

CAUSE NO. 685193

THE STATE OF TEXAS) IN THE 228TH DISTRICT COURT
)
VS.)
)
KEVIN JAMAL ROGERS) OF HARRIS COUNTY, TEXAS

A P P E A R A N C E S:

For the State: Mr. Steve Baldassano
 Assistant District Attorney
 Harris County, Texas

For the Defendant: Mr. Obii L. Aham-Neze
 Mr. Arthur Jackson
 Attorneys at Law
 Houston, Texas

BE IT REMEMBERED that upon this the 15th day of
June, A.D., 1995, the above entitled and numbered cause
came on for trial before the Honorable Lee Duggan,
presiding Deputy Judge of the 228th District Court of
Harris County, Texas, and the following proceedings were
had, viz:

Mary M. Mills
Official Deputy Court Reporter
228th District Court
Harris County, Texas

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Your Honor.

THE COURT: Anything further from the State?

THE STATE: No, Your Honor.

THE COURT: All right. Thank you, Judge. You are excused. Call your next witness, please.

THE STATE: Christy Kim.

THE COURT: Christy Kim, please.

THE STATE: May this witness be excused, Your Honor?

THE COURT: Yes. Jurors, while we locate the witness, why don't you go ahead and go to the jury room while we locate the witness. We'll stand in recess pending the arrival of the witness.

(Whereupon the court stood in a brief recess.)

THE COURT: All right. We'll come to order.

THE STATE: Neither of these witnesses have been sworn, Your Honor.

THE COURT: All right. Madam

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Bailiff, recall and seat the jury, please.

(Whereupon the following proceeding was held in the presence of the jury.)

THE COURT: Mr. Baldassano, call your next witness, please.

THE STATE: Christy Kim, please.

THE COURT: Ms. Kim to the witness chair, please.

Ms. Kim, have you been previously sworn?

THE WITNESS: No, sir.

(Whereupon the witness is sworn in by the Court.)

THE COURT: Be seated, please. The bailiff will help you adjust your microphone. You'll still probably have to make a special effort to raise your voice. Proceed, please.

CHRISTY KIM,
was called as a witness, after being first duly sworn,

1 hairs like that, then it would be inconsistent
2 with your statement that it is not a positive
3 identifier; isn't that correct?

4 A. A positive?

5 Q. Right, a positive. In other words, puts a
6 defendant to the exclusion of everybody else.
7 Can you do that with hair?

8 A. No, I cannot do that.

9 Q. All right.

10 MR. AHAM-NEZE: I have no further
11 questions.

12 THE STATE: No further questions,
13 Your Honor.

14 THE COURT: All right. You may step
15 down. You are excused.

16 THE STATE: Judge, at this time the
17 State of Texas rests.

18 THE COURT: All right. The State
19 rests. Jurors, at this time, then, we're
20 going to stand in recess until nine o'clock
21 tomorrow morning. All the same
22 instructions previously given continue to
23 hold. See you in the jury room at nine
24 o'clock.

25

1 (Whereupon the following proceeding
2 was held outside the presence of the jury.)
3

4 THE COURT: Now, are there motions to
5 be presented now out of the jury's
6 presence?

7 MR. AHAM-NEZE: Yes, Your Honor. At
8 this time, since the prosecution has
9 rested, the defense would move for an
10 instructed verdict -- a directed verdict of
11 not guilty due to the fact that the
12 prosecution has not been able to prove the
13 elements of each element of its case of the
14 various -- of the three various ways that
15 it has charged the defendant with capital
16 murder in this case.

17 Specifically speaking about the
18 charge that the defendant committed -- was
19 in the process of committing aggravated
20 sexual assault. And speaking also about
21 the charge that the defendant had
22 intentionally killed the complainant in the
23 process of committing burglary. I'm also
24 referring to the fact that the defendant
25 has been charged with intentionally

1 stabbing and killing the complainant in the
2 process of committing robbery.

3 The defense submits, Your Honor,
4 respectfully, that the prosecution and the
5 evidence and testimony presented has not
6 supported the fact that there's been any
7 evidence of sexual assault in this case.
8 And they have not been able to put the
9 defendant positively in the house. They
10 have not been able to show that money was
11 taken, and they have not been able to show
12 any evidence of motive or the fact that any
13 BB gun was removed. They have not been
14 able to show that the defendant
15 intentionally -- the defendant
16 intentionally killed or stabbed the
17 complainant, nor have they been able to
18 prove that the defendant was in the house.

19 Because of their failure to meet all
20 of the requirements and their heavy burden
21 in this case of proving each and every
22 element of the offense as charged beyond a
23 reasonable doubt, the defense at this time
24 would move for an instructed verdict of not
25 guilty. We respectfully submit that, Your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
~~17~~
18
19
20
21
22
23
24
25

Honor.

THE COURT: The motion for instructed verdict will be denied.

MR. AHAM-NEZE: Thank you, Your Honor.

THE COURT: Mr. Aham-Neze, are you ready, then, to proceed with your evidence tomorrow morning?

MR. AHAM-NEZE: Yes, Your Honor, we are.

THE COURT: I believe we can go off the record on this.

(Whereupon counsel approached the bench outside the hearing of the court reporter.)

THE COURT: All right. We'll stand in recess then until nine o'clock.

(Whereupon the Court adjourned for the day.)