

Testimony in sandbar case put on hold

Detective admits "an error" was made; celebrity forensic pathologist brought in to testify

BY MEGAN V. WINSLOW
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STUART — Brian Godwin's second-degree murder trial was sidetracked Thursday morning after defense attorneys accused the lead investigator on the Stuart sandbar homicide case of intentionally misplacing or destroying evidence.

The defense's cross examination of Martin County Sheriff's Detective Michael Dougherty ended abruptly after he said one of four people who saw 19-year-old victim Brett McCarthy getting struck identified Godwin as a suspect because she knew him, not because she picked him out through a photo line-up, as stated in an official complaint affidavit.

Dougherty said he realized the error only Wednesday evening and wanted to bring it to the court's attention.

But the mistake, coupled with the disappearance of some recorded witness statements and the printed photo line-ups they signed identifying

Godwin, has resulted in a severe prejudice against him, said defense attorney Marc Shiner.

"There is a pattern of items that have been lost or destroyed, and we're alleging it was intentionally done because every item that was lost or destroyed provides potential material in favor of Mr. Godwin," Shiner said.

Circuit Judge Larry Schack agreed to halt Dougherty's testimony until the defense can interview him outside the courtroom at a later time.

To make some headway in the sluggish trial both sides agreed to call defense witness Dr. Michael Baden out of turn.

Baden, a forensic pathologist best known as the host of HBO's television program "Autopsy," and prosecution witness Dr. Roger Mittleman, the medical examiner who performed McCarthy's autopsy, agree he died from a blunt force injury sustained when a vertebral artery in his neck

was torn, causing hemorrhaging and a lack of oxygen to his brain.

But while Mittleman has said the unusual injury was caused by a blow to McCarthy's face, Baden said it resulted from a blow to the back of the head or neck, based on the artery's location and the lack of visible injury to McCarthy's face. There are eyewitnesses that support both theories. But Baden said he thought Dustin Sahlberg's account of a blow from a beer can was most accurate, because the registered nurse had not been drinking Aug. 27, 2006, the day of the sandbar fight.

Also, unlike most of the prosecution's witnesses, Sahlberg did not know anyone involved in the fight and is less likely to be biased, Baden said.

Despite who hit McCarthy or how he did so, Baden said McCarthy suffered brain damage within 10 seconds of the blow.

"Even if there was a surgeon there, they might have had a better chance of keeping the heart going, but not bringing the brain back," Baden said.

McCarthy's family donated his organs for transplant and removed him from life support on Aug. 28, 2006.



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With the help of Brian Godwin's defense attorney, Marc Shiner, right, forensic pathologist Dr. Michael Baden demonstrates for jurors how he believes someone may have struck victim Brett McCarthy in the back of the neck during the Stuart sandbar fight. Dr. Baden is the chief forensic pathologist for the New York State Police. Contrary to his theory, prosecutors and Medical Examiner Roger Mittleman believe someone struck McCarthy in the face. Brian Godwin, the defendant, is on trial for second-degree murder.

Gary's firm wants to be dropped from sexual suit

BY MICHELLE SHELDONE
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STUART — The law firm of prominent attorney Willie Gary wants out of a lawsuit involving allegations he raped a Port St. Lucie woman, according to documents filed Thursday in Martin County Circuit Court.

The woman, a 25-year-old former employee at the firm of Gary, Williams, Finney, Lewis, Watson & Sperando, referred to as Jane Doe, filed suit against Gary and the law firm in November. She claimed that Gary in August deceptively convinced her to meet him at the Best Western Downtown Stuart, where he raped her.

Gary, who has sued the woman and two others on claims of extortion, maintained he and Doe had a consensual sexual relationship that included a rendezvous that night at the Best Western, and he passed polygraph exams regarding the incident.

Now, Fort Lauderdale attorney Craig Hudson contends the firm shouldn't be named in the lawsuit because Doe wasn't an employee or client at the time of the alleged encounter.

And the meeting, which didn't happen on the law firm's premises, wasn't connected with its business, Hudson wrote in his request to dismiss the firm from the suit.

Martin County Judge Robert R. Makemson is scheduled to hear the request to dismiss on Jan. 30.

Doe's attorneys plan to first address with Hudson an amended lawsuit that they plan to file.

The amended lawsuit provides more details as to why Gary, Williams, Finney, Lewis, Watson & Sperando is named in it, Doe attorney Linda Capobianco said.

Those details include Doe's claims that Gary was acting as a representative of the firm when Gary suggested that she sign papers waiving responsibility with regard to a vandalism incident at the law firm that allegedly involved her husband, Capobianco, said.

Jane Doe asked to meet Gary at the law firm to sign the papers, but he told her the office would be closed and instead recommended the Best Western, Capobianco said.

Capobianco and her partner, Jerome Stone, also want to keep Gary's polygraph exams and references to them out of the case.

Florida courts in the past have found polygraph tests to be unreliable and inadmissible, she said.

Getting a grip on things



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Five-year-old Tony Burns tries to pull a stick out of Molly's mouth during a tug-of-war while his brother Danny, 7, holds on to the dog's leash at Zeus Park in Hobe Sound on Monday. The boys' aunt acquired Molly, a 4-month-old American bulldog, a few weeks ago. "We are trying to teach her to release," said Rebecca Burns, the boys' mother. "Hopefully, she'll have it down by the end of the week."

Hinkley Yacht expansion proposal disturbs neighbors

BY R.J. HARRINGTON
Correspondent

STUART — Planning Agency members late Thursday night expected to postpone a vote on Hinkley Yacht's proposal to expand its boatyard on Robertson Road at the Manatee Pocket in Rocky Point.

The more than 80 people at a Thursday hearing on the proposal were divided between residents who live nearby, many of whom are opposed the expansion, and Hinkley employees and their families.

The planned building will be a 40,000-square-foot, 40-foot high, climate-controlled storage facility to house Hinkley's and other yachts.

Hinkley CEO Jim McManus said some 30 percent of their customers have moved their expensive boats

"We have some 50 highly skilled employees — carpenters, electricians, electronics experts — whose jobs are threatened unless we expand this facility."

Jim McManus, CEO, Hinkley Yachts

north in the wake of Florida's hurricanes to seek inside storage.

"As the boats go north, so do the jobs," he said. "We have some 50 highly skilled employees — carpenters, electricians, electronics experts — whose jobs are threatened unless we expand this facility."

"This is critical to the future of our company."

Principal county planner Joseph Banfi said all permits have been ap-

proved and there are minor project issues concerning open space and utilities.

Stuart Attorney Robert Raynes, who represents the yacht company, said the company has held several meetings with the neighbors "and have made several changes to the initial plan to accommodate their wishes."

"Of course for some people, compromise means that we must do 100 percent of what they want," he said.

Ted Robbins, who lives near the site in the 4600 block of Southeast Manatee Terrace, raised a number of concerns, including whether the site conforms to requirements for upland preserve.

Banfi said there are no native habitats on the property, which has been a boatyard since the 1950s.

Giovanna Gallottini of the 5000 block of Southeast Manatee Terrace, wanted to know if the expansion would result in manufacturing operations.

She was assured by Banfi and Raynes that the proposed facility is for storage and light maintenance. Hinkley Yachts are built in Maine.

To move forward, the project would still need approval from the Martin County Commission.

The planned building would be a 40,000-square-foot, 40-foot high, climate-controlled storage facility.