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09 Feb A TRAGEDY WRAPPED INSIDE A CATASTROPHE INSIDE A DISASTER: The Story of the Prosecution and Trial of Bryce Miller PART II

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I called in an old friend for help. David Smith of Norman Oklahoma is one of the greatest trial lawyers our state has ever produced. His list of accomplishments, trial victories, and past clients is as impressive as it is long. You can always see David in the comfort of your home if you have a subscription to Netflix. David was interviewed for the series, The Innocent Man, which was produced by John Grisham. David appeared on the series as a result of his representation of Glen Gore. David did not hesitate to accept my invitation to join me on Bryce's case and I spent the next couple of months bringing him up to speed while we prepared for preliminary hearing.

AND THE FUNNY STUFF BEGINS

Randy Hass of the Pittsburg County Sheriff's department was handling the investigation of the alleged murder of Jaylen Nelson. I thought this was a bit unusual considering that it would generally be the Oklahoma State Bureau of Investigation (OSBI) that handles murder investigations as they are generally much more equipped in both better trained personnel and resources, but the Sheriff decided not to call them in and handle it within his own department.

Bryce told me that there was a knife that night and where it was thrown, and in his interrogation without a guardian present or the benefit of Miranda, he told Randy Hass about the knife he was threatened with too. However, Randy Hass' report or any of the other officer's reports never mentioned that a knife was ever found at the scene or just up the road as Bryce had told him. But we were pretty sure a knife existed.

In a story that ran in the McAlester News Capital, Chris Morris (the Sheriff), mentioned that a knife was found, but did not describe it or indicate what kind of knife it was. I had a description of the knife that I had gotten from Bryce, but I had nothing to compare it to. I contacted the Sheriff office to see if I could get more information about the knife, and I was told I would have to speak to the District Attorney's office. From there I called Chuck Sullivan's office (the elected district attorney) and spoke with First Assistant Adam Scharn, who told me that I should speak to someone at the Sheriff's office. I know when I'm getting the run-around and I was definitely getting that. Our preliminary hearing date was fast approaching and I want to know about this knife and law enforcement and the DA's office had obviously taken the approach of hiding evidence and stalling to keep it from me as long as possible. I would say this is unusual, but it is actually the preferred practice of Mr. Sullivan's office to hide as much evidence from defense counsel as possible and until the last second.

Instead of waiting or depending on the DA's office or the Sheriff's office to do the right thing. I went out to the scene not once but twice, with help, and the second time with a metal detector. I figured that either law enforcement did have the knife I was looking for or if it was

a different one, they had in their possession, I would find the other. Despite an exhaustive search, and a few cuts and bruises to my investigator, I wasn't able to find anything. I then took the step of subpoenaing Randy Hass to appear at the preliminary hearing with the knife the Sheriff mentioned to the newspaper, and this was met with extreme resistance by the DA's office.

It would take a hearing and a pretty decent fight before the State would agree to at least give me a picture of the knife that was found so I could ask about it at the preliminary hearing. I did get a picture of a knife, and although it did fit the description Bryce had given me, I would need to show it to him for confirmation. The knife was photographed next to writing pen for reference and positioned in a manner that I found odd on what appeared to be a piece of paper or paper towel. I was used to seeing items of evidence collected by OSBI and numbered, sorted and measured by generally placing a ruler next to an object for reference as to size. I would have to go find this brand of pen and measure it in order to get some accurate idea of the size of the knife.

The knife was a match. Bryce recognized it the moment he saw the photograph and I noticed his reaction manifest itself physically when he recoiled just slightly upon seeing it. But, before this prelim was over there would be more fireworks and even a witness would come forward for the defense.

WITNESS FOR THE DEFENSE?

I received a phone call one afternoon, and all my receptionist could tell me was that the person on the line was wanting to talk to Bryce's lawyer and it was about the case. I answered and heard the voice of "Jane".

Jane wanted to let me know that Bryce had acted in self defense and that she knew that because he had spoken with her that night. I asked Jane if she could elaborate and she agreed to prepare for me a statement of sorts and bring it by my office. I thanked her and told her that I would wait for her to do just that.

What Jane brought me was in fact her recollection of her conversation with Bryce the night he shot Jaylen. She had written it down as if it was a transcript, and she told me that she knew Bryce and she knew Jaylen, and she had no doubt that Bryce acted in self-defense or at least in defense of her, because it was her that Jaylen wanted to harm. She told me the background. She told me about the argument she had with Jaylen, how her and another girlfriend had approached Jaylen's girlfriend and revealed some things that Jaylen definitely did not want her to. She told me about the drugs and the burglaries and other bad things she claimed Jaylen was into. She told me how he would take out a large knife and threaten to use it, and how he had boasted about using it before. And she told me that Randy Hass was a close family relative and how he and the rest of her family was pressuring her.

By the time I was finished talking to Jane, my head felt like it was swimming. I had a full-on version of a high school musical rife with over dramatic acts, hyper feelings, wild innuendo, a strange oversexualized but juvenile energy, and all of it pointed to a bunch of poorly supervised and overindulgent teenagers playing grown-up with extremely real life and death consequences. And just why in the hell was I hearing about what Jane had to say now for the first time?

Jane would be listed as a witness at the preliminary hearing, but then as a witness for the State. I could tell she had been bullied and threatened quite a bit, and I wasn't too surprised when she toned down everything that she had told me. However, she did stick to her story in regard to what happened the night Bryce called her. She did have the whole conversation in written form to the best of her memory, and she was clear that Bryce claimed Jaylen wanted to kill her (Jane) and when Bryce wouldn't help him, he attacked with a knife. She confirmed that Bryce had told her the same thing he had told Randy Hass, and she could add to its potential truth by testifying about how Jaylen carried a knife and he would threaten people, including her.

Although the case was bound over for trial, myself and David were feeling pretty good. We had learned from the preliminary hearing that the knife recovered was in close proximity to the crime scene and was found in a place that supported it being flung from a moving vehicle as Bryce had described. We confirmed the fact that the investigation was bungled and amateurish at best and full leads weren't just not followed, but wholly ignored.

The preliminary hearing had taken place in early September and that set us up for a trial for sure in March of 2020. Before it was all said and done the trial of Bryce Miller would produce some the craziest and most out-there moments that I have ever personally witnessed in a jury trial. Some of that would come as a result of who the State picked to lead the case for them at trial, and even more could be attributed to the strange circumstances around the case in general. And when it was all done and finished, all of us involved in that trial would wake up the day after to a completely different world.

LEADING UP TO TRIAL

We were scheduled for trial to begin March 9, 2020, and that almost didn't happen. Tim Mills, who was slated to try the case discovered that he had a conflict with less than a month before the date of the trial. Judge Brendan Bridges of McIntosh County was assigned to the case (his first major felony jury trial) and made it clear that he was determined to follow through with trial in March. For the last few months, the State and Defense had been battling over discovery.

Discovery is the process of obtaining and then sharing the evidence in which you plan to use at trial. In the American criminal justice system, there is not supposed to be any surprise. As a former District Judge then Oklahoma Supreme Court Chief Justice, and local celebrity,

Stephen Taylor has always maintained, a prosecutor's job is to seek justice, not victory.

The State is supposed to hand over everything at least ten days prior to trial, according to the law. Most prosecutors give their discovery before then, because it is nearly impossible to go through an entire case worth of discovery ten days before trial, and it will often result in a request for continuance from the defense. In this particular case the state was going to dump thousands and thousands of pages of internet history and search results and everything else that could potentially be stored in a personal computer. I took steps to try to obtain all of this at a reasonable time before trial and was met with the resistance that I have grown used to in Pittsburg County. At one point I even filed a motion to dismiss the case completely due to the continuous discovery violations by the state. And, then they filed the tape.

THE TAPE

As I told you fights with this DA's office over discovery are far from new. At some point, as a result of one of these fights, Mr. Sullivan began the unprecedented policy of filing the State's discovery with the Court Clerk. Why that is so unprecedented is because that would make what they filed a public record. So, if you, John Q Public, was interested in a particular case you could just head on up to the Pittsburg County Courthouse, to the second floor and request to see the court file. A nice lady will go retrieve that for you and in that file will likely be a disc. On that disc will be everything, from things that will be introduced at trial to things that a Court may not let be introduced at trial. You can ask the nice lady for a copy of that compact disc and one should be provided for you at cost. That means that very personal information, medical records, grizzly photographs, and all kinds of statements and things that we all probably want to not come out into the light of day unless necessary in the pursuit of justice, is right there for you to pick up, take home and share with the world if you want to.

This particular case would cure Mr. Sullivan's office of doing this any longer, but they had already done it for years. Don't want to take my word for it? Head on up to the Court clerk's office and request any file that has made it to a jury trial docket between 2016 and March 2020, and you will probably find a disc in there.

I received this particular tape in February, and it came after I had filed numerous motions, including that one to dismiss the case. My first reaction when I opened up that disc was anger. There were thousands and thousands of pages of discovery documents and other things. I went through all of it, sometimes sitting up in the evening well into the morning hours, because I was not going to be unprepared. Also on this disc were some interviews, and one in particular would blow my mind.

When I listen to police interview, I have a certain process, and it is very slow and meticulous. I take not only notes, but I make comments and ask myself questions, often stopping the tape several times and going over a response or question. I listen for everything from the actual answer to the tone or inflection of the speaker. I try to transport myself into the shoes

of both the interviewer and interviewee and attempt to feel what they are feeling. I was taking my time over the course of two days listening to this particular interview of Jane that was conducted by the actual prosecutor in the case, Michon Hastings-Hughes. This is particularly unusual to hear a prosecutor conduct an interview, because that would subject them to potentially becoming a witness in the case itself.

I thought the things Ms. Hughes-Hastings said to this minor were shocking. I was filling pages of notepads with notes. However, I was getting frustrated. I was now at about the hour and fifteen-minute mark of what already felt like a protracted and unnecessarily long interview when I noticed the “progress bar” for the audio tape was still not even showing that I was a quarter of the way through.

In a moment of frustration, I used my mouse to find a point on that progress bar that was about three quarters of the way through and clicked my left mouse button. I expected to hear either Ms. Hastings-Hughes or Jane speaking. Much to my surprise I heard Randy Hass’ voice and another voice I recognized, District Attorney Task Force Officer, Walker Stewart. I didn’t find it immediately strange to hear Walker’s voice, he was actually present during the interview I was listening to, but Randy Hass was never announced to be in the room. Why does it sound like they are in a car driving? What are they talking about?

I went further back on the progress bar and clicked my mouse button again. Now I heard all kinds of voices and plates clattering. This was in a restaurant. People were talking socially, but it was about things and cases I was familiar with and voices that I recognized. And then it hit me.

Ms. Hastings-Hughes conducted the interview that day of Jane and Walker Stewart was present, it was his tape recorder they had said was being used to record the interview. THIS GUY NEVER TURNED THE RECORDER OFF! The interview itself was just about an hour and a half long, but the tape I had was over six hours long. I sat there for a long, long time listening to that tape.

Next: The trial begins.