IN THE SUPREME COURT OF IOWA

Supreme Court No. 19-1981
Muscatine County No. FECR059164

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANNETTE DEE CAHILL,
Defendant-Appellant.

Appeal from the Iowa District Court in and for Muscatine County
The Honorable Patrick A. McElyea, Judge

APPELLANT'S APPLICATION FOR FURTHER REVIEW OF THE COURT OF APPEALS OF IOWA OPINION FILED APRIL 14, 2021

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE COURT OF APPEALS ENTERED A DECISION IN CONFLICT *STATE V. JONES*, 817 N.W.2D 11, 22 (IOWA 2012), WHEN IT FAILED TO "TAKE INTO ACCOUNT THE POSSIBLE EFFECTS NONDISCLOSURE HAD ON THE DEFENSE'S TRIAL STRATEGY," WHEN EVALUATING THE MATERIALITY OF THE SUPPRESSED EVIDENCE.

II. WHETHER THE COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH A DECISION OF THIS COURT, WHEN IT FAILED TO CONSIDER THE SUPPRESSION OF THE AVAILABILITY MTDNA TESTING, WHICH MAY HAVE IDENTIFIED A POTENTIAL SUSPECT, AND THE EFFECT THAT WOULD HAVE "HAD ON THE DEFENSE'S TRIAL STRATEGY,"

III. WHETHER THE COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH *STATE V. SMITH*, 508 N.W.2D 101 (IOWA CT. APP. 1993) WHEN IT FAILED TO FIND ERROR IN THE DENIAL OF THE 1.504 MOTION AS TO BECKER'S TESTIMONY.

IV. WHETHER THE COURT OF APPEAL ENTERED A DECISION IN CONFLICT WITH *STATE V. ROBINSON*, 288 N.W.2D 337, 340 (IOWA 1980) WHEN IT FAILED TO CONSIDER THE FANTASTIC ELEMENTS AND THE STALENESS OF BECKER'S TESTIMONY, WHEN EVALUATING THE SUFFICIENCY OF THE EVIDENCE.

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STATEMENT IN SUPPORT OF FURTHER REVIEW

Pursuant to Iowa Rule of Appellate Procedure 6.1103(1)(b)(1), the Court of Appeals "entered a decision in conflict with a decision of this court" as to several issues. First, the Court erred in finding that the hair evidence was not material to the issue of Defendant's guilt, contrary to the analysis in *DeSimone v. State*. *DeSimone v. State*, 803 N.W.2d 97, 105 (Iowa 2011). In *DeSimone,* this Court found that "with minimal physical evidence," the missing timecard that would have rendered witness testimony a nullity was of sufficient import to constitute a Brady violation. *Id.* at 105.

In the case at bar, there was no physical or forensic evidence indicating a specific assailant—fingerprint analysis was unsuccessful, suspects subjected to polygraph testing all passed (including Defendant), none of the samples (fingerprints, palm prints, blood, clothing samples, shoes, car interior samples) voluntarily given to the authorities by the Defendant matched anything at the crime scene. Further, of the many potential suspects in the case, several would have never had reason to be in Wieneke's home except to assault him; if one of those suspect's hairs were the ones in Wieneke's hand, it would be damning evidence that that person was the killer (or one of them). Defense counsel argued the *DeSimone* issues at length in oral argument in front of the Court of Appeals.

Second, the Court erred in its application of *Brady* and its progeny. A *Brady*

violation has three main components—"'(1) the prosecution suppressed evidence; (2) the evidence was favorable to the defendant; and (3) the evidence was material to the issue of guilt.'" *Harrington v. State*, 659 N.W.2d 509, 516 (Iowa 2003) (citation omitted). The issue of materiality of the evidence is dealt with above; favorability to defendant in this case is presumptive, since any indication of another assailant would be favorable to her (because no other physical evidence exists to indicate she was the killer, or an accomplice to another killer). As to suppression, the Court of Appeals erred in finding that the hairs report was not suppressed because the Defendant knew about the existence of the hairs prior to trial. This is contrary to *DeSimone*, where the Iowa Court of Appeals rejected the State's assertion that defense counsel should have subpoenaed the critical missing record.

The *DeSimone* court found that the defendant and defense counsel reasonably relied upon the prosecution to present complete, competent evidence. As defense counsel herein argued extensively at oral argument in this matter, Cahill relied upon the State to present complete discovery. Defendant also relied upon the statements made by the prosecution, in chambers, after the discovery of the "missing" lab report, that testing was not possible on the hairs. She relied upon the State to her detriment—the State knew at that time[1] that mtDNA analysis was available and

[1] In-chambers discussion of the hairs report starts on page 178 of second trial transcript. The State's knowledge of the ability to test the hairs could have either

could have been performed, but did not mention that.

Finally, the Court erred in overlooking the fantastical elements of the testimony proffered at trial by Jessica Becker. The Iowa Supreme Court has held that a trial court may properly exclude witness testimony from the jury, where such testimony is so incredible as to be misleading to the jury and render an unjust outcome. *Graham v. Chicago & N.W.Ry.Co.* 119 N.W.708, 711 (Iowa 1909). The Court has further held that witness testimony be excluded in criminal cases, such as in *State v. Smith*, where the defendant's conviction rested solely upon testimonial evidence offered by his young stepdaughters. *State v. Smith*, 508 N.W.2d 101 (Iowa Ct. App. 1993). In *Smith*, the children's testimony was contradictory, confusing, and lacked in "experiential detail." *Id.* at 103. The inconsistent testimony in Smith was especially damning because, like in the case at bar, it was basically the only evidence against the defendant. The Court of Appeals, in this case, erred by not finding that the childlike, biased, and incredible testimony of Jessica Becker offered at the trial in this matter should have been excluded.

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been direct knowledge of the County Attorney, or knowledge of the many state actors at his disposal—local law enforcement, DCI investigators, DCI criminalists.

BRIEF IN SUPPORT OF REVIEW

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Statement of the Case

Annette Cahill comes before the court seeking further review after the Court of Appeals decision affirming a conviction of Murder in the Second Degree entered on September 19th, 2019. Cahill was initially charged with Murder in the First Degree in a Complaint issued May 31st, 2018, in relation to the October 1992 death of Corey Wieneke. Cahill was first tried in March of 2019; the jury was unable to reach a unanimous verdict, and the Court declared a mistrial on March 13th, 2019. Cahill was retried in September of 2019, and was found guilty of Murder in the Second Degree by the jury.

Cahill appealed the district court's ruling on pretrial motions citing Iowa Rule 5.104 requesting the exclusion of the testimony of Jessica Becker, Cynthia Krogh, and Scott Payne under the rule established in *Graham v. Chicago & N.W.Ry.Co.* 119 N.W.708, 711 (Iowa 1909).

There was also a Brady violation in this case. The State failed to make certain required disclosures before trial, chiefly a report indicating that the State was unable to perform DNA STR testing on the four human hairs found in decedent Wieneke's hand because the hairs were not suitable for DNA STR analysis. After Cahill was found guilty by the jury, defense counsel engaged in additional research and discovered that the hairs were never tested for mitochondrial DNA (mtDNA), a newer type of testing more suitable for older specimens. Defense counsel filed a

post-trial motion to compel the State to test these hairs, which was denied.

Statement of Facts

Corey Wieneke (hereafter, "Wieneke"), was killed in his residence in Muscatine County, Iowa on October 13, 1992 (Transcript p. 22, Lines 10-15). His death was due to blunt force trauma to the head (Transcript p. 100, Lines 7-8), caused presumably by a baseball bat found at the edge of the gravel road near Wieneke's house (Transcript p. 25, Lines 24-25, p. 26, Lines 1-4).

At the time of his death, Wieneke had ongoing sexual relationships with several women (Transcript p. 309, Lines 17-23). Understanding these myriad relationships is helpful to follow the narrative of the days leading up to and following Wieneke's death. The Defendant, Annette Cahill (hereafter, "Cahill"), had a relationship with Wieneke in the months prior to his death, fostered by Cahill's part-time employment at the Wieneke family bar, Wink's Tap, in West Liberty (Transcript p. 444, Lines 6-14). In the same time period, Wieneke also fathered a child with Wendi Marshall (Transcript p. 310, Lines 7-11). The child Wieneke conceived with Marshall was an infant at the time of Wieneke's death (Transcript p. 311, Lines 4-6). Wieneke had not officially claimed paternity of the child, and had limited interactions with Marshall (Transcript p. 310, Lines 7-25; Transcript p. 311, Lines 4-5).

In addition to his ongoing relationships with Cahill and Marshall, Wieneke

was simultaneously engaged to his high-school sweetheart, Jody Hotz. Hotz and Wieneke lived together in a two-bedroom house on a small parcel of land near their hometown of West Liberty (Transcript p. 28, Lines 7-8). Finally, Wieneke was engaged in yet another sexual relationship with Missy Morrison, who was married to another man (Transcript p. 361, Lines 13-24).

On October 12, 1992, the night before Wieneke died, he was working at Wink's Tap (Transcript p. 192, Lines 4-9). Cahill and Marshall, both of whom were romantically involved with Wieneke at the time, were also at the bar that night (Transcript p. 313, Lines 9-15). Cahill became intoxicated and went to Wieneke's car to wait for him to get off work (Transcript p. 313, Lines 19-24; p. 314, Lines 13-15). In the early morning hours of October 13th, 1992, Wieneke left the bar with Marshall and the pair got into Wieneke's car (Transcript p. 314, Lines 13- 18). Cahill was annoyed that Wieneke brought another woman (Marshall) with him to the car (Transcript p. 316, 8-16). Wieneke planned to drop off Cahill at her home, and then proceed with Marshall (Transcript p. 316, Line 2). While the car was en route to Cahill's home, Cahill became upset and tried to get out (Transcript p. 316, Lines 2-7). Wieneke stopped the car and had a conversation with Cahill at the side of the road, witnessed by Marshall (Transcript p. 316, Lines 21-22). After the conversation by the side of the road, Wieneke changed his plans and drove Marshall back to her car, which was parked behind Wink's Tap (Transcript p. 317, Lines 24-25, p. 318,

Lines 1-3). At that point, Wieneke and Cahill went to Cahill's home, where they had sex (Transcript p. 481, Lines 8-9). After having sex with Cahill, Wieneke was seen at an after-hours party in honor of a friend's birthday, and following the party, he went to Marshall's apartment in West Liberty (Transcript p. 322, Lines 21-25, p. 323, Lines 1- 8). He left a brown paper bag with a six pack of beer and two shotgun shells inside the refrigerator at Marshall's apartment (Transcript p. 322, Lines 7-13).

Wieneke finally made it home in the early morning hours of October 13, sometime before his fiancée, Hotz, left for her job as a bank teller (Transcript p. 192, Lines 16-23). Hotz saw Wieneke asleep in bed prior to leaving for work on October 13 (Transcript p. 194, Lines 2-4). Hotz found Wieneke's body upon returning home from work that day, at approximately 6:30 pm (Transcript p. 197, Lines 5-10; p. 20-24). She noted that he was cold to the touch (Transcript p. 200, Lines 10-14). She called 911 immediately (Transcript p. 200, Lines 13-16).

There were no signs of forced entry to the house (Transcript p. 42, Lines 9-12). The house would not have been difficult to enter because, according to witnesses, only a piece of particle board blocked the space where a pane of glass had been, near the doorknob (Transcript p. 44, Lines 10-15). This particle board had been removed and was sitting near the side of the house after the murder (Transcript p. 41, Lines 20-25, p. 42, Lines 1-4). There was no indication, to law enforcement or to Hotz, that any property had been stolen or disturbed in the home (Transcript p.

42, Lines 9-12, p. 200, Lines 22-24). Wieneke's dog had been released into the yard, where she was running freely when Hotz arrived home (Transcript p. 197, Lines 18-25, p. 198, Lines 1-6).

Wieneke's body was found on the floor, face-down, near his bed (Transcript p. 111, Lines 17-18). He was wearing a pair of briefs (Transcript p. 111, Lines 19-20). Wieneke sustained 13 blunt force injuries, only one of which—the blow to the back of his head—could have been fatal (Transcript p. 100, Lines 11-23, p. 102, Lines 16-23). Wieneke sustained the other injuries prior to his death (Transcript p. 105, Lines 4-14). Wieneke was a large man, at 5'9" tall and 225 pounds (Transcript p. 112, Lines 6-7). He was physically strong and had played football in high school (Transcript p. 202, Lines 16-17).

A reporter with a local news station found a bloody, youth-size aluminum bat near the side of the road, about a quarter mile east of Wieneke's house (Transcript p. 78, Lines 20-22). There were no fingerprints found on the bat (Transcript p. 235, Lines 20-25, p. 236 Lines 1-2).. The blood on the bat was of the same type as Wieneke (Transcript p. 40, Lines 4-12). There were microscopic red fibers on the bat, but no other distinctive markings (Transcript p. 47, Lines 6-19). The bat was of a type easily obtainable at Walmart in 1992 (Transcript p. 42, Lines 19-25, p. 43, Lines 1-4). Hotz denied that she or Wieneke owned a bat of any type (Transcript p. 190, Lines 4-5). No evidence was presented at trial that anyone in Cahill's household

had a bat. State and local law enforcement investigated the Wieneke murder in the months and years following his death (Transcript p. 43, 18-25, p. 44, 1-3). During this time, they identified three reasons Wieneke may have been murdered: drugs, gambling, and infidelity.

Wieneke was a known drug user, and his autopsy results found both cocaine and marijuana in his system (Transcript p. 111, Lines 10-13; p. 133, Lines 10-17; p. 323, Lines 10-15). Wieneke sourced his drugs from multiple individuals, including suppliers Slim Zamora, Ken Hammond, and Otis Sanders (Transcript p. 59, Lines 6-13; p. 134, Lines 5-17). In the late night and early morning hours shortly before he was killed, Wieneke attended an after-hours party with one of his drug suppliers, Slim Zamora (Transcript p. 58, Lines 15-25, p. 59, Lines 1-13). At trial, the defense argued that an unpaid debt to one of his suppliers may have been a motive for the baseball bat attack (Transcript p. 482, Lines 6-8). Law enforcement did, in fact, explore this possibility, but did not arrest Zamora (Transcript p. 132; Lines 16-25, p. 133, Line 1). Wieneke also ran a small illegal gambling operation from his workplace, Wink's Tap, which was discovered by investigators (Transcript p. 133, Lines 2-9). Despite the obvious potential for conflict arising from the purchase and sale of illegal drugs, the operation of an illegal gambling operation, and the transport of cash associated with such enterprises, authorities never arrested anyone who might have had reason to harm Wieneke in connection with drugs and gambling

(Transcript p. 132; Lines 16-25, p. 133, Line 1).

Investigators also pursued a theory that Wieneke may have been murdered by a jealous husband of one of his romantic partners (Transcript p. 142, Lines 4-19). Around the time of his death, Wieneke was involved in sexual relationships with at least four women: his fiancée (Hotz), his two girlfriends (Marshall and Cahill), and another local woman named Missy Morrison (Transcript p. 142, Lines 4-8; p. 361, Lines 13-24). Missy Morrison's husband, Bob Morrison, was a large and violent man (Transcript p. 62, Lines 4-9; p. 138, Lines 13-20). In fact, Bob Morrison later murdered his wife Missy amid accusations of her infidelity and intent to leave him, and then killed himself (Transcript p. 138, Lines 13-20). Investigator Lieutenant Orr (later Muscatine County Sheriff, now deceased) theorized that Morrison was the real killer, but ultimately did not follow up further, because with Morrison dead, there was no one to prosecute for Wieneke's murder (Transcript p. 142, Lines 4-19).

The Morrison theory was considered credible within law enforcement on the Wieneke case, to the extent that a meeting was held in October of 1995 to discuss the numerous links between Bob Morrison, his wife, Missy, and Wieneke. A memorandum, created presumably by Orr, was circulated at this meeting. The memo was included in the original discovery items produced to Defendant, and was presented to the Trial Court as Exhibit O in the materials supporting her Motion to Dismiss. In it, the unknown author describes how "Bob was a powerfully built man"

and was "of the correct height" to have committed the Wieneke homicide. Missy Morrison was known to frequent local bars, and had affairs with men younger than she was. Bob was "quick tempered" and was known for his remorseless abuse of animals and his wife. Although he was a "workaholic" who put in enormous amounts of overtime, Bob Morrison took the day off on the date of Wieneke's murder (a Tuesday).

The Wieneke death investigation team of the 1990's conducted several interviews with Cahill (Transcript p. 55, Lines 4-11), including a polygraph, which she passed. She also provided law enforcement with several samples for forensic testing: her coat and shoes; a sample from the interior of the vehicle she was in on the day of the murder; her finger and palm prints; and her blood (Transcript p. 46, Lines 13-25; p. 47, Lines 1- 19; p. 52, Lines 22-25; p. 53, Lines 1-24). None of these samples matched anything at the crime scene (Transcript p. 46, Lines 13-25; p. 47, Lines 1-19, p. 54, Lines 23-25; p. 55, Line 1). The 2018 DCI investigative team attempted testing on the fibers from Jacque Hazen's car and Annette's coat, to see if either had DNA profiles (Transcript p. 155, Lines 9-25; p. 156, Lines 1-11). The tests, which occurred in June of 2018, showed no blood or DNA on these fibers (Transcript p. 155, Lines 9-25; p. 156, Lines 1-11). On the DCI report form, several men are listed as the suspects in the Wieneke homicide: "Dennis Stromer, Corey Prowant, Robert Steven Burke, William James Wade, Steven Charles Young, et. al.

(Defendant's Exhibit G)"

In 1992, Cahill lived with her brother-in-law, Denny Hazen, and Denny's wife, Jacque, in their two-story farmhouse near Atalissa, Iowa (Transcript p. 358, Lines 13-21). In the years between Wieneke's death and the onset of this prosecution, Cahill moved to Tipton, Iowa, about twenty miles from West Liberty (Transcript p. 172, Lines 15-17). In 1994, Cahill married Bill Cahill, and the two lived a quiet life, raising their children and working full-time. Outside of this case, Cahill has no criminal history. For several years, and through her pretrial release in this matter, Cahill worked at Police Law Institute, a small tech company that produces legal training videos for police officers.

In December 2017, a 34-year-old nurse named Jessica Becker approached DCI Special Agent Trent Vileta at the University of Iowa Hospitals and Clinics, where she worked. After attempting to "kick [SA Vileta] out of the ICU," (Transcript p. 278, Lines 1-2), Becker then changed her approach and told SA Vileta a story from when she was nine years old (Transcript p. 278, Lines 11-25; p. 279, Lines 1-2). In this story, she told a bizarre tale of seeing Cahill lighting black candles in a dining area, and weeping in front of the candles while saying things like "Corey, I never meant to hurt you" (Transcript p. 275, Lines 1-19). Becker testified at trial that, as a nine-year-old, she asked her mother about the symbolism of black candles, and her mother replied "sometimes people light black candles, and it means they can

speak to, you know, spirits or bring out evil spirits" (Transcript p. 276, Lines 17-25; p. 277, Lines 1-2). Becker's bizarre story about black candles and evil spirits, suddenly recollected after 25 years and told to a stranger, formed the State's entire theory of the case and led them to arrest Annette Cahill shortly thereafter.

The evidence presented at trial showed that Becker could not have witnessed the bizarre scene she described, in the way she described it. Becker testified that when she was eight to nine years old, she was friends with a group of children including Kayla Hazen, who often had sleepover parties at the Hazen home (Transcript p. 265, Lines 10-24). Kayla Hazen's parents were Denny and Jacque Hazen (Transcript p. 358, Lines 5-25). Annette Cahill, Denny's sister and Kayla Hazen's aunt, also was living at the home with her children (Transcript p. 358, Lines 18-21). Becker testified that Cahill was "the fun, the favorite aunt" who would take the kids out to get "movies, scary movies, [and] pizza" (Transcript p. 266, Lines 6-12). Becker told SA Vileta that during a sleepover party in Fall 1992, she and Kayla Hazen were sneaking down the stairs for a snack, when they heard Cahill's voice (Transcript p. 273, Lines 19-25; p. 274, Lines 1- 5, 19-22). Becker testified that she and Kayla stopped on the stairs and heard Cahill speaking and crying; and that they could see her from the back side but could not see her face (Transcript p. 274, Lines 19-22; p. 284, Lines 9-11).

A few months after Becker approached Vileta at the hospital, the Department

of Criminal Investigation (DCI) paid Cahill a visit at her home in Tipton (Transcript p. 171, Lines 1-9). On the day of this first encounter, SA Jon Turbett asked Cahill to go to the local sheriff's department and meet with him (Transcript p. 174, Lines 21-25; p. 175, Lines 1-2). During that interview, SA Turbett asked Cahill to draw a diagram of the Hazen house, which she did (Transcript p. 218, Lines 14-23). Cahill explained to Turbett how Jacque and Denny Hazen slept on the main floor, near the living and dining room (App. p. 361). She drew the stairway, which was fully enclosed, and the door at the base of the stairs (Transcript p. 219, Lines 11-23). When opened, this door would obscure a person's line of sight between the base of the stairs and the dining room (Transcript p. 220, Lines 1-7). At trial, the Court accepted Cahill's diagram as Defendant's Exhibit H (Transcript p. 218, Lines 14-25; p. 219, Lines 1-9). The diagram shows that it would be impossible to be on the stairs of the Hazen home, or to peer around that door, and see a pacing figure in the dining room. Therefore, Becker's claim that she could see Cahill in the dining room from her perch on the staircase was not credible.

In 1992, Jessica Becker told her "black candles" story to her mother, now known as Cynthia Krogh (Transcript p. 245, Lines 19-25, p. 246, Lines 1-24). Krogh testified she did not take her daughter, or her daughter's story, to the police (Transcript p. 246, Line 25; p. 247, Lines 1-8). At the time of the alleged "black candles" incident, Krogh had recently been divorced from a man named Lester

McGowan (Transcript p. 240, Lines 1-8). During their marriage, McGowan had affairs with a number of women, including Annette Cahill (Transcript p. 241, Lines 10-25; p. 242, Line 1). Krogh testified that she had no negative feelings toward Cahill regarding her romantic involvement with Krogh's husband (Transcript p. 243, Lines 24-25; p. 244, Lines 1-7). However, Krogh later reunited with McGowan, and then later appeared in court to testify against Cahill as a witness for the State (Transcript p. 253, Lines 20-25). Despite her testimony, Krogh clearly has a motive to hurt Cahill in retribution for her affair with Krogh's husband.

The State called a known criminal and heavy drug user, Scott Payne, to "corroborate" the so-called "confession" through his story of Cahill and Jacque Hazen burning clothing after Wieneke's murder (Transcript p. 297, Lines 1-5; p. 298, Lines 4- 9). Payne's testimony was shown to be inconsistent and lacking in credibility at trial (Transcript p. 328, Lines 10-25; p. 329, Lines 1-7). Payne also testified he was unhappy with Jacque Hazen over an unpaid loan he extended to her in the mid-nineties (Transcript p. 329, Lines 8-16) and he thus had a motive to be untruthful in his testimony about her.

During depositions, the main DCI agents involved in the 2017 investigation acknowledged that the so-called "confession" (Cahill's alleged statements during the "black candles" story) is the main piece of evidence against Cahill, and that it was the main reason leading up to the reopening of the Wieneke murder

investigation. (*See* Deposition of Trent Vileta at 73, ln. 19 – 74, ln. 1; Deposition of Jon Turbett, p. 43, ll. 13-19.) At trial, the State did not produce any eyewitnesses to the actual murder. The State's witness admitted at trial that there was no physical evidence linking Annette Cahill to Wieneke's murder (Transcript p. 46, Lines 13-15). The State's witness admitted at trial that DNA tests did not yield any evidence linking Annette Cahill to Wieneke's murder (Transcript p. 155, Lines 9-25; p. 156, Lines 1-11). The State's entire case was built on the "black candles" story, as remembered by a nine-year-old, twenty- five years after the fact, and corroborated only by the testimony of a drug-abusing criminal. After the trial, the State resisted the Defendant's attempt to obtain mitochondrial DNA testing of the hairs found in Wieneke's hand, although this type of testing is available for free through regional FBI laboratories.

ARGUMENTS

I. THE COURT OF APPEALS ENTERED A DECISION IN CONFLICT *STATE V. JONES*, 817 N.W.2D 11, 22 (IOWA 2012), WHEN IT FAILED TO "TAKE INTO ACCOUNT THE POSSIBLE EFFECTS NONDISCLOSURE HAD ON THE DEFENSE'S TRIAL STRATEGY," WHEN EVALUATING THE MATERIALITY OF THE SUPPRESSED EVIDENCE.

The Court of Appeals erred in its analysis of the suppressed report by failing to take into account the possible effects nondisclosure had on the defense's trial strategy. The State and Cahill entered into a Reciprocal Discovery Agreement that covered the report in question. The defense proceeded through the first trial resulting in a hung jury and the suppressed report was not revealed by the State until it was produced mid-way through the third day of the second trial. When analyzing the materiality of the suppressed evidence, the Court of Appeals should have turned back the clock and considered the effect on the trial if the defense had been presented with the suppressed evidence within a reasonable time so as to allow the defense integrate into its trial strategy.

The Court of Appeals notes that the defense counsel's trial strategy was to argue that the State investigation was sub-par. The Court of Appeals stated that the fact that the report revealed that the State had attempted one type of strategy and found the hairs to be not suitable was a basis to further argue the investigation had been inadequate. However, the fact that the State attempted to test the hairs and had been unable to do so shows more investigative efforts on the part of the state, not

less. This was not information that bolstered the defense but undermined its central theme and would have suggested other potential avenues of attack upon the State's case. The appeals court erred by confining its analysis to the impact on the trial strategy employed and ignoring the implications of the suppressed evidence on the choice of strategy.

II. THE COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH *STATE V. JONES*, 817 N.W.2D 11, 22 (IOWA 2012), WHEN IT FAILED TO CONSIDER THE EFFECT MITOCHONDRIAL DNA TESTING IDENTIFYING A MURDER SUSPECT WOULD HAVE "HAD ON THE DEFENSE'S TRIAL STRATEGY."

The Court of Appeals erred by failing to consider the effect that identification of DNA from another individual would have had on the defense's trial strategy and the outcome that would result. *State v. Jones*, 817 N.W.2d 11, 22. The court of the appeals found that evidence of another individual's hairs clutched in the hand of the victim would have been cumulative and not exculpatory. This misapprehension resulted from the court's failure to roll back the clock and view the effect physical evidence of another suspect would have had on the trial strategy. The Court of Appeals found that such evidence would only be useful in impeaching law enforcement to show a shoddy investigation. In fact, establishment of the actual identity of another suspect would have been much more effective than the court acknowledges. This is true because such an identification would open lines of inquiry about the last hours of Wieneke's life, the efforts undertaken to locate the

person whose hair was in Wieneke's hand, and the possibility that this evidence did, in fact, identify the perpetrator. The court of appeal's finding that DNA evidence implicating another party was cumulative was in error.

The Court of Appeals' reasoning focused only the potential impact of the district court's failure to grant Cahill's post trial motion to compel the mtDNA testing. However, *Jones* states that the impact of suppressed evidence upon the defense trial strategy must be taken into account when deciding if the suppressed evidence was material or not. If the defense had had access to the suppressed report within the timeframe authorized by the Stipulated Discovery Agreement, the defense would have had time to understand the import of the report, i.e., that further testing was available, without cost, from the FBI. Such testing may have identified another suspect, changing the entire defense strategy and the trial's outcome if the case against Cahill would even have proceeded to trial. There were several potential suspects throughout the investigation who had no reason to ever be in Corey Wieneke's home (notably Bob Morrison, the notoriously violent and jealous husband of one of Wieneke's paramours)—if the hairs had matched any of those people, the defense strategy would've been completely different, and the presentation of it much more compelling.

III. THE COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH *STATE V. SMITH*, 508 N.W.2D 101 (IOWA CT. APP. 1993) AND, WHEN IT FAILED TO FIND ERROR IN THE DENIAL OF THE 1.504 MOTION AS TO BECKER'S TESTIMONY.

The Court of Appeals erred when it failed to find error in the admission of Jessica Becker's testimony, because her testimony was so unreliable as to fall within establish parameters for inadmissibility under Iowa case law. The Iowa Supreme Court has created an exception to the general rule that the jury should be allowed to make evaluations of the credibility of a witness. Where a witness's testimony is "impossible and absurd and self-contradictory," the Court should exclude it from jury consideration. *Graham v. Chicago & N.W.Ry.Co.* 119 N.W.708, 711 (Iowa 1909).

In affirming the conviction, the Court of Appeals relied on the authority of *State v. Mitchell* improperly. *State v. Mitchell*, 568 N.W.2d 493, 503 (Iowa 1997). Citing *Mitchell*, the court focused on contradictory statements alone. Reliance on the mere existence of contradictory statements does not complete the analysis of the question of whether to render Becker's testimony null. The Court of Appeals, in a footnote, cites Becker's age at the time the memory was allegedly formed and the lapse in time until she reported it as excusing her lack of detail and inaccuracies. However, even viewed in the light most favorable to the State, these facts cut both ways. An old memory formed by an immature mind does not explain the testimony's shortcomings. If Becker's memory is unreliable, that undercuts her testimony. Additionally, the court wrongly found that Payne's testimony corroborated Becker's. Payne's testimony did not overlap Becker's in anyway, and so could not

corroborate it.

The court in *Smith* relied on other factors when finding that testimony a nullity not to be given to the jury. Like the witness in *Smith*, Becker lacked experiential detail in their testimony. Also in *Smith*, the court separately viewed the implausibility of the testimony due to timeline and the claim that sexual abuse occurred during a party with many people present. Becker's testimony is similarly implausible: that Becker happened upon Cahill viewing her from a stairway, where her view would have been obstructed, and that Cahill was sobbing over a black candle confessing to herself in a voice audible to Becker. These fantastic elements further strip the realism from the memory of young girl, aware of a brutal murder that implicated a woman with whom her father had had an affair. When viewing Becker's testimony in light of the court's analysis in *Smith*, the testimony is so unreliable it would the jury guessing and for that reason it should have been excluded.

IV. THE COURT OF APPEAL ENTERED A DECISION IN CONFLICT WITH *STATE V. ROBINSON*, 288 N.W.2D 337, 340 (IOWA 1980) WHEN IT FAILED TO CONSIDER THE FANTASTIC ELEMENTS AND THE STALENESS OF BECKER'S TESTIMONY, WHEN EVALUATING THE SUFFICIENCY OF THE EVIDENCE.

The opinion of the Court of Appeals in this case is in conflict with the precedent of this Court when it found sufficient evidence without addressing the all the evidence. The Court of Appeals acknowledges that the testimony of Becker was

the strongest evidence presented. Under *Robinson*, the court was tasked with looking at all of the evidence, not just the inculpatory evidence. The Court of Appeals states that the jury found Becker's testimony credible despite the defense's efforts, and next imagines that, perhaps, the jury did not believe Becker made up her story which she was then coincidentally able to convey to law enforcement.

The court should not simply rely on the jury's verdict and adopt what it assumes accounts for the verdict. The court must make an independent assessment of the evidence and whether it is sufficient to support the verdict. In the present case, the Court was obliged to view the evidence presented that Becker was not credible. If the court is correct that the jury believed Becker didn't make up the story, the court should weigh the possibility that Becker, a child at the time, remembered a story from her childhood that did not happen; a story that connected a grisly murder in her hometown, a woman competing romantically with her mother for her stepfather's affections, and elements that are more common to the horror genre than true crime. At base, this little girl apparently had the critical piece of evidence all along. The court should have weighed the improbability of this evidence along with the lack of physical evidence, the issues with the State's timeline, and the nature of the murder and physical statute of Cahill and it should have found the evidence insufficient.

CONCLUSION

This Court should reverse the judgment of conviction and sentence entered against Cahill and affirmed by the Court of Appeals, remanding this case to the district court for a new trial.

REQUEST FOR ORAL ARGUMENT

Oral argument would assist this Court in its analysis of the issues presented. Consequently, Appellant requests oral argument.

CERTIFICATE OF FILING AND SERVICE

I certify that on the 4th day of May, 2021, I filed Appellant's Application for Further Review electronically through EDMS with the Clerk of the Supreme Court.

I further certify that on the 4th day of May, 2021, I served Appellant's Application for Further Review by electronic filing through EDMS and/or by mailing a copy to all other parties in this matter to their respective addresses as shown below:

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Respectfully submitted,

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ATTORNEY FOR APPELLANT

COURT OF APPEALS OF IOWA OPINION DATED APRIL 14, 2021

IN THE COURT OF APPEALS OF IOWA

No. 19-1981
Filed April 14, 2021

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANNETTE DEE CAHILL,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Patrick A. McElyea, Judge.

Annette Cahill appeals the judgment and sentence entered after a jury found her guilty of second-degree murder. **AFFIRMED.**

Elizabeth A. Araguás of Nidey Erdahl Meier & Araguás, PLC, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, and Louis S. Sloven, Assistant Attorney General, for appellee.

Heard by Bower, C.J., and Doyle and Mullins, JJ.

DOYLE, Judge.

Annette Cahill appeals the judgment and sentence entered after a jury found her guilty of second-degree murder. She challenges the court's rulings on the State's failure to disclose evidence and the court's refusal to exclude the testimony of three witnesses at trial. Cahill also challenges the sufficiency of the evidence to support the jury's verdict and contends her constitutional rights were violated by the twenty-six-year delay between the crime and her arrest.

I. Background Facts and Proceedings.

Corey Wieneke died on October 13, 1992, after sustaining multiple blunt force injuries, including one that fractured his skull. Jody Hotz, Wieneke's fiancé, saw him when he returned to their West Liberty home that morning after he had worked his shift as a bartender. Wieneke was asleep when Hotz left to begin her 8:30 a.m. shift at a bank. When she returned home around 6:30 or 6:45 p.m., Hotz noticed some things out of the ordinary. The dog was outside and unchained. The screen door to the home was wide open. Wieneke's car was in the driveway—he should have been at work. The main door to the house was unlocked. Hotz went inside and found Wieneke dead on the bedroom floor. No property was missing from the home. Hotz went out and dialed 9-1-1.

At around 1:30 p.m. that day, a farmer drove by Wieneke's house and saw a metal baseball bat on the side of the road near the house that had not been there when he drove by that morning. Traces of blood found on the bat matched Wieneke's blood type. Wieneke's injuries reflected the kind of injuries inflicted by a baseball bat generally, and the injury pattern on Wieneke's back matched those that one could inflict with the baseball bat found near the residence.

Law enforcement investigated many possible suspects in Wieneke's death. They investigated Cahill, who was one of four women Wieneke had a relationship with at the time of his death. But Cahill told investigators that she was shopping in Iowa City with Jacque Hazen, her sister-in-law, on the day of the murder, and Hazen produced store receipts to support the claim. And no physical evidence linked Cahill to the murder.

The investigation waned until new information was disclosed during a chance encounter in December 2017. Iowa Department of Criminal Investigation (DCI) Special Agent Trent Vileta met Jessica Becker, a nurse, while at a hospital to interview a witness in an unrelated matter. When Agent Vileta told Becker he worked on "cold cases," Becker told him about an event she witnessed in 1992, when she was nine years old. Becker was friends with Hazen's daughter and attended a sleepover in Hazen's home sometime after Wieneke's murder. Becker and her friend left the bedroom to sneak downstairs after their bedtime. When they neared the bottom of the stairs, Becker heard Cahill in the dining area and saw her "from the back side." Becker recalled that Cahill was facing away from the stairs and was "crying and sobbing" while lighting black candles. Becker heard Cahill make several statements like, "Corey, I never meant to hurt you," "Corey, I'm so sorry," "I never meant to kill you, Corey," and "Corey, I love you." Before Cahill could notice them, Becker and her friend turned around and went back upstairs. Becker told her mother about the incident shortly after, but her mother did not go to law enforcement because she feared retaliation.

With the new information from Becker, investigators began looking into Wieneke's death again. One potential witness they spoke to was Scott Payne,

who was friends with Hazen and her husband in 1992. A DCI report from an interview with Payne in 1996 detailed that "Scott Payne stated that [Cahill] was seen burning a bunch of stuff after Wieneke was killed," suggesting Payne received the information from another source. That information concerned a rumor that Cahill burned a diary. When Payne was re-interviewed, he recalled seeing Cahill burning bloodstained clothing in a barrel at Hazen's house one or two days after Wieneke's death. Cahill claimed that she was burning the clothes because they were covered in paint. But Payne, who had worked butchering hogs for IBP, believed there was blood rather than red paint on clothing.

In June 2018, the State filed a trial information, alleging Cahill committed first-degree murder by killing Wieneke willfully, deliberately, premeditatedly, and with malice aforethought. Cahill's first trial resulted in a mistrial after the jury deadlocked. During Cahill's second trial, the State discovered that one page of a DCI criminalistics lab report was captioned incorrectly and left out of the investigative file. A draft of the lab report, which included the missing page, states that the human hairs found in Wieneke's left hand at the crime scene were not suitable for DNA STR analysis.[1] The State conceded it could not offer the draft report into evidence, and so defense counsel did not think there was any "fighting issue" over the report.

[1] The page states: "A slide mailer from exhibit K contained two glass slides. Slide #1 contained animal hairs and synthetic fibers. Slide #2 contained several animal hairs and human hairs; however, none of the human hairs were suitable for DNA STR analysis." Laboratory exhibit K was a box containing hairs from Weineke's left hand.

At the close of Cahill's second trial, the jury returned a verdict finding her guilty of second-degree murder. Cahill filed post-trial motions, including a motion to compel discovery relating to the hairs found in Wieneke's hand. She asked that the State provide any other information about the testing that was performed on the hairs and to arrange mtDNA testing if the evidence was still in the DCI's possession. If the evidence was lost or destroyed, Cahill asked the court to order the State to explain its loss or destruction and grant her a new trial based on a *Brady*[2] violation and "the unfairness of the jury lacking a spoliation instruction based on this destroyed evidence." After a hearing, the court denied Cahill's motion and sentenced her to a period of incarceration not to exceed fifty years.

II. Motion to Compel.

On appeal, Cahill first challenges the court's denial of her motion to compel testing of the four hairs found on Wieneke's hand at the crime scene. The court ruled on Cahill's post-trial motions on the record at the start of the sentencing hearing. In doing so, the court addressed Cahill's claim that she is entitled to a new trial based on newly discovered evidence, which included the hairs. The court noted that Cahill knew that hair was recovered from Wieneke's hand because the information was in the discovery materials[3] and counsel questioned witnesses at trial about whether the hair was tested. Although the court recognized that Cahill did not learn that the DCI tried to test the hair until trial, it found the State's failure

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[2] *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that due process requires the prosecution to disclose exculpatory evidence to the accused).

[3] A DCI lab report described Laboratory exhibit K as a "Box containing hairs from victim's left hand." The report stated: "Numerous hairs and fibers were recovered from exhibit K. An inventory of the hairs and fibers showed numerous cat hairs, 4-Caucasian head hairs, and yellow trilobal synthetic fibers."

to disclose that attempt "did not impact the[] opportunity to discover the hair and to discover the opportunity to test the hair." Nor did the court find the evidence was material or would have likely changed the outcome of trial:

> It would be reasonable to test the hairs found in Corey Wieneke's hand against [Cahill]'s DNA, Corey's DNA and Jody Hotz's DNA. However, as discussed during the hearing if the results came back that the hair didn't match any of those people, the jury would only be in a slightly better position than they were during the trial. The court does not find that it would probably change the result of the trial. There would still be more questions than answers. And the defense was able to create those questions by asking witnesses about the hairs and developing a line of questioning that indicated they hadn't been tested and no one knew whose hairs they were. That would be the same purpose if the hair was tested and found not to be the hair of Annette Cahill, Jody Hotz or Corey Wieneke. And the court does not find that it's reasonable or feasible for the State to test the hair against every possible suspect that the defense has raised throughout this proceeding.

The court then reviewed the other issues raised in the post-trial motions, denied the motions for new trial and in arrest of judgment, and stated, "[F]or the reasons previously stated regarding the hair and the DCI report and the DNA testing the motion to compel is also denied."

On appeal, Cahill argues she is entitled to DNA testing of the hair under Iowa Code section 81.10 (Supp. 2019). This section provides a way for those convicted of a felony or misdemeanor to obtain DNA profiling on a sample collected in the case. Iowa Code § 81.10. Cahill's post-trial motion did not cite to section 81.10, the parties did not discuss it at the hearing on the motion, and the court did not mention it in denying Cahill's motion. The State argues Cahill failed to preserve error because the court never considered or ruled on a claim under section 81.10.

Assuming, without deciding, Cahill preserved error on this claim, we find she has failed to make the required showing for DNA profiling under section 81.10.

To grant an application for DNA profiling, the court must find the results would be "material to, and not merely cumulative of or impeaching of, evidence included in the trial record" and "would raise a reasonable probability that the defendant would not have been convicted if such results had been introduced at trial." Iowa Code § 81.11(1)(d), (e). In rejecting Cahill's motion for new trial under Iowa Rule of Criminal Procedure 2.24(2)(b)(8), the court found Cahill was unable to prove the materiality of the evidence or a likelihood of a different result at trial even if DNA testing showed the hair belonged to someone other than Cahill, Wieneke, or Hotz. The court noted that defense counsel created questions about the identity of the perpetrator based on the hairs found in Wieneke's hand even without DNA testing. This occurred during cross-examination of one of the DCI investigators who investigated Wieneke's death in 1992:

> Q. So it appears to me that we can conclude that there were hairs collected from the victim's hand and . . . placed into a custody bag or something like that and sent to the DCI lab. Would that be a fair conclusion from this document? A. It appears that that's correct.
>
> Q. . . . [Was] there testing of the Caucasian head hairs that you're aware of? A. I do not know that.
>
> Q. You don't know whether they were compared to Annette Cahill or any other suspects? A. I do not know that.
>
> . . . .
>
> Q. And as an experienced detective do hairs in the hand of a dead man who has been beaten in his bedroom with 13 blows tell you anything? A. Well, certainly they'd be collected as evidence to see what they did show.
>
> Q. But despite any testing you don't have to be Columbo to figure out that hairs in the hand might indicate a struggle, right? A. Well, that's possible. They may also be the hair from the individual, the hair from someone else sleeping in the bed. It appears from the report that there's also cat hairs, so I don't know.
>
> Q. Are you familiar with any followup investigation of those human hairs that were found in the left hand of the victim? A. I am not.

Defense counsel then referred to this testimony during closing argument:

> Let's revisit the human hair evidence. There were four human hairs in the victim's left hand. State has presented no evidence that the human hairs matched Annette's hair either by microscopic comparison with known hairs through slides or by DNA comparison. Moreover, the hairs tell us it is unlikely Corey was unaware of his assault. The fact he was an experienced fighter, weighed 230 pounds and was a football player make it unlikely that there was only one assailant unless that was someone powerfully built.
>
> The evidence seems to indicate a struggle. There were 13 blows, not 12. They were all inflicted while Corey was alive. There was a mark above the door. There was splatter and you've seen the pictures. So none of this evidence that we do have comports with Annette Cahill going over and pummeling or however you want to describe it, killing the man she loved with a bat. None of it. Nor with all of this blood, the hairs, the clothing, the tennis shoes, everything examined is there a scintilla of actual evidence that proves beyond a reasonable doubt element one of the checklist the County Attorney promised he would check off for you that Annette Cahill struck Corey Wieneke.

Even if DNA profiling showed the hairs belonged to someone other than Cahill, the evidence would be cumulative and unlikely to have changed the result of trial. The district court did not err in denying Cahill's post-trial motion to compel DNA testing of the hairs.

Cahill also argues the failure to produce the lab report about the hair testing violated her due process rights under *Brady.* The State again contests error preservation. Cahill moved for new trial in part based on a violation of her right to receive a fair and impartial trial. Though she did not cite *Brady*, she argued the State's failure to provide the DCI lab report until after trial began impeded her ability to present a complete defense. The district court never addressed a *Brady* violation in denying her post-trial motions.

Again, assuming, without deciding, Cahill preserved error, we are unable to find a violation of *Brady*. "In order to establish a Brady violation, the defendant had to prove '(1) the prosecution suppressed evidence; (2) the evidence was favorable

to the defendant; and (3) the evidence was material to the issue of guilt.'" *Harrington v. State*, 659 N.W.2d 509, 516 (Iowa 2003) (citation omitted). Evidence is suppressed under *Brady* when information is discovered after trial that had been known to the prosecution but not the defense. *See id.* But Cahill knew hairs were found in Wieneke's hand at the crime scene, as shown by discovery materials and her counsel's cross-examination of the DCI investigator. The information not disclosed until after trial began was the fact that the State did not conduct DNA STR testing because the hairs were not suitable for that type of analysis. The information was not evidence but a basis for Cahill to argue the State's investigation was subpar and that additional DNA testing of the evidence was necessary. In any event, we do not find the information favorable to Cahill nor material to the issue of her guilt. Cahill has not established a *Brady* violation regarding the laboratory report disclosed by the State mid-trial.

III. Admissibility of Witness Testimony.

Cahill next challenges the district court's rulings on motions brought under Iowa Rule of Evidence 5.104. That rule requires that "the court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible." Iowa R. Evid. 5.104(a). We review the court's preliminary ruling on the question of admissibility for correction of legal error. *See State v. Veverka*, 938 N.W.2d 197, 202 (Iowa 2020). But we give deference to the court's fact findings and uphold those findings if supported by substantial evidence. *See id.*

Before her first trial, Cahill moved the court to exclude the testimony of Becker and Becker's mother. When the State identified Payne as a witness before

her second trial, Cahill also moved the court to exclude Payne's testimony. Cahill sought to exclude the testimony of all three witnesses on the same ground, arguing their claims are so impossible, absurd, and self-contradictory that they should be deemed a nullity by the court. The court denied both motions. Cahill challenges those rulings on appeal.

Cahill's argument touches on an important distinction between the roles of the court and jury. The job of determining witness credibility and assigning weight to the evidence generally falls to the jury, not the court. *See State v. Musser*, 721 N.W.2d 758, 761 (Iowa 2006) ("It is not the province of the court . . . to resolve conflicts in the evidence, to pass upon the credibility of witnesses, to determine the plausibility of explanations, or to weigh the evidence; such matters are for the jury." (citation omitted)); *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993) ("The jury is free to believe or disbelieve any testimony as it chooses and to give weight to the evidence as in its judgment such evidence should receive."). And "a court must be careful not to usurp the role of a jury by making credibility determinations that are outside the proper scope of the judicial role." *State v. Paredes*, 775 N.W.2d 554, 567 (Iowa 2009). But there is an exception:

> The rule that it is for the jury to reconcile the conflicting testimony of a witness does not apply where the only evidence in support of a controlling fact is that of a witness who so contradicts himself as to render finding of facts thereon a mere guess. We may concede that, ordinarily, contradictory statements of a witness do not make an issue of fact; and that such situation may deprive the testimony of all probative force.

State v. Mitchell, 568 N.W.2d 493, 503 (Iowa 1997) (citation omitted).

Does the testimony at issue fall into this exception? Cahill claims Becker's testimony is "impossible" for the following reasons: (1) Becker could not have

viewed Cahill in the dining area while standing on the stairs because the stairway was fully enclosed and with a door at the base that opened out and away from the stairs; (2) Becker was unable to recall other details of the home's layout even though she claimed to have spent the night there many times over the years; (3) and Becker did not recall the date of the sleepover or whether other children were present that night.[4] As for Payne's testimony, Cahill cites contradictions between statements he made to law enforcement in 1996 and 2019 and claims Payne was biased because he gave the Hazen family a $5000 loan that they never repaid. But these concerns are more appropriately weighed by the jury in determining the credibility of their testimony. *See State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990) ("When determining the credibility of the testimony of witnesses, the [trier of fact] may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness's appearance, conduct, memory and knowledge of the facts, and the witness's interest in the trial."); *see also State v. Tyler*, 830 N.W.2d 288, 296-97 (Iowa 2013) ("In making credibility determinations, we examine extrinsic evidence for contradictions to that witness's testimony. We also examine a witness's testimony for internal inconsistencies in making credibility determinations." (internal citation omitted)). And the limitation on the jury's ability to determine

[4] Although Becker could not recall a door at the bottom of the stairs in 1992, she testified that if it was there it was open on that night. And Becker's inability to recall the entire layout of the home of a friend she had when she was nine years old—especially details likely inconsequential to her at the time, like the location of the parents' bedroom—is unsurprising considering the time that has passed. Finally, though Becker could not recall whether any other friends were at the sleepover on that night, she was sure that only she and Hazen's daughter witnessed Cahill in the dining room.

witness credibility does not apply if there is corroboration of the testimony or when there is an explanation for conflicting statements. *See State v. Frank*, 298 N.W.2d 324, 329 (Iowa 1980). The court did not err in refusing to exclude the witnesses' testimony.

IV. Sufficiency of the Evidence.

Cahill also challenges the sufficiency of the evidence to support the jury's finding she committed second-degree murder. We review such claims for correction of errors at law. *See State v. Benson*, 919 N.W.2d 237, 241 (Iowa 2018). We will uphold the verdict if it is supported by substantial evidence. *See id*. Evidence is substantial if, when viewed in the light most favorable to the State, it could convince a rational factfinder that the defendant is guilty beyond a reasonable doubt. *See id.*

In arguing there is insufficient evidence to show she committed the murder, Cahill notes that she never confessed to the crime and the State never produced (1) physical evidence connecting her to the scene of the crime; (2) an eyewitness to the crime; (3) an eyewitness placing her with the murder weapon; and (4) a witness who was aware of any plan she had to kill Wieneke. The only evidence connecting Cahill to the crime was Becker's testimony that she witnessed a distraught Cahill make statements of her guilt, which was corroborated by Becker's mother, and Payne's testimony that he saw Cahill burning bloody clothing within days of the murder.

Although the evidence of Cahill's guilt is not overwhelming, when it is viewed in the light most favorable to the State, we are unable to find that it falls short of the substantial-evidence threshold. Cahill was one of several women with

whom Wieneke was romantically involved. The night before his murder, Cahill was at the bar where Wieneke worked as a bartender. After his shift, Wieneke intended to go home with another woman but found Cahill sitting in his car. Eventually, Wieneke decided to drive Cahill home. Cahill became upset during the drive and tried to get out of the car as it was moving. Wieneke stopped the car, and he and Cahill got out and had a conversation. Both got back in the car, and Wieneke drove back to the bar where the other woman's car was parked. Wieneke said he would take Cahill home and then go to the woman's home. He later stopped at the other woman's home. By morning, Wieneke was back at the home he shared with Hotz, who last saw Wieneke asleep when she left for work that morning. When Hotz returned home that evening, she found Wieneke dead on the bedroom floor. The window of time in which the murder occurred is narrowed by the testimony of a farmer who drove past Wieneke's home that day. When he drove by after 9:00 a.m., he saw two people standing outside the home by a car. When he drove by around 1:30 p.m., he noticed a metal baseball bat on the side of the road that had not been there that morning. The baseball bat matched Wieneke's injuries, and trace amounts of blood that matched Wieneke's blood type was found on it.

During the time frame of Wieneke's murder, Cahill spent time at a construction jobsite but left when Hazen picked her up after between one hour and one and one-half hours later. Hazen testified she picked Cahill up at the jobsite around 10:00 a.m. and that they stopped at Wieneke's house on the way to Iowa City. She said Cahill wanted to drop something off, but no one answered the door. Cahill and Hazen claimed they went to Iowa City to run errands, and Hazen

provided receipts of purchases she made for corroboration. But the only receipt with a timestamp showed a purchase made at 1:25 p.m.

The strongest evidence of Cahill's guilt is Becker's testimony about the events she witnessed when she was nine. The defense tried to discredit her testimony by emphasizing every possible inconsistency, as well as Becker's inability to recall certain details. Even so, the jury found her credible—perhaps based on the accidental way in which she crossed paths with Agent Vileta while he was investigating an unrelated crime twenty-six years later. The defense tried to discredit Becker by portraying her as biased based because Cahill had an extramarital relationship with Becker's stepfather when Becker was young. But it is hard to conceive that Becker invented a story to portray Cahill as a murderer in the hope that she could one day share it during a coincidental meeting with a law enforcement officer. And Becker's mother testified that Becker told her about the incident not long after, which corroborates her claim. Her testimony is also corroborated by Payne, who saw Cahill burning clothing two days after Wieneke's murder. The evidence was sufficient to support the jury's verdict, so the district court did not err in denying Cahill's motion for new trial.

V. Delay in Prosecution.

Cahill's final claim on appeal concerns the twenty-six years that passed between when the crime occurred and her arrest. Cahill argues that the delay in her prosecution violated her due process rights. We review her claim de novo. *See State v. Brown*, 656 N.W.2d 355, 362 (Iowa 2003).

Although the State need not arrest and charge the accused "at the precise moment probable cause comes into existence," it cannot delay the filing of criminal

charges against the accused to gain a tactical advantage. *Id.* (citation omitted). To prove a delay in prosecution violated her due process rights, Cahill must show that the delay in prosecution caused her actual prejudice and was unreasonable. *See id.* Actual prejudice occurs when the delay leads to a loss of evidence or testimony that meaningfully impairs the ability to present a defense. *See id.* Generalized claims of prejudice based on loss of memory, witnesses, or evidence will not suffice. *See id.*

Even assuming the delay caused prejudice, Cahill cannot show the delay was unreasonable. The State did not delay prosecution to gain tactical advantage. Rather, the State lacked sufficient evidence of Cahill's involvement until December 2017, when Agent Vileta spoke to Becker. The State did further investigation and filed charges against Cahill six months later. Under the circumstances, there was no unreasonable delay in prosecution. A defendant cannot complain about a delay in prosecution of a crime when that delay is attributable to the defendant's success in concealing guilt. Delaying prosecution to allow full investigation differs fundamentally from delaying prosecution for tactical advantage. *United States v. Lovasco*, 431 U.S. 783, 795 (1977). By waiting to prosecute a defendant until guilt beyond a reasonable doubt can be established promptly, the prosecutor is abiding by standards of fair play and decency rather than deviating from them. *See id.*

> Penalizing prosecutors who defer action for these reasons would subordinate the goal of "orderly expedition" to that of "mere speed." This the Due Process Clause does not require. We therefore hold that to prosecute a defendant following investigative delay does not deprive [the defendant] of due process, even if [the] defense might have been somewhat prejudiced by the lapse of time.

Id. (internal citation omitted). Cahill's due process rights were not violated by the pre-accusation delay in prosecution.

For all the above reasons, we affirm Cahill's second-degree murder conviction.

AFFIRMED.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
19-1981	State v. Cahill

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