

1 THE BAILIFF: Stand here. Face the clerk, raise  
2 your right hand and take the oath.

3 THEREUPON,

4 CHERYL HAGAN

5 Was called as a witness and after having been first duly  
6 sworn on oath, was examined and testified as follows:

7 THE BAILIFF: Have a seat in the witness stand.  
8 Speak in a loud and clear voice.

9 DIRECT EXAMINATION

10 BY MR. BULONE:

11 Q. Okay. Cheryl, go ahead and take a deep breath.  
12 Please state your name for the jury.

13 A. Cheryl Hagan.

14 Q. And are you employed?

15 A. Yes.

16 Q. What do you do?

17 A. I'm a cashier.

18 Q. Do you go to school?

19 A. Uh-huh.

20 Q. What are you taking?

21 A. Just basics.

22 Q. Where do you live now?

23 A. In Clearwater.

24 Q. And how old are you?

25 A. Twenty-one.

ROBERT A. DEMPSTER & ASSOCIATES

1 Q. Let's go back to July the 14th, July 15th of  
2 1989. Where were you living at that time?

3 A. 4017 Audobon Road.

4 Q. Is that a house or apartment?

5 A. Triplex.

6 Q. And who did you live there with?

7 A. Darren Scott, my fiance, and my son.

8 Q. And how old was your son then; do you remember?

9 A. About three-and-a-half months old.

10 Q. How old is he now?

11 A. Seventeen months.

12 Q. And is Darren Scott your fiance now?

13 A. Yeah.

14 Q. And is he the father of Darren?

15 A. Yes.

16 Q. Now, in this triplex did you guys live in the  
17 east apartment?

18 A. Yes.

19 Q. And did somebody else live in the west apartment?

20 A. Dave and Barb.

21 Q. Okay. David Stewart?

22 A. Yeah, I guess, that's his last name.

23 Q. And then is there an apartment on the south side  
24 as well?

25 A. The landlord Theresa's apartment.

1 Q. So it's kind of U-shaped?

2 A. Uh-huh.

3 Q. Did you know the Defendant in this case Kevin  
4 Herrick?

5 A. He had been staying there for a couple weeks, so  
6 I had seen him and we had talked to him a few times, but I  
7 didn't know him really.

8 Q. He had been staying where?

9 A. With the landlord.

10 Q. Do you see him in the courtroom today?

11 A. Yeah.

12 Q. Could you please point him out and describe what  
13 he's wearing for the record?

14 A. He's wearing a black coat and gray shirt and  
15 black tie.

16 MR. BULONE: Your Honor, may the record reflect  
17 the witness has identified the Defendant Mr. Herrick?

18 THE COURT: Let the record reflect that this  
19 witness has identified the Defendant.

20 Q. (By Mr. Bulone) During the couple of weeks that  
21 he was living with the landlady about how many times did  
22 you see him?

23 A. Just a few times.

24 Q. What were the circumstances when you saw him?

25 A. Well, we were having a barbecue and he was

1 walking around the triplex, I guess, smoking a cigarette  
2 and he was talking to Scott, Darren Scott. We watched  
3 videos with him one time and played a game of chess with  
4 him one time.

5 Q. How many times do you think he was in your  
6 apartment?

7 A. Four or five, probably, total.

8 Q. Were you ever in his apartment at all?

9 A. In Theresa's?

10 Q. Yeah.

11 A. I've been in the kitchen and stuff.

12 Q. With him?

13 A. No, with her.

14 Q. Now, when he normally left your apartment how  
15 would he leave?

16 A. Most of the time he left through the back sliding  
17 glass doors.

18 Q. All right. Let's go specifically to July 14th,  
19 1989.

20 Did you see the Defendant on that day?

21 A. During the day, yeah, that's when we played a  
22 game of chess.

23 Q. Okay. Please describe how you first saw him on  
24 that day?

25 A. He came over and he wanted to play a game of

1 chess with Scott. It was time for Scott to get off work,  
2 so he said he would play a game of chess with me. I told  
3 him he'll be home in a minute and I'll play chess, so we  
4 did.

5 Q. Was the baby there?

6 A. I think I just put him down for a nap. Either  
7 that or he was in his swing, I'm not really sure.

8 Q. Okay. What happened after that?

9 A. Scott came home about five minutes after he  
10 showed up and he was with his friend Tammy and Darrel. We  
11 decided to go to a drive-in. Kevin left and Tammy and  
12 Darrel left, so me and Scott went to the drive-in.

13 Q. With the baby?

14 A. Yeah.

15 Q. Then you came home from the drive-in?

16 A. We only saw the first movie because the baby was  
17 grumpy.

18 Q. Do you know what time you got home?

19 A. Around 11:30.

20 Q. What did you do after you got home?

21 A. I took a bath, put the baby down first for  
22 nighttime. Scott came to the door, to the bathroom door,  
23 and told me he was going to go with Dave to drop off  
24 tropical fish to his mother's house because the tank was  
25 not ready for the fish or something.

1 Q. And you said okay?

2 A. Yeah, I said okay.

3 Q. What did you do after that?

4 A. Went to sleep. I had cracked the baby's door  
5 open, and I leave the bathroom light on because I have to  
6 get up and feed him, and I just went to sleep.

7 Q. Did you leave the bathroom light on?

8 A. I'm not sure if it was the bathroom or hall light.

9 Q. But you left one of them on?

10 A. Uh-huh.

11 Q. You went to sleep?

12 A. Yes.

13 Q. Where did you go to sleep?

14 A. In my bedroom.

15 Q. On your bed in your bedroom?

16 A. Uh-huh.

17 Q. What happened after that?

18 A. Well, I woke up. I don't know how long I had  
19 been sleeping, and there's there guy over me and it was  
20 dark. I couldn't see anything except for like an image  
21 over me. He had his knees on either side of me and a  
22 knife to my neck.

23 Q. Did you feel the knife?

24 A. I thought it was a scalpel because it was so  
25 sharp.



1 Q. It was either a scalpel or a knife?

2 A. Uh-huh.

3 Q. Did this man have any clothes on?

4 A. A shirt, I think, because it seemed like a dark  
5 shirt. I could just see the outline. I couldn't really  
6 see any details.

7 Q. Did he have any pants or underwear on?

8 A. No, it was in my face.

9 Q. What was in your face?

10 A. His penis.

11 Q. What did he do then?

12 A. He told me if I didn't suck on it he was going  
13 to kill the baby.

14 Q. What happened after that, Cheryl?

15 A. He just kept trying and he kept threatening the  
16 baby. I was getting scared. I told him not to touch the  
17 baby and he said just do it. I just couldn't do it  
18 because I was scared, you know. The knife was right on my  
19 neck and he kept trying to shove it in. And one time when  
20 I was screaming, he started to put his hand over my mouth  
21 and then he just started moving the knife down. I don't  
22 know whether he was going to cut me or stab me or cut my  
23 underwear or what.

24 Then he turned around and Scott was there. He  
25 jumped up and they started going back and forth. I didn't

1 know if he was going to kill him or not.

2 Q. Was this man ever able to get his penis inside of  
3 your mouth?

4 A. Once.

5 Q. It actually went inside your mouth?

6 A. Yes.

7 Q. Was that against your will?

8 A. Yes.

9 Q. Did you notice if the hall light or the bathroom  
10 light was still on?

11 A. I couldn't see anything, so I believe it was off  
12 because I couldn't see really anything.

13 Q. What happened next then?

14 A. Well, him and Scott were just fighting back and  
15 forth and, you know, I wasn't sure if a gun was going to  
16 go off or if he was going to get stabbed or anything.

17 They were just fighting back and forth and he had a knife  
18 in Scott's face. He told him to back up and let him get  
19 his pants.

20 Q. Now where did this take place, in the bedroom  
21 still?

22 A. It was still in the bedroom.

23 Q. What happened after he was waving the knife or  
24 scalpel around?

25 A. Scott let him get his pants off the ground and,



1 you know, when I looked down it looked like jeans with a  
2 big belt buckle, so that's another reason why I thought it  
3 was the guy next door. Then he closed us in the room and  
4 we were trying to get the door open and Scott told him --  
5 he said he was going to go kill the baby if we didn't let  
6 go of the door. So we let go of the door and Scott said  
7 to stay away from the baby. So after he opened the door I  
8 ran into the room and checked on him.

9 Q. Was he okay?

10 A. Yeah, he was still sleeping.

11 Q. Sleeping like a baby, huh?

12 A. Yeah.

13 Q. Okay. What happened after that?

14 A. I guess Scott, like, chased him out to the  
15 hallway. He went to the glass sliding door, apparently,  
16 because I heard Scott say it's locked and I guess -- I  
17 didn't really see. I just heard the door's locked and  
18 then Scott chased him out down the street. And I started  
19 screaming out the front door that somebody tried to rape  
20 me and that somebody stabbed Scott because he had blood  
21 all over him.

22 Q. Who were the first people that came out of their  
23 doors besides yourself and Scott?

24 A. I'm not sure if it was Theresa or Barb. It was  
25 Theresa because Theresa was like, "Oh, my God. What's

1 wrong?" And I told her. I was just screaming and holding  
2 onto the baby because I was really scared. I told her  
3 that you know somebody tried to rape me and threatened to  
4 kill the baby and that Scott ran after him. She was just  
5 ranting and raving, "Oh, my God. Oh, my God," and then  
6 Barb and Dave -- well, Barb came out and I guess Scott  
7 came back and told them to call the police.

8 Q. Was Theresa still out there?

9 A. Yeah, she stayed out there.

10 Q. Were the police called and the ambulance?

11 A. I guess Barb called them and they showed up and  
12 everything, yeah.

13 Q. What happened after that?

14 A. Well, the policemen was asking what was -- they  
15 came and just investigated. And they had to take Scott to  
16 the hospital because he had two stab wounds in his chest  
17 and they just pretty much were looking at all the  
18 fingerprints and everything.

19 Q. Did you see the Defendant after that?

20 A. Yeah. He came right through the front door, and  
21 I didn't know it was him, but I kept thinking it was him  
22 because I couldn't see him. All I saw was an outline, but  
23 when he walked out I felt sick to my stomach because I  
24 knew it was him. But he just came out the front door.

25 Q. Was he the last person out of all the neighbors

1 and everything?

2 A. Yes.

3 Q. And then did you go to the hospital with Scott  
4 then?

5 A. No I went home with my mother.

6 Q. Then did Scott go there?

7 A. Yeah, they had to take him to the hospital.

8 Q. And then did Scott go to your mom's house after  
9 that?

10 A. Yes, he did.

11 Q. Did he call the police from there?

12 A. He called and made a positive identification  
13 then.

14 Q. Let me ask you this: Before you even spoke to  
15 Scott about who this was, did you have an idea about who  
16 the attacker was?

17 A. Yes.

18 Q. And who was that?

19 A. Kevin Richard Herrick.

20 Q. And why did you feel that way, what observations?

21 A. Just everything. It was just -- like the dark  
22 shirt, he always wore the same shirts when he was walking  
23 around the apartments. It was like the dark shirt and his  
24 build, the outline of his hair, just everything. Not only  
25 that, but it was just everything led up to it. I just

1 thought it was him. It just looked like him in the dark.  
2 I couldn't see him, but I just had a feeling.

3 Q. Okay. Was there anything about his belt or his  
4 pants?

5 A. His belt buckle, he always wore that on his  
6 jeans. Like I said, he wore pretty much the same clothes.  
7 And the belt buckle was like a big belt buckle. When he  
8 bent down to pick up his pants I glanced down and I could  
9 see a big belt buckle.

10 Q. This is in your bedroom, you mean?

11 A. In the bedroom.

12 Q. Where the attacker was when he put his pants on?

13 A. When he had the knife to Scott's neck and he bent  
14 down to pick it up. I was on the bed screaming, and when  
15 he bent down I could see the pants and belt buckle.

16 Q. When the Defendant finally emerged from his  
17 apartment did you see the same belt buckle?

18 A. On his pants? Yeah, but he had a red shirt on  
19 when he came out and his hair was kind of standing up like  
20 either he had sleepen or he had changed shirts.

21 Q. Did it appear as -- I realize it was pretty dark  
22 in there. Did it appear as if he had the same belt buckle  
23 and same pants?

24 A. It seemed like the same jeans and belt he always  
25 wears.

1 Q. Big belt buckle?

2 A. Yes.

3 Q. Now was there anything that you observed or heard  
4 or anything like that that would indicate to you that it  
5 was not Kevin Herrick that did this to you?

6 A. No.

7 Q. Now, when he went into the house at that point in  
8 time was it against your will; he wasn't invited in, was  
9 he?

10 A. Of course not, and I was sleeping.

11 Q. And when he put his penis inside of your mouth  
12 that was against your will, too, wasn't it?

13 A. Yes.

14 MR. BULONE: I don't have anything else, Judge.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. LEINSTER:

18 Q. Cheryl, have you had an opportunity to go over  
19 your deposition and your written statement prior to coming  
20 in here today?

21 A. Yes, sir.

22 Q. How recently?

23 A. Today.

24 Q. Okay. And has that helped to refresh your  
25 memory?

1 A. Yeah, a little bit.

2 Q. Theresa, the lady that came out of the house,  
3 that's Theresa Porrey?

4 A. Uh-huh.

5 Q. She's been rather ill for some time?

6 A. I guess, she's been on oxygen since we moved in  
7 there.

8 Q. How long would you say it was from the time  
9 that Scott left running after the assailant until he got  
10 back?

11 A. Oh, I don't know. I mean, I was pretty scared  
12 and I was just yelling for help. It didn't seem like that  
13 long, really. Five minutes.

14 Q. Do you think it was that long?

15 A. Five, ten minutes. I don't know.

16 Q. He got back before the police got back, didn't  
17 he?

18 A. Yes.

19 Q. And the first investigator that you talked to,  
20 you told that individual that your assailant had on a tank  
21 top --

22 A. Muscle shirt.

23 Q. -- isn't that right?

24 A. Muscle shirt, yes.

25 Q. Are you sure that's what it was?



1           A.    Now, no. All I remember is that it was dark. It  
2           was either a dark -- it was in the bedroom. All I could  
3           see was dark. Like the shirt ended here (indicating).  
4           You could see the skin where the shirt ended, so it seemed  
5           to be a muscle shirt.

6           Q.    As a matter of fact, you described it as being a  
7           dark shirt either navy blue or black, didn't you?

8           A.    Because it was dark, yes.

9           Q.    Wouldn't everything had been dark under those  
10          conditions, dark green, dark red, everything would have  
11          appeared black, wouldn't it?

12          A.    Yeah, I guess.

13          Q.    As a matter of fact, everything did appear black,  
14          didn't it?

15          A.    His clothing?

16          Q.    Everything in the room.

17          A.    It was dark, but his skin was lighter then his  
18          shirt, his face was lighter then his hair. I could see  
19          the difference between dark and light.

20          Q.    As a matter of fact, was it not, in your words,  
21          "pitch dark"?

22          A.    I don't know. I guess.

23          Q.    Okay. I'm referring to your deposition which was  
24          taken December 5th, 1989, here at the State Attorney's  
25          office. Do you remember that deposition?

1 A. Uh-huh.

2 Q. I'm referring to page 14 line 18. "I woke up and  
3 it was pitch dark." Going to line 25, "it was pitch  
4 dark." And the next page 15, line 8. "It was totally  
5 dark."

6 MR. BULONE: Judge, I object. I think this is  
7 improper impeachment because I don't think this is  
8 inconsistent at all, so it would be hearsay.

9 THE COURT: I think we'll rely upon the jury to  
10 determine if it was a consistency or inconsistency.  
11 I'll allow him to continue.

12 Q. (By Mr. Leinster) Do you recall stating under  
13 oath it was pitch dark?

14 A. I don't recall. But if it says it then, I guess,  
15 I did say that.

16 Q. All right. But there is no question in your mind  
17 that your assailant had a shirt on?

18 A. No. When he was over me he did not have a shirt  
19 on -- I mean he did have a shirt on.

20 Q. All right. So when Darren came into the room he  
21 would still have the shirt on?

22 A. As far as I know, yes.

23 Q. Okay. Now, prior to the police coming out to the  
24 scene, did Darren not take you back inside to console you?

25 A. When he came in he asked me did I see who it was

1 and I said it looked like the guy next door, and he told  
2 me it was.

3 Q. That's what I'm getting at. He told you at that  
4 point that it was Kevin Herrick, right?

5 A. Right.

6 Q. And yet you didn't tell the police it was Kevin  
7 Herrick?

8 A. No.

9 Q. Did you disbelieve Darren?

10 A. No, it wasn't that I didn't believe him. I was  
11 just really freaked out at that time. I was in shock and  
12 I really -- it was not like he'd ever been mean or acted  
13 strange. He was kind of quiet. I just couldn't believe  
14 that somebody that was being nice to you would do that to  
15 you, you know, would hold a knife to your neck. When  
16 Scott told me at the time, I was in shock. Me and Scott  
17 didn't talk any further. It was just those two  
18 statements.

19 Q. The fact is, you didn't tell the police it was  
20 Herrick?

21 A. I told them it looked like the guy next door.

22 Q. As a matter of fact, the only description you  
23 gave to the investigator, is it not true, that he seemed  
24 tall, heavyset, with dark, curly hair, right?

25 A. Right.

1 Q. In those days Mr. Herrick's hair was considerably  
2 longer than it is now; would you agree?

3 A. Longer as on his neck? I mean, it was --

4 Q. Longer down his sholders?

5 A. It was pretty bushy everywhere.

6 Q. And that was the nature of the haircut of your  
7 assailant bushy, curly?

8 A. I can't say if it was curly. It was rough  
9 around. I didn't see curls, I just saw -- it looked like  
10 rough hair around.

11 Q. So you don't recall telling the investigator that  
12 it was the dark, curly hair that looked like Kevin?

13 A. Yeah, I do recall that.

14 Q. Okay. Do you recall also that you told the  
15 investigator that you couldn't be sure, but you thought it  
16 was the neighbor because he'd been there before and always  
17 left through the sliding glass door?

18 A. Well, the thing is --

19 Q. Do you remember saying that?

20 A. Yes, I do.

21 Q. So in your mind, isn't it true that you're  
22 thinking this guy always leaves by the sliding glass door  
23 and the assailant tried to leave by the sliding glass  
24 door, therefore, it must be Kevin Herrick; is that right?

25 A. Not really. In fact, he knew where the glass

1 sliding door was and it was locked. So, he, obviously,  
2 didn't come in the glass sliding door. He knew where it  
3 was. After it happened I did think about it. Yeah, he  
4 did leave through the sliding door a lot and he walked  
5 around the apartments a lot.

6 Q. My question is do you remember telling the  
7 investigator --

8 A. Yes, I do.

9 Q. -- you couldn't be sure, but you thought it was  
10 the neighbor because he left through the sliding glass  
11 door?

12 A. That's right.

13 Q. But it isn't true he left through the sliding  
14 glass door, is it?

15 A. Most of the time.

16 Q. He was only at your place about three times?

17 A. I don't know the exact time but, yeah.

18 Q. Referring once again to your deposition, page  
19 four, line five. "I had been around him a couple of times  
20 because Scott invited him over a couple of times when we  
21 were barbecuing and stuff and I played chess with him one  
22 day and he got the mail for me one day."

23 Okay. Do you remember that?

24 A. Yes, but he was around the apartments and talked  
25 to us quite a few times.

1 Q. But not inside the apartments?

2 A. Not inside, no.

3 Q. In fact, on another occasion he came over to  
4 watch the VCR, correct?

5 A. With Pat, yes.

6 Q. And he used the door, not the sliding glass door?

7 A. No. He knocked on the door and it was dark. He  
8 asked for a VCR cleaner.

9 Q. It's your statement that it might be the neighbor  
10 because he always leaves by the sliding glass door means  
11 on three occasions; he may have come through once or  
12 twice?

13 A. Excuse me?

14 Q. What did you mean by always leaves through the  
15 sliding glass doors if he only came over three times?

16 A. He didn't come over a total three times. Him and  
17 Scott, when they came in the house during the barbecue, he  
18 walked around and he came in the back door. He always  
19 walked around and smoked cigarettes. He was always  
20 walking around the apartments and we were building like a  
21 little pond by the glass sliding doors. He was always  
22 walking around there and talking to us. And there's a  
23 couple times he came and talked to Scott, whether I was  
24 there or not.

25 Q. Well, you indicated on your testimony today that



1     you thought he had been in there four or five times?

2           A.    He's been in there a few times. I don't know  
3 exactly. I didn't count how many times he came in.

4           Q.    Well, it might be important. You said a couple  
5 times on your deposition. Do you know?

6           A.    Whether it was a few or a couple?

7           Q.    What is a few?

8           A.    More than two.

9           Q.    Okay. I never knew what a few was. And let me  
10 ask you this: You said that it was pitch dark, we've  
11 acknowledged that. Were the venetian blinds closed?

12          A.    I don't know. I really don't know.

13          Q.    When you go to sleep do you customarily close the  
14 blinds?

15          A.    They were probably closed, yes.

16          Q.    And where are they in relation to your bed?

17          A.    There are two different windows. There's a real  
18 big window right by the bed. The bed was against the wall  
19 and there was a big window right there (indicating).

20          Q.    Is the head of the bed against the wall or the  
21 side of the bed?

22          A.    Against the wall where the window is.

23          Q.    No, first question first. Is the head of the bed  
24 against the wall?

25          A.    Yes.

1 Q. At the head of the bed is there a window?

2 A. No.

3 Q. No window there?

4 A. No.

5 Q. So if you were lying on the bed on your back  
6 where would the window be, right or left?

7 A. To the left.

8 Q. And would that be facing the little alcove that's  
9 created by those three units?

10 A. Would what?

11 Q. If you looked out that window what would you see?

12 A. Just the street.

13 Q. The street?

14 A. Uh-huh.

15 Q. So it faces to the north, that window; would that  
16 be right?

17 A. Yes.

18 Q. In any event, your best understanding would be  
19 the venetian blinds would be closed?

20 A. But I wasn't laying the way the bed goes.

21 Q. I'm assuming that would contribute to the fact it  
22 was pitch dark inside.

23 Now, you also gave a written statement which was  
24 a sworn statement and you made this statement on July the  
25 18th and you said in that statement, "I left the kitchen

1 light on so that Scott could see when he got home and I  
2 always leave the bathroom light on for the baby."

3 Do you remember saying that?

4 A. Yes.

5 Q. Turning to your deposition on page 35, however,  
6 you're talking about Scott chasing your assailant?

7 A. Uh-huh.

8 Q. "He still couldn't see him at that point because  
9 it was dark, pitch dark in the house. See, that's right,  
10 there were no lights."

11 A. This is what he told me.

12 Q. There were no lights on, your words?

13 A. When he was chasing him?

14 Q. Yes.

15 A. Probably not. He probably turned them off.

16 Q. I'll get to that. Quote, "It was pitch dark in  
17 the house," and you said you went to the baby's room that  
18 got around through the kitchen.

19 MR. BULONE: Judge, all this is hearsay unless he  
20 can show that it's a prior inconsistent statement.

21 That's the only way you can get in prior out of court  
22 statements is if you show it's inconsistent, and he  
23 has failed to show that foundation. All he's doing is  
24 just going through the depositions, which is improper.

25 MR. LEINSTER: She said the light was left on and

1 I'm going to that point where she says the light in  
2 the kitchen is not on. If she can explain that,  
3 that's fine, but I have the right to ask.

4 THE COURT: Ask the question.

5 Q. (By Mr. Leinster) "He didn't want to go by Scott,  
6 but Scott saw his face when he ran through the kitchen  
7 because the light from Dave's porch light was shining in  
8 our kitchen."

9 That's not the same thing as leaving the kitchen  
10 light on. Do you understand what I'm saying?

11 A. Yeah.

12 Q. Okay. You're saying that when they ran through  
13 the kitchen the kitchen light was off. The light that was  
14 coming through was coming from Dave's porch light?

15 A. Uh-huh.

16 Q. So your assumption would be that he turned the  
17 kitchen light off, too?

18 A. I suppose, yes. He probably turned off the  
19 lights that were on. I don't know what he did. All I  
20 know is when I woke up there was a guy over me with a  
21 knife to my neck and his privates in my face.

22 Q. But we've established all the lights were off?

23 A. (Witness nods head affirmatively).

24 Q. However they got off, they're all off?

25 A. At that time I turned the baby's lights on when I

1 came into the room and Scott was chasing him.

2 Q. You never saw your assailant at all once Scott  
3 chased him; you went straight to the baby's room, correct?

4 A. Correct.

5 Q. And you heard Scott yell, "Hey, man, the sliding  
6 glass doors are locked"?

7 A. Yeah, uh-huh.

8 Q. And they were locked, correct?

9 A. (Witness nods head affirmatively).

10 Q. So the assailant would have come through the  
11 front door?

12 A. Right.

13 Q. No signs of breakage, no sign of a break in or --

14 A. Why would he need to? He lived with the  
15 landlord.

16 Q. When Scott chased the individual and the  
17 individual was trying to get out the sliding glass doors,  
18 he left blood on the sliding glass doors, didn't he?

19 A. Uh-huh, yes.

20 Q. That wasn't -- was that Scott that left that  
21 blood or was it the assailant?

22 A. I didn't see, but as far as I know Scott didn't  
23 go near the sliding glass doors. He was the only one that  
24 touched the glass doors.

25 Q. Then Scott directed the assailant to the front

1 door?

2 A. Well, he told him to get him out.

3 Q. Once again, there was blood left on that  
4 doorknob, wasn't there?

5 A. There was blood left in a lot of places, yes.

6 Q. Now, I guess it's obvious that in the couple of  
7 weeks that Mr. Herrick had been living around there he got  
8 to know that you and Scott lived together, had a child  
9 together, slept together.

10 Was it a usual occurrence for Scott to leave at  
11 midnight and go somewhere?

12 A. I guess not.

13 Q. So, usually, if someone were to come into your  
14 place around that time they would expect to encounter you  
15 and Scott, not just a defenseless lady like yourself?

16 A. If they knew us, I guess. If they knew that we  
17 lived there.

18 Q. You didn't call Mr. Herrick to say Scott left;  
19 he's gone?

20 A. No.

21 Q. Scott probably didn't call him and say, Hey, I'm  
22 leaving for a while?

23 A. But he could look out the landlord's window and  
24 watch Scott walk away. I'm just assuming, though.

25 Q. When Scott got home and he found you playing



1 chess with Kevin, how did he react to that?

2 A. He didn't react. He just sat down and started  
3 talking to us.

4 Q. He wasn't angry at all?

5 A. I've been with Scott three years now. Why would  
6 he be angry?

7 Q. He's been your fiance for three years?

8 A. Not my fiance, we've been together for three  
9 years.

10 Q. And who was the other girl that was there?

11 A. Tammy.

12 Q. And who is Tammy?

13 A. Darrel's girlfriend.

14 Q. Okay. Darrel being another friend?

15 A. Uh-huh.

16 Q. Darrel, Darren is not the same person?

17 A. No.

18 Q. So it was just business as usual. He got home,  
19 the chess match concluded, Mr. Herrick left, your other  
20 friends left, no harsh words?

21 A. No.

22 Q. You never saw any unusual behavior from  
23 Mr. Herrick; you had always friendly, right?

24 A. Yeah.

25 Q. Because that's one of the reasons you told the

1 police you didn't think it could be him; isn't that right?

2 A. Yeah.

3 Q. Are Dave and Scott pretty good friends?

4 A. Well, they just met when we moved into the  
5 triplex and, you know, they talked a lot. Yeah, they were  
6 pretty good friends, I guess.

7 Q. Pal around together?

8 A. Not really, just around the apartments and talked  
9 to each other.

10 Q. Good enough friends that Dave would leave at  
11 midnight to help him fix a fish tank?

12 A. It was Dave's fish.

13 Q. Okay, but they're going to fix a fish tank?

14 A. Their going to take a fish to Dave's mother's  
15 house because the fish was dying.

16 Q. Okay. When you first saw your assailant on top  
17 of you, you claimed he had his pants off; is that right?

18 A. Yes. I don't know if they were all the way off.  
19 All I saw was he was on his knees. So I saw from his  
20 knees up.

21 Q. Uh-huh. And the only thing that you could see at  
22 that time was the outline of the hair, the curly hair,  
23 correct?

24 A. And his privates in my face.

25 Q. I understand. The curly hair, though?

1 A. I don't know. It's been a year now.

2 Q. Well, not since your deposition.

3 A. Almost.

4 Q. Would it help me to show the deposition to you?

5 A. No. I've read my deposition.

6 Q. I'm not trying to mislead you here. "I could  
7 just see the outline of the curly hair," is what you said?

8 A. It just was lumpy. It was like -- it looked like  
9 curly hair. It was dark, but it looked like the outline  
10 that curly hair would have.

11 Q. Otherwise, no facial features, just the build,  
12 the shape of the body; that's about it, right?

13 A. Uh-huh.

14 Q. Now, you didn't wake up at all until you were  
15 being straddled, right?

16 A. (Witness nods head affirmatively). I just woke up  
17 and he was over me.

18 Q. Okay.

19 A. I think --

20 Q. You didn't hear anybody come in, take their pants  
21 off, belt buckle hit the floor, things like that?

22 A. No.

23 Q. I am curious, how did you determine these were  
24 blue jeans with a large belt buckle, in as much as it was  
25 pitch black?

1           A.     Because when I was screaming and on the bed and  
2     Scott and him were fighting, I looked down and they looked  
3     like blue jeans and a belt buckle, and I could see the big  
4     belt buckle.

5           Q.     How do blue jeans look in pitch black light; can  
6     you distinguish the color blue in the absence of light?

7           A.     I could see more at that time. My eyes had  
8     focused. I could see a little bit more, but I don't know  
9     for sure if they were jeans. They did look like jeans and  
10    I did see a belt buckle.

11          Q.     But you don't know if they were jeans, right?

12          A.     I'm not sure.

13          Q.     You told the police they were jeans?

14          A.     They looked like jeans.

15          Q.     You didn't say they looked like jeans, you told  
16    the police they were jeans, right?

17          A.     I guess so.

18          Q.     And you had this knife to your throat. You  
19    thought it was a scalpel, right?

20          A.     Because it felt very sharp. It was so sharp I  
21    was afraid to move.

22          Q.     You found out, according to your deposition, that  
23    it was not a scalpel because somebody told you they found  
24    the knife and it was a regular knife?

25               MR. BULONE: Judge, this is pure hearsay. I

1 object to it.

2 MR. LEINSTER: It has nothing to do with the truth  
3 of the statement.

4 THE WITNESS: I don't know if --

5 THE COURT: Just a second.

6 MR. BULONE: What somebody told her is hearsay.

7 MR. LEINSTER: I'll approach the bench.

8 THE COURT: Rephrase the question, counsel.

9 Q. (By Mr. Leinster) Isn't one of the reasons that  
10 you believe that it's Mr. Herrick that did this is because  
11 you think that they found the weapon that was used on you?

12 A. One of the reasons?

13 Q. Yeah.

14 A. One of the many reasons, yes.

15 Q. Whether it is true or not true, you were told  
16 that they found the knife and it was a regular knife,  
17 correct?

18 A. Yes.

19 Q. All right. And if, in fact, that statement were  
20 not true, how would it affect your judgment now?

21 A. I'd still think it was him.

22 Q. You'd still think it was him?

23 A. Whether the knife felt sharp to my neck or not,  
24 it was still there and Scott doesn't lie to me.

25 Q. Who told you they found the knife and it was a

1 regular knife?

2 A. A police officer.

3 Q. Do you remember which one?

4 A. Huh-huh. He was at my mother's house, but I  
5 don't know his name.

6 Q. Did that reconfirm for you your suspicions when a  
7 police officer told you that?

8 A. Yes. The police officer told me that they found  
9 the knife and that it had blood on it, it looked like  
10 blood on it, and they found a gun under his mattress and  
11 all that.

12 Q. Okay. So whatever you started with, as far as a  
13 belief, was now enhanced by the police, correct?

14 A. Before the police got there Scott had told me  
15 that he saw him and it was him, so it was not just a  
16 belief anymore. I knew it was him.

17 Q. If that's the case, when Scott told you and you  
18 knew it was him, as I asked you earlier, why didn't you  
19 tell the police? Instead of saying I don't think it was  
20 him; he's too nice.

21 A. Because I was in shock. If you've had somebody  
22 hold a knife to your neck and try to rape you --

23 Q. I haven't.

24 A. Then you don't know how much shock it could bear  
25 on you.



1 Q. Would you say it is a disorienting experience?

2 A. I don't understand.

3 Q. Would you say by sheer terror you do not observe  
4 things as accurately as you might under normal  
5 circumstances?

6 A. I think I can observe everything I saw. I can  
7 tell you things that are very important, not the little  
8 minor details.

9 Q. Wouldn't it have been important to tell the  
10 police, since you were certain at that time that it was  
11 your neighbor who had done this, isn't that important?  
12 That's not a minor detail.

13 A. I wasn't certain. Scott said it to me once, but  
14 we didn't go into a discussion. He didn't say he knew for  
15 sure or whether he was assuming. He said it was him, but  
16 that was it. The police came and then when he went to my  
17 mother's he told me. And he told me that he was scared  
18 for us and that's why he didn't say anything else to the  
19 police.

20 Q. The knife was being held to the right side of  
21 your neck; was it not?

22 A. Yes.

23 Q. And at the same time a hand was over your mouth?

24 A. Sometimes, not the whole time.

25 Q. But at least during part of that time one hand

1 would have been over your mouth and the other hand would  
2 have -- you had the knife to the right side of your neck?

3 A. Yes.

4 Q. Would you agree that that would suggest that your  
5 assailant would be left-handed?

6 A. No. I don't know.

7 MR. BULONE: Judge, I object. That calls for  
8 speculation.

9 THE COURT: Sustained.

10 Q. (By Mr. Leinster) Were you able to see any shoes?

11 A. I really wasn't paying attention to shoes, no.

12 Q. Where was it that Scott backed up when the  
13 assailant was putting his pants back on?

14 A. In the bedroom.

15 Q. Backed up where there?

16 A. Backed up towards the wall that the headboard was  
17 on. The head of the bed.

18 Q. Not next to the window where the venetian blinds  
19 are?

20 A. Not the big window, no.

21 Q. He would be in the same general area where you  
22 were at this point?

23 A. I was on the bed and he was more toward -- I was  
24 on the bed and he was here and Scott was on this side  
25 (indicating).

1 Q. Where did the assailant put his pants on, near  
2 the door to the bedroom to get out of the bedroom?

3 A. I guess more close to the bedroom door.

4 Q. Well, my point, I guess, is you still couldn't  
5 determine the features of your assailant while he's  
6 putting his pants on?

7 A. Just dark hair, what I said before.

8 Q. Where at this point is Scott? Is he closer to  
9 the assailant or right near?

10 A. Well, Scott went for him again because, maybe, he  
11 figured that he could, you know, keep him from going  
12 towards the baby's room.

13 Q. He went for him while he was trying to put his  
14 pants on?

15 A. I'm not sure if it was before or after he put  
16 them on, but it was around that time. I don't know.

17 Q. It seems like a pretty good time to go for him.  
18 You don't recall if that's how it happened?

19 A. Not positive, no.

20 Q. Where did Scott run when he ran out of the unit?

21 A. Down the sidewalk.

22 Q. Down the sidewalk?

23 A. (Witness nods head affirmatively).

24 Q. Down the street?

25 A. I didn't see him run down the street. I saw him

1 run up the sidewalk and I saw him run to the right once he  
2 came out of there.

3 Q. Well, did Scott or did he not chase the assailant  
4 down the street?

5 A. According to what I saw or according to what  
6 Scott says?

7 Q. According to your own testimony.

8 A. As far as I know Scott chased him down the  
9 street.

10 Q. Which would be heading east?

11 A. I have no idea.

12 Q. Well, if your looking out the front of that  
13 building.

14 A. I believe it was to the east, yes, but I don't  
15 know. I did not see him chase him. I just saw him -- I  
16 saw Scott run out the front door and I barely saw, you  
17 know, I barely saw that. I saw him run out, and that was  
18 it, and run up the sidewalk.

19 Q. So when you stated on your deposition page 24  
20 line two, "Right, and Scott chased him down the street."  
21 That was not something that you observed?

22 A. Not something I observed, no.

23 Q. But you said it as though it were gospel.

24 MR. BULONE: Judge, I object. This is totally  
25 irrelevant what she may have said in the depo. I

1 mean, there is absolutely nothing that indicated it  
2 was gospel. It was a discovery deposition when they  
3 asked her what she knew, and that's what she said.  
4 That is nothing inconsistent with what she's testified  
5 to, so it's not proper.

6 THE COURT: I'll sustain the objection. It  
7 doesn't appear inconsistent. Move along, please,  
8 counsel.

9 Q. (By Mr. Leinster) When he came back, when Scott  
10 came back, he was yelling, wasn't he?

11 A. I don't know.

12 Q. Do you remember something about a license tag?

13 A. I heard him say something to Dave to write down a  
14 license tag, yes.

15 Q. He said it to you, too, didn't he?

16 A. I just heard him say write down the license  
17 number. I don't remember. It was over a year ago.

18 Q. So you don't recall whether or not he told you  
19 and Dave?

20 A. I know he told Dave and I was there, so I heard  
21 it.

22 Q. Isn't what he said is that he chased the  
23 assailant down the road and he saw the lights of a car  
24 turn on; isn't that what he said?

25 A. Yes.

1 Q. Right?

2 A. I believe so.

3 Q. Okay. And you did hear him say something about  
4 the assailant leaving in a car and writing down a tag  
5 number?

6 A. I said I he thought he saw him leaving in the  
7 car, but I guess he realized that it wasn't him.

8 Q. Later on you found that out, but right there on  
9 the scene what he was saying to Dave was the assailant  
10 left in the car and he got the tag number, correct?

11 A. No, not in those words. Even after he saw the  
12 car leave he was looking around for him because he thought  
13 he might have run behind a bush or house, but he couldn't  
14 find him. So he assumed he drove away in the car.

15 Q. Your deposition, page 30. Question: "Did you  
16 hear anybody say anything about the assailant leave in a  
17 car or anybody writing down a tag number?" Answer: "Yes,  
18 yes, I did hear that." Question: "Okay. Could you tell  
19 me that?" Answer: "Scott chased him down the road and he  
20 saw lights of a car turn on." Question: "This is  
21 something Scott told you after the fact?" Answer: "And  
22 Dave." Question: "Okay."

23 And did you not hear him also say, as he went  
24 through some bushes, that he saw a car pulling out and he  
25 thought that he had got in a car and, you know, drove

1 away?

2 A. That's what he thought.

3 Q. That's what he said, isn't it?

4 A. Yeah.

5 Q. And he told Dave to get that tag number down and  
6 call the police; isn't that right?

7 A. Right.

8 Q. Did you find out later that that was a lie?

9 A. That it was a lie?

10 Q. Yeah, that it wasn't true.

11 A. When Scott saw him come out the front door he  
12 knew that he didn't drive away in the car and that's -- I  
13 mean as soon as he saw Kevin's face he knew he didn't  
14 drive away in the car.

15 Q. Yet he came back and told not only Dave that but  
16 you as well, right?

17 A. Before he saw Kevin, yes.

18 Q. Okay. And when did he see Kevin?

19 A. When Kevin came out of the apartment when the  
20 police were there.

21 Q. Kevin came out before the police were there,  
22 didn't he?

23 A. No.

24 Q. Are you sure of that?

25 A. When I saw him it was when the police were

1 already there.

2 Q. Okay. You had gone back inside, though, if I'm  
3 not wrong because Scott came in to console you. You had  
4 come out screaming then you went back inside?

5 A. I was out for quite a while, you know, when  
6 Theresa and Barb were out there and I don't know how long  
7 it was before the police got there, but I went in for a  
8 little bit. It wasn't long at all when Scott went in and  
9 I was inside, too.

10 Q. Was it the police there that told you they didn't  
11 find blood on the knife but his fingerprints were on the  
12 doors and that those were his prints?

13 A. No.

14 Q. Who told you that?

15 A. I saw the fingerprints and Scott didn't touch the  
16 glass sliding door.

17 Q. Well, I know. But it was your belief, isn't it  
18 or it was at the time of your deposition, that it was  
19 Kevin Herrick because they found the blood on his knife  
20 and the fingerprints of him on your doors?

21 A. And I also --

22 Q. Yes or no?

23 A. Yes.

24 Q. And who told you that they found his fingerprints  
25 on your doors?



1 A. Nobody told me that.

2 Q. Well, how did you come to that conclusion then?

3 A. I figured that's the only person it could be. I  
4 mean it was either his or Scott's.

5 Q. You said Scott didn't touch the door?

6 A. Not the glass sliding door, no.

7 Q. Was Mrs. Porrey somewhat hysterical when she came  
8 out?

9 A. Yes.

10 Q. You were hysterical?

11 A. Yes.

12 Q. Would it be fair to say everybody was a bit on  
13 edge?

14 A. Shocked.

15 Q. Nervous?

16 A. Yes.

17 Q. Not something that happens every day, obviously.  
18 How long before the police arrived?

19 A. I don't really know. It wasn't that long.

20 Q. Can you do a little better? From the time that  
21 Scott ran back, how long before the police arrived?

22 A. It wasn't that long. I can't say how many  
23 minutes because I really don't know. I mean everything  
24 was pretty -- everybody was in shock. I was in shock. I  
25 didn't count the minutes until the police officers got

1       there. We just waited. It wasn't very long.

2           Q.    How many times have you talked with the police  
3       about this incident since you gave them your written  
4       report on July 18th of 1989? Let me put it another way.

5           Have you been involved in any further  
6       investigation or has all of your conversation been with  
7       respect to we've got a trial date coming up or something  
8       like that?

9           A.    A couple times because we had to give  
10      fingerprints and hair pluckings and stuff.

11          Q.    You provided some hair samples, I believe, for  
12      lab analysis and so forth?

13          A.    Uh-huh.

14          Q.    Do you recall anything that Scott said as he was  
15      being taken from your residence to the ambulance? Did he  
16      say anything to the police concerning the assailant?

17          A.    I don't think so.

18               MR. LEINSTER: That's all I have.

19               THE COURT: Redirect.

20                       REDIRECT EXAMINATION

21      BY MR. BULONE:

22          Q.    I just want to get something straightened out.  
23      When the police first arrived in the very beginning and  
24      the police were taking your statement, did you or did you  
25      not tell them at that time that you believed that it was

1 the neighbor, the Defendant, but that you weren't a  
2 hundred percent sure?

3 A. I did tell them that.

4 Q. Okay. And was it you who first stated to Scott  
5 that you thought it was the neighbor?

6 A. Uh-huh.

7 Q. And then he said it was him?

8 A. Yes.

9 Q. When you finally were able to get out of your  
10 bedroom and you went into the baby's room, did you turn  
11 the light on there?

12 A. Yes, I did.

13 Q. Did Kevin know that you had a baby?

14 A. Yes.

15 Q. He had seen the baby before?

16 A. Uh-huh.

17 Q. Now after you woke up and it was pitch black, as  
18 time went on were you able to focus better and see more of  
19 the things?

20 A. I could see a little bit better. It was still  
21 dark, but I could see a little bit better.

22 Q. Okay. Did anyone ever tell you that the the  
23 Defendant's fingerprints were on the door? Did anyone  
24 ever tell you that the Defendant's fingerprints were on  
25 the door? Did anyone ever say that?

1           A.    I don't think so.

2           MR. BULONE:   That's all Your Honor.

3           THE COURT:   Any recross?

4           MR. LEINSTER:  No, sir.

5           THE COURT:   Fine.  Thank you very much, ma'am.

6           Is she excused or do you wish her to stay?

7           MR. LEINSTER:  I'd like her to stay, at least on  
8           call.

9           THE COURT:   Before your call your next witness,  
10          let's take a five minute break.

11         (THEREUPON, A BRIEF RECESS WAS HAD AT 3:05 P.M. AND  
12         PROCEEDINGS RESUMED AT 3:20 P.M. AS FOLLOWS: )

13          THE COURT:   Bring the jury in please.

14          THE BAILIFF:  The jury is seated in the jury box,  
15          Your Honor.

16          THE COURT:   Thank you.  Mr. Bulone, call your  
17          next witness, please.

18          MR. BULONE:   Darren Scott Barfield.

19          THE COURT:   Call Darren Barfield to the stand,  
20          please.

21          THE BAILIFF:  Darren Barfield fails to respond.  
22          I sent someone to the lunch room, he might be down  
23          there.

24          THE COURT:   When did you last see him,  
25          Mr. Bulone?