BACKGROUND FACTS ON O.J. SIMPSON CASE

Note: This is not required reading. I have posted it because some students have expressed interest in learning more about the background of a case that I sometimes use in class hypotheticals. – Roger Park


The world first learned that O.J. Simpson was in trouble on Monday and Tuesday, June 13 and 14, 1994, when the news broke that his ex-wife Nicole Brown Simpson and a waiter from the Mezzaluna Restaurant named Ron Goldman had been stabbed to death in front of Brown's Brentwood condominium late Sunday night. Days earlier, the Los Angeles Times had mentioned Simpson in stories about current nominees for the Heisman Trophy and membership in the exclusive Sherwood Country Club. On Tuesday morning, June 13, the fact that Simpson was a prime suspect in the murders was front-page news.

Recall that on Monday morning Simpson returned from Chicago to his home on Rockingham Drive. That afternoon he went to police headquarters and gave a statement to Detective Vannatter. Simpson spent Monday night at Rockingham in the company of friends and relatives. On Tuesday, he left Rockingham undetected with his friend Robert Kardashian, in clothes borrowed from his old friend Al Cowlings, slipping away unrecognized by the reporters gathered outside. A videotape shows Kardashian carrying a bulging Louis Vuiton garment bag. On Wednesday, Simpson went to the Laguna Hills Mortuary to visit the casket of Nicole Brown Simpson, thereafter going to a family gathering at the home of the Browns. Kardashian then took him to Kardashian's own home in San Fernando Valley, and on Thursday Simpson attended Nicole's funeral.

That evening he spent the night at the home of Al Cowlings in Encino. Amidst reports of evidence that Simpson was the killer, charges were filed on Friday, and police went to the Cowlings home to arrest him. But Cowlings and Simpson had disappeared. Simpson had already hired Robert Shapiro to represent him, and Shapiro had reached an agreement with the Los Angeles police that Simpson was to turn himself in at noon that day. But at 2 p.m. Simpson had not shown up, and the police announced that he was a fugitive from justice. In his civil deposition testimony in January 1996, Simpson said that on that Friday afternoon he and Cowlings were trying to get to Nicole's gravesite but a police car was blocking the entrance. That afternoon, Robert Kardashian read to reporters an apparent suicide note from Simpson, and from 6 p.m. to 8 p.m. on Friday evening the nation watched the famous slow-speed car chase culminate in Simpson's arrest back at his home on Rockingham.

Recall what we know about the murders. Perhaps because of mismanagement or lax procedures, the bodies were not examined promptly and the autopsy could only put the time of death somewhere between 9 p.m. and midnight. The bodies were actually
discovered close to midnight, and the prosecutor's theory was that the murders had occurred between 10:15 p.m. and 10:35 p.m., as signaled by the wailing of the Akita dog "Kato" (named after Kato Kaelin, the friend and houseguest whom Simpson aptly described as "goofy"). Simpson himself was unaccounted for between 9:36 p.m., when he and Kato Kaelin parted company in front of the Rockingham house after returning from McDonald's where they bought hamburgers for dinner, and 10:55 p.m., when Allan Park (the limousine driver) saw Kaelin on the grounds and simultaneously saw a "shadowy figure" resembling Simpson enter the house. Shortly thereafter, Simpson emerged from the house in preparation for departure to the airport for the midnight flight to Chicago. At the trial, Simpson himself never testified, but his lawyers said he was sleeping, packing, and chipping golf shots in the front yard during this eighty-minute period. To show Simpson committed the murders during this time frame, the prosecutors relied mainly on three kinds of proof.

First was proof of Simpson's motive, mood, appearance, and behavior. He was angry at his ex-wife for breaking up with him a second time. They had divorced; then she had sought a reconciliation more than a year earlier. He had gone for it, but she dumped him again a month before the murders by returning his birthday gift and excluding him from the family circle at the dance recital and the dinner afterwards. Simpson was angry and withdrawn, as shown by his demeanor at the recital (particularly as described by Candice Garvey); he was in emotional turmoil because he was losing Paula Barbieri, his then-current girlfriend. She had wanted to come with him to the recital, but he had refused and she suddenly left town. Not knowing where Barbieri was, Simpson left Rockingham in the Bronco early in that eighty-minute period after returning from McDonald's with Kato and tried vainly to contact her by cellular phone - making two calls to her L.A. and Florida numbers. But she was in Las Vegas, staying at a hotel in a room paid for by Michael Bolton. Also, Simpson had a fresh cut on the index finger of his left hand when he went to the police station on Monday, June 13, that Kato Kaelin had not seen when the two went out for hamburgers shortly before the murders. No one at the dance recital Simpson had attended earlier that evening had seen the cut either.

Second was the physical proof. A left-handed blood-soaked Aris Isotoner glove and ski cap were found at the murder scene, and what seemed to be the right-hand blood-soaked mate to that glove was found in the outside walkway behind Simpson's house. Fibers on the ski cap matched fibers in the fabric in the Bronco, and similar fibers were found on the gloves and on Ron Goldman's shirt. The glove at Rockingham contained a blond hair that could have come from Nicole and a dark hair that could have come from Ron Goldman. The theory was that Simpson lost the cap and left-handed glove during the murders and, after losing the glove, sustained the cut on his left index finger. The deed done, he rushed back to his house in the Bronco, carelessly parking it on Rockingham while Allan Park waited at the Ashford Street entrance to the house. Simpson entered the grounds and tried to sneak down the walkway alongside the house, intending to bury or hide the clothing and knife used in the murders. In the dark walkway, he bumped into the air-conditioning unit, which accounted for the noises Kato Kaelin heard, and dropped the glove at that moment. Minutes later he entered the house and turned on the lights, buzzed the gate to let Park in, and then left for the
airport. In addition to a suitcase and a bag of golf clubs, Simpson carried a black golf bag that he insisted on taking into the limousine himself. That bag was never seen again, although the prosecutor suggested that it might have left Rockingham with Simpson and Kardashian in the garment bag on Tuesday morning.

Third was the scientific evidence. DNA tests of traces of blood discovered inside the Bronco matched O.J. Simpson, Nicole Brown Simpson, and Ron Goldman. Blood on the glove found at the Simpson residence produced a similar threefold match. A sock found on the floor of Simpson's bedroom had a spot of blood that produced a DNA match for Nicole Brown Simpson. And blood drops on the sidewalk at Bundy (the murder scene) and on the walkway and hallway at Rockingham matched O.J. Simpson. This DNA evidence was presented over a period of many weeks in June, July, and August by singularly impressive witnesses, like Robin Cotton of Cellmark and Gary Sims of the State Crime Laboratory. Their information was developed by the skilled, if somewhat plodding and mannered, questions put by Rochne Harmon. Without going into details, what it suggested is that the various reported matches are very rare - in one instance presented at trial, the testimony was that only one in seven billion people would be expected to have the alleles observed in the crime scene sample and in the defendant. The prosecutor also presented the scarcity figures for the overall population and for various subgroups, including black Americans.

The defense counterattacked on all fronts. First, it argued that the prosecution was wrong about O.J. Simpson's motive, mood, appearance, and behavior. Simpson did not want to harm Nicole, and was in fact not angry at her. His behavior at the recital, as captured on a homemade videotape showing him smiling and affable in a brief encounter with another parent outside the recital, reflected a father who was cheerful and normal in his demeanor. Simpson had started anew with Paula Barbieri and was at peace with Nicole. Nobody actually saw him leave Rockingham in the Bronco after he and Kato parted company at about 9:36 p.m., and later on the plane he was cheerful and friendly. And people on the plane did not notice the telltale cuts.

Second, the defense attacked the interpretation and the integrity of the State's physical evidence. In a memorable moment, Cochran ridiculed the suggestion that Simpson would have worn a ski cap as a disguise (Cochran himself donned a similar hat and remarked, "I'm still just Johnny Cochran in a ski hat."). And in what may well have been the downfall of the prosecution's case, the defense argued that the glove at Rockingham was planted there by a racist cop - Mark Fuhrman, who claimed to have discovered it after jumping the fence at Rockingham at about 5 a.m. Monday morning. The initial efforts of the defense in this vein were only partly successful. Lee Bailey tried to develop that Fuhrman had time to enter the yard at Bundy, snatch one glove, and hide it in a baggy in his sock. Then Bailey repeatedly, and with visible anger and frustration, asked Fuhrman whether he had used what Christopher Darden later called the "n-word" in the last ten years, but Fuhrman repeatedly and calmly denied it.

Later in the trial, however, the defense struck paydirt in finding the McKinny tapes, which had been made in 1985 and 1986. Ultimately, Judge Ito let the defense play two
out of forty-one instances on the tapes in which Fuhrman had used the word "nigger." The defense was also allowed to call McKinny herself to testify that Fuhrman had used that word forty-one times and two other witnesses who testified that Fuhrman had used the same word in their presence. McKinny was also allowed to testify that Fuhrman had described an incident in which police beat a black suspect, and that Fuhrman had said that police planted evidence against black suspects. The defense offered some evidence that the sock in Simpson's bedroom was planted too, showing that it did not appear on the floor in a videotape of the room taken by an insurance adjuster. It further argued that Fuhrman may have used the left-handed glove that he picked up at the crime scene to plant the blood smears found on the console and inside the driver's side door of the Bronco.

In another unforgettable and symbolic moment, the hapless prosecutor Christopher Darden asked Simpson to don the glove found at the murder scene. Wearing latex gloves to avoid contamination, Simpson tried to put it on, and it was clearly too small - the glove didn't fit. In an image of the Simpson trial most of us will never forget, Simpson looked to his right toward the jury, tugging downward on a glove that seemed clearly too small for his palm and wrist, while Marcia Clark stood behind him, her mouth open in astonishment and disbelief. (A later demonstration with a similar glove showed it could fit Simpson's hand, although the fit was tight. Pictures of telecasts three years earlier showed him wearing similar gloves, although arguments erupted because the gloves shown in the telecast were a different color from the gloves found at the crime scene and Simpson's residence.)

The defense also sought to show that Detective Vannatter could have planted some of the blood discovered at Rockingham and Bundy, the murder scene. As the defense revealed, Vannatter had carried the sample of Simpson's blood, drawn at the police station on Monday, around with him for about three hours, during which time he returned to Rockingham. The defense further showed that Vannatter had commented to someone, during a smoke break early in the investigation, that the husband of a murdered woman is always a suspect. Because Vannatter had defended the warrantless search that produced the glove at Rockingham on the ground that Simpson was not yet a suspect, however, the defense had at least a plausible claim that Vannatter must have lied in defending the warrantless search. In his closing argument, Cochran linked Vannatter to Fuhrman by suggesting that they are both liars and that both were racially motivated to frame Simpson. Hence Vannatter might have planted the blood found at the Simpson estate and on the back gate at Bundy (the latter being discovered weeks after the murder).

Third, the defense attacked the DNA evidence. It showed that mistakes were made in collecting the blood and that the samples could have been mixed up or "cross-contaminated" at the crime scene or in the laboratory. In this enterprise, defense lawyer Barry Scheck made real progress, showing on cross-examination that Dennis Fung and Andrea Mazzola made careless mistakes at the crime scene and that Colin Yamauchi may have contaminated samples in the LAPD Crime Laboratory, which Scheck called a "cesspool of contamination." Already contaminated before reaching Cellmark or the FBI
Laboratory, the crime samples could yield nothing that could be relied upon, even if Robin Cotton and Gary Sims and their colleagues performed their own lab work to perfection. The defense was assisted in its attack on the DNA evidence by a famous criminalist named Henry Lee, who testified that there was just "something wrong" with much of the DNA evidence, especially the trace of blood in the sock that matched Nicole Brown Simpson. Lee argued that this particular spot must have been splattered on the interior surface of the sock because it was not forced into the fabric as would be expected if it had gotten there while someone was wearing the sock. In this connection, Lee helped Scheck by evoking the image of finding a cockroach in a bowl of spaghetti. Lee asked: "Do you search the rest of the spaghetti to see if there are any more cockroaches, or do you just throw it all out?"

Scheck also attacked the database used to generate the frequency estimates for the various alleles, arguing that the database itself was not an adequate sample. He similarly argued that the supposed match between the Bronco fibers and the fibers found on the cap, gloves, and shirt of Ron Goldman meant very little because there was no showing of the scarcity of such fibers generally. Scheck developed as well that EDTA (a preservative used in collection vials) showed up in blood scrapings found on the gate at Bundy and the sock at Rockingham, as evidence that these had been planted from reference samples taken from Simpson or gathered at the crime. And Scheck also showed that the labs had made mistakes in other cases, and he got even Robin Cotton to admit that nobody could explain how some of these errors had occurred.

These facts remind us, in case we need it, that even an exhaustive trial does not tell us everything. As onlookers watching a great drama of murder and its aftermath, we are like readers of Dostoyevsky or Faulkner. We can reach deeper levels of understanding, but we can never know everything. We cannot know everything about O.J. Simpson, even if we think he did it, any more than we can know everything about Joe Christmas in Light in August or Raskolnikov in Crime and Punishment. And we may never be satisfied that we have learned what we most want to know. When and how was criminal intent formed? How did it get from thought to plan, from thinking to acting? When was the last moment to stop it? And why didn't it stop, or get stopped, before there were deaths and ruined lives of people we can like and even admire? [*736]

[Simpson was acquitted of the criminal charges, but subsequently found liable in a civil wrongful death action brought by the survivors of the two victims. – RCP.]