Tidewater • **3 days ago**

"Nor did Soering's attorney challenge the testimony of a tire track expert who claimed a bloody sock print matched the defendant's foot like a glove. Hudson says it did not."

That "claim" was never made to the jury by Robert B. Hallett in his testimony in court before the jury at Bedford on June 13, 1990. This is really idiotic reporting. She's got it all wrong.

Commonwealth Attorney James W. Updike Jr. put this question to Mr. Hallett (Proceedings, page 136): "Now as to the LR-3 itself, can you describe the action and function of the foot as it comes across a slippery substance of some sort, particularly on a hard wood floor as we have here, what does the foot do, how does it respond, what are the functions of it?"

Mr. Neaton: "I am going to object, it calls for an opinion."

The Court: "Sustained. Sustained. That's opinion, he's not been qualified as an expert. Objection sustained, sir."

There was a judgment here that Judge Sweeney had to make. Earlier in the day, he stated the problem in discussions with the lawyers for both sides with the jury out of the court. (Page 100.) The question was argued how much Hallett would be allowed to say. Would he be allowed to give an opinion? And, certainly, he was qualified to do so. The "tire-tread" remark was a jibe made by Neaton with a little snort of contempt which I thought was a bit amusing, but not accurate as to Mr. Hallett's background, career with the FBI and state of Virginia and current authority as an expert witness.

Mr. Cleaveland: "I think our primary concern is when he starts discussing the unusual features of one foot as opposed to another, that is when we are more concerned..." And he went on about their concerns until it dawned on me that Neaton and Cleaveland were angling for the footprint to disappear, somehow.

The Court: "But that flows from the physical fact that there was a footprint there, Mr. Cleaveland, it really does. He is an expert in the field, and the fact that he is an expert in the field is a fact. Now I'm not going to let him testify as to his opinion on the sock print evidence simply because I feel that it has not been accepted to the extent that I am comfortable with it in Virginia...."

So not only was Mr. Hallett not allowed to give his opinion, he was sharply rebuked in front of the jury. It had to sting a little. It was an interesting moment. I looked closely at the jury and it seemed to me that the point had been driven home to them --as it had to me-- that they were the ones who decided what the facts of the case were. They were the ones who were going to decide whether those foot prints were Soering's or not. And an appellate

court is very reluctant to overturn a jury's decision on the facts. It is not easy to second guess a jury.

A few years later I heard Mr. Hallett testify in court at Buckingham Court House, across the river from C'Ville. It was a similar case, though footprints in blood are rare.

It was Jim Updike who told the jury that the bloody sock print matched Soering's foot, not Bob Hallett.

As I see it, what Judge Sweeney did was avoid a mixed question of law and fact. It was risky. He put his trust in the jury and avoided any later litigation that he had somehow misapplied the law to steer the jurors. It is those mixed questions of law and fact which sometimes allow appellate judges to second-guess trial judges. Send it back down because it is wrong on the law. It didn't happen in this case. One thing I learned from listening to Judge Sweeney was that he never forgot those judges in Roanoke and Richmond up there over his head. And he was reversed very few times in a long, distinguished career. He was a great judge and a very good man.

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