

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NORTH DAKOTA
3 SOUTHEASTERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs.

Crim. No. (2 85-69

7 LOREN GREY BEAR, et al.,

8 Defendants.

9
10
11 TRANSCRIPT

12 of

13 PROCEEDINGS

May 15, 1986

4:25 o'clock P.M.

(Closing Argument Of Gerald Haga)

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19 J. S. District Courthouse
Old Federal Building
20 Fargo, North Dakota

21 BEFORE: SENIOR JUDGE PAUL BENSON
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A P P E A R A N C E S

DENNIS FISHER, LYNN CROOKE & NORMAN ANDERSON
Assistant United States Attorneys
Fargo, ND
COUNSEL FOR PLAINTIFF

DAVID THOMPSON
Attorney at Law
Fargo, ND
COUNSEL FOR LOREN GREY BEAR

THOMAS L. ZIMNEY
Attorney at Law
Grand Forks, ND
COUNSEL FOR JESSE CAVANAUGH

GERALD HACA
Attorney at Law
Grand Forks, ND
COUNSEL FOR PAUL CAVANAUGH

A. DANIEL VOGEL
Attorney at Law
Fargo, ND
COUNSEL FOR TAYRON DUNN

KEVIN SPAETH
Attorney at Law
Grand Forks, ND
COUNSEL FOR MAYNARD DUNN

ALLEN J. FLATEN
Attorney at Law
Grand Forks, ND
COUNSEL FOR TIMOTHY LONGIE, JR.

ALAN J. LARIVEE
Attorney at Law
Grand Forks, ND
COUNSEL FOR ROGER CHARBONEAU

MICHAEL DALEY
Attorney at Law
Grand Forks, ND
COUNSEL FOR DWAYNE CHARBONEAU

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A P P E A R A N C E S

MARK R. PRAASE
Attorney at Law
Fargo, ND
COUNSEL FOR LEONARD FOX

BRUCE BOILMAN
Attorney at Law
Grand Forks, ND
COUNSEL FOR RICHARD LAFUENTE

WARREN C. SOGARD
Attorney at Law
Fargo, ND
COUNSEL FOR JOHN PEREZ

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MR. HAGA: If it please the Court.

THE COURT: Mr. Haga.

MR. HAGA: Counsel, members of the jury. My name is, again, Gerald Haga and I represent Paul Cavanaugh. Without sounding like a broken record, I too want to thank you members of the jury for the effort you put in on this case and you will continue to put in on this case. The others have said, I too have made the observation that you have obviously worked very hard in this case to pay attention to all of the evidence and are probably at this very moment working very hard to listen carefully to the arguments of the attorneys as we draw later into the afternoon and I appreciate that on behalf of my client and all the rest of the attorneys involved.

I think there have been outstanding arguments made by other attorneys and I know there are going to be arguments made by others following me and I'm not going to repeat those or anticipate them while saying the poor investigation was done of the incident 24 to 48 hours following it, the role that James Yankton had in this case, about the certain witnesses that have been provided in the case could help mostly assist you in understanding what's happened, what did not happen and about the physical facts that were gathered or were not gathered by investigators in this case.

1 I agree with everybody else who said that the
2 death of Eddie Peltier was a tragedy. There is no question
3 about it. But I ask that we not compound it by convicting 11
4 people for a crime that they did not commit, crime that was
5 not committed by anyone.

6 Mr. Fisher in his opening arguments appealed, I
7 think, to your emotions. I don't want to do that and I don't
8 think any of the other defense counsel have done that. I
9 think we have tried to point out carefully to you the
10 evidence that has been presented in the case to help you
11 understand the case and to reach a just verdict.

12 I want to visit with you about my client Paul
13 Cavanaugh. In doing so, I will be discussing two fundamental
14 issues in the case: was there an all night drinking party
15 at the home of Bernice Juarez and Domingo Juarez in her yard
16 and was there a fight that followed with the death of Eddie
17 Peltier resulting from it.

18 The evidence in this case was clear that Bernice
19 and Domingo along with others in the family were home that
20 night. I think it's clear that they would have heard the
21 type of party described by the prosecution witnesses.
22 Certainly would have heard the type of fight up in the yard
23 described by the prosecution witnesses. I think it's clear
24 that if they had heard such a party with such a fight,
25 Bernice and Domingo would have been in that yard in a

1 microseconds.

2 Why do I say the evidence is clear that they were
3 here? You saw on that witness stand Bernice Juarez testify.
4 As Mr. Thompson indicated to you, one of the primary
5 functions of the jury is to watch the witnesses, not only
6 listen to what they say but listen to how they say it and
7 judge for yourself the credibility of that witness. I think
8 that Bernice Juarez is a credible witness. Mr. Fisher has,
9 and I'm sure Mr. Crooks will make much of the fact that she
10 is Paul and Jesse Cavanaugh's mother and she is related to
11 others. But I don't think that was the factor that was
12 involved in her testifying. I think she was a believable
13 witness and we put in evidence regarding Bernice's background.
14 Mr. Fisher ridiculed that but I think you can tell from her
15 testimony, the testimony of Curtis Marcus, Bernice went
16 through a fundamental change in her life about April of 1983
17 that affected many things. It affected the way she viewed
18 the consumption of beer or alcohol in her home or around her
19 home or even by her children. That is unrefuted by the
20 government.

21 Domingo Juarez testified also and I think you
22 heard him testify that as of January 1, 1983 he quit drinking
23 and he was opposed to it. As I say, that testimony was
24 uncontroverted.

25 Also they were home that night. I don't think

1 there is any question about that and I think having them home
2 they would have had to have heard that party.

3 We have in evidence a number of pictures and a
4 number of exhibits that you will take with you to the
5 deliberation room, but I want you to take a look at these
6 right now as best that you can and I know they are kind of
7 small but it shows a portion of the Juarez house. In using
8 this picture, remember that Bernice Juarez pointed out where
9 the windows to her bedroom were and they are right there and
10 that looked right out on the driveway portion of their home.
11 There is another exhibit that will go with you in evidence
12 and it shows the Juarez house and again the bedroom area
13 looking out and the driveway here. And I think the effect of
14 those exhibits is this: well, also reminding you that
15 Bernice, Domingo testified, and it was uncontroverted, it was
16 a hot summer night, their house was not air conditioned and
17 those windows were open. Now given that and given the
18 testimony of the prosecution witnesses who have told you that
19 from 9:00 or 10:00 o'clock at night until 5:00 or 5:30 in the
20 morning there were 25 or more people in that yard drinking,
21 talking, laughing, sometimes loudly and this is even before
22 the fight starts, is it believable that Domingo or Bernice
23 would not have woken up early on and detected the presence of
24 that party?

25 On cross examination of Bernice we asked did you

1 hear when Annabel came and Loren came and switched cars with
2 Annabel? I think her testimony was honest. She couldn't
3 recall that. I think there is an easy explanation for that,
4 a believable one. People hear lots of things that they don't
5 even consciously know they hear at the time or certainly
6 don't remember a few days later that they heard. The reason
7 is that there is everyday sounds. They are sounds they are
8 used to, they are sounds that they are not alarmed by so
9 there is no reason to remember them. Bernice has a lot of
10 children, they come and they go, they come in the house, they
11 leave the house. I think Paul testified that he had a memory
12 that that night after Annabel had come in and after Isabel
13 had asked if Paul would continue to watch their baby that
14 Bernice came out in her nightgown and said, "oh, you're still
15 here." Bernice honestly couldn't remember that and that's
16 the way she testified. But the kind of sounds we are talking
17 about with this party of 25 people, not even getting to the
18 fight yet, is the type of sound that is not normal for
19 Bernice, the type of sounds that raises the red flag with her
20 and it's almost like setting off a siren.

21 Every now and then I try to go on a diet and I
22 can tell you that when I am that if I get up at 3:00 o'clock
23 in the morning and sneak into the kitchen, I swear to you my
24 wife can hear that refrigerator door opening from about 60
25 feet away because she doesn't want me breaking that diet, and

1 shit's perhaps a somewhat frivolous analogy but I'm here to
 2 tell you that Bernice Juarez from April, '83 on was
 3 hypersensitive to the drinking of beer in her house or around
 4 her yard or around her premises and she would have heard a
 5 gathering of 25 or more people having a party all night long
 6 right next to her bedroom window. In fact, I think she would
 7 have been awoken by the first beer can hitting the gravel in
 8 that driveway.

9 But here not just dealing with the sounds of the
 10 party, prosecution witnesses, their alleged eyewitnesses that
 11 have come up here and told you about two or three fights,
 12 maybe one argument and two fights, the last one, according to
 13 Fred Peltier, started right up near the house, my
 14 recollection of his testimony. That means it was right up
 15 next to her bedroom window. The prosecution witnesses talk
 16 about yelling, shouting, punches. Is it believable that
 17 Bernice and Domingo, let alone Paul or Annabel or Cheryl,
 18 would not have heard that? I don't think it is. There was
 19 more noise as, according to prosecution witnesses and Mary
 20 McDonald, four or five cars parked in the Juarez driveway all
 21 of a sudden started up, started up their motors, presumably
 22 were spinning around to get out of the driveway and Patricia
 23 DeMarce tells us about a collision that occurred in the
 24 driveway between the El Casino and the Peltier car. Is it
 25 believable that that could not have been heard by Bernice or

1 Domingo or both of them? I don't think so. I think it also
2 clear that if such a party had been taking place and they
3 would have heard it that Bernice and Domingo would have done
4 something about it.

5 You saw both of them testify. You saw Domingo
6 Juarez testify and he told you things about himself. He is a
7 man with a first grade education, he's worked hard all his
8 life, who for the past 30 some years has been employed steady
9 in the state and he had the marriage now to Bernice Juarez
10 and they have a daughter from that, daughter named Loupe and
11 you think that he would jeopardize that by coming in here and
12 perjuring himself in this case and do you think with the way
13 he viewed drinking and the way Bernice viewed drinking that
14 he would have sat on the door step of that house, as one of
15 the prosecution witnesses suggested to you, and done nothing?
16 I don't think so.

17 The evidence is uncontroverted that on at least
18 two prior occasions following April of '63 Bernice here went
19 and contacted the police when she found Paul or Jesse
20 drinking in their yard. From there do you really think that
21 Paul and Jesse would be participating in an all night
22 drinking party with 25 or more people right next to the
23 bedroom windows of their mother and Domingo with that kind of
24 a background? I submit to you it's unbelievable.

25 Curt Marchus, as I mentioned, testified. Mr.

1 Machus is a man with a responsible position with the Devils
 2 Lake Sioux Manufacturing plant, supervises, I believe, around
 3 25, 26 people. He testified that he attended the same church
 4 that Bernice did and that Sunday, August 28, Bernice came to
 5 that church shortly after 10:00 that morning with a couple of
 6 friends, one relative and one friend and he testified under
 7 oath that Bernice was calm, happy, excited by aunt Tilly,
 8 that she was not nervous, not upset. Curt Machus is not
 9 related to anybody in this case. He has no axe to grind with
 10 anybody. Wouldn't you think that if a mother of two boys,
 11 some other relatives that had just been involved in a brutal
 12 murder described by the prosecution witnesses was aware of
 13 that, she'd have to be aware of it, you think she could go to
 14 church that morning and be calm and happy? I don't think she
 15 is a hypocrite.

16 The wild inconsistencies of the prosecution's
 17 alleged eyewitnesses has been touched on and I'm not going to
 18 go into it, repeat it a great deal. There were a couple of
 19 things that I heard from the prosecution eyewitnesses.
 20 Remember, I asked several of them if they could describe the
 21 yard of Bernice Juarez since they had been there from 9:00
 22 o'clock, 10:00 until daybreak of the next day. Mrs. DeMarce
 23 could not describe it. I said, "Is there anything unusual
 24 about it?" She said no. I asked another one of them, "Is
 25 there anything unusual about it?" "Not that I can remember."

1 Well, we have introduced in evidence pictures of Bernice
 2 Juarez' yard and I think, I'm just going to show a few of
 3 them to you, you can look at them all in the jury room. I
 4 don't know in my entire life if I have ever seen a more
 5 unusual yard and surely if these people had been in that yard
 6 from 9:00 o'clock on Saturday night until 5:00 o'clock the
 7 next morning they would have noticed. How do you miss
 8 something like that? How can you testify up on that witness
 9 stand you didn't notice anything unusual about a yard like
 10 that?

11 Incidentally, I believe the record and the evidence
 12 will show that the wishing well that Mylo Smith so
 13 desperately hung to was not built until 1965 because it's the
 14 only one that he would have had any chance to have seen this
 15 red flashing radio tower light that he claims to have seen.

16 Paul Cavanaugh took the stand. You heard his
 17 testimony. He does not have a miraculous memory that Mr.
 18 Fisher so sarcastically accused him of having. He states
 19 that he was home Saturday, Sunday, August 27th and 28th, that
 20 he was home with Cheryl Bull and tried to tell you to the
 21 best of his memory what he did Saturday night and to the best
 22 of his memory what he did Sunday morning. The events of that
 23 weekend with frozen somewhat for Paul because on September 2
 24 about five days after the 26th he was taken down to the BIA
 25 blue building, the police building, and interrogated by the

1 agents. You've heard about, where is whereabouts that
2 weekends and a few days after that he was taken before the
3 grand jury here in Fargo and again was interrogated. So what
4 things he does remember are not the result of any miraculous
5 memory but because, number one, he heard about the death of
6 Eddie Peltier and, number two, it was apparent that somebody
7 thought he had something to do with it and he was subjected
8 to an ordeal of terror, of interrogation within days after.
9 But he told you he was with Cheryl at his mother's house
10 Saturday. He doesn't remember what he did Saturday. He told
11 you that they were watching TV later that night. He does
12 remember he was watching movies and he watched until the TV
13 went off somewhere around 1:30, 2:30. Cheryl agrees with him
14 on this. He told you very honestly that his recollection, he
15 didn't try to change it, was that he thought he maybe got up
16 about 11:30, as I recall, and Bernice testified that he
17 actually got up earlier and I believe Paul did have a memory
18 of getting after Loren when Loren came home with Isabel about
19 7:30 because the baby had been left without pampers or milk
20 and some other things. Bernice heard that and Domingo heard
21 that and Cheryl heard it.

22 Paul and Cheryl were taken to the laundromat that
23 morning. That was confirmed by the testimony of another
24 lady, I believe her name is Elberta Dunn, testified she went
25 to the laundromat sometime that morning to do some washing

1 and saw Paul and Cheryl there. She was asked, "Did you see
2 Paul?" "Yes." "See any bruises on his face?" "No." "Did
3 Paul appear to be nervous?" "No. No. He was just Paul." I
4 think she referred to him as a fat one. But in any event,
5 that testimony was likewise uncontroverted.

6 Annabel Cavanaugh also testified honestly. She
7 doesn't remember much about the Saturday night except she got
8 in, had to get up early and go to national guard and went to
9 bed early. We have another exhibit that corroborates that in
10 the absence of any contradictory evidence, Defendant Exhibit
11 115, and it is an official record from the North Dakota
12 National Guard. It shows her attendance for 26th, 27th and
13 28th of '36 or August and that she was present on Friday in
14 the morning and on Saturday in the morning and afternoon and
15 on Sunday in the morning and afternoon. You will be able to
16 take a look at that and judge for yourself. I think it's
17 clear that if she had been at an all night drinking party she
18 would not been in a position to show up and put in a full day
19 in national guard duty and get credit for it.

20 I just want to talk very briefly to you about
21 some of the eyewitnesses. Sissy Bigtrack DeMarce. It has
22 been mentioned made eight or nine statements from June of '35
23 to December of '35. This is January of '36. But through
24 December of '35 she not once in any of those statements, as
25 was brought out in cross examination, indicated that Paul had

1 fought with Eddie. And in her grand jury testimony she was
2 asked a direct question by Mr. Fisher, what about Paul
3 Cavanaugh, was he a beater, and her answer was not I don't
4 remember, I don't recall, but answer was unequivocal no.
5 Strangely, on January 30th of 1986 another statement, I think
6 the ninth statement obtained from Sisay Bigtrack DeMarce.
7 At that time she stated also Paul was involved in the fight
8 up on the highway. I mention that to you because I think
9 it's indicative of the character of Patricia DeMarce's
10 testimony. It would change so easy and so flippantly after
11 she has stated to the contrary eight to nine times, including
12 sworn testimony before the grand jury.

13 Freddie Peltier is of special interest to me
14 because Freddie Peltier testified that even though he claimed
15 to have observed Bruce, or Paul Cavanaugh brutally
16 participate in the murder of his brother, that for two years
17 thereafter he continued to consider him a good friend. That
18 doesn't make any sense to me and I think it is indicative of
19 the fact that his testimony lacks credibility totally. But
20 he also testified to another thing and that was that the
21 Longis vehicle was up here someplace and when the fight, the
22 third fight broke out, that somebody yelled at them to get
23 the car out of the way so all the other cars could pursue his
24 brother. Somebody's already alluded to the irony of Freddie
25 being willing to move that car out of the way, or help move

1 that car out of the way so they could chase his brother. But
 2 what interests me was he testified that they pushed it all
 3 the way down to near Highway 57. This picture has already
 4 been shown to you. I want to show it to you again because
 5 it's the barricade Domingo Juarez testified that he had up
 6 there prior to August 27th. Now Freddie admitted that it
 7 would have been a pretty good trick for him to have gone to
 8 that barricade without knowing it because he did admit that
 9 they didn't stop and unlock any barricade, they just went
 10 straight down to the road. Now I think this evidence on that
 11 is that Domingo told you that he spends a lot of time in his
 12 yard, he's going around fixing things, and it's obvious he
 13 spends a lot of time in his yard by things that he built out
 14 there. But not once since August 27th and 28th of 1983 has
 15 he had to fix or repair that barricade. It's been that way
 16 ever since. It was that way before. That's the testimony
 17 and it's uncontroverted.

18 Tim Longie, Jr. testified and what he said that
 19 on that Sunday morning, and it wasn't clear to me whether it
 20 was when he first picked up the boys or when he went back to
 21 get the car he testified to, was he saw a post and there is a
 22 post there and he saw a stop sign and there is a stop sign
 23 there. Mr. Crooks attempted valiently to get him to admit to
 24 the fact that the post was right on or next or under the stop
 25 sign and I believe you recall Mr. Longie, Sr's testimony that

1 he says, "Well, I really didn't look at it or study it, I
 2 just looked and I saw it," and he saw a stop sign and he saw
 3 a post and I think that corroborates the testimony of Domingo
 4 Juarez that in fact there was that barricade there and that
 5 that barricade was there. You can't believe the testimony of
 6 Freddy Peltier on the issue of how he went down that approach
 7 road.

8 I want to conclude by just telling you, as the
 9 other attorneys have, consider the evidence carefully,
 10 consider the inconsistencies in the evidence presented by the
 11 prosecution and the states attorney, inconsistencies that are
 12 wholly inadequate. I think for the prosecution to call the
 13 disparities in the testimony of their witnesses as
 14 inconsistencies is something like NASA describing the
 15 explosion of the shuttle Challenger as an anomaly. I think
 16 it's something far more than that. And I think it is of such
 17 degree it makes it impossible for anybody to conclude the
 18 government has proven any element of any offense against any
 19 of these defendants beyond a reasonable doubt. I think quite
 20 to the contrary the sincere conscious effort of the defense
 21 trying to present evidence of what happened in the case
 22 indicates quite clearly that there was no fight, there was no
 23 party and that Freddie, or that Eddie Peltier was in all
 24 likelihood the unfortunate victim of a hit and run accident.
 25 So I ask that you return a verdict of not guilty on all

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charges against Paul Cavanaugh as well as the rest of the
defendants.

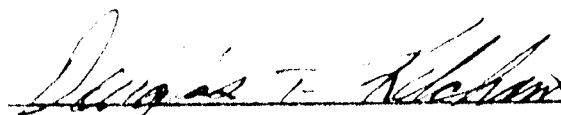
Thank you.

THE COURT: Members of the jury, we'll take a ten
minute recess and then we'll hear one more summation this
afternoon.

(Recess taken.)

REPORTER'S CERTIFICATE

1
 2 I, Douglas T. Ketcham, official shorthand reporter,
 3 1122 1/2 First Avenue North, Fargo, North Dakota, do hereby
 4 certify that the foregoing eighteen (18) pages of typewritten
 5 material constitute a full, true and correct transcript of my
 6 original stenotype notes, as they purport to contain, of the
 7 transcript of proceedings reported by me at the time and
 8 place hereinbefore mentioned.

9
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 11 
 12 Douglas T. Ketcham
 13 1122 1/2 First Avenue North
 14 P.O. box 3105
 15 Fargo, North Dakota 58108

16 dated this 25th day of January, 1969.

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