

IN THE CIRCUIT COURT OF COOSA COUNTY
STATE OF ALABAMA

TIMOTHY C. DAVIS,
Petitioner,

vs.

Case No. CV 92-14

STATE OF ALABAMA,
Respondent.

DEPOSITION OF:
STANLEY B. SIKES
JANUARY 9, 1995

The deposition of STANLEY B. SIKES was taken before Rebecca S. Daniels, Court Reporter and Notary Public at Large, at TAYLOR MANUFACTURING COMPANY, 150 West Oakdale Avenue, Crestview, Florida, on the 9th day of January, 1994, commencing approximately at 2:00 p.m., and being concluded on the same day, pursuant to the Alabama Rules of Civil procedure.

REBECCA S. DANIELS
Court Reporter
1722 Colonial Court
Fort Walton Beach, Florida 32547
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WHEREUPON,

STANLEY B. SIKES

was called as a witness and after having been first duly sworn, was deposed and testified as follows:

DIRECT EXAMINATION

BY MS. NORBY:

Q. I need to ask you whether you want to sign the deposition or whether you would like to waive.

A. I will waive signing.

MS. NORBY: Clay, with regard to stipulations, this deposition is being taken for use for any purpose by either party. And with regard to objections/ I assume we will again stipulate that objections can be reserved except for objections to the form of the question; do you agree to that?

MR. CRENSHAW: That's fine.

MS. NORBY: And I should also mention that we're here at Taylor Manufacturing where Mr. Sikes works, and it's possible that he may have to stop and go and attend to some business in the middle of the deposition; so if that happens, we will have to take a short break until he can get back.

MR. CRENSHAW: Okay.

Q. (BY MS. NORBY:) All right. The witness has been sworn. Would you state your name and address, please.

A. Stanley Brit Sikes, 1002 Regatta Drive East,
Micanville, Florida, 32578.

Q. And what's your present occupation?

A. General manager, Taylor Manufacturing Company.

Q. And are you the same Stan Sikes who represented
Tim Davis at his capital trial in 1980?

A. I am.

Q. And at the time when you tried Mr. Davis' case,
had you ever tried any other capital cases?

A. That is the only capital case I have ever tried.

Q. When did you first get involved with this case?

A. The case was in my firm since the time of Tim's
earlier arrest, or thereabouts, I believe. It was
initially handled by one of my partners. Allen Edwards. I
became responsible for the case some period of time - a
couple of months maybe or so - prior to the actual trial.

Q. And how did that come about?

A. I'm not sure exactly or I cannot remember
exactly all of the reasons for my becoming responsible for
the case in so far as our firm was concerned. But I was
the senior member of the firm and it was a very nasty case
and it was better for me to try it than Mr. Edwards.

Q. Do you have any knowledge of where Allen Edwards
is today and what his situation is?

A. Allen Edwards is located in Montgomery, Alabama.

He unfortunately attempted suicide with a gunshot wound through the mouth several years ago and he is in need of constant care.

Q. I take it from your statement about your present occupation that you're no longer practicing law.

A. That is correct.

Q. And the file that you had in this case when you stopped practicing law, what did you do with that file?

A. It remained with my law firm in Selma and ultimately was turned over to you, as I recall, or made available to you to make copies of whatever.

Q. The original of the file which -

MR. CRENSHAW: I object. It's repetitive. He's already answered the question.

Q. (BY MS. MOREY:) The original of the file, do you know where that is now, the original copy of it?

A. I assume it's in Selma.

Q. Have you had an opportunity prior to today to review a copy of your file?

A. No. I have reviewed some specific items that you made copies of and sent to me in the nature of pleadings, as I recall, or principally in the nature of pleadings. I do not now have a transcript and I don't think I have ever had a transcript.

Q. Okay. When your firm first got involved in this case, how did that come about, if you know?

A. As I recall, some of the members of Tim Davis' family, specifically two uncles and perhaps others lived in Arma - and I'm not sure how Allen was sought out, but in any event, Allen was sought out.

Q. And what was the arrangement, if you know, between Mr. Davis' family and your firm?

A. Do you mean were we paid a fee?

Q. Yes.

A. The answer to that is: Yes. I'm not sure how much. It was not enough.

Q. What do you mean by saying it wasn't enough?

A. I cannot give you the dollars at this point in time, but the amount that was paid us was nowhere near what the fee that was quoted. But we were in the case and we had been paid something and we stayed in the case. And I think that is also true with respect to Lee Sims, who was co-counsel with us.

Q. Was he retained separately?

A. I cannot answer that. I don't know.

Q. Were you paid a one-time fee or were you paid for your hours or do you know?

A. I really don't know. My - well, that would be speculation. I really don't know.

Q. Did you have any investigators working on the case?

A. No. Our firm did not have an investigator.

Q. And were any experts hired by family or by you to assist you?

A. Not to my knowledge, no. Not by our firm.

Q. And you didn't have any experts who were working for you?

A. No.

Q. Now/ if you could, tell us what you recall about the community sentiment about this case around the time when the trial took place.

A. At the time of trial, the courtroom was generally full every day, all day long. There was probably more community interest in that case by far than any I had seen during my lifetime of practicing law.

MR. CRENSHAW: I'm going to object. I think that question was immaterial and irrelevant to the Rule 32 petition.

MS. NORBY: Okay. That's noted.

Q. (BY MS. NORBY;) How was it different or unusual from what you were used to in cases?

MR. CRENSHAW: Same objection.

THE WITNESS; I represented two state officials charged with white collar crimes involving their state-held offices, both of which attracted a

tremendous amount of publicity in both the print, television, and radio mediums. There were certainly a good number of spectators in both of those cases which were tried in Montgomery, Alabama. But in neither case were there the number of spectators in the courtroom on a daily basis as there was in Rockford, Alabama, for Tim Davis' trial.

Q. (BY MS. NORBY:) who were those public officials?

MR. CRENSHAW: I object. That is irrelevant.

MS. NORBY: That's noted.

THE WITNESS: Howard white, who was the state purchasing agent, and the president of the public service commission, whose name I cannot tell you right this second. I will think of it and add it in a minute.

Q. (BY MS. NORBY;) Do you know whether there were any concerns about security at this trial?

MR. CRENSHAW: I object. There is no claim in the petition regarding this. This is immaterial and irrelevant.

MS. NORBY; It goes to the venue claim, among others. Clay, but that objection is noted.

MR. CRENSHAW; Well, you should have predicated all your questions based on that, then.

MS. NORBY: Okay.

THE WITNESS: May I answer?

Q. (BY MS. NORBY:) Yes, you may answer. Please do.

A. The sheriff/ at the time of the trial, made certain that Lee Sims and I were afforded security from the time we arrived and from the time we left every day. If that answers your questions that we had a deputy looking after us. The sheriff also made certain that there was order in the courtroom at all times because of the interests that were shown by the attendants there.

Q. (BY MS. NORBY:) What did that deputy do in the courtroom that was assigned to you and Mr. Sims?

A. He basically took a position between us and the courtroom inside the bar.

Q. What/ if anything, did he do outside the courtroom?

A. Stepped with us until we got in the car and our cars got away and out of our cars in the morning.

Q. In your experience, was that commonly done in criminal cases?

MR. CRENSHAW: I object to what -- I don't know what you mean by what is commonly done in criminal cases regarding this.

Q. (BY MS. NORBY:) In your experience -- I'll rephrase the question.

In your experience/ had you/ on other occasions, been assigned security by the sheriff during trial?

A. on only one other occasion.

Q. In light of the community sentiment, did you take any particular action to prepare for the voir dire in the case?

MR. CROMBIE: I object to the characterization of community sentiment.

Q. (BY MS. NORBY:) If I could just rephrase that, then.

Could you characterize what, if anything, you did to prepare for the voir dire in the case?

A. We felt that it was imperative, if possible, for us to have the ability to voir dire individual members of the panel outside the hearing of other members of the proposed panel.

MR. CROMBIE: I'm not trying to be an obstructionist, but I'm going to have to make another objection. One of these matters was decided by the State Appellate Courts on direct appeal and they held that there was no violation, so therefore, you can't establish prejudice under Strickland vs. Washington. And I'll go ahead and just make that objection based upon all grounds that were raised and addressed by the court on direct appeal and I won't interrupt on those grounds anymore.

MS. NORBY: That's fine.

Q. (BY MS. NORBY:) You can continue with your answer, if you hadn't finished it.

MR. CKENSHAW: I'm sorry. I didn't mean to interrupt you.

THE WITNESS: I think I had finished. I'm not sure. My answer was to the effect that we very much wanted to have individual voir dire of each member of the venire, or of the panel, outside the presence of the others. And we wanted to do this really not only outside the presence of the other members of the jury but outside of any spectators that were in the courtroom at the time.

Q. (BY MS. NORBY:) And why was it that you wanted that?

A. For the same reason that you invoke the rule at the start of a trial to keep witnesses from hearing the testimony of others. With the members of the public at large and other members of the panel present/ I had a great deal of concern that I would receive truthful answers and that one person's answers might color another member of the panels answers as it regarded something. It would also limit you with regard to questions such as, "What have you read and heard about this case?" And then let it all hang out there in front of everybody else again, you know.

Q. When you said that you had a concern about getting truthful answers, could you elaborate on what you mean by that?

A. Well, I don't know that I can give you a specific because individual voir dire didn't take place and this was fourteen years ago.

But obviously, the rule has proved to be a useful tool in the practice of law in the trying of cases because you don't want one witness to hear

what another witness may testify about the same subject.

Well, I didn't want one member of the panel to decide,

"Well, no I really hadn't heard or seen or read anything about this case," simply because nobody else had the guts to raise their hand in front of everybody else. I wanted an opportunity to question each one about it and see whether they had read the Montgomery Advertiser and the Alabama Journal and watched WSEF TV, and when did they watch it and did they know who sponsored the six o'clock news and really find out something, which you couldn't do.

Q. Do you remember a witness during the trial whose name was Tracy Bignault?

A. Yes.

Q. Were you aware of any relationship or connection between Tracy Bignault and a counselor at the juvenile detention facility in Savannah?

A. Other than Bignault was an inmate/client/ whatever the correct term would be/ at the juvenile detention center, no.

Q. If you had been informed that Tracy Bignault had been asked and/or encouraged by a juvenile corrections officer to talk to and question Tim Davis about the crime in this case, would that have made a difference?

MR. WRENTHAM: Objection. Improper characterization of the evidence.

THE WITNESS; Do I understand you to be asking me: Had I known that a correctional officer was involved in getting Bignault to question Davis?

Q. (BY MS. NOREY:) Yes. That was my question.

A. Yes. I'd have been interested in it had I known that.

Q. And did you know that at the time?

A. No.

Q. Why would you have been interested in that?

A. I would have certainly attempted to use it to possibly even kick Bignault off the stand if I knew who the corrections officer was and if I could have questioned him outside the presence of the jury and tried to make Bignault then into an agent of the state. And I mean/ I cannot remember what all the facts and circumstances were, but

Rebecca S. Daniels, Court Reporter
Stanley B. Sikes/ 1/9/95

14

Bignault was not -- Bignault testified on direct examination did he not?

Q. Yes.

A. There was no question of Miranda in regards to him?

Q. No. The record will reflect that, no.

A. All right. So if in fact Bignault was acting on behalf of the corrections officer, then maybe I could have kept Bignault off the stand totally.

MR. CRENSHAW: I move to strike the whole sequence of questions regarding Tracy Bignault because the questions are based upon an improper characterization of the evidence.

MS. NORBY: Okay.

THE WITNESS: Finishing what I was saying/ if I didn't, if in fact Bignault was under the influence of being guided by or whatever, I don't know what the -- I can't remember what the evidence was. But then, obviously/ I would of at least had a shot at trying to exclude his testimony if I could have laid a proper predicate that showed the tie-in because then would he not have had to have -- Tim would have had to have received Miranda rights and so on before Bignault talked to him.

Q. (BY MS. NORBY;) And if you had not been able to express or keep out Tracy Bignault all together, would this have been something that would have been important to the trial itself?

A. certainly, it would have been something else you could have shown the jury to, you know, reflected on his credibility.

Q. There was another witness --

A. Bignault was a damaging witness. I mean, I'm sitting here fourteen years later but my recollection was Bignault was a damaging witness.

You've read the transcript and I haven't, maybe that's wrong, but I think he was.

Q. Another witness, Curtis Smith, do you recall that witness?

A. He was one of the people down by the creek who observed Tim and the motorcycle, okay?

Q. That's correct?

A. All right.

MS. NORBY: And, Clay, I'm going to refer to the prior convictions that I sent to you of Curtis Smith.

MR. CRENSHAW: Charlotte, that's fine. I will

just say that I don't know if that's the same Curtis Smith, but with that in mind, you can go ahead.

MS. NORBY: Okay. And what I will do, Clay, is I'm going to mark and attach copies of them here, and I'm going to keep the originals for when we get to Cross County next week.

MR. CRENSHAW: All right. That's fine.

THE WITNESS: And if a witness can be so bold as to say off the record while this is physically getting done/ I'm going to step down into another room for just a minute and I will be right back, if that's agreeable with everybody?

MS. NORBY; That's fine. Is that okay, Clay?

MR. CRENSHAW; Can we take five minutes, then?

MS. NORBY: Okay. I will call you back in five minutes.

(WHEREUPON, A BREAK WAS TAKEN.)

MS. NORBY: All right. We'll continue. We've had the two exhibits marked Exhibits 1 and 2. Clay, the one that's marked Exhibit 1 is the one that has a lot of handwriting on the front. It says Carnal knowledge-under 12. It's like four pages.

MR. CRENSHAW; All right.

MS. NORBY: All right. And the other one is several pages more than that and it is marked Exhibit 2 and I'm giving that to the witness.

Q. (BY MS. NORBY:) All right. Exhibit 1, Mr. Sikes, would you look at that.

A. All right.

Q. Have you ever seen that before?

A. No. I have not.
(THE ABOVE REFERRED TO DOCUMENT WAS MARKED AS PETITIONER'S EXHIBIT NO. 1 AND IS ATTACHED HERETO.)

Q. And I'll hand you Exhibit 2. Could you look at that and, when you've had a chance/ tell us whether you've ever seen that before?

A. No. I have not.
(THE ABOVE REFERRED TO DOCUMENT WAS MARKED AS PETITIONER'S EXHIBIT NO. 2 AND IS ATTACHED HERETO.)

Q. And assuming for the purposes of these questions that that is the same Curtis Smith as the Curtis Smith who was a witness in this case, if you had had knowledge of these prior convictions, would that have made a difference at Tim Davis' trial?

MR. BRENSCHAW: I object. I don't think the witness can answer that question. I think that's phrased improperly.

MS. NORBY: I'll rephrase it.

Q. (BY MS. NORBY:) Would those two convictions have been something that you would have liked to have had prior to Tim Davis' trial?

A. If in fact Exhibit 1 and Exhibit 2 represent convictions of the same Curtis Smith that was a witness in Tim Davis' case on Carnal Knowledge of a child under 12 in -- what is this? Is this Lee County -- Lee County, Alabama, and indecent molestation of a minor in Tallapoosa County -- both of them are prior to the date of Tim Davis' trial -- I surely would have wanted to know that and I surely would have used it if it was the same Curtis Smith. I would have done my best to impeach him before the jury.

Exhibit 1 appears to me to be copies of the consolidated docket and fee book from Lee County appearing to show a conviction for Carnal Knowledge of a child under 12. The other one appears to be copies of a court file. I don't know whether the copy of the fee book or whatever is back here but it appears to be the complete court file.

It's got orders entered by Judge Tynar. It appears to be a conviction of a Curtis Smith on Indecent Molestation of a Minor.

MR. BRENSCHAW: Just for the record, Curtis Smith was not convicted of Carnal Knowledge for a Minor under the age of 12.

You can continue now.

THE WITNESS: okay. Thanks for the correction.

I cannot read all of the handwritten material. The charge appears to be Carnal Knowledge and the last thing I note down there that I can read real well is, "the defendant gives notice of an appeal." So I assumed a conviction on the charge that he was charged with, which I should not have done. I cannot read the verdict. Wait a second. It appears that he was convicted of an assault with intent to ravish as charged in the indictment and a recommendation by the jury of a maximum sentence of twenty years. If I'm reading that right/ yes/ whatever he was charged and convicted with, it's in the nature of a sexual offense and he was sentenced to a term of twenty years. I sure would have wanted to have known that and sure would have done my best to use it to impeach Curtis Smith or cast doubts on his credibility. Wait a minute. If this is the same Curtis Smith that testified, then knowledge of these convictions would have changed possibly the entire nature of the defense.

Q. (BY MS. NORBY:) Why is that?

A. Well, he's convicted of sexual crimes and there was a sexual crime in this case and where he was physically located was not far from where the lady was killed; that's why.

Did we ask for records -- if I may ask a question.

Did we ask for criminal histories on the state's witnesses?

MS. NORBY: I can state that the record will reflect that such a motion was filed and denied. It was filed by the defense. It was denied by the court.

Q. (BY MS. NORBY:) Did you finish your answer, Mr. Elser?

A. Yes. I mean, I cannot believe that we had somebody that was convicted of sexual crimes that was a witness in the case and I didn't know it. I mean, given the nature of the case that would have been -- it would have gone beyond trying to impeach Curtis Smith. I mean, I'm answering, you know, off the top of my head but that's what just has just leaped out at me.

MS. NORBY: I'll hand you now -- I'll give these back to the court reporter. We're going to mark the Findings of Fact, Clay, that we talked about --

MR. CRENSHAW! Right.

MS. NORBY; -- as Exhibit 3, and I'll hand you now what will be marked as Exhibit 3 and give the others back to the court reporter.

Q. (BY MS. NORBY:) And I'll just ask you whether you have ever seen that document before?

A. Yes. You showed this to me yesterday afternoon. (THE ABOVE REFERRED TO DOCUMENT WAS MARKED AS PETITIONER'S EXHIBIT NO. 3 AND IS ATTACHED HERETO.)

Q. Prior to yesterday afternoon, have you ever seen it?

A. No. I had not.

Q. I want to ask you a question, if I could, about the transcript in this case. Did you make any efforts to insure that the transcript in this case would be complete?

A. I'm at a loss as to what you're asking me. We were relieved before the case got to the appellate level.

MR. CRENSHAW: Charlotte, if you made the motion, just point him to the motion. Let's not play games.

Q. (BY MS. NORBY:) The record will reflect that a motion was filed asking the court -- and I'm paraphrasing that -- to ensure that everything was transcribed that took place during the trial.

A. Yes, then. Whatever the record reflects, I did.

Q. Right. At any time after that motion was ruled upon, did you ever agree to omit from the transcript or omit from the record the closing arguments to the jury?

MR. CRENSHAW: I object. The law at that time did not require the court reporter to transcribe the closing statement or the closing argument, rather. He can answer the question now.

THE WITNESS: I have no memory, really, of anything having to do with the transcript and with regards to closing arguments or closing statements. I can only tell you that it was my practice -- which I learned when I was law clerking for a lawyer in Tuscaloosa while I was in law school, a trial

lawyer -- to always make certain that the court reporter took down opening statements and closing arguments and that was my practice the entire time in which I practiced law. I have no specific recollection about Tim Davis' case, but I'm as sure as I am sitting in this chair that I would have made certain that the opening statements and closing arguments for both sides were taken down because it was not a general practice for court reporters to always sit there and take them down in Alabama at this point in time. If that's an answer to your question?

BY MS. NORBY: Thank you. I don't have any further questions at this point. Clay, if you would like to ask some questions you can go ahead.

MR. CRENSHAW: I may ask a few.

CROSS-EXAMINATION

BY MR. CRENSHAW:

Q. Mr. Sikes, how many times have you spoken with Ms. Norby or somebody in her law firm?

A. I couldn't answer that. I first met Ms. Norby a couple of years ago, perhaps. And I'm certain that we spoke on the telephone before I met her in person and --

Q. On how many occasions do you think you have either spoken with her in person or on the telephone?

A. I've only seen her twice in person if you count yesterday and today as one time. I saw her yesterday and again today, and I've seen her once prior to that. That's what I remember, was once prior to that.

And I could not tell you how many times I've spoken with her on the telephone.

Q. Has it been more than five times?

A. I would not know. It has not been -- there was a long period of time between the first time and the time she got back in touch with me with regard to this deposition.

Q. What was the basic subject of those conversations ?

A. The first time I think there was a hearing set or something that I needed to testify at before Judge Rochester maybe or -- and I think I actually went and testified, did I not?

MS. NORBY; Clay, are you familiar with that hearing?

MR. CRENSHAW: Somewhat.

MS. NORBY; Do you want me to explain it to you?

THE WITNESS: My answer is: I don't really remember what was discussed at that time other than Tim Davis and my representation of him/ but I cannot tell you any of the specifics.

Q. (BY MR. CRENSHAW:) Have you ever been told by

Ms. Norby or someone in her law firm that certain things you say could be helpful to Tim?

A. No.

Q. I think you made a reference that Ms. Norby sent you some documents in preparation for your testimony today. What documents were those?

A. It was copies of certain portions of my file. And frankly, I looked through part of them and part of them

I did not. The main thing that she sent me that I have studied in detail was the order entered by the court on the imposition of the death penalty which was entered on the 28th day of July 1960.

Q. Are you through with your answer?

A. Yes.

Q. Just for the record, do you have those documents that she sent you there with you?

A. Not with me here, no. But I have the documents.

Q. Where are they?

A. They're at my house or in my car. I can't remember which.

Q. You didn't feel like it was important that you bring those documents with you to where you were going to testify?

A. No.

Q. So the only thing that you remember from those documents that she sent you is the court order imposing the death sentence?

A. That was what, in looking through the documents, I felt that I would need in order to try to refresh my recollection with regard to names, evidence, et cetera; that is correct, and I have that with me.

Q. And so that was your only purpose for looking at that document?

A. I'm sorry. I'm not sure I follow the question.

Q. Well, was the refreshing of your memory the only purpose for you looking at that document?

A. Yes.

Q. And just for the record, you don't recall what any of those other documents that she sent you were?

A. No. I could not tell you. In general, they were, I think, file copies in some cases and perhaps copies of original documents from the court.

Q. But again, for the record, you can't identify those documents?

A. No. I cannot sit here and tell you specifically what they are, no.

Q. I believe you testified you were retained for this case?

A. Our firm was.

Q. I'm sorry. Your firm was. And I believe you have testified that you didn't collect all the fee that was due to be paid to you; is that correct?

A. That would be to the best of my recollection, yes.

Q. And just for the record, I think you said that you don't recollect what fee you were supposed to be paid.

A. No. I do not know, nor do I know how much we were paid.

Q. And you testify that you were assigned a deputy to protect you and Lee Sims is that correct?

A. That would be what I testified to and that is correct.

Q. Did the sheriff's department or anybody in law enforcement tell you that there was a need for them to assign someone to protect you?

A. I certainly cannot recall the specifics of any conversations regarding that. I can tell you that I myself

never felt threatened. Certainly, if I had felt threatened I'm sure I would be able to remember that and I do not remember that I myself felt afraid at any time for my own safety.

Q. Did you hear my last question?

A. I thought I was answering it.

Q. Is it a possibility that someone possibly threatened you or

Lee Sims?

A. If they did, I don't have any recollection of that.

Q. All right. In the courtroom who was assigned to protect you?

A. The way the courtroom is, or was laid out, there were two deputies that were inside the bar. One was really Tim's guard and the other one was not sitting necessarily behind Lee and I inside the bar and between us and the spectators but in the general area where if anybody had come through the bar, he would have been able to have gotten to that person before the person got to us.

Q. All right. Do you recall the individual that was assigned to you?

A. No, sir. In fact I'm not sure that it was the same person every day.

Q. Do you recall the names of anybody who was assigned to protect you and Lee Sims?

A. No, I do not. And I cannot today tell you the name of the sheriff even. It was a different sheriff from the sheriff who was the sheriff at the time of Tim Davis' arrest.

Q. Is there any evidence in this case that points

to someone else having committed this crime?

A. As of the time of the trial?

Q. Yes.

A. Not that I was aware of at that time.

Q. Are you saying that you've acquired some knowledge after the trial?

A. What I'm saying is, that if in fact -- and I

gathered from your objections a while ago that there may be some serious doubt as to whether or not this Curtis Smith is the same Curtis Smith. And looking at Exhibit 1, I see that at least that indictment -- I'm, not sure I can figure out when the conviction was but it looks like that indictment was as far back as 1947. So all of what I am now saying is predicated on the assumption that this is the same Curtis Smith. If this is in fact the same Curtis Smith that testified in Tim Davis' trial and was down by the creek or wherever it was/ down by the bridge, and he was in fact -- and I see in Exhibit 2 that he had some sort of a psychiatric examination and that conviction or that indictment at least was in 1964 -- that he had convictions of crimes of a sexual nature. And no, I'm. not sitting here telling you -- I mean, I can't sit here and tell you where that would necessarily lead, but I can tell you that had I known that, I would have dag gone tried to find out where it could have lead so far as there being evidence that someone else could have committed this crime.

Q. What was Curtis Smith's role in this case, to the best of your recollection?

A. Curtis Smith has got Tim washing blood off. And Curtis Smith has got Tim near the scene shortly thereafter

where -- what, was it the billfold that was found?

Q. Yeah, that's right.

A. Okay. Just, you know, obviously Curtis Smith

could have gone to and from the store where the murder took place as quickly as the state says Tim Davis went to and from that store or from the store. And the one thing that was always a problem from a standpoint of trying to understand the case and representing the kid, was the sodomy.

Q. Do you agree that the big difference between those two individuals was that Tim Davis was on a motorcycle and Curtis Smith was walking?

A. Please, know that I'm not trying to be difficult. But I'm thinking this kind of thing through as I'm answering you, and I cannot sit here and tell you for absolute certainty what knowing this about Curtis Smith, if it is the same Curtis Smith even, would have necessarily done to the trial. But I can't go sure tell you that if you're defending somebody charged in a capital case for murder and there is evidence -- and frankly proof of sodomy if you accept the evidence from the toxicologist -- and you've got a witness in the case that's located reasonably nearby, that's an important witness. I mean, this guy has got blood on Tim Davis. This guy has got at least the inference that Tim Davis threw the billfold away or the purse, whatever it was, and this guy has got two convictions on sexual crimes. Well, heck yeah, I'm going to try to see if that in any way does lead to evidence that will point the whole case in another direction.

Q. What other evidence could you point to that Curtis Smith committed this crime?

A. I can't right now.

Q. Thank you.

A. I'm sitting here fourteen years after the trial.

Q. I understand that. You've answered the question.

MS. NORBY: Clay, I object to you interrupting the witness.

MR. CREMSHAW: I'm not interrupting. He answered the question.

Q. (BY MR. CREMSHAW.) Do you think Tim Davis is guilty of the crime?

MS. NORBY: I object. That calls for a conclusion.

MR. CREMSHAW: You can answer.

THE WITNESS: You know, I've never been involved testifying in a post-conviction thing like this before. I guess I have blithely walked along thinking that, you know, I'm free to sit here and that all of the cannons of ethics about confidentiality, etcetera, are waived; is that correct?

Q. (BY MR. CREMSHAW:) Yes, sir. Unless they withdraw their claims of ineffective assistance of counsel that they have made against you, any of those privileges are waived. And I will also tell you, Mr. Sikes, there is no claim of innocence under the Rule 32 petition.

MS. NORBY: I will also state, Clay, that attorney-client privilege is waived only to the extent that claims of ineffectiveness relevant to it are raised.

MR. CRENSHAW: You can answer now, Mr. Sikes.

THE WITNESS: All right. Rephrase the question and I'll answer it, having listened to both of y'all.

Q. (BY MR. CRENSHAW:) Do you think that Tim Davis is guilty of the crime?

A. Based on the facts that I knew at the time this case concluded, yes.

Q* And would you agree with the statement that the state presented an overwhelming case of guilt against Tim Davis?

MS. NORBY: Objection. Calls for a conclusion.

MR. CRENSHAW: Mr. Sikes, you may answer.

THE WITNESS: My impression that I distinctly still have at the conclusion of the crime or the conclusion of the trial was the only thing the state could have had that it didn't have was a videotape of the crime being committed.

Q. (BY MR. CRENSHAW:) All right. Mr. Sikes, do you recall how many times that you personally, or along with Allen -- excuse me/ along with Lee Sims spoke to Tim Davis?

A. No. I couldn't tell you that.

Q. Would it have been more than ten times?

A. I'm certain that it was many more than that, but I can't even remotely characterize how many times I talked to him.

Q. I understand it's been a long time and we can all understand that. Did you ever ask Tim any questions about his family background?

A. I'm sure that I did but I don't remember.

Q. What would have been the purpose for your asking

him those questions?

A. I don't know, you know. I say I assume that I did. I really don't remember. I can't -- even assuming that there is no problem with confidentiality, I really cannot remember the contents of any specific conversations.

Q. Did he tell you anything about his mother and father or his mother and father's relationship with each other?

A. I don't recall how I acquired knowledge that there was a problem in the relationship between the mother and father, and my impression is that we had knowledge that he was from a troubled home.

Q. And did he tell you that his father was an alcoholic?

A. I do not remember.

Q. I should say was allegedly an alcoholic.

A. Still the same answer. I don't remember. I do remember that there was -- maybe I'm characterizing it unfairly but that certainly the home life was less than desirable. And I believe the mother and father were divorced, separated, et cetera, at maybe some early stage in his life. Of course, he was still pretty dag gone young when all this took place.

Q. Did he ever tell you anything about growing up in any kind of an impoverished setting?

A. I don't remember.

Q. Do you recall asking him those kinds of questions?

A. I have no recollection of either asking him or not asking him. And as I said earlier/ when I said I assumed that I asked him stuff about his background, I

assumed that I probably did. But on reflection now, you know, all of this probably was gone into by Lee Sims and Allen Edwards. It very probably or possibly could be true that I didn't go back into that and simply had relied on what Lee and Allen had related to me.

Q. But is it also possible that you did ask him questions and you just don't remember?

A. Sure it's possible that I did and that I just don't recall any of the specifics.

Q. Okay. Well, since you've answered in that way, I'm not going to ask you anymore questions about your questions of Tim asking about his background. Charlotta, just give me one more minute, please.

MS. NORBY: Sure.

MR. CRENSHAW: Mr. Sikes, I don't think I have any more questions. Thank you.

THE WITNESS: Thank you.

MS. NORBY: I don't have any further questions either, Mr. Sikes.

THE WITNESS: Thank you.

(WHEREUPON, THE DEPOSITION WAS CONCLUDED AT 3:15 P.M.)

Rebecca S. Daniels, Court Reporter
CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF OKALOOSA)

I, Rebecca S. Daniels, Court Reporter, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in this action.

REBECCA S. DANIELS

Court Reporter

STATE OF FLORIDA)

COUNTY OF OKALOOSA)

The foregoing certificate was acknowledged before me

this day of 19____, by Rebecca S. Daniels, who is personally known to me.