

No trial date yet for Draper, but motions reveal new details about case, possible motive

By Byron Tate

A hearing last week took murder suspect Rusty Draper a step closer to having a date for trial, and while the brief session centered mostly on courtroom logistics, several motions filed by the defense in the days prior to the hearing reveal numerous details about the case not previously made public.

In one such motion, Avery Lichty, the girlfriend of the victim, Austin Moody, said Draper was “overly interested” in her previous relationship with Draper’s son, Colton, and that Draper cried when the two teens broke up. Such details are the first indication of any motive in the case.

Draper is charged with capital murder in the shooting death of Moody, 17, whose body was found in his front yard on the morning of Jan. 19, 2017. Moody was apparently about to leave for Sheridan High School where he was a junior. Draper, who turned 46 in October, has been held in the Sheridan Detention Center without bond since his arrest on Jan. 26.

At the call-back hearing, held Tuesday, Oct. 24, in Circuit Judge Eddy Easley’s courtroom, both the prosecution and defense confirmed that there was still some evidence being processed by the FBI that has not been returned.

Prosecuting Attorney Teresa Howell, who was accompanied in court by Deputy Prosecuting Attorney Norman Frisby, told the judge that despite the outstanding evidence, she did not want to delay the court in setting a court date.

Judge Easley gave three directives to the prosecution and Draper’s defense attorney, J. Blake Hendrix of the Little Rock law firm of Fuqua Campbell. He set another call-back hearing for Nov. 28 to make sure all evidence has been received and made available to the defense.

The judge also directed the two sides to work with each other and courtroom staff to find a court date that works for all three entities for a trial that has been estimated could take three weeks.

And he said he wants a list of the motions that need to be heard and for the two sides again to work with courtroom staff to set aside time to hear them. The judge suggested a full day for such a hearing, but Howell said the six motions that had been filed were “substantial” and would take at least two full days to argue, and possibly longer.

Before the hearing started, she said she expected as many as 40 additional motions from the defense to suppress evidence and that such an abundance of motions was routine for capital murder cases where the defense has to take every opportunity to protect the defendant from such a conviction.

The morning hearing took less than 10 minutes, but included an appearance by the defendant who was seated with a handful of other defendants, all wearing orange jumpsuits, awaiting court actions on their cases.

In earlier hearings, Draper was brought in separately by a deputy who stood near him during the proceedings. In those previous appearances, Draper sat stoically with his head down until his case was called. On Tuesday, he seemed more at ease; his head was up and he was looking around the courtroom.

As in previous hearings, Moody's parent's, Terry and Robin Moody, were seated with several family members and friends in an area of the courtroom used by juries.

The six motions, which were electronically filed on Oct. 19, are all efforts to suppress various types of evidence collected by authorities. The most revealing motions, in terms of newly released evidentiary information, are one regarding statements Draper made to authorities and another regarding the search and seizure of evidence from Draper's vehicle. The following are reviews of each of the motions and why defense attorneys are wanting the evidence excluded.

Motion to Suppress Statements

In the motion regarding statements made by Draper, defense attorney Hendrix, along with fellow defense attorney Annie Depper, give the background that leads up to Draper talking to Grant County investigator Lt. Robbie Bird, who was investigating Moody's death. In that background information, it was stated that Lt. Bird had interviewed Moody's father, Terry Moody, and that Terry Moody had told Bird that his son had told him that he was dating Avery Lichty and that before dating Moody, Avery Lichty had dated "a boy with the last name of 'Draper,' later identified as Colton Draper." Terry Moody also said that his son had told him that Colton Draper's father, Rusty Draper, "was obsessed with Avery because he thought Avery and Colton would get married, and that when Avery and Colton broke up, Rusty cried." Terry Moody also said his son "joked around about being 'stalked' by Rusty," the motion stated.

Others who were questioned identified Draper as the person who was knocking on windows of the Moody and Lichty homes, asking for help with his own car, or offering assistance when Avery Lichty's mother or brother or Moody had flat tires, caused, according to Bird's arrest affidavit, by Draper, who made and distributed metal spikes around the neighborhood.

The background information continued, saying that Lt. Bird and Special Agent Drake Champagne with the Arkansas State Police interviewed Avery Lichty and her mother, Tammy Lichty, and that their questions focused almost entirely on Draper. Avery Lichty told investigators she had recently broken up with Colton Draper. She said Rusty Draper "would often discuss saving money for Avery and Colton to get married," adding that Rusty "was upset when she and Colton broke up, and that, following a previous break-up, Rusty cried."

Avery Lichty, the motion stated, “described Rusty as ‘overly interested’ in her and Colton’s relationship.

When Avery was asked by the investigators, “Is there anybody that you would think might want to hurt (Austin)?” “...Avery responded, ‘IT’S COLTON’S DAD... or Colton or Colton’s dad, but Colton was at school.’”

Before the release of these latest details, little has been said about a possible motive in this case. Draper, in a failed attempt to be allowed out on bail earlier in the year, was described by friends and family as a solid, stable individual who was never in trouble and was kind to his family and friends. Why he would kill Moody, if he did, has remained a mystery. The fact that multiple people are describing him as being upset with his son’s break-up with a girlfriend is perhaps the clearest explanation of what could have been a motivation to act.

Tammy Lichty also confirmed to the two investigators that after her daughter and Colton Draper broke up a previous time, Rusty Draper came to her house crying. She said Rusty Draper accompanied her to a repair shop when she and her son had flats on the same day in December. She said Draper stayed with her the entire time while her tire was being repaired and that Draper “spoke about Avery and Colton’s relationship the entire time” and that “this made her uncomfortable, and that it was ‘weird.’” Rusty Draper, Tammy Lichty said, “was upset about the break-up.”

The background information in the motion sets the stage for the argument to suppress the statements that Draper would eventually make to investigators. Based on what investigators knew from these previous interviews, the prime suspect in the case was Rusty Draper. But in the days immediately following Moody’s death, rumors were circulating that Colton Draper was responsible for the killing. To counter that, Derendea Draper, Rusty Draper’s wife, contacted Lt. Bird and offered to speak to the officers “in order to clear up any suspicion that Colton was involved.”

When the three Drapers arrived at the Grant County Sheriff’s Office, they were taken through locked doors to the interior offices, where Rusty Draper was interviewed first. He was led into a small office where the door was shut. The motion says Draper, who was not read his Miranda rights, was told his interview was voluntary and he could leave at any time.

It was during this questioning that Draper made what would appear to be damaging statements about where he was and what he was doing on the day before and the day of Moody’s death, and it is these statements his defense team would like to suppress. Draper said he went to his work at Union Pacific in North Little Rock, arriving there on at 7 o’clock on the morning of Jan. 19, the day Moody was found dead of a gunshot wound to the head.

Draper said he tried to clock in to work but was unable to do so because he had “unknowingly scheduled a holiday,” according to the motion. He said the only individual who saw him in North Little Rock was a co-worker, Chuck Addie. Addie was stopped at an Exxon station on

Broadway Street in North Little Rock, which was his daily habit. Draper said he honked at Addie and that Addie waived to him.

In Bird's arrest affidavit, the investigator said authorities reviewed records at Union Pacific and found out that had Draper attempted to log in, a record would have been created and an error message logged into the system. There was no such record of an attempt by Draper to clock in, they said. What they did find out was that on Jan. 18, the day before, Draper had called his union representative and asked for a vacation day on the 19th.

Additionally, authorities looked at security video from the Exxon store. They reported that they saw Addie parked at the store that morning, but at no time did they see him turn toward the street or waive to anyone. Addie also told them that Draper told him on the 20th that he had waived to him on the 19th.

Colton Draper was read his Miranda rights and interviewed, while his mother was not read her Miranda rights before being interviewed. Colton Draper and his mother were both told they were speaking voluntarily and could leave whenever they wanted.

Draper's attorneys argue that even though Draper was told his comments were voluntary, his statements should not be allowed. They say that he did not initiate contact with the authorities and was there simply to accompany a minor child for questioning.

"Rusty's movement was restrained during questioning," the attorneys state. "The questioning was conducted in Lieutenant Bird's office, which was located in an area of the Grant County Sheriff's Office that is closed to public admittance. ...Rusty had to be buzzed through a locked door. Rusty could not leave that secured area without assistance from an employee of the ... Sheriff's Office. Rusty's movement was further limited by the small size of Lieutenant Bird's office." During questioning, Rusty was separated from his wife and son and placed in a locked room with two armed law enforcement officials.

"Lieutenant Bird and SA Champagne knew at the time that Derendea contacted them that Colton was not a target of the investigation," the motion states. "The evidence at that point pointed only to Rusty. And yet, knowing this, they allowed Derendea, Rusty and Colton to come in for questioning to 'clear Colton's name.' If Lieutenant Bird and SA Champagne were honest with Rusty, and told him that he was the target, it is likely that Rusty would have invoked his right to an attorney as he did in the January 21, 2017, telephone conversation with SA Champagne, after it became clear that he was the target. To avoid this, the officers deceived the Drapers, allowing them to believe that Colton was the target of the investigation."

In conclusion, the motion states that Draper's statements to the two investigators should be suppressed because Draper was in custody and subject to interrogation in violation of Miranda.

Motion to Suppress Evidence of an Unlawful Search and Seizure

The motion to suppress evidence from a search and seizure centers around the finding of Draper's vehicle after he went missing and then the search of its contents.

On Jan. 23, Draper's wife could not find her husband, according to background information in the motion. She called his brother, Dewayne Draper, to tell him she didn't know where her husband was, and Dewayne Draper called a mutual friend, Gary Austin, to help look for him. As the motion describes the action, "at some point, an individual with the Arkansas Forestry Commission was also contacted, and a (commission) plane began to search the area around Sheridan for Rusty's vehicle."

The plane found Draper's vehicle on Austin's hunting lease in Dallas County. Dewayne Draper and Austin then drove to the location in Dewayne Draper's truck and found Draper unresponsive in the back seat. Austin called 911 and then the two men loaded Draper into Dewayne Draper's truck and they all drove to meet the 911 ambulance.

While the men were waiting for the ambulance, Dewayne Draper called Jay Ables, a Dallas County constable, who Dewayne Draper believed had EMT training. The ambulance, however got to the scene before Ables did. The emergency technicians examined Draper briefly and then told the two men they needed to know what Draper had taken. Dewayne Draper and Austin returned to Draper's vehicle and found a bottle of sleeping pills. Draper was then taken to a hospital.

Ables had car trouble on his way to the scene, but eventually he and Dewayne Draper and Austin returned to Draper's vehicle on the hunting lease, and Ables put on gloves and started searching the vehicle.

"He located a red notebook that contained letters from Rusty to members of his family," the motion states. "Constable Ables began to read the letters. The letters indicated a fear of going to jail. Constable Ables asked Dewayne about this, and Dewayne told Constable Ables that Rusty was questioned in the death of Austin Moody. Constable Ables then placed the notebook back in Rusty's vehicle, discontinued the search, and contacted the Dallas County Sheriff's Office."

Two deputies from that sheriff's office came to the scene and were told that Draper had taken pills in an attempted suicide. The deputies called a wrecker to tow the vehicle to the sheriff's office, but before the vehicle was towed, an inventory was taken of its contents. The list included the notebook, a small number of rounds from various caliber guns – a .22, .243, and .38 – and a cylinder from a .22 caliber revolver. Those items were later taken to the Grant County Sheriff's Office.

Again, the items found in Draper's vehicle are likely to be damaging to him if they are allowed into evidence. The .38 caliber bullet found in his vehicle is consistent with the caliber of weapon used to kill Moody. And in the earlier filed arrest affidavit, the contents of the Draper's notebook could be considered a suicide note and something very close to a confession.

“I am back in a corner,” he wrote. “So much stuff went wrong with plans. Cops search house. They look for my guns. Not find what the look for. I not want to live in pin.!! I will not. I backed in corner not know how to get out of. I though about running but not could leave you. I not want to live in jail!”

Draper’s attorneys, in trying to get that evidence tossed out, are claiming that the search was done without a warrant and therefore, it was unreasonable. Vehicles can be searched “but only when there exists ‘probable cause to believe the vehicle contains contraband,’” quoting the federal case, *United States v. Ross* (1982). As the situation unfolded, the attorneys claim, “There is no evidence that Constable Ables had reasonable cause to believe that Rusty’s vehicle contained contraband or evidence of a crime.” And because the vehicle was parked on private property, Constable Ables could not legally search it, the attorneys claim in the motion.

In conclusion, the attorneys state that the warrantless search of Draper’s vehicle was “outside the bounds of the Fourth Amendment” and the Dallas County Sheriff’s Office had no grounds to impound Draper’s vehicle.

“Accordingly, neither search falls into one of the exceptions for warrantless searches and the evidence from the searches must be suppressed,” they claim.

Motion to Suppress Evidence from Search of Residence

A search warrant for Draper’s home was issued on Jan. 24, allowing authorities to remove from the home such items as clothing, belongings that might contain gunshot residue, bodily fluids, palm prints, shoe prints, fibers, fingerprints, footprints, hair, saliva, blood, firearms, ammunition, shell casings, photos in print or on other devices and the contents of digital media devices.

During the search, authorities found items consistent with the making of the spikes that were reported around the neighborhood that authorities believe Draper used to cause flat tires on cars operated by Moody, as well as members of the Lichty family.

Draper’s attorneys have moved to “suppress the evidence seized because the affidavit failed to establish a sufficient nexus between the crime ... and Draper’s home.” They also contend that the seizure of the metal, blades, rods, pictures and paint was beyond the scope of the warrant.

Motion to Suppress Evidence from AT&T Seizure

As part of the investigation, authorities executed a search warrant on AT&T for Draper’s “cell-site location information” or CSLI. Because cell phones can be associated with the towers that they are connected to, a person’s current or past whereabouts and movements can be known based on which towers their cell phones were closest to. Authorities asked for and received from AT&T Draper’s CSLI from Nov. 21, 2016, to 11:55 p.m. on Jan. 25, 2017, which is 65 days.

Draper's attorneys want this information to be excluded from evidence because they say that individuals have an expectation of privacy in regard to their movements, that the warrant was overly broad and that the seizure and search of the information violated Draper's constitutional protections.

Motion to Suppress Evidence from iCloud Search

On Jan. 30, 2017, investigators applied for a search of Draper's iCloud in a quest for evidence. Specifically, they sought backed up and deleted files, photos, videos, various types of text messages, etc.

Draper's attorneys are claiming that the warrant affidavit was overly broad and the evidence should not be admissible. "Search warrants that authorize the search of the entire contents of a cell phone violate the Fourth Amendment," the motion states, because there was no probable cause for such a broad search.

Motion to Suppress Evidence from the Search of iPhone

On Feb. 9, 2017, authorities applied for a search warrant for Draper's cell phone, specifically seeking such items as digital photographs, video, audio, data and system files, text messages, call histories, contacts, to-do lists, SIM cards, etc.

Similar to their arguments to throw out evidence from the iCloud search warrant, Draper's attorneys are seeking to keep any evidence taken from his cell phone out of court because they say the warrant was without probable cause and its execution was overly broad.

Each of the motions cite numerous examples of state or federal case law in bolstering the argument that the related evidence should not be allowed into court. Arguing the merits of the motions, according to Prosecutor Howell, will require calling witnesses and a close examination of the law – and then a ruling from Judge Easley. Those rulings on these pre-trial arguments will likely go a long way in determining the type of case prosecutors will be able to bring against Draper, and likewise, the type of defense his attorneys will be able to put on.

The rulings could also become fodder for later defense appeals if Draper is found guilty. Capital murder carries a sentence of death by lethal injection or life in prison without the possibility of parole.