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Opinion #23 *What the newspapers won't tell you!* April 13, 2007

Juvenile Justice

THE CASE OF THE MISSING MUTT

An Exercise in Fuzzy Justice

BY GLENN CAMPBELL

It was the Trial of the Century, and we missed half of it.

Granted, it hasn't been much of a century so far (O.J. was last century, remember.), but this was certainly the Trial of the Century for the people involved: a woman who claimed to have lost her little dog and a 15-year-old girl who allegedly stole it.

Something evil happened here; the question is what and by whom. The only thing certain is that a precious little pooch went missing from his home last August and remains unaccounted for to this day.

If there was ever a need for a pet detective or a pet psychic, this is it.

The pet in question was a pint-size Pomeranian, a toy breed about a foot high, consisting of more hair than body. Pomeranians are extremely annoying, high-strung little beasts who are prized almost exclusively for their cloying cuteness. Femmy women and certain gay males like to dote over them, take them to the doggie salon and dress them up in painfully precious little doggie outfits.

In the movie As Good as It Gets, Jack Nicholson dealt with a similar annoying lapdog by dumping it down an apartment house garbage chute—an action we don't entirely condemn.

You might feel differently, however, if he were your dog. What if he had totally taken over your life and pushed aside more meaningful human relationships. (Isn't that what pets are for?) What if you had already invested in vet visits, hair styling and a whole doggie wardrobe (a Spring Collection, a Fall Collection, etc.) and then one day he just vanishes. Wouldn't you feel sad?

That's what might have happened here—or might not have. The fate of the dog was the subject of a delinquency trial in Family Court on April 9. The juvenile suspect had been cited by police for petty larceny, had pled "not guilty" to the charges and was now on trial for allegedly stealing the dog.

Although this was juvenile court, the trial was real, subject to all of the rules of evidence and standards of proof of any adult murder case. The defendant was "innocent until proven guilty" and guilt had to be established "beyond a reasonable doubt."

A qualified pet psychic attempts to locate a missing Pomeranian dog, similar to the one in this case.

We walked into the courtroom by chance about halfway through the trial. We instantly recognized its newsworthiness but unfortunately missed some key testimony. We later reconstructed what we missed by talking to others who were present in the courtroom.

The first witness called by the State (before we arrived) was the woman who allegedly lost the dog. She said that she had bought it from the family of the defendant in April. In August, according to the witness, the young defendant phoned her, asking to see the dog. Being that the defendant had a prior relationship with the animal, the witness said she saw nothing wrong with the visit. The defendant came to her house along with an unidentified female companion. The girls then spent some quality time with the canine, which included dressing him in the aforementioned painfully precious outfits.

We can only imagine a saccharine scene of feminine gushing and gooing as the poor animal had to endure this indignity, which the owner herself also participated in. At one point, the owner went upstairs to hunt for more outfits for the dog, leaving the girls alone with him. When she came downstairs again, both the girls and the dog were gone.

The State's position, of course, was that the girls stole the dog.

The defendant's position was simple: "I wasn't there, I didn't do it." She didn't go to the house and never touched the dog.

As so often happens, what initially seemed an open-and-shut case was actually more complicated. It turns out, there was only a single witness to the alleged incident: the dog's owner, otherwise known as the "complaining witness" (C.W.).

There were no witnesses putting the dog in the defendant's possession. Furthermore, the C.W. and the defendant's mother had once been friends but were no longer. There had recently been some kind of acrimonious falling out between them prior to the alleged dognapping.

This brings up a possible defense theory: that the complaining witness made up the whole story. Perhaps she wanted to get back at the mother by damaging the daughter. Maybe she herself got rid of the dog. Maybe she filed a false police report, then perjured herself on the stand as an act of aggression against the mother.

If this scenario sounds far-fetched, we assure you, as a Family Court Observer, that it is not. This kind of treachery happens all the time, especially in the divorce section of Family Court. Some people get crazy when facing abandonment or rejection and will lie about the stupidest things to try to regain control.

Correction: EVERYBODY gets crazy when facing abandonment or rejection, but some people with poor emotional regulation don't know when to stop. In the absence of internal controls, simple lies to get attention can quickly snowball into absurd and elaborate Watergate-size hoaxes that the liar herself is unable to retreat from.

Most people we talked to rated the C.W.'s testimony as "very credible." Unfortunately, this in itself was not proof that she was telling the truth. Some people are very practiced and comfortable at lying, to a degree that the rest of us may have difficulty imagining. The fact that a witness raised their right hand and swore to tell the truth has little effect when they have already trapped themselves into an escalating fiction.

We saw it in the Judge Jones trials of last summer. While seeking a protective order against the Judge in June, Jones' girlfriend testified under oath that Jones had thrown her violently against a baseboard, and she had wounds on her face to prove it. In Jones' trial on criminal charges three months later, the girlfriend completely recanted her original testimony and showed the court how she had deliberately inflicted the wounds on her own face. The only motivation for the lie, she said, was a panicked fear of rejection.

We believe the girlfriend's recantation because it was more consistent with the facts, but both performances were equally credible, detailed, heartfelt and convincing on their surface, even though they made opposite claims.

In the dog trial, there were two heinous possibilities: (a) the girl had stolen the dog and disposed of it, or (b) the complaining witness got rid of the dog herself, then gave an Academy Award performance to the police and at trial.

Unfortunately, in our mind, the trial never resolved the issue.

The Defense, quite honestly, was incompetent. Instead of pressing the issue of the witness' truthfulness and possible nefarious motivations, the Defense seemed to be pursuing another vague theory, that the dog had somehow escaped on its own and that the C.W. had erroneously but innocently blamed the defendant.

The Defense even went so far as to ask the witness whether there might be coyotes in her semi-rural neighborhood, which presumably might have snatched the dog. The witness replied that she knew of no coyotes in the area. Furthermore, it was pointed out that while coyotes might take the dog, they probably wouldn't have taken the little doggie outfits, which were also allegedly missing.

The Defense sent one of its investigators to photograph the back door and back gate of the house to show how the dog might have escaped, but this was completely irrelevant if the defendant claimed that she was never there at all.

The Defense put their own defendant on the stand, which is regarded as wise if your client is innocent but foolish if they have something to hide. A defendant is not compelled to testify against themselves unless they voluntarily take the stand like this, in which case the State has the right to cross-examine them brutally.

Unfortunately, once the defendant was on the stand (which we were present for), the Defense failed to ask her some key questions which could have conceivably cleared her.

For example, on the day of the alleged abduction, there were a number of cellphone calls from the C.W. to the defendant. This was documented by the woman's phone bill which showed outgoing phone calls but unfortunately not the phone numbers of incoming calls. The C.W. contended that the defendant called her first, asking to visit the dog, and that the subsequent outgoing calls were the woman inquiring, with increasing alarm, where her dog had vanished to.

The defendant, in turn, claimed that the woman was the first one to call. She phoned the defendant, out of the blue, to

ask if the defendant would dog-sit for her on a specific future date.

This story might seem to make no sense at first, since there had already been a falling out between the witness and the defendant's mother. If you are now an enemy of someone, would you call their daughter to dog-sit?

However, such a phone call might be consistent with the escalating lies of an emotionally desperate person.

If you had just lost a friend, perhaps by your own bad behavior, a few days later you might come to regret it. Maybe this was your only friend, and now you have pushed them away and burned your bridges. How do you get them back? Well, you still have the dog. You know that the dog holds some sentimental value to someone in that household: the daughter.

Maybe you call the daughter with a vague intention of trying to reconnect with the mother. You ask the daughter, "Wouldn't you like to dog-sit?" This is a dimwitted strategy that the desperate person is not going to think through very deeply. If they have driven away their only friend, panic is now setting in. They might try anything, no matter how deceptive and irrational, to try to get the relationship back.

We often see in domestic violence cases how easily this impulse can turn aggressive. After you have sabotaged your most important relationship, you could become repentant and apologetic: "I am so sorry, please forgive me." Many people, however, don't have those skills. The way they express their desperation is more like: "Come back to me, or I'll kill you." If you can't have someone, then the next best thing, in a certain emotional logic, is to devalue and destroy them.

Or destroy their daughter.

Maybe when you call the daughter about dog-sitting, her response is lukewarm. Maybe she has forgotten all about the dog and isn't really keen on the idea. What would you do then? There could be even more panic and a greater sense of abandonment. The dog-sitting ruse isn't working, so what do you try next? You still have the dog, so what can it be used it for? Maybe you call back again, with feigned anger, claiming that the daughter stole the dog.

This may sound Loony Tunes, and it is, but acts like this are not implausible if you have ever been close to someone who has Borderline Personality Disorder. "Frantic attempts to avoid abandonment," are one of the diagnostic criteria for this common but rarely identified mental illness. These frantic attempts can include, as in the Judge Jones case, actions that seem totally aggressive and counter-productive.

If someone seems to be abandoning you, and you assault them or accuse them of things they didn't do, at least you are engaging them and forcing them to respond to your presence. In a warped way, this is better than losing them altogether.

In the internal perceptions of the Borderline, if someone you are attached to stops noticing you, then you stop existing. Abandonment, to them, feels like death and they may do crazy, destructive and self-destructive things to try to avoid it. This, we believe, is the root cause of most domestic violence. If you can't get someone to love you, then at least you can get them to fear you and respond to your aggressive force.

When the juvenile defendant took the stand in the dog trial, there were many things we wanted to know about the underlying relationships, but these questions were never asked. The defendant affirmed that the woman had called her and asked her to dog-sit, but the Defense didn't ask for any details about the call. We wanted to know the exact words that the woman supposedly used. We also wanted the Defense to ask about all the later calls. Exactly what did the defendant remember about them?

The fact that the Defense put the defendant on the stand implies their confidence in her innocence, but they didn't do much with her once they got her there. They didn't press for any details that might have rebutted the C.W. They just asked a few irrelevant, softball questions, then let her go.

The State, in turn, also failed to ask those same missing questions. Prior to this, the State had only a single witness to the alleged incident. Now that it had the defendant on the stand, it could have two. Since the Defense had opened up the subject of the phone calls, the State could now hammer the defendant on this issue, asking about every single phone call that appeared in the cell phone record. This could demolish the defendant's credibility if she was lying.

But it might also conceivably demolish the State's case. If the State asked the defendant the hardball questions that the Defense failed to ask, and the defendant responded with strong, coherent answers, it could devastate the state's position. Why, then, would the State want to take this risk?

Because the State wants the truth.

We commonly think of prosecutors as the people in court who will do or say anything to get the defendant convicted, while defense attorneys will do or say anything to get their client off the hook. This is a misperception of what these roles really are.

The prosecutor does not represent the police, as commonly perceived, nor do they represent victims of crime. The prosecutor represents "The People," or the good of society at large. The District Attorney, in fact, is elected directly by the people and is responsible only to them.

If the D.A. takes the same position as the police, as is usually the case, this is only because their interests happen to coincide. The D.A. remains free, however, to not pursue charges brought by the police and even to turn around and investigate the police themselves.

The overwhelming interest of The People is in seeing justice done. Although it doesn't happen often enough, we have seen prosecutors turn the tables. They ask a question that elicits information damaging to their case, and instead of pulling back, they continue to pursue the same line of questioning, eliciting even more damaging information.

The People have more flexibility than anyone else to depart from the script. If the testimony in the courtroom evolves differently than expected, there is nothing wrong with the prosecutor asking the Defense's questions for them—especially for an incompetent

Defense like this one.

When the Defense in the dog trial failed to ask for the details of the phone calls, we believe that the State should have asked those questions instead—regardless of what the answers might be. If the defendant was lying, here was a perfect opportunity to prove it and to remedy the weakness of having only a single witness. If, on the other hand, the defendant was telling the truth, hadn't made the initial phone call and hadn't visited the C.W.'s home, it was also in The People's interest to expose this.

Instead, the State asked the defendant nothing of significance. We don't even recall what few questions were asked on cross-examination, which perhaps indicates how trivial they were.

The conflict between the mother and the C.W. was never explored during the trial, except that both acknowledged a falling out. This third-party conflict, in our mind, was absolutely key to the credibility of the C.W. Was it escalating warfare like the Hatfields and the McCoys? If so, then the missing dog story needed to be seen in the context of all the other conflicts.

Observers say that the Defense attempted to pursue this avenue during earlier testimony but was stopped by the Bench. Without a transcript, we can't judge the nature of the objection or whether it was valid. We are sure, however, the Defense did not make this the central issue of its case as it should have. If the Defense had made it clear in its opening statement that the relationship between the adults was a critical element of its theory, then it should have been able to press these questions—or at least raise on-the-record objections that could have been used on appeal.

It appeared to us that the Defense hadn't even investigated this adult conflict before trial. Instead of sending an investigator to photograph the back gate, they could have pressed the mom on what these two women were bickering about. It is a lot easier to interview witnesses outside the courtroom than inside it, to at least determine whether there was useful information for trial, but the Defense apparently didn't bother to do this obvious homework.

However, the Defense did present two alibi witnesses. The C.W. had been fairly specific about the date and time of the alleged abduction. If the Defense could show that the defendant was someplace else at that time, then it would obviously raise "reasonable doubt" about the complaint.

The first alibi witnesses appeared in court on an earlier date and we did not see her. This was an aunt of the defendant, who said that the youth was at her house at the time of the alleged crime. A second witness, a 20-ish friend of the defendant whose testimony we were present for, said that she visited the defendant at the same house at the same time. This witness said that she was certain of the date because she came to the house directly from a documented doctor's visit.

The alibi testimony, however, was confounded by what was on television. The aunt said that the girls were watching <u>movies</u> on TV, while the friend said they were just channel surfing. The friend said that she was certain that she was at the house at 3pm, because that is when *Oprah* came on, which was one of the things they watched. The Bench pointed out that *Oprah* actually comes on at 4pm and for this reason seemed to discount this witness's testimony.

There weren't really any closing arguments at this trial. The Bench just started wondering aloud about each witness and their relative credibility. It seemed to us that he was laying the groundwork for saying that the crime could have occurred but had not been proven beyond a reasonable doubt.

We reviewed the evidence in our own mind. There was only a single witness to the alleged crime, and her testimony was circumstantial—that the dog disappeared at the same time the girls did. There was never any evidence placing the dog in the defendant's possession, and the State had established no real motive for a theft. The C.W. had some sort of preexisting beef with the suspect's mom, which could have complicated her own motivation. There were two alibi witnesses of at least modest credibility. For all the Defense's incompetence, we felt that it had at least established "reasonable doubt," which is all that is required to acquit.

We were stunned by the verdict: Guilty! What was particularly disturbing to us is that it was accompanied by none of the usual language. We never heard the Bench say "The State has met its burden" or that the case was "proven beyond a reasonable doubt," which you almost always hear in other verdicts. It was more like, "This is what I think happened," which is an entirely different standard.

Sentencing immediately followed. The Defense wanted a "consent decree" which would allow the charges to be dropped after six months if the juvenile stayed out of trouble and performed some community service. The State, however, wanted a more severe sentence given the defendant's "lack of remorse."

Sigh! She would have a lack of remorse, wouldn't she, if in fact she didn't do it.

The State eventually agreed to the consent decree, which required the girl to perform some 40 hours of community service, pay $150 restitution (the price of the dog in April), stay out of trouble, and maintain an "A" average in school (which she seemed to be doing anyway). If she did all this, then the charges would be dismissed. In all, it wasn't a terribly harsh punishment, but she was still convicted.

We were left with the sort of queasy feeling you get when you eat too much junk food. We had experienced something resembling a trial but it hadn't filled us up. We honestly don't know now whether the kid was guilty, and we don't think we would have known even if we had seen the whole trial. Even if the complaining witness had come across like Mother Theresa, would want something more than her word to erase our doubts.

There are a lot of phrases that come to our mind when we think about this trial, but "beyond a reasonable doubt" is not one of them.

—GC