

1 manslaughter conviction and allowing in what
2 otherwise would have been inadmissible
3 evidence which you felt would benefit that
4 approach to it, did it occur to you, Dick,
5 that at that point in time you were
6 systematically eliminating the grounds for
7 appellate review and possible appellate
8 reversal of any conviction that might be
9 obtained did it not come to manslaughter?

10 A. That came to mind, yes, it did. It
11 most certainly did. But there was a trial
12 tactic question that was do we go ahead and
13 attempt to win it at the trial level or are we
14 trying the case for an appeal. That was the
15 question that had to be answered when you step
16 up to the jury box. And that's the decision
17 that was made.

18 Q. I follow what you're saying. And is
19 your answer, then, that you knowingly allowed
20 the inadmissible evidence in for the purpose
21 of hopefully getting a manslaughter
22 conviction, realizing at the time you did it
23 that you were eliminating issues that could be

1 preserved after the trial and utilized for
2 appellate purposes later?

3 A. Certainly.

4 Q. Was that knowingly?

5 A. Yes, that was knowingly.

6 Q. Knowingly done. So, the failure to
7 object and the failure to insist on those
8 improprieties being corrected was a
9 deliberate, knowledgable act that occurred on
10 the occasions when it did occur?

11 A. Well, yes. I will say yes to -- in
12 a very general sense because I don't know
13 exactly -- and I'm not trying --

14 Q. What I'm saying?

15 A. Most of the time, yes, they were
16 calculated to allow evidence that would not
17 come in ordinarily to come before the jury.
18 As I said, one of the things was the
19 relationship between -- or the extent of the
20 relationship between Mr. Pate and Ms. Swiney.

21 Q. That would, however -- however,
22 there was one exception we had covered and
23 that was the incorrect charge given by Judge

1 Rochester because, I believe, you told us at
2 that time you didn't realize that was an
3 incorrect charge?

4 A. That's right.

5 Q. The appeal itself, there was --
6 following the strategy that was followed,
7 there was very little left to be put into the
8 appeal, would it be fair to say that?

9 A. Yes. I believe that would be a good
10 characterization.

11 Q. All of the viable issues were not
12 preserved based on your trial strategy, is
13 that what you're saying?

14 A. Well, I think one of the most viable
15 or I will say many of them, if we're talking
16 about charges and hearsay being admitted and
17 that kind of thing, I believe that we did make
18 a very good objection to the characterization
19 of the death of Ms. Swiney as to murder and
20 that the judge charged on that. We asked for
21 a mistrial and it was not granted and I
22 believe that we brought that up on appeal.

23 But I -- the most important thing to

1 me was, again, the connection between the
2 weapon and Mr. Swiney. It just wasn't there
3 as far as I'm concerned and I still have that
4 feeling today. And the -- I was disappointed
5 that the trial -- or that the appellate courts
6 did not write to that.

7
8 CONTINUED DIRECT EXAMINATION
9

10 Q. (BY MR. SHEFFIELD, III:) Your
11 approach to the case from reading the
12 transcript, trying to figure out exactly what
13 you were ultimately striving for, it would
14 appear to me that -- correct me if I'm wrong,
15 you were anticipating either trying to reduce
16 this to a manslaughter or to get a not guilty
17 verdict, correct?

18 A. That's correct.

19 Q. But you were aware of the statement,
20 were you not, that Mr. Swiney had made wherein
21 he described how he went to the house and
22 looked through the window and saw them and
23 said he blacked out?