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# THE CHEYENNE HERALD

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## Evidence not presented

A review of the Dwayne Sells coroner's inquest file now in the possession of the Laramie County District Court offices indicated that there were some witness statements and other evidence which was not presented at the inquest.

by  
**Dave Featherly**

A 7-page document entitled "Supplemental Report of Investigation (SRI)," was prepared by a detective of the Cheyenne Police Department and indicated it was a "WITNESS LIST FOR CORONERS INQUEST" (sic).

In the same file are three tapes (or disks). One is a VHS of the interview with Dr. Judson Cook, the Cheyenne neurosurgeon who cared for Dwayne Sells in the last days of his life. A second disk is of the Outlaw Saloon surrounds, taken five months after the incident.

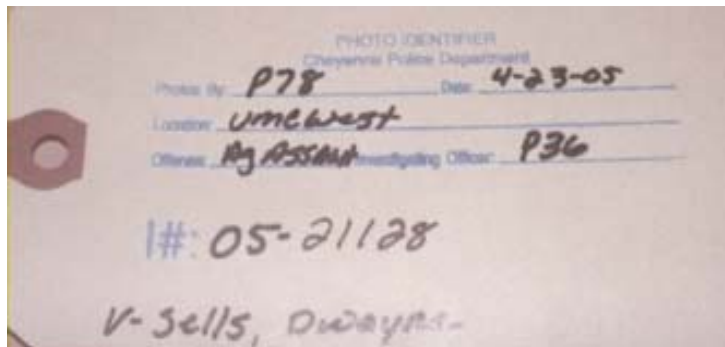
The third disk contains pictures of two of the men in the altercation that early morning of April 23, 2005. Most of the photos on that disk were presented at the coroner's inquest.

But not everything on the disk was shared with the inquest jury. Not quite everything.

Two tags appeared on the disk - one before each set of pictures on the disk.

The tag preceding the pictures taken that night of Dwayne Sells in the UMC emergency room - taken shortly after 2:00 am on 4/23/2005 - was not shown at the coroner's inquest even though the following graphic pictures of the injuries sustained by Dwayne that night were. A similar tag which preceded pictures of the other individual in the altercation, identified widely now as Jay Payne, was on the same disk and also was not presented to the inquest jury. Those photos (including the tag) were taken just after 4:00 am on 4/23/2005. Payne suffered no visible injuries to his head or face.

These two tags say that the "Offense" from this incident was "Ag (aggravated) Assault" and that Dwayne Sells was the victim (V). Why was this evidence withheld from the inquest jurors? Did Bill Ryan know it was being withheld?



(STORY CONCLUDES ON PAGE 10)

## "Black Death" at Gilchrist School?

by Dave Featherly

Two school district maintenance men were dispatched to Gilchrist Elementary School, in rural Laramie County School District No. 1, to remove a small section of water damaged wall.

Though the district has all the protective equipment necessary to deal with the health dangers of asbestos and mold, these two were told to stop at Home Depot and pick up a dust mask for themselves.

Using a dust mask to protect yourself from exposure to mold is like taking a knife to a gun fight.

For two full workdays and a part of a third, the two men removed the interior wall on an entire side of that particular classroom - which is, according to one of the men who sat for an exclusive interview with the Cheyenne Herald - a fourth grade classroom. They also removed the insulation and steel studs. All, he said, were covered with a slimy, black colored mold. During the day, the windows were left open and there was some circulation of air.

At the end of the work day, the windows were closed and the sheetrock, insulation and studs which were mold covered could fill the room with the mold's toxin.

A website advises the following applies to clean-up of *Stachybotris*, which is what the mold was:

- Anyone with a chronic illness, such as asthma or emphysema, should *not* do the cleanup.
- Use a HEPA filter respirator purchased from a hardware store to reduce the mold spores you breathe in.
- Wear protective clothing that is easily cleaned or discarded.
- Wear rubber gloves.
- Work over short time spans and take breaks in a fresh air location.
- Open the windows during and after the cleanup.
- Turn on an exhaust fan or place a fan in a window to blow air out of the affected room to the outside (make sure the air is being blown *outside*, not into another room).
- Double bag materials before you remove them from the contaminated area

The workers were not questioned about chronic illnesses, which both have.

On May 15, 2001, *The Wall Street Journal* on its page one helped alert people and businesses to the growing problem of deadly *Stachybotrys* (or *Stachybotris*) mold contamination. "*Stachybotris chartarum*, or *stachy* as it called for short, is invading a good many buildings and homes. The mold isn't new, nor is the problem; but the recent outbreaks have people scared, and some of them have gone to extremes to deal with it. The fuzzy intruder lurks behind wallpaper and under sinks and feeds off moisture and building materials." Air-quality experts and doctors link it to illnesses ranging from dry coughs and runny noses to oozing rashes and constant fatigue.

My first question to the school district employee was, "how do you feel?" He looked haggard, like someone who not only didn't feel too great but had also experienced disappointment with how his health situation was being challenged. He described symptoms of exposure to *stachybotris*, which, through research, I came to learn. In 20 years in the construction field, he had never before come in contact with mold.

The mold had not been identified as *stachybotris* until the workers themselves arranged to have it tested - a test for which they paid.

He told me school district maintenance supervisors had been trained on the issue of mold removal but hadn't shared any advice with these workers before dispatching them to tear out a wet wall that was a prime candidate to have mold attached to its back surface. And, while the district has a trailer full of equipment to use for removal of asbestos and mold, none was provided to either of them. The only protective item recommended was a dust mask - wholly ineffective and, according to him, not advised for men with beards, goatees, etc. - which he has.

He described for me a situation where water had entered the wall, above ground, through cracks in the exterior walls. He believes that those outer walls were not sealed as they should have been and mold problems may exist now, or could in the future, in other newer schools built with similar construction.

(More on page 2)

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## Evidence and statements confound

(Continued from page 1)

When asked to read a statement which hadn't been read into the record or show pictures of the injured Dwayne Sells which he wasn't planning to, Bill Ryan was always accommodating at the inquest. He made the statement at one point that he wanted all possible evidence considered.

That's what makes it hard to understand why these tags were withheld.

I haven't seen the witness statements from Don or Steve Nath, nor of any witness who had their statements taken by the police department - except the five-page statement given by Colt Price, Sells young friend who was with him that night. But, Don Nath testified that he had stayed around that night so he could give a statement.

So at the time Detective Brasile interviewed Jay Payne and a police photographer took the pictures which appear on the disk, pieces should have been falling into place.

Knowing what they knew by 4:00 am, one of the policemen wrote on that tag that the "Offense" being dealt with was aggravated assault.

In addition to these previously undisclosed pieces of evidence (the tags), the witness statements typed by Detective Brasile on August 2, 2005, and now present in the file in the District Court offices, contained different accounts of what happened to what witnesses themselves testified to at the inquest and to the references made by Bill Ryan on his "cheat sheet" that he used the day of the inquest - to introduce witnesses.

It is impossible to know how much of each original witness statement is included in the detective's synopsis but what is written is often contradictory to or incomplete from what the same witness testified to at the inquest itself.

For example, on Ryan's list, his brief reminder to himself about one of the bouncers who intervened in the fight was: "Don NATH - saw fight, escorted Sells out of the bar: statement"

That is contrary to Don Nath's testimony at the inquest. He said that he and his brother had come out of the men's room and the fight had ended. He did not testify to any aspect of a fight - only its aftermath. Detective Basile's narrative of what Nath had told him in an interview began: "D. Nath was standing by the rear bar area when he was splashed by a liquid and glass debris."

Both accounts cannot be true. Either he was splashed by "a liquid and glass debris," or he was coming out of the restroom with his brother. Not both.

Nath's brother, Steve, testified AND the SRI of Brasile states that: "He walked out of the men's bathroom and noticed where two males were on the floor."

On the SRI, done by Brasile on August 2, 2005, he wrote that Jay Payne had told him that "after hitting him (Payne) on the cheek, Sells hit him over the head with a bottle." The pictures of Jay Payne at 4:00 am that same morning clearly show that he was not hit on any part of the head with a beer bottle - especially one that broke and hit others nearby with the flying glass, as one of the bartenders also testified.

On his narrative of a purported "interview" of Colt Price (Sells companion that night), Brasile wrote: "While conducting a bar check at the Eagle's Nest Bar on April 23, 2005, Sgt. S. Wheeler contacted Price. Price told Wheeler he was a witness to the fight at the Outlaw Saloon the night before." That's odd. If Wheeler didn't know Price was a witness to the fight, why did he contact him? Price has consistently testified that HE approached the police officer to give him an account of what happened at the Outlaw.

Price said that the officer was disinterested in what he had to say and wrote his brief comments in a pocket-size tablet. Price never reviewed, confirmed nor signed any statement typed up by Sgt. Wheeler as the result of that conversation. The narrative DID reflect that Colt Price had told the policeman at the Eagle's Nest: "Payne picked up a long neck beer bottle and hit Sells over the head."

That was consistent with Sells' injuries shown on the department's photographs (which were on the disk referenced here), whereas Payne's accusation that he had been hit on the head by Sells was not supported by evidence of injury.

In spite of Steve Nath's statement, as reflected by Brasile's SRI, as well as Steve Nath's testimony at the inquest, that he had come out of the men's bathroom and saw two males on the floor, Bill Ryan's list read: "Steve NATH - saw fight, escorted Payne out of the bar: statement." His self-prompting was wrong.

Only one statement written in the SRI collaborated the manner in which Don Nath said he was forcing Dwayne Sells toward the front door. That statement came from a person whose subpoena was served on him at the same address as Don Nath was served - two minutes apart on August 12, 2005.

Three of the non-police witnesses who were subpoenaed did not show for the inquest. The file contains a response from the Marion County, Florida sheriff's department in which they told local law enforcement that it would cost \$20.00 to serve a Wyoming subpoena on Jay Payne and his friend who had moved there. A subpoena was prepared but no attempt was made to serve it. For \$20.00 it was possible that the young men would not know the law and would dutifully appear at the inquest.

One witness who was not on Ryan's list gave a statement to police that concluded: "... the force Don Nath used was, 'excessive and not necessary'." She evidently was not subpoenaed to testify.

Another witness, who had just gotten off work and was then presumably one of the more sober patrons at the Outlaw Saloon. His statement included: "... he saw Don Nath dragging Sells in a deadlock and noticed that Sells' back was facing the ground." He said that "Sells did not appear to be fighting with Don Nath." This witness said that: "Don Nath was standing next to his table immediately after Sells fell, with some of his friends. [The witness] overheard them telling Don Nath not to worry because they'll stand up for him." This witness's statement was not read at the inquest and he was not subpoenaed to testify.

The statement from an assistant attorney general contradicted what Don Nath swore was his method of ejecting Dwayne Sells. Her credibility should be stronger than most who were witnesses. She was not required to respond to the subpoena - she testified in an affidavit and was not questioned. Her husband was also there and was just named a chairman of a Frontier Days committee. His story was the same as hers. Their testimony should have gone a long way toward discrediting the Nath position.

Digest this: "For reasons unknown, Colt [Price] felt it necessary to come to the Cheyenne Police Department to provide us with a written statement as to what he witnessed the night of Dwayne Sells' death." In that same SRI, Detective John Brasile wrote: "It should also be noted that on April 24th, 2005, Colt Price moved to Tennessee and recently returned to Cheyenne."

An inference could be intended that Colt Price fled to Tennessee after this incident. But, his move to Tennessee had been planned before that night and was the very reason he and Dwayne Sells were out on the town that night.

In the nine line statement the same detective had written regarding Jay Payne, he did not reflect that Payne had suddenly moved to Ocala, Florida. Bill Ryan made it sound that day as though the move was to take a participant in a bar death out of the reach of a subpoena.

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