

**IN THE COURT OF APPEALS OF VIRGINIA**

**DONNA L. BLANTON,**

**Petitioner,**

**v.**

**Record No. 2389-08-2**

**COMMONWEALTH OF VIRGINIA,**

**Respondent.**

**BRIEF IN OPPOSITION  
TO PETITION FOR APPEAL**

**STATEMENT OF FACTS**

The Commonwealth announced in its opening statement that it would prove the following was the defendant's motive for murdering Taylor Blanton:

(1) The defendant had deceived Taylor Blanton into believing she was financially well-off;

(2) In fact, she had run up enormous debt without his knowledge in both his and her names;

(3) The defendant believed that, if Taylor Blanton died, she would be a rich woman and would inherit his home on thirteen acres with a lake;

(4) The defendant also believed that she would be left poor and homeless if Taylor Blanton learned of the deception and debt; and

(5) Taylor Blanton was about to learn of the deception and debt.

(Tr. 165-88).

Additional facts are stated, with citations to the record, in the Argument section of this Brief in Opposition to Petition for Appeal.

## ARGUMENT

- I. THE COMMONWEALTH'S ARGUMENT ON REBUTTAL WAS A FAIR RESPONSE TO THE DEFENDANT'S CLOSING ARGUMENT AND WAS NOT A COMMENT ON THE FAILURE OF THE ACCUSED TO TESTIFY.

After the Commonwealth presented its case-in-chief, the only evidence introduced by the defense consisted of three certificates of analysis regarding the murder weapon.

(Tr. 1003-05; Defense Exhibits G, H & I).

In his closing argument, counsel for the defendant argued repeatedly that the Commonwealth had chosen to keep evidence from the jury and was asking the jury to convict based on speculation and suspicion, as follows:

[O]ne of the things that we started with was Mr. Spencer was telling you about this financial motive. And in proving the case they had options on what they could do. They wanted to show you that she was in financial ruin and that she was going to be a rich woman upon Taylor's death. Well, **they could have told you** actually how much debt Taylor had. They can tell you what Donna's debt is. **They actually could have told you** that the house was mortgaged to the hilt or that it was free and clear, but **they chose not to give you that information. They also could have told you** if Donna was actually going to get the house upon his death. Or if she wasn't going to get the house, **they could have told you that too.** It's their case to prove, ladies and gentlemen. **Shouldn't they give you all the information so you can make a decision? Why don't you get information** about the house? **Why don't they tell you** how bad Taylor's debt was? **Is that because it just doesn't work with the theory that they have, which is that she's presumed guilty? Isn't that really what it is?**

(Tr. 1062-63) (emphasis added).

**They give you suspicion, they talk about probabilities,** and with their case to prove **they don't provide you with all the evidence. Why do they hide that from you?** Think about what they could prove, the resources and the ability that they have. **Couldn't they have shown you if she was going to benefit at all?** Did they prove to you that she got even one penny? Now, with everything that we've heard, if she did, **couldn't they and wouldn't they show it to you?** That's because she didn't get one penny. We'll get back to the motive because I know you want to hear a little bit more about that. You haven't heard enough over the past week.

(Tr. 1064) (emphasis added).

[If a video surveillance system had been installed], ***then you would have evidence***, proof, solid visual evidence of what went on outside in that driveway. ***You wouldn't need to hear speculation*** of it did happen, it didn't happen.

(Tr. 1068) (emphasis added).

[T]he first break-in. You'll recall that was, I believe, February of '98. Mr. Spencer asked her, Was Donna Blanton living there? And she said no. It was before Donna Blanton. Or else, I assume, ***if it wasn't she probably would have been blamed for that too.***

(Tr. 1072) (emphasis added).

[I]f you want to know what happened and you want to prove beyond a reasonable doubt what happened, ***why don't we hear from Special Agent Tom Kaschak***, the lead detective, the case agent? Why do we hear from the loving nephew and her ex-husband? Because he would have had the time to sit down with her and to ask her, Where did the dogs go? Did they run right out into the driveway? Did they go out into the woods? Do they come back? Where are the dogs? Are they in a position where they would bark when an intruder does come into the house? That's something I bet someone like Special Agent Tom Kaschak would ask.

You see, they're supposed to prove this case beyond a reasonable doubt. ***If they want to use circumstantial evidence, they should provide you with all the circumstances.*** Are they afraid that if you hear the conversation that Kaschak had with Donna that it will all make more sense to you? ***As long as they keep you in the dark, maybe you'll go with them and you'll agree with their suspicions and let their suspicions be proof beyond a reasonable doubt.***

(Tr. 1074-75) (emphasis added).

But isn't that something that they could have asked? Because, in fact, that might be what you have there. Now, the Commonwealth might say, Well, how do you know it's not Donna's? Well, you know what, you don't know because if anybody asked her about it, Special Agent Kaschak, ***you didn't hear from him.*** Anybody else able to identify those? You think Katie could identify her dad's shoes, Donna's shoes? Sure. ***But you didn't hear it. They want you to be in the dark about it*** and assume teddy bears. That's what he told you. How many times did he tell you this morning? Three - - at least three times. Surrounded by teddy bears. Oh, yeah, and these.

Now, the reality is it might have been there for quite some time, not anything to do with even the month of October. We don't hear any testimony about his always liking to keep the .380 in the holster. You didn't hear any testimony and the taking in and out of the .357 on the other side of a holster. No.

This is a clip-on. It was there. But they said, Well, it had to be there. How about, Donna, where was the .380? Don't you think Tom Kaschak is asking that question? And what if she says, Taylor was nervous. We were up. He had it with him. I don't know if he put it on his dresser. He might have left it on the kitchen island with the night vision goggles. Right? Aren't those questions - - ***aren't those circumstances that they could provide you with?*** We heard Tom Kaschak's name throughout, but ***we don't hear from him.***

Brad Thomas gets his information where? Over at the family house while she is still grieving. She's just come back from the hospital. He says he talks to her. And I asked him, Was that after she spent the several hours with the police? Yeah. It wasn't even before she got to talk to Kaschak and he talked to her. It was after that. So it was sometime that afternoon or that evening. She didn't sleep well the night before. She had been through this all day, and yet Brad comes in here four and a half years later and says, This is exactly what I remember her saying. There's no indication that he has any of the specialized training that Special Agent Kaschak and people of his standing would have to understand the facts, to objectively listen, as questions, take down information. ***Wouldn't that be the better means of finding information?***

(Tr. 1077-79) (emphasis added).

Dane Satterwhite is the second deputy on the scene, the more experienced deputy. This is Deputy Childress' first year, first time he's been involved in a murder scene. He doesn't want to do anything until Deputy Satterwhite gets there. Did we hear from Deputy Satterwhite? When you talk about circumstances, ***did we hear from him? No. They don't even call Deputy Satterwhite.*** This is the first person who goes into that house after the 911 call is made, Deputy Dane Satterwhite; but ***they don't call him. Why[?]***

(Tr. 1083) (emphasis added).

Think about this puzzle that you've been told, a thousand-piece puzzle. And just in the time that we've been talking now, how many of those pieces are missing? ***How many pieces are not only missing but are intentionally missing because in their burden of proof they've decided not to let you know?***

Now, they say that there were things hidden in her room. Quite frankly, ***there have been things hidden here.*** It started with hiding Childress' recollection about CPR. Mr. Kaschak is just another example that you don't have. Was there an investigation? Was there a talk about how somebody could enter that home? Did we hear about how many people have spare keys? Did we hear about where the spare key or spare keys are kept? Who would know about them? Do you know if there was any investigation done into anybody who would have made any threats against Taylor? There was computer and PDA equipment. Remember that? That was part of the search warrant. That was taken. Well, the allegation is

that she's this big gambler and she's on the computer screen with casino games or something like that. Well, how come we don't have any analysis of that computer? We've got Katie testifying that she used that computer and would even minimize when the casino things were on. Was she minimizing a computer casino CD game? Were there big gambling debts? They took it. And I think it was Sal Girgente. Isn't that, I think, the name they used of the special agent who deals with computer recovery? If they went through those computers, wouldn't they have found something? They wouldn't have - - if they would have found something that implicated her, don't you think they would have brought that to you? Well, they had to find something, right? And if it implicated her, they'd show it to you. ***What did they find that doesn't implicate her?***

(Tr. 1103-05) (emphasis added).

***Some of the evidence that they could have brought to your attention they didn't***, how much debt he had, whether the house was available or not. Okay. And, again, I think you can be certain that if she got that house, if she got any money, if there was - - if there was anything to indicate that she said, Okay, I've got to kill him because I'm going to get money from a will, I'm going to get the life insurance policy, I'm going to get the house, I'm going to get the lottery ticket that he bought last Tuesday, you would have heard it.

Chelsea and Danielle said they were hiding the mail. Okay. They were hiding the mail. Why? ***Again, something Mr. Kaschak, Tom Kaschak, could have talked to her about. Maybe he did talk to her about it. Maybe she explained to him the whole situation, that they were both in deep financial trouble; but actually Taylor's was more serious and more extensive than hers.***

(Tr. 1108) (emphasis added).

But let's look at that. ***Let's look at what suspicion is when we talk about what really was a lot of their time. SunTrust. Did they show you any of the SunTrust accounts and loans that Taylor had? No.*** They talked about Donna. Donna had all these bounced checks. Now, remember we heard at length she had bounced checks and there were fees and then she had no money here and she had money there. When she writes the check on the 27<sup>th</sup> of August, okay, there is not enough money in that account. I would submit to you Taylor doesn't have it in his account. She doesn't have it in her account.

(Tr. 1110) (emphasis added).

They say that the motive is her financial devastation. They say that she was going to be a rich woman. ***You don't hear anything about that except from Mr. Spencer.*** Taylor had already found out about the hiding of the mail; and that's what the girls said mom was afraid of, if he found out about hiding mail, not about how much she paid for this or how much Taylor paid for this. By the

way, *did they show you anything that indicates that she's the one who ran these bills up?*

(Tr. 1118) (emphasis added).

*We don't know the extent of his debt or his holdings.* And I would submit to you the first person to jump up and tell you would be that fellow over there, Mr. Spencer, if they had something that they could prove to you. *They told you it was a thousand-piece puzzle and they would put it together. How many pieces are missing? How many big pieces are missing? How many answers did they withhold from you?* They've got to bring this to you, and they've got to prove to you beyond a reasonable doubt.

(Tr. 1120) (emphasis added).

*The circumstances that could have proved her innocence, a lot of those were degraded or eliminated because the police saw what they wanted to see and attacked what they wanted to attack.*

And then the majority of the testimony you heard today - - excuse me - - this trial Mr. Spencer put on was an attack on Donna Blanton. Is she guilty of bad finances? Is she guilty of puffery, bragging about making money in Atlantic City? Is she guilty of having her kids take the mail and put it into a bag? Is she guilty of bouncing checks? Sure. *The Commonwealth wants you to know all that because they want to drag her through the mud and hope that that's enough and you'll say, yeah, she had a motive.* Try and say it out loud to yourself what that motive really was. Because she didn't gain a penny.

You didn't hear about the fact that she was living in the house, did you? Oh, you heard that she came back to the house right after that, and within seven days, people, they had already come to the conclusion. Before they even had the forensic evidence returned, they had come to the conclusion that they were going to arrest her.

(Tr. 1122-23) (emphasis added).

And the reason they went through all of that in all of that time is they know they can't make that case. *They can give suspicion ... They can talk about all those things and say, Here's suspicion. We think that she might have even probably did it.*

(Tr. 1123) (emphasis added).

That's why Mr. Spencer's going to be able to get up and talk to you again because their burden is so high they have to prove their case. Read Instruction 4. They need to prove it, but they haven't done it. He's going to get up and he's

going to talk again. He's probably going to talk to you about motive, and *he's going to talk about speculation; but when he talks to you about what we don't know and why we don't have it, every time he talks about it, think to yourself, Where is Special Agent Kaschak, the lead investigator?*

(Tr. 1125) (emphasis added).

During the Commonwealth's attorney's response on rebuttal to defense counsel's arguments, the following was said:

MR. SPENCER: The defense did put in some evidence. They put in the three lab reports, and they had all of this here. [At this point, the Commonwealth's attorney pointed at the mounds of files and notebooks on counsels' tables]. You better believe that if there were one shred of evidence in all of this that proved that the defendant was not guilty that Mr. Murphy would have presented it to you, and he didn't. All the leads led to her --

MR. MURPHY: Your Honor, we have no burden to put on evidence. It's his case to prove. I think that's an inappropriate argument. We have no obligation. The obligation is upon the Commonwealth. He's essentially saying we have a burden to prove her innocence, to prove a negative; and that's not appropriate argument, Judge.

MR. SPENCER: Not at all what I argued. I said if there were a shred of evidence in here that proved she was not guilty you know Mr. Murphy would have introduced it.

(Tr. 1162-63). The trial court overruled the objection. (Tr. 1162).

The Commonwealth's argument on rebuttal was a fair response to the defendant's closing argument and was not a comment on the failure of the accused to testify.

II. THE COMMONWEALTH'S ARGUMENT ON REBUTTAL WAS A FAIR RESPONSE TO THE DEFENDANT'S CLOSING ARGUMENT AND WAS NOT "TANTAMOUNT TO HAVING THE DEFENDANT APPEAR BEFORE THE JURY WEARING PRISON GARB."

Throughout his closing argument, counsel for the defendant stated as facts to the jury things that had not been introduced into evidence, some of which were not true, including that Taylor Blanton's debt was bad and his financial trouble was more serious and extensive than the defendant's, that Taylor Blanton did not have enough money in his

account, and that the defendant did not get the house or “one penny.” (Tr. 1063-64, 1108, 1110, 1122-23). Defense counsel argued that the defendant did not get the house or “one penny” because, within seven days of Taylor Blanton’s murder, the police had decided to arrest her. (Tr. 1123).

During the Commonwealth’s attorney’s response on rebuttal to defense counsel’s arguments, the following was said:

MR. SPENCER: Mr. Murphy says, The Commonwealth could have told you if Donna was going to get the house. She didn’t get the house. She didn’t get it. He goes on to say, They didn’t prove to you - - did they prove to you that she got one penny from any of this? No. And even though it wasn’t in evidence, Mr. Murphy said, She didn’t get one penny. She was in jail ten days after this happened. That’s why she didn’t get one penny. That’s why she didn’t get the house.

MR. MURPHY: Your Honor, I’m going to object, and I would like to address the court outside the presence of the jury. That is a completely inappropriate statement.

THE COURT: All right. Well, if you object, we’ll do it outside the presence. Please be quiet until they’re in the jury room...

MR. MURPHY: Your Honor, I think the court knows that that is an overly prejudicial statement to make. It’s not permitted. He can’t call upon the fact that she has been in jail. She doesn’t come in here in shackles. She doesn’t come in prison garb. Nobody mentions the fact that she is in jail or not in jail. It is completely inappropriate and it’s too prejudicial. It’s something that can’t happen, Your Honor. When the jury’s told, it’s inappropriate. It puts us in a position where we have to ask the court to have a mistrial because in the rebuttal statement he tells them she was in jail. And, Your Honor, I don’t know if it’s contrived so that we will ask for a mistrial or if it was done recklessly or if it was done intentionally, but he clearly set out to tell them that she was in jail and just announced it to the jury.

MR. SPENCER: Actually, it was first announced by Mr. Murphy during his closing argument.

THE COURT: I think that door had been opened, frankly; and the fact of the matter is the evidence would reveal that she was a suspect at the time that she was taken in.

MR. MURPHY: Your Honor, my statement was that she was arrested seven days later.

THE COURT: Right.

MR. MURPHY: People are often arrested and left to bail. He's saying that she was in jail ten days later.

THE COURT: Well, you sort of opened that door in the sense that she was arrested. Obviously, there's a difference between being arrested. Sometimes you go to jail. Sometimes you don't. But, in any event, clearly from the evidence before the jury there can be no question but that she was - - within six to seven days she was a suspect and was taken into custody. She was arrested.

MR. MURPHY: And, Your Honor, again, our motion would be with regard to the statement about her being in jail. It was not something that was mentioned. I understand if the court wants to make that ruling; but I think it's too prejudicial, and that's why we request a mistrial be had or that they be at the very least instructed. But I would ask that there be some kind of instruction given to the Commonwealth not to revisit at this point if the court is going to overrule our motions.

THE COURT: Mr. Spencer, you want to respond?

MR. SPENCER: Your Honor, he had said that she had been arrested within ten days. People are arrested and taken to jail. I said that ten days later she was - - she was in jail.

MR. MURPHY: Actually, I said a week, Your Honor.

MR. SPENCER: Well, it is - - I didn't say that she's been in jail continuously since that time. I just said she was in jail ten days later. I'm sorry if I didn't get the time right. I thought it was ten. Maybe it was seven.

THE COURT: All right.

MR. SPENCER: If the court wants to give a curative instruction, if that's what Mr. Murphy's asking for, the Commonwealth wouldn't have any objection. I will rephrase, if you would like, that she was arrested seven days later. Either way she's not getting the house or any property if she's been arrested.

THE COURT: Let's do that. I'm going to ask that you correct yourself in the presence of the jury.

MR. SPENCER: Yes, sir.

THE COURT: And with that, I overrule the objection. Bring the jury in...

THE COURT: I would like the record to reflect the jury's now back in the courtroom.

Ladies and gentlemen of the jury, I would like briefly to revisit the preliminary instructions at the beginning of the trial that I mentioned to you. You'll be hearing argument, opening argument and closing argument, from the attorneys in the case. One of the things I said specifically with regard to their closing arguments is this. That what the attorneys say is not evidence. It is only their recollection of the evidence. You are the triers of fact. You heard the evidence based upon your collective memories as to what, in fact, is the evidence. And so I would like to bring that to your attention at this time one more time. With that, you may continue, sir.

MR. SPENCER: Thank you.

Let me correct myself. Of course, she didn't get the house. Of course, she didn't get any money. She was arrested for the murder of Taylor Blanton seven days after he was murdered.

(Tr. 1133-38).

The petitioner argues that "the prosecutor's comment ... is tantamount to having the Defendant appear before the jury wearing prison garb." (Petition for Appeal at p. 11). The Commonwealth's argument on rebuttal was a fair response to the defendant's closing argument and was not "tantamount to having the Defendant appear before the jury wearing prison garb."

III. THE DEFENDANT'S EX-HUSBAND WAS FAMILIAR WITH HER HANDWRITING AND WAS QUALIFIED TO OFFER HIS OPINION THAT THE WRITING ON A QUESTIONED DOCUMENT WAS HERS.

The defendant's ex-husband was familiar with her handwriting and was qualified to offer his opinion that the writing on a questioned document was hers. *See Wileman v. Commonwealth*, 24 Va. App. 642, 647, 484 S.E.2d 621 (1997).