

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CRC 89-11425-CFANO-B

STATE OF FLORIDA, :
Plaintiff, :
vs. :
KEVIN RICHARD HERRICK, :
Defendant. 362912 :

TAKEN: Pursuant to Notice at Instance of
Defendant

REPORTED BY: MATTHEW D. LINDEMANN
R.P.R., C.P., C.M.
Notary Public
State of Florida at Large
Deputy Official Court Reporter
Sixth Judicial Circuit

PLACE: Room B-101
Criminal Courts Complex
Clearwater, Florida 34620

DATE: December 5, 1989

TIME: 11:58 A.M.

THE DEPOSITION OF

CHERYL LYNN HAGAN

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MORGAN J. MOREY & ASSOCIATES
Court Reporters

A P P E A R A N C E S

FOR THE PLAINTIFF:

ROBERT HAMBRICK, ESQUIRE
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5100 - 144th Avenue North
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FOR THE DEFENDANT:

JANE H. BROWN, ESQUIRE
Assistant Public Defender
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P R O C E E D I N G S

THEREUPON,

CHERYL LYNN HAGAN

was adduced as the deponent herein and, after having been duly sworn on oath, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MS. BROWN:

Q Would you state your name, please.

A Cheryl Lynn Hagan.

Q Ms. Hagan, what is -- what is your relationship to Darren Scott Barfield?

A He's my boyfriend the last, about two years, and he's the father of my baby.

Q Okay. How old is your baby?

A Seven months now.

Q And are you living together?

A Yes.

Q Where?

A Well, we moved to Belcher Road in a house from that other place because I didn't feel comfortable there anymore.

Q All right. Now, back on July 15th where were you living?

A At Audubon Drive in a triplex.

Q Who is the owner of that triplex or --

1 A Her name is Theresa. I don't know their last
2 name. Scott knows their last name, knows their last name.

3 Q All right. Now, while you were living there did
4 you become acquainted with Kevin Herrick?

5 A I had been around him a couple of times because
6 Scott invited him over a couple of times when we were
7 barbecuing and stuff and I played chess with him one day
8 and he got my mail for me one day.

9 Q Okay. Now, where was he living?

10 A He had been staying with the landlord next door
11 with, I guess he was friends with Pat, the landlord's son.

12 Q About how many times have you played chess with
13 him?

14 A One time.

15 Q Have you visited with him at other times?

16 A No.

17 Q You had no other conversations or contacts with
18 him at other times?

19 A No.

20 Q You had no other conversations or contacts with
21 him?

22 A Not without Darren around, no.

23 Q But Darren wasn't around that one time you played
24 chess?

25 A No. What he had done was he had come to the door

1 and asked if Darren was home because he wanted to play some
2 chess with him. I said no, he will be home any minute. I
3 -- Scott I call him, Scott, he gets home from work, at the
4 time he was getting off like 6 I think it was, about 10 to
5 6. I said I'll play a game of chess with you.

6 I let him in. We played chess and Scott got
7 there maybe after we had two moves of chess.

8 Q What happened after Scott got home?

9 A He had brought friends home from work and we just
10 sat around and all talked and watched TV.

11 Q Did Mr. Herrick stay there while you were
12 visiting with these other friends?

13 A Yeah, yeah.

14 Q Okay. Did you finish your chess game?

15 A Yes.

16 Q When -- when did that visit occur? Was it the
17 same day of this event?

18 A Oh, yes, it was, yes, it was.

19 Q Now, who else was there, do you recall?

20 A Tammy, I'm not sure of last name, Darryl, his --
21 Scott's friend he works with.

22 Q And is Tammy the girlfriend of Darryl?

23 A Right, but not anymore, but, yeah.

24 Q Was there anyone else there?

25 A Just me and Scott and Kevin.

1 Q So, when Scott got home with his friend you
2 continued to play chess and --

3 A Yeah.

4 Q Okay. Did you have supper or dinner, whatever
5 you call it?

6 A I don't recall. I mean I'm sure we did but I
7 don't know what time.

8 Q Okay. Well, when did people start leaving?

9 A Probably about, oh, a half an hour after
10 everybody arrived I guess.

11 Q Who was the first to leave?

12 A I think Kevin was. I'm not sure but I'm pretty
13 sure it was Kevin.

14 Q Okay. And you're saying this is the first time
15 Kevin was ever in your home?

16 A No, no, he had been around for when we had a
17 barbecue, we invited a bunch of friends over and he walks
18 around the -- he walks around the apartments I guess
19 smoking cigarettes with his friend Pat sometimes, and he
20 walks around the back of the apartments.

21 Q Uh-huh.

22 A And he's walked in the glass sliding doors and
23 talked to Scott I guess and we were barbecuing.

24 Q Just through the door?

25 A He was barbecuing and Kevin walks around. I

1 guess they had a conversation. That was the first time he
2 was ever around.

3 Q But was that occasion when you described the
4 chess game, was that the first and only time he was inside
5 your home?

6 A No, it wasn't.

7 Q Okay. What other times?

8 A The day of the barbecue he brought him in the
9 house.

10 Q I see. Okay. And approximately when did that
11 happen in relation to this incident?

12 A Oh, God, it was probably -- I guess he only lived
13 there for a couple of weeks, so, it was within two weeks of
14 the incident.

15 Q Okay. I assume when you had the barbecue there
16 were a number of other people kind of in and out?

17 A Yes.

18 Q Was there anything unusual about his behavior on
19 that occasion?

20 A No, not at all.

21 Q Did you have any one-on-one conversation with him
22 on that occasion?

23 A Only when he played the chess game to discuss the
24 chess, that was about it.

25 Q No, I mean at the barbecue.

1 A No, no.

2 Q So, the next time after the barbecue he was in
3 your home was on the 15th of July when he came over looking
4 for Scott?

5 A No, no, him and Pat watched Cocoon II with me on
6 the VCR one day. That was probably -- that was within the
7 two weeks, I'm not sure if that was before the barbecue or
8 after the barbecue.

9 Q Did you know Pat Porrey?

10 A Only from just talking to him with Scott and he's
11 supposed to fix a lot of things in our house because he was
12 the landlord's son and he was supposed to fix things in our
13 house that he never really did fix. We just talked to him.

14 Q Could you describe the occasion when you watched
15 the movie together?

16 A From when he came over?

17 Q Yes, how that came about.

18 A Okay. It was before the chess game I know
19 because the chess game was the incident, the day of the
20 incident, but he came to the door and asked if he could
21 borrow a VCR cleaner, something like that, because they
22 were going to watch Cocoon II.

23 Q Now, who came to the door?

24 A Kevin did. I don't really remember everything
25 that happened at the door but I know he asked for a VCR

1 cleaner and stuff and I don't know --

2 Q Did you have one?

3 A No, and I don't know -- oh, yeah, he asked if
4 Scott was home and everything. I said no, he went to a
5 bachelor party and I don't know what the whole conversation
6 was, but we ended up conversing, him and Pat ended up
7 coming over and I popped popcorn and made lemonade and we
8 watched Cocoon II and that was about it.

9 Q Was this in the daytime or the evening?

10 A No, it was nighttime.

11 Q About what time did they leave?

12 A I have no idea because they just came and watched
13 the movie and then left.

14 Q Did they leave together?

15 A Yes.

16 Q Okay. Any other incidents of him being inside
17 your home?

18 A No.

19 Q Now, on the 15th you say he was the first to
20 leave?

21 A The 15th?

22 Q Was Scott there when he left?

23 A Yes, everybody was there when he left.

24 Q Okay. Did he say anything about where he was
25 going or why he was leaving?

1 A No, he never -- we never really had that much
2 conversation.

3 Q And how did he leave? What door did he use?

4 A The back door, the glass sliding door. He always
5 left out of the glass sliding back door.

6 Q Okay. Well, at the barbecue where was the
7 barbecue located? Was that outside in the back?

8 A On the porch.

9 Q Out by the back sliding door?

10 A Uh-huh.

11 Q I would assume in a barbecue all your guests were
12 coming in and going through that door because that's where
13 the food was?

14 A No, no, everybody ate inside. Scott and his best
15 friend Jeff were outside grilling and the only person they
16 really talked to outside was Kevin because he came around
17 to the back and I don't know --

18 Q But that's basically where the party activity
19 was?

20 A No, it was inside.

21 Q Inside?

22 A Uh-huh.

23 Q Okay. Now, on the incident when you watched the
24 film together you said he came to the door.

25 A Uh-huh.

1 Q Looking for --
2 A A VCR cleaner.
3 Q Did he come to the front door?
4 A Yes, he did.
5 Q Did he knock or ring a bell?
6 A Yeah, he knocked.
7 Q And then when he -- he and Pat watched the
8 picture with you, how did he -- did he come in the front
9 door?
10 A Yeah, him and Pat came through the front door.
11 Q Okay.
12 A I think.
13 Q And when the picture was over how did they leave
14 or don't you remember?
15 A Through the front door I think. I really don't
16 recall.
17 Q I realize you may have trouble remembering. Just
18 say so if you do.
19 Now, on the night of the 15th you say he left.
20 And then what happened? What happened after he left?
21 A The night of the 15th?
22 Q Uh-huh.
23 A I can't recall the date. Was that the day I
24 played chess with him?
25 Q That's it allegedly, yes.

1 A Okay. What do you mean after he left, the chess
2 game or what happened that night?

3 Q What happened after he left, the chess game?

4 A Nothing. I mean we just, we ate dinner some time.
5 I take care of the baby. The baby is fed every two or
6 three hours at that time because he's only three months
7 old. I put the baby to sleep. I fed the baby. We went to
8 a drive-in because that's really the only place we can take
9 a newborn was a drive-in.

10 Q So, you went out to the drive-in?

11 A No, we ate at home and went to the drive-in
12 later.

13 Q Oh, a movie?

14 A Yeah, drive-in movie.

15 Q Who went?

16 A Me and Scott and the baby.

17 Q Okay.

18 A I don't remember what we watched I think, but we
19 came home and I put the baby to sleep because he was asleep
20 in the car and put him in his crib and went and took a
21 bath. And Scott came in and said he was going to go next
22 door to talk to Dave for a few minutes.

23 Q Dave?

24 A In the triplex there is three apartments. It's
25 another tenant. And he went and talked to Dave and he came

1 back in while I was still in the tub and said that he was
2 going to Dave's house because he -- Dave was making a
3 tropical fish tank or something and the fish was dying
4 because the chemicals weren't right, so, he was going to
5 run it into his mother's house and drop it off, the tank,
6 and I yelled through the door okay.

7 Q About what time of the evening was this?

8 A We only saw the first movie, so, I think it was
9 probably around 11 or something like that. 11 or midnight,
10 I'm not really sure.

11 Q So, Scott was trying to get some help with his
12 tropical fish?

13 A No, Dave was.

14 Q Oh.

15 A Dave was making a tropical fish tank, whatever.

16 Q I see.

17 A And Scott was just going to run with him for the
18 heck of it I guess.

19 Q Okay. Scott's mother knows something about
20 tropical fish?

21 A No, Dave's.

22 Q I see.

23 A Dave's mother has a tropical fish tank.

24 Q Okay.

25 A And Dave was making a tropical fish tank and the

1 chemicals weren't right and the fish were going to die, so,
2 he was going to put it in mother's fish tank.

3 Q So, Scott came along and told you he was going
4 along for the ride?

5 A Right, he was going along for the ride.

6 Q So, what happened after that?

7 A I got out of the shower and went to bed. Well, I
8 opened the baby's door a crack just -- and I turned the
9 light on so when I get up in the middle of the night,
10 because the baby was waking up in the middle of the night
11 at the time, I left the bathroom light on and went to bed.

12 Scott called and said he would be there in a few
13 minutes.

14 Q You have a telephone by your bed?

15 A I said okay, yeah. I said okay. And I fell
16 asleep. I don't know how long I was asleep, probably not
17 very long according to the time, and I woke up and it was
18 pitch dark and there was a guy over me with a knife to my
19 neck and his pants off and I saw the outline. I didn't
20 know who it was but it looked like Kevin because of the
21 outline, but I didn't think it would be because he was
22 friendly to us and everything.

23 Q Okay. Now, I want to get from you a description
24 of your room. The lights were out I take it?

25 A Yeah, it was pitch dark but I did leave the hall

1 light on.

2 Q So, there was light?

3 A So it was turned off. It must have been turned
4 off.

5 Q So, when you woke up --

6 A It was pitch dark.

7 Q The hall light?

8 A It was totally dark.

9 Q What about coming in windows, was there anything
10 in the way of street lights or even moonlight coming in?

11 A Well, there was a little light because I saw the
12 outline, but it was like I didn't see -- it was dark. All
13 I saw was like an outline and I could see what was right
14 here, but other than that I couldn't see.

15 Q You couldn't see this person's features?

16 A I could just see the outline of the hair, you
17 know, the curly hair, the stringy hair.

18 Q But you -- okay, but you couldn't determine
19 facial features?

20 A The face, no, just the build, the shape of the
21 body and that was it.

22 Q You say this person was over you. How was he
23 perched over you?

24 A With his knees on each side of me.

25 Q Uh-huh.

1 A And bent down with a knife to my neck.

2 Q Okay. Did you see it or feel it or did he tell
3 you it was a knife?

4 A Oh, God, I felt it. I knew it -- it felt like a
5 scalpel because it felt very sharp. That's what I told the
6 police officers, but I guess when they found the knife it
7 was a regular knife.

8 Q Tell us what your impressions were at the time.

9 A I thought it was a scalpel because it felt very
10 sharp and I -- you know, he didn't really threaten to cut
11 my throat, he just threatened to kill the baby.

12 Q What did he say?

13 A He said -- he had his private part in my face and
14 he said that if I didn't suck on it he was going to go in
15 and kill the baby and --

16 Q All right. Did he force his penis into your
17 mouth?

18 A When I was -- I went hysterical when he mentioned
19 the baby's name because that's the first thing I thought of
20 was the baby's name.

21 Q What is the baby's name?

22 A Darren, Darren Andrew Barfield. It has the
23 father's last name and the first name.

24 Q And how did he pose this threat to you?

25 A Pose it?

1 Q Yeah, I mean what did he say to you. When you
2 say he threatened the baby --

3 A He just said -- he just said that when I opened
4 my eyes he said do this or I'm going to go in and kill your
5 baby. And I just lost it.

6 Q So, he didn't use the baby's name?

7 A No, he just said the baby.

8 Q Okay. What do you call the baby?

9 A At the time I mostly called him baby.

10 Q Okay. What did you do?

11 A I went hysterical. I just started crying and
12 begging him not to touch the baby. He told me, kept
13 telling me to shut up and do it. At that point I lost it
14 once he mentioned the baby's name. I just kept begging him
15 not to touch the baby. He told me to shut up, he wouldn't,
16 but I better do this. I just started saying, you know,
17 just was telling him, you know, I was trying to scare him
18 away and I told him my boyfriend is going to be home any
19 time now and he was like, well, you better hurry up. And
20 then he said --

21 Q That didn't seem to intimidate him at all?

22 A No, he just said that I better hurry up. That's
23 all he did.

24 Q Did he have an erection?

25 A I don't remember.

1 Q Okay.

2 A I was very hyterical at the time.

3 Q I can understand that. You say he held a knife
4 and you gestured to the right side of your neck.

5 A Yeah.

6 Q So, I would assume from that that the knife was
7 in his left hand as far as you know?

8 A I have no idea. All I know is I was pinned down.

9 Q Were you aware at all what was being done with
10 his other hand? Was he touching himself or --

11 A It was like this because it was over my mouth. I
12 know that, but I don't know -- all I know he had a hand
13 over my mouth and a knife to my neck.

14 Q Let the record reflect she is gesturing his
15 forearm sort of at a right angle to what would have been
16 her, what shoulders or face?

17 A Excuse me?

18 Q Do you think his arm was across your shoulders
19 and his hand up against your mouth or --

20 A I'm not really sure. All I know is he had me
21 down, pinned down with his hand over my mouth.

22 Q Okay.

23 A I was stiff. I wasn't exactly trying to get up
24 with a knife to my neck.

25 Q Sure. So, but you did get an opportunity to say

1 your boyfriend was coming home?

2 A Yes, I did.

3 Q And he said then hurry up?

4 A Well, he kept telling me to shut up, shut up or
5 he would go in and kill the baby. I was more or less
6 crying and begging him not to touch the baby and just
7 always I remember repeating over and over not to hurt the
8 baby.

9 Q Did at any time he cut you with that instrument?

10 A No, no.

11 Q Okay. So, what happened after?

12 A I don't know how long he was over me because I
13 was very hysterical and just seemed like forever that he
14 was there. But all's I remember he moved the knife, he had
15 me pinned down, he was moving the knife, he got up I guess,
16 like sat up or something. He was still strapped over me.
17 And he moved the knife down to my underwear and right when
18 he did that he turned around and there was Scott at the
19 doorway.

20 And all's I remember is he jumped up and I just
21 started screaming and I didn't know what was going to go on
22 because I didn't know whether he had a gun or what on him.
23 I wasn't sure whether he was going to kill Scott or
24 whatever, but he started -- I guess he stabbed Scott twice.
25 I just heard noises and then I saw them going back and

1 forth.

2 Q This person, when did you first become aware that
3 he was -- that his sexual organs were exposed?

4 A When did I first?

5 Q When you first woke up?

6 A As soon as I opened my eyes and I felt the knife
7 and there it was right in front of my face.

8 Q At any time did he touch you with his penis?

9 A Yes, when I screamed he kept trying to shove it
10 in my mouth.

11 Q Okay.

12 A He did shove it in once in my mouth.

13 Q Okay. Then you say he sat back and seemed to be
14 --

15 A He leaned back.

16 Q Seemed to be reaching toward your underwear?

17 A He moved the knife down to my underwear. I
18 wasn't sure if he was going to cut me or stab me or what he
19 was going to do because I hadn't done what he wanted me to
20 do because I was hysterical and he just started moving the
21 knife down and I wasn't sure what he was going to do.

22 Q Okay. What were you wearing besides the
23 underpants?

24 A A bra, a maternity nursing bra.

25 Q I see. So, you are still lactating then?

1 A I was breast-feeding.

2 Q So, you say I assume the bedroom door was open
3 while this is going on?

4 A Yes.

5 Q When did you become aware that Scott had come in
6 the room?

7 A As soon as he turned around.

8 Q So, did the two of them start fighting
9 immediately?

10 A Well, he -- as soon as he turned around and he
11 saw Scott, I mean I felt kind of relieved but I was also
12 scared and they were just -- he jumped off the bed and
13 attacked Scott and they were fighting back and forth. And
14 he told -- he had -- I guess at that point had stabbed
15 Scott, I didn't know he had stabbed him, but from what I
16 talked to Scott about it --

17 Q Well, just tell us what you saw and what you
18 heard.

19 A Well, he told Scott to back off or he would kill
20 him and he would go in the baby's room and kill the baby,
21 so, Scott backed off because he was already hurt and the
22 guy bent down and picked up his pants or I guess that's
23 what he was asking Scott to do was back off so he could get
24 his pants or something, but he -- the whole time I was
25 pretty much screaming.

1 Q Do you know where the pants were?

2 A On the floor, on the floor by the side of the
3 bed.

4 Q Okay.

5 A And he -- and he got his pants on. I don't think
6 he zipped them up or anything but he got his pants on, and
7 when he went for the door, he had closed the bedroom door
8 and I really got scared because we were inside the room and
9 the baby was out there with him and I didn't know, you
10 know, what was going to happen, so, I was screaming the
11 baby, don't touch the baby.

12 And Scott kept trying to open the door and the
13 guy was holding it for it was a very short time. Scott
14 told him to stay away from the baby's room, that his son
15 was out there and he let go of the door and he ran through
16 the hallway and Scott ran after him I guess and I ran
17 straight to the baby's room.

18 Q Okay. And when you got to the baby's room was
19 everything okay?

20 A I switched the light on. He was fine. He didn't
21 wake up through all the screaming or anything.

22 Q Did you see any more of the fight between Scott
23 and this person?

24 A Just the only time they fought was in the room
25 and out, you know, in the hallway because it was going in

1 and out of the bedroom in the hallway and the bedroom.

2 Q Did you see either of them leave the apartment?

3 A No, what happened was I was holding -- I picked
4 up the baby out of the crib and I clutched the baby and I
5 was still screaming and I didn't think I was going to wake
6 up the baby because I was too hysterical but -- and then I
7 heard Scott say that door's locked because he went for the
8 glass sliding door and it was locked.

9 Q Okay. But you didn't see that?

10 A No, I just heard.

11 Q You just heard Scott say those words?

12 A I heard the voice. I heard that door is locked
13 and then Scott told, directed him to the front door, told
14 him -- he told him, you know, by mouth, he didn't direct
15 him, he told him the front -- the front door, I just heard
16 him say the front door, man, like that, and then I guess
17 Scott chased after him because I saw Scott, I didn't see
18 the guy but I saw Scott go out the door after him, so,
19 right when he was running Scott chased after him.

20 Q Did you see which direction Scott went?

21 A They went up the sidewalk out the door and down
22 the sidewalk. He didn't --

23 Q To the right as he got out the front door?

24 A Like if you go through the front door and you
25 take a right there is a sidewalk going out to the road.

1 Q And that goes towards the road?

2 A Right, and Scott chased him down the street.

3 Q Okay. Now, through the course of all this you
4 say the appearance of his general build and the texture of
5 the hair or the curls you said looked to you as though it
6 could have been Kevin.

7 A Yes, it looked as though it could have been. I
8 didn't think it would be. I just kept telling the police
9 it looked like the guy next door, it looked like the guy
10 next door.

11 Q Was there anything else that made you think it
12 was him?

13 A Well, when Scott came back from chasing him he
14 said did you see -- did you see who it was and I just said
15 looked like the guy next door and he said it was.

16 Q Okay. Was that before the police arrived?

17 A Yes.

18 Q And Scott told you it was?

19 A It was.

20 Q Kevin?

21 A But when the police got there I was so hysterical
22 when they asked me I just kept saying it looked like the
23 guy next door, it looked like the guy next door.

24 Q Did the police question you closely about why? I
25 mean did you describe to them the dark room and so on that

1 you just described here?

2 A Yes, uh-huh.

3 Q Did the police ask you about how you could make
4 that identification in the dark?

5 A No, they asked me could I describe him and I told
6 them what I saw, that everything looked -- the outline
7 looked -- everything looked like the guy next door but I
8 don't think it could be him because he played chess with me
9 that day.

10 Q So, at that point did you still have some doubts
11 about who that was?

12 A I did, yes, I did, even after Scott had told me
13 it was him I was such in shock I still had doubts because I
14 didn't know Scott had seen him.

15 Q So, basically your opinion as to who this was is
16 based primarily on what Scott has told you he saw?

17 A Now it is not.

18 Q Okay. Why is that?

19 A Because they found the blood on his knife.

20 Q Okay.

21 A And the fingerprints of him on our doors.

22 Q So, all of that, what you have been told since
23 this incident has just confirmed your suspicion that
24 originally --

25 A Well, not only that but when I was hysterical and

1 the police had -- were there, they, you know, were -- they
2 were talking to me and everything. I was just in shock. I
3 mean all's I remember is I was very freaked out that night
4 and I walked out before the police got there. I was
5 screaming.

6 I had ahold of my baby and I was screaming at
7 the door to help because Scott had chased after him and the
8 landlord came out and she's on oxygen. She's all
9 hysterical what, what, what, you know, Scott and me got in
10 a fight? She thought Scott and me got in a fight or
11 something.

12 Q Okay. When you -- were you still dressed in your
13 underwear and your nursing bra or had you put something on?

14 A Well, right when Scott had ran out the door I was
15 -- and I was like hanging at the door screaming and both
16 people out of the triplex, the landlord and the lady --

17 Q And who else came out?

18 A Right after the police got there?

19 Q No, no, when you first ran out or you got by the
20 door --

21 A Just Theresa, Dave and Barbara.

22 Q Okay. Barbara and Dave live together in the
23 other triplex?

24 A Uh-huh.

25 Q Those are the triplexes you and they're the ones

1 that face each other?

2 A We face each other, me and Dave and Barbara.

3 Q It's kind of a U-shaped deal?

4 A Yeah.

5 Q You say Theresa Porrey came out?

6 A Yes, she was hysterical because I started
7 screaming somebody threatened to kill the baby and tried to
8 rape me and I kept screaming that.

9 Q Okay. And what did she do?

10 A She just kept going oh my God, oh my God, oh my
11 God.

12 Q How about Dave and Barbara?

13 A Same thing basically.

14 Q Did they come over to your place?

15 A They asked where Scott went. Now, I guess Scott
16 when he ran out or he came back he told them to call the
17 police. I think they're the ones that called the police.

18 Q Okay.

19 A But when the police got there Kevin came out, out
20 of Theresa's front door and was standing there and I just
21 -- I mean I didn't think it was him but I almost knew
22 because I felt real sick if I even glanced over at him.

23 Q What was he -- let's go back, I'm sorry to dwell
24 on this, let's go back to the time of the attack and you
25 described the general build of the attacker.

1

A He was wearing a dark shirt also.

2

Q That's what I wanted to know.

3

A He was wearing a dark shirt. It was either Navy blue or black. It was dark because you could see --

4

5

Q What was the style of the shirt?

6

A Muscle shirt I think. I'm not positive. It was either down here or up here.

7

8

Q Basically didn't have sleeves?

9

A I'm not sure if it was short sleeved or muscle shirt but it just looked, you know -- it was one of those two. I don't remember.

10

11

12

Q Were you able to determine what kind of trousers this person had?

13

14

A Jeans and a big belt because when he picked it up, when Scott -- when him and Scott were -- were fighting each other and he went to pick up his pants I remember glancing down and seeing jeans and a thick belt.

15

16

17

18

Q Okay. Had any lights been turned on in the meantime?

19

20

A Yes, Scott, I'm not sure which one, but Scott had turned on one of them when he came in the house.

21

22

Q Okay.

23

A Because I could see a little bit when -- maybe he didn't turn the light on, but all's I know is I could see a very little bit. I'm not sure.

24

25

1 Q What was this person doing with the knife when he
2 was picking the jeans up off the floor and getting into --

3 A I have no idea. I think he had it in his hand.

4 Q Do you recall if this person had shoes on or
5 didn't you notice?

6 A No, I don't recall.

7 Q Now, it's later on. You said that when the
8 police arrived Mrs. Porrey had gone back in the house and
9 then come out?

10 A I don't think so.

11 Q Or don't you know?

12 A I think she stayed outside. I'm not sure, but I
13 think she stayed inside (sic). I was in talking to the
14 police and I called my mother.

15 Q When -- okay, from the time the police got there
16 when was it you noticed Mr. Herrick?

17 A Well, the police were -- I don't know how long
18 they had been there but long enough to where they had asked
19 me a few questions and talked to me.

20 Q Where were you when you first talked to the
21 police, inside or outside?

22 A Inside I believe.

23 Q Uh-huh. Where were you when you noticed Mr.
24 Herrick?

25 A I was -- I was -- my friend Barbara had came over

1 because I was very emotionally upset and she was, you know,
2 just kind of comforting me and I walked to the front door
3 with the baby, the baby had woken up by this time and I
4 didn't want to let him go because I was just scared for him
5 and he was standing there. I had watched him come out the
6 door I guess and he had, you know, for one thing I didn't
7 think it was him because he was wearing a red shirt.

8 Q Uh-huh.

9 A But his pants were unbuckled and they looked
10 exactly like the pants I saw almost and his hair was
11 sticking straight up like he had changed his shirt. But he
12 just stood out there and I walked back in. I didn't stay
13 out, I just glanced over there and I felt sick to my
14 stomach. So, I walked back in the house.

15 Q Was Pat out there or anybody else?

16 A No, just Theresa and him and Barbara was standing
17 out there for awhile.

18 Q And David, was he still around?

19 A He was. Yeah, he was in and out of our house and
20 in and out of his house.

21 Q Okay. Did you see David and Scott talking about
22 anything?

23 A No, I didn't see them talking. Scott was taken
24 to the hospital for his stab wounds.

25 Q I see. Did you hear anybody say anything about

1 the assailant leave in a car or anybody writing down a tag
2 number?

3 A Yes, yes, I did hear that.

4 Q Okay. Could you tell me that?

5 A Scott chased him down the road and he saw lights
6 of a car turn on.

7 Q This is something Scott told you after the fact?

8 A And Dave.

9 Q Okay.

10 A And Dave -- Dave had said what were you talking
11 about because Scott told Dave to take down this number
12 because when he chased the guy around through, and he lost
13 him through some bushes and at the same time he saw a car
14 pulling out, so, he thought maybe that it was -- that he
15 had gotten a car and pulled, you know, drove away.

16 Anyway, when he came back to the house he told
17 Dave to write down this tag number and then --

18 Q Now, when he came back to the house when is it do
19 you think the police were called? Was it just moments?

20 A When he chased after him he ran back to the -- to
21 the triplex and said something to the guy, to Dave to call
22 the police. I think that's what he told him, to call the
23 police.

24 Q And did the police get there pretty quick?

25 A Yes.

1 Q That's probably asking a great deal, can you
2 estimate?

3 A I don't know because everything seems forever
4 that night.

5 MR. HAMBRICK: I have a question while we're
6 waiting.

7 MS. BROWN: Sure, go ahead.

8 MR. HAMBRICK: Did the defendant know the name of
9 the baby?

10 THE DEPONENT: I don't -- no, I don't think so.
11 He might have. I mean the times that he was around I
12 was usually rocking the baby to sleep or feeding him
13 or having him in the swing.

14 MR. HAMBRICK: I mean did the defendant at the
15 time of the attack use the name of the baby?

16 THE DEPONENT: No, he said or I'll kill the baby.
17 That's what he said, but he mentioned the baby's name,
18 he threatened the baby's life several times but he
19 never mentioned the baby's name.

20 Q (By Ms. Brown) And the police later told you
21 what they had recovered in the way of evidence?

22 A Well, what had happened was Scott -- Scott did
23 not -- when they were asking Scott questions he was just in
24 basically shock pretty much and he didn't answer very many
25 questions and he went straight to the hospital. And they

1 -- when they got back -- well, first of all they asked him
2 if he knew who it was and I guess he wouldn't answer
3 because at the time he was scared for us that they wouldn't
4 take him away and then we'd be in danger.

5 Q You're guessing about that or that's based on
6 what he has since told you?

7 A He told me that he didn't want to say anything
8 because of us.

9 Q Okay. But he was being questioned. As far as
10 you know he did not at that time identify Mr. Herrick?

11 A He knew who it was but he didn't tell the police.

12 Q How do you know he knew who it was?

13 A Because he told me.

14 Q And he told you that actually before the police
15 came?

16 A He did, yes.

17 Q Did he tell you why he didn't at that time, why
18 he didn't want to tell the police?

19 A He told me, one, that he was in shock, and, two,
20 that he was scared for us because sometimes if they don't
21 find evidence they won't take him away to jail and we'd be
22 in danger because he had to go to the hospital and he
23 wanted to wait until he was back from the hospital and got
24 from the hospital and back with us.

25 Q That's what he told you after?

1 A Excuse me?

2 Q That's what he told you after he got out of the
3 hospital?

4 A I went to my mother's because I was scared. He
5 came to my mother's and called the police and said I want
6 to make a positive identification. The policeman came over
7 and we both filled out reports. I think I filled out mine
8 later, but we both got report things and Scott turned his
9 in and then they went to the guy's house, it was probably
10 around 3 in the morning at this time.

11 Q And you spent the night at your mother's?

12 A Right. I didn't sleep there after the incident
13 at all.

14 Q So, there was no discussion between you and Scott
15 before the police arrived about I'm not going to tell them
16 or --

17 A No, no, uh-uh. I didn't know. See, at the time
18 I was such in shock that Dave had asked me does Scott know
19 who it is. I said I don't know why because when he had
20 told me that it was Kevin I was in such shock that I forgot
21 until he reminded me back at my mother's house and Dave
22 said I don't know and he kept saying do I know who it was.
23 I said I think it was the guy next door because it looked
24 like him. He said Dave thought he was acting funny. He
25 said he acted like he knew who it was.

1 Q Who?

2 A Scott.

3 Q Who?

4 A Dave said he acted funny like he knew who it was
5 because he didn't say anything. When Scott called me from
6 the hospital he called on Dave's phone. I went across and
7 talked to Scott and said do you know who it is. He wasn't
8 talking to me. I didn't know what was going on because he
9 wouldn't talk to me. I guess he figured I would tell the
10 police and then I would make myself in danger or something
11 by -- but anyways, that was, you know, they thought it was
12 weird that Scott wasn't telling the police who it was.

13 And I wanted to know whether he really knew who
14 it was or not but --

15 Q Did he ever express any doubts to you about this
16 identification?

17 A No. Once he came back to my mother's house he
18 said that when he was leaving, when he went to the glass
19 sliding door he still couldn't see him at that point
20 because it was dark, pitch dark in the house. See, that's
21 right, there was no lights on.

22 Q Okay.

23 A It was pitch dark in the house except I turned
24 the baby's room on right when he was chasing the guy to the
25 back sliding glass door but the guy ran through the

1 kitchen. See, we have a hallway and then if you go through
2 our hallway the kitchen's to our right, if you are coming
3 through the bedrooms the kitchen is to the right and the
4 dining room is to the left and the glass sliding doors. He
5 ran through the glass sliding door through the kitchen
6 because Scott was standing in the hallway. He didn't want
7 to go by Scott, but Scott saw his face when he ran through
8 the kitchen because the light from Dave's porch light was
9 shining in our kitchen.

10 Q And that's what Scott has told you after the
11 fact?

12 A Right.

13 Q Was Scott admitted to the hospital? I gather he
14 was just treated.

15 A He was just treated there. I guess it was very
16 deep. It almost punctured his lung. It wasn't wide or
17 anything. He took a few stitches in each one.

18 Q Okay. Now, did the police take a sample of any
19 of your body hair?

20 A They took my sheets, they still haven't given
21 them back.

22 Q Did they take any of your hair?

23 A I don't remember if they did.

24 Q You don't remember them plucking hair out of your
25 head or anything like that?

1 A I don't remember if they did or not. I don't
2 think they did but I was in a lot of shock. I was very
3 upset that night, so, if they did I don't remember it.

4 Q Were you referred anywhere for counseling?

5 A They talked to me and asked me that would be a
6 good idea for me to talk to -- they gave me a name, a phone
7 number and a name of a lady that deals with victims, victim
8 --

9 Q Victim Assistance?

10 A It was the name of a -- victim -- victim rights
11 or something like that. I don't know.

12 Q Have you been in touch with those people?

13 A No, I called -- my mother gave me a number to
14 some kind of counselor, female counselor that deals in
15 people that have been raped or -- and stuff like that, and
16 I called her once and talked to her because she said that
17 my mom said sometimes they are very supportive during the
18 trial and stuff.

19 Q And you have talked to that lady once?

20 A I talked to her once, but after, you know, after
21 talking to her once I really didn't want to talk to anybody
22 about it because I just feel sick to my stomach when I
23 talk about it. I have been trying to quit talking about it
24 because the more I talk about it I can't sleep. It took me
25 about three months, not three months, about two months

1 before I could sleep, so, I try not to talk about it.

2 Q I take it, sorry to get back to the gruesome
3 details, I take this man never ejaculated?

4 A No, uh-uh.

5 Q Have you had any discussions with Dave or Barbara
6 about this incident since this happened?

7 A Yes.

8 Q Okay. When was that?

9 A Well, after -- the day after I think I talked to
10 her, the day after, I talked to her a few days afterwards
11 and I talked to her just recently because she was pregnant
12 and just had a baby and I went to see her baby and we
13 talked to them a few times afterwards.

14 Q How about Dave?

15 A No, I haven't really talked to him except one
16 day, the first day after the incident or something like
17 that.

18 Q Okay. Have you talked with either of them in
19 your conversations about the identification, about whether
20 or not it was Mr. Herrick?

21 A They just asked me if I was sure it was him. I
22 said I don't know, I didn't see him but it looked like him
23 and Scott said it was him and, you know, we just talked
24 about that and she talked about what Kevin was saying to
25 her when he was standing out there and I was talking to the

1 police and stuff like that.

2 Q What did she tell you he said?

3 A Really bad stuff, maybe it was somebody she knew
4 because she's always having guys in and out of there all
5 day, and oh, if somebody would do that to my family I'd
6 kill them and stuff like to her. That's the only thing I
7 remember.

8 I mean it was just like almost like he knew he
9 would not get in trouble for it.

10 Q That's your interpretation of what she told you?

11 A Apparently he's saying that stuff, it's like he's
12 really thought he covered his tracks well.

13 Q Have you had any conversations with Mrs. Porrey,
14 with Theresa?

15 A After the fact?

16 Q Yes.

17 A After? Well, right directly after she just kept
18 going are you okay, are you okay. Then after awhile she
19 got really nasty.

20 Q How do you mean nasty?

21 A Well, just like -- well, I probably shouldn't
22 even say this, but we have a baby intercom and every now
23 and then it picks up cordless telephone conversations and
24 the day that -- after the incident we -- the baby was in
25 his crib napping and we had the intercom and it started to

1 fuzz and her voice came on the intercom and normally I
2 would just shut it off but she was talking to -- about me,
3 so, I listened.

4 I don't know who she was talking to because you
5 only hear her voice but she was saying, I don't know what
6 happened, I just can't believe it would be him, get a good
7 attorney and stuff like that. That's all I heard her
8 saying. I heard her saying his shoes are wet, his shoes
9 were wet and the back door was open. That's all I heard,
10 and I was just getting really upset and started to cry and
11 so Scott turned it off.

12 Q Did you know that was her for sure? Did you know
13 her voice?

14 A Oh, yeah, I know her voice.

15 Q Did you have any face-to-face contact with her?
16 I assume you moved out shortly after that?

17 A We moved out. I mean didn't sleep there after
18 that night but we didn't move our stuff out for a few days
19 because we had to find a place and stuff.

20 Q Was there any trouble about your moving out?

21 A Yeah, there was a lot of problems. See, what we
22 were trying to do, because they were really nice at first
23 and they felt that --

24 Q By they you mean --

25 A Theresa and Pat, and Pat that night, Pat came

1 over, Pat -- when Scott got out of the hospital he came
2 back to the triplex while I was at my mother's so he could
3 pick up stuff for me and the baby and Pat had came home and
4 I guess he had been drinking, whatever, and he came
5 knocking at Scott's -- our door and Scott was talking to
6 Dave.

7 Q You weren't there then?

8 A No.

9 Q I'll get that from Scott.

10 A Okay. Well anyways, after the -- I'm sorry,
11 after the incident Theresa and Pat were fairly nice to me
12 and everything. They just couldn't believe it happened,
13 you know, and we were going to move. Scott was going to
14 move one of his friends in, Tracy, because she -- even
15 though she knew about the incident she still didn't care.
16 She wanted to move. If she needed a place to go Scott was
17 going to move her in. We still hadn't moved our stuff out
18 and we still needed to clean it up like that, but she
19 needed a place to go right then.

20 We started moving her stuff in before we started
21 moving our stuff out. They got really nasty because they
22 said it was a disaster. This was like four days after the
23 incident. And they knew I wasn't doing very well. They
24 started getting nasty with us and everything.

25 Q Over the condition of the apartment?

1 A No.

2 Q I thought there was -- I was just asking about
3 whether there was a dispute about you breaking the lease.

4 A They did but they kicked her out too.

5 Q So that was later?

6 A Not very much later, maybe two weeks.

7 Q Have you had any more contact with anybody in
8 that household?

9 A Yeah, after we had most of our stuff moved out
10 they had called my -- Scott's parents' house because we
11 were staying there until we got another place. Okay. I
12 know we had -- we just moved into our new place and we were
13 still moving our stuff into the new place and they called
14 Scott's parents' house and started yelling saying they were
15 going to lock up the apartment and we weren't going to be
16 able to get any more of our stuff until we cleaned it up
17 which it had only been like five, six days. So they
18 weren't even giving us time.

19 I was still freaking out over the incident and we
20 had planned totally on cleaning the place, but Scott was
21 doing it all himself because I felt sick if I even went
22 there, but they had said, they got real nasty on the phone
23 and Scott went down there to get things straightened out,
24 to explain it to them we haven't even moved most of our
25 stuff out, we would clean the place up. It was just that

1 Tracy's stuff was in there, too, and it was clutter.

2 Well, Tracy broke a window while she was moving
3 in furniture. They are really getting mad. Scott went
4 over there and explained. She verbally attacked Scott.

5 Q Who was this?

6 A Theresa. She's the landlord. But she has her
7 daughter-in-law managing them because she's on oxygen and
8 she doesn't get around very much and stuff.

9 Q Did you hear all this stuff from Scott and his
10 parents or did you witness any of these conversations?

11 A What I'm getting to is I came back. When Scott
12 came home and told him what was said, how nasty they were
13 and what we had been through and they were nasty to us,
14 Scott is a very honest person and they wouldn't take his
15 word for anything. I think they were basically, they felt
16 guilty because he was living with them is what I feel and
17 that's why they were getting all nasty with us.

18 But anyways, I went back because I started, you
19 know, I was very upset because I couldn't believe they were
20 being like that and we were only gone a few days. They
21 came back and Theresa was trying to shut the door in my
22 face saying we have nothing to do with this, we have
23 nothing to do with this, shutting the door in the face.

24 I was like I want to talk to your daughter-in-law
25 and they just was -- just started getting really hyper and

1 shut the door in my face and Pat walked up and I started
2 crying and said I can't believe you're being like this. I
3 said we have not even been gone for very long. We planned
4 on cleaning this place up. You didn't even give us -- we
5 were -- we were only moving Tracy in there so you wouldn't
6 miss out on a month's rent.

7 I said we're planning on cleaning everything up.
8 And he goes well, we were told that you were suing us. I
9 said why would you sue -- you know, we haven't even said
10 anything like that because Theresa makes up a lot of
11 stories and stuff. She's just kind of causes trouble. So,
12 I think what she did was tell, you know, her
13 daughter-in-law then that we were suing them.

14 Q So, you're guessing about that, too?

15 A No, they told us that they were told that we were
16 suing, Pat.

17 Q Pat told you?

18 A Pat said, well, my mom told us you were suing us.

19 Q But the rest of what you said about that you are
20 speculating where that story came from?

21 A Yeah, but anyways they just -- I just was crying.
22 I said I can't believe you're being like this because of
23 what we have been through, you know, and you're being like
24 this. I said we plan on cleaning up. I said you have seen
25 the apartment, you saw how nice I kept it, you know -- you

1 know what I have been through.

2 I said we have no reason to sue you. It's your
3 friend that did that and he just apologized and everything.
4 He was nice to me but his mom just said come in here and
5 this has nothing to do with us. And I yelled and I said
6 yes it does have something to do with you, the rapist was
7 living with you, because I was really upset at that time and
8 I couldn't believe she was being like that.

9 Q So, you didn't part on very good terms?

10 A No.

11 Q Was there any later contact with the Porreys?

12 A No.

13 Q Okay. Outside of the police, your neighbors Dave
14 and Barbara and the Porreys, have you discussed this -- and
15 the State Attorney's Office, have you discussed this
16 incident with anyone else -- well, your mother too I
17 assume?

18 A Yes, my friends, a couple of my friends, my close
19 friends and my mother and Scott's parents and Scott's
20 sister. Scott's sister was there when I went over there,
21 back over there and talked to Theresa and Pat.

22 MS. BROWN: I have no further questions.

23 MR. HAMBRICK: No questions. Thank you, ma'am.

24 You did fine.

25 (WHEREUPON, THE DEPOSITION WAS CONCLUDED AT 12:55

1 P.M.)

2
3 I have read the foregoing pages and
4 herewith subscribe to same as a true
5 and correct transcription of the
6 questions contained therein and my
7 answers thereto, subject to corrections
8 noted, if any there be.
9

10
11 _____
12 CHERYL LYNN HAGAN

DATE


STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, MATTHEW D. LINDEMANN, R.P.R., C.P., C.M., Deputy Official Court Reporter, Notary Public, State of Florida at Large, do hereby certify that the foregoing deposition of CHERYL LYNN HAGAN was taken before me at the time and place set forth in the caption thereof; that the deponent therein was by me duly sworn on oath to testify the truth; that the proceedings of said deposition were stenographically reported by me in shorthand, and that the foregoing pages, numbered 1 through 46, inclusive, is a true and correct transcription of my said stenographic report.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties hereto, nor a relative or employee of such attorney or counsel, nor do I have any interest in the outcome or events of the action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal this 9th day of January, 1990, at Clearwater, Pinellas County, Florida.


MATTHEW D. LINDEMANN
R.P.R., C.P., C.M.
Notary Public
State of Florida at Large
My Commission Expires: 12/09/91