

SUPREME COURT COPY

IN THE SUPREME COURT OF CALIFORNIA

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff/Respondent,

v.

DOUGLAS EDWARD
DWORAK,

Defendant/Appellant.

Case No.: **S135272**

Ventura County
Superior Court Case No.:
2004016721

SUPREME COURT
FILED

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Deputy

**ON AUTOMATIC APPEAL
FROM A JUDGMENT AND SENTENCE OF DEATH**

Superior Court of California, County of Ventura
Honorable Kevin J. McGee, Judge Presiding

APPELLANT'S REPLY BRIEF

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DEATH PENALTY

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APPELLANT'S OPENING BRIEF

INTRODUCTION

Appellant Douglas Dworak incorporates and reaffirms the arguments made in Appellant's Opening Brief. In this reply brief, Mr. Dworak addresses respondent's specific contentions but does not reply to arguments effectively foreseen and addressed in the opening brief. The failure to address any particular argument, sub-argument, or allegation by respondent or to reassert any particular point already made in the opening brief does not constitute a concession, abandonment, or waiver of the point by Mr. Dworak but merely reflects his view that the issue has been adequately presented and the positions of the parties fully joined.

Rule 8.204(a)(1)(B), California Rules of Court requires a brief to "support each point by argument and, if possible, by citation of authority." Points merely asserted with argument or authority for the proposition may be deemed without foundation, requiring no discussion by the reviewing court. (*People v. Morse* (1993) 21 Cal.App.4th 259, 274.) Throughout Respondent's Brief, respondent cites case authority and, in brackets, recites an abstract legal principle from the opinion but fails to analyze the case's factual context, actual holding, or analogous relationship to the present case. Although some cases may primarily stand for a legal principle, most apply established principles to a particular set of facts. Respondent's failure to explain the concrete relevance of most of the authorities cited in

Respondent's Brief to the issues or the facts of the instant case makes a reply more difficult, since respondent has not explained the degree to which any particular cases is relied upon. Mr. Dworak must do triple duty, first speculating about respondent's point in citing the case and its legal principle; second, ferreting out respondent's intended analysis as to case content and analogous relationship to the issue at hand; and third, rebutting respondent's reliance on the case.

ARGUMENTS IN THE GUILT PHASE

I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR AND VIOLATED MR DWORAK'S 5TH, 6TH, 8TH, AND 14TH AMENDMENT RIGHTS BY EXCLUDING CRITICAL DEFENSE EVIDENCE UNDERCUTTING THE STATE'S THEORY OF THE CASE.

A. Introduction.

There was no forensic or other evidence linking Mr. Dworak directly with Ms. Hamilton's injuries while alive, none connecting him directly with her death, and none establishing his being in Ms. Hamilton's presence at the time of her death. Rather, there was only evidence that his sperm had been deposited sometime before her death. The prosecution attempted to fill this evidentiary gap in two ways. First, the prosecution attempted to narrow the timeline between Ms. Hamilton's departure from her friend Matt Zeober's¹ house and her death. Second, the prosecution attempted to portray Ms. Hamilton as a happy, sweet, naïve girl who would never have willingly failed to meet her father at the planned pick-up point. To counter this theory and create a reasonable doubt, Mr. Dworak sought to show that,

¹ Mr. Dworak notes for the record that Matt Zeober's name is spelled "Zeober." (11 RT 2094.) The name was frequently misspelled in the reporter's transcript as "Zoeber" but was corrected during record settlement proceedings. Respondent mis-spells the name as "Zoeber" throughout the Respondent's Brief. (See, e.g., Respondent's Brief 6 et seq.)

although he may have engaged in consensual sexual intercourse with Ms. Hamilton, she had died by misadventure or at the hands of another, without his involvement. In order to do this, he attempted (1) to introduce evidence of third-party culpability for the murder and (2) to present evidence that would provide a more accurate and realistic picture of Ms. Hamilton and her behavior. The court's exclusion of this evidence deprived Mr. Dworak of his state and federal constitutional rights to present a defense, to confront and cross-examine witnesses, to due process and a fair trial, to a reliable guilt and penalty determination, and to be free from cruel and unusual punishment. (Appellant's Opening Brief ("AOB") 75-111, citing U.S. Const., 5th, 6th, 8th, 14th Amends.; *Holmes v. South Carolina* (2006) 547 U.S. 319, 330-331; *Washington v. Texas* (1967) 388 U.S. 14, 18-19; *Chambers v. Mississippi* (1973) 410 U.S. 284, 302; *Pennsylvania v. Ritchie* (1987) 480 U.S. 39, 56; *United States v. Valenzuela-Bernal* (1982) 458 U.S. 858, 867; *Green v. Georgia* (1979) 442 U.S. 95, 97; *Crane v. Kentucky* (1986) 476 U.S. 683, 687-691; *Smith v. Illinois* (1968) 390 U.S. 129, 133; Cal. Const., art. I, §§ 7, 15, 16, 17, 24; *People v. Lucas* (1995) 12 Cal.4th 415, 436.)

Ms. Hamilton's body was discovered around 6:00 a.m. on Sunday at Mussel Shoals beach. (11 RT 2006, 2010, 2019-2020, 2011, 2032-2034.) Ms. Hamilton had hung out with Matt Zeober, smoking marijuana and

ingesting methamphetamine with him and friends at Zeober's house (where he lived with his mother, Robyn Jones) on Friday and Saturday, leaving the house late on Saturday, after talking to her father on the phone arranging for him to pick her up around midnight at a nearby Ralph's Market. (11 RT 2060-2064, 2100-2102, 2108.) First, the defense sought to introduce evidence of third-party culpability related to Jay Campbell, a friend of Jones and her roommate, and to Danny Carroll, "a long time drug user, low-level dealer, and occasional boyfriend of Robyn Jones." (1 CT 127, 129, 140.) As to Carroll, there was evidence that he was at Jones's home the day and the night of Ms. Hamilton's disappearance, that he had stolen Jones's car on the night of the murder and returned it with sand inside and a broken window, that he had avoided Jones after the murder (1 CT 140-141-142, 164-172), that he had shaved his moustache and pubic hair after the murder (which Jones found suspicious), that he had written letters from prison in which he discussed Ms. Hamilton's murders and made various claims (1 CT 143-144), that Jones had said Carroll was involved in the murders, that he had said he had a sexual relationship with Ms. Hamilton, and that he had said she was attractive. As to Campbell, he was at the Jones house that weekend, had been at the beach that weekend, and soaked his sandy jeans in a bucket in the garage. (1 CT 139.)

Second, the defense sought to introduce evidence of Ms. Hamilton's lifestyle, which included hanging out at hotels with friends, including men Mr. Dworak's age (1 CT 135-138), to show there were other possibilities about what Ms. Hamilton might have done, rather than show up at Ralph's to meet her father for a ride home.

Nonetheless, respondent contends that the lower court did not err in excluding the third-party culpability evidence because the evidence did not link the third parties in question -- Danny Carroll and Jay Campbell -- to Ms. Hamilton's murder and therefore was irrelevant and incapable of raising a reasonable doubt about Mr. Dworak's guilt. (Respondent's Brief ("RB") 28.) Respondent also claims that evidence about Ms. Hamilton's associates and behavior was properly excluded because it was speculative and thus irrelevant. (RB 48.) Respondent further asserts that there was no prejudice. (RB 49-52.)

B. The Trial Court Abused Its Discretion In Excluding Evidence As to Third Party Culpability, Violating Mr. Dworak's Fifth, Sixth, and Fourteenth Amendment Rights To Present A Defense, Among Other Rights.

As a starting point, Mr. Dworak and respondent agree that appellate review of exclusion of third-party culpability is governed by an abuse-of-discretion standard. (AOB 93; RB 39-41.) While respondent has cited this Court's statement that discretion is abused when a trial court's ruling falls

“outside the bounds of reason” (*People v. Waidla* (2000) 22 Cal.4th 690, 714), such colorful actions are not required for a finding of an abuse of discretion (see *People v. Jacobs* (2007) 156 Cal.App.4th 728, 736-737; *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297; *Department of Parks and Recreation v. State Personnel Board* (1991) 233 Cal.App.3d 813, 831, fn. 3). Use of “pejorative boilerplate is misleading since it implies in every case in which a trial court is reversed for an abuse of discretion its action was utterly irrational.” (*People v. Jacobs, supra*, 156 Cal.App.4th at pp. 737-738.) Rather, the question is whether the trial court’s ruling was unreasonable in light of the legal principles, the governing law, and the facts presented. (*Ibid.*) Both respondent and appellant also agree that, under *People v. Hall* (1986) 41 Cal.3d 826, 833-834, third-party culpability evidence is treated like any other evidence, admissible if relevant and relevant if capable of raising a reasonable doubt about the defendant’s guilt. (AOB 93; RB 40.)

In its ruling, the lower court relied upon *People v. Adams* (2004) 115 Cal.App.4th 243. (4 RT 564G-564I.) Respondent cites *People v. Adams* and begins its recitation of that case’s facts and procedural history with the fact that, in *People v. Adams*, the DNA of sperm in the victim matched that of the defendant. (RB 41.) Any evidence inculcating a defendant is, of course, completely irrelevant to any assessment of the admissibility of third

party culpability evidence and the evidence respondent cites was not considered in *People v. Adams* by the lower court or by the appellate court for purposes of third-party culpability. The amount, nature, or weight of the evidence against a defendant is irrelevant to a decision to admit third-party culpability evidence and, on appeal, to a determination of whether such evidence should have been admitted. (*Holmes v. South Carolina, supra*, 547 U.S. at pp. 330-331.)

In *People v. Adams*, the defendant sought to introduce evidence that the victim's erstwhile boyfriend may have killed her. (*Id.* at pp. 247, 250.) The evidence consisted of (1) hearsay evidence about a volatile relationship, (2) crushed beer cans at the crime scene and in the boyfriend's motel room, and (3) cigarette butts found in the victim's apartment and in the boyfriend's motel room. (*Id.* at p. 251-252.) The appellate court found the evidence did not sufficiently connect the boyfriend to the crime, because the cans were of different brands and not identically crushed, the butts were not found at the crime scene, and the victim's statement that the boyfriend had previously tried to kill her was made at an unknown time and referred to an incident at an unknown time; further, other evidence did not link the boyfriend to the victim in the hours before her death or on the date of her death. (*Id.* at pp. 253, 254-255.)

Here, on the other hand, there were links connecting Campbell and Carroll to the crime.

Asserting incorrectly that appellant made no offer of proof linking Campbell and Carroll to “the actual perpetration of Crystal’s rape and murder,” respondent again provides two citations with bracketed holdings but no legal or factual analysis. (RB 42, citing *People v. Sandoval* (1992) 4 Cal.4th 155 and *People v. Edelbacher* (1989) 47 Cal.3d 983, 1018.) An examination of each case shows lack of concrete relevance to the instant issue. In *People v. Sandoval, supra*, 4 Cal.4th 155, law enforcement had found the names of three men, one of whom was the defendant, written on two pieces of paper clipped into the victim’s appointment book, and the defense sought to present the evidence to show that the victim was at the center of a violent criminal operation and that any number of criminal accomplices could have killed him. (*Id.* at pp. 176-177.) This Court found that the evidence was properly excluded, because the defense offered no evidence of a real, identified individual’s actual motive to commit the crime, merely the possibility that unknown “others” might have potential motives, and no evidence of an actual link between the crime and a real, identified individual. (*Id.* at p. 176.) Similarly, in *People v. Edelbacher, supra*, 47 Cal.3d 983, the defense sought to introduce evidence that the victim had associated with “Hell’s Angel-type people” and drug dealers as

third-party culpability evidence. (*Id.* at pp. 1017-1018.) This Court upheld exclusion of the evidence because the defense did not identify any actual suspect or link any actual third person to the commission of the crime. (*Ibid.*) Here, unlike in *People v. Sandoval* and in *People v. Edelbacher*, defense counsel named specific third-party perpetrators -- Carroll and Campbell -- rather than claiming vaguely that there were shadowy or stereotypically dangerous but unidentified people who might possibly have wanted to harm Ms. Hamilton.

Respondent erroneously contends that Mr. Dworak presented no third-party culpability evidence linking Carroll or Campbell to the lower court and has not presented any on appeal. (RB 42-45.) Contrary to respondent's claim, the requisite link between the crime and each of the two men was set forth below in the prosecution's trial brief and motion in limine (1 CT 135-148), in the defense opposition to the exclusion of third-party culpability evidence (2 CT 428-431), and at the hearing on third-party culpability. Contrary to respondent's claim, the evidence has been described on appeal in the opening brief. (AOB 77-89.)

As to Campbell, respondent claims there was "nothing unique about the sand in Campbell's jeans that somehow connected him to the crime scene or the crimes." (RB 44.) Respondent is minimizing the evidence in order to dismiss it. Ms. Hamilton's body was found in the ocean next to

Mussel Shoals beach. (11 RT 2033.) She may or may not have been killed at the same beach where she was found. According to the chief medical examiner, the cause of death was most likely drowning, but the evidence also strongly suggested she was manually strangled intermittently in sandy water inhaled into her lungs. (12 RT 2209-2212, 2252.). Campbell wore jeans to a beach, the jeans got wet and sandy, and sometime on Saturday or Sunday he was at the Zeober house where he placed the wet and sandy jeans in a bucket.

Respondent also hails Campbell's "innocent explanation" for the presence of the sandy jeans, as if such self-serving statements obviate the admissibility of the evidence. (RB 43.) However, respondent offers no authority to show that proffered "innocent explanations" for third-party culpability evidence (particularly when offered by the third party itself) is considered as part of the admissibility calculus or renders the evidence excluded. Indeed, as set forth in the opening brief (AOB 98), the standard for relevancy (including relevancy of third-party culpability evidence) is any tendency in reason to prove or disprove any material fact (Evid. Code, § 210), "no matter how weak it may be" (*In re Romeo C.* (1995) 33 Cal.App.4th 1838, 1843). Indeed, respondent has failed to challenge the authority in the opening brief establishing that *credibility* of evidence goes to the weight, not the relevance, of third-party culpability evidence. (AOB