

Guy trial: Attorneys duel

Lawyers close case in Walpole park murder

By Sean Murphy
DAILY NEWS STAFF

DEDHAM – Defense attorney Robert Jubinville in his closing argument yesterday in the Irene Kennedy murder trial said police made so many mistakes in their initial investigation that it should be impossible for jurors to find Martin Guy guilty of the crime.

But prosecutor Robert Nelson said DNA evidence and witness testimony leave the jury with no choice other than to conclude that Guy killed the 75-year-old Foxborough woman in Walpole's Bird Park on Dec. 1, 1998.

The jury listened for more than an hour yesterday morning to the closing re-



DAILY NEWS PHOTO BY JAMIE LYN GIAMBRONE

Martin Guy listens during his trial for first-degree murder. He is accused of killing Irene Kennedy in 1998.

marks, and spent the afternoon deliberating without reaching a decision. Judge Judith Fabricand instructed jurors not to talk about the case or watch, listen to, or read news stories about it when they go home.

The jury resumes delibera-

tions in Norfolk County Superior Court today. Guy, 45, is accused of first-degree murder in the death of Kennedy, whose body was discovered beaten, strangled, and stabbed 32 times. There were two bite marks found
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on the woman's breasts.

In his closing remarks, Jubinville reminded the jury that police originally arrested Walpole's Edmund Burke for the murder. The attorney said if Burke did not commit the crime, police were wrong then, just as they are wrong now.

"This case has been messed up and fouled up since day one, and it's still being fouled up," he said.

But Nelson reminded the jury the chances that DNA found on Kennedy's body did not belong to Guy were 1 in 268 trillion, according to a forensic expert. He said Guy not only confessed to the crime in a conversation with a fellow prison inmate, but got a "thrill" out of committing it.

The prosecutor dropped to a knee and acted the part of Guy stabbing Kennedy to death. "He's having fun," Nelson said of Guy. "He's enjoying himself."

Police initially suspected Burke, who lives on the edge of the park and has a brother married to one of Kennedy's daughters. Police arrested him within two weeks of the slaying, based on bite molds from his teeth that a dental expert at first said could be matched to marks on Kennedy's breasts.

But Burke was released 41 days later after DNA evidence taken from one of the bite marks cleared him and eventually implicated Guy. The accused murderer is currently serving life in prison at MCI-Shirley for the 1999 murder of Christopher Payne in Norwood.

Yesterday, Jubinville called into question the DNA evidence used to implicate his client. Jubinville noted that only 12 of the 13 testing points matched to Guy the DNA found on Kennedy's body. The defense

Jubinville quoted a letter from Davis to police in which the inmate acknowledged the conversation with Guy did not provide a "smoking gun" proving the accused committed the crime. Jubinville charged Davis made up the story as he went along to get a deal from the district attorney.

"He came up with the 'smoking gun,' and that's what he gave them," Jubinville said.

Jubinville said it was not unreasonable for police to blame Burke for the killing, citing testimony that the Walpole man declined to allow police to search his house, that police tentatively linked a bite mark to him, and that knives were taken from his home on suspicion that one of them might be the murder weapon.

"What are the chances or the possibility that all of these things could happen to Ed Burke?" he asked the jurors.

Jubinville cited a litany of evidence — a discarded condom, a hair found on Kennedy, a wood-and-stone "club" discovered near the murder scene on the day of the crime — that he said police and prosecutors have chosen to discount.

"There's something wrong with the evidence in this case. There's something wrong with the testing in this case," Jubinville said.

The assistant district attorney summed up his case in about half the time the defense spent.

Nelson talked about Guy himself, painting the former Norwood resident as a callous man who laughed at stories about the murder, and the prosecutor also responded point-by-point to Jubinville's accusation that police discounted certain items of evidence.

He picked up the wood-and-

He also dismissed as a "red herring" the hair found on Kennedy, which the FBI determined to be "negroid" in origin. Nelson said since no black people were seen in the area where the murder took place, police had no reason to pursue it as evidence.

The used condom Jubinville argued police carelessly ignored was not tested, Nelson said, because a rape kit revealed no signs sexual trauma on Kennedy.

"There was no evidence that Irene Kennedy was sexually assaulted," he said.

That made the condom another "red herring," he said, so police were right to do nothing else with it.

Nelson said Calicchio, the DNA expert, admitted in court that she could only test 12 of the 13 loci on the sample taken from Kennedy because the 13th had no data. Nelson said the expert told the court she has never seen a case in which 12 loci matched and the 13th didn't.

Nelson reminded the jury of Calicchio's statement that the chances the DNA sample came from someone else other than Guy are 1 in 268 trillion.

"It was Martin Guy's bite," he said.

In order to find Guy guilty of first-degree murder, Nelson reminded the jurors they needed to determine he premeditated the killing. Nelson said Davis, the inmate, demonstrated this by testifying that Guy was hunting for a victim in the park on that day in 1998.

Jurors could also find Guy guilty of first-degree murder if they felt he committed an act of extreme atrocity. Nelson put an autopsy photo up on an easel showing Kennedy's bruised and battered head.

attorney said the single locus with "no data" available calls into question its value as evidence.

"She (DNA expert Theresa Calicchio) doesn't know what's there," Jubinville said of that 13th locus, "but if it isn't Mr. Guy's numbers, then he's excluded."

He also said the bite marks on Kennedy's breasts haven't been definitively linked to anyone. The forensic dentist first said the marks could have been made by Burke, but later changed his mind.

"Years later, they say it's Mr. Guy, and they brought in another dentist who said it might be Mr. Guy," Jubinville said. "That in itself is reasonable doubt."

Jubinville also attacked the testimony of Scott W. Davis, an inmate at MCI-Norfolk, who in 2003 contacted police to say that Guy had confessed to the murder in a conversation with him.

stone "club" and rapped it on a table, saying it was strong enough to break bones, then pointed out no skull fractures were found on Kennedy's head.

He held the "club" up for jurors and pointed out the age and wear on the duct tape holding it together. "A lot of it is worn, right down to the threads," he said.

He called the "club" a "red herring," saying this is why police and prosecutors did not value it as evidence.

"I'll let the pictures talk about that," he said. "No one should die like that."

Nelson finished by responding to Jubinville's questioning whether police could be so certain they had the right man now if they had it wrong with Burke.

"The answer to all the people of Walpole is, 'Yes! We got it right this time!'" Nelson told the court.

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