

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

**Jury Charge Conference
Court Updates – Friday, August 31, 2012**

**A Personal Collection of Found Materials ("as is")
(Note: This is "not" an official legal court transcript)
(Dialog spacing done below for format and reading ease)**

In Session

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

August 31 at 12:01pm

Testimony in the Drew Peterson trial is over. Attorneys are gathering in the courtroom to discuss jury instructions.

We will have live updates from court in this thread.

Most of the prosecution team is inside the courtroom.

James Glasgow, however, is out in the hallway, speaking to a group of reporters.

Half of the defense attorneys are still in the hallway, while the remainder have gone inside. Drew Peterson is inside the courtroom as well.

In Session

It looks like the parties are gathering in the courtroom.

We may be starting shortly.

August 31 at 12:13pm · Like

In Session

Judge Burmila is on the bench.

"Good morning, everyone . . . this is a jury instruction conference. Then the State has filed a motion in limine, which we'll discuss after the instruction conference is over."

August 31 at 12:29pm · Like · 2

In Session

Attorney Joel Brodsky addresses the Court regarding the first proposed instruction.

The defense wants extra language in a standard instruction telling jurors not to let sympathy or prejudice influence their deliberations.

Prosecutor Koch argues against the modified language.

Brodsky: "The jury should be aware that [punishment] is not for them to worry about."

Judge: "The version submitted by the State is a correct statement of the law.

The defendant's modified [version] is denied."

August 31 at 12:38pm · Like · 13

In Session

The next instruction concerns outside sources of information.

Once again, the defense offers a modified version, says the instruction as written is actually appropriate for a pre-trial instruction, not post-trial.

The judge seems inclined not to re-read the instruction to the jury, but to submit it along with the written instructions.

Brodsky: "We've had multiple people who have been sitting behind the State's table, and actually instructed in and out of the courtroom by Chuck Pelkie, who after court addressed favorably the way the State's case was going, and addressed in a negative fashion the way the case was going for the defense . . . they're also on occasion criticizing the Court's rulings. I don't know what Mr. Pelkie is telling them . . . I just think that given the potential of some connection, reading this instruction to instruct the jury once again that they're not to consider anything that may have filtered by to them through the press is beneficial to ensuring that Mr. Peterson gets a fair trial."

August 31 at 12:44pm · Like · 1

In Session

Prosecutor Koch responds, calls this defense complaint "purely speculative . . . I don't see the purpose in reading this again at the end of the case."

Attorney Greenberg: “Why not give it, just in an overabundance of caution? There’s no harm.”

Judge: “First of all, in regards to the allegations about communications with the press, I don’t know that what you’ve related to me today is something I can take into account . . . if what you’re saying is accurate, and the State’s Attorney’s office is using an agent to make derogatory comments about the Court, that’s something they’re going to have to answer to in a different setting. The case law in Illinois is completely clear that these instructions should not be modified, unless there’s a significant reason to modify them . . . we did give the instruction before the trial started . . . over the defendant’s objection, the instruction will not be modified, and it will be given to the jury in writing.”

August 31 at 12:44pm · Like · 1

In Session

The next instruction involves the believability of witnesses.

Brodsky has no objection to this instruction, and the instruction will be given as prepared.

August 31 at 12:44pm · Like · 1

In Session

The next instruction involves opening statements.

Again, the defense has no objection.

The prosecution has an objection to the next instruction, related to the use of the word “deputy” instead of “bailiff.”

The judge decides to grant the State’s suggested modification to change the word.

The next several instructions will be read without objection (regarding the defendant’s pleading not guilty, presumption of innocence, defendant’s right not to testify, and the definition of circumstantial evidence).

August 31 at 12:48pm · Like

In Session

The defense has an objection to the next instruction, which Greenberg says is confusing.

This apparently involves “statements” (but whether they’re media statements or hearsay statements is unclear, according to the defense).

Brodsky proposes that the word “hearsay” be inserted in front of “statements,” to make the instruction’s meaning clearer. “Otherwise, they’re not going to know what we’re talking about . . . you haven’t heard evidence of the defendant’s statements; you’ve heard evidence about what may have been the defendant’s statements. That’s the problem with hearsay.”

Prosecutor Koch: “Those aren’t hearsay statements.”

Judge: “No, they’re hearsay. They’re admissible hearsay, but they’re still hearsay.”

Koch: “I don’t think the instruction needs to be modified in any way. I think it’s appropriate.”

Brodsky: “The jury doesn’t have any guideline by which to determine.”

Judge: “Sure they do, the last sentence . . . it’s right there . . . I think that this is a correct statement of the law. The jury is advised that they can consider any of the statements they’ve heard that have been attributed to the defendant. The jury has to determine whether they believe the defendant even made those statements, and the circumstances under which they were made . . . I think it’s a correct statement of the law, and the defendant’s objections are overruled.”

August 31 at 12:55pm · Like · 8

In Session

The next instruction regards challenging the believability of witnesses.

Attorney Greenberg says that the defense has its own proposed instruction on this issue.

Attorney Joe Lopez: “The State tendered two versions of it. We want every variation.”

Judge: “That doesn’t stand on its own.”

Greenberg: “I don’t think it’s one or the other.”

Prosecutor Koch: “This is for inconsistent statements.”

Judge: “I think with those bracketed portions included would now be an accurate statement of the law.”

August 31 at 1:06pm · Like · 1

In Session

The State has a proposed modification to the next instruction.

Brodsky says that the defense also has its own proposed version of this instruction.

Judge: "The State's modification is a correct statement of the law, and will be given."

August 31 at 1:07pm · Like · 2

In Session

The next instruction concerns the definition of murder.

Brodsky offers some minor modifications to the instruction's grammar.

"Other than that, we have no objection to it."

Judge: "I think the defendant's objection is well-taken."

He orders the grammatical changes to be made to this instruction.

August 31 at 1:09pm · Like · 5

In Session

The defense objects to the next proposed instruction, "the issues instruction."

Greenberg: "The indictment charges he intended to kill . . . it does not charge he intended to kill or do great bodily harm . . . this indictment is very specific in that he alleges that he caused her to inhale fluid . . . I believe because they have specifically alleged inhaling fluid, the instruction should require the jurors find that. So I believe the instruction should be modified to include that he intended to kill her by causing her to inhale fluid, or caused her to inhale fluid knowing that such an act created the possibility of death or great bodily harm."

Greenberg concedes, however, that he has no case law that supports the defense position.

"Here, I still don't know how they say she died. How did he cause her to inhale fluid? They still haven't said that."

Prosecutor Griffin responds: "There's nothing that would suggest this is a factual modifier that should be included . . . we would ask that [the standard instruction] be given."

Judge: "I'm not aware of any case that allows the issues instruction to include a factual modifier . . . I think that the instruction is a correct statement of the law, and with no precedential support for the objection that Mr. Peterson is making, the modification is denied, and the instruction will be given as stated."

August 31 at 1:18pm · Like

In Session

Based on the judge's ruling, Greenberg asks for a motion in limine, asking that the State be precluded from arguing any other theory except that Kathleen Savio was forced to inhale fluid.

For the moment, the motion is denied, but may be brought up again later.

August 31 at 1:18pm · Like

In Session

The judge now moves to the concluding instructions.

The defense objects to the verdict forms, but the judge overrules that objection.

"Now we need to address the defendant's proposed instructions" (most of which he's already denied).

The State objects to the judge re-reading the various cautionary instructions that the jury has already heard.

"The cure was during the course of the trial; there's no need to do it again."

Greenberg insists that part of the sanctions against the State mandate that the cautionary instructions be read again.

Judge: "You asked me to caution the jury, and I did . . . the Court did say at the time it cautioned the jury that I would re-read these cautions again at the end of the trial. [But] I don't see the need at this point in time to re-read these cautionary instructions . . . so the defendant's motion is denied; they will not be re-read to the jury. And if they are, any modifications will be up to the Court."

Greenberg: "Can we still argue these things?"

Judge: Absolutely."

August 31 at 1:29pm · Like

In Session

The next proposed defense instruction concerns a definition of "reasonable doubt," which Brodsky is asking be read to the jury.

"There is no direct evidence whatsoever . . . it's a circumstantial case, based on hearsay. So they [the jurors] should be instructed on what reasonable doubt is."

The judge denies the request: “There is no better definition of ‘reasonable doubt’ than the words themselves. No definition of reasonable doubt will be given in this case.”

August 31 at 1:32pm · Like · 6

In Session

Judge Burmila recesses court until 1:15 CT/2:15 ET.

Judge to attorneys: “If we could be prompt, please!”

He then leaves the bench, and the trial is in recess until 1:15/2:15.

August 31 at 1:42pm · Like · 1

In Session

August 31 at 2:37pm

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

Judge Burmila takes the bench, and the jury charge conference continues.

The question of the proposed defense instruction regarding “impeachment by omission” is once again addressed.

The defense has given the judge some case law on this issue.

Prosecutor Griffin responds, argues that this issue is adequately covered by a standard impeachment instruction.

Judge: “I tend to agree with the State . . . the parties can argue the inferences that can be drawn by the omission. So the defendant’s proposed instruction is denied.”

In Session

The next proposed defense instruction involves “failure to produce evidence or a witness.”

The defense hopes for an instruction based on a similar civil instruction, and offers that civil instruction for use as a template.

Attorney Greenberg cites case law that he believes supports the defendant’s argument.

Judge: “The Court recognizes there are instructions that can be given to the jury in regards to the failure to call a witness . . . the defendant does not have the ability to use a shield as a

sword . . . I think it would only be confusing, and the defendant's proposed instruction is denied."

August 31 at 2:45pm · Like · 1

In Session

The next proposed defense instruction concerns regarding "the multiplicity of attorneys."

Greenberg says this is important "because of the number of attorneys in this case, and because this case is being personally prosecuted by the State's Attorney . . . given the number of times the jury had to be excluded, and the length of time, I think it's important the jury knows it's no one's fault . . . it just reinforces, especially given the length of time. Where's the harm?"

Prosecutor Griffin: "I believe this misstates the law, and I don't even understand the reason for it."

Judge: "I think the record has to be clear; there was an unusual number of sidebars in this case . . . we wouldn't them to be frustrated in any fashion in regards to the number of times they did have to leave the courtroom . . . I think if you guys could get your heads together along the lines of some instruction, I think it would be helpful. If you could agree on some language, I think it might be appropriate in this case to address that subject again."

August 31 at 2:50pm · Like · 1

In Session

The defense offers an instruction regarding "the prior conviction of a witness."

The prosecution objects to this instruction (which seems to deal solely with prosecution witness Jeff Pachter).

The judge decides to give this instruction.

"It goes to the issue of moral turpitude, and I'm going to give it."

August 31 at 2:50pm · Like · 1

In Session

The next defense proposal has to do with the issue of jury speculation regarding the bifurcation of the Peterson/Savio divorce (and incorrect statements of the law regarding that issue, specifically how the death of one of the parties affects that proceeding).

Before he hears argument on this issue, Judge Burmila consults a bound reference volume.

Judge: “The instruction is mostly testimonial in its outlook . . . to remind the jurors they heard this testimony, that’s testimonial, not a statement of the law . . . you need to put it in an explanation of the law, rather than a recount of the testimony.”

August 31 at 2:59pm · Like

In Session

Greenberg offers the next proposed defense instruction, which concerns “the implication that Mr. Peterson might be a beneficiary of some kind . . . we would like you to inform the jury that he was no longer an heir, because they were divorced, and he was not listed as a beneficiary in the will.”

Prosecutor Griffin responds, objecting to the defense’s proposed instruction. “What matters is what his state of mind was, and whether he thought he might have specific financial benefits from this crime.”

Koch: “That goes right to his state of mind. We wanted to produce testimony to that, and we were precluded from doing so.”

Greenberg: “All we’re asking you to do is present a correct statement under the law.”

Judge: “The defendant’s instruction will not be given. The evidence in this case in regards to the issue of what the defendant’s posture would be post-divorce and in advance of the property distribution, I think, is irrelevant . . . this instruction is one that goes toward evidence, and not the law in this case . . . so I don’t see any need for this instruction at all; it’s not an accurate statement of the law, as it’s applicable in this case. So it will not be given.”

August 31 at 3:08pm · Like · 2

In Session

The State objects to the next proposed defense instruction, saying it’s irrelevant.

Brodsky responds: “This goes to correct a misstatement of the law that Mr. Smith gave from the stand.”

Judge: “I will say that when Mr. Smith made this statement in front of the jury about concealing a homicidal death . . . at the time, you did not cross-examine him any further when he made the statement. Is that correct?”

Brodsky: “I only cross-examined him on his prior statements that it was extortion.”

Judge: “So you had an opportunity to cross-examine him on whether the information he was

giving the jury was incorrect?”

Brodsky: “I was a bit taken by surprise.”

Judge: “How does the fact that you were surprised and did not cross-examine him on this issue, how does a jury instruction cure that?”

Brodsky: “Because it would advise the jurors that the law he told them was wrong. They could use that in evaluating the weight and credibility to give his testimony.”

Greenberg: “The jury should be advised that it was an incorrect statement of the law. To do otherwise is to leave the jurors with an incorrect understanding of the law.”

Griffin: “The correct understanding of the law they need to have is the law of this case.”

Judge: “You’re not disputing that what he [Smith] said was wrong?”

Griffin: “All Mr. Smith was doing was clarifying that he was not talking to her about extortion.”

Judge: “But Mr. Smith says he was advising her about a crime that she could not have committed.”

Griffin: “This is not something that should be included in a jury instruction; it should have been addressed at the time that Mr. Smith was testifying.”

Judge: “I believe everybody will believe that what she told him did not constitute the crime of concealing a homicidal death . . . that’s a separate issue from whether or not a special instruction is curative. What Ms. Griffin said is correct; if you abandon that line of questioning, I don’t know if you can come back and ask for a jury instruction later.”

Greenberg: “The fact is that he was wrong, and it is the Court’s obligation to advise the jury on the law, not a witness’ obligation . . . it would be unjust to have the jury have an incorrect understanding of the law simply because maybe something should have been said or done earlier.”

Judge: “You [the defense] called him . . . you called this witness . . . there’s nothing I can see that the State did to augment or embellish Mr. Smith’s testimony. The defendant’s proposed instruction is denied . . . there was no request for a sidebar, no request that the Court correct the information. So the relief the defendant seeks in the form of a jury instruction is denied.”

August 31 at 3:28pm · Like · 23

In Session

Brodsky proposes the next defense special instruction (regarding accusations of witnesses of wrongdoing by the defendant).

“This is the only crime that he’s charged with . . . they should not consider any other collateral evidence of wrongdoing.”

Griffin: “It seems to me that the defendant’s suggesting that the jury can’t consider any of the evidence against him.”

Brodsky: “Some of those people Mr. Pelkie has escorted to the microphone have said why Stacy Peterson is not here . . . people are saying jurors will consider that against Mr. Peterson . . . there’s other accusations out there, Judge. Jurors are only to consider the charged crime, and not anything outside of that. It seems as if a lot of the State’s case was aimed at bringing in other accusations against the defendant and getting them in front of the jury.”

Judge: “I understand the argument that the defendant is making . . . I think the instructions as a whole address the issue that the defendant is concerned about . . . that objection is overruled, and will not be given.”

August 31 at 3:34pm · Like · 13

In Session

The next proposed defense instruction concerns a definition of “hearsay.”

Joe Lopez: “The jurors have heard us say ‘hearsay’ a bunch of times, ‘Objection, hearsay’ . . . they’ve heard about ‘the hearsay hearing’ . . . the jurors are sitting in there, wondering what is it exactly? The jurors, I think, should be instructed what it means.”

Lopez then offers a definition of hearsay from a 1962 Illinois Supreme Court decision.

“We don’t want them arguing over what exactly a hearsay statement is . . . the team thinks it would be wise to give them an instruction. We’d like the Court to read that into the record, and instruct the jurors so that it doesn’t become an issue later.”

Griffin responds: “There is no case we have found about hearsay evidence or forfeiture by wrongdoing . . . we would object to this instruction; it highlights hearsay evidence . . . we don’t believe that this is an instruction that should be given; there’s no support for it.”

Judge: “Over the State’s objection, this instruction is going to be given. I think it’s peculiarly relevant in this case.”

August 31 at 3:46pm · Like · 4

In Session

The judge acknowledges that the final defense proposed instruction “is a correct statement of the law.”

However, he decides to take under advisement the question of whether or not he will actually give it (wanting to check case law first).

August 31 at 3:53pm · Like · 3

In Session

Prosecutor Connor now addresses the Court, asking for some restrictions to the defense summation.

The first involves witness Mary Pontarelli.

Attorney Greenberg rejects the State's amendment, says that what Connor has just stated about Pontarelli is "completely false."

Judge: "The State is asking me to restrict the defendant's closing argument; the argument is restricted . . . it's up to the jury to resolve that conflict."

August 31 at 4:00pm · Like · 6

In Session

Connor then moves to the issue of a certified copy of Kathleen Savio's death certificate.

"The date on the certificate should not be brought out during closing statements; that is irrelevant . . . they're attempting to argue that the official position of the coroner's officer is that the death is still an accident; it is now a homicide, and that's certified by the coroner's office."

Greenberg: "I'm offended . . . for them to accuse us of a defense stunt is an insult. We have engaged in no stunt . . . there is a procedure for changing a death certificate . . . they've never done anything to try to change anything or correct anything . . . they cite no authority for their position, not a single case."

Judge: "The request that I restrict the defense closing argument in that regard is denied."

August 31 at 4:05pm · Like · 2

In Session

The defense requests to be able to mention in its closing that Harry Smith looked repeatedly at the State's table during his testimony.

Judge: "The State's request that the defense be restricted from mentioning that is denied."

August 31 at 4:06pm · Like · 5

In Session

Finally, Judge Burmila also rejects a State request that the defense be precluded from arguing that hearsay evidence is lesser evidence.

“Are we done with the jury instructions?”

“Yes.”

August 31 at 4:08pm · Like · 4

In Session

New thread

August 31 at 4:21pm · Like

In Session

Judge: “We’re done for today on the record. Everybody have a good weekend. We’ll now move to the chief judge’s conference room.”

The judge leaves the bench, and the rest of the hearing is now off the record.

The public portion of the trial is now in recess until 9:00 CT/10:00 ET.

August 31 at 4:34pm · Like · 3

In Session

August 31 at 4:21pm

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

Attorney Greenberg renews his motion for a directed verdict in this case.

In Session

“Now you’ve have to consider the defense case . . . we are still at a point in this case where we have no evidence that Mr. Peterson went into that house this weekend. Harry Smith said Stacy Peterson wanted to know if she could use the fact that Drew killed Kathy as leverage in

the divorce. There are no facts to back that statement up, so that statement by itself is no evidence in itself. It means nothing. Then you have very prominent experts from both sides.

Dr. Case only believes something if she wrote it . . . how can you give any weight to her opinion? And then they recalled her yesterday, and you go to observe her demeanor on the stand, her combativeness. She was defensive, to say the least. We had Dr. Baden, a very nice man, very personable . . . but, again, he didn't tell you how Ms. Savio died. I still sit here and go, 'How did this person die?' They have not shown any evidence that Mr. Peterson broke into the house, was let into the house, was in the house that night. They have not put him in the house . . . they have not had a witness who can tell you he went to that house that night, and there's not evidence from which you can infer it . . . the State says that he staged a crime scene to make it look like an accident, something that no one ever said. They have to say that, because they don't want to accept it's an accident. If he had staged the scene, then how did he get the scene wrong? He's such a mastermind that he's sitting there indicted for murder? . . . they have not shown one piece of evidence that was missed . . . was she hit over the head with a candlestick? Hit over the head with a billy club? A gun? There's no defensive wounds on her, nothing under her fingernails.

Her best friend said if she was attacked, she would have fought back . . . there's nothing on Mr. Peterson, no mark on Mr. Peterson at all. There's no confession. There's just no evidence at all. If there is not sufficient evidence, then our motion should be granted . . . they may want to believe this, but the fact is that nothing changed from 2004 until the time this indictment was brought in 2009 except that two doctors decided in their opinion it was a homicide instead of an accident. The only other thing that changed was that Stacy was gone."

August 31 at 4:21pm · Like · 5

In Session

Prosecutor Koch responds to the defense motion.

"Harry Smith puts Mr. Peterson in the house . . . it corroborates Neil Schori's statement about when Mr. Peterson came home that night . . . you heard the clavicle injury could have been caused by being pushed down on a hard surface . . . the circumstantial evidence, all the evidence taken together, could convince a reasonable person that the defendant is guilty . . . the prior bad acts on the intent, the motive and intent . . . 'I will kill you,' those statements that came in . . . the expert testimony from Dr. Case; it's for the jury to decide the credibility of these witnesses . . . there is sufficient evidence for this case to go to the jury, and we ask that you deny the motion for a directed finding."

August 31 at 4:25pm · Like · 17

In Session

Greenberg responds.

“They say it wasn’t an accident, so therefore he did it. Because who else would have done it? . . . even as I sit here now, after four or five weeks of trial, the fact is that they cannot tell you did he go to that house on Friday night? Did he go on Saturday night?” “Did he go on Sunday night? When did he commit this crime, if a crime was committed? Where did he commit the crime? Did he whack her over the head with a coffee can? Did he drag her up the stairs? We don’t know . . . it’s a scary day when someone can be on trial or be convicted or have a jury decide when the State cannot still today articulate for you what happened. I challenge them to tell us what happened. How was the crime committed, and what piece of evidence do you have to say Drew Peterson did it? I just don’t get it.”

August 31 at 4:27pm · Like · 3

In Session

Judge: “A circumstantial case is built much like a house, brick by brick . . . the defense argues that this case comes down to the experts; there’s no disagreement about that . . . at the same time, the jurors are entitled to ignore all the experts and rely on their common sense . . . but a reasonable person could return such a verdict. So the defendant’s motion is denied.”

August 31 at 4:30pm · Like · 27

In Session

August 31 at 4:34pm

Judge Burmilla has denied the defense's motions for a directed verdict in this case.

Judge: “We’re done for today on the record. Everybody have a good weekend. We’ll now move to the chief judge’s conference room.”

The judge leaves the bench, and the rest of the hearing is now off the record.

The public portion of the trial is now in recess until Tuesday morning at 9:00 CT/10:00 ET.
