

September 23, 2011

The Honorable Jay Nixon
Governor of Missouri

Regarding the Petition for Absolute Pardon for Byron Case

Sir,

I write of wrongful convictions and executions under the pseudonym The Skeptical Juror. I have written to you once before, that time regarding the impending execution of Richard Clay. I cautioned you that his case was murkier than most capital convictions, each of which I now review before the scheduled execution. I do not know if you read my letter, out of the many you must have received, but I do know that you commuted Richard Clay's sentence to life in prison.

I write to you now regarding Byron Case, the subject of my book *The Skeptical Juror and The Trial of Byron Case*. Mr. Case is now serving a double life sentence without parole for the 1997 murder of Anastasia Witbolsfeugen. I am aware that Mr. Case has petitioned you for an absolute pardon based on his claim of actual innocence. I support his petition with this letter in which I hope to convince you that Ms. Witbolsfeugen died near midnight and that Byron Case is therefore factually innocent of her murder.

Overview

The body of Anastasia Witbolsfeugen was discovered in Lincoln Cemetery at 3:44 AM on October 23, 1997. Someone had put the muzzle of a gun to her nose while she stood there. There was no sign of a struggle, no indication she attempted to flee. She was not robbed, nor was she molested. She simply stood there looking at the person who pulled the trigger. When she was found, her eyes were still open.

Multiple time-of-death markers indicate Anastasia was killed near midnight. If that is so, then Byron Case is factually innocent of her murder. Byron was at his home near midnight. Even Kelly, his sole accuser, places him there at that time.

According to Kelly, the only alleged witness to the crime, Anastasia died near sunset. The timing is absolutely crucial to Kelly's story. If Anastasia did not die near sunset, then Kelly's story is absolutely false and Byron Case is factually innocent.

We do not need great precision in our time-of-death determinations to prove Byron's factual innocence. We need only discriminate between a death near sunset and a death near midnight. If Anastasia died near midnight rather than near sunset, then Byron Case is factually innocent.

There are, in this case, twelve time-of-death markers for testing Kelly's claim that Anastasia died near sunset. I summarize them in the table below.

TIME-OF-DEATH SUMMARY

	Absolutely Close To Sunset	Probably Close To Sunset	More Likely Close to Sunset	More Likely Close to Midnight	Probably Close To Midnight	Absolutely Close To Midnight
Kelly Moffett Claims Anastasia Murdered						
DQ Employee Sees Anastasia Alive						
DQ Owner Sees Anastasia Alive						
Cemetery GM Sees Anastasia Alive						
Auto Mechanic Sees Anastasia Alive						
Anastasia's Wallet						
Anastasia's Sanitary Napkin						
Anastasia's Father Hears Gunshot						
Skin Temperature						
Skin Coloration						
Rigor Mortis						
Corneal Clarity						
Date of Death						

None of the twelve markers supports Kelly's claim that Anastasia was killed near sunset. Each of the twelve markers indicates a time of death more likely near midnight, probably near midnight, or absolutely near midnight. Each marker will be discussed in turn.

Background

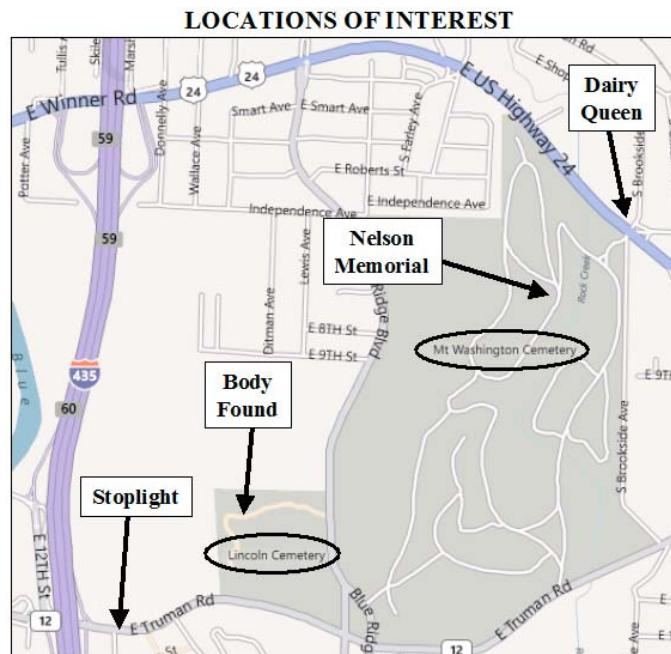
At the time surrounding the murder of Anastasia WitbolsFeugen, Kelly Moffett and Byron Case were dating one another. For several years, during multiple police interviews, Kelly maintained that neither she nor Byron knew who killed Anastasia. She and Byron had been with Anastasia that evening, along with Anastasia's boyfriend Justin Bruton. Anastasia had become angry with Justin, exited his car at a stoplight, and began walking in the direction of her house. They never again saw her alive.

For several years after the murder, Kelly's relationship with Byron deteriorated. Once, after Byron hung up on her, she called the police and told them he had threatened to kill himself with an overdose of sleeping pills. The police questioned Byron and conducted a search for weapons and prescription drugs. Despite finding no evidence to support Kelly's report, the law required them to escort him to a mental health center for 23-hour observation. The medical staff there confirmed the police findings: Byron was not suicidal. Instead he displayed a bright, alert, and calm affect. They released him, and justifiably so. Byron did not then and has not since attempted suicide, despite the horrible circumstances which have befallen him.

Kelly Moffett, on the other hand, learned that she could use the State's law enforcement system to extract revenge against those who displease her.

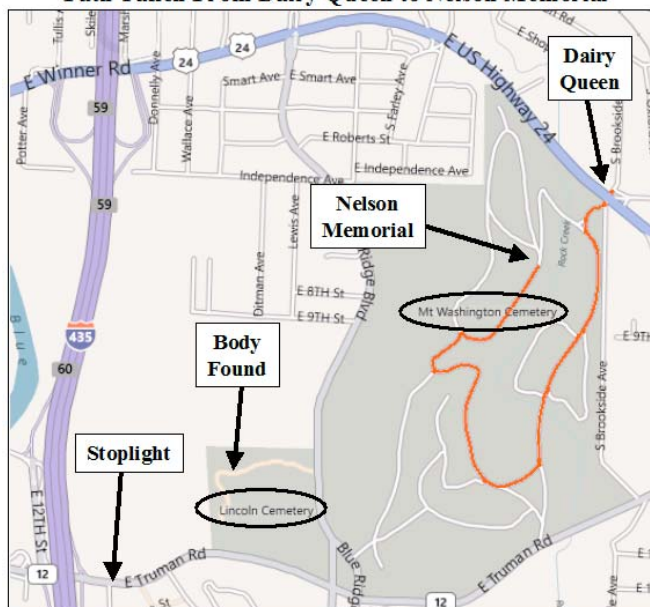
In part because of Kelly's false report to the police, Byron Case informed her that he planned to move to St. Louis. He refused to provide a mailing address or phone number. Within days of his departure, Kelly claimed that he killed Anastasia.

The region of interest to us in this case is the unincorporated region of Blue Summit, located between Kansas City to the west and Independence to the east. To help you visualize the events as I describe them, I offer the following annotated map identifying the primary locations of interest.



For the most part, Kelly's post-rejection version of events corresponded with her initial version of events, which in turn corresponded with Byron's consistent and persistent version of events. The three of them (Kelly, Byron, and Anastasia's boyfriend Justin) picked Anastasia up at a Dairy Queen. Justin drove the four of them across the street to Mount Washington Cemetery, and stopped near the large memorial there. The route shown within Mt. Washington Cemetery below is approximate but ultimately inconsequential.

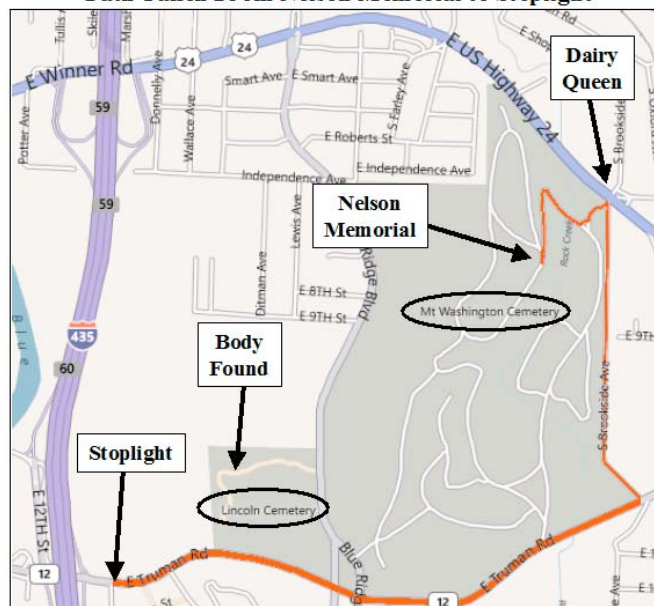
Path Taken From Dairy Queen to Nelson Memorial



Anastasia and Justin stepped from the car to speak in private. As they did so, the caretaker drove up behind them, flashed his lights at them, and thereby chased them from the grounds.

The four of them exited Mount Washington Cemetery and headed towards Justin's condo. Justin and Anastasia were arguing. When Justin stopped at a light on Truman Road, near I-435, Anastasia stepped from the car and began walking towards her house, three miles back and east along Truman Road. Once again, the route shown within Mount Washington Cemetery below is approximate but ultimately inconsequential.

Path Taken From Nelson Memorial to Stoplight



Justin dropped Kelly off at her house, then dropped Byron off at his house. Kelly called Byron around midnight, and the two of them talked about the events of that night. Neither of them would ever again see Anastasia or Justin alive.

Anastasia was found dead the next morning, at 3:44 AM in Lincoln Cemetery. At 10:00 AM that same morning, Justin Bruton purchased a shotgun from a just-opened gun shop, drove to an abandoned warehouse, stuck the shotgun in his mouth, and pulled the trigger.

Though no one could prove it, the presumption was that the two had died as part of a slightly delayed suicide pact. Anastasia's mother reported that Anastasia had, just two days earlier, asked for assistance in killing herself. Anastasia was suicidal because Justin had stopped loving her. On the same day she spoke to her mother, Anastasia had left an ominous note on Justin's computer. The note read in part:

I wish I could kill myself. I wanted to do it before but I couldn't because I firmly believed that you would come back to me. I hate life. Life is a big joke to be played on the ones who don't want to feel it. I never wanted to feel life.

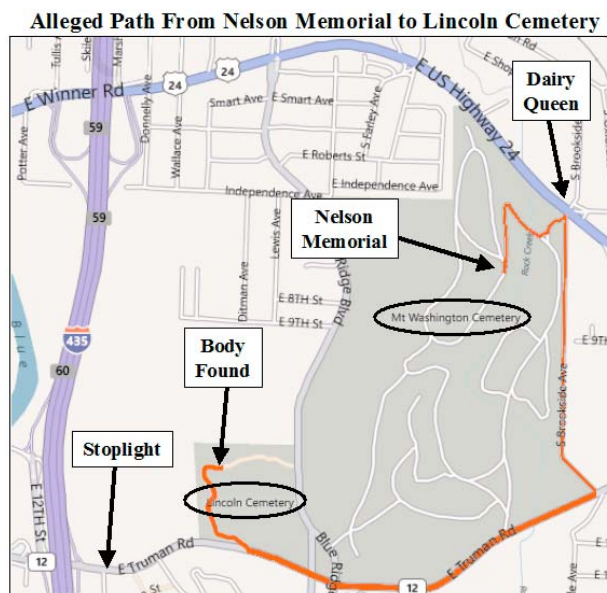
Justin was also obviously suicidal. From Byron's police interview conducted the day before Justin's body was discovered, Byron revealed the following information about Justin's suicidal nature.

I know he had attempts in the past, uh, quite a few actually. Um, and last night he did, after Anastasia got out of the car, he, I don't know, we were driving down Truman Road and ... he was mentioning how, you know he was as like, geez, I don't know, how I'm thinking about, you know, tonight, I should just kill myself. I just thought he was being silly.

...

I mean, he, he, he's talked about a lot of different ways that he's tried. He's tried poisoning himself, like probably about five times, I imagine, I don't know. I mean, we never really got into specifics about it. Uh, I think he once tried to hang himself, but I'm not really sure about that either.

In Kelly's post-rejection version of events, Anastasia did not die as part of a suicide pact, despite Anastasia's previous attempt to kill herself, despite Anastasia's recently expressed intent to attempt suicide again, and despite Justin's obvious suicidal bent. Instead, Kelly claimed that Justin drove the four of them from Mount Washington Cemetery to nearby and little-known Lincoln Cemetery.



There, according to Kelly, Byron shot Anastasia from five feet behind while she was arguing with Justin. Her story is medically, ballistically, and geometrically ludicrous. Because I detail the problems with her post-rejection story in my book, I will not dwell on them here. I will focus instead on time-of-death issues, beginning with the time-of-death as described by Kelly Moffett.

Time-of-Death as per Kelly Moffett

Lincoln Cemetery is a dark place at night. We learn that from the testimony of Deputy David Epperson, the person who discovered Anastasia's body.

A. At 3:44 in the morning, Lincoln Cemetery is very dark. It has no lights, no street lights. There is a lot of trees. And in October, there is lots of leaves on the trees. You can't see any roadways from inside Lincoln Cemetery. About the only thing you can see is lights of Kansas City off in the distance.

Q. ... Would it be fair to say it's pitch black in there, because there is no lights in the cemetery?

A. Yes.

Q. And there are no street lights that shine into Lincoln Cemetery, are there?

A. No, there is not.

By comparison, Kelly testified thus:

Q. Let me stop you for a second. Do you have any idea what time it is at this point?

A. No. It was like -- it was dark enough to where cars had headlights.

Q. Okay. So it wasn't the middle of the afternoon?

A. No.

...

A. It was light enough for me to be able to see that.

Q. So, if an officer said it would have been pitch black in a cemetery, would you agree with that statement?

A. No, I don't.

...

Q. And your testimony is this occurred around dusk and you were able to see; is that correct?

A. Yes.

Sunset on that day was at 6:29 PM. Nautical twilight ended at 7:28 PM. At the end of nautical twilight, general outlines of ground objects may be distinguishable, but only under good atmospheric conditions. The atmospheric conditions on that night, however, were far from favorable for viewing. The moon would not rise until 12:22 AM. It would make no difference in any case. Clouds covered the entire sky, for the entire night.

Kelly's post-rejection version of events demands that Anastasia died soon after sunset. Had Anastasia died earlier, the cars would not have needed their headlights. Had Anastasia died later, Kelly would have been unable to describe the events in precise detail at trial. Had Anastasia died after nautical twilight, Kelly would not have agreed that Anastasia died "around dusk."

If Byron did indeed kill Anastasia as Kelly only later claimed and eventually testified, then Anastasia absolutely, positively must have died much closer to sunset than to midnight.

Time-of-Death as per Dairy Queen Employee Dawn Wright

Dawn Wright was working at the Dairy Queen while Anastasia sat there waiting for Justin, Byron, and Kelly to arrive. She gave an interview just two days later to Detective Gary Kilgore. In a commendable act of evidence preservation, Detective Kilgore recorded that conversation after informing Dawn Wright that he would be doing so. I offer the following segment from Detective Kilgore's transcription of his recording. Dawn Wright is speaking of Anastasia.

She kinda seemed nervous, a little bit upset. And I asked her what was wrong. She goes well ... I have plans with my boyfriend tonight, and ... I lost my ride over there. So I called him to see if he can come pick me up, and he said that he had already made plans with his best friend. She goes, now if that was you and he told you that, what would you do? I said well, I'd ask him what's more important, me or your friend? She goes, well I asked him that, and he said ... that his best friend didn't want me there. ... I said, well I think that you should tell him that he's an asshole and not call him for a couple days. ... I think it was about 9:00, I'm not for sure. It was about 9:00 or so and, uh, I seen her, she ran outside because three people had pulled up. There was two guys and a girl. ... I'm thinking [she arrived] anywhere between 8:00 to 9:00, cause she was here for about a half an hour before we closed, and we close at 10:00.

From Dawn Wright's trial testimony, I offer the following transcript segments.

It was in the 9 o'clock vicinity [that she left]. Whether it was 9 PM or 9:45 PM, I'm not sure. But it was in the 9 o'clock vicinity, because we was getting ready to close within an hour, and we start our closing procedures an hour early down there.

Dawn Wright unequivocally places Anastasia alive in the Dairy Queen well after sunset. Whatever events would then lead to Anastasia's death had not yet occurred. Dawn Wright's statement and testimony therefore places Anastasia's death more likely near midnight than near sunset.

Furthermore, Dawn Wright's statement and testimony absolutely impeaches Kelly's testimony by placing Anastasia alive more than a hour after the end of civil twilight.

Time-of-Death as per Dairy Queen Owner Sulaman Saulat

Sulaman Saulat also was working at the Dairy Queen as Anastasia waited to be picked up. He too was interviewed just 2 days later by Detective Kilgore. Once again, Detective Kilgore recorded and transcribed that interview. From the transcription, I offer the following.

Well she came to my Dairy Queen Wednesday night or Tuesday night, or Wednesday night, the evening. ... I think it was about 7:00 when she came in: 7:00, 7:30, somewhere in there. ... Well, she was here for a long time, ... over an hour, an hour or hour and a half. I asked her was she expecting somebody to come pick her up? And she said yes. And I said are you sure they're coming? She said if they don't, then I'll be really really mad at them if they don't. And then I asked her if she needed anything, because I was going to ask her if, I mean, if she needed a cab or something, I'd call a cab for her, you know. She said she didn't have any money, and that's the whole conversation I had with her. ... It was between 8:30 and 9 :00 I would say. ... Saw two guys and a girl came pick her up.

Sulaman Saulat was not called to testify. The jury did not know that he corroborated Dawn Wright's testimony that Anastasia was alive long after sunset, well beyond dusk.

As did Dawn Wright's statement and testimony, Sulaman Saulat's statement places Anastasia's death more likely near midnight than near sunset.

And as did Dawn Wright, Sulaman Saulat's statement absolutely impeaches Kelly's testimony by placing Anastasia alive more than an hour after the end of civil twilight.

Time-of-Death as per Cemetery General Manager Glen Colliver

Glenn Colliver was the person who chased the four teenagers from Mount Washington Cemetery. I do not have a copy of his police statement. During the trial, he confirmed that he had seen Anastasia sitting alone at the Nelson Memorial, and that he saw her again standing beside a car.

It's the William Rockhill Nelson Family Memorial. ... She was alone. ... That evening about 9 o'clock I saw her. ... At the same location. ... She was standing outside of an automobile with a male. ... I stopped because I wanted them to move on, and there was a male and female standing outside the car ... I was right behind the car, because I wanted them to get out.

Opposing counsel attempted to impeach Glen Colliver's timing by pointing out he told a police officer soon after the murder that the event happened at 7 PM. It is not clear, however, whether Colliver was then referring to his initial viewing of Anastasia sitting alone or to his later viewing of Anastasia standing outside the car. Colliver, however, never wavered in his recollection that he chased them from the cemetery near 9 PM.

It was between 15 until 9 and 9 o'clock, because I know ... the time I left my house. ... And I'm only about five minutes away from the cemetery to my house. ... I know it was 9 because I left my house at my wife's instructions because we watch a television show at 9 o'clock. And she said, if you plan on watching that television show, it's a quarter till 9, you'd better get home. So that's why I had the time in my mind, because I know I left the house with ample time to go down, take care of the task and get back.

Glen Colliver's recollection of 9 PM is consistent with the recollections of the two Dairy Queen witnesses, neither of whom were ever impeached regarding their timing.

While Glen Colliver's timing is subject to multiple interpretations, it is more suggestive of a time-of-death near midnight than it is suggestive of a time-of-death near sunset.



William Nelson Rockwell Family Memorial

Time-of-Death as per Mechanic Don Rand

The day after Anastasia's body was discovered in Lincoln Cemetery, the police conducted a survey of the businesses along Truman Road to determine if anyone had seen Anastasia or Justin. The police thereby established Don Rand as a witness to the events of that evening. Don Rand was a mechanic who worked at the gas station at the intersection served by the stoplight at Truman Road and I-435. The police barely mentioned this significant discovery in a supplemental report.

On 10-24-97, Sgt. Joseph Becker conducted a canvas of the businesses in the Blue Summit area. The purpose of the canvas was to see if anyone had seen Ms. Witbolsfeugen the evening of 10-22-97.

Sgt. Becker located one individual that remembered seeing a female subject he recognized as Ms. Witbolsfeugen walking east on Truman Rd. at approximately 2030 hrs., 10-22-97.

...

Night Mechanic 2pm to 10pm

Don Rand ... Says he remembers the victim walking east across the drive at about 8.30 p.m. He says he looked up, say [*sic*] her walking and thought she was attractive. Couldn't tell if she was upset or emotional at all. Distance of about 50 feet.

Unfortunately, no one interviewed Don Rand carefully to preserve his recollection of that evening. Instead, the only recorded statement from Don Rand comes four years later during the trial, when he was called by the defense. I offer below those portions of his testimony relevant to the time of the event.

Q. Do you recall if you were working that specific evening?

A. Yes, I was.

Q. Can you recall what shift you worked?

A. 2 to 10 every night.

Q. On the evening of Wednesday, October 22nd, did you notice anything unusual happening with any vehicles or pedestrians in the area of your job?

A. I recall a young lady that either just gotten out of a car or was in some type of an argument with somebody in a car at the light of Truman Road and 435 eastbound and from that point on she proceeded to walk away from the car before the light had even changed.

...

Q. You seem to recall that this happened after dusk, that it was dark outside?

A. Yes.

Q. Is there anything about the evening that helps you remember it was dark?

A. As far as cars were driving with their headlights on.

...

Q. And when you talked to the detectives, you told them that you remembered seeing the girl walking east across the drive at about you said 8:30; is that right?

A. Could be about that time, yes.

Q. Pretty dark around 8:30 though, right?

A. Yes. But the Amoco is well lit.

Not only did Don Rand see Anastasia WitbolsFuegen alive after Kelly Moffett claims she had witnessed Anastasia being shot and killed, Don Rand did not mention hearing the gunshot which would have been but 1/3 of a mile away.

Since Don Rand saw Anastasia alive around 8:30 PM, and since he did not report hearing a gunshot despite working until 10 PM, Don Rand's report and testimony places Anastasia's death absolutely closer to midnight than to sunset.

Don Rand's statement, quite simply, fully corroborates the story that both Kelly and Byron first told the police, before either of them even knew of his existence.

Time-of-Death as per Anastasia's Wallet

After Anastasia stepped from Justin's car, and after Don Rand saw her walk by his workplace, she seems to have made it home. This conclusion is based on reports and testimony regarding two personal items: her wallet and the sanitary napkin reported at her autopsy. I will discuss the wallet in this section, and the sanitary napkin in the next.

From Anastasia's autopsy report, we learn that a wallet was not found on her person.

The subject wears black Doc Marten shoes, dark gray socks, black denim pants with "Dungaree" label, a light brown corduroy jacket, size small, with the "Brandon Thomas" label, a dark gray pullover shirt, size medium, with the "Energie" label, a black bra and a black pair of panties containing a sanitary napkin. The pant's pockets contain \$3.65 in bills and change.

Kelly Moffett, however, reported in an interview with Detective Kilgore that Anastasia carried her wallet with her that night.

Q. Did she have a purse?

A. Huh-uh, she had a wallet though.

...

Q. And that night that you guys picked her up at Dairy Queen, did she have a purse or anything?

A. Yeah, she had a wallet. Cause we walked in, and I think it was a wallet. She was messing with like some little like black little thing. Or like dark brown thing on the table, so I like assumed she had a wallet.

Q. Did it look like a wallet?

A. Yeah, mmm-hmm. It was just, yeah. I mean, I didn't like stare at it cause when we looked in and saw her she was kinda sitting there like fiddling with it. But I think that's what it was. Cause she like you know picked it up and put it in her back pocket. So, yeah, I'm guessing it was a wallet.

Anastasia's wallet was not found on her person because it was found at her house, by her father. When interviewed at his home on the same day her body was discovered, he reported:

And she left her billfold here. And driver's license. And credit card.

Robert WitbolsFeugen had arrived home sometime between 9:45 and 10 PM, according to his daughter Francesca, who had arrived home at 9:15 PM. Prior to that, the house had been unoccupied for a while. Robert WitbolsFeugen was mildly concerned about his daughter, having learned earlier (by phone) that his wife (Anastasia's step-mother) had dropped Anastasia off at Mount Washington Cemetery. He believed Anastasia was stranded there without a ride. From a later interview with Detective Kilgore, we learn more about his discovery of her wallet.

And so I looked up in that direction and I think I saw my daughter's billfold lying on the stairway rail there, and I remember picking it up and running and running to her room and thinking I'll do this, she's home. And when I got there and looked around her room. She wasn't there.

In a different report, Anastasia's sister confirmed that Anastasia's wallet had been found at home.

No, she didn't carry purses. She did have a wallet, but she left it at home I guess. Because it's at home.

If Kelly Moffett was correct about seeing Anastasia with her wallet at the Dairy Queen, then Anastasia made her way home sometime before 9:15 PM, left her wallet and departed. She certainly may have made a phone call while she was there. In any case, if Anastasia left her wallet at home after stepping from Justin's car, then her death would have probably been close to midnight.

More significantly, if Kelly was correct about seeing Anastasia's wallet at the Dairy Queen, then Kelly's post-rejection version of events is absolutely false, and Byron Case is factually innocent.

Time-of-Death as per Anastasia's Sanitary Napkin

Recall from Anastasia's autopsy report that she wore "a black bra and a black pair of panties containing a sanitary napkin." That is of considerable interest to us here because Anastasia left her house without any feminine protection, was given a tampon at the Dairy Queen, and was wearing a sanitary napkin when killed.

From Dairy Queen employee Dawn Wright's trial testimony, we learn:

Well, she had been in there for a little while, and she hasn't bought anything; and she was just sitting there. And I asked her if there was anything that she needed, if I could get her anything, that she needed help with anything. And she asked me if she could use the bathroom, and she went to use the restroom. And she came back out and she asked me if I had a pad or a Tampon, and I didn't have anything there. But I just lived maybe a minute and a half, two minutes away, so I called my ex-husband and I had him bring up a Tampon down for her. And she went in the bathroom, and she came back out, and she said thanks.

Opposing counsel then asked Dawn to clarify what she had given Anastasia.

Q. I just want to clarify something. What did you loan the victim? Was it --

A. It was a Tampon.

Q. So it was not a feminine napkin?

A. No. It was a Tampon. And I know I told that guy that I just couldn't think of a polite name.

On re-direct, Dawn maintained that she had given Anastasia a tampon, not a sanitary napkin, despite being pressed by Case's own attorney. Personally, I would not argue with a woman about such issues.

Q. I know this is a weird topic, but I need to ask you about the tampon, Maxipad thing again. When Detective Kilgore interviewed you in 1997, did you say you gave the young lady a Maxipad?

A. Probably.

Q. Okay. Well, would it help refresh your memory to look at it?

A. Yeah, I looked at it out there.

Q. You understand this was tape recorded?

A. Yes.

Q. So you're on tape saying that. Did you tell Detective Kilgore that what you gave the young lady was, quote, a pad, a maxi pad, feminine napkin?

A. I was trying to think of a decent way -- I mean a Tampon just doesn't -- I was trying to be polite about it. I guess I should have just said a Tampon, but it's a Tampon.

Dairy Queen owner Sulaman Saulat's contemporaneous statement confirms that Dawn Wright gave Anastasia a tampon.

O. Anything else at all that you can remember?

A. Well, she was on her period.

Q. And how do you know that?

A. Cause she asked Dawn for a tampon.

Given that Anastasia did not have a sanitary napkin with her at the Dairy Queen, and given that she used a tampon while at the Dairy Queen, and given that she had no opportunity to switch before stepping from Justin's car, it is likely that she changed at home sometime before 9:15 PM. Given that the events leading up to her death had yet to take place, it is probable that her death was near midnight.

More significantly, if Anastasia WitbolsFeugen was given a tampon by Dawn Wright, then Kelly Moffett's post-rejection version of events is absolutely false, and Byron Case is factually innocent.

Time-of-Death as per the Gunshot

Anastasia's father, Robert WitbolsFeugen, began searching for her sometime after 9:45 PM on the night of her disappearance. He stopped at the Independence Police Department between 10:30 and 11:00 PM. He then traveled along Truman Road and stopped at the closed south gate of Mount Washington. He stepped from his car. As he was standing there, he heard a gunshot. "At that time I knew my daughter was dead."

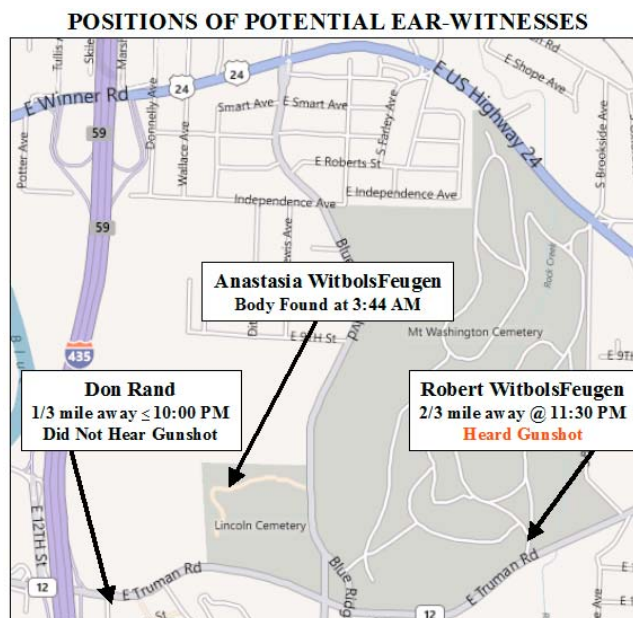
One day after Anastasia was found, Robert WitbolsFeugen talked to Deputy David Epperson. Epperson, as you may recall, is the person who discovered Anastasia's body. From his report of his encounter with Robert WitbolsFeugen, I offer the following.

Mr. Witbolsfeugen then began advising the following information: At 2330 hours [11:30 PM], 10-22-97, he was looking for Anastasia when he stopped at the gate of Mount Washington cemetery (where he had dropped her off at 1630 hrs [4:30 PM], this date, with her friends). He stated that the gate was locked and he pondered for a moment, hopping the fence, to go into the cemetery searching for his daughter because he sensed she was in real danger. At that time he advised he heard a loud gun shot, possibly from a large caliber rifle, and he immediately turned in the direction of the Cimarron Apartments, believing the noise came from that direction. Mr. Witbolsfeugen stated at that time he clapped his hands together and yelled "boom" "There goes the neighborhood." Mr. Witbolsfeugen then stated "at that time I knew my daughter was dead."

Four days later, Robert WitbolsFeugen gave one of several interviews to Detective Kilgore. From that interview, I offer the following.

I'm in front of the Mt. Washington Cemetery on Truman Road side. In front of the gate. I had turned my car off, just parked it. Standing out there wondering what else I could possibly do, what, some area where I possibly haven't looked. And I hear this shot and an echo ring out. And I'm going "Like, well that speaks for the neighborhood." Couldn't determine where it was from. ... I wound up looking at the Cimarron Apartments, kinda saying, I'm glad I don't live there. Uhm, there goes the neighborhood. But then I immediately turned my thoughts back to Anastasia and the fact that she was here somewhere and that she was in danger.

Robert WitbolsFeugen did not testify at trial. In the map below, I show where he was standing relative to where Anastasia's body was discovered. For comparison, I also show where Don Rand worked.



Assuming the shot Robert WitbolsFeugen heard was the one that killed Anastasia, then his ear-witness evidence places Anastasia's death absolutely near midnight.

Time-of-Death as per Skin Temperature

The field investigator for the Medical Examiner's office arrived at Anastasia's murder scene at 5:05 AM. Had he troubled himself to measure the body's core temperature, he would have found her core temperature to be around 92 °F if she had died near midnight, and around 81 °F if she had died near the end of nautical twilight. In other words, we wouldn't be discussing this issue today.

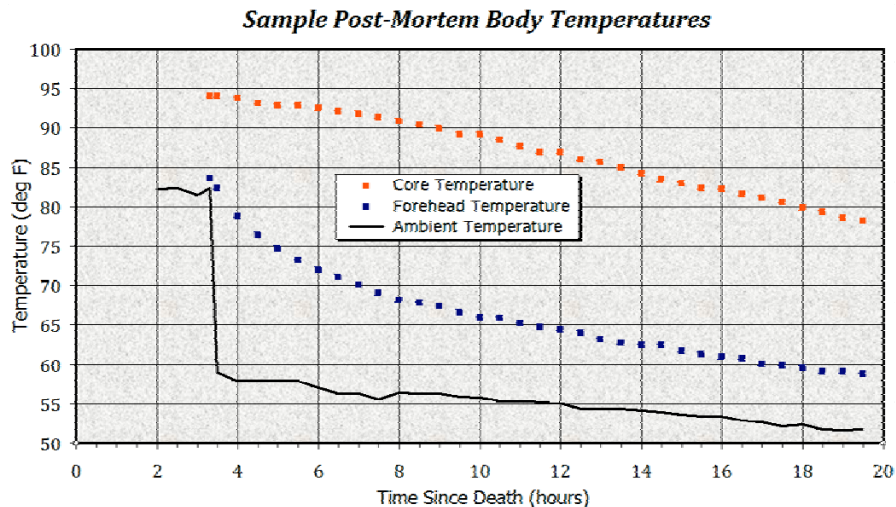
Unfortunately, no one at any point measured Anastasia's body temperature. One of the best established time-of-death estimates (for recently deceased bodies) was thereby lost to the State forever. The only body temperature evidence preserved was an observation made by the diligent Deputy Epperson. From his report, in which he refers to himself as "the R/D", I offer the following:

The R/D observed the victims skin to be bluish gray and cool to the touch, and the victims eyes to be open wide.

In one sentence, Deputy Epperson managed to preserve three time-of-death markers, if only crudely. I'll discuss the skin temperature marker in this subsection and discuss the other markers later.

Skin temperature is not generally used as a time-of-death marker, though it could be. As would be expected, actual skin temperature measurements of cadavers in controlled environments show that the exposed skin temperature drops far more rapidly than does the body's core temperature. The outside of a warm object cools down much faster than the inside.

Below I provide one set of measured post-mortem body temperatures. In the case presented, the person died of natural causes in a hospital setting. Core and forehead temperature measurements began at 3 hours postmortem and continued until 20 hours postmortem. For the first 3.5 hours, the body was left at room temperature, after which time it was moved to colder conditions, presumably the morgue. From the core temperature curve, it appears as if the person's core temperature was approximately 95 °F shortly before death. The skin temperature would have been slightly lower at that point.



What is important to our understanding of Anastasia's time-of-death is that the exposed skin temperature dropped rapidly after death. In the sample above, the skin temperature dropped by approximately 12 degrees after three and a half hours, even though the body had been kept in warm conditions for most of that time. After eight hours, the skin temperature dropped by approximately 25 degrees.

Anastasia's skin temperature would have dropped more rapidly than in the example above, since the ambient air temperature in Independence on that day was near 52 °F from 7 PM onwards. Had Anastasia died near midnight, her exposed skin temperature would have been at least 12 degrees cooler than normal. Had she died near the end of nautical twilight, her skin temperature would have been at least 25 degrees colder than usual.

Deputy Epperson did not measure her skin temperature. He made only a subjective assessment. He described her skin temperature as "cool." He did not describe her skin temperature as "cold."

Humans are actually pretty good at detecting, by touch alone, abnormal skin temperatures. If a child has a fever with a temperature only 6 degrees above normal, a parent who touches the child's forehead is apt to describe the child as "burning up." If a friend touches the skin of a person who has been exposed to the cold outside air for any length of time, the friend is apt to describe the person as "freezing."

The argument in Anastasia's case is simple, and while not compelling, it is mildly persuasive. Had Anastasia been killed before the end of nautical twilight, her body would have been exposed to 52 degree air for more than 8.5 hours by the time Deputy Epperson discovered it. Her skin temperature would have by then dropped well within 10 degrees of the ambient temperature. It's unlikely that anyone who touched the skin would describe it as "cool."

Given that Deputy Epperson described Anastasia's skin as "cool", and given the subjective nature of that observation, Anastasia's skin temperature at the time of her discovery places her time of death more likely near midnight than near sunset.

Time-of-Death as per Skin Coloration

When the heart ceases to function, the blood begins to slowly flow from the uppermost to the lowermost portions of the body. The earliest manifestation of this phenomenon is pallor mortis, from the Latin for paleness after death. Soon after death, the uppermost portions of light-skinned individuals, such as Anastasia, will become pale. The onset of pallor mortis is so quick that pallor mortis is generally not useful as a time-of-death indicator.

A later manifestation of gravitational blood settling is livor mortis, from the Latin for blueness of death. As the blood pools at the lowermost portions of the body, those portions turn dark blue or purple. Nominally, livor mortis will become noticeable 2 to 4 hours after death. It will become fully fixed sometime after 8 hours postmortem. Livor mortis is deemed to be fixed when the skin will not blanch in response to a finger press.

Anastasia laid on her back from the time she was killed at least until the time she was transported from the scene. It's likely she remained on her back even after transport. During that time, the front of her body (including her face) tended to become more pale, while the back of her body tended to become dark blue or purple.

When Deputy Epperson discovered her body at 3:44 AM, he made an interesting observation about her skin color. "The R/D observed the victims skin to be bluish gray ..." The fact that Anastasia's skin was not by then pale suggests that she was killed not long before she was discovered.

The investigator from the medical examiner's office arrived at 5:05 AM. He allowed the body to be transported at 6:15 AM. In his astoundingly brief report, he addressed the state of Anastasia's livor mortis only to note he did not check it. "The body is fully dressed and post mortem lividity is not assessable." Once again, had he checked the state of Anastasia's livor mortis and had it not yet been noticeable, we would not be discussing the issue today.

Anastasia's autopsy began at 9:30 AM. Dr. Thomas Young assessed the state of her livor mortis thus: "Livor mortis is faint and posterior, mostly in the buttocks and legs. Livor mortis is mostly fixed but focally blanching." Even 9.5 hours after midnight, 14 hours after the end of nautical twilight, Anastasia's livor mortis was not fully fixed.

Anastasia's post mortem skin coloring places her time of death more likely near midnight than near sunset.

Time-of-Death as per Rigor Mortis

The term rigor mortis is from the Latin for stiffness of death. After death, the muscles begin to stiffen. The stiffness becomes noticeable first in the smallest muscles and last in the largest muscles. Because of the muscular organization of the human body, rigor mortis tends to proceed from head to toe. The eyelids and jaws stiffen first, then the neck, arms, torso, and finally the legs.

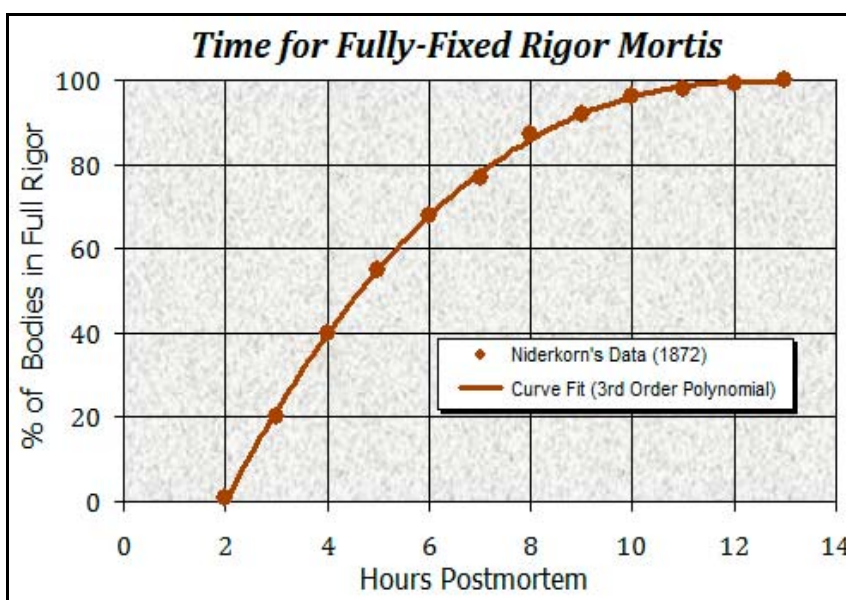
The ME investigator recorded the state of Anastasia's rigor as "2+". The investigator has since died, and no one else involved in the case seems to know the precise meaning of "2+". Dr. Young himself explained, in an email exchange, that he interpreted "2+" to mean that her rigor was "moderately formed and not fully developed". Dr. Chase Blanchard, who testified in place of Dr. Young, offered the following thoughts during her deposition:

That means that's very subjective. I don't even know what the top number is that he is referring to, whether it's three plus or ten plus. To me that means there is some rigor mortis that he can appreciate.

Both doctors make clear that Anastasia's rigor was not complete when the ME examined her soon after 5:05 AM. Anastasia's rigor was fixed when Dr. Young began the autopsy at 9:30 AM.

I find only one study documenting the onset timing of rigor mortis. Amazingly, that study dates back to 1872. Dr. P. F. Niderkorn then made hourly observations of 114 bodies from their time-of-death to the time when rigor was fully developed. I repeat Niderkorn's data below in both tabular and plotted form.

2 hours since death:	2 cases in which rigor was complete
3 hours:	14 cases
4	31
5	14
6	20
7	11
8	7
9	4
10	7
11	1
12 hours:	1 case
13 hours since death:	2 cases in which rigor was complete



Niderkorn's data indicate that it is highly unlikely Anastasia was killed before the end of nautical twilight the previous day. That would be 9.5 hours prior to the beginning of the ME investigator's on-scene examination. Referring to the curve fit of Niderkorn's data, rigor would have by then been fully fixed in 94% of all cases in which rigor was fully fixed.

In other words, even if Anastasia's rigor had been more advanced than it was, there would be only a 6% chance she died prior to the end of nautical twilight, based on rigor mortis calculations alone. On the other hand, even if Anastasia's rigor had been more advanced than it was, there would still be more than a 55% chance that she died sometime after midnight.

The state of Anastasia's rigor indicates that Anastasia probably died close to midnight.

Time-of-Death as per Corneal Clarity

Anastasia died with her eyes open and her corneas clear. Together, those two observations establish that she was probably killed near midnight. Allow me to explain.

Recall that Anastasia's eyes were open when her body was discovered by Deputy Epperson.

The R/D observed the victims skin to be bluish gray and cool to the touch, and the victims eyes to be open wide.

Her corneas must have been clear when Epperson discovered her because her corneas were clear still when examined by Dr. Young during her autopsy.

The body was brought to the morgue fully clothed and in a white tarp. ... Rigor mortis is well developed and generalized. Livor mortis is mostly fixed, but focally blanching. The corneas are clear.

After death, the eyes begin to dry and to undergo autolysis. Autolysis is from the Greek for self splitting. The word refers to the process of an organ consuming itself via its own enzymes.

Within minutes, these natural assaults on the eyes cause a thin film to appear over the cornea. Hours or days later, the corneas will become cloudy, then opaque. The rate at which these changes occur depends on multiple factors, including the position of the eyelids. If the eyes remain open after death, the corneas cloud quite rapidly, within a few hours. If the eyes are closed postmortem, then the corneas may remain clear for several days.

Ocular changes

- Thin film appears over the cornea of opened eye within minutes of death (closed eyes-hours)
- Corneal cloudiness (2-3 hours in open eyes and 24 hours in closed eyes)

Dr. Michael M. Baden is a renowned pathologist and was the Chief Medical Examiner in NY City and for Suffolk County.

Dr. Baden was on the panel that investigated the assassinations of president John F. Kennedy and Dr. Martin Luther King, Jr. He has been involved as an expert in forensic pathology in many cases of international interest including:

- The remains of Tsar Nicholas of Russia and his family
- The Claus Von Bulow murder trial
- Expert witness for the defense in the O.J. Simpson trial
- Re-autopsy of Medgar Evers, Civil Rights leader
- Re-examination of the Lindberg Kidnapping and murder
- Autopsies of the victims of TWA Flight 800

Dr. Baden is the host of [HBO's Autopsy](#) series and is featured on many of the crime talk shows.



Multiple authoritative sources claim that corneas cloud over within 3 hours of death if the eyes remain open, and within 24 hours of death if the eyes are closed. One of the more prominent authorities on the matter is "renowned pathologist" Dr. Michael Baden. I presented just above two clips from one of his presentations.

From *Forensic Pathology of Trauma: Common Problems for the Pathologist* by Michael J. Shkrum and David A. Ramsey, we find:

Another eye change is corneal clouding. It occurs 2 to 3 h after death, if the eyes are open, and by 24 h if they are shut.

From *Spitz and Fisher's Medicolegal Investigation of Death: Guidelines for the Application of Pathology to Crime Investigation* by Werner U. Spitz, we find:

When the eyes remain open, a thin film may be observed within minutes on the corneal surface, and within two or three hours corneal cloudiness develops. If the eyes are closed, the appearance of the corneal film may be delayed by hours and that of corneal cloudiness by twenty-four hours or longer.

I have continued researching this subject since completing my book on Byron's case, and have since discovered two studies that provide additional insight.

- Wroblewski and Ellis wrote of 300 postmortem eye examinations in their 1970 work "Eye Changes after Death." They reported that only 74% of the corneas they examined were cloudy after 36 hours. They noted also that some corneas clouded over within one half-hour postmortem. Also, 48% of the corneas they examined between 1.5 and 2 hours of death were cloudy. Finally, they reported that onset of corneal cloudiness could be delayed by keeping the eyes artificially moist.
- BK Prasad wrote of 150 postmortem eye examinations in his 2003 work "Post-mortem Ocular Changes." He reported that all examinations took place more than 4 hours postmortem, and that in only 10 cases were the corneas not cloudy.

In neither study did the authors distinguish between eyes-open and eyes-closed subjects.

The weight of the scientific evidence is that corneas cloud over quickly if the eyes remain open after death, and cloud over much more slowly if the eyes are closed (or presumably otherwise protected). In Anastasia's case, it seems as if her corneas were clear upon discovery because she had been killed near or after midnight, and her corneas were clear at autopsy because her body had been wrapped in a tarp.

If Anastasia had been killed before the end of nautical twilight, she would have had to lie there for more than eight hours with her eyes "open wide" before being discovered. It is exceptionally unlikely, in that case, that her corneas would have been clear upon discovery. Recall that Wroblewski and Ellis found that 48% of the corneas they examined within only 1.5 and 2 hours of death were already cloudy. Some of those eyes may have been closed; most were probably open. Recall also that Prasad found cloudy corneas in 93% of his examinations, since all of his subjects had been dead for 4 hours or more.

Anastasia's open eyes and clear corneas therefore establish her time of death as probably near midnight.

Time-of-Death as per the Date of Death

The investigator for the ME's office filled out report form and narrative describing his on-scene examination of Anastasia's body. In that form, he entered "10/23/97" as the *Date of Injury*. That would be the same day that Deputy Epperson discovered the body. Quite simply, the ME investigator filed a formal report stating that Anastasia WitbolsFeugen was injured on the same day she was discovered. That would be after midnight.

There is no reasonable possibility that when the ME investigator entered 10/23/97 in the *Date of Injury* field, he was merely describing the day the body was discovered. There was a separate field for the discovery date. On the form, it was called the *Incident Date*. In the field for *Incident Date*, the ME investigator entered 10/23/97. In the field for *Incident Time*, the investigator entered 0344. The incident date and time correspond perfectly with the discovery date and time reported by Deputy Epperson.

Nor is there any reasonable possibility that when he entered that date, he was merely describing the date of his investigation. There was a separate field for the date of his investigation. In the form, it is called the *Report Date*. In that *Report Date* field, he entered "10/23/1997." In the *Report Time* field, he entered 0410. The *Report Date* and *Report Time* fields apparently correspond with when he was notified of a body to be investigated.

Nor is there any reasonable possibility that the ME investigator was required to write a specific date in that *Date of Injury* field. Assuming he was not confident about the date of Anastasia's injury, he could have simply left the field blank. Alternatively, he could have typed "UNKN." He did, for example, type "UNKN" in the *Time of Injury* field.

The standardized Medical Examiner Investigator Report attests that the investigator is qualified to estimate the date and time of injury. It does so by providing the investigator fields for entering that information.

The ME investigator who examined Anastasia's body evaluated the state of her rigor. He must therefore have touched her skin and made at least an unconscious assessment of its temperature. He must have also seen the color of her exposed skin. He must have seen the clarity of her eyes.

We cannot ask him now what he felt or what he saw, because he has since died. We can only go by the information he placed on his official Medical Examiner Investigator Report. In that report, he willfully entered 10/23/97 as the Date of Injury. He chose to enter UNKN for the Time of Injury. We are left with the inescapable conclusion that he believed, based on his training and his examination of Anastasia's body, that she was shot sometime after midnight, but he was unable or unwilling to specify the time more precisely.

The Medical Examiner Investigator Report establishes absolutely that Anastasia WitbolsFeugen was killed near or after midnight.

Similarly, Anastasia's Certificate of Death (signed by Dr. Young) lists her *Date of Death* as *OCTOBER 23, 1997*. Once again, that is the same day that Deputy Epperson discovered her body. Once again, that is after midnight.

It is possible, of course, that the Certificate of Death needed a specific *Date of Death*, even if that date could only be approximated. It is not reasonable, however, that the same certificate would demand a date in the *Date of Injury* field if such a date was not known. In the *Time of Injury* field, for example, Dr. Young entered *UNKN*.

In the *Date of Injury* field, however, Dr. Young entered 10-23-97.

Summary and Prayer for Relief

Time-of-Death considerations establish with certainty that Anastasia was killed close to midnight, and they do so to the detriment of Kelly Moffett's veracity and her claim to the contrary.

TIME-OF-DEATH SUMMARY

	Absolutely Close To Sunset	Probably Close To Sunset	More Likely Close to Sunset	More Likely Close to Midnight	Probably Close To Midnight	Absolutely Close To Midnight
Kelly Moffett Claims Anastasia Murdered						
DQ Employee Sees Anastasia Alive						
DQ Owner Sees Anastasia Alive						
Cemetery GM Sees Anastasia Alive						
Auto Mechanic Sees Anastasia Alive						
Anastasia's Wallet						
Anastasia's Sanitary Napkin						
Anastasia's Father Hears Gunshot						
Skin Temperature						
Skin Coloration						
Rigor Mortis						
Corneal Clarity						
Date of Death						

Byron Case clearly did not murder Anastasia WitbolsFuegen. Someone killed her near midnight and Byron was then at home. His mother places him there and Kelly Moffett herself places him there. She called him slightly before midnight and they spoke about the events of the day, fretting about Anastasia. Kelly does not dispute that Byron was then at home. No one does.

Four eye-witnesses saw Anastasia alive well after dusk, well after the time of day when Kelly claimed she witnessed Anastasia being murdered.

One eye-witness actually saw Anastasia step from the car and walk towards home, well after dusk, just as Byron has always claimed, just as Kelly claimed until Byron left her for St. Louis.

One ear-witness, Anastasia's own father, places her time-of-death absolutely near midnight. Don Rand did not hear any such gunshot, though he was only half the distance to the crime scene. Don Rand did not hear the shot because he went home at 10 PM.

Anastasia's wallet somehow made it home, well after dusk.

The tampon provided by Dawn Wright (well after dusk) was not found with Anastasia's body. Since there was absolutely no opportunity in Kelly's post-rejection story for Anastasia to replace the tampon with a sanitary napkin, Kelly's post-rejection story must be false.

Four medical time-of-death markers place Anastasia's death near midnight. Her skin temperature and coloration, the incomplete stiffness or her muscles, and the clarity of her corneas all testify to Byron's innocence.

The Medical Examiner Investigator Report formally specifies the date of Anastasia's injury as the 23rd, sometime after midnight, well past dusk the previous day. The ME investigator was not obliged to enter that date.

Anastasia's Death Certificate formally specifies the date of her injury as the 23rd, sometime after midnight, sometime well past dusk the pervious day. Dr. Young was not obliged to enter any date in that field

Had the jury been presented the time-of-death evidence I now present to you, we would not be corresponding today. I say this with confidence based on my four experiences as a juror.

I have served as a juror for a drive-by shooting, an assault and battery, a multi-victim child molestation case, and a first-degree murder. I have voted both guilty and not guilty. I have favored counts more

serious than preferred by my fellow jurors, and have argued for counts less serious than preferred by the others.

I am confident that no jury of twelve citizens would have found Byron Case guilty of murder had they been presented the time-of-death evidence I have summarized herein. One of the many tragedies in this case is that the jury was left completely uninformed about the time of death issues.

The jury heard not a whit from Dr. Young, or from the ME investigator, or Anastasia's father, or Dairy Queen owner Sulaman Saulat. None of those four were called to testify.

The jury heard absolutely nothing about the medical time-of-death markers placing Anastasia's death near or after midnight. As I recall from the trial transcripts, the words time of death were never even mentioned contiguously and in that order.

The jury did hear from Wanda Wright and from Glen Colliver. The testimony Ms. Wright and Mr. Colliver provided was, however, not inconsistent with the testimony Kelly provided, unless the jurors realized the subtle time of day discrepancies. Byron's court-appointed counsel did not himself recognize those discrepancies, and did not argue them to the jury.

The jury did hear from Don Rand. They heard he saw the woman only from a distance and only while it was dark. They chose not to believe him. They chose instead to believe the embittered young woman who said she witnessed the murder up close, when it was still light enough to see.

Governor Nixon, I pray that after careful consideration of Byron's petition and this letter, you will grant him an absolute pardon. If it would be helpful, I would be pleased to meet with you and discuss any matter associated with this case.

Respectfully,

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