

1 MR. BULONE: A couple minutes ago. I don't know
2 what happened to him.

3 THE COURT: Did he know he was going to be on
4 next?

5 MR. BULONE: Yeah, he knew. He might be in the
6 bathroom.

7 THE BAILIFF: I checked the bathroom. He might
8 be in the cafeteria. We're looking, Your Honor.

9 Stand right here, raise your right hand and face
10 the clerk and take the oath.

11 THEREUPON,

12 DARREN SCOTT BARFIELD
13 Was called as a witness and after having been first duly
14 sworn on oath, was examined and testified as follows:

15 THE BAILIFF: Have a seat in the witness box,
16 please. Speak in a loud and clear voice.

17 THE COURT: Proceed, Mr. Bulone.

18 DIRECT EXAMINATION

19 BY MR. BULONE:

20 Q. Sir, please state your name.

21 A. Darren Scott Barfield.

22 Q. And are you employed?

23 A. Yes, sir.

24 Q. What do you do?

25 A. I work for a magazine company, sales.

- 1 Q. And where do you live?
- 2 A. In Clearwater.
- 3 Q. And who do you live there with?
- 4 A. My fiancée and my son.
- 5 Q. Let's go back to July of 1989. Where were you
- 6 living at that time?
- 7 A. On Audubon Drive.
- 8 Q. Was this a house or an apartment?
- 9 A. Triplex.
- 10 Q. And were you in the apartment that was on the
- 11 east end?
- 12 A. On the east end? Yes, on the east end.
- 13 Q. And was there someone that lived on the west end
- 14 across from you?
- 15 A. Neighbors David and Barbara.
- 16 Q. And was there someone who lived in the apartment
- 17 on the south side adjacent to you?
- 18 A. Theresa Porrey, yeah, her son and one of her
- 19 son's friends moved in later.
- 20 Q. And who was that?
- 21 A. Kevin Herrick.
- 22 Q. Now, who did you live there with at that time?
- 23 A. My fiancée and my son.
- 24 Q. Okay. What is your fiancée's name?
- 25 A. Cheryl Hagan.

1 Q. And your son's name?

2 A. Darren Andrew Barfield.

3 Q. I'm going to show you a diagram that was drawn up
4 here by Officer Joiner and I ask you if you recognize what
5 this depicts and does that look like the triplex?

6 A. Yes, sir, it does.

7 Q. And you and Cheryl and baby Darren lived over
8 here?

9 A. That is correct.

10 Q. And David and Barbara Stewart lived over here?

11 A. That's right.

12 Q. And Theresa Porrey and Pat Porrey and the
13 Defendant lived over here?

14 A. Right.

15 Q. Now, at that time did you know the Defendant
16 Kevin Herrick back on July the 14th or 15th of 1989?

17 A. Yes, he was an acquaintance.

18 Q. And how did you know him?

19 A. From seeing him around the triplex with Pat.

20 Q. Let me ask you do you see him in the courtroom
21 today?

22 A. Yes, sir, I do.

23 Q. Could you please point him out and describe what
24 he's wearing to the record?

25 A. Sitting at the table wearing a black coat, gray

1 and black striped shirt and a tie.

2 MR. BULONE: May the record reflect the witness
3 has identified the Defendant?

4 THE COURT: So reflect.

5 Q. (By Mr. Bulone) Under what circumstances did you
6 see the Defendant before this happened?

7 A. Just seen him like out in the yard and in the
8 courtyard and I had invited him into the house a few
9 times.

10 Q. What for?

11 A. Just to have a drink, like, they were out working
12 and it was hot and I asked if he wanted a drink of iced
13 tea.

14 Q. Let's go to July the 14th, 1989. Did you come in
15 contact with him on that day?

16 A. When I came home from work him and Cheryl were
17 just finishing up a chess game.

18 Q. Okay. What happened after this, after you got
19 home and they were playing chess?

20 A. Cheryl and I had plans to go out to a movie.

21 Q. Okay. Did you and Cheryl then go out to a movie?

22 A. Shortly after that, yeah.

23 Q. Was it a drive-in?

24 A. Yes, sir, it was.

25 Q. Did you take the baby?

1 A. Yes.

2 Q. Before you-all left did the Defendant leave the
3 apartment?

4 A. Yes.

5 Q. And then you came back from the movies?

6 A. Yes, sir, we did.

7 Q. Did you have any idea what time that was?

8 A. It was around midnight, 11:00 something. I'm not
9 really sure.

10 Q. Once you got back from the movies what did you do
11 then?

12 A. I was at the house for a little while and I
13 stopped and went next door to Dave's to say hi to him
14 because he kept late hours. One of his fish was doing
15 poorly and he wasn't stabilized in the saltwater tank and
16 he asked me to take him over to his mother's house where a
17 stabilized tank was.

18 Q. So what did you do after that?

19 A. I went back into our apartment and told Cheryl I
20 was going to go over there with him.

21 Q. Did you go over there with him?

22 A. Huh?

23 Q. Did you go over with him then?

24 A. I went over to Dave's mother's house to help
25 him with the fish.

1 Q. Where did she live?

2 A. In Largo.

3 Q. How long do you think you were gone; do you have
4 any idea?

5 A. Probably forty-five minutes, half hour.

6 Q. And then what did you do when you got back?

7 A. When I got back I was finishing my cigarette in
8 the courtyard because I don't smoke in my house because of
9 my son. I was just out there smoking a cigarette and I
10 heard Cheryl crying. At first I thought she was just
11 talking on the phone or something, and then I heard it
12 louder and kind of muffled, and that's when I went into
13 the place.

14 Q. What happened when you went in there?

15 A. The lights were out and I went into -- down the
16 hallway to the bedroom and I opened the door and I saw
17 someone on top of Cheryl. I proceeded to tell him to get
18 off.

19 Q. What did he say?

20 A. Exact words, it was a long time ago, to the
21 effect of, Get out or I'll kill you.

22 Q. What did you do then?

23 A. I didn't get out. I just kept telling him to get
24 off.

25 Q. What happened after that?

1 A. He jumped up and started struggling with me and
2 we fought for a few seconds, and I got stabbed twice in
3 the chest and then I backed up.

4 Q. What happened then?

5 A. I was facing my back to the window with the
6 venetian blinds and he was, like, holding the knife and
7 putting his pants on. I went to attack him again at that
8 time and then he cocked me in the jaw real hard, but it
9 didn't really phase me at the time. Then he started to
10 wave whatever the object was that stabbed me at my throat,
11 so I backed up again. And when he stood up I saw the
12 silhouette of the person looked exactly like Kevin
13 Herrick.

14 Q. What happened after that?

15 A. Then he left the room and shut the door behind
16 him. I went around to the door and he was holding the
17 door closed. I exchanged words with him and he threatened
18 to kill our baby and I yelled, Not my baby. And then
19 after a few seconds he released the door and we rushed out
20 and went to check on our son. And then I proceeded down
21 the hallway where I saw him struggling -- trying to get
22 out the glass doors.

23 At that point I knew I was bleeding severely and
24 I was fearing for my family's life because the person was
25 obviously capable of anything and my whole intent was to

1 get him out of the dwelling to make my family safe. I
2 instructed him to go out the front door because he
3 couldn't get out the back door. And he told me to back up
4 and I backed up a little bit and he went through the
5 kitchen and through the other -- there's another entrance
6 like right near the front door and he went out that way.
7 The kitchen venetian blinds were open and David's porch
8 light was bright and it was shining through.

9 Q. What porch light?

10 A. His porch light. He has a bright light, porch
11 light.

12 Q. Where is that on this diagram? This is David's
13 house?

14 A. Right there where that panel is.

15 Q. About here?

16 A. Yeah, about there. And it was shining through
17 the kitchen window and I recognized his face was Kevin
18 when he went through the kitchen because the light showed
19 on him. I chased him outside facing the street. I went
20 around to the right, to the east.

21 Q. This way?

22 A. Yes, and he stopped like a house down and then
23 again I saw him because the moonlight and the street
24 lights were on. I chased him around the corner of the
25 building a couple houses down, but there was a bush right

1 there at the wall, so I hesitated in case he was hiding
2 behind the bush and I lost him.

3 Q. Before we go on with that, there's another
4 diagram here drawn by Officer Joiner. Does this fairly
5 and accurately outline what your apartment looked like?

6 A. It's fairly accurate, yes.

7 Q. If you want to come down and step down so we can
8 show the jury where these things occurred.

9 A. This is the bedroom here and this is our son's
10 room here and this is the hallway here and this goes to
11 the front door. This is the kitchen area here with an
12 opening here going to the dining room. Living room, glass
13 doors right here and this is another opening going to the
14 front door.

15 Q. Just go ahead and write down what the things are.
16 Is that your bedroom?

17 A. Yes.

18 Q. That's your son's bedroom?

19 A. Yes.

20 Q. Okay. Now where were you in the courtyard when
21 you heard Cheryl crying?

22 A. Right here.

23 Q. And then you entered through the front door?

24 A. Yes, going in through the front door.

25 Q. And you went here?

1 A. Yes.

2 Q. And you opened up the door -- was the door opened
3 or closed?

4 A. The door was closed and I had to open it.

5 Q. Okay. Where did the struggle take place?

6 A. Right in the doorway of the bedroom.

7 Q. And then where did he go after that, the
8 Defendant?

9 A. He went out here and down the hallway while he
10 held the door, and he told me not to run after him. When
11 he left the room he yelled a little bit and he went down
12 the hallway and he went towards the glass doors and tried
13 to escape out the glass back doors.

14 Q. Now, did Cheryl go into the baby's room?

15 A. Yes.

16 Q. Did she turn the light on?

17 A. That I can't recall. I don't believe so.

18 Q. Did you go in there, too?

19 A. For a brief second to make sure he was okay.

20 Q. And you then followed him?

21 A. Yes.

22 Q. What happened after that when he was over here by
23 the sliding glass doors?

24 A. That's when I told him to go out the front door.

25 Q. Okay. Now, at what point were you able to see

1 him the best inside of the apartment?

2 A. Right here at this point. A light was shining
3 through the kitchen window here, through here, and when he
4 came out here I could see his face.

5 Q. Okay. Were the blinds open or closed?

6 A. They were open.

7 Q. And the light from David's apartment would be?

8 A. Right here shining into the window.

9 Q. And it was pretty bright?

10 A. Yes, it was a very bright light.

11 Q. So, you were over here and he was over here,
12 basically?

13 A. No, I was here.

14 Q. And he was where?

15 A. He came from here and went through here and then
16 out the door.

17 Q. Now, when you saw him then was there any doubt in
18 your mind that that was him?

19 A. None whatsoever.

20 Q. So then he ran out this way and you followed him?

21 A. That is correct.

22 Q. Now, you said that he stopped. Where was that
23 approximately?

24 A. Approximately it was a house down, like right
25 around this area right here, and he stopped and turned

1 around and I -- he saw me chasing him, and that's when he
2 turned back around.

3 Q. Did you get a good look at him then?

4 A. Yes.

5 Q. And was it him?

6 A. Definitely, beyond a doubt.

7 Q. It was Kevin Herrick?

8 A. It was Kevin Herrick.

9 Q. Okay. So, what happened after he ran and you ran
10 after him?

11 A. I chased him around a second building, around a
12 corner. Then I hesitated because there was a big bush
13 there and that was the last visual contact I saw of him
14 during the chase. I went back around and there was a back
15 fence and I thought he might have jumped the fence at the
16 time. So, I jumped the fence and on the other side of the
17 fence is an apartment complex and I saw a car with the
18 engine running. I thought at that time that he might have
19 gotten into the car, so I crouched down between some boats
20 and memorized the license plate number and sat there for
21 a couple minutes then went back over the fence and went
22 back around to the triplex.

23 Q. Now, how long do you think you were gone from the
24 time that you ran out the front door to the time that you
25 came back?

1 A. A good five minutes because, like I said, I
2 jumped the fence and I was waiting in between the boats
3 looking at the car and getting the license plate number.
4 I'd say a good five minutes.

5 Q. When you came back who was in the courtyard?

6 A. There's David and Cheryl and, I believe, Theresa
7 was there as well at that time.

8 Q. What about Kevin; was he there?

9 A. Not at that time.

10 Q. Anybody else there?

11 A. Barbara, David. And I told David the license
12 plate number, to write it down and call the cops.

13 Q. Why did you say that at that time?

14 A. Because I thought he might have gotten into the
15 car.

16 Q. When did you realize that that's not where he
17 went?

18 A. A couple minutes after that I saw him step out of
19 the Porrey house.

20 Q. That would be up here?

21 A. It would be right here. And I saw him step out
22 and he had his jeans on, and they were unfastened, and he
23 had a shirt in his hand and he didn't have a shirt on.

24 Q. About how long after you got back did he emerge
25 from the house?

1 A. It was a couple, few minutes. I was very
2 traumatized.

3 Q. Did you know it was him at that point?

4 A. Yes, sir, I did.

5 Q. Okay. Go ahead and have a seat. Now. The
6 ambulance came and the police came. Did you speak to the
7 police first or were you treated first?

8 A. I didn't really speak to the police very much
9 when they were there.

10 Q. Now, did you tell the police that you knew who it
11 was?

12 A. At that time I did not.

13 Q. Why not?

14 A. There was a couple reasons. I was concerned for
15 my family and their welfare. I didn't know if he would be
16 arrested at that time. I wasn't aware of his friends. I
17 had seen some of his friends over there before and what
18 they were capable of.

19 Q. What did you think might happen?

20 A. I was fearing for my family. I wasn't really
21 sure what might have happened and I thought, you know,
22 they might not arrest him. Also what was running through
23 my mind was that I wanted to kill him, to tell you the
24 truth. He had just raped my fiancée and threatened to
25 kill my son and almost killed me.

1 Q. So, you were taken to the hospital then, correct?

2 A. Yes, I was.

3 Q. And what was wrong with you?

4 A. Two knife wounds in my chest.

5 Q. Okay. Were you treated and released after that
6 then?

7 A. Yes, I was.

8 Q. Where did you go after that?

9 A. I went back to the triplex because I wanted to
10 see who was there and at that time I got a ride from Dave
11 to Cheryl's mother's house where I called the police from.

12 Q. Why did you decide to call the police at that
13 time?

14 A. I was at the hospital thinking about it for a
15 while and no matter how badly I was angered over the
16 incident, I knew that I couldn't possibly carry out the
17 justice, that it was up to the law. Even though I felt
18 like it at the time I knew I could never do that.

19 Q. Let me ask you this, you saw the Defendant when
20 he was in the kitchen over here, right?

21 A. That is correct.

22 Q. And you saw him when he was over here?

23 A. That's right.

24 Q. And you saw him in the bedroom?

25 A. Right.

1 Q. Where was he when you saw his face?

2 A. I didn't see his face in the bedroom, I saw a
3 silhouette.

4 Q. Where was he?

5 A. He was like right near the front door, like right
6 there.

7 Q. After you saw his outline in the bedroom and you
8 saw his face and his whole body over here and you saw his
9 face and whole body over here, was there any doubt in your
10 mind that it was the Defendant Mr. Herrick?

11 A. No doubt whatsoever.

12 Q. Is there any doubt now --

13 A. None.

14 Q. -- that it was him?

15 A. Not beyond a shadow of a doubt.

16 Q. Now, when he stabbed you with a scalpel or the
17 knife was that against your will?

18 A. Yes.

19 MR. BULONE: I don't have anything else.

20 THE COURT: Cross-examination.

21 MR. LEINSTER: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. LEINSTER:

24 Q. Do you go by Scott or Darren usually?

25 A. Scott.

1 Q. Scott, have you ever been convicted of a felony?

2 A. No, sir, I have not.

3 Q. And you went to a drive-in movie?

4 A. Yes, sir, I did.

5 Q. Were you and Cheryl doing any drinking at the
6 movie?

7 A. No, sir, we were not.

8 Q. Now, you just a second ago stated under oath that
9 at the time you came back to the residence and told Dave
10 about the tag number, that it was because you genuinely
11 believed at that time that that might be Kevin Herrick in
12 that vehicle, right?

13 A. That is correct.

14 Q. And there was no question in your mind that Kevin
15 Herrick and the rapist were one in the same?

16 A. That is correct.

17 Q. All right. Then perhaps you can explain your
18 answer on deposition on page 30, line 13. You answered --
19 excuse me. Question: "Good. And when you gave that tag
20 number to David and asked him to report it to the police,
21 you knew that that was not the rapist that was in the car,
22 that was really to deflect the police?" Your answer:
23 "Yes."

24 Do you see an inconsistency there?

25 A. Sir, at that time when the public defender was

1 questioning me, I interpreted her question as when I gave
2 the tag number to the police and when I gave it to the
3 police at that time I knew it did not have anything to do
4 with the case. When I did come back to the --

5 Q. Let me ask you what is confusing about this
6 question and when you gave that tag number to David and
7 asked him to report it to the police, you knew that was
8 not the rapist in the car, that was really to deflect the
9 police. Is that a confusing question to you?

10 A. Sir --

11 Q. Is it yes or no?

12 A. At that time I had been in there for quite some
13 time and she had gotten me very flustered. And if that
14 was her exact word use, I'm not really sure because I
15 found many errors in that deposition.

16 Q. Well, the next question, as a matter of fact,
17 is: "Okay. Did you later report that to the police?" In
18 other words, that the license plate didn't have anything
19 to do with it, and you said you did. So you understood
20 the question, didn't you?

21 A. When she asked the question she was referring
22 about telling the police about the plate, and when I told
23 the police about the plate at that time I was just saying
24 it to tell them something because I already stated it to
25 David.

1 Q. The fact is when you called the police the first
2 time after you had your bout with conscience about having
3 lied to them, do you remember who you talked to?

4 A. The exact person, I do not. It was a chief or
5 something.

6 Q. Would it have been a Lieutenant Piehl; does that
7 ring a bell?

8 A. I'm not sure.

9 Q. You do remember having a conversation, though,
10 over the telephone?

11 A. Yes, sir, I do.

12 Q. And at that point you told them now you were
13 going to give them the culprit?

14 A. I do not believe I used those words.

15 Q. You didn't, I'm paraphrasing. You told them, now
16 I'm going to tell you who did this, right?

17 A. Yes, sir.

18 Q. And do you recall telling that individual over
19 the phone that you were not sure who it was while you were
20 still in the house, but when you ran outside in the full
21 light of the commons area you recognized that it was,
22 indeed, Kevin; do you remember telling him that?

23 A. I said I don't remember the whole conversation at
24 that time. I was still in hysteria.

25 Q. You were hysterical?

1 A. Not hysterical, I was very traumatized. I had --
2 I said I had seen my fiancée being raped, I had a bout
3 with an intruder, in fact, had seen the intruder, I've
4 been stabbed and my son's life had been threatened.

5 Q. Well, we'll get to that. But isn't it a fact you
6 were keenly alert, acutely aware of what was going on at
7 that point in time; you had the adrenalin of ten men
8 running through you; according to your own words?

9 A. No, sir. They asked me if I was fatigued and
10 tired.

11 Q. You've read these reports, haven't you?

12 A. Have I read the reports?

13 Q. Yes.

14 A. I did glance through them.

15 Q. So you remember saying that you had the adrenalin
16 of ten men running through you; you weren't confused, you
17 knew exactly what was going on, right?

18 A. I wouldn't -- when I stated that that was a
19 question on whether I was tired or not, and because I had
20 so much adrenalin rushing through my bloodstream I was far
21 from tired.

22 Q. Was it the fact that you were confused that you
23 told the detective you didn't see who it was in the house,
24 it was only outside in the light of the commons area that
25 you recognized Kevin Herrick or do you deny saying that?

1 A. I can't deny something I do not recall.

2 Q. All right. Well, then assuming that your
3 testimony today is correct and that, in your words, there
4 is no question in your mind in the kitchen area that it
5 was Kevin, I would direct your attention to page 17 of the
6 deposition line 4.

7 "Because David's light was right here and it was
8 very light and it's shining through the kitchen right here
9 and when he came through here I saw his face, and it was
10 indeed Kevin which I speculated here because of his body
11 shape. He's dumpy, can tell, there is rolls of fat, and
12 so, he went out the front door and around."

13 It's your words that you speculated it was him
14 because of his rolls of fat?

15 A. No, sir, at that time that is not a visual of
16 what transpired there.

17 Q. That's what you said, though, isn't it?

18 A. Sir, at that time I pointed to the bedroom when I
19 first saw him through the window of the bedroom is when
20 I -- if you wanted to ask the public defender to come in
21 here and witness it. That particular phrase, when I said
22 speculated, I pointed to the bedroom area on the map.

23 Q. Did you go through this deposition; did you have
24 a chance to read it for accuracy?

25 A. For accuracy? No, sir, I did not.

1 Q. When you got through taking a deposition did they
2 not tell you you have the right to read this and see that
3 it was taken down properly or you can waive that right and
4 assume that it's being done correctly; were you not told
5 that?

6 A. I don't believe I was.

7 Q. You don't believe you were?

8 A. No, sir.

9 Q. Did you ever go to look at your deposition and
10 note that on page 33 it says, "you have the right to sign
11 your name I have read the foregoing pages and and herewith
12 subscribe to same as a true and correct transcription of
13 the questions contained therein and my answers thereto,
14 subject to corrections noted, if any there be," did you
15 ever see that?

16 A. I noticed that today, in fact.

17 Q. That's the first time you've looked at it?

18 A. At the back page. I had seen the transcript
19 before, but I never read the back page.

20 Q. So are you saying the court reporter took down
21 what you said incorrectly?

22 A. On a few minor instances in the transcript; that
23 is correct.

24 Q. What is minor about the fact that on one hand you
25 say you saw him clearly in the kitchen and on the other

1 that you speculated it was him because of his rolls of
2 fat; what is minor about that?

3 A. Sir, if you notice the word usage on that
4 particular sentence, if you read it back you would notice
5 before I said speculated I also said here referring that I
6 was pointing to the bedroom at that time.

7 Q. Do you deny my rendition of what was said; would
8 you like to read it yourself?

9 A. Sir, I'm just saying what you just read was right
10 before I said that I said speculate. You also read in
11 there I speculate.

12 Q. Okay. Let me pursue this and see how confusing
13 this one is to you. Today you said that the second time
14 you determined beyond a shadow of a doubt it was Kevin
15 Porrey was when the moron turned around to look at you
16 when you chased him, and then you saw him in the moonlight
17 and the street lights; do you recall that?

18 A. Yes, sir, I do.

19 Q. Okay. Do you recall on page 17 of your
20 deposition, line 17, "What were the lighting conditions
21 there," speaking exactly of this situation where he
22 stopped and turned around. Answer: "It was clear sky,
23 moon." Question: "Okay. There is no street lights there
24 though?" Your answer: "Good question. I'm not really
25 sure. Possibly. But I have excellent night vision."

1 A. That is correct.

2 Q. You've already been asked this set of questions.
3 You acknowledged there might not be street lights there
4 and today you're saying there is?

5 A. Since the deposition I road by there at night and
6 saw there was street lights on the street is why I brought
7 it up. The only reason I said it at the time of the
8 deposition, I was not sure.

9 Q. Okay. Do you recall telling the investigators
10 that you first chased the assailant south for about three
11 houses?

12 A. Yes, it was two or three houses.

13 Q. South, is that right?

14 A. If I said south I had my directions incorrect.

15 Q. All right. I wasn't watching all of this
16 presentation. Explain for, me because I was over there at
17 the time, I guess K is kitchen?

18 A. Uh-huh.

19 Q. How does all this relate to the triplex in
20 general; where are the rest of the units?

21 A. If you could flip the page.

22 Q. Okay. This one is yours?

23 A. That is correct.

24 Q. And are these sidewalks; is that what that is?

25 A. Yes.

1 Q. That little cross, so for my purposes then north
2 is down?

3 A. Right.

4 Q. And this would be, then, east?

5 A. That is correct.

6 Q. So you chased the assailant east rather than
7 south?

8 A. Right.

9 Q. How far down did you go, three houses according
10 to your initial report?

11 A. It was two or three houses.

12 Q. How far is that?

13 A. As far as what? You mean how many feet?

14 Q. Feet, yards, whatever.

15 A. About thirty, forty yards, maybe.

16 Q. A little longer then the length of this room
17 here?

18 A. A length-and-a-half, two lengths.

19 Q. Okay. Running pretty fast?

20 A. Fairly quickly.

21 Q. Just out of curiosity, since you already knew
22 that this was Kevin Herrick and since you had allowed him,
23 as a matter of fact, ushered him out the door and knew he
24 was armed, why are you chasing him at all? Are you going
25 to get in a fight with a guy with a knife?

1 A. At that time if, in fact, I would have caught
2 him, I might have. I was --

3 Q. Okay. You expressed understandable concern for
4 the lady you refer to as your fiancée. I'm just baffled
5 as to why you're chasing this guy that's got a knife if
6 you're already convinced to who he is. Call the police
7 and say Kevin Herrick just tried to rape my fiancée, call
8 911 right now.

9 A. I didn't want him to escape and I wasn't sure
10 about -- I wasn't really sure as far as the judicial
11 system. I read too many reports, read too many stories
12 and heard too many stories.

13 Q. At what point, if ever, did you bring up this
14 story about jumping fences and looking at this automobile;
15 when did you ever tell the police that or did you?

16 A. I verbally told them. I don't believe I put it
17 down in writing.

18 Q. You only made one written report of this entire
19 thing, right? That would have been on July 15th, a copy
20 of which I have in my hand.

21 A. It was the night of July 14th.

22 Q. I'm not arguing with you about the date. It's
23 July 15th. It started on the 14th, but this is the only
24 report you made, right?

25 A. Yes.

1 Q. And you mentioned nothing about jumping fences
2 and doing all of these things -- well, we'll get back to
3 that.

4 Now, you told the detective over the telephone
5 that the reason you had not told them originally it was
6 Kevin Herrick was because you were going to go get some of
7 your friends and take care of Kevin, correct, that's what
8 you told the detective over the telephone?

9 A. Like I said, I don't really recall that
10 conversation.

11 Q. Well, you've admitted that that was in fact your
12 intention. You wanted, as you said, to kill him, right?

13 A. Yes, sir, I did.

14 Q. Okay. Now, you don't recall the fact that you
15 called up the police and said, Okay, now I'm going to tell
16 you it was Kevin Herrick. The reason I didn't tell you is
17 because I was going to take care of it myself?

18 A. I don't remember my exact words.

19 Q. Okay.

20 A. That was a year-and-a-half ago.

21 Q. Is David one of your friends?

22 A. He is an acquaintance.

23 Q. Is he a trusted acquaintance?

24 A. As far as what aspect?

25 Q. Well, would he be a trusted friend that would

1 help you to go and beat the daylights out of Kevin
2 Herrick?

3 A. No, sir, I would not.

4 Q. And are you disputing the fact that your original
5 motive, whether you communicated it over the telephone to
6 the detective or not, was that you wanted to do the job
7 yourself; are you disputing that?

8 A. No, sir, I am not.

9 Q. All right. But you know when you wrote out your
10 sworn statement the next day after you talked to the
11 police you said, "The reason I waited before I told the
12 police who it was is because I was in shock and very
13 traumatized and my only concern was to see my family safe
14 and get myself to the hospital as quickly as possible."

15 MR. BULONE: This is improper impeachment because
16 it's not inconsistent. He testified there were a
17 couple reasons why and that was one of them.

18 MR. LEINSTER: It's inconsistent with the version
19 he gave the police the first time.

20 THE COURT: I'll overrule the objection.

21 THE WITNESS: I did in fact tell the police that.

22 Q. (By Mr. Leinster) Which?

23 A. That I did in fact wish to kill him at that time.

24 Q. I understand that but my -- I guess my question
25 is why didn't you put that down in your sworn report since

1 that really was your initial reason, according to you?
2 Why did you sanitize it, clean it up and make it look like
3 you were just in a state of trauma and that's why you
4 didn't tell them?

5 A. It was, in fact, both of those reasons. And the
6 officer, in fact, off the record suggested that I didn't
7 need to put that down.

8 Q. Oh, the police told you to sanitize it, right?
9 Don't put that in there about wanting to kill him, that
10 ain't going to help us any. Am I right?

11 A. He said I didn't need to put that down on the
12 report.

13 Q. Okay. Just put down what's helpful, huh?

14 MR. BULONE: Judge, I object to that.

15 THE COURT: Sustained.

16 Q. (By Mr. Leinster) The first thing that you did
17 when you came back to the complex was you were yelling
18 about this tag, right?

19 A. Yes.

20 Q. Dave, take this tag number and call the police,
21 correct?

22 A. That is correct.

23 Q. And Dave is a friend, according to you, at least
24 a good enough friend that you guys go out with a sick fish
25 at midnight. Why lie to him? Why get him involved with

1 this delusion about a car and a tag number?

2 A. At that time, sir, as I mentioned before, I
3 believed that he might have gotten in the car at that
4 time.

5 Q. Okay. Back to your confusion, I guess, about
6 that. It was merely to deflect the police when you gave
7 it to David, right? You were confused.

8 MR. BULONE: I object. Is that a question?

9 THE COURT: I'm not sure. Is that a question,
10 counsel?

11 MR. LEINSTER: I'm pursuing something else all
12 together at this time, Judge.

13 Q. (By Mr. Leinster) Let me ask you this: This car
14 that we're talking about, according to you, you already
15 knew it was Kevin Herrick, correct?

16 A. Correct.

17 Q. And what did you mean by the question and answer
18 on page 19 of your deposition, When you saw that person --
19 excuse me. "Did you see anybody in that car in the
20 complex?" Answer: "Yes." Question: "When you saw that
21 person did you know for a fact that it was not the person
22 who had attacked your girlfriend? You said: "I had
23 already known who that person was that attacked my
24 girlfriend and stabbed me, and, no, I didn't get a visual
25 ID of who was actually in the car."

1 So, were you really thinking that whoever is in
2 this car was the rapist; is that what you're telling us?

3 A. I was thinking that he might have gotten in the
4 car, and since I seen him, I thought he might try to flee
5 the State. That's why I got the license plate number at
6 the time.

7 Q. And did the car ever move?

8 A. No, sir, it did not.

9 Q. Did it have its lights on?

10 A. Yes, sir, it did.

11 Q. Did you tell Dave in the presence of Cheryl that
12 you chased him down the road and saw the lights of a car
13 turn on, and that you chased the guy through some bushes
14 and at the same time you saw a car pulling out, so you
15 thought that he had got in the car and pulled, you know,
16 drove away; do you remember telling Dave that in the
17 presence of Cheryl?

18 A. No, sir, I do not recall that.

19 Q. If you had said that that would not have been
20 true according to what you just said, correct? The car
21 didn't move?

22 A. I don't recall it moving, no. I think it was
23 just stationary, and I don't believe I said that.

24 Q. And since you were so incensed that you were
25 chasing the possible assailant and, as you said, if you

1 caught him might have attacked him, why did you simply
2 squat in the bushes and take down the tag number and go
3 home?

4 A. Because there were other individuals at the car
5 and I did not know if there was a gun in the car.

6 Q. Okay. Was it a real license tag number that was
7 taken down?

8 A. Yes, sir, it was.

9 Q. And was that given to the police?

10 A. Yes, sir, it was.

11 Q. When, however, the police arrived and you were
12 aware that they were being given a real honest to goodness
13 tag number for a real live car, you knew you were sending
14 the police on a wild goose chase, didn't you?

15 A. Yes, sir, I did.

16 Q. You knew that what you had done was to lie to the
17 police, didn't you, and to Dave and to Cheryl, correct?

18 A. As far as the car, when I first originally saw it
19 and told Dave to write down the license plate number, I
20 did in fact think that he could have gotten into it. When
21 I found out later he did not, it was too late to say that
22 he did not.

23 Q. Were you aware that the police even brought out a
24 canine to try to track the path that you said that you
25 followed in chasing this assailant?

1 A. Yes, sir, I was.

2 Q. Okay. Exactly where did you go in all of your
3 fence hopping and this chase of the assailant, where did
4 you really go?

5 A. I went down two or three houses. The Defendant
6 turned the corner in between a building and large bush. I
7 hesitated there for a moment because I didn't know if the
8 Defendant was hiding behind the bush, so I checked around
9 to make sure he wasn't and I proceeded. In the back of
10 the yard there was a green like power box and a wooden
11 fence right behind that. At that time I thought he might
12 have jumped on the box and jumped over the fence, so I did
13 likewise. That is the back of an apartment complex. On
14 the fence side there is boats parked there and then across
15 the parking lot is where I saw the car.

16 Q. And how far was this car in terms of feet or
17 yards from your complex?

18 A. From my complex?

19 Q. Uh-huh. How far did you run?

20 A. I'd say about thirty, forty yards to make the
21 turn at the chase and then maybe another ten yards to the
22 fence.

23 Q. Okay. You hopped the fence rather quickly, I
24 assume?

25 A. Yes, sir.

1 Q. Took down the tag number, hopped the fence and
2 came back?

3 A. No, sir.

4 Q. Wrong?

5 A. I hopped the fence and I looked around and I
6 noticed the car and I eased up as close as I could beside
7 a boat and I watched for a minute to see if I could make
8 out any of the people in the car, and there was one person
9 on the side of the car. Then I sat there and stared at
10 them for a moment deciding in my mind to go up there, and
11 I decided against it because there might be a firearm in
12 the car. And I memorized the tag number and I proceeded
13 back.

14 Q. Were you able to see their facial features?

15 A. Like I said, they were in the car and the person
16 that was outside the car was not facing me, so, no, I
17 could not make out any facial features.

18 Q. Let's go back, if we may. When you came into the
19 apartment and you saw someone on top of Cheryl, you
20 determined, did you not, that the man was wearing nothing?

21 A. That's what it appeared to me, that he wasn't
22 wearing anything.

23 Q. Okay.

24 A. It was dark in the room.

25 Q. He was completely naked except for possibly

1 socks, correct?

2 A. That's what I said in my deposition. That is
3 correct.

4 Q. Your deposition is under oath; is it not?

5 A. Yes, sir, it is.

6 Q. So then it's true?

7 A. To the best of my recollection, yes, sir.

8 Q. And that would suggest, obviously, that he did
9 not have a shirt on, obviously, correct?

10 A. Is that a question?

11 Q. Yes.

12 A. Yes.

13 Q. Do you recall at this point or did you ever
14 recall what color shirt he had with him, if he even had
15 one?

16 A. A dark shirt.

17 Q. A dark shirt. Okay. And I believe you indicated
18 then that you saw a silhouette that looked exactly like
19 Kevin Herrick, a silhouette --

20 MR. BULONE: Judge may I ask him to clarify where
21 because he did see him in a number of different places
22 in the house and outside.

23 THE COURT: Clarify to where this took place.

24 MR. LEINSTER: There was only one silhouette
25 mentioned in the bedroom as you had backed off and he

1 was toward the door and you saw a silhouette?

2 THE WITNESS: That is correct.

3 THE COURT: Okay. Proceed.

4 Q. (By Mr. Leinster) A silhouette, is it not, is
5 created by a source of light?

6 A. Correct.

7 Q. Were the venetian blinds closed?

8 A. Yes, sir, they were.

9 Q. Then where did the source of light come from to
10 provide the silhouette?

11 A. From the venetian blinds.

12 Q. From the closed venetian blinds?

13 A. When our blinds are closed it still allows light
14 in.

15 Q. Then I guess you would disagree that the
16 conditions in that room were not pitch black?

17 A. They were pretty dark, but, I mean, I was back
18 against the window and he was in front of me. To see a
19 silhouette of someone you don't need hardly any light at
20 all, if you have good night vision.

21 Q. How did he get his pants on?

22 A. I assume with one hand.

23 Q. One hand on the knife, the other pulling the
24 pants up. Okay. And did you go after him at that point
25 in time when he's pulling his pants up?

1 A. Yes, sir, I did.

2 Q. And is that when he hit you?

3 A. Yes, sir, it was.

4 Q. So he had one hand on his pants, one hand on the
5 knife and with his other hand he hit you?

6 A. He either hit me with the hand with his knife or
7 the one pulling his pants up. Which hand, I'm not really
8 sure.

9 Q. And he put his pants on, he grabbed his shirt and
10 shoes and went out the door, correct?

11 A. That is correct with what I stated in my
12 deposition, yes.

13 Q. Is it also correct meaning true?

14 A. To my -- yes, it is true to my knowledge.

15 Q. So, now, the assailant is holding the door from
16 the other side so that you can't get out and has a shirt a
17 knife and shoes while he's holding the door, correct?

18 A. I could not say what was taking place on the
19 other side of the door, no.

20 Q. Do you think it was possible while he's holding
21 the door with one hand that he's putting shirt and shoes
22 on?

23 MR. BULONE: Objection, speculation. It was
24 asked and answered. He's on the other side of the
25 door.

1 THE COURT: Sustained.

2 Q. (By Mr. Leinster) When the door was opened you, I
3 believe, first went to check on the child briefly?

4 A. Yes, sir.

5 Q. And then you saw the assailant trying to get out
6 the glass doors?

7 A. After I went down the hallway, yes.

8 Q. At this point in time did you see him carrying
9 his shoes and shirt?

10 A. I don't remember. I saw him struggling out the
11 door, but I don't remember little details like that. That
12 was a year-and-a-half ago.

13 Q. Based on your observations and what you call
14 speculation to his rolls of fat in the kitchen, may I
15 assume he did not have a shirt on when he ran out the
16 kitchen and to the door?

17 A. I did not speculate to rolls of fat in the
18 kitchen. I mentioned that as pertaining to the bedroom.

19 Q. Getting to the rolls of fat, may I conclude he
20 did not have a shirt on when he ran through the kitchen or
21 don't you recall?

22 A. As far as -- I was trying to stare and get a
23 positive ID on his face.

24 Q. So you don't recall; is that right?

25 A. I don't really recall. He either didn't have a

1 shirt on or it was a dark shirt on.

2 Q. Where did you come up with dark shirt, is that
3 from Cheryl, you don't even remember if he had a shirt?

4 A. When he grabbed me in the bedroom it wasn't a
5 light-colored shirt. It wasn't red or yellow. It didn't
6 have any --

7 Q. Well, do you have a picture in your mind of
8 chasing this guy down the street? There is a pretty
9 unique event in your life; do you remember this?

10 A. I remember it to a degree, but I've tried to push
11 that whole event out of my mind during the past year.
12 I've been trying block it out.

13 Q. How far behind the assailant were you as you
14 chased him down the street?

15 A. At what point?

16 Q. What was the closest?

17 A. Fifteen, twenty feet.

18 Q. Okay. Do you remember as he hotfooted it down
19 the street if he had his shoes in his hands or on his
20 feet?

21 A. In his hands.

22 Q. Now you remember he had his shoes in his hands.
23 How about his shirt?

24 A. It could have been in his hands as well.

25 Q. Okay.

1 A. He had something in his hand while he was
2 running.

3 Q. Did he do some fence hopping with his shoes in
4 his hand?

5 A. That would be pure speculation. I did not see
6 after he rounded the corner.

7 Q. So you didn't see him hop a couple fences?

8 A. That was speculation.

9 Q. Okay. Page 18 of your deposition. "No, I chased
10 after him and I thought he might have hopped the fence
11 back here which goes into an apartment complex which I
12 found that he did not, he just circled around, hopped a
13 couple fences."

14 Did you misunderstand that?

15 A. To what you just stated or what you said, did I
16 misunderstan it, no.

17 MR. BULONE: If you read on, he's not stating
18 that that's what he saw, but that's what he assumed is
19 all. So I object to it.

20 THE COURT: Well, I think the jury can determine
21 if that's what he said. Continue.

22 Q. (By Mr. Leinster) The assailant would have had
23 blood on his hands, wouldn't he, because you said the
24 assailant left bloody fingerprints on the sliding glass
25 door?

1 A. That is correct.

2 Q. And also on the door that he left through,
3 correct?

4 A. The door that he left through?

5 Q. Yeah, the door that he went out?

6 A. The front door?

7 Q. Yeah.

8 A. I don't recall if there was any blood on there or
9 not. It would probably be in the police report if there
10 was.

11 Q. It took you less then -- well, I'm guessing now,
12 correct me if I'm wrong. Less then five minutes to go
13 from the complex to the car and back, you said five
14 minutes?

15 A. It was a good five minutes, maybe a little longer
16 but I doubt it was less because I was on the other side of
17 the fence for a few minutes.

18 Q. Okay. And the assailant, what was the most
19 prominent thing about his facial features? What was
20 different that evening about Mr. Herrick from the neck up?

21 A. I'm not sure if I quite understand your question.

22 Q. How about his hair?

23 A. What was different about him?

24 Q. Uh-huh.

25 A. He had his hair slicked down.

1 Q. He had his hair slicked back close to his scalp,
2 right? It was matted down with mousse or oil of some
3 kind, correct?

4 A. Correct.

5 Q. Ordinarily Mr. Herrick has -- let's go back to
6 July of 1989. His hair was longer then than it is now.
7 It came down to his shoulders in back, correct?

8 A. Just above the shoulders.

9 Q. Bushy, curly hair, right?

10 A. Correct.

11 Q. But it wasn't that way that night. It was
12 slicked back with oil close to his head, right?

13 A. Closer than normal, yes.

14 Q. You could even see the light gleaming off of it,
15 couldn't you?

16 A. Yes, sir.

17 Q. You only speculated that he had hopped a fence or
18 two. The reason you decided that that hadn't happened, is
19 it not, is because you saw him so quickly when you got
20 back to the residence?

21 A. I did not decide that he had not hopped a couple
22 fences. I decided that he did not go to the car.

23 Q. Okay. I just read to you about hopping a couple
24 fences?

25 A. That was speculation.

1 Q. The prosecutor wanted me to go on and I will.

2 "How did you find that out found out?" Answer: Find what
3 out?" Question: "That he had not hopped the fence?"

4 Answer: "Because when I had come back around and I was in
5 the house for awhile he had come out the front door, and
6 when he originally first came out he had greased his hair,
7 he had greased it back to make it look short with oil or
8 mousse or whatever you use."

9 So, in other words, you decided he couldn't have
10 hopped those fences because he didn't have enough time to
11 get back and come in and out the front door?

12 A. Sir, when you just read that you left out the
13 first part about the fence to the back of the complex
14 which is what the public defender was referring to. I had
15 determined that he did not jump the fence to the back of
16 the complex.

17 Q. Well, in any event, your assailant, according to
18 you, would have blood on his hands, he would have slicked,
19 greasy, oily hair and only moments after you arrived back
20 at the complex you see Mr. Herrick coming out the front
21 door, correct?

22 A. Incorrect. It was a few minutes, and when he
23 came out he had pouffed up his hair and there was still a
24 line of the grease or oil or whatever he used glistening
25 from his scalp.

1 Q. So he would have had time to go in and wash the
2 blood off his hands get all the oil out of his hair, blow
3 dry his hair?

4 A. No, sir, I did not say that.

5 Q. Was his hair wet?

6 A. It appeared wet, yes.

7 Q. You thought his hair was wet?

8 A. It was glistening and it pouffed up. It was not
9 blown dry or washed.

10 Q. You saw Mr. Herrick before the police arrived,
11 didn't you?

12 A. It was right before, I believe so, yes.

13 Q. He came out and he did not have a shirt on,
14 correct?

15 A. The first time he came out, that is correct.

16 Q. And when he came out, the police were not there,
17 his pants were undone, correct?

18 A. Correct.

19 Q. So before the police arrived he came out and at
20 that time Dave and Barbara were also out there, weren't
21 they?

22 A. Yes, sir, that's correct.

23 Q. And Theresa Porrey was out there, right?

24 A. Yes, sir.

25 Q. And you wanted to kill this guy?

1 A. Yes, sir, that was correct.

2 Q. So why didn't you say something at that time
3 before the police got there? Say, You're the dirty
4 bastard that did this; I know who you are; come on.

5 A. Why didn't I say it?

6 Q. Yeah.

7 A. I told you why.

8 Q. Why didn't you say something?

9 A. I was concerned for my family and I wanted to
10 kill him.

11 Q. Why didn't you -- why did you just stand there
12 and say this is the guy that just tried to rape my
13 fiancée? You don't say boo to him.

14 A. Exactly. He just raped my fiancée and stabbed me
15 twice in the chest and threatened to kill my son and I did
16 want to kill him.

17 Q. I would be mad, too.

18 A. But there was three other people out there.

19 Q. Okay.

20 Q. Well, the first thing that you did when you got
21 there, the very first thing is you're yelling about this
22 tag number, you tell Dave to call the police, right?

23 A. Right.

24 Q. And the police responded very quickly, didn't
25 they?

1 A. Yes.

2 Q. As a matter of fact, it was quicker then just a
3 few minutes. They were extremely -- this says sufficient.
4 I imagine it's a typo and probably said efficient. It was
5 not even a few minutes, they were so efficient and quick,
6 correct?

7 A. That's what I said, and actually it was at least
8 -- it was more than a few minutes as far as the police
9 actually getting there.

10 Q. Page 25, line 2. "Okay. Was it more than a few
11 minutes before the police or the paramedics arrived?"

12 Answer: "No, it wasn't. They were extremely sufficient
13 and quick."

14 A. Well, it was more than three minutes before they
15 arrived.

16 Q. Well --

17 A. A few means --

18 Q. Regardless of the exact time, you said it was
19 quick. And prior to their getting there Kevin Herrick is
20 out the front door standing there, right?

21 A. Right before.

22 Q. So from the time that you get back --

23 A. Uh-huh.

24 Q. -- you've come all the way back from where you
25 chased him. You come back, immediately the police are

1 called. According to you, less than a few minutes later
2 they've arrived and in that time Mr. Herrick has come out
3 of the front door, right?

4 So how much time could he have had to get back
5 into his place, get the blood off his hands, get all the
6 oil out of his hair?

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

9 THE COURT: I'll overrule it. I think he can
10 answer it, if he knows.

11 THE WITNESS: Sir, he could have been back way
12 before. He could have been back a good three minutes
13 before I got back and that would give him a total of
14 like six minutes to wash his hands, and I never said
15 he got the oil out of his hair. All I said is it was
16 pouffed up. So, yes, he would have had time to,
17 speculating, would have had time to wash his hands and
18 pouff up his hair.

19 Q. (By Mr. Leinster) As you were being taken to the
20 ambulance, did you tell the police that the assailant's
21 hair was slicked down?

22 A. Yes, sir, I did.

23 Q. Why?

24 A. I felt I had to tell them something.

25 Q. Why? You already sent them on a wild goose

1 chase. Why tell them about the guy's hair being slicked
2 down? You didn't say, hey, it was slicked down but it's
3 not now. You said it's slicked down, right?

4 A. I said his hair was slicked down. I did not use
5 the word "is".

6 Q. Did you ever tell Cheryl that the police found
7 the weapon and Kevin's clothes with your blood on them;
8 did you ever tell her that?

9 A. Did I tell her that?

10 Q. Yeah.

11 A. We both knew that.

12 Q. You both knew that to be true?

13 A. Yes, sir.

14 Q. And you still believe that to be the case today?

15 A. Do I believe that to be the case today?

16 Q. Yes.

17 A. You mean do I -- they might not have found the
18 right knife and right clothing, no. They might not have
19 sent the right stuff to the lab or the lab might have made
20 a mistake.

21 MR. LEINSTER: That's all the questions I have.

22 THE COURT: Redirect.

23 MR. BULONE: Yes, briefly, Judge.

24 REDIRECT EXAMINATION

25 BY MR. BULONE:

1 Q. Let's straighten this out. I don't think it's
2 really all that complicated. When you came back you told
3 David about the license plate number --

4 A. Yes.

5 Q. -- because you believed that the person who is in
6 the car at that point -- did you believe the Defendant
7 Mr. Herrick could have been in the car?

8 A. Yes, sir, I did.

9 Q. At what point did you realize that Mr. Herrick
10 was not in the car?

11 A. When a few moments later I saw him in the doorway
12 of the Porrey's.

13 Q. And then after that did you tell the police about
14 the license plate number and the assailant possibly being
15 in the car?

16 A. Yes, because Dave had already mentioned it to
17 them when they asked me about it.

18 Q. And, again, the reason that you went through with
19 that story was because you were going to get some guys
20 together?

21 A. Yes, sir. I was -- I was going to take care of
22 it on my own.

23 Q. Okay. And since that story had already started
24 when you thought that he might have been in the car, you
25 just continued with that one?

1 MR. LEINSTER: Counsel is leading the witness.

2 THE WITNESS: Yes.

3 THE COURT: Sustained.

4 Q. (By Mr. Bulone) Now you stated that when you
5 chased him at one point the Defendant turned a corner; did
6 you say that?

7 A. Yes, he went in between some houses.

8 Q. Which way did he go; do you remember?

9 A. South.

10 Q. So he was running eastbound and then he went
11 southbound?

12 A. That is correct.

13 Q. And his apartment was over here?

14 A. Yes.

15 Q. So he's running this way?

16 A. Uh-huh.

17 Q. He's running southbound. Now when the Defendant
18 emerged from his house, finally, what did you notice about
19 his hair?

20 A. His hair was pouffed up. Mainly what I noticed
21 was right along the scalp line it was real glistening from
22 the light.

23 Q. Now when you saw him when you first came home
24 from work when Cheryl was playing --

25 A. Chess.

1 Q. -- chess, was his hair like that then?

2 A. No, sir, it was not. It was dry.

3 Q. Had you ever seen his hair like that before?

4 A. No, sir, I had not.

5 Q. Okay. Now you may have been told something about
6 a knife and some clothes and that sort of thing?

7 A. Yes, sir, I was.

8 Q. Now, were you told about that before or were you
9 told about that after you called the police and you told
10 them that the person was Kevin Herrick?

11 A. After.

12 MR. BULONE: Nothing further, Judge.

13 THE COURT: Recross.

14 MR. LEINSTER: I have one item.

15 RECROSS-EXAMINATION

16 BY MR. LEINSTER:

17 Q. Going back to that silhouette that looked just
18 like Mr. Herrick, since you had never seen his hair
19 slicked back like that, how did that silhouette conform to
20 the Mr. Herrick you had always seen?

21 A. Body shape.

22 Q. Body shape. Okay.

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

24 THE COURT: Thank you, sir. You may step down.

25 May he be excused or do you wish him to remain on