

1 THE COURT: Good morning.

2 MS. MCCARTHY: Good morning, Your Honor.

3 THE COURT: Are we ready to begin?

4 MS. MCCARTHY: Yes, Your Honor. I would  
5 just like to advise the Court as a preliminary  
6 matter that our expert broke down on the other  
7 side of the bridge --

8 MR. FISHKIN: This side.

9 MS. MCCARTHY: This side, right.

10 And he's having his secretary come pick  
11 him up, and he thinks he'll be here by 10:00.

12 THE COURT: Do you have any other  
13 witnesses you can call?

14 MS. MCCARTHY: Yes, Your Honor, Cheryl  
15 Hagan.

16 THE COURT: Are you ready to begin,  
17 Mr. Gillick?

18 MR. GILLICK: Yes, Your Honor.

19 MS. MCCARTHY: Sullivan. Cheryl Hagan  
20 Sullivan.

21 MS. SWANK: Please raise your right hand  
22 and repeat after me.

23 CHERYL H. SULLIVAN, RESPONDENT'S WITNESS,  
24 SWORN

25 MS. SWANK: Please say your name for the

1 record, and spell your last name.

2 THE WITNESS: C-H-E-R-Y-L;

3 S-U-L-L-I-V-A-N.

4 DIRECT EXAMINATION

5 BY MS. MCCARTHY:

6 Q. Good morning.

7 A. Good morning.

8 Q. I'm going to call your attention back to 1989,  
9 mid-July of 1989, July 14th and 15th. Did you go by  
10 Cheryl Sullivan at that time?

11 A. (Shakes head from side to side.)

12 Q. What was your name?

13 A. Cheryl Hagan.

14 Q. Okay. Is that your maiden name?

15 A. Yes.

16 Q. Have you married since then?

17 A. Yes.

18 Q. And when was that?

19 A. July 16th.

20 Q. Of?

21 A. Oh, it's been three years.

22 Q. Three years?

23 A. Uh-huh.

24 Q. I'm going to call your attention back to 1989.  
25 Did you have a relationship with a Darren Scott

1 Barfield?

2 A. Yes.

3 Q. What was your relationship with him?

4 A. He was my fiance and the father of my son.

5 Q. Were you living together?

6 A. Yes.

7 Q. All right. Where were you living back on July  
8 15th?

9 A. Audubon Drive.

10 Q. And is that in Pinellas County?

11 A. Uh-huh.

12 Q. What city?

13 A. Largo.

14 Q. Largo?

15 THE COURT: Ms. Sullivan, if you would  
16 speak a little louder, please.

17 MR. GILLICK: Your Honor, I'm going to  
18 object to any testimony from this witness as  
19 being irrelevant. Everything is already in the  
20 record or on the record that this witness can  
21 testify to.

22 MS. MCCARTHY: Judge, the underlying --

23 THE COURT: Why don't you come to  
24 sidebar?

25 (At side bar on the record)

1 MS. McCARTHY: There's two points.

2 THE COURT: Just a second.

3 Are you ready?

4 THE COURT REPORTER: (Nods head up and  
5 down.)

6 MS. McCARTHY: Two points. In the  
7 petition, the underlying issue is the  
8 identification, and I think it's relevant,  
9 Cheryl's identification testimony, which we have  
10 the trial testimony, but they have challenged it  
11 and attacked it. The identification is Herrick  
12 as the actual assailant in this case.

13 Secondly, even if the Court were to  
14 restrict or rely on the trial testimony, which,  
15 of course, was adequate and quite sufficient, the  
16 issue of omission with respect to Porrey has to  
17 do with whether Darren Barfield had a  
18 conversation with Patrick --

19 THE COURT: I'm sorry. There are two  
20 Porreys in this case.

21 MS. McCARTHY: And I need to be more  
22 specific. The claim is that Patrick Porrey  
23 should have been called as a defense witness.  
24 And Cheryl Hagan was present when Patrick Porrey  
25 came over to her mother's house after the event.

1 I think that would be relevant to the claim. And  
2 she can describe his demeanor, what he was like,  
3 and what he was doing over there, the  
4 relationship between her and Barfield, because  
5 the claim is that Patrick Porrey had a  
6 conversation with Darren Barfield and that he  
7 told him he was uncertain as to his identity.  
8 And I think the Court is appropriate to explore  
9 the circumstances in which that occurred.

10 THE COURT: Mr. Gillick.

11 MR. GILLICK: My objection is, I don't  
12 want to retry the whole case. If she has  
13 pertinent testimony relating to conversations  
14 with Patrick Porrey, I don't object to that, but  
15 I don't want to retry the whole case. This  
16 witness has given the police a statement, she has  
17 written a statement, she was deposed, and she  
18 gave trial testimony, all four of which are  
19 already in the record for this case.

20 THE COURT: Well, I'm going to overrule  
21 the objection and see where we go.

22 MS. MCCARTHY: Also, I have a photograph  
23 of them at the time, so you can see what the  
24 victims looked like at the time. There was some  
25 hair analysis done, as the Court knows, the hair

1 with respect to lightened hair, and you can see  
2 the difference. This is her hair color. That's  
3 simply what that's offered for.

4 THE COURT: All right.

5 (End of discussion at side bar)

6 Q. How old was your child back on July 15th?

7 A. Three months. Three months old.

8 Q. Earlier in the day on July 15th, had you had  
9 occasion to come into contact with Kevin Richard  
10 Herrick?

11 A. Yes.

12 Q. And how did you know him?

13 A. He was living with the landlord and her son.

14 Q. Okay. You need to speak up just a little bit  
15 more.

16 A. Sorry.

17 Q. All right?

18 A. (Nods head up and down.)

19 Q. How long had you known Mr. Herrick?

20 A. I guess a couple of weeks he'd been there.

21 Q. All right. And how did he have occasion to  
22 come in contact with you?

23 A. Well, he walked around the apartment quite a  
24 bit, and him and Scott, Darren Scott, had talked  
25 quite a bit; and we had barbecue over there; and we

1 had watched a movie with them and played chess with  
2 them.

3 Q. Okay. Now, on the day in question, how had he  
4 had occasion to come in contact with you,  
5 specifically earlier in the day?

6 A. He knocked on the door and asked if Scott was  
7 home yet and wanted to play chess.

8 Q. Did that seem unusual to you?

9 A. No. I think they had talked about it before, I  
10 guess.

11 Q. Can you describe your relationship with  
12 Mr. Herrick before, or at that time, rather?

13 A. He was friendly. He got the mail for me one  
14 day when I was taking the baby out 'cause he was  
15 real young and I was trying to guard his eyes from  
16 the sun, and he offered to get the mail when I was  
17 walking there. He'd been friendly. We didn't know  
18 each other that well, but that was really it.

19 Q. Okay. You weren't -- were you close or --

20 A. No.

21 Q. -- was the relationship casual?

22 Can you describe it more for the Court?

23 A. It wasn't close at all. It was like an  
24 acquaintance, I mean.

25 Q. All right. Now, when he came over, was Scott

1 home?

2 A. No, he had -- he was going to be home in a few  
3 minutes, and I told him that he'd be home in a  
4 couple of minutes.

5 Q. What happened then?

6 A. I offered -- I said I'd play a game of chess  
7 with him.

8 Q. And what happened after that?

9 A. Scott and a couple of his friends came over  
10 after work, and we finished playing our chess game.

11 Q. Do you remember what time that was  
12 approximately?

13 A. Not really.

14 Q. Was anyone else there with you and Herrick?

15 A. Yeah, after they came home from work.

16 Q. When you were playing chess?

17 A. Right. Tammy, and Darryl, and Darren Scott.

18 Q. No, when you were playing chess.

19 A. No, just us were playing. We were playing  
20 chess. The baby was home sleeping in the crib.

21 Q. All right. Do you remember the time when  
22 Darren and his friends came home?

23 A. Not exactly. I know that we were still playing  
24 chess. We had started playing chess, and we were  
25 still playing chess when they came home.



1 Q. All right. And do you recall the time that  
2 Mr. Herrick left?

3 A. No.

4 Q. All right.

5 A. I guess it was after Scott came home, after a  
6 few minutes, or I don't know if he hung out for a  
7 while or not.

8 Q. Was there anything remarkable or unusual about  
9 that particular contact with Mr. Herrick?

10 A. No.

11 Q. Now, prior to that, had you had occasion to  
12 have Mr. Herrick come to your home, inside your  
13 house?

14 A. Yeah. He'd been there before when we had a  
15 barbecue and, you know, hung out -- he would walk  
16 around the back of the apartments and smoke  
17 cigarettes and talk with Scott.

18 Q. All right. Now, after Mr. Herrick left, what  
19 did you do, or what do you recall doing?

20 A. After, I don't --

21 Q. Uh-huh.

22 A. I guess we had dinner later that evening, and  
23 we went to a drive-in later that night.

24 Q. Okay.

25 A. I mean, I took care of the baby most of the

1 time, so, I mean, time, I don't know.

2 Q. Did there come an occasion when Darren left the  
3 apartment that night, the complex that evening?

4 A. After the drive-in.

5 Q. How did he have occasion to leave?

6 A. I'm sorry?

7 Q. After the drive-in, what did you do?

8 A. Came home and put the baby down and I took a  
9 bath, and he came to the bathroom door and told me  
10 he was going to run with Dave, the guy that lived  
11 across the way from us.

12 Q. Is that David Stewart?

13 A. I think that's his last name, yeah.

14 Q. And what was he going to do?

15 A. He was going to return a tropical fish that was  
16 dying in his tank to his mom's tank, and Scott said  
17 he was going to run with him and he'd be back  
18 shortly.

19 Q. Okay. And what occurred after that?

20 A. Well, I laid down on the bed after my bath and  
21 fell asleep, and when I --

22 Q. What's the next thing you know occurred?

23 A. I woke up and I had a knife at my neck and  
24 there was somebody over me, told me if I didn't suck  
25 his penis that he would go in and kill the baby.

1 Q. Okay. The person specifically named the baby?

2 A. Oh, Darren. What do you mean? I'm sorry.

3 Q. The person over you specifically named the  
4 baby?

5 A. He said "baby," he would go in and kill the  
6 baby.

7 Q. What was the lighting like, if at all?

8 A. It was pretty dark.

9 Q. Were there lights on in the bedroom?

10 A. No, there was no lights on in the house. There  
11 was just the light from outside shining in a little  
12 bit.

13 Q. Could you see who was on top of you?

14 A. Well, the first thing I thought was it looked  
15 like Kevin and just the outline and everything, and  
16 I just thought, well, God, it couldn't be him. And  
17 I was scared to say anything.

18 Q. All right. And then what occurred after that?

19 A. I went hysterical, I guess, and kept screaming,  
20 and he told me to -- he put his hand over my mouth  
21 and told me to shut up, and if I didn't suck on it,  
22 he was going to go and kill the baby. And I told  
23 him, you know, Scott was going to be here soon, and  
24 he said, "Then you'd better hurry up." I mean, I  
25 was kind of hysterical. He tried to -- he shoved

1 his penis in my mouth when I was hysterical with my  
2 screaming and crying.

3 Q. All right. And how long did this occur?

4 A. It's hard to say. It was pretty rattled. It  
5 seemed like forever, but --

6 Q. What's the next thing you recall occurring?

7 A. He took the knife from my neck and went --  
8 started going down to my underwear, and just then I  
9 didn't know what he was going to do. He turned  
10 around, and Scott had walked in and was like, What's  
11 going on, and he jumped off the bed. And they  
12 started going back and forth, and I was screaming.

13 Q. Could you see with any clarity who it was at  
14 that time?

15 A. I still felt like it was him, just the hair and  
16 the build and everything looked like him, but it was  
17 still pretty dark. And I could see -- when him and  
18 Scott were talking, I could see he was trying to get  
19 his pants off the floor. I could see a belt buckle  
20 that looked like his, his pants.

21 Q. And what's the next thing that occurred that  
22 you recall?

23 A. Well, they were going at it, and I didn't --  
24 at that time, I didn't know Scott had been stabbed,  
25 but apparently he was at that time. And he tried to

1 go get his pants, and Scott went after him, and he  
2 said, "You'd better stop or I'm going to go in and  
3 kill the baby."

4 Q. Who said that?

5 A. Kevin did.

6 Q. Where are you at that point?

7 A. I'm still on the bed screaming.

8 Q. And then what do you recall occurring?

9 A. He managed to get his pants on and out the  
10 door, out our bedroom door, and he closed it and he  
11 said to stay away from the door or he'd go in the  
12 baby's room. And we both kind of went hysterical  
13 then, and Scott said, "Leave my baby alone," and we  
14 opened the door.

15 Q. The door to which bedroom?

16 A. Our bedroom door. He was holding it on the  
17 other side, and we fought to get it open, and  
18 finally we got it open and he chased after -- Scott  
19 chased after Kevin. He ran for the back glass  
20 sliding door, and I went to the baby's room and he  
21 was still sleeping, amazingly enough.

22 Q. Was your sliding door locked or open?

23 A. It was locked when he got to it. He couldn't  
24 open it. He was trying to get it open real quick  
25 and he couldn't get it open, and Scott just wanted

1 to get him out of the house and told him, That's  
2 locked, go to the front door, and he backed up.

3 Q. That path or that location he went to, would  
4 you say there's any lighting by that sliding door  
5 that was locked?

6 A. I don't know. I mean, it looked pretty much  
7 the same.

8 Q. I mean, was the light on or light off?

9 A. I turned the baby's light on first thing, but I  
10 don't know if any other lights were turned on.

11 Q. Could you see his features at that time when he  
12 was at the sliding door?

13 A. No, pretty much just the same thing, the  
14 outline of him.

15 Q. Okay. What occurred when Mr. Barfield told him  
16 about the way to leave, or what did he say  
17 specifically?

18 A. He let him go and then he chased after him. I  
19 guess Kevin went through the kitchen and he chased  
20 him from the hall. They went out the front door.

21 Q. Did you follow?

22 A. I pretty much stayed at the front door  
23 screaming for the neighbors.

24 Q. No, no, at the point which he's chasing him  
25 through the house back to the front, where were you?

1 A. I had the baby, but I stayed pretty much back  
2 in the hall.

3 Q. Was the hallway lit?

4 A. I don't recall.

5 Q. Okay. At any time as he is going through the  
6 house, were you able to get a good look at him?

7 A. Not myself, no.

8 Q. When you went to the front door -- well, first  
9 of all, how did he leave, to be clear? How did the  
10 assailant leave the house? By what means; what do  
11 you remember?

12 A. The front door.

13 Q. All right. What did you see occur after that?

14 A. Scott went after him. He chased him up the  
15 sidewalk. He took off the front door and ran up the  
16 sidewalk.

17 Q. What did you do then?

18 A. That's when I went -- I had the baby and I was  
19 yelling at the front door that somebody tried to  
20 rape me and stabbed Scott.

21 Q. All right. Did you notify the police then?

22 A. Scott yelled at one point, I think, and I don't  
23 know when they called the police, but I believe the  
24 neighbors across the way called the police.

25 Q. What did you do next? I mean where --

1 A. I mean, basically I stood there screaming,  
2 crying, but then when Scott came back -- Scott came  
3 back. He lost him. He couldn't find him. He had  
4 chased him down the street. And he said, "Did you  
5 see who it was?" And I said, "Yeah, it looked like  
6 the guy next door." And he said it was.

7 Q. All right. Did the police arrive?

8 A. Yes.

9 Q. Do you recall how long it was after the police  
10 arrived from the time that --

11 A. He showed up pretty quick. I don't know  
12 exactly how long.

13 Q. Did you tell the police who you felt had done  
14 it?

15 A. Yes. You know, I told them, you know, I  
16 couldn't believe it would be, but it looked like the  
17 guy next door.

18 Q. As Scott was chasing after him, did you get any  
19 other look at him outside the house?

20 A. Oh, after the police came.

21 Q. As Scott -- let me be clear, as Scott was  
22 chasing him.

23 A. As Scott was chasing him?

24 Q. Uh-huh.

25 A. No, 'cause they ran down the street and I don't



1 know how far they went but he lost him behind some  
2 bushes or something 'cause I didn't go out down the  
3 sidewalk. I didn't see outside at all.

4 Q. When the police arrived, did they make any  
5 immediate arrests?

6 A. No.

7 Q. Did Scott tell them who had done this to him?

8 A. No.

9 Q. Did Scott tell you why he didn't tell them?

10 A. He told me that he was afraid that if they  
11 didn't take him off that they would try to kill us.  
12 He was just trying to protect me and the baby. He  
13 said at the time that he was so pumped full of  
14 adrenaline after being stabbed that he wanted to  
15 kill him.

16 Q. Were the police there a long time, a short  
17 amount of time, or do you recall?

18 A. They were there -- they were there a while  
19 asking questions and, you know, looking at the  
20 house -- there was blood, bloody fingerprints on,  
21 you know, the walls -- and just asking questions;  
22 and Scott was stabbed, so they had to treat that.

23 Q. All right. Was there an arrest made at that  
24 time?

25 A. No.

1 Q. What occurred after the police left?

2 A. I went with my mom's home, I was scared to stay  
3 there, so I went to my mom's house with the baby,  
4 and Scott went to the hospital. And when Scott got  
5 back from the hospital, he said, "I'm going to call  
6 them now and file a report." He was just so, you  
7 know, full of adrenaline. I was afraid he was not  
8 going to be taken away. He was afraid for our  
9 safety, so he said, you know, he was going to call  
10 and tell them who it was.

11 Q. When you were at your mother's house, did you  
12 have occasion to have any contact with Patrick  
13 Porrey?

14 A. He showed up with Scott, and I was really upset  
15 at him because in -- you know I didn't -- I felt  
16 like he was friends with Kevin and why would you  
17 bring him to our house after that happened, but I  
18 don't know, you know -- I didn't really talk to him  
19 that much myself, Pat.

20 Q. Did you see Porrey's demeanor at that time?

21 A. He was really upset.

22 Q. Meaning Patrick Porrey?

23 A. He was really upset. He kept asking Scott  
24 questions and he seemed like he was -- he felt bad  
25 for us and couldn't believe it happened, but, I

1 mean, he seemed -- actually, at the time he seemed  
2 concerned, you know.

3 Q. Do you recall what Scott told him?

4 MR. GILLICK: Judge, objection to this,  
5 hearsay.

6 THE COURT: I'll overrule it.

7 Q. Do you recall what Scott told him in response  
8 to his questions?

9 A. No. I wasn't really present for the  
10 conversations.

11 Q. Did you let Patrick Porrey inside your mother's  
12 home?

13 A. Oh, no.

14 Q. Why not?

15 A. I didn't trust him because he was friends with  
16 somebody that just had attacked me and Scott.

17 Q. All right. Do you recall when Scott called the  
18 police?

19 A. As soon as he got to my mom's house and got in  
20 the house.

21 Q. Was that before or after Patrick Porrey was  
22 there?

23 A. It must have been after. He tried to get rid  
24 of him pretty quick and came in the house and  
25 called.

1 Q. All right. Did you testify at Kevin Herrick's  
2 trial?

3 A. Yes.

4 Q. And did you identify him as the one who had  
5 committed this sexual offense --

6 A. Yes.

7 Q. -- upon you?

8 A. Yes, I did.

9 Q. Was there any doubt in your mind as to who had  
10 done this to you?

11 A. No, not at all.

12 Q. Over the course of the years, have you had any  
13 doubt as to who was your assailant?

14 A. No.

15 MR. GILLICK: May I approach the  
16 witness?

17 THE COURT: You may.

18 Q. I show you Exhibit No. 35. Just could you  
19 identify this photograph, please?

20 A. That is myself and Scott and the baby very  
21 close to when that happened.

22 Q. Do you know when that picture was taken?

23 A. He was only a couple of months old, so it was  
24 probably a month before it happened or so. I'm not  
25 really sure of the exact time, but he was only a

1 couple of months old and it happened when he was  
2 three months, so --

3 Q. Your hair color in this particular photograph,  
4 is that your hair color approximately when this  
5 offense occurred?

6 A. Oh, yeah. Yeah. I bleached it for eight  
7 years, so --

8 MS. MCCARTHY: Move to admit Exhibit  
9 35.

10 MR. GILLICK: May we view the exhibit?  
11 We've got no objection.

12 THE COURT: It's admitted.

13 (Respondent's Exhibit No. 35 was received  
14 in evidence)

15 MS. MCCARTHY: Tender the witness.

16 CROSS-EXAMINATION

17 BY MR. GILLICK:

18 Q. Good morning, Ms. Sullivan.

19 A. Good morning.

20 Q. Ms. Sullivan, do you recall which police  
21 officer told you that the police found a bloody  
22 knife and clothes in Kevin's apartment?

23 A. No, I do not.

24 Q. But some Largo police officer --

25 A. Yes.

1 Q. -- told you that?

2 A. Uh-huh.

3 Q. Did you ever talk to attorney Edward Leinster?

4 A. During the trial, I guess, is it?

5 Q. Just when you were on the stand?

6 A. Yes.

7 Q. The night of the incident, did you smoke  
8 marijuana?

9 A. No. I was breastfeeding.

10 Q. Did you smoke with Kevin?

11 A. No, I was breastfeeding, I didn't smoke  
12 marijuana.

13 Q. Did you smoke cigarettes?

14 A. No.

15 Q. No further questions. Thank you.

16 THE COURT: Just a moment.

17 MS. McCARTHY: One moment.

18 THE COURT: Do you have any questions?

19 REDIRECT EXAMINATION

20 BY MS. McCARTHY:

21 Q. Did you ever use marijuana in the presence of  
22 Kevin Herrick?

23 A. No.

24 Q. Or Patrick Porrey?

25 A. No.

1 Q. When did the police talk to you or mention to  
2 you about a knife or a gun being found in Herrick's  
3 apartment?

4 A. I believe it was after -- it was at my mom's  
5 house, and it was after they had arrested him they  
6 told me what they found.

7 MS. MCCARTHY: No further.

8 THE COURT: Let me ask you, did you ever  
9 find out that that was not the case, that is, a  
10 bloody knife or bloody clothes were not found in  
11 Mr. Herrick's case, that the police officer had  
12 misstated the evidence?

13 THE WITNESS: Yes. Actually, it was  
14 before the trial. It was like a year later, I  
15 guess, they said that the supposed blood on the  
16 shirt was actually grease and that they did not  
17 find a knife with blood on it.

18 THE COURT: Did that change in any way  
19 your identification of who the attacker was?

20 THE WITNESS: No.

21 THE COURT: In other words, did it  
22 change your opinion or the confidence in your  
23 opinion as to whether Mr. Herrick did this or  
24 not?

25 THE WITNESS: No, it didn't change my

1 confidence at all. I just was disappointed that  
2 there wasn't physical evidence. I was  
3 disappointed there wasn't just more than our  
4 word.

5 THE COURT: All right. Any questions as  
6 a result of my questions?

7 MS. MCCARTHY: No further.

8 MR. GILLICK: No, Your Honor.

9 THE COURT: Thank you, ma'am.

10 MS. MCCARTHY: Our next would be Darren  
11 Scott Barfield, if he's arrived. I talked to him  
12 this morning. He was en route.

13 MR. FISHKIN: Do you want to call him.

14 MS. MCCARTHY: Yes.

15 THE CLERK: Good morning, sir. Raise  
16 your right hand, please.

17 DARREN S. BARFIELD, RESPONDENT'S WITNESS,  
18 SWORN

19 THE CLERK: State your full name for the  
20 record, and spell your last name.

21 THE WITNESS: Darren Scott Barfield.  
22 Last name is spelled B, as in boy, A-R-F, as in  
23 Frank, I-E-L-D.

24 THE CLERK: Thank you, sir. Be seated

25 DIRECT EXAMINATION