

Westchester County District Attorney's Office

Report on the Investigation into the Disappearance of Kathleen Durst



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Statement from District Attorney Rocah

As the District Attorney of Westchester County, it is incumbent upon me to maintain public trust in the criminal justice system. I believe that sharing facts with the public, where possible, is the best way to enhance public trust in our criminal justice system. This report summarizes some of the facts gathered during the investigations into the disappearance of Kathleen Durst in order for the public to be more fully informed about the basis for the charges against Robert Durst, since a public trial is no longer possible due to his recent death. It will also shed light on some of the reasons why it took nearly 40 years to charge Robert Durst with her murder. In particular, our investigation revealed some missed opportunities by law enforcement during the crucial early stages of the investigation, which may have contributed to the delay in bringing justice in this case. This is not about assigning blame, but rather looking at how we can better serve justice in future cases. This report is not a comprehensive account of all of the information learned during the investigation and, based on New York State Grand Jury secrecy laws, excludes certain information.

Introduction

In January 2021, the Westchester County District Attorney directed her newly created Cold Case Bureau to investigate the previously unsolved disappearance of Kathleen Durst, which took place nearly 40 years ago. The resumption of this investigation included, among other things, the review of police paperwork, information revealed during the production of the HBO documentary about Durst titled “The Jinx: The Life and Deaths of Robert Durst,” witness interviews, and information related to Durst’s Los Angeles prosecution, including testimony elicited during proceedings related to his trial for the murder of Susan Berman.

The Night of Kathleen Durst's Disappearance and Durst's Statements to Law Enforcement

Kathleen Durst vanished on the night of January 31, 1982. She was first reported missing to the New York City Police Department ("NYPD") by her husband, Robert Durst, on February 5, 1982, five days after she went missing. In that report, Durst claimed to investigators that he had driven Kathleen from their South Salem home to a nearby train station in Katonah, where she boarded a Manhattan bound train to return to their Riverside Drive apartment. Durst further reported that he called her later from a South Salem payphone and confirmed that she had arrived at the Riverside Drive apartment. Based on these statements, the NYPD focused its investigation in Manhattan, driven by the information that she had vanished sometime after arriving at her Riverside Drive residence the night of January 31, 1982. This focus was based largely on Robert Durst's statements to police about his last contact with his wife. As set forth below, a number of Durst's statements to authorities regarding Kathleen's disappearance were contradicted even early on in the investigation.

The Initial 1982 Investigation

The NYPD, with the assistance of the New York State Police ("NYSP"), interviewed Kathleen's family, friends and associates as they investigated Kathleen's disappearance. These interviews revealed inconsistencies between Durst's original statements about his wife's disappearance and the statements of the individuals that were interviewed.

Evidence Contradicting Durst's Initial Statements

First, contrary to Durst's contentions otherwise, interviews revealed that Kathleen and Durst had been experiencing marital problems at the time of her disappearance, and there were allegations that Durst committed acts of domestic violence against Kathleen. Specifically, one of the Dursts' neighbors in the Riverside Drive apartment building told investigators that, on one previous occasion,

Kathleen had climbed from her balcony to the neighbor's balcony and knocked on the window to be let in. Kathleen, who the neighbor described as scared and hysterical, then told the neighbor that Durst had beaten her, that he had a gun, and that she was afraid that he would shoot her. When confronted with this, Durst denied the incident. The neighbor also informed law enforcement that there were other incidents in which Kathleen came to their apartment seeking protection from Durst.

Second, contrary to Durst's claim that after driving Kathleen to the train he stopped at the home of his South Salem neighbors for drinks before returning to his home next door, his neighbors denied that Durst visited them that night.

Third, according to the cleaning woman who worked at the Durst South Salem home, when police visited the home shortly after Durst reported Kathleen missing, she showed the police what she described as a small amount of blood on the dishwasher. The cleaning woman also recalled telling police that she noticed a wood panel askew in the dining room, as well as the presence of grimy fingerprints in that area. She also recalled telling police that Durst instructed her to dispose of many of Kathleen's belongings soon after her disappearance.¹

Additional Evidence

In the days immediately following Kathleen's disappearance, a worker at another of the Dursts' apartments, located at 12 East 86th Street in Manhattan, encountered a clogged trash compactor at the building. Inside, she found a number of personal items, including medical books marked with Kathleen Durst's name. Kathleen was in her final year of medical school at the time, and was set to graduate that spring. The worker shared her findings with Kathleen's sister, who in

¹ Although there are no reports from the 1982 investigation that document these observations, when interviewed in 2000, the cleaning woman told police about her observations and indicated that she made the same report to the police in 1982.

turn shared them with police, since Kathleen's family did not believe that there was any rational reason why Kathleen would have disposed of the materials herself.

Kathleen's family and friends also reported finding notes, believed to be in Robert Durst's handwriting, in the garbage at the South Salem home shortly after Kathleen's disappearance. One note appeared to be Durst's itinerary for the week after Kathleen disappeared. Another note (hereinafter, the "Dig Note") contained the following words: "town dump, bridge, dig, boat, other, shovel, car or truck rental." These notes were also shared with the NYPD.

Despite the evidence that seemingly contradicted Durst's version of events, the focus of the investigation remained in New York City. This was in part because of (1) statements made by individuals working in the Riverside Drive building the night of Kathleen's disappearance who claimed to have seen her at the building, which appeared to corroborate the statements made by Durst that she traveled into the city that night; and (2) a phone call that was placed to Kathleen's Bronx medical school the day after she was last seen, wherein she purportedly notified them of her intended absence. As detailed below, these two pieces of evidence did not withstand further investigative scrutiny. At the time, investigators were also subjected to statements by Durst's close friend and unofficial spokesperson, Susan Berman, who was a well-known author, which characterized Kathleen in an unflattering light and suggested that Kathleen voluntarily ran off with another man. After the Manhattan-centric investigation failed to locate Kathleen or her body, the investigation went cold.

NYSP and WCDAO Investigation - 1999 to 2005

In 1999, after receiving a tip from a person who had been arrested on an unrelated case and who claimed to know the location of Kathleen's body, NYSP Investigator Joseph Becerra examined the NYSP file and a number of NYPD reports related to the investigation of Kathleen's disappearance. While that tip did not lead to any credible evidence, it did cause Investigator Becerra to begin another

investigation into Kathleen's disappearance, assisted by Investigators from the Westchester County District Attorney's Office ("WCDAO"). Most importantly, Inv. Becerra re-interviewed many of the witnesses who had been interviewed around the time of Kathleen's disappearance. He determined that the information gathered in 1982, which had led the police to focus the investigation in Manhattan, was not credible or reliable. Specifically, with respect to the Riverside Drive building employees: (1) one worker reported to Inv. Becerra that he had been mistaken about seeing Kathleen the night she disappeared; (2) another clarified that he thought he had seen someone wearing Kathleen's coat, but could not say whether it was Kathleen; and (3) the elevator operator who was working when Kathleen purportedly returned to her Riverside Drive residence told Inv. Becerra that Kathleen had not, in fact, returned that night. Further, with respect to the call that Kathleen purportedly made to her medical school, there was no evidence that the person who identified herself as Kathleen in the call to the medical school dean the day after her disappearance was actually Kathleen Durst and not someone pretending to be her as part of a ruse. As discussed below, subsequent evidence was developed that the call was not, in fact, placed by Kathleen.

As part of the new investigation, on January 6, 2000, NYSP searched the South Salem home, which had been since remodeled and was no longer owned by Durst. The Dursts' cleaning woman accompanied NYSP during this search, and pointed out the wood panel that she reported as being askew in the days just after Kathleen's disappearance. NYSP discovered a secret compartment behind the wood panel, but no evidence was recovered inside the compartment. Nor was any new evidence discovered in other parts of the home or in the lake on which the home borders. The existence of the new NYSP investigation was reported in the media in October 2000, and shortly thereafter, Robert Durst fled to Galveston, Texas, where he disguised himself as a mute woman.

As a part of the investigation, Inv. Becerra interviewed Robert Durst's family and friends, and he planned to interview Susan Berman. However, before Inv. Becerra could speak with Berman, she was murdered in her Los Angeles home on or about December 23, 2000. Evidence shows that after the investigation was reopened and prior to her murder, Robert Durst sent Berman two checks with the value of \$25,000 each.

According to the investigation into Berman's murder, there were no signs of forced entry, and nothing appeared to have been stolen from her home. Around the time Berman's body was discovered, the Beverly Hills Police Department received a note in the mail. The address on the envelope had the word Beverly misspelled as "Beverley," a fact that would become relevant later in the investigation, as discussed below. The note within the envelope contained Berman's address and the word "cadaver" (hereinafter, the "Cadaver Note").

Shortly after Berman's murder, Inv. Becerra and a WCDAO Investigator flew to Los Angeles where they met with the LAPD, and interviewed some of Susan Berman's friends and family. At other times during the investigation, NYSP, WCDAO investigators, and other law enforcement officers conducted additional interviews with Berman's friends and family. During these interviews, Susan's friends said that Susan told them that she helped Robert Durst after his wife disappeared by pretending to be Kathleen during a phone call that Berman placed to Kathleen's medical school saying that she would be absent. Additionally, a mutual friend of both Berman and Durst also told law enforcement that Susan told the friend that Durst confessed to Berman that he killed Kathleen.²

On or about September 28, 2001, Robert Durst's Galveston neighbor, Morris Black, was murdered, and his dismembered torso was found in garbage bags floating in Galveston Bay. Evidence led police to Durst, who was arrested and charged with Black's murder. Durst posted bail and fled.

² According to another witness, Berman said that Durst admitted to having a fight with Kathleen and said that Kathleen had an accident on the stairs.

Seven weeks later, Durst was caught when he was arrested for shoplifting from a Wegman's grocery store in Pennsylvania. At the time of his arrest, he had a shaved head and eyebrows, and about \$500 in his pocket. Police executed a search warrant on Durst's rental car, which he had rented in Morris Black's name. During the search, officers recovered approximately \$37,000, two loaded handguns, and some handwritten notes, one of which contained the Connecticut work address of a friend of Kathleen who had been vocal about her belief that Durst was responsible for Kathleen's disappearance and death.

After his apprehension in Pennsylvania, Robert Durst was returned to Texas and held for trial. During the trial, Durst testified that he killed Morris Black in self-defense. On November 11, 2003, Durst was acquitted of murdering Black, but later pled guilty to bail jumping and evidence tampering, and was sentenced to five years in prison. Durst was not charged in the death of Berman or Kathleen, and the NYSP and the WCDAO investigation became dormant.

Interviews of Robert Durst by Andrew Jarecki - 2010 to 2015

In 2010, after Durst was released from prison and from parole, and after reading about the soon-to-be released scripted movie based on his life titled, "All Good Things," Robert Durst contacted the film's director, Andrew Jarecki, and asked to view the movie. Jarecki arranged for a private viewing, after which Durst contacted Jarecki. Durst told Jarecki that he liked the way he was portrayed in the movie and proposed that Jarecki interview him. Durst and Jarecki watched the movie together, during which Durst provided commentary, which was recorded. Durst also participated in three days of recorded interviews during which he made many admissions. These admissions included: that he had a number of physical altercations with Kathleen, including on the night she disappeared; that he lied to police about calling and speaking to her at their Riverside Drive apartment; and that he did not actually have drinks with his neighbors the night that she disappeared. Durst

continued to insist, however, that he did not kill Kathleen, and that he drove her to the Katonah train station in Westchester County. He claimed his lies were intended to focus the search in Manhattan. Durst also admitted that shortly before Susan Berman was murdered, Berman told him that she had been contacted by detectives regarding Kathleen's disappearance and that she intended to talk to them. Durst denied writing the Cadaver Note, but opined that only the killer could have written it.

After these interviews, Susan Berman's stepson gave Andrew Jarecki an envelope and letter that Robert Durst had sent to Susan Berman over a year before she was murdered, which he had found with Berman's possessions. The return address on the envelope was stamped with Robert Durst's name and Manhattan business address. The envelope was addressed in block lettering that appeared strikingly similar to the lettering on the Cadaver Note sent to the Beverly Hills Police Department around the time of Berman's murder, and included the same misspelling of "Beverly" as "Beverley." After receiving the envelope, Andrew Jarecki tried repeatedly to schedule another interview with Robert Durst, with the intention of confronting him about these similarities. Durst avoided doing so for some time, but eventually scheduled an interview for April 18, 2012. When questioned about the two envelopes, Durst admitted that the writing was very similar, and the misspelling the same, and while he conceded that he wrote the letter to Berman, he continued to deny that he wrote the Cadaver Note. At the conclusion of the interview, Durst, still wearing his microphone, went to the restroom where he was recorded talking to himself. Specifically, Durst said:

There it is. You're caught. Well, that's... You're right, of course. But you can't imagine. They want to talk to him. That's good. I find them very frightening, and I do not want to talk to them. I don't know. The washer... Well I don't know what you expected to get, but the...the rest of... I don't know what's in the house. Oh, I want this ... Killed them all of course. I want to do something new. There's nothing new about that. What a disaster. He was right. I was wrong. And the burping. I'm having difficulty with the question. What the hell did I do?

Years after the Jarecki interviews were completed, the audio of Durst talking to himself and stating “[t]here it is. You’re caught.” was discovered during the production of “The Jinx.” The envelope and letter Durst sent to Berman, and the bathroom audio recording, were turned over to Los Angeles authorities, who subsequently obtained an arrest warrant for Durst for the murder of Susan Berman.

Berman Murder Charges and Subsequent Trial

On March 14, 2015, the night before the final episode of *The Jinx* was to air, Durst was arrested in New Orleans for the murder of Susan Berman. In his possession police found a loaded gun, over \$40,000, a fake identification, and a latex mask capable of altering his appearance. Durst pled guilty to felony weapon possession in Louisiana related to the loaded gun that he possessed, and he was subsequently extradited to California in November of 2016.

Robert Durst was charged in California with murder in the first degree with special circumstances. One of the “special circumstances” was that he killed Berman because she was a witness to a crime, and to prevent her from cooperating with law enforcement about that crime. The theory of the prosecution was that Durst killed Berman because she was a central witness in the investigation of Kathleen’s death; evidence showed that Durst made admissions to Berman that he had killed Kathleen, and that Berman assisted Durst by calling Kathleen’s medical school pretending to be Kathleen in order to misdirect the police investigation.

During the trial, a witness testified that the witness met Durst for dinner and Durst said that he wanted to talk about Susan and Kathleen. When the dinner ended, the witness realized that they hadn’t spoken about the women and, according to the testimony, the witness said to Durst, “you wanted to talk about Susan,” and Durst replied, “I had to. It was her or me. I had no choice.” The witness testified that Durst then began to walk away, at which time the witness said “You wanted to talk about Kathie” and Durst continued to walk away without responding.

Robert Durst testified in his own defense at the Los Angeles trial. In that testimony, he continued to deny killing Kathleen and repeated his story that he left her at the train station the night she disappeared. He did concede, however, that he wrote and sent the Cadaver Note to the Beverly Hills Police Department. Durst testified that he did so after he found Susan Berman's body after she was murdered, but claimed that he was not the killer. He testified that he did not report finding the body because he thought no one would believe that he did not kill her. Durst also testified about the Dig Note found in the trash at the South Salem home just after Kathleen's disappearance. Specifically, he testified that it was a to-do list for a neighborhood high school student that he had hired to do odd jobs around the South Salem house, and was not related to the disposal of a body. Durst's trial testimony about what he did in the time period surrounding Kathleen's disappearance contained several inconsistencies from his previous accounts. He also admitted that he perjured himself in the Texas trial when he denied he was in Los Angeles at the time of Berman's murder.

On September 17, 2021, Durst was convicted of Susan Berman's murder with the special circumstance of killing a witness to prevent them from cooperating with law enforcement. On October 14, 2021, he was sentenced to life in prison without the possibility of parole.

The Effect of the Trial Conviction

In addition to the admissions Durst made during the course of the trial, Durst's conviction was legally significant for a potential criminal charge in Westchester County for Kathleen Durst's murder. Specifically, because Durst was convicted of killing Berman as a witness to prevent her cooperation with law enforcement, Berman's statement that she was the person that called Kathleen's medical school pretending to be Kathleen and Durst's statement that he had made to Berman about killing Kathleen (as told through other witnesses) were now admissible in New York. Put another way, there was now new, legally admissible evidence that Durst had admitted to Berman that he killed Kathleen

and that Berman assisted in Durst's misdirection of law enforcement. The Westchester County District Attorney's Office filed a felony complaint in the Lewisboro Town Court on October 19, 2021, charging Robert Durst with murder in the second degree. On November 1, 2021, a grand jury returned an indictment charging him with that crime. The WCDAO then filed the necessary paperwork to secure Durst's return to Westchester County. On January 10, 2022, Robert Durst died before he could be brought to Westchester County to face the indictment filed against him.

Conclusion

The initial investigation into Kathleen Durst's disappearance was hampered by several factors including: (1) an overreliance on the narrative provided by Durst, who was the last person to see Kathleen; (2) an overreliance on the statements of Susan Berman, a successful author, who acted as Durst's spokesperson, about Kathleen's life style habits and likelihood to run away; (3) the insufficient investigation into the statements made by the witnesses who had placed Kathleen in Manhattan until Inv. Becerra did so almost 20 years later; and (4) a failure to thoroughly investigate the phone call supposedly placed by Kathleen to her medical school, which was later discovered to have been a ruse perpetrated by Susan Berman at Durst's request. All of this allowed the initial investigation to be focused almost solely in Manhattan, resulting in missed opportunities to possibly obtain physical evidence in Westchester County where she was actually last seen alive.

In short, it appears that the initial investigation suffered to some degree from "tunnel-vision"—having a theory of a case, which is maintained even when there are red flags that should cause those initial theories to be questioned. While the investigation understandably focused on Manhattan initially, that should have changed as more facts came to light. While it is impossible to know why this happened, we cannot ignore the wealth, status and resources available to Durst, and the credibility accorded to Susan Berman because of her status as a well-known author. This case

should serve as a stark reminder to investigators and prosecutors that the best approach initially is always with an open mind and a broad brush, especially in homicide cases where physical evidence is so crucial. We must also remember that cases involving domestic violence are often based in deception and secrecy, where the details of what occurred cannot always be proven by evidence from outside of the home, and as such, should be approached with that in mind.

Thanks to the dedication of investigators with NYSP, the WCDAO and ADAs from our Cold Case Bureau, however, we were able to reach the point where we felt confident that we could prove beyond a reasonable doubt that Robert Durst murdered Kathleen Durst in Westchester County. We hope that the charges here send a powerful message that no one is above the law and that no victim's case should be forgotten.