

SUMMARY OF EVIDENCE AT TRIAL

ALIBI

The parties agreed on Clifton's whereabouts up through 3:00 pm. Both sides placed him at the home of his wife's niece who had asked for a dryer repair at Christmas dinner the day before. The DA said that Clifton then drove from that house north of Visalia to Woodlake. Clifton said that he returned to the Rose remodel job in Visalia.

-The Woodlake witness and her mother testified that she was approached by the man in the white truck at 3:00 pm, the same time the DA and Clifton agreed that he was 15 miles away, a drive of 23 minutes.

-The neighbor across the street from the Rose job in Visalia was standing in his driveway at 3:15 pm as two trucks arrived to pick up a freezer. He looked at his watch, and made a comment like "it's about time you got here." Clifton reported hearing that comment as he arrived back at the Rose job. The loading of the freezer is included in Donahue's handwritten intake notes. Donahue then sent PI Pettyjohn to interview the neighbor on December 31, 1975. The neighbor confirmed making the comment, that Pettyjohn knew about the comment before he arrived for the interview, and the time he looked at his watch.

-A young female grove worker claimed that a man passed by her a few times in a white pickup, and then exposed himself to her in the grove by Donna's house in Exeter. She claimed this event happened at 3:30 pm.

-Due to the strange street alignment, and house orientation, the neighbor and freezer loading guys did not notice Clifton or his truck. The DA repeatedly told the jury that Clifton was lying about being at the Rose job between 3:15-3:45, that he'd learned about the freezer loading from Pettyjohn, and the proof was that nobody had seen Clifton while the freezer was being loaded.

-In late 1980, a witness who had seen and spoken to Clifton during the freezer loading came forward. In preparation for a post-conviction hearing on whether or not the witness had been suppressed, a taped interview with another eye witness was discovered in a box at the Sheriff's Office. These two witnesses clearly saw, and one spoke with Clifton, between 3:15-3:45 in Visalia. Defense counsel Donahue died 6 hours prior to the hearing in a single car, high speed accident. Earlier that day, Donahue had admitted to the DA's investigator that he had known

of the witnesses during the trial, had not informed Clifton, had not called them to testify, and had misled Clifton's appellate counsel about his knowledge. The court ruled that Donahue's knowledge of the witnesses meant that they had not been suppressed, and Clifton lost his appeal.

-If Clifton was in Visalia until 3:45, he was not in Woodlake at 3:00, or in Exeter at 3:30 as placed by the two witnesses as trial.

-Between 3:45 and 4:15 Clifton stopped at a hardware store, got gas, and drove home. Clifton, his two teenage daughters, and Rick Carter placed his arrival at home between 4:15 and 4:30. Carter was aware of the truck arriving, and Clifton removed tools from the truck and locking them in the garage before his daughters saw him inside the house. Carter's original taped statement to TCSO the morning of his arrest placed Clifton home at 4:15, and he was given a polygraph, which he passed.

-The DA's theory of the case relied on Donna riding her bike almost all of the way home before being kidnapped, and transported to the homicide scene at Neel Ranch. That fit with the idea that the invoice book fell from Clifton's truck during a struggle to get Donna into the vehicle.

-Donna left her boyfriend's house no earlier than 3:45, and the ride was timed at 25 minutes. That placed Donna at the bike scene at 4:10 or later. Carter's sworn, taped statement and polygraph became an immediate problem. Clifton couldn't be at home, and kidnapping Donna at the same time.

-TCSO then rearrested Carter, and told him that he would be charged with Donna's murder unless he gave a new statement placing Clifton arriving home at 4:45. The new taped statement started out with Carter saying Clifton arrived home "at 4:15... I mean 4:45." There was no polygraph to confirm the new statement.

-According to the DA's timeline, Clifton would have kidnapped Donna at 4:10, driven over 3 miles to Neel Ranch, killed Donna, then driven 7 miles to where her underpants were found, and then scattered her pants and shoes as he drove the final 5 miles home. All of this at somewhere between 20 and 45 mph. The total miles driven would have taken about 25 minutes, so the time at the homicide scene would have been a maximum of 10 minutes.

-It was undisputed that Clifton wore the same clothing all day, including out to dinner that night, and it all tested negative for mud, blood, and semen — as did Clifton's truck.

-If Clifton was at home by 4:30 as he, his daughters and Carter originally stated, he could not have driven the route, let alone killed Donna. If he was home at 4:45 he had 5-10 minutes to kill Donna and erase all evidence of the crime. The DA's entire case relied on those disputed 15 minutes. Again, Rick Carter was the only person who placed Clifton home as late at 4:45, and only in his poorly coached, un-polygraphed second statement.

WITNESSES

-Brumley claimed that Clifton made a lewd comment to her as she walked home in Woodlake. She gave several different statements with times ranging from 2-3:30 pm. Trial testimony placed it at 3:00 pm. She also gave several contradictory descriptions of the man, and could not identify Clifton's clothing or his distinctive Ford truck. Her father came forward with her story only after seeing Clifton's photo in the paper as the suspect in Donna's homicide.

-Moscorro was approached picking oranges at Donna's family grove the morning after the bike was found. Sheriff Wiley was photographed by a local reporter showing Moscorro a photo of Clifton, and asking her if she saw him in the grove the prior afternoon. She told a story of a flasher she identified as Clifton, but described a man in black framed glasses, with tan pants and a turtleneck, which did not match Clifton. She also described the back of the truck driven by the man, and it did not match Clifton's distinctive Ford. She said the incident occurred around 3:30 pm.

-Clifton and two witnesses placed him in Visalia between 3:15 and 3:45. Clifton and the DA agreed he was in north Visalia at 3:00. He could not have been in Woodlake or Exeter at the same time.

“CHANGED STORY”

-Upon arrest, Clifton asked for an attorney, and refused to sign the Miranda waiver provided by TCSO. Sgt. Byrd admitted to “limited” questioning of Clifton in an attempt to find Donna. Although Clifton claimed that this questioning was taped, TCSO refused to produce the tape. Sgt. Byrd testified at trial regarding the

statements, and claimed that Clifton lied about his alibi, and changed his story when he was caught in the lie.

-Obviously, the questioning was a Miranda violation, and nothing about it should have been admitted at trial.

-Testimony from TCSO officers at trial was clear. Clifton said he was with Bill Rose in the morning, at a house near the "Road Camp" (his wife's niece), and then at Bill Rose's "place" in Visalia between 3:00 and 4:00 pm. As was pointed out in Clifton's subsequent appeals - that's exactly where he was, in that order. He never changed his story, lied about where he was, or lied about who he was with.

-There was no evidence of any "changed" story, but the repeated false statements that Clifton gave conflicting stories, and lied to TCSO was incredibly damaging at trial, especially in the DA's closing statements.

INVOICE BOOK

-Clifton never denied ownership of the invoice book. The last invoice was dated December 23rd, and it was presented to Bill Rose in his office, and paid by check that same day. The Cliftons deposited the check in the bank, and went Christmas shopping. That is the last time anyone remembered seeing the invoice book.

-The invoice book could have been in Clifton's truck, Carter's truck, or the family car. All of the vehicles were kept in the driveway, on the far side of the garage, and were always unlocked. The invoice book could have been taken from any of those vehicles at any time between the 23rd and 26th.

-Although three pages within the book contained fingerprints from Clifton and his wife, there were no prints on the outside of the book, and it appeared to have been wiped.

-A small notepad was found on top of the invoice book near Donna's bike. The notepad had figures and writing on several pages, but no fingerprints inside or out. It also appeared to have been wiped. Clifton denied any knowledge of the notebook, the handwriting did not match his or his wife's, and the figures inside did not relate to his life or business. TCSO made no known attempt to determine the source or ownership of the notebook, including whether or not it belonged to Rick Carter. A critical piece of evidence found ON TOP of the invoice book, next

to the victim's bike, was completely ignored by TCSO, and not introduced by the DA at trial.

SWEATER HAIR

-Dr. Morton, from the Institute of Forensic Sciences, testified at trial that a long blonde hair found on Clifton's sweater may have belonged to Donna. That hair was the sole piece of evidence that pointed to direct physical contact between Donna and Clifton at trial. During closing, the DA told an imaginary story about how it was transferred to the sweater during a struggle in Clifton's truck.

-Dr. Morton did not disclose that a week earlier he had conducted 3 rounds of ABO testing on Donna's head hair, Clifton's head hair, and the sweater hair. Donna's hair was type A, and the sweater hair was type O. Donna was conclusively excluded as the donor of that hair.

-The exculpatory ABO testing was not turned over to Clifton until a court order in 2001.

SEMEN

-No findings of semen, spermatozoa or ejaculate were found at autopsy. All samples tested from 1975-2011 tested negative for spermatozoa, including autopsy samples, the victim's clothing and Clifton's clothing. All smears were negative on acid phosphatase testing. A scraping taken from a sample of victim's pubic hair gave a weak, slow reaction to acid phosphatase. That sample was then ABO tested, and determined to be type A.

-At the Grand Jury, the forensics student who had done the testing, Grubb, testified that semen was present on Donna's pubic hair, and that the donor had blood type A. The jurors never heard that Clifton's blood type O excluded him as the possible donor.

-Given that there were no physical signs of a sexual assault, no spermatozoa, and that the only blood type found was Donna's own A, and her PGM type 1-1, we do not believe that semen was ever present. There were no visual findings of ejaculate noted at autopsy, and the sample tested was nearly microscopic - not the normal amount of semen present in a sexual assault. Donna's body was face down in the grove for almost 24 hours. The pubic hair was matted with menstrual blood, mud, decayed oranges and fresh pesticide/herbicide accidentally sprayed on her when

she was found. It's likely that one of those substances resulted in the weak, false positive on the acid phosphatase test. None of those substances were separately tested as controls.

-There was no testimony about the testing, or the finding of a type A donor at trial. A statement was made that "semen" was present, with no further discussion of how that was determined, or the fact that Clifton's type O was excluded. The trial jury heard none of that evidence, and the lab testing, and notes were not disclosed to Clifton until 2001.

-It was misleading to use the term semen since the lab noted only a positive for "S.F." for seminal fluid. Again, no spermatozoa were present.

-DA Powell jumped from one sentence of testimony that "semen" was detected, to the scenario he painted (6 times) for the trial jury during his closing:

"having ejaculated on her private parts;"

"she was stripped naked and someone ejaculated on her;"

"she was choked, her body mutilated there and ejaculated upon there;"

"there was no question but that the material found on the pubic hairs of Donna Richmond had human semen or human ejaculate;"

"he's still got thirty-two minutes in which to disrobe her, to ejaculate on her;" and

"the girl was stopped naked from the waist down and someone ejaculated on her."

-At the very most, a nearly microscopic amount of pre-ejaculate, or seminal fluid was found, based solely on a slow, weak acid-phosphatase reaction, and the donor had a blood type of A, not Clifton's type O. More likely, it was a false positive, and the ABO typing picked up the type A in Donna's menstrual blood present on the pubic hair.

TIRE & BOOT HEEL PRINTS

-Sgt. Byrd ordered photographs taken of certain tire tracks at the scene of Donna's bike, Neel Ranch, and the ditch where her panties were found. Forensic officers were ordered to ignore all other tire tracks. Plaster casts were taken at the ditch

scene, and those were conclusively excluded as having come from Clifton's truck. Testimony was offered that some of the other photos were "consistent" with certain tires on Clifton's truck, but could not be conclusively matched. The wheelbase was also off by about 20 inches. No other vehicles known to be at the scenes were checked for comparison and elimination.

-Sgt. Byrd also ordered photos of certain boot heel prints at Neel Ranch. Again, forensic officers were told not to photograph any other shoe prints. No plaster casts of the prints were prepared. The photographs were not of comparison quality, and attempts to have them enhanced or interpreted at a specialty lab in San Diego failed.

-The prints were of a plain cowboy boot heel, with no markings or distinguishing features. No complete prints including a boot sole were photographed, so no brand, or size information was available. At trial, Morton testified that the heels were "consistent" with a pair of boots found in Clifton's closet.

-Multiple disinterested witnesses testified that Clifton was wearing a specific pair of black shoes on the day of the homicide. The shoes were the only pair that fit Clifton's knee brace, and they were custom designed to be worn together. There was no evidence that Clifton was ever wearing cowboy boots that day, and testing showed no blood, mud or other evidence on the boots found in the closet.

-All of the grove workers, and most of the TCSO officers at the Neel Ranch scene were wearing cowboy boots. None of those boot heels were examined for elimination purposes.

PAINTER'S PANTS

-A pair of white painter's pants were on the passenger side floor of Clifton's truck when it was impounded by TCSO. Clear photos of the pants were taken next to an evidence stand on 12/27/75. Those photos were withheld from Clifton prior to trial.

-During cross-examination, the DA accused Clifton of wearing those pants to kill Donna and disposing of them. This was offered as an explanation for the total lack of blood evidence. Clifton denied wearing the pants, or disposing of them on 12/26/75, but he could not address why they were missing. Clifton had no idea that the pants were sitting in the police evidence room.

LEAF

-TCSO found a single leaf stuck in the side mirror of Clifton's truck. The leaf was entered into evidence as "leaf."

-Unfortunately, the leaf was not preserved, and by the time it was given to a citrus expert several months later, it was dry and broken. The expert was able to say it was likely citrus, but could not be certain that it was orange, let alone a specific variety, or from a specific grove.

-The DA offered the leaf as proof that Clifton had driven between the rows on Neel Ranch. The defense failed to point out that it was much more likely that it came from Bill Rose's house on Garden Street - Clifton had backed up the front walk, right between two trees leading to the front door. The leaf was never compared to either of those trees.

POCKET KNIFE

-Several knives were collected from Clifton's residence including kitchen knives and his pocket knife. All tested negative for the presence of blood, hair, skin and fibers.

-Although there was no evidence tying Clifton's pocket knife to Donna, testimony was given that it was the murder weapon. It had a 2 inch folding blade which was undamaged, including the tip. It supposedly made 17 stab wounds, most through 3-4 layers of Donna's clothing, including at least 2 penetrating chest wounds — with an undamaged, 2 inch folding blade.

-In 2001, the knife was taken apart, and it tested negative for Donna's DNA.

REFERENCES TO STRUGGLE, AND "KNOCKED OFF BIKE"

-During his closing, the DA made multiple references to a struggle between Donna and Clifton. That was an imaginary struggle presented as fact. Clifton was free of cuts, bruises, and scratches, and Donna's fingernails tested negative for skin, blood and fibers matching Clifton. Clifton's fingernails were also free of evidence related to Donna. The only footprints found near Donna's bike belonged to her brother and his friend who found the bike. The only blood at Neel Ranch was found immediately around and under Donna's body, and again, there was no sign of Donna's footprints in shoes or socks.

-The DA also referenced Donna being “run down” or “knocked off” her bike. Donna’s pants were undamaged, her legs had no injuries, her bike showed no damage, and the only paint transfers turned out to belong to the TCSO truck that transported the bike from the scene.

1965 CONVICTION

-The judge ruled that Clifton’s 1965 conviction could not be presented in the Richmond case. However, the local paper printed the State’s version of the facts during the trial.

-The victim in that case denies being assaulted or threatened, and claims that the story was made up by a witness who arrived on the scene. The witness had a connection to law enforcement. Victim was not transported or photographed for injuries, and Clifton was contacted, and allowed to leave the scene. Clifton was 24, the victim was 18, and their mothers worked together. He was going to say hello, did not flee, and was swimming when police arrived.

-The documentation in the case supports the victim’s story. She also noted that Bob Byrd, who was not a TCSO officer, or assigned to the case, assisted in Clifton’s arrest in his home, at night, several days after the incident. Byrd also conducted a search of Clifton’s home and transported him to jail. Again, there was no reason for Byrd to be involved in a case outside his jurisdiction.

-The victim did not feel a crime had been committed, and refused to cooperate after Clifton’s arrest. Eventually, multiple officers arrived at her home, and transported her to her sister’s home in an effort to obtain her written statement. In the end, she was transported directly to the DA’s office, and her older sister told her to sign the typed statement that was waiting for her there. Based on that, the DA agreed to file charges against Clifton.

DEFENSE

-Clifton was at the job site in Visalia until about 3:45 pm, and arrived home between 4:15 and 4:30. He was not making remarks to Brumley in Woodlake at 3:00 pm, or flashing Moscorro at 3:30 pm, or kidnapping Donna at 4:10 pm.

-Critical alibi witnesses were suppressed, the timeline was not presented to the jury, and the jury was falsely told that Clifton was caught lying about his whereabouts.

-Nothing from Clifton, his home or his truck was found on Donna, or at Neel Ranch. Nothing from Donna was found on Clifton, or in his truck or home.

-No fingerprints were found on either of Donna's shoes found by the road, including her own.

-Three unidentified fingerprints were found in and on Clifton's truck.

-Multiple items that had all been wiped of fingerprints were found near Donna's bike. These included the invoice book, notepad, Pepsi cans, beer cans and a rum bottle. Leaving empty beer and soda cans with no prints was a well-known EAR MO point. Additionally, a decanter style bourbon bottle with no prints was found in the yard at the Snelling homicide.

UNTESTED SKI CAP/MASK

-Multi-colored ski cap/mask. We have one photo of it crumbled on the ground as found. Unknown if it had eye holes. Three hairs removed and mounted to slides, and DNA tested in 2011. No profile developed from any of the hairs. Item itself destroyed in 1977.