

## The murderer next door

May 21st, 2008

How Travis County prosecutors tried a gruesome murder case in front of the national media and laid the groundwork for recognition of an inevitable discovery doctrine in Texas

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Jennifer Cave was a 21 year-old Austin resident who had grown up and graduated high school in Corpus Christi. After high school, she enrolled in and attended classes at Texas State University in San Marcos, but Jennifer struggled academically and decided to move to Austin rather than return to college. She had several jobs in Austin, mostly as a waitress. Jennifer's friends and family knew of her battle with drugs, her attempts to resist them, and how she kept going back to them.

Colton Pitonyak, a 22-year-old junior at the University of Texas, was a National Merit Scholar from a private Catholic high school in Little Rock, Arkansas. He had no criminal history from Arkansas, and his high school records were spotless. His father owned a farm machinery company, and his family lived in an upper-middle class neighborhood. He came to the University of Texas at Austin with scholarships and an admission into the business school, not an easy task for an out-of-state applicant. Colton had been charged with DWI and POCS while at the university, so his family was aware of his problems with drugs and alcohol. They did not appear to know that he was also dealing drugs, nor the extent to which his drug use had escalated during the summer of 2005.

The relationship between Jennifer Cave and Colton Pitonyak was never very clear. Those who knew Jennifer describe Pitonyak as her source for drugs. No one reported seeing them on a date, and no one reported that they ever held themselves out as a couple.

### The crime

On August 16, 2005, Jennifer Cave, a 21 year-old Austin resident, showed up at a local law firm in response to a posting for a one-day filing job. The firm was so impressed by her enthusiasm that she was offered a full-time position with the firm to begin the next day.

That evening Jennifer talked to her mother, roommate, and ex-boyfriend, telling them how excited she was for her first day at the new job. At 8:30 p.m., in her pajamas, she said she was going to bed and asked her roommate to make sure she woke up in the morning. However, at about 9:30 p.m. that evening, she spoke to a friend, Michael Rodriguez, and told him she was going to spend some time with a friend named Colton, whom she said was having some problems.

Around 11:00 that night, Jennifer and Pitonyak saw several of Jennifer's acquaintances on 6th Street, an area of clubs and bars in downtown Austin. The two groups joined together, sat down at a table at Treasure Island, and each had a couple of drinks. While at the bar, Jennifer talked to a couple of girlfriends and Colton Pitonyak flirted with one of them. He also made a call on his cell phone to set up the purchase of an 8-ball, an eighth-ounce of cocaine. Around midnight, the group decided to go across the street to Cheers Shot Bar. At the door of Cheers, Pitonyak pulled Jennifer away, and the two were last seen walking east on 6th Street.

Michael Rodriguez received a call from Jennifer at 12:08 on the morning of August 17, 2005. She told him that the only people who could help Colton were in jail. Michael said that she did not seem afraid or anxious, and she said she would call him back. About an hour later, Michael Rodriguez again spoke to Jennifer. She was describing Pitonyak as drunk and angry. Jennifer yelled at him while on the phone, "What are you doing? That is not my car!" and "Oh my God, he is pissing on that car." Again, she did not want help or sound like she was afraid for her safety.

That was the last known conversation Jennifer had with anyone besides Colton Pitonyak. Sometime between 1:05 and 3:30 a.m. Jennifer Cave was shot and killed in Pitonyak's apartment just west of campus. Pitonyak remained alone in his apartment with Jennifer's body until his friend, Laura Hall, came over later that morning. Around nine that evening, Hall and Pitonyak left Austin for Mexico in Hall's green Cadillac, leaving Jennifer's body in the bathtub, her head and hands severed.

The morning after

The morning of August 17, 2005, Jennifer did not show up for her first day of work. The law firm called her cell phone several times and sent an office manager to her apartment to leave a note to call when she got home. Around 3:30 that afternoon, after not hearing from their new employee, Bill Thompson called Jennifer's mother in Corpus Christi to advise her that her daughter did not appear for work.

Sharon Cave was very close to her daughter and typically spoke to her several times a day. Obviously, the news from the law firm was distressing. Sharon called T-Mobile, Jennifer's wireless service provider, and asked about Jennifer's cell phone activity on the account, which Sharon maintained for her daughter. Sharon then called the last three numbers on her daughter's cell phone.

One of the people Sharon reached quickly was Scott Engle, Jennifer's ex-boyfriend. She also attempted to reach Pitonyak, but he did not answer Sharon Cave's call. When she reached Michael Rodriguez, Sharon was told about Jennifer's calls the night before. While talking to Michael on her business phone, Pitonyak returned Sharon's call on her cell phone. Pitonyak told Sharon that he had not seen Jennifer. Michael Rodriguez, still on the office phone, immediately told Sharon that Pitonyak was lying to her.

In Austin, Pitonyak had already gone to great lengths to cover up Jennifer's murder. At three in the morning, less than two hours after Michael Rodriguez last talked to Jennifer, Pitonyak went to the apartment of Nora Sullivan, several doors down from his own. While there, he told Nora a

rambling tale about being in a gunfight with at least two Mexicans and claimed that he fired two shots and may have hit someone. He removed the magazine from his gun and asked Nora if he had blood on him. She pointed out a small smear on his arm that appeared to be blood.

Pitonyak's cell phone records showed that he exchanged text messages with Laura Hall after leaving Nora Sullivan's apartment. Although the content of text messages is not retrievable in phone records, one of the messages remained on Colton's cell phone when it was recovered. That message from Laura Hall read "What do U mean." The text messages were followed by a 13-minute call between the two at 6:00 a.m.

About the same time that the law firm called Sharon Cave about Jennifer's absence, Pitonyak was in Breed's Hardware, about a half-mile from his apartment. In the hardware store, he asked for a saw to cut up a turkey he was frying. In addition to the 8-inch hacksaw, his receipt showed that he bought safety masks, ammonia, and other cleaning products. The surveillance video from the hardware store showed that he was alone. Another receipt in the apartment showed that he stopped at Burger King on his way home.

Around 6:30 in the evening of August 17, Scott Engle called Pitonyak. He asked about Jennifer's whereabouts and confronted him with the fact that he was the last person to see her. Pitonyak said repeatedly that he had not seen her and ended the phone call by saying, "That bitch is going to get me arrested."

At 8:34 p.m. the same night, Pitonyak again talked to Sharon Cave in response to her persistent calls. He said, "Dude, I am eating pizza with my friends," and again insisted that he had not seen Jennifer since the night before. Sharon told Pitonyak that she had contacted the police and that they were going to his apartment.

Pitonyak's cell phone records revealed that shortly after that call, his cell phone was traveling south on Interstate 35. He attempted numerous calls, with the tower hits showing a clear path from Austin to Del Rio on the Texas-Mexico border. Surveillance video later showed that Pitonyak and Hall crossed at the international bridge into Acuna at 2:41 a.m.

Desperate to find Jennifer, Sharon Cave and her fiancé, Jim Sedwick, came to Austin on August 18. Before they got to town, they heard from a missing persons detective with the Austin Police Department that Jennifer's car was parked on the street outside of Pitonyak's apartment. They went to the apartment and repeatedly banged on the door and windows calling for Jennifer. Officers from the Austin Police Department arrived, only to tell the distraught family that they could not enter. After the last officer left the scene, a locksmith was called, but he couldn't open the deadbolt of the apartment. Feeling they had run out of time and fearing for Jennifer's safety, Jim Sedwick entered the apartment through a window that they had managed to unlock.

As Jim Sedwick walked through the dark apartment, he had no idea what he was about to see in the bathroom. He did not stay long enough to fully comprehend that his fiancée's daughter was not only dead in the bathtub, but her head and both hands had been severed from her body and lay in a bag on the floor next to the tub. Once he saw Jennifer's body, he immediately left the

apartment and called the police. He knew he had to prevent Sharon Cave from entering the apartment, even when it meant physically restraining her.

Pitonyak's apartment was cleared by APD officers and sealed until a search warrant was signed. In many ways, it was a typical college male's apartment except for the immaculate kitchen, two shell casings on the coffee table, and the mutilated body in the bathtub.

The autopsy revealed that the cause of death was a single gunshot, through the right arm, into the torso and lacerating the aorta before lodging just under the skin of Jennifer's left back. The other findings were grotesque: The head and hands were severed from the body, there were multiple post-mortem stab wounds to the chest and neck, and there was a bullet against Jennifer Cave's skull that was fired into the head through the severed neck. The shell casing for that shot was discovered in the bathtub only after the body was moved by the medical examiner.

Police quickly discovered that Pitonyak's vehicle was still parked beneath the apartment complex. A search revealed a Smith and Wesson .380, which was later determined to be the weapon that fired all three casings in the apartment, as well as the two projectiles removed from Jennifer's body. Also in the vehicle was a road atlas, which was missing the page for southwest Texas.

As his apartment was searched, Pitonyak was in Piedras Negras, Mexico, partying with Hall. They went with the clerk of the CasaBlanca Hotel to watch the Ultimate Fighting Championship, and Pitonyak inquired about extradition and the possibility of selling Hall's Cadillac to go further into Mexico. Crimestoppers tips led officials to their location, and Mexican authorities removed Pitonyak to the custody of United States Marshals at the international bridge in Eagle Pass.

#### Pre-trial

The first stage in our prosecution was preventing the exclusion of evidence found during Jim Sedwick's entry into Pitonyak's apartment. Although there was certainly no constitutional violation, Article 38.23 of the Texas Code of Criminal Procedure disallows the use of evidence discovered as the result of a violation of the law by any person. Caselaw has allowed for the fruits of apparent theft if the items were taken with the intent to turn them over to law enforcement, but none of those cases covered evidence discovered as the result of criminal trespass.

The State argued that the evidence should not be suppressed on three grounds:

1. Jim Sedwick's actions were the result of exigent circumstances that would have allowed entry by law enforcement. The facts as Jim Sedwick believed them at the time of entry warranted his entry as immediately necessary to cure harm or prevent future harm. This argument was new ground because the emergency doctrine has not been applied to non-state actors.
2. Sedwick's actions, although they meet the elements of criminal trespass, were non-criminal by reason of the justification of necessity under §9.02 of the Penal Code. For pre-trial purposes, the judge was the factfinder charged with determining if Jim Sedwick was entitled to this affirmative defense.

3. Finally, the State presented evidence of and argued that suppression was not appropriate because of inevitable discovery (if that doctrine were applicable in Texas). Specifically, homicide detectives testified that the apartment had an odor of decay during their search. They further stated that based on training and experience, neighbors would be reporting the odor within 72 hours. During that time period, Pitonyak was in Mexico, having made no effort to return to his Austin apartment. We believed that inevitable discovery is an issue that must be re-examined by the Texas Court of Criminal Appeals.

The court denied the motion to suppress on those three grounds, making a specific finding that inevitable discovery would apply if recognized in Texas. This finding will negate the need for a future remand to the trial court if the doctrine is later recognized.

### Brainstorming defenses

The process of trial preparation, beyond the normal fact gathering, consisted of many hours of brain-storming to determine what the defense would argue. One obvious strategy the defense might choose was to implicate Laura Hall in the murder. Swabs of the murder weapon contained a mixture of DNA, and neither Pitonyak nor Hall could be excluded as contributors. Hall's alibi witnesses were initially uncertain regarding exact dates when police interviewed her, so the State had to consider Hall a wildcard. She and Pitonyak's relationship appeared to be one-sided: Laura was in love or obsessed with Pitonyak, a feeling he did not appear to return. We anticipated that she would be called by the defense and take the Fifth, but we could not be certain. Of course the State had to explore any angle the defense might use to claim self-defense, accident, or mistake. We knew that when the jury saw the defendant, he would present as a clean-cut, handsome young man. If he testified, we were sure that he would be articulate and well-prepared for cross examination.

To force the defense's hand, we charged Pitonyak only with murder. The inclusion of lesser-included offenses would provide defense arguments more credibility and give soft jurors an out. Charging only murder put the onus on the defense to produce evidence of what happened between 1:05 a.m. and 3:00 a.m. if Pitonyak wanted a charge on manslaughter or criminally negligent homicide.

### The trial

We knew that the case of State vs. Colton Pitonyak would be well-attended by local media, but it was the Friday afternoon before trial when the State was notified that CourtTV would also be present bright and early Monday morning to set up its equipment. Despite the need to make some adjustments for more microphones on our counsel table, the State made a conscious effort from voir dire on to try this case for what it was: a straightforward murder. The gruesome dismemberment of the victim's body and the defendant's flight to Mexico had brought national media to the courtroom, but we had to focus on the facts that proved beyond a reasonable doubt that Colton Pitonyak intentionally and knowingly shot and killed Jennifer Cave in the early morning hours of August 17, 2005.

As early as voir dire, Pitonyak's attorneys said that he would testify. In the defense opening statement, the jury was told that Pitonyak would testify that he did not remember what happened that night. Even more surprising was the revelation that the defense was conceding that no one

else was at the apartment and Laura Hall did not arrive until the next day—after Jennifer Cave was dead.

The State's case was presented in a very straightforward manner and proceeded quickly. One issue we had wrestled with prior to trial was how to present the very disturbing photos of the crime scene and autopsy. It was important that the jury could see the true horror of this crime, but at the same time we did not want to overwhelm them. We went through all the photographs carefully a number of times, culling them until we could articulate a succinct argument stating how each photo was crucial to the presenting our case.

The defense attorneys spent all of their energy attempting to confuse motive and premeditation with intent. They presented evidence that the murder weapon has no a safety and no indicator that a round is in the chamber, even if the magazine is removed. At about midpoint at their case's presentation, the one person everyone had been waiting to hear from testified. Pitonyak said that he had no reason to murder Jennifer and would never have intentionally or knowingly hurt her. He also testified that, although he went to Breed's Hardware, Laura Hall did all of the mutilation of Jennifer's body.

On cross examination, any question as to the time period around the murder was answered with an "I don't remember" or an "I don't know." All along, the State felt it would be important to expose the other side of Pitonyak's personality, the one that lurked beneath his boy-next-door look and upbringing. During his testimony we were able to present to the jury Pitonyak's other face, the one that admired the drug and gangster lifestyle. The defendant admitted to screen names of "Cmoney" and "Ilovemoneyandhos" on his Facebook profile. We also showed that his favorite movies were DONNIE BRASCO and GOODFELLAS, both of which contain scenes of body mutilation. On his coffee table was a "Sopranos" DVD where Tony Soprano dismembers a murder victim in a bathtub, then removes his head and sticks it in a bowling ball bag. In his apartment the police had found toy guns that were very realistic. The defendant had also done computer searches looking at different types of guns. The large SCARFACE movie poster hanging in his kitchen began to take on new meaning, as the defendant admitted to dealing drugs and how he came to possess the murder weapon. Colton told the jury that a friend wanted to borrow his car after giving Colton a tattoo and left the gun in the apartment as collateral. He further testified that this particular gun had been used in the past as payment and collateral in drug transactions.

At the conclusion of the evidence, the defense argued that the testimony about the gun and the lack of motive or premeditation warranted charging the jury on the lesser-included offenses of manslaughter and criminally negligent homicide. However, the court agreed that the defendant's testimony—that he did not remember what happened—was not evidence that warranted those instructions. In their closing arguments the defense attorneys tried to distance the defendant from Jennifer's mutilation by placing the blame on Laura Hall. They repeated their mantra that Pitonyak had no motive to murder Jennifer and attempted to confuse the jury about the meaning of intent.

The jury was out just over an hour before finding Pitonyak guilty of murder. Following powerful victim impact testimony from Sharon Cave, when she tearfully told the jury of the devastating

effects of Jennifer's brutal murder on the emotional and physical well-being of her family and friends, the State rested its punishment case. The defense put on a number of Pitonyak's high school friends, coaches, and teachers. In addition, his parents testified. His mother begged the jury to spare her son because "he is such a good man." All blamed Pitonyak's heinous actions on the influence of drugs and alcohol.

The jury deliberated about two hours before sentencing Pitonyak to 55 years in prison. The State had argued for life, but Sharon Cave and her family viewed the sentence as five years short of the maximum and were glad to see that the jury did not give credit to the defense's arguments minimizing Pitonyak's culpability.

Laura Hall is currently charged with hindering apprehension, and the State is considering adding a charge for tampering with physical evidence based upon statements she has made since her return from Mexico. Her trial has not yet been scheduled.