

**Drew Peterson Trial 2012 - Murder of Kathleen Savio
People of the State of Illinois v. Drew Peterson (09CF-1048)
Will County, Joliet, Illinois**

**Harry Smith Testified August 29, 2012
Called as Witness for the "Defense"
Arguments: 7/31, 8/2, 8/9, 8/22, 8/24, 8/27**

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(Note: This is "not" an official legal court transcript)
(Dialog spacing done below for format and reading ease)**

07/31/2012: Court Arguments Regarding Attorney Harry Smith testifying

In Session

<https://www.facebook.com/InSession>

July 31

Prosecutors in the Drew Peterson trial are expected to call Tom and Mary Pontarelli, Robert Akin, and Chris Wolzen as their first witnesses. Tom and Mary Pontrarelli are Peterson's neighbors who found Kathleen Savio's body in 2004.

In Session will post some minor updates on the the trial in the thread below.

In Session

Judge Burmilla has just taken the bench.

"One housekeeping thing we need to do is there's one juror that was not sworn in. I took care of that this morning, so all the jurors are now sworn."

The judge says there is one motion that needs to be addressed this morning. Defense attorney Steve Greenberg says that one of his concerns is what can and can't be said during openings.

"If either side starts saying things in their opening, and they aren't proven up later on, the jurors will hear that ... some of these things are of serious concern. If the State starts getting into the specifics of the hearsay statements, we have many objections to that ... all of Kathleen Savio's statements that 'Drew's going to kill me' are not admissible."

He cites case law to back up his position.

July 31 at 9:57am · Like · 2

In Session

Greenberg continues to go over case law that he believes backs up his position regarding use of hearsay during the openings.

"We're worried about that."

July 31 at 10:00am · Like

In Session

Greenberg also mentions motive evidence.

"When a person dies, and they're already divorced, the individual is considered as a living person under the statutes. For years, we've been hearing that Drew did this for financial reasons . . . But there's a divorce decree where a judge said this was a fair settlement. They have zero evidence to show . . . that if anything happened to her he was going to benefit. So I don't think they should be allowed to argue that he was in way benefitting from her death."

July 31 at 10:06am · Like · 1

In Session

Greenberg wraps up by arguing that the State should not be allowed to claim that "this was a staged crime scene... they shouldn't be able to get into this in their opening, because they have no evidence of it... they can't say Drew was at the house, because they have no evidence of it... how can they say these things in opening statement? Because they want to believe it's true."

July 31 at 10:10am · Like · 1

In Session

The prosecution responds by arguing that there is no pertinent law that limits what can be said during openings, and disputes the case law cited by the defense.

July 31 at 10:10am · Like · 1

In Session

Prosecutors say they are not sure what the defense is taking about regarding a staged crime scene, "If this was a murder, it was indeed a staged crime scene, because it was not an accident."

July 31 at 10:12am · Like · 7

In Session

Prosecutor Connor offers some case law to the Court. Greenberg complains, says the defense was not provided with this info prior to the hearing.

The judge agrees, but lets Connor proceed, and says if the defense needs time later to look at this material, that can be arranged.

July 31 at 10:13am · Like · 1

In Session

Greenberg responds, repeats that the defense believes that "anything they can't prove came directly from the horse's mouth, meaning Drew, they shouldn't get into."

He once again disputes the Prosecution's supposition that this was a staged crime scene.

"They did all their fancy CSI testing, and they didn't find anything ... they want to call it a staged crime scene before they can establish that it was a crime scene."

July 31 at 10:25am · Like · 1

In Session

Greenberg now dismisses the proposed testimony of Harry Smith, Savio's divorce attorney.

"To say that Savio was worse off (financially) after she died than beforehand... nobody (can say that). "

July 31 at 10:27am · Like

In Session

The arguments are now over.

Judge Burmila denies the motion to limit the State's opening. He notes that the prosecution never has to prove motive, but if they decide to argue motive they need to prove it, "We're not going to have a mere whiff of a motive".

He says he can't rule in advance on the issue of a staged crime scene.

"I'm not going to limit the State from doing that, other than to follow the law."

July 31 at 10:30am · Like

In Session

The judge asks "are we ready for the jury now?"

July 31 at 10:31am · Like

08/02/2012: Court Arguments Regarding Harry Smith Testifying

In Session

August 2

The Drew Peterson murder trial is set to resume at 2:15 p.m. ET.

Locksmith Robert Akin is about to be cross-examined by the defense.

Watch this thread for live updates from court.

In Session

The sidebar ends, and the jurors are now gone.

Prosecutor Connor informs to the Court that at this time the State would intend to call attorney Harry Smith, Kathleen Savio's divorce attorney.

According to Connor, Smith's testimony will involve some prior bad acts.

"I have some transcripts...in addition, there is testimony we were previously seeking to bring in...we'd like to ask him one question about the initial filing for divorce in this case, and whether that opens up testimony during the divorce trial for issues of mental cruelty. I don't know how else to get that except to just ask the witness."

Judge Burmila: "What would the relevance be of what led them to be divorced? Why would that be relevant?"

Connor: "He was seeking custody of the children. During the bifurcation hearing, it was said by both sides that this was going to trial... allegations of mental cruelty might have played some role in the subsequent trial. To make that distinction to the jury, I would be asking that of this witness...obviously, the issue of what was possibly going to be testified to during the actual divorce trial would be at issue, given the State's allegations."

Judge: "If the State is saying they want to ask Mr. Smith what issues would be before the trial

court in a bifurcated hearing, they can ask those general questions. But Mr. Smith would not be allowed to testify as to what he expected the outcome of that trial to be... the issue of what he believes the judge would have done, or the outcome, that would not be admitted.”

August 2 at 3:06pm · Like · 2

In Session

Connor continues to argue before Judge Burmila.

“The jury has to consider the financial motive in this divorce. And in order to do so, they have to understand what the defendant was facing at that time, regarding his financial future, and what the judge would have been looking at.”

Judge: “How is the State going to be able to demonstrate that the absence of Ms. Savio affected the outcome?”

Connor: “The issue is what further issues could she have made, and what testimony was going to be elicited during the trial that could have affected the case? We’ll never know. But if I’m dead, I’m certainly less of a threat to the other side...there’s all sorts of things that Ms. Savio can’t assist her attorney with ...Ms. Savio was long dead by the time the case was set for trial.”

August 2 at 3:09pm · Like · 3

In Session

Judge: “But these parties were divorced, and they entered into an agreement...the issues before the Court were already agreed upon, were they not?”

Connor: “They were going to be addressed at the April 6 hearing...but one party was dead by then, Your Honor.”

Connor asks for a moment before he continues.

“Your Honor, basically there were a number of issues; some of them were held in abeyance... clearly, in the defendant’s mind, the issue of whether Kathleen Savio was entitled to any of his pension was still in play...in addition, the bar was a subject of dispute in the case...whether that was or was not marital property was still in dispute. Both Mr. Beck and Mr. Smith indicated that this was going to trial; there were many issues that were still in dispute.”

August 2 at 3:13pm · Like · 2

In Session

“In 2003, things might have been getting better...but, financially, crunch time was coming for the defendant. The judge was pushing the divorce toward conclusion. So the idea that this divorce was in any way solved is wrong, and Mr. Smith was involved in that front and center.”

Judge: “Once they were divorced, the defendant’s pension became a marital asset. And whether or not Miss Savio was going to get the pension was going to be up to the judge. So the pension was in play, and it was going to be resolved by the judge one way or the other?”

Connor: “I apologize; I don’t practice divorce law...the law seems to say that the pension is to be considered part of the marital assets. What portion she was going to get, her ability to fight for that went away when she died.”

August 2 at 3:15pm · Like · 2

In Session

Prosecutor Connor: “Certainly, the pension is not going to be an issue while Mr. Peterson is alive and still working. To assert that any individual is unchanged in any legal situation by their own death is a legal fiction...Kathleen Savio cannot protect her own interest, given the knowledge that she has, once she’s in the grave...everything that was to be hotly contested was still open...at that point, the defendant was still disputing on the record that Kathleen Savio would have any portion of his pension, and was still set to fight at a trial the financial implications of this divorce. She was prepared to fight, and was assisting her attorney greatly...the legal fiction of the estate continuing as if nothing has changed belies the real situation of what occurred...even people outside the legal community would understand they’d rather be alive than dead when they’re trying to protect their assets.”

Judge: “I get what the State is trying to say. But just because it makes sense doesn’t mean it makes legal sense...if the question here is this is the status of two people who were now divorced...the fact that she was not there at the trial and the trial wasn’t held does not necessarily extinguish her interests...I believe the right to the pension would continue to her estate; the pension was in play, and it was going to be addressed one way or the other. But you can’t say she was going to get everything she wanted, and the only way she’d get everything she wanted was if she was there. I understand what you’re saying...but I’m telling you once they were divorced, the pension became an asset of their marital estate, and it was going to be resolved one way or another.”

August 2 at 3:23pm · Like · 2

In Session

Once again, prosecutor Connor asks for a moment before proceeding.

“I skipped a rather obvious point. In Judge White’s ruling, he would have to make a finding that Kathleen Savio was murdered to prevent her testifying at a specific hearing...in making that finding, Judge White was basically finding that the defendant’s motive in

murdering Ms. Savio, by a preponderance, was to keep her from testifying at that hearing.”

Judge: “Well, the State’s argument is absolutely incorrect...you have perverted Judge White’s ruling 100%.”

August 2 at 3:23pm · Like · 2

In Session

Attorney Steve Greenberg responds for the defense.

“I believe that the hearsay statement they’d like this gentleman to testify to was found unreliable by Judge White...I don’t think he’s got any relevancy at this point; I don’t know what it is that they want him to testify to...they can’t use this to show Mr. Peterson’s state of mind in any way.”

August 2 at 3:25pm · Like · 1

In Session

According to Connor, “There are many other things that Mr. Smith would testify about...such as the fact that he’d subpoenaed the Bolingbrook Police Department about Mr. Peterson’s pension information...he received that information on March 4, four days after the death.”

Judge Burmila: “But in October the defendant knew the pension was in play...so what would be the significance of having Mr. Smith say they were trying to get those records, when they had agreed in October?”

Connor: “They were still fighting...he was indicating he [Peterson] did not believe Kathleen Savio was entitled to any of his pension...that issue would not be disposed of until the trial.”

Judge: “But it wasn’t like Mr. Peterson decided what the issue was; the judge made that decision and signed the order.”

Connor: “Yes, the judge signed the order...after that hearing was over, Mr. Peterson was angry, and was observed yelling at Mr. Beck in the hallway. Mr. Smith would also testify as to the timeline...he can obviously testify as to what was being said, and where things were going. The defendant had not disclosed the sale of a bar in a timely manner... that was the first time the defendant had to pay out anything close to \$15,000 in the divorce. And Kathleen did not survive that by more than five months.”

August 2 at 3:33pm · Like · 1

In Session

Connor: "The financial issues were never preserved, based upon the death of Kathleen Savrio."

Judge Burmila: "As far as Mr. Smith is concerned, I do believe the State is allowed to go into the timeline. As far as the questions of the legal issues before the court, they will be able to go into that with this witness as well. As far as anything touching on how Mr. Smith believed the matter would be resolved by the trial court, those things are not going to be elicited through the testimony of this witness."

August 2 at 3:36pm · Like · 4

In Session

Attorney Greenberg addresses the Court, and argues against the ruling Judge Burmila has just made. "It [the Peterson/Savio divorce] was a bifurcated proceeding, which the jury already heard in opening statements...they [the State] don't have any evidence there was any motive not to have a trial...so I don't understand the relevancy, if it's not motive, of what happened in the divorce proceedings."

Judge: "Well, whether or not the State will attempt to demonstrate if this was the motive for this homicide, if it was indeed a homicide, remains to be seen...he can say what the issues were that would remain after the couple was divorced."

Greenberg: "And how is that not privileged?...how is what Harry Smith believes not privileged?... I'd like to know what issues they're talking about."

Judge: "Well, I guess we'll find out when the witness gets here...the only other way to handle it is for the State to make an offer of proof. We'll hear what he has to say, and then determine what goes before the jury."

August 2 at 3:42pm · Like · 1

In Session

Connor hands the judge a copy of a letter from Kathleen Savio to the State's Attorney's office, and redacted by Judge White in 2010.

"The judge made some statements about it stands on its own...Harry Smith is the witness we're going to use to introduce that letter...so we would be asking this witness to authenticate a portion of that letter, and introduce that during his testimony."

Judge: "OK, we'll take five minutes, to give you [the defense] time to look at that letter. And then we'll go from there. I've made all the statements I'm going to make about my conversation with Mr. Smith on the record. I'm not going to say anything more on that."

August 2 at 3:44pm · Like · 1

In Session

Judge Burmila leaves the bench.

The court is in recess for approximately five minutes (until 2:50 CT/3:50 ET).

August 2 at 3:44pm · Like

08/09/2012: Court Arguments Regarding Harry Smith Testifying

In Session

August 9

WATCH THIS THREAD FOR LIVE UPDATES FROM THE DREW PETERSON MURDER TRIAL!

The jurors are now back in the courtroom, and prosecutor Glasgow begins his redirect examination of witness Mary Parks.

In Session

Attorney Greenberg addresses the Court.

“The other day, when the State addressed the issue of [attorney] Harry Smith, they started to go into all these areas they want him to testify to. Just to the divorce issues, we don’t think any of it’s relevant, because the divorce case went on, as if nothing had happened. And they have no evidence that Mr. Peterson believed he had anything to gain by Ms. Savio’s death.”

Connor responds: “At the time we first addressed this argument, Your Honor had not heard any statements attributed to the defendant . . . it is, in fact, the belief of the defendant that is in issue in this case . . . in their filing, the defense has conceded that the defendant’s pension might be in a separate category than other issues in the divorce case . . . the defendant made statements about that particular asset, that he did not want Kathleen Savio to receive any portion of that. Because of her death, that pension has not been divided.”

August 9 at 4:01pm · Like · 8

In Session

Judge Burmila questions prosecutor Connor about the relevance of the fact that the original executor of Savio’s will was a relative of the defendant’s.

Connor: "That means that the defendant understood that the individual was going to be a relative of his."

Judge: "Well, how did he know that he wasn't going to die first?"

August 9 at 4:02pm · Like · 4

In Session

Greenberg responds: "The reason we raised this was in the context of motive, and the context of Mr. Smith testifying. The appellate court has already ruled that what might have happened in the divorce court was not a subject for expert testimony . . . the fact is that in this case, whether they like it or they don't, under the law she was considered a living, breathing person under the divorce law. And they can't now come and say if she was actually living the divorce would have been different . . . there was an executor of her estate who stepped in to control things . . . there was a valid will, and that executor was an executor that she picked . . . Judge O'Leary found it was a fair and just settlement. And now they want to have this jury retry this divorce case . . . where are they connecting the dots here?"

August 9 at 4:07pm · Like · 5

In Session

Greenberg cites "the Davis case" as case law that he believes supports the defense position. Because the parties were getting divorced is automatically a reason to murder your spouse?"

Attorney Brodsky jumps in, notes that the divorce judge "made a finding that everything was above board and nothing untoward."

August 9 at 4:11pm · Like · 4

In Session

Brodsky: "I can tell you there are legions of appellate court decision that determine what weight is given to what factor . . . to give that list to the jury is nothing but to confuse them and mislead them. To have Mr. Smith up and there and testifying makes it no less confusing, because he's putting his twist on it. I don't see any relevance in giving that laundry list of factors to the jury . . . it's just there to confuse the jury, to throw smoke and mirrors."

August 9 at 4:12pm · Like · 4

In Session

Brodsky: "There was a divorce. There was going to be a property settlement. The jury doesn't need to know more than that . . . to allow the State to admit evidence is nothing more than attempt to muddy up Mr. Peterson, to infer that he's guilty of murder."

Prosecutor Koch responds: "That goes to his state of mind, what this defendant went through at the time: that by committing the murder, he would financially gain from that . . . he believed by committing this crime there would be a financial benefit."

August 9 at 4:18pm · Like · 6

In Session

Judge: "How does Harry Smith's testimony make any of those statements more believable?"

Koch: "What's important to know is what the value of the marital state was."

Judge: "There's a big difference between A motive and THE motive."

August 9 at 4:19pm · Like · 4

In Session

Koch: "We're saying that Harry Smith should be allowed to testify about the factors at the time of the divorce . . . we think that's relative . . . he was paying temporary support, which was obviously cut off with the death of Ms. Savio . . . I think that's also relevant as a motive for this offense . . . in addition, Harry Smith is going to testify about the timeline and the documents as they were laid out in the divorce court.. We think it's relevant to have Harry Smith testimony."

Greenberg: "I think that the appellate court said it would not be proper to have an attorney get up there and explain what the law was. That's up to the court . . . it's only proper if it's a malpractice case . . . I don't know if we're going to get into a little mini-trial if it's cheaper to pay support, or to have teenage boys at home, eating you out of house and home . . . they want to collaterally attack the proceedings, and it's just not relevant."

August 9 at 4:25pm · Like · 3

In Session

Judge: "When we last visited this issue, it was in advance of the trial, and the testimony of Anna Doman . . we now have evidence before this jury that, if believed, demonstrates all the motive the defendant would have to have to kill Kathleen Savio . . . now, once that testimony came in before the jury, I don't see how anything on the issue of motive that the attorney could add would assist this jury at arriving at a verdict in this case, other than speculating what might have happened in the course of a divorce trial. The law in Illinois is crystal clear:

once they were divorced, the pension became a marital asset . . . we could be talking about something as little as a third of a quarter of ten years' worth of a pension of a defendant with three other wives . . . if the defendant has a malignant heart, what is the condition for the jury to decide? At what level the malignancy in his heart occurs? We cannot have a trial within a trial. The court found in the pension case that it was possible that she might be eligible for any of the pension . . . but the State wants to insist that Harry Smith will be able to clarify to the jury that that was his motivation. You have to contrast that again with the testimony of Anna Doman, when she says the defendant says, 'You're not going to get a penny of my pension.' Anything Harry Smith would testify to now is completely speculative, and again would cause a trial within a trial . . . I think allowing Harry Smith to come in and testify to what issues were before the divorce court, what Miss Savio expected as a financial resolution in this case, is a complete distraction and does not aid in any way if she was murdered, and if she was murdered did the defendant do it. I know Harry Smith has some other issues, and I'm not ruling about that . . . but he will not be able to testify about the substance of the pre-divorce negotiations, or what Ms. Savio expected to get as a result of the divorce. But Harry Smith, for the other issues he may testify about, the State is allowed to call him."

August 9 at 4:32pm · Like · 8

08/22/2012: Court Arguments Regarding Harry Smith Testifying

In Session

August 22 at 4:59pm

Watch this thread for live updates from the Drew Peterson murder trial!

The jurors are gone, but the judge is back on the bench. Attorney Joel Brodsky is addressing the court about the limits to the scope of witness Harry Smith and his testimony about Kathleen Savio.

"If the statement leads to the fact that maybe he knows that Miss Savio lied under oath, that goes to the issue of her credibility."

Judge; "Well, I directed both sides to interview Mr. Smith if they wanted to. Did you do so?"

Steve Greenberg: "I talked to him today . . . what she [Savio] told him about the incident is different from what she then testified in court."

Judge: "Well, then, you've got your impeachment."

Greenberg: "I think they should be asked to disclose that before he testifies."

The judge says that the defense may call Smith in an offer of proof prior to his testimony before the jury.

Judge: "If he's going to testify about something she said to him, and he knows that she testified under oath, they'll be able to impeach her through cross-examination... if that alters

your plans about calling him, then don't call him now, and call the other witness.”

In Session

The judge notes that the jurors have complained about a defense printer running too loudly during testimony. He tells the parties that the printer in question will no longer be allowed to run during witness testimony.

August 22 at 5:00pm · Like · 17

In Session

The judge leaves the bench, and the trial is in a brief recess.

August 22 at 5:00pm · Like · 8

In Session

The parties are still milling around in the hallway. It now appears that the next prosecution witness will be Nick Pontarelli, the son of earlier witnesses Mary and Tom Pontarelli.

August 22 at 5:09pm · Like · 10

08/24/2012: Court Arguments Regarding Harry Smith Testifying

In Session

August 24 at 2:49pm

Watch this thread for live updates from the Drew Peterson murder trial!

Judge Burmila returns to the bench. He says that he has reviewed the transcript of Teresa Kernc.

Prosecutor Koch: “The next witness the State intends to call will be Harry Smith. There are a couple of questions I'd like to bring to the Court's attention . . . there's a letter that was presented to Harry Smith, that Miss Savio presented to Mr. Smith . . . we believe Harry Smith can testify as to the foundational elements of that letter . . . it's the State's position that the letter could come in through Harry Smith's testimony without opening the door to any privileged information that Mr. Smith maintains he still has . . . that's the first clarification we want to ask the Court's guidance on . . . also, there was some discussion made as to any kind of offer of proof of Mr. Smith prior to him testifying . . . we believe Harry Smith will be able to testify.”

Judge: "What is the date of this statement to her sister that the defendant allegedly said he was going to kill her?"

Koch: "Anna Doman's statement was approximately six weeks before her death."

In Session

Attorney Brodsky responds: "I'm really at a loss here. My client is not charged with the July 5th incident . . . now, they're trying to introduce this evidence as motive . . . I've never seen an attempt to get in such collateral evidence . . . all this is going to is to lay the foundation for the March 22 court order. It's an agreed order."

Judge: "One of these I already ruled on . . . [two more] are admitted . . . this one I said before already this morning was inadmissible."

August 24 at 2:57pm · Like · 5

In Session

The judge/attorney exchange continues at length.

Brodsky argues that through this letter the State is putting Kathleen Savio's credibility at issue. Should that happen, "Then I want Mr. Smith to take the stand and tell us about this privileged information he has, about how she took the stand and lied . . . they can't have their case [sic] and eat it, too."

August 24 at 3:03pm · Like · 4

In Session

Prosecutor Colleen Griffin joins the discussion.

Judge: "This exhibit is going to be admitted. This is a statement signed by Ms. Savio . . . if the defense wants to call Mr. Smith to impeach him, tell me the date and I will compel him to be here."

August 24 at 3:10pm · Like · 18

In Session

Judge: "I'm going to take a break.

You guys get your act together, and let me know."

Judge Burmila leaves the bench, and the trial is in recess.

August 24 at 3:11pm · Like · 3

In Session

The attorneys have just disappeared into the back hallway.

They are presumably on their way to Judge Burmila's chambers.

August 24 at 3:33pm · Like · 7

In Session

Chuck Pelkie has just informed us that attorney Harry Smith will now NOT be testifying today.

He MAY be back on Monday.

August 24 at 3:45pm · Like · 4

In Session

I have just been informed that the jury has been excused for the day.

August 24 at 3:59pm · Like · 5

In Session

Judge Burmila is back on the bench.

He confirms that all of the State's stipulations will be presented at 9:00 Monday morning, and that attorney Harry Smith has been alerted to be present Monday morning, should the defense choose to call him.

The State confirms that it does not plan to call any additional live witnesses, and should be resting as soon as it presents its stipulations.

August 24 at 4:02pm · Like · 8

In Session

August 24 at 4:05pm

The jury has been excused in the Drew Peterson Murder Trial.

The prosecution is expected to rest its case Monday morning.

08/27/2012: Court Arguments Regarding Harry Smith Testifying

In Session

The judge is back on the bench (no jury).

Prosecutor Colleen Griffin makes a motion regarding the testimony of proposed defense witness Harry Smith (Kathleen Savio's divorce attorney).

The defense is hoping to call Smith to impeach Savio's credibility.

Griffin: "It's the State's position that Your Honor ruled in our favor regarding the attorney/client privilege."

She argues that "the defendant doesn't get to benefit from the fact that he made the witness unavailable . . . it is a one-way street . . . if Harry Smith's going to get up here and say Kathleen Savio told him she lied under oath, that would be hearsay . . . that wouldn't be impeachment of anything . . . whatever the statement is, it was part of the attorney/client privilege, and that was not waived by Kathleen Savio; it continues past her death."

August 27 at 1:11pm · Like · 15

In Session

Griffin continues, cites case law that she believes supports the State's position.

"The defendant made this witness unavailable . . . through his malfeasance, through his own acts . . . to impeach a witness on behalf of a defendant who made her unavailable . . . we would ask this Court not to break the attorney/client privilege."

August 27 at 1:16pm · Like · 10

In Session

Defense attorney Brodsky responds, says that the point of impeaching Savio is to ensure that the defendant is not "convicted by a lie . . . they haven't cited one case – not one – that talks about a limited waiver . . . the July 5th incident was something she didn't complain about until she was served; she was very angry . . . the interplay between these two is great."

Brodsky then cites case law in support of his argument.

August 27 at 1:21pm · Like · 7

In Session

Brodsky: “Our defense here is that Ms. Savio is not credible . . . there are multiple instances here of Ms. Savio fabricating; this is just another one . . . this flies in the face of the defendant’s right to get a fair trial . . . somebody whose hearsay is admitted can only be impeached through additional hearsay.”

Griffin: “This Court specifically found there were four privileged conversations, and that three would remain privileged . . . again, we would ask the Court grant out motion.”

August 27 at 1:26pm · Like · 5

In Session

Judge Burmila makes his ruling: “I disagree with [defense] counsel that there can be no partial waiver of the attorney/client privilege . . . what’s determinative of this motion is there is a prohibition in the State of Illinois against specific act impeachment . . . while it’s a close call, I don’t believe that this specific form of impeachment would be appropriate. And the defendant will not be allowed to impeach Kathleen Savio’s testimony by this avenue.”

So, apparently, the defense will not be able to use Harry Smith’s testimony to impeach Kathleen Savio.

August 27 at 1:31pm · Like · 18

In Session

August 27 at 2:48pm

Watch this thread for the latest from the Drew Peterson murder trial!

Judge Burmila is back on the bench.

Defense attorney Greenberg addresses the Court, revisits the defense argument for calling attorney Harry Smith in an attempt to impeach the credibility of victim Kathleen Savio.

In Session

“She perjured herself under oath . . . I think that’s a different situation, not a specific act of misconduct in a vacuum . . . if, in fact, she perjured herself, we would have no way of knowing until Mr. Smith actually disclosed this to someone . . . I think this is not a specific act of

misconduct in the traditional sense . . . it goes to the oath, and what the oath means to the individual.”

Prosecutor Griffin responds: “I’m not really sure what counsel is talking about . . . we don’t know what was said, what was done . . . this is nothing different than a specific act of misconduct that the defendant is trying to bring in . . . I think Your Honor’s previous ruling should stand.”

August 27 at 2:48pm · Like · 10

In Session

Judge Burmila: “I understand the argument Mr. Peterson is making now . . . but my ruling is applicable to this additional argument as well. And the State’s motion in limine is granted.”

August 27 at 2:49pm · Like · 20

08/27/2012: Attorney's Still Arguing Regarding Harry Smith 3 hours later

In Session

The judge asks to have the jurors removed from the courtroom.

Once they’re gone, he asks the State is it’s filing a motion in limine regarding a conversation between Harry Smith and Stacy Peterson. Prosecutor Griffin says that she doesn’t have that motion written up, but that she’s prepared to argue it orally.

“It’s my understanding the defense is seeking to call Harry Smith regarding a telephone conversation in which Stacy asked Mr. Smith if she could get more money out of Drew if she threatened to tell the police he killed Kathleen Savio . . . that still leaves the question of the cases that we cited earlier . . . this doesn’t go to impeachment of the statements that she made to Rev. Schori. It doesn’t even say that she was going to extort money, just that she asked about it . . . this does not directly impeach what Harry Smith said that she told him . . . it’s intrinsic evidence that would not be allowed for impeachment . . . and, again, she cannot be rehabilitated except by her coming in and telling what she meant by any of these statement . . . there are specific rules for impeachment in Illinois; this simply does not fall under one of them . . . I believe there’s no rule in Illinois that would allow for the impeachment of Stacy’s statements to Neil Schori with this intrinsic evidence.”

August 27 at 5:20pm · Like · 19

In Session

Attorney Greenberg responds. “I don’t understand the argument.”

Judge: “I understand the argument the State is making . . . [but] I don’t have any case law at my fingertips here . . . it sure raises into question what the person wanted to do with that

information. Do you have any case law, other than that one case you already submitted?"

Prosecutor Griffin offers some additional cites to back up her position.

"We can't just impeach her credibility with an attempt to talk about 'maybe' doing a bad act."

August 27 at 5:27pm · Like · 6

In Session

Greenberg responds: "Frankly, I don't follow the argument."

Judge: "None of the case law submitted to this point says what the State is arguing. I don't see how we can make a resolution to this without looking at the applicable law . . . so I guess I'll have to see that case law before I can make a decision."

Greenberg: "So we should tell Mr. Smith to come back another day?"

Judge: "I don't want to do that . . . but I'm going to have to see this case law, if it's out there, to support what they're arguing . . . so will everybody be ready to go with this argument first thing tomorrow morning? . . . we will convene with regard to this argument at 8:30 tomorrow morning."

August 27 at 5:31pm · Like · 10

08/29/21012: Court Arguments Regarding Harry Smith Testifying

In Session

August 29 at 10:16am

Watch this thread for live updates from the Drew Peterson murder trial!

The judge now turns to the Peterson case.

Prosecutor Colleen Griffin argues a motion in limine regarding an incident in which Stacy Peterson allegedly asked attorney Harry Smith if she could get more money out of Drew Peterson if she informed the police of what he told her at the time of Savio's death.

In Session

The State argues that this is improper impeachment, should the defense try to call Smith and bring it up.

"We're talking about a conversation with Harry Smith in October of 2007 to somehow impeach a statement Stacy made to Neil Schori . . . it's just an attempt to try to show that Stacy

Peterson was a bad person . . . the People assert that if the Court is considering this testimony of Harry Smith, the State should be allowed to bring up other hearsay statements, in order to rehabilitate her.”

Judge Burmila: “You have no doubt that Mr. Smith interpreted this conversation as an attempt on her part to commit a crime?”

Griffin: “I believe Mr. Smith told Stacy that she could be arrested for something like that.”

Attorney Brodsky then responds.

August 29 at 10:16am · Like · 9

In Session

Judge Burmila makes his ruling.

He says if the defense uses this testimony for impeachment that makes the entire hearsay applicable. However, any reference to Stacy's disappearance will be banned.

August 29 at 10:28am · Like · 13

08/29/21012: Defense Attorney Joel Brodsky on direct examination

In Session

The jurors enter the courtroom.

The defense calls its next witness: attorney Harry Smith (questioned by attorney Brodsky).

He has been an attorney since 1993.

“It’s a litigation firm. I handle the family law part of that . . . and I also do some criminal defense work.”

His firm’s name is “Smith and Fuller.”

The witness says that he was formerly a prosecutor (but not in Will County).

“You had a client named Kathleen Savio?”

“That is correct.”

“When did she come to you?”

“I believe 2002 or 2003.”

August 29 at 2:32pm · Like

In Session

The witness is shown some billing records, which show that he first met Kathleen Savio in January, 2002.

“That was a divorce between Kathleen Peterson and Drew Peterson?”

“Yes.”

“At some point in that case, there was a bifurcated divorce?”

“Yes.”

The prosecution objects, and asks for a sidebar.

August 29 at 2:38pm · Like · 1

In Session

The sidebar ends.

“At sometime during these proceedings with Kathy Savio and Drew Peterson, was their marriage dissolved?”

“Yes.”

“Subsequent to that, are you aware Drew Peterson married Stacy Cales?”

“Yes.”

“Did you recall a call in 2007 from Stacy Peterson?”

“I did receive a call from Stacy Peterson; I’m not sure of the specific date.”

The witness is shown a copy of a report, to refresh his recollection.

“Yes . . . she contacted the office on Oct. 24. I just didn’t talk to her that day.”

“The purpose that she called you was for information about a divorce?”

“She told my office she wanted to retain me as a divorce attorney.”

“From Drew Peterson?”

“Yes.”

August 29 at 2:41pm · Like · 2

In Session

Brodsky asks for permission to question Smith as an adverse witness.

The judge then calls the attorneys to a sidebar.

August 29 at 2:41pm · Like

In Session

The jurors are back in the courtroom, and Brodsky continues his direct examination.

“When you spoke to Stacy Peterson, the purpose of her call was to do what?”

“She contacted our office to retain me as an attorney in a divorce proceeding.”

“Did she eventually retain you?”

“No.”

“Why not?”

The witness is hesitant to answer.

The judge then calls the attorneys to a sidebar.

August 29 at 2:47pm · Like · 5

In Session

The sidebar ends.

“Even though there was this conflict of interest, she did ask you questions about divorce?”

“Yes.”

“Did she tell you she had information about Drew Peterson?”

“Those were not her specific words, but she did tell me she had information about Drew Peterson . . . she said she had information regarding Kathleen Peterson she wanted to us.”

“She wanted to use that as leverage in the divorce case?” Objection/Overruled.

“She wanted to know if it, in my opinion, the fact that he’d killed Kathy could be used against him.”

“In the divorce proceeding?”

“Yes . . . she didn’t use the word ‘leverage,; but that certainly was the intimation.”

The State objects, and the parties approach the bench for a sidebar.

August 29 at 2:50pm · Like · 4

In Session

The witness and the jurors return to the courtroom.

Brodsky continues:

“Isn’t it true when you testified previously you were sworn under oath?”

“Every time I’ve given a statement, I’ve been sworn.”

“And never before have you ever said that Stacy said that Drew killed Kathy?”

“I do not know if the words you just said to me are the way I said it to you.”

The witness is confronted with some of her previous testimony.

“I think you just intimated those were my words. I just want you to know that that is what she said to me. Those aren’t my words.”

“Did I ask you that question, and did you give me that answer?”

“I responded to that question.”

“Did you give that answer?”

“Yes.”

August 29 at 3:07pm · Like

In Session

“Stacy wanted to threaten Drew, in order to get more money out of him in a divorce?”

“She asked me if we could use information to get more money.”

“Not to prosecute him, but to get more money for herself?”

“I don’t know that.”

“So Stacy wanted to say whatever she could in order to get more money out of Drew Peterson?”

“No, she wanted to say that he killed Kathy . . .that was absolutely one of the reasons that she gave.”

“She said, ‘If I give information, give me money’?”

“No, she said, ‘If I threaten to do this, can we get more money.’”

August 29 at 3:07pm · Like · 6

In Session

Brodsky moves to the Savio/Peterson divorce.

“Isn’t it true that if it was Drew Peterson’s visitation weekend, and that happened to be a three-day weekend, he got the kids for the additional day?”

“I remember that being an issue . . . I think they fought over that.”

The witness is asked about his October, 2008 grand jury testimony, in which he indicates that Drew could keep the boys until Monday night on a three-day weekend.

“I would agree with that transcript.”

“So Mondays, like Casimir Pulaski Day, would belong to Drew?”

“No.”

Once again, Brodsky reads from the transcript.

“I again agree that was the question and the answer.”

August 29 at 3:12pm · Like · 3

In Session

“Also in this case, there was a child support order?”

“Yes.”

“So Drew Peterson agreed to pay child support?”

“Yes.”

“And he paid it on time?”

“I do not recall a time when there was a child support order.”

August 29 at 3:13pm · Like · 1

In Session

“Remember some talk in the divorce about a company called Fast & Accurate Printing?”
Objection/Overruled.

“Isn’t it true this company was sold back in 1999?”

“I do not recall.”

The witness is shown a copy of a deposition taken in 2004.

“Fast & Accurate Printing was, in fact, sold back in 1999?”

“That’s what Ms. Peterson said in the deposition.”

“And the profits were already split?”

“I do not recall that, either.”

Once again, the witness is directed to his deposition.

“They divided the money; half went into Mrs. Peterson’s account, and half into Mr. Peterson’s account.”

“If the property was sold before the divorce was filed, and they split the money . . . I don’t remember whether there was an issue about some of the proceeds, honestly.”

August 29 at 3:13pm · Like · 1

In Session

“This was a difficult divorce for Kathy?”

“Yes.”

“Sometimes she would get angry?”

“Yes.”

The defense then asks for a sidebar.

August 29 at 3:13pm · Like · 1

In Session

The sidebar ends.

The jurors are then excused.

Prosecutor Connor states his objection to this line of questioning, says “we’ve gotten WAY beyond financial motive at this time.”

Brodsky: “We’ll withdraw the question.”

The judge sends for the jury.

August 29 at 3:28pm · Like

In Session

The witness and the jurors are now back in the courtroom.

Brodsky: “I withdraw my last question. And I have no further questions for this witness.”

That concludes the direct examination of Mr. Smith.

August 29 at 3:29pm · Like · 1

In Session

The attorneys head to a sidebar.

August 29 at 3:29pm · Like · 1

08/29/2012: Prosecutor John Connor on cross examination

In Session

The sidebar ends, and prosecutor Connor begins his cross.

“Did she [Stacy] tell you that Drew was pissed at her because he thought that she told Tom that Drew killed Kathy?”

“Yes . . . she told me that he [Drew] had too much shit on her to do anything to her.”

“She specifically used the word ‘how’ he killed Kathy, not just that he killed Kathy, but ‘how’ he killed Kathy?”

“Yes.” Objection.

The parties go to a sidebar.

August 29 at 3:29pm · Like · 7

In Session

The sidebar ends.

“When Stacy referred to ‘Tom,’ did you know who she was referring to?”

“Yes, Drew’s son.”

“Did you hear anyone speak to her during this conversation?”

“Yes.”

“Who was that?”

“Drew . . . he called to her, and asked her what she was doing and who she was talking to.”

“Did he call her a second time?”

“To rush her off the phone and tell her to get ready.”

August 29 at 3:32pm · Like · 1

In Session

At the time of the Peterson/Savio divorce, the property settlement was still to be finalized.

“When you heard the defendant’s voice in the background, was it close by?”

“Further away. Not standing right next to the person.”

“When he spoke to her [Stacy], did you hear her respond to him?”

“I did.”

“Could you describe how loud she was when she responded to him?”

“As I sit here right now, I cannot recall.”

“When he called the second time, did she end the call?”

“Yes.”

The witness is shown a document to refresh his recollection.

“My memory is refreshed as to how she responded to Drew’s first call. She yelled to Drew that she would be in a minute.”

August 29 at 3:38pm · Like · 1

In Session

“Did Stacy say to you something about a GPS during that conversation?”

“I do not recall.”

Once again, the witness is shown a document to refresh his recollection.

“Did she say to you that she believed he was tracking her [by cell phone]?”

“Yes . . . ‘but now I have a new one he doesn’t know about.’”

The State then asks for a sidebar.

August 29 at 3:41pm · Like · 6

In Session

The sidebar ends.

The jurors are then excused from the courtroom.

The attorneys are arguing over exactly what was said in the witness’ previous grand testimony (regarding Drew’s custody of the boys on “long weekends”).

Glasgow: “I believe he [Harry Smith] was mistaken, and I’d like to be able to show him the court order.”

Brodsky joins in: "I have very clear grand jury testimony by an officer of the court."

The judge then sends for the jury and the witness.

August 29 at 3:55pm · Like · 2

In Session

The witness and the jurors are now back in the courtroom.

The prosecution has no further questions for this witness.

August 29 at 3:55pm

08/29/21012: Defense Attorney Joel Brodsky on redirect examination

In Session

Brodsky begins his redirect.

"Isn't it true that when Stacy Peterson asked you about threatening to tell the police that you told her to be careful because she could be arrested for extortion?"

"During that call, I did tell her to be careful. But it wasn't about extortion."

"What were you telling her to be careful for? She could be arrested for telling a falsehood?"

"No, that's not what I told her."

"She told you her cell phone had GPS?"

"Yes."

"Isn't it true all cell phones have GPS?" Objection/Sustained.

There are no more questions for this witness, and he is excused.

August 29 at 3:57pm · Like
