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Was justice for Bella washed cy c{ A



PATRICK WHITEMORE/POOL

Michael McCarthy, left, spoke with his attorney Jonathan Shapiro during his murder trial on Thursday.



By **Nestor Ramos** GLOBE STAFF JUNE 08, 2017

Were it not for the water, justice might have come easier for Bella Bond.

Had investigators found her in the Maxwell Street apartment where prosecutors say she died — had they seen the bruises and measured their sizes and shapes — then perhaps there would have been no deal for her mother's tarnished testimony. Maybe Michael McCarthy, the man prosecutors say beat Bella to death, wouldn't seem so poised to skate.

But Bella Bond's time in the water, dumped in the harbor until she turned up on the Deer Island shore, washed all that evidence away. Prosecutors had only bad options. The details that made us so desperate to discover who she was — the sad circumstances that made her Baby Doe — are the same things that could set her alleged killer free.

It could have been different. On the other side of the country, where a girl named Kayleigh Kayleigh died, it was.

Kayleigh was 3 years old. Her mother was strung out on drugs and brought home a man who was violent and strange. And she died horribly, beaten to death and stashed in the freezer in 2014.



FOR THE LOVE OF KAYLEIGH JAYNE SLUSHER FACEBOOK PAGE

On the other side of the country, Kayleigh Slusher died horribly, beaten to death and stashed in the freezer in 2014.



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Rachelle Bond's marathon testimony ends

Bond took the stand last Friday in the trial of Michael P. McCarthy and remained sitting next to Superior Court Judge Janet L. Sanders every trial day since.

But there were no billboards, no Baby Doe. Police found the girl's battered and partially frozen body in the place where she'd been killed. In May, after an unusual monthlong dual trial, two juries in Napa County, California, **convicted** Kayleigh's mother and the man who'd moved in of murder. Both face possible life sentences.

That sounds like justice. So what do you call what's happening here?

The similarities between the two cases are eerie. The differences in the two cases are at least as important. They say the devil is in the details, but if McCarthy really did kill that girl, the details might be what set the devil free.

Thanks to the plea deal Rachelle Bond struck with Suffolk prosecutors, she will probably be released not long after McCarthy's murder trial concludes. And thanks to her sloppy, contradictory testimony against him, he might beat her to the jailhouse doors.

Never mind a plea deal — after watching several days of Rachelle Bond on the stand, would you even offer to trade seats on the bus with her?

“She’s been all over the map,” said David Duncan, a criminal defense lawyer at Zalkind, Duncan & Bernstein in Boston. Jonathan Shapiro, representing McCarthy, is one of the best cross examiners in the state, Duncan said, and he teased out every inconsistency.

But what option did prosecutors have? As star witnesses go, Bond was a white dwarf. Without her, the case against McCarthy would be a black hole.

“You have a dead body, and you really have two people who know something about it, and that’s it,” Duncan said. “How would they prosecute him without her? Her testimony was key. They had to have her, and the only way to get her was to give her a deal.”

There was also exactly zero evidence that Bond had participated in her daughter’s killing — even McCarthy has not alleged that. Accessory after the fact — the charge to which Bond pleaded guilty — was all prosecutors could plausibly prove against her.

That left District Attorney Dan Conley’s office with three bad options, said Martin G. Weinberg, a Boston criminal defense lawyer.

If prosecutors believed Bond was involved in her daughter’s death, they could have tried her along with McCarthy. But without testimony from either one of them, what evidence was there? A little girl on a rocky beach, with no cause or date of death. Vague recollections from similarly addled friends and relatives. The risk of both McCarthy and Bond getting off would be high.

Prosecutors also could have refused to deal with Bond and called her to the stand, but she surely would have invoked her Fifth Amendment rights against self-incrimination. If the trial had been in federal court, prosecutors could

have forced Bond to testify by granting her limited immunity, but they wouldn't have been able to use anything she said (or anything later derived from it) to prosecute her.

That's moot anyway: State courts require what's called transactional immunity to break Fifth Amendment privilege, lawyers said. In order to compel Bond to testify absent an agreement, prosecutors would have given up the chance to try her for anything related to the case. The result would have been worse: Once immunity was granted, Bond would have walked without a conviction or probation. Bond "had a lot of negotiating leverage and a very good lawyer," Weinberg said.

The district attorney's office chose the third option: Cutting Bond a deal — she'll end up doing about two years behind bars — and trying McCarthy for murder. Unpalatable as it is, it appears to be the lesser of three evils.

Napa County prosecutors had a few crucial advantages: Expert witnesses testified that Kayleigh's body was badly and repeatedly beaten. The couple who killed her had called a friend for help disposing of a dead body, and the friend called authorities. And the couple fled together, leaving Kayleigh's partially frozen body behind.

"We wouldn't file the case against both defendants if we did not believe we could prove it without a reasonable doubt," said Paul Gero, an assistant district attorney in Napa. "We had that confidence going into the case."

So they charged them both — Sarah Lynn Krueger, 27, and Ryan Scott Warner, 29 — with murder and split the trial in two because their defenses conflicted with one another. It didn't matter who actually struck the blow that killed Kayleigh. They both tortured her. They both killed her.

"Really the main evidence was the 3-year-old victim's body," Gero said — the bruises and the broken bones.

After so long in the water, Bella's body told no such stories.