

Carl Will Atkinson - Cross by Mr. Unti

1 MR. VLAHOS: No further questions at this time, Your
2 Honor.

3 THE COURT: Okay then. It's 5 til. Let's the take an
4 extra five minutes. Let's take a lunch break. Come back in
5 session at 2:30.

6 (Lunch recess at 12:59 p.m.)

7 AFTERNOON SESSION

8 THE COURT: Let's get started, Mr. Unti.

9 CROSS-EXAMINATION BY MR. UNTI:

10 Q. Mr. Atkinson.

11 A. Yes, sir.

12 Q. Let me just start with the very end of your direct
13 testimony. You were talking about a meeting that you had at the
14 IHOP with Christina Fowler?

15 A. Yes, sir.

16 Q. Do you recall your testimony, and one of the things
17 you said is that Tina really didn't want to have anything more
18 to do with the case; is that right?

19 A. That's the impression I got. She, she was -- by body
20 language more than anything else, she was making it clear that
21 she had said all she wanted to say, and I felt -- I got the
22 impression she didn't want to be involved.

23 Q. Do you remember last week when I sent you a couple of
24 memos on the, actually, multiple meetings between Tina Fowler
25 and one member of the defense team or another; do you recall

Carl Will Atkinson - Cross by Mr. Unti

1 that?

2 A. I do.

3 (Defendant's Exhibit Numbers 19 and 20 marked for
4 identification.)

5 Q. Let me just show you what we have marked as
6 Defendant's Exhibit 19.

7 The very last thing, does that refresh your recollection of
8 Tina's willingness to continue to cooperate with the defense
9 team at that time?

10 A. She did. Yes, it does. Is willing to meet with Pete,
11 Danny, and I to discuss the case.

12 Q. Are you aware of any subsequent meetings with either
13 you or other members of your defense team?

14 A. Yes. I have had my recollection refreshed by
15 another -- by memos that you've sent me in which she indicated
16 that she had met with me and Pete Oldham and Danny Carter in his
17 office. I did not -- when I talked to you, I did not, I could
18 not recall that at all. But after reading the memo and seeing
19 the heading of the memo, at least one of them, it did come back
20 to me. Yes, I now recall that happening.

21 Q. Isn't it true that on that occasion, or another
22 subsequent occasion, Tina informed your defense team that when
23 she got back home from work on that Friday night, Scott was
24 asleep on the couch in her house?

25 A. I recall her -- and it may be in that memo. But I

Carl Will Atkinson - Cross by Mr. Unti

1 recall her saying when she came from work, he was there. I
2 don't specifically at this point remember her saying he was
3 asleep on the couch, but I recall her saying, yes, when she came
4 home from work, he was there.

5 Q. You're an old trial lawyer, and you know I wouldn't
6 have asked that question if I didn't have a document.

7 A. I understand that. And I have seen that document you
8 sent me, so.

9 Q. This is one of the documents I've sent you?

10 A. Yes.

11 THE COURT: Thank you, sir.

12 Q. And the significant fact is there in the first
13 paragraph where Tina states the time Scott showed up at her
14 house had to be before 4 p.m. because she went to work at the
15 Badin Tennis Club. Is that what it said?

16 A. Yes.

17 Q. When she got back home, it was approximately 3 a.m.
18 and Scott was asleep on the couch?

19 A. Yes.

20 Q. When she woke up, he was gone?

21 A. Yes.

22 Q. And that he may have stayed more of the night, she
23 just doesn't know.

24 A. That's what it says, yes, sir.

25 Q. Are you aware of any further meetings between Tina

Carl Will Atkinson - Cross by Mr. Unti

1 Fowler and your defense team?

2 A. There is another memo and it seems to indicate that
3 she met with -- either met or talked with Danny Carter
4 somewhere, but I don't recall -- know of another one that I was
5 involved in.

6 Q. In light of this last meeting that we have a record
7 of, and that's the April 16, 2002 meeting, did you consider
8 calling her as an alibi witness or as a mitigation witness in
9 either phase of the trial?

10 A. I did not call her -- consider calling her as a
11 defense witness at the guilt/innocence phase because she always
12 denied that he was there on that night, and she never did have
13 anything that indicated that he was in her home the night when
14 this Christopher Gailey was supposedly killed.

15 Q. So you're saying that when she states that the time
16 Scott showed up at her house had to be before 4 p.m. and that
17 she found him asleep on her couch, that you're not sure --
18 you're personally, by personal knowledge don't know which night
19 she's referring to; is that correct?

20 A. I do not.

21 Q. Did you discuss with your co-counsel the use of the
22 1994 recantation of Vanessa Smith in the church break-in cases
23 in which she had originally accused Scott Allen?

24 A. That came up and it was discussed at some point in
25 time. I don't recall exactly when it was. And Pete, it was

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Official Court Reporter

Carl Will Atkinson - Cross by Mr. Unti

1 vague in his memory, but he talked to me about it and told me
2 about it.

3 Q. Was that one of the reasons why the overarching
4 strategy that you and Pete developed for the trial was aimed at
5 the credibility of Vanessa Smith as a prosecution witness?

6 A. I'm sure that came into play. And what -- well,
7 that's all.

8 Q. Mr. Atkinson, do you recall who the DA was in the 1994
9 time period when the church break-in cases were prosecuted?

10 A. I imagine -- I think it was probably still Garland
11 Yates, but I don't -- I think he was. I don't know.

12 Q. Garland Yates?

13 A. Yes.

14 Q. Do you have personal knowledge of who the chief
15 investigating law enforcement officer was in those break-in
16 cases?

17 A. For some reason, Barry Bunting comes to mind, but.

18 Q. It's true Garland Yates was the DA and Lieutenant
19 Bunting was the chief investigating officer in the 1994 or the
20 2003 trial of Mr. Allen for the murder of Chris Gailey; is that
21 true?

22 A. Correct.

23 Q. It was the same team for the prosecution in both
24 cases; is that correct?

25 MR. VLAHOS: Objection.

Denise St. Clair, RPR, CRR, CRC
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Carl Will Atkinson - Cross by Mr. Unti

1 A. Assuming my recollection of Garland Yates --

2 THE COURT: I'll take judicial notice that Garland
3 Yates was the elected DA from December of 1980 until four years
4 ago, whenever that was, three years ago.

5 Q. Did Scott ever express to you his reluctance to
6 involve other people to help with his defense for fear that they
7 too would also be charged with something?

8 A. Yes.

9 Q. Did Tina Fowler ever express any fear about being
10 charged with something if she appeared to testify in Scott's
11 defense?

12 A. I vaguely recall her mentioning that in our
13 conversation.

14 Q. Were you ever made aware of any letters that Vanessa
15 Smith sent to Scott while he was in detention in which she
16 proclaims both of their innocence?

17 A. Say that again, sir.

18 Q. Are you aware of any letters written to Scott Allen
19 from Vanessa Smith in which she proclaimed that both of them
20 were innocent?

21 MR. VLAHOS: I'm going to object unless he has
22 personal knowledge.

23 MR. UNTI: Well, I'm asking if he is aware of those
24 letters.

25 THE COURT: You can answer.

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Carl will Atkinson - Redirect by Mr. Vlahos

1 A. Yes.

2 Q. Did you consider using those letters in the trial of
3 Mr. Allen?

4 A. I'm sure we considered it, Mr. Unti, but I do not know
5 why we elected not to, other than that we didn't believe that we
6 was going to have a method of getting them into evidence.
7 That's something that seems to come to mind, because at the time
8 we didn't have any -- we had been told that Scott was not going
9 to testify.

10 Q. The only way you could have gotten them into evidence
11 would have been -- in your case in chief would have been for
12 Mr. Allen to take the stand; is that correct?

13 A. Yes.

14 Q. Could you have used them in your cross-examination of
15 Vanessa Smith?

16 A. Now that's a possibility, yes. That could have been
17 done.

18 MR. UNTI: Your Honor, I have no further questions for
19 this witness.

20 THE COURT: Thank you, Mr. Unti.

21 Mr. Vlahos.

22 MR. VLAHOS: Thank you, your Honor.

23 REDIRECT EXAMINATION BY MR. VLAHOS:

24 Q. Do you still have that Defendant's Exhibit Number 20
25 up there with you? It's a Tuesday, April 16 of 2002, additional