells were sustained. Everybody but the inquest jury.

Dr. Cook's operative report, dated 04/23/05, the day Dwayne was brought in to UMC, read, in part - both preoperative and postoperative diagnosis: "Nondisplaced skull fracture on the right."

The Colorado pathologist testified that all of the skull fractures could have happened from a single incident. Dr. Cook did not see it the same way. Dr. Cina of McKee Medical Center in Loveland did not attempt to explain what influence the multiple skull fractures would have had on Dwayne Sells chance of survival IF he had not fallen and hit the back of his head. He was never asked questions about any other injury and the medical danger they presented to the deceased.

The operative report by Dr. Cook stated: "There was clearly a fracture along the parietotemporal area which was displaced." That is above and behind the ear.

Findings of UMC radiology include: "The fluid in the sinuses makes me worry about a basilar skull fracture, ... This is consistent with a fracture through the petrous bone and the mastoids. ... This is consistent with a pterygoid process fracture. ... There is a fracture in the right temporal bone." Another report: "Basilar skull fractures and fractures of the right temporal and left parietal bones which are nondisplaced."

All of these fractures, in the Colorado pathologist's opinion, were the result of the same incident, a fall to the tile floor - even though in different areas of the skull.

I cannot sort out the contradictory medical information and witness testimony to the extent of being able to say either that the death was caused by a beating or from a fall onto the back of the head.

No consideration was given to the possibility that, as Dr. Cook testified, the fractures (hence possibly the brain damage) were not the result of a single fall. No consideration was given for the possibility that the conflicting testimony about how Dwayne was being taken out was wrong except for his friend's.


There can be no reconciling ALL of the contradictory testimony about how Sells was taken toward the exit. In that event, why couldn't the friend's version - that two "bouncers" were sort of dragging him backward toward the door and laid him down - be the right one?

The three man jury dismissed the testimony of not only Dwayne's friend, but that of a local attorney and that of Dr. Cook, who repeatedly operated on Dwayne. With those dismissals, they somehow reached a conclusion that the manner in which Sells was being evicted did not matter. An engineer and his wife (an attorney), another attorney, a bartender, the former bouncer, and "bystanders" who spoke with the ambulance paramedics, all related a different version. And all of them are convinced that they have it right.

From the beginning, there has been a public attempt to diminish or distort what may have happened that night. What MAY have happened. I am not absolutely positive myself and the multiple stories and conflicting testimony have made the truth even more evasive. The WT-E described Dwayne Sells as an employee of the Eagle's Nest, as though working there part-time was a better job description than his working full time at Quark Mfg. That linkage also portrayed Dwayne as a biker, a negative image the paper wanted to impart to its few remaining readers.

Even at the inquest, the trashing continued. The coroner asked the pathologist about toxicology results. Dwayne had a BAC of .08 - a drunk driving violation by today's standards. And the pathologist said Sells had "cannabinoid" in his system. Pot. UMC reported that his level of pot was within the "reference range." Negative there. What wasn't reported was that no other participant in this incident - the nonbouncers, the other combatants, witnesses - was similarly tested for either alcohol or drugs. The UMC medical reports show that Dwayne was negative for hard drugs. His blood was negative for amphetamines, barbiturates, cocaine, opiates, benzodiazepines, phencyclidine (PCP) and tricyclics (antidepressants). That fact was not mentioned. How many patrons of the Outlaw Saloon that night might have had pot or one or more of those harder drugs in their system, had they been tested? Dwayne Sells did not. Only pot, in a trace amount.

In the next issue, we will report on any new developments. The story cannot end here. And it won't. Nothing has yet been proven.



Dennis Rafferty's
Oroweat
Bakery Outlet

308 Southwest Dr. • 635-8400
Open Monday - Saturday

South across from Tyrrell-Doyle Chevrolet - west at PTA Self-Storage

Oasis Market *Your best choice for ...*
Beef

190 So. College Drive
637-8870

M-F 8:30 - 5:30 / Saturday 9-4
Visa, MasterCard & Discover

XL Premium Beef . All Natural Angus Beef, Dry Aged for Flavor and Tenderness, USDA Inspected, Antibiotic-Free, No Growth Hormones Used, Quarters and Halves Available, Laramie County Produced. **KNOW WHERE YOUR MEAT COMES FROM!**

Future issues of the Cheyenne Herald

September 12, 26
October 17, 31
November 14, 28
December 19

In search of the truth

If supply of the Herald has been depleted at City News, BLM Building lobby, Burger Inn, Wonder Bread Outlet, Oroweat Bakery Outlet, County Library, Los Angeles or any other established redemption location - please call 637-2879. If you or your group need the Herald in quantities, call and we will provide them - rather than taking all available from racks around town.