

IN THE SIXTH JUDICIAL CIRCUIT OF FLORIDA

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 STATE ATTORNEY'S OFFICE
 SIXTH JUDICIAL CIRCUIT

S T A T E A T T O R N E Y I N V E S T I G A T I O N

SWORN
 STATEMENT OF: KIMBERLY SWAILES HOWARD

DATE: February 14, 2002.

PLACE: Office of the State Attorney
 Criminal Justice Center,
 14250 49th Street North,
 Clearwater, Florida.

REPORTED BY: Lynne J. Ide, RMR
 Notary Public,
 State of Florida at large.

APPEARANCES: BRUCE BARTLETT, ESQUIRE
 Assistant State Attorney
 Office of the State Attorney
 Sixth Judicial Circuit of Florida.

 MR. STEVEN PORTER, Investigator
 Office of the State Attorney
 Sixth Judicial Circuit of Florida.

1 evening, I guess, around, I would say, twelve, somewhere in
2 there.

3 I was doing my show, and I had a lot of singers.
4 And a lot of times, you cannot accommodate everybody to come
5 up and sing.

6 And the one with the freaked-out hair -- is that
7 Dillman -- started screaming at me. I don't know which --

8 Q Okay.

9 A -- is which. He started calling me names because
10 he wasn't able to come up and sing.

11 They were drinking a lot. The waiter, Eddie, was
12 telling him to calm down. Then that died down for a little
13 bit.

14 Then, at the end of the evening when I had to stop
15 legally, he called me every name in the book. The one with
16 the long curly hair, and his other friend, they started
17 calling me names. I mean --

18 Q Both of them then at that point?

19 A Yes.

20 Q Give me some graphics.

21 A They called me "You fucking cunt. You fucking
22 whore. We'll beat your ass." Blah-blah-blah. "We'll make
23 sure we'll never come back. We'll tell our friends never to
24 come back."

25 Q Primarily because you would not let them

1 continue --

2 A I had to be done legally at that point.

3 Q But prior to that, how long does this
4 confrontation take place?

5 A Well, it started, like I said, earlier in the
6 evening. Then it stopped because our waiter asked -- knew
7 them, told them to cut it out. That stopped then.

8 Then at the end of the evening is when it all
9 picked up again.

10 Q The first time it went on, how long does it go on
11 for, ten minutes?

12 A Maybe five minutes.

13 Q Five minutes? Are they very vocal in that they
14 are yelling profanities at you, where the other people --

15 A Extremely vocal.

16 Q -- in the establishment can hear you?

17 A Yes.

18 Q Did you ask them to stop?

19 A Yes. I went over to the table. "What is the
20 problem?"

21 "You fucking won't let us sing." Excuse my
22 language, but that is what they said.

23 I said, "I'm trying to get everybody. It's just a
24 rotation thing, if I can get you up and accommodate you."

25 They stopped. And I decided at that point I

1 wasn't going to let them up. That is just my policy.

2 So at the end of the night is when it all began
3 again. That is when they called me a "F-ing cunt." And
4 everybody saw it. Eddie was asking them to leave, told
5 them --

6 Q Is that Werda?

7 A Yes.

8 Q Asked?

9 A Asked them, if they continued, they would be asked
10 to leave. So they calmed down.

11 Q Now, again, we're talking about Dan Nordmark?

12 A Right.

13 Q And Bernie Dillman?

14 A Right.

15 Q Who, I think you described, as the guy with the
16 curly bushy hair?

17 A Yes. The other one with the dark eyes.

18 Q Then Shawn?

19 A Shawn was playing pool. Shawn was not involved --

20 Q At all?

21 A -- at all.

22 Q Did you see Rita? Do you know Rita?

23 A No.

24 Q Blonde -- kind of dirty blonde, more brown, I
25 guess.

1 A Is she the girlfriend of Nordmark?

2 Q She's -- she owns the British Pub.

3 A No. I did not see her. The one on TV? No, I
4 didn't see her.

5 Q Kind of tall, thin?

6 A No. If she was there, I didn't notice her.

7 Q Was there anybody else at their table?

8 A I'm sure there were because there usually are.

9 But to be honest with you, I tried to stay just away from
10 them as much as I could. They usually come in like in a
11 wolf pack of five or six people.

12 Q Dan and Bernie there with them?

13 A Right.

14 Q Okay. All right, so you said that lasted five
15 minutes. You went over and said, "Chill out, I'll get you
16 up here," then you decided you weren't going to do it?

17 A Right.

18 Q This was about midnight?

19 A Yes.

20 Q Then the next time you have a situation involving
21 them would be about what time?

22 A Bar time, it would be about probably ten to two.
23 So actual time, it was twenty of.

24 Q Okay. And tell me what happens with that.

25 A They came up, started screaming at me again. I

1 was unloading my equipment out the back door -- the front
2 door with my friend, Doug Baird, who helps me.

3 They came up, started calling me the same names
4 again, "Why didn't you let us sing?"

5 "Because you were being an ass hole, that is why."

6 They started verbally accosting Doug, saying they
7 were going to whip his ass. They were surrounding my car,
8 yelling at me, and I'm trying to put my equipment in there.

9 Q This is out back of the bar?

10 A Out front, actually.

11 Q It starts inside, walks outside?

12 A Correct. They're on the front side of my car.

13 I'm on this side, loading my equipment in. And Doug is here
14 (indicating), I'm here (indicating).

15 And Shawn came out and asked them, "Why are you
16 yelling at her? She didn't do anything. She was doing her
17 job. There is no reason to call her names like that."

18 That is when it basically started going between
19 those three. And the way that the one with the dark eyes
20 and the -- I can't get their names straight, I don't really
21 care to -- looked at him, he shot him a look like just -- it
22 was -- scared the hell out of me. I mean, we loaded my
23 stuff up and got out of there.

24 And that is the -- the only thing I know of Shawn,
25 because he wasn't at the table when they were yelling at me.

1 He was playing pool most of the evening. And I think I
2 remember he had on a plaid shirt.

3 Q Was he ever at the table?

4 A I don't -- I don't ever remember him being at that
5 table.

6 Q Could he have been at the table?

7 A He could have been, possibly, sure. He was with
8 them, because --

9 Q What was the purpose of those guys following you
10 outside?

11 A To scream at me.

12 Q Just those two?

13 A To scream and yell at me, call me names.

14 Q Who is the fellow you said that was with you?

15 A Doug Baird.

16 Q Doug Baird? Does he interfere, or try to, in
17 this?

18 A No. He was very quiet. He stayed to himself. I
19 thought somebody was going to speak with him because he
20 may -- I told him, you know, he may have a different spin on
21 things.

22 Q How would we talk to Doug Baird?

23 A I can give you his name.

24 Q Okay.

25 INVESTIGATOR PORTER: What is it?

1 with the eyes, the correctional guy.

2 Q You have seen him on TV?

3 A Yes. And he was just in the club.

4 Q The guy with the eyes is the guy we are referring
5 to as Dan?

6 A Yes. He has been in the club again.

7 Q And the guy with the hair you watched on the
8 Channel 28 thing?

9 A Right.

10 Q Is Bernie?

11 A Okay.

12 Q Is that the guy they referred to as Bernie?

13 A Yes.

14 Q Okay. I don't want you to agree. I want you to
15 tell me that is your understanding, because we're sitting
16 here referring to them --

17 A The guy with the hair -- that sounds funny.

18 Q So we could be talking about the wrong people.

19 A No.

20 Q So Bernie and Dan come out while you are loading
21 stuff into the car, and you have a verbal --

22 A Yes.

23 Q -- confrontation?

24 A It almost got physical.

25 Q And tell me about that in detail.

1 A They just came up to my car, like I said, calling
2 me, "Fucking cunt. Why didn't you let us sing? We come
3 here all of the time. We know the owner very well. Mmm, my
4 sister -- my sister owns a bar." Just ranting and raving
5 profanities.

6 Q Are they drunk?

7 A They were on their asses drunk.

8 Q No question about that?

9 A No question about it. And they had to come back
10 in and apologize, because I had them barred, and they came
11 back in and said, "We were blind drunk on tequila and don't
12 remember what we did." But I never got an apology out of
13 them, anyway.

14 Q This is after the fact they come back in the bar?

15 A Pardon?

16 Q This is after the fact? This wasn't that night?

17 A No. No. They wouldn't apologize that night.

18 Q Okay. All right, so what -- Shawn comes out and
19 tells them to leave you alone?

20 A "Calm down. Leave her alone."

21 Q Did they leave you alone at that point?

22 A Yes. It started to subside.

23 Q What made you think it was going to get physical?

24 A Just -- you mean between -- because he was in my
25 face.

1 And I told him, "You need to get out of my face."

2 Q Did he ever raise a fist or anything?

3 A No.

4 Q Did anybody else ever try to intercede on your
5 behalf?

6 A Doug was like, "Hey, guys, calm down."

7 Q But none of this pushing or threatening with a
8 fist?

9 A No.

10 Q You just figured, based on the escalation, that
11 you were headed into a physical confrontation?

12 A Exactly.

13 Q Shawn comes out and says, "Hey, get out of her
14 face."

15 They give him a dirty look. Do they say anything
16 to him?

17 A Not that I recall.

18 Q Do they do anything of a physical nature?

19 A No.

20 Q Or anything that would suggest they were going to
21 try to --

22 A No.

23 Q Did they all leave together or go together?

24 A I didn't see anything after that.

25 Q After that?

1 Q Okay. Do you know what they were drinking or
2 anything that night?

3 A Mmm, they had pitchers, pitchers of beer on the
4 table. That is all I saw. I know they do shots, but I
5 wasn't aware of it that night.

6 Q Was there ever any confrontation between them and
7 another table?

8 A The night of the --

9 Q Yes, the night of the incident. It has been
10 suggested to me that perhaps Bernie Dillman's chair came
11 into contact with somebody else's chair at a table and there
12 was a little bit of a skirmish there, verbal?

13 A It seems like maybe that could be possible, but I
14 couldn't honestly say I have direct knowledge of that.

15 Q You don't recall that?

16 A No.

17 Q Have you heard that?

18 A I have heard it. Yes.

19 Q Who did you hear that from?

20 A Eddie.

21 Q Okay. Have you heard they pulled a gun out that
22 night?

23 A Not at our bar.

24 Q On the Channel 28 tape you make reference to the
25 fact that you felt that Shawn was in danger and that he did

1 not commit suicide.

2 A Yes. I don't believe he did.

3 Q Okay. What is the basis for you -- your
4 conclusions with regard to that?

5 A The way -- the way they looked at him, the way,
6 after this is all -- it was like slow motion, they were on
7 this side of my car just standing there, just perched, and
8 this kid comes out and they like came around and they, I
9 mean, just stared at this kid. And it just freaked me out,
10 just gave me the creeps. And I just knew --

11 Q When he said for them to leave you alone, then
12 they stared at him?

13 A Yeah. They stared at him.

14 Q You don't know if Shawn walked away with them, if
15 Shawn walked away by himself, or how they separated?

16 A I have no idea how they separated. Doug may be
17 able to help you with that. I wanted the hell out of there.

18 Q Other than the look, there was nothing else to
19 suggest to you that he was in any kind of a --

20 A No.

21 Q -- of a danger?

22 A No.

23 Q And then your conclusion that he did not commit
24 suicide, is that based largely on your continuation of the
25 look and the anger by them?

1 A Yes. The way they looked at him and their
2 demeanor that night. They're so mean. I mean, every time
3 they are there, something happens.

4 Q I am just saying, being mean and looking at
5 somebody is one thing. But it's a pretty damn big leap then
6 to say they went and killed somebody, too.

7 A Yeah. But somebody is dead.

8 Q Well, they are. But -- and that is my job to find
9 out --

10 A The way they looked at him was just -- was just --
11 I wish I could describe it. It was just pure evil. They
12 just -- I was scared. I was scared for myself.

13 Q Okay. Help me out with what about their look --
14 I'm not trying to be cute when I say this --

15 A I understand.

16 Q -- but what is it about the look that made you
17 think it was so evil?

18 A It was an evil look, like if I could kill you
19 right now, I would. A look like that. I mean, I can't
20 explain it any other way except it was just a look like --
21 like pure hatred.

22 Q Teeth gritted, or what?

23 A Yes, they were like this (indicating). The one --
24 oh, it was just a very -- a very threatening look.

25 Q When you say "the one," who are you talking about?

1 A The eyes.

2 Q Dan?

3 A Dan. I'm sorry. The way he looked at him.

4 Then the other one, they just looked at him like

5 they were just pissed off at the world. It made me feel --

6 and this is just me -- if they had had a gun, now this is in

7 hindsight, they would have shot him right there.

8 Q But they didn't try to go over and beat the hell
9 out of him or anything?

10 A No, they didn't.

11 Q Were they physically in a position to be able to
12 do that, bigger in size, or the same size, or --

13 A They were bigger in size. Definitely could have
14 whooped up on him.

15 Q Certainly they could have confronted him?

16 A Yes.

17 Q And that wasn't done?

18 A No.

19 Q What else about that led you to that conclusion?

20 A Actually, all that came after I spoke with his
21 mother and found out that he -- his life was going forward
22 and all these things. I mean --

23 Q Okay. So would I be accurate in saying to you
24 that when that happened that night, you didn't get in your
25 car and turn over to Doug Baird and say, "Those two guys are

1 going out and shoot that guy"?

2 A Doug wasn't in my car. But I definitely thought
3 they were going to do something to him. That was the
4 impression I was left with.

5 Q But you didn't wait around to see what that might
6 have been?

7 A Hell, no.

8 Q Or call the cops?

9 A They already called the cops, supposedly. Eddie
10 said he called the cops.

11 Q And everything you are saying is based on the look
12 they gave him?

13 A Yes. I know it's not much to go on, but it is all
14 I know.

15 Q Again, I'm not trying --

16 A I understand your position.

17 Q But I'm having a little difficulty construing a
18 look --

19 A Well, it's also the way they conduct themselves.
20 They're very violent. Almost every time they come in --

21 Q Tell me -- what I'm saying, on this particular --
22 well, tell me first, on the other occasions, what kind of
23 violence are we talking about?

24 A Screaming and yelling at people, threatening them,
25 "I'll whip your asses," blah-blah-blah, chairs going over.

1 On that night, I mean, the guy was right in my
2 face. Dillman was right in my face. And, you know, he was
3 like bowed up.

4 I said, "You don't want to go there."

5 I'm trying to back this guy down, if he's willing
6 to get into my face. Do you understand what I'm trying to
7 say?

8 Q Yes.

9 A Everything tied in, he's going to get in a woman's
10 face, he damn sure will not back off some kid who he
11 outweighs, I'm sure.

12 Q How about Dan Nordmark, did he get in your face?

13 A I don't remember him in my face.

14 Q It was mostly --

15 A Dillman.

16 Q -- Bernie Dillman?

17 A Dillman.

18 Q Was Nordmark?

19 A He was around looming in the background.

20 Q But was he also shouting profanities?

21 A Yes.

22 Q But the most active participant, and what I'm
23 labeling as -- is that what you would label as
24 confrontation?

25 A Yes.

1 Q Okay. Now, I realize, Kimberly, we've been over a
2 lot. And I asked you this question. I'm going back over it
3 again.

4 A Okay.

5 Q In this letter from Channel 28 and on that tape,
6 it is attributed to you that you feared for your life. For
7 your life. Okay? Is that accurate? Your life?

8 A Very accurate. If I would have stayed there --

9 Q You were afraid somebody was going to kill you?

10 A I was afraid somebody was going to hurt me or kill
11 me. Really, these guys were nasty.

12 Q While you "deeply appreciated Shawn McMillan's
13 intervention on her behalf, she also felt he might be harmed
14 or killed."

15 A That is the way I felt.

16 Q Based on the look?

17 A And the way they got in my face. What I just told
18 you.

19 Q You also made mention that you didn't initially
20 form those conclusions, but you did after talking to Shawn's
21 mom, or something like that?

22 A No. No. No.

23 Q Help me out.

24 A The conclusion about him committing suicide and
25 feeling that he didn't was after I spoke with Michela. She

1 said he graduated college and he was going on to this great
2 job and blah-blah-blah. That was about the suicide thing.

3 Q And then, based on that, then is that when you
4 kind of did a turnaround in your mind about what may have
5 happened in regard to that?

6 A Yes.

7 Q Did she contact you, or you contact her?

8 A I contacted her.

9 Q What was the purpose for doing that? Just --

10 A To tell her what happened in the bar, because
11 nobody would talk to her. Absolutely nobody would speak to
12 her.

13 Q How did you know that she was out there and that
14 nobody was talking to her?

15 A Eddie.

16 Q Eddie Werda?

17 A Yes. He wouldn't talk to her. Nobody would. I
18 have 21 year-old son. So I called her.

19 MR. BARTLETT: Steve, do you have anything
20 else?

21 EXAMINATION

22 BY INVESTIGATOR PORTER:

23 Q What was Shawn's demeanor that evening in the bar?

24 You said he was playing pool?

25 A He was very sweet, very laid-back.