

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO.: CRC89-11425CFANO
DIVISION: B

KEVIN HERRICK,
Defendant.

**DEFENDANT'S FOURTH AND SUCCESSIVE MOTION FOR POSTCONVICTION
RELIEF AND TO VACATE JUDGMENT AND SENTENCE PURSUANT TO FLA. R.
CRIM. P. 3.850**

Defendant-Movant, KEVIN HERRICK, by and through undersigned counsel and pursuant to Fla. R. Crim. P. 3.850, moves this Honorable Court to vacate his judgment and sentence in this cause and grant Defendant a new trial based upon violations of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Supreme Court of the United States holdings in *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny for failure to disclose material information favorable to the defense, as well as the Assistant State Attorney's failure to correct knowingly false testimony or evidence in violation of *U.S. v. Alzate*, 47 F.3d 1103 (11th Cir. 1995), *Napue v. People of State of Illinois*, 79 S.Ct. 1173 (1959), and *Giglio v. U.S.*, 92 S.Ct. 763 (1972). All claims contained in Defendant's previous motions or amended motions for postconviction relief, filed May 20, 1993, August 1, 1994, January 8, 1996, are hereby incorporated by reference into the instant motion.

PRELIMINARY FACTS

On October 3, 1990, Kevin Herrick was convicted of burglary, sexual battery, and aggravated battery for the July 15, 1989, attack on Cheryl Hagan and her fiancé Darren “Scott” Barfield in Pinellas County, Florida.¹ He was sentenced to life in prison for counts one and two and 15 years on count three. Mr. Herrick has now spent 37 years in prison for crimes he did not commit. From his initial questioning by the Largo Police Department, throughout his trial, and up to the present day, Mr. Herrick has adamantly maintained that he is innocent and was in no way involved in the crimes perpetrated against Ms. Hagan and Mr. Barfield. Despite the fact that there should have been, there was no physical evidence connecting Mr. Herrick to this violent crime scene.

The statement of facts below illustrates the State’s case as was presented to the jury at Mr. Herrick’s 1990 trial; however, after extensive investigation, it is clear that the narrative perpetuated by the State to convict Mr. Herrick is untrue. Investigation has additionally revealed that the State had evidence in its possession at the time of the trial that exculpated Mr. Herrick, yet the State neglected to reveal said evidence to Mr. Herrick’s defense counsel. The basis of the motion is the following: the State violated the Due Process Clause of the United States Constitution and the Supreme Court’s mandate in *Brady v. Maryland* by 1) failing to disclose a report that likely identifies the true perpetrator of the crime; 2) manipulating forensic evidence to mislead the finder of fact; and 3) failing to disclose significant impeachment evidence related to Mr. Barfield. Additionally, the prosecutor failed to correct what he knew to be false testimony in violation of *Alzate*, *Napue*, and *Giglio*, and thus these convictions must fall.

REQUIREMENTS OF A MOTION TO VACATE JUDGMENT AND SENTENCE MADE
PURSUANT TO FLA. R. CRIM. PRO. 3.850

¹ Mr. Barfield goes by the name Scott, so, when necessary, he will be referred to as Scott throughout this motion. Reports generated by law enforcement typically refer to him by his legal name Darren Barfield, so when those reports are quoted, Mr. Barfield will be referred to as Darren. These references are to the same person.

Florida Rule of Criminal Procedure 3.850(c) sets forth the required contents of a Motion to Vacate Judgment and Sentence made pursuant to Fla. R. Crim. Pro. 3.850:

- (1) the judgment or sentence under attack and the court which rendered same;
- (2) whether the judgment resulted from a plea or a trial;
- (3) whether there was an appeal from the judgment or sentence and the disposition thereof;
- (4) whether a previous postconviction motion has been filed, and if so, how many;
- (5) if a previous motion or motions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions;
- (6) the nature of the relief sought; and
- (7) a brief statement of the facts (and other conditions) relied on in support of the motion.

Fla. R. Crim. Pro. 3.850(c)(1)-(6). Requirements (1), (2), (3), (4) and (5) are addressed in the Procedural History. Requirement (6) is addressed by the Prayer for Relief. Requirement (7) is met by the section entitled Statement of Facts. This Motion is made under oath as indicated in the attached Verification. Thus, this Amended Motion is facially sufficient pursuant to Fla. R. Crim. P. 3.850(c).

PROCEDURAL HISTORY

On August 4, 1989, the State of Florida charged Mr. Herrick via Information with Burglary; Sexual Battery; and Aggravated Battery for breaking into the Hagan/Barfield residence, while armed with a knife or scalpel, raping Ms. Hagan, and stabbing or slashing Mr. Barfield with the knife during Mr. Herrick's escape. *See* Information attached as Exhibit A. On October 3, 1990, Mr. Herrick was convicted as charged. On January 4, 1991, he was sentenced to life in prison without the possibility of parole for counts one and two and 15 years on count three by the Honorable Brandt Downey, Circuit Judge for the Sixth Judicial Circuit of Florida. *See* Judgment

and Sentence attached as Exhibit B. Mr. Herrick appealed to the Second District Court of Appeal, which affirmed his conviction and sentence on July 17, 1992. *See Herrick v. State*, 602 So. 2d 536 (Fla. 2d DCA 1992). The mandate was issued on August 5, 1992.

On July 20, 1993, Mr. Herrick filed a *pro se* motion for postconviction relief, pursuant to Fla. R. Crim. P. 3.850, alleging ineffective assistance of trial counsel. That motion was denied on December 1, 1993. Mr. Herrick appealed the trial's court denial to the Second District Court of Appeal. The Second District Court of Appeal affirmed on January 26, 1994, and the mandate was issued on March 18, 1994. Mr. Herrick also filed a petition for writ of habeas corpus to the Florida Supreme Court on March 9, 1994, which was denied on March 16, 1994. *See Herrick v. State*, 637 So. 2d 236 (Fla. 1994).

On August 1, 1994, Mr. Herrick filed a *pro se* successive motion for postconviction relief, pursuant to Fla. R. Crim. P. 3.850. That motion was denied on June 6, 1995, by the trial court. Mr. Herrick moved for rehearing on August 29, 1995. That request was denied on the same day.

On January 8, 1996, Mr. Herrick filed a *pro se* amended motion for postconviction relief, pursuant to Fla. R. Crim. P. 3.850. That motion was denied February 14, 1996. Mr. Herrick filed a motion for rehearing on March 7, 1996, which was denied on March 29, 1996. Mr. Herrick appealed the trial court's denial of his postconviction motion to the Second District Court of Appeal, which affirmed the denial on August 7, 1996. Mr. Herrick's motion for rehearing was denied and the mandate issued October 7, 1996.

On September 10, 1997, Mr. Herrick filed a petition for writ of habeas corpus in the U.S. District Court for the Middle District of Florida (Tampa). *See Kevin Herrick v. Michael W. Moore, et. al.*, Case No. 8:97-cv-02205-SDM. The petition was denied July 10, 2003. Mr. Herrick

appealed to the U.S. Court of Appeals for the Eleventh Circuit on August 6, 2003. The appeal was denied and the mandate issued on January 26, 2004.

On April 12, 2004, and March 4, 2005, Mr. Herrick filed two distinct *pro se* Motions to Correct Illegal Sentence, pursuant to Fla. R. Crim. P. 3.800. Both motions were denied in one order on July 1, 2005.

On October 3, 2006, Mr. Herrick filed a motion for postconviction DNA testing, pursuant to Fla. R. Crim. P. 3.853. That motion was denied on October 12, 2007. Mr. Herrick appealed the trial court's denial of his 3.853 motion to the Second District Court of Appeal. The Second District Court of Appeal affirmed on December 5, 2008, and the mandate issued on December 30, 2008.

This motion is Mr. Herrick's fourth Rule 3.850 motion, but the first time he has raised the grounds contained herein. The new facts which support the instant motion were not raised previously. The exculpatory evidence on which the instant motion is based was withheld from the defense at the time of Mr. Herrick's trial in 1990. Mr. Herrick did not learn of the information contained in this motion until June 11, 2025. As such, this evidence was neither available to Mr. Herrick nor known to him at the time of the completion of his trial and the filing of his previous Rule 3.850 motions for postconviction relief. Mr. Herrick filed the instant motion within two years of the disclosure of the withheld evidence to him. Thus, this motion is timely filed. The Florida Supreme Court held in *Allen v. State*, 854 So. 2d 1255 (Fla. 2003):

A defendant's knowledge that the State submitted evidence for testing, however, does not create a duty to inquire further. *Citing Hoffman v. State*, 800 So. 2d 174, 179 (Fla. 2001) (noting that the State has the burden "to disclose to the defendant all information in its possession that is exculpatory"). The defendant's duty to exercise due diligence in reviewing *Brady* material applies only after the State discloses it.

Allen v. State, 854 So. 2d 1255 at 1259.

STATEMENT OF FACTS

In early July of 1989, Mr. Herrick temporarily moved in with a childhood friend, Patrick Porrey, and his mother, Theresa Porrey. Theresa Porrey was the landlady of a triplex and lived in the middle unit with her son. T. 106. Cheryl Hagan and her fiancé Darren “Scott” Barfield lived in the left unit with their newborn son. T. 105. Mr. Barfield goes by the name Scott and will be referred to as such throughout this pleading. David Stewart lived in the right unit with his girlfriend Barbara Forrester. T. 105. On July 15, 1989, Ms. Porrey rushed into Mr. Herrick’s room and woke him up in the middle of the night screaming. Ms. Porrey told Mr. Herrick that their neighbor, Ms. Hagan, had been raped and that she needed his help. Mr. Herrick rushed outside, where he saw Ms. Hagan standing outside her apartment with her newborn baby.

Shortly after, Mr. Barfield came running up the walkway towards their apartment screaming a license plate number. *See* Deposition of Cheryl Hagan at 31 attached as Exhibit C. Mr. Barfield reported that he chased Ms. Hagan’s assailant to a car and memorized the license plate number. T. at 90. Ms. Porrey’s neighbor, David Stewart, wrote down the license plate number and frantically called 911. T. at 87.

Mr. Barfield smoked marijuana with Mr. Herrick earlier that evening and had paraphernalia, including a bong, in the open in his apartment, so Mr. Herrick told him to “hide his stuff” before the police arrived. *See Herrick v. Moore*, No. 8:97-cv-2205-T-23MAP, Transcript of Evidentiary Hearing at 53 and 74 (M.D. Fla. May 20, 2002) attached as Exhibit D. The police arrived within minutes and began asking all the witnesses what had happened. Officers Brian Lavigne and Steven McMullen were first on the scene, and Officer Lavigne took lead on the case. Federal transcript at 409. Shortly after Officers Lavigne and McMullen arrived, Officers Crosby, Nilsson, and Joiner arrived at the scene as well. Officer McMullen began canvassing for the suspect with a K9, while Officer Crosby spoke with the witnesses present. *See* deposition

transcripts of Officers McMullen and Crosby attached as Exhibits E and F. Officer Joiner was the forensic technician on scene and went inside Mr. Barfield and Ms. Hagan's apartment to process the scene and collect evidence. Officer Crosby had conversations with Mr. Herrick and Mr. Stewart, neither of whom could provide additional details, but Officer Crosby did not memorialize what was actually said. T. at 116.

Ms. Hagan then gave Officer Lavigne an initial account of what happened that evening. Around midnight, Ms. Hagan woke up to an unknown man on top of her. T. at 23. The man proceeded to hold a scalpel or a knife to her throat and threatened to kill her and her baby if she did not perform oral sex on him. T. at 23. After a brief struggle, her fiancé, Scott Barfield, came home. T. at 24. Mr. Barfield rushed into their bedroom and briefly fought the assailant. T. at 25. During the struggle, the assailant stabbed or slashed Mr. Barfield with his weapon. T. at 68. The assailant then put on some clothes and fled the room. T. at 25. Ms. Hagan went to check on her baby and heard Mr. Barfield tell the assailant that the sliding back door was locked. T. at 26. She did not see anything else but was told that the assailant fled out the front door. Ms. Hagan reported that Mr. Barfield then chased the assailant. T. at 26. Ms. Hagan testified that it was pitch black in her room and she could not identify the assailant. *See* Deposition of Cheryl Hagan at 15.

Officer Joiner, a Largo Police evidence technician, began collecting evidence at the scene. He collected nine fingerprints in and around blood on the sliding glass door, doorknobs, and the doorstep. T. at 126. Officer Joiner reported that he took 15 photos, although he submitted 24 to evidence and only 14 were provided to the defense. *See* Officer Joiner Supplemental Report attached as Exhibit G. Officer Joiner took a photo of Mr. Barfield's bloody shirt but did not collect it. *See* Crime Scene Photograph attached as Exhibit H. Officer Joiner also collected the sheets, which contained debris. The debris included head hairs, pubic hairs, and a crumpled receipt.

Neither the head hairs, nor the pubic hairs matched Mr. Herrick. *See* FDLE Report (Federal Evidentiary Hearing Exhibit R-30) attached as Exhibit I. The hairs collected from the bed where Ms. Hagan was raped also did not match either victim. Thus, it is reasonable to assume that they belong to the actual perpetrator. The police did not conduct subsequent investigation into the receipt found in the bed where Ms. Hagan was raped. The police left shortly after, without collecting any additional evidence, after only securing the crime scene for approximately 30 minutes. *See* Deposition of Officer Crobsy at 8.

According to Mr. Barfield, he did not give a full account of what had occurred at that point. Mr. Barfield specifically did not identify the perpetrator, that if the State's theory is to be believed, who was a man certainly known to Mr. Barfield. He only told police that it was pitch black, he did not know who the assailant was, and the assailant fled in a white car. T. at 75. Mr. Barfield was transported to the hospital in an ambulance to get treatment for his knife wounds. T. at 76. Mr. Barfield was briefly treated and called the triplex from the hospital, refusing to speak to Ms. Hagan. *See* Deposition of Cheryl Hagan at 35. Instead, Mr. Barfield spoke with Mr. Stewart before returning to the triplex. *See* Deposition of Cheryl Hagan at 35. Mr. Barfield was released from the hospital after approximately an hour. There is no record of how he returned to the triplex.

Ms. Hagan went to her mother's house. T. 28. Mr. Barfield returned to the triplex, before Mr. Stewart drove him to Ms. Hagan's mother's house. T. at 76. Several hours later, around 4am, Mr. Barfield called the police to report that he knew who the assailant was. T. at 76. Mr. Barfield claimed that the assailant was Mr. Herrick. T. at 88. Mr. Barfield then provided a written report to the police. Mr. Barfield reported that an officer told him to change pieces of his version of events in the report. T. at 89. The officer was likely Officer Hollingsworth, who – according to Officer Lavigne – collected the written statement. However, Officer Hollingsworth's supplemental report

was never given to the defense. After collecting Mr. Barfield's written statement, the police arrested Mr. Herrick.

Officers collected clothes that they believed to be bloody – although it was later shown to be mud – as well as a knife and a firearm from Mr. Herrick's apartment. *See* FDLE Report (Federal Evidentiary Hearing Exhibit R-30) attached as Exhibit J. All supplemental reports from the officers present at the scene claim that another officer collected the evidence. Despite the evidence technician, Officer Joiner, being present, no officer photographed or memorialized the state of the apartment, the location of the items collected, or the sliding back door into Mr. Herrick's room.

Mr. Barfield's statement from the night of the crime, deposition testimony five months after the incident, testimony at trial, and testimony during a postconviction evidentiary hearing all contradicted one another and contradicted pieces of Ms. Hagan's testimony. There are key facts that remained relatively consistent throughout Mr. Barfield's recounting of the events. Mr. Barfield claimed that he was out with Mr. Stewart the night of the incident and came home around midnight. T. at 66. Mr. Barfield then smoked a cigarette outside, where he heard Ms. Hagan whimper from their room. T. at 67. Mr. Barfield then reported that he rushed into their room, where he saw a man on top of Ms. Hagan. T. at 15. Mr. Barfield initially stated that it was pitch black and he could not make out any details about the assailant. Mr. Barfield reported that he got into a brief struggle with the assailant, who slashed him with his scalpel or knife. T. at 68. Mr. Barfield then stated that the assailant tried to leave through the back sliding door, where he left a bloody palm print, before running out the front door. T. at 68. Mr. Barfield reported that he chased the assailant down the road and lost sight of him as he turned down an alley between two triplexes. T. at 69. The alley ends in a fence leading to an apartment complex parking lot. There is an electrical box against the fence that makes jumping the fence an easy task. Mr. Barfield testified that he peered over the

fence and saw the headlights of a white car turn on. T. at 73. Mr. Barfield proceeded to jump over the fence and hide behind some parked boats to memorize the license plate number as the car pulled out. T. at 73. Mr. Barfield then ran back to the triplex yelling the license plate number to the neighbors who had stepped outside during the commotion. T. at 74. Mr. Barfield gave the license plate number directly to the police when they arrived. T. at 93.

The State's theory of the case is that Mr. Herrick assaulted Ms. Hagan, stabbed Mr. Barfield, ran away from the scene, jumped a fence, was not in the vehicle that immediately fled the scene, doubled back without being spotted by Mr. Barfield, jumped three more fences, forced his way into his apartment through a sliding back door that was off its rails and blocked by building materials, washed the blood off of him, and climbed back into bed in the span of minutes. Additionally, the State's narrative necessarily asserts that, while he smeared blood on the sliding glass door and doorknobs in Mr. Barfield and Ms. Hagan's apartment when he touched them, Mr. Herrick did not get a drop of blood on the sliding glass door in his own room when pushing hard against it to force it open. The State withheld critical evidence, knowingly presented false testimony, misstated the results of physical evidence testing to the defense, manipulated the defense into stipulating to falsehoods, and withheld impeachment evidence on its star witness.

CURRENT INVESTIGATION

The following is a description of evidence uncovered during investigations conducted by undersigned defense counsel, led largely by defense investigator, Dr. Amanda Lewis, Ph.D. *See* Declaration of Dr. Amanda Lewis, Ph.D. attached as Exhibit K. This information is then discussed below in the context of other evidence available at the time of trial and illustrates that if the State had disclosed the withheld information before Mr. Herrick's trial, the defense would have been

able to adequately develop its reasonable doubt defense and prevented Mr. Herrick's wrongful conviction for these crimes.

In March of 2025, defense investigator and postconviction research consultant, Dr. Amanda Lewis, Ph.D., identified an anomalous vehicle property report that lacked a case number and identifying information consistent with other documents in the Herrick case file. *See* Complaint with Accompanying Vehicle/Property Report attached as Exhibit L. Undersigned counsel emailed the State Attorney's Office requesting that the State Attorney's Office provide the redacted case number from the report on August 7, 2025. The State Attorney's Office responded on August 13, 2025, again asserting that the *case number* from a criminal mischief complaint was subject to redaction because it was connected to a sexual assault case, even though it was provided pursuant to a public records request for the entirety of Kevin Herrick's file, which is a sexual battery case. The letter writes, "We continue to stand by our original exemption applicable to that public records request, which were sections: 119.071(2)(h), 119.071(4)(c), 119.071(5)(a), 119.0712(2), and 365.171, Florida Statutes. This includes the redactions on the page you attached in your email." *See* August 13, 2025, Letter from Assistant State Attorney Sara Macks attached as Exhibit M.

The State of Florida has not disputed that this document, seemingly from a criminal mischief complaint on August 8, 1989, is connected to this case. *See* September 22, 2025, Letter from Assistant State Attorney Sara Macks attached as Exhibit N. This document ultimately proved central to the identification of a viable alternative suspect, Paul Fredette, and to the discovery of significant evidence withholding and destruction issues. Undersigned counsel emailed Ms. Macks on November 12, 2025, the following:

Sara:

I guess the better question would be: why was the criminal mischief report in Kevin Herrick's file? I was expecting an additional letter from you and realized that you likely believed your letter sufficiently answered my question. What is the connection between this report and Kevin Herrick?

I am happy to talk at your convenience if that's easier - 321-945-7615.

Thanks,
Allison Miller

Counsel for Kevin Herrick

Ms. Macks responded the same day with the following: "I don't think I can answer that question. That may be a better question for the police department. I provided you with the original report and all of its supplements, including the one you are currently referencing. -Sara" See Email Exchange between Allison Miller and Sara Macks attached as Exhibit O. The police department has not been able to answer that question and does not have the criminal mischief report and accompanying vehicle/property report in its file. Thus, the only way to reconcile the discrepancy in this document becoming a part of Kevin Herrick's case file at the State Attorney's Office, yet not part of law enforcement's file, is for this postconviction court to hold a hearing.

On June 11, 2025, through a public records request to the Florida Department of Highway Safety and Motor Vehicles (DHSMV), Dr. Lewis identified Paul Fredette as the registered owner of the vehicle referenced in the property report attached to the August 8, 1989, criminal mischief complaint. Dr. Lewis informed Mr. Herrick of this discovery the same day. Two days later, on June 13, 2025, Dr. Lewis learned through records obtained from the Largo Police Department that the majority of physical evidence in Mr. Herrick's case had been destroyed on August 4-5, 1992, *prior* to the issuance of the mandate on Mr. Herrick's direct appeal.

Following these discoveries, Dr. Lewis' investigation expanded to determine: (1) whether any physical evidence still existed; (2) whether the vehicle and license plate evidence had been

suppressed; (3) whether Paul Fredette had proximity, opportunity, or social connections to the victims; and (4) whether remaining forensic evidence could be independently evaluated using modern methods.

Between August and October of 2025, Dr. Lewis conducted multiple investigative trips to Florida. These trips resulted in the recovery and preservation of physical items belonging to Paul Fredette (including a knife), in person outreach to potential witnesses, confirmation of social and workplace overlaps between Mr. Fredette and individuals connected to the crime, direct access to fingerprint cards still held by the Pinellas County Clerk of Court, partial viewing of a VHS deposition used at trial, and an independent expert review confirming that at least five, potentially six latent prints ‘of-value’ exist—contrary to the State’s later representation. *See* Declaration of Peter Massey attached at Exhibit P.

The following information sets forth those findings in full. It also documents investigative barriers encountered, including destroyed evidence, missing police reports, incomplete chain-of-custody records, and limitations on access imposed by agencies. Throughout this investigation, efforts were made to respect witness’ boundaries, document diligence, and preserve evidence integrity.

I. Scope, Role, and Methodology (March 2025 – October 2025)

Dr. Amanda Lewis, Ph.D., is a registered private investigator in the Commonwealth of Virginia and holds a Ph.D. in Criminology, Law, and Society, with specialization in wrongful convictions and postconviction investigation. In this case, she served as a defense investigator and postconviction research consultant.

Her investigative methodology included:

- Systematic review of discovery and historical case files

- Public records requests to state and local agencies
- Background and relational research using public records
- In person site visits and witness outreach
- Evidence recovery and preservation in coordination with a licensed Florida investigator
- Consultation with forensic and fingerprint experts

All investigative actions described below were undertaken for the purpose of identifying suppressed evidence, evaluating the integrity of prior forensic conclusions, and determining whether alternative suspects and investigative leads had not been disclosed or adequately explored.

II. Initial Document Review and Vehicle Property Report (March 2025)

Dr. Lewis first reviewed the approximately 1,600-page document production from the State Attorney's Office for the Sixth Judicial Circuit of Florida during the first week of March 2025. During this review, she identified a two-page vehicle property report that appeared anomalous within the broader file. The report lacked a case number and contained redactions and labeling inconsistent with nearly all other documents in the production.

Victim names were routinely redacted in the file; however, case numbers were not. The absence of a case number on this document obscured its relevance and made it difficult to immediately determine whether it pertained to the Herrick case. Based on its contents, however, it appeared possible that the report was related to a vehicle observed in connection with the July 1989 assault.

Subsequently, on August 7, 2025, undersigned counsel submitted a public records request for simply the *case number* associated with the criminal mischief complaint and accompanying vehicle/property report. The State of Florida responded on August 13, 2025, that "it continue[d] to stand by our original exemptions applicable to that public records request, which were sections:

119.071(2)(h), 119.071(4)(c), 119.071(5)(a), 11.0171(f), and 365.171, Florida Statutes.” See Exhibit M.

III. DHSMV Records and Identification of Paul Fredette (June 11, 2025)

On June 11, 2025, Dr. Lewis reviewed the DHSMV response and learned that the registered owner of the vehicle was Paul Fredette. She informed Mr. Herrick of this discovery the same day.

Subsequent background research revealed that Paul Fredette had a 1979 conviction for sexual battery involving his young daughter, with conduct spanning approximately five years.

Recognizing the potential relevance of this information, she immediately requested additional case records from the Pinellas County Clerk of Court and began broader research into Mr. Fredette’s background, residences, and family members who may have had access to the vehicle.

IV. Discovery of Evidence Destruction (June 13, 2025)

On June 13, 2025, two days after identifying Paul Fredette as the vehicle owner, Dr. Lewis learned through records obtained from the Largo Police Department that the majority of physical evidence in this case had been destroyed on August 4 and August 5, 1992. These destruction dates occurred either prior to or contemporaneous with the issuance of the mandate on Mr. Herrick’s direct appeal.

Prior to this disclosure, neither Dr. Lewis nor other members of the defense team had reason to believe that the physical evidence had been destroyed. This discovery substantially altered the scope and urgency of the investigation and necessitated immediate efforts to determine what evidence, if any, still existed.

V. Largo Police Department Records and Missing Documentation (June–October 2025)

Dr. Lewis made repeated public records requests to the Largo Police Department seeking full chain-of-custody documentation and identification of any remaining evidence. Dominick Precopio of the Largo Police Department located 37 pages of records on microfilm and confirmed the 1992 destruction dates.

Cross-referencing these materials with prior records, revealed references to supplemental police reports authored by Officers Paulson and Hollingsworth that were never produced in discovery and could not be located in the State Attorney's Office files. Despite repeated inquiries, the Largo Police Department indicated that no additional records existed beyond what had been provided.

Further correspondence in October 2025 with Mr. Precopio and Anita Fowler highlighted inconsistencies involving court-order notations dated January 13, 1994, signed by evidence specialist Vivian Caphart—well after the alleged destruction of the evidence. These notations appeared inconsistent with claims that the evidence had already been destroyed.

VI. Development of Paul Fredette as an Alternative Suspect, a.k.a. the Likely Perpetrator

Following identification of Paul Fredette as the vehicle owner, Dr. Lewis investigated Mr. Fredette's residences and social connections. Records showed that Fredette lived approximately three minutes from the crime scene at Westgate Mobile Home Park at the relevant time.

The supplemental vehicle report referenced contact with a "park manager," prompting outreach to current and former Westgate residents and management. Multiple individuals corroborated that a woman named "Debbie" was likely the park manager in 1989. Fieldwork at Westgate and surrounding businesses also revealed that a police substation had been installed at the park in the mid-1990s, consistent with contemporaneous reports of frequent law enforcement activity.

VII. Recovery and Preservation of Physical Evidence (August 8–12, 2025)

Through investigative research, Dr. Lewis identified Rita Rudny as having a connection to Paul Fredette through his niece, Annette Gendron. Ms. Gendron's mother, Carol, was Paul Fredette's sister. Mr. Fredette lived with Carol Gendron over the years mostly but would get kicked out for drinking repeatedly. He would then experience a period of being unhoused or living in temporary housing, before returning to his sister.

Ms. Rudny can best be described as Ms. Gendron's chosen family. Ms. Gendron and Ms. Rudny currently live on the same property next door to each other. Mr. Fredette lived on the property until he was admitted into a care home, where he ultimately died. Thus, Ms. Rudny was well acquainted with Mr. Fredette.

After reviewing Mr. Fredette's criminal history to ensure informed and sensitive contact, Dr. Lewis spoke with Ms. Rudny, who indicated that Mr. Fredette lived with his niece toward the end of his life and that his belongings remained stored there.

At Dr. Lewis' request, Ms. Rudny searched for those belongings while wearing gloves and preserving any items in paper bags. On July 5, 2025, she reported finding a pocketknife that Mr. Fredette regularly carried. After reviewing photographs and videos of the knife, Dr. Lewis traveled to Florida with investigator Clifford Blum from August 8–12, 2025, to retrieve the knife and additional personal items.

All items were photographed, logged, and secured in Mr. Blum's Largo office. Preliminary research indicated the knife was a two-blade Barlow-style pocketknife unlikely to have been manufactured after 1989.

VIII. Identification and Examination of Remaining Evidence (October 9, 2025)

Despite the destruction of most physical evidence, fingerprint cards used at trial remained in the custody of the Pinellas County Clerk of Court. After being told that access was unlikely, Dr. Lewis contacted evidence custodians directly and secured permission to view the materials in person.

On October 9, 2025, at approximately 11:00 a.m., Dr. Lewis and journalist Gilbert King viewed the VHS deposition of Theresa Porrey used at trial (partial viewing permitted) and examined the fingerprint cards while wearing gloves. They took high-quality photographs of the cards, which were significantly clearer than prior scanned copies.

Evidence custodian Marlica Tomlinson confirmed custody of these materials. Access to the full VHS deposition of Ms. Porrey remains pending a court order.

IX. Independent Fingerprint Expert Review

Upon returning from Florida, Dr. Lewis provided the fingerprint photographs to an expert fingerprint examiner. Peter Massey, a fingerprint examiner with a laboratory based at the University of South Florida – St. Petersburg, subsequently advised that at least five latent prints were ‘of-value’, and possibly six. Notably, at least one print previously reclassified by the Largo Police Department as “not of value” was determined by Mr. Massey to be ‘of-value.’

In addition to reviewing the fingerprint cards, Mr. Massey advised that his laboratory is capable of using a cyanoacrylate (commonly referred to as “super-glue fuming”) technique to develop latent fingerprints on physical objects. This technique is particularly significant because it can successfully develop high-quality fingerprints from items on which prints were deposited long ago.

Based on this capability, Mr. Massey offered to attempt latent fingerprint development on any and all personal items recovered from Paul Fredette. Successful development would allow

direct comparison between any prints recovered from those items and the unidentified latent prints from the crime scene.

X. Witness Contact Attempts and Limitations

Dr. Lewis made documented attempts to contact individuals present on or connected to the events of July 15, 1989. Patrick Porrey and David Stewart are deceased. Dr. Lewis spoke with Patrick Porrey's sister, Sandi Porrey, who recalled that law enforcement frequently targeted her brothers.

Dr. Lewis contacted Barbara Forrester in person in the summer of 2025. Ms. Forrester later communicated by text and stated that she and David Stewart believed Patrick Porrey was responsible for the attacks on Ms. Hagan and Mr. Barfield. She also indicated she was likely working late at Honeywell on the night of the offense.

Dr. Lewis attempted respectful contact with Cheryl Hagan through written correspondence and an in-person delivery to her mother, Reta Hagan. After receiving a call from Cheryl's husband, Curtis Sullivan, requesting no further contact, outreach ceased to Ms. Hagan immediately.

In January 2026, Dr. Lewis spoke with Angelina Barfield, who married Scott Barfield in 1992. Ms. Barfield reported that she had not been informed of the events underlying this case at the time and did not have specific information regarding the July 1989 incident. She indicated that she believed Mr. Barfield continued to reside in the Largo area.

XI. Summary of Findings and Outstanding Questions

This investigation identified suppressed vehicle evidence, destruction of physical evidence during the pendency of appeal, surviving forensic materials contradicting later representations by the State, and substantial social, geographic, and workplace overlap between an alternative suspect

and individuals connected to the crime. It further documented extensive field investigation, record collection, and witness outreach conducted across multiple jurisdictions.

Importantly, this investigation has also engaged multiple independent forensic disciplines—including latent fingerprint analysis, touch DNA evaluation, and forensic pathology—to assess whether surviving evidence may yield probative results under modern scientific methods. These efforts reflect a deliberate, methodical approach to testing alternative suspect theories using validated forensic techniques rather than speculation.

Outstanding questions remain regarding missing supplemental police reports authored by Officers Paulson and Hollingsworth, full access to the VHS deposition of Ms. Porrey used at trial, and completion of pending expert analyses.

SUMMARY OF ARGUMENT

The State of Florida withheld three key pieces of evidence that had they been disclosed would have altered the outcome of Mr. Herrick's trial: 1) the license plate number identified by Scott Barfield on the vehicle fleeing from the crime scene the night of the attack; 2) that five, likely six, fingerprint lifts, collected from a place where the perpetrator would have had contact, were 'of-value'; and 3) impeachment information regarding Scott Barfield, the State's star witness. Because the State refuses to disclose the case number for the criminal mischief complaint with the attached vehicle/property report contained within Mr. Herrick's case file, while not directly disputing that the report is relevant to Mr. Herrick's case, the adverse inference belongs to Mr. Herrick. The complaint and vehicle/property report must be relevant to his case, and the most likely conclusion is that it is relevant because the license plate number of the vehicle in that report is the same as the license plate number identified by Scott Barfield on July 15, 1989, as the license plate he observed on the vehicle fleeing from the crime scene. Occam's razor: when faced with

competing hypotheses, the simplest explanation – requiring the fewest assumptions – is usually the best. The only way this issue can be resolved is in a hearing.

Brady requires the State, in its capacity as prosecutor, to adhere to certain standards. Specifically, *Brady* mandates the disclosure of material evidence favorable to the defense—particularly evidence tending to exculpate the criminal defendant. A violation of *Brady* constitutes a serious offense because it signifies that the State has violated the defendant’s constitutional rights to a fair trial and due process of law. Not only did the State fail to disclose the exculpatory license plate number from the vehicle fleeing from the crime scene, that one, potentially two additional fingerprint lifts were ‘of-value’, and impeachment information related to Scott Barfield, but the State also deprived Mr. Herrick’s trial counsel from fully investigating the actual perpetrators of the crime and presenting material, substantial evidence to the jury in support of the defense argument that Mr. Herrick was not the perpetrator. *See Rogers v. State*, 782 So. 2d 373 (Fla. 2001) (holding that “courts should consider not only how the State’s suppression of favorable information deprived the defendant of direct relevant evidence but also how it handicapped the defendant’s ability to investigate or present other aspects of the case.”). Where, as here, defense counsel’s strongest argument was reasonable doubt, based on a theory of police negligence or misconduct and misidentification, and that the crime was committed by another individual, and there is no physical evidence conclusively proving Mr. Herrick’s guilt, the failure to disclose the existence of the information addressed herein constitutes a violation of the Fourteenth Amendment Due Process Clause. The withheld license plate number, the withheld unidentified latent fingerprint lifts, and the withheld impeachment evidence regarding Scott Barfield undermines the entirety of the prosecution theory that this was a crime committed by Kevin Herrick, and points to other more likely suspects as the perpetrator of these crimes. Independently all these *Brady*

violations, as well as the *Alzate/Napue* violation, require this postconviction court to vacate Mr. Herrick's judgment and sentence and award him a new trial, but it is the "cumulative effect of the suppressed evidence that must be considered when determining materiality." *citing Kyles*, 514 U.S. at 436 & n. 10, 115 S.Ct. 1555. "It is the net effect of the evidence that must be assessed." *citing Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998); *see Kyles*, 514 U.S. at 436 & n. 10, 115 S.Ct. 1555." *Way v. State*, 760 So. 2d 903, 913 (2000). The violation of principles, which were established to promote and protect a criminal defendant's right to a fair trial, is grounds for immediate relief.

GROUND FOR RELIEF

- I. MR. HERRICK WAS DENIED DUE PROCESS WHEN THE STATE WITHHELD CRITICAL EXCULPATORY EVIDENCE FROM DEFENSE COUNSEL AND, BY EXTENSION, THE JURY DURING DISCOVERY AND MR. HERRICK'S CRIMINAL TRIAL IN VIOLATION OF *BRADY V. MARYLAND*.

"The suppression by the prosecution of evidence favorable to an accused," violates due process. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). *See also Mordenti v. State*, 894 So. 2d 161, 168 (Fla. 2004) ("*Brady* requires the State to disclose material information within the State's possession or control that tends to negate the guilt of the defendant."). The United States Supreme Court further asserted in *Brady* that a state's suppression of material evidence will result in a new trial "irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. *See also Guzman v. State*, 868 So. 2d 498, 506 (Fla. 2003) ("The *Brady* standard of materiality applies where the prosecutor fails to disclose favorable evidence to the defense."). To establish a *Brady* violation the defendant must show (1) that favorable evidence, either exculpatory or impeaching, (2) was willfully or inadvertently suppressed by the State, and (3) had the jury had that non-

disclosed evidence, there is a reasonable probability they would have acquitted the defendant. *Owen v. State*, 986 So. 2d 534, 547 (Fla. 2008) (citation omitted).

Mr. Herrick has exercised reasonable diligence in timely filing this *Brady* claim within two years of when the favorable, exculpatory evidence was first disclosed to him. Despite requests from different entities for Mr. Herrick's file from either the State Attorney's Office for the Sixth Judicial Circuit or the Largo Police Department, all involved parties have confirmed that the first time that Mr. Herrick was alerted that the anomalous criminal mischief complaint with accompanying vehicle/property report contained a reference to a license plate number connected to a vehicle registered to registered sex offender Paul Fredette was June 11, 2025. Mr. Herrick could not have possibly known about the connection of that license plate number to Paul Fredette, even whilst exercising due diligence. The investigation further uncovered, after June 11, 2025, that either one or both latent fingerprint lifts identified as not 'of-value' by the Largo Police Department were 'of-value.' Again, this information could not have been known to Mr. Herrick. Lastly, Mr. Herrick was unaware of Mr. Barfield's criminal history and given that some of it is lacking from public docketing databases, there was no way this information could have been known to Mr. Herrick. Or that Mr. Barfield's sentences fell below the norm of sentencing ranges typically negotiated by the State Attorney's Office for the Sixth Judicial Circuit, lending someone to conclude that either Mr. Barfield or his neighbor and friend, David Stewart, who also has a lengthy drug-related criminal history, could have had a confidential informant-type relationship with the Largo Police Department.

The law establishes a carve out time-limit exception for *Brady* claims pursued in a Rule 3.850 motion. The Florida Supreme Court in *Davis v. State* held that there was an exception to the time-limit rule for bringing a successive motion for postconviction relief, if facts supporting claim

were unknown to a prisoner and could not have been ascertained by the exercise of due diligence.

See Davis v. State, 417 So. 3d 242 (Fla. 2005). Mr. Davis's claim failed. The Florida Supreme

Court noted:

Davis's *Brady* claim is untimely. The relevant exception to the time-limit rule here is "if the facts supporting the claim 'were unknown to the [defendant] and could not have been ascertained by the exercise of due diligence.'" *Id.* (alteration in original) (quoting Fla. R. Crim. P. 3.851(d)(2)(A)). Davis's claim does not fall within that exception. Davis knew not just of the slides but of the medical examiner's finding of pneumonia. The defense obviously could have examined the slides, including for the purpose of rebutting the medical examiner's testimony. *See id.* (concluding that *Brady* claim was untimely where defendant "had access to" relevant witnesses "and could have questioned" them regarding the matter).

Davis v. State, 417 So. 3d 242 at 247.

The facts in the instant case are clearly distinguishable. The State never disclosed the license plate number reported to law enforcement by Scott Barfield and David Stewart on July 15, 1989, to Mr. Herrick or his counsel, let alone the possibility of that license plate number belonging to a vehicle registered to a registered sex offender. Mr. Herrick could not have known that fact, despite exercising due diligence. He also could not have known that the latent fingerprint lifts reported by the Largo Police Department as not 'of-value,' were, in fact, 'of-value.' And he could not have known of Scott Barfield's history with the criminal justice system. Thus, this motion is timely filed.

While the information contained herein is presented as one claim, it contains three subparts: 1) the State's failure to disclose the license plate number from the vehicle to which Scott Barfield pursued the fleeing perpetrator; 2) the State's failure to disclose that five, potentially six, latent fingerprint lifts were 'of-value,' and only four belonged to Scott Barfield, while none belonged to Kevin Herrick; and 3) the State's failure to disclose impeachment evidence regarding Darren

“Scott” Barfield. Independently and cumulatively these *Brady* violations warrant Mr. Herrick a new trial.

- **THE STATE FAILED TO DISCLOSE THE LICENSE PLATE NUMBER FROM THE VEHICLE TO WHICH SCOTT BARFIELD PURSUED THE FLEEING PERPETRATOR.**

A. The first prong of Brady is satisfied because the evidence withheld by the State here was both favorable and exculpatory. It is clear that the evidence withheld in Mr. Herrick’s case was both favorable and exculpatory.

It is clear that if the license plate number that Scott Barfield observed on the car fleeing crime scene belonged to someone other than Kevin Herrick, that information would be exculpatory. Mr. Barfield ran back to the scene of the crime after chasing the perpetrator, yelling out a license plate number, yet, if the State’s evidence is to be believed, none of the spectators on scene, nor law enforcement recorded that license plate number. That defies logic and constitutes either willful destruction of evidence or gross negligence, but either way, pursuant to *Brady*, parsing out the why has no moment here. It stands to reason that someone did, in fact, collect that license plate number, and after Mr. Barfield contacted law enforcement at 4 a.m. to identify Mr. Herrick as the perpetrator, subsequent investigation into that license plate number ceased. Perhaps the license plate would have never surfaced but for a criminal mischief complaint with an accompanying vehicle/property report provided pursuant to a public records request for Kevin Herrick’s file from the State Attorney’s Office.

The State of Florida provided that report with Mr. Herrick’s case file pursuant to a public records request for the entire file and has not disputed that the document is related to Mr. Herrick’s case. The only conceivable connection between the document and Mr. Herrick’s case is the license plate number on the document, a license plate number that just so happened to belong to a vehicle registered to a registered sexual offender who was living in the area at the time.

There is no question that this information is favorable to the defense, as it exculpates Mr. Herrick by pointing to another individual as the actual perpetrator. This is especially true in the instant case, where defense counsel's primary defense presented at trial was reasonable doubt based on misidentification, spurred on by police negligence or misconduct. Had the defense been aware of the license plate number from the fleeing car, the defense would have acted differently in preparing for and presenting its case at trial. Introduction of the license plate number belonging to Paul Fredette, along with favorable evidence developed through subsequent defense investigation, both implicating the actual perpetrator, would have completely undermined the State's theory of prosecution and furnished reasonable doubt that Kevin Herrick was responsible for the attacks on Cheryl Hagan and Scott Barfield. Thus, the suppressed evidence is favorable, and the first *Brady* prong is satisfied.

B. The second prong of *Brady* is likewise satisfied where the State Attorney's Office, through its agents, the Largo Police Department, failed to disclose the evidence.

Again, it defies logic that the State Attorney's Office did not have the license plate number that Scott Barfield shouted as he returned, running, after pursuing the fleeing perpetrator on July 15, 1989. Assuming it did, it was clearly not turned over to the defense before trial, as any license plate number connected to this case as belonging to sexual offender Paul Fredette was first disclosed to Mr. Herrick on June 11, 2025, after his investigator, Dr. Amanda Lewis, Ph.D., reviewed what the State disclosed pursuant to a public records request for the entirety of Mr. Herrick's file. According to testimony, David Stewart provided the license plate number on the 911 call, and then again directly to the responding officers on scene. Even if the Assistant State Attorney was never made aware of the license plate number, the fact that the Largo Police Department never provided this information to the State Attorney is no defense to this claim and it also does not appear to be the case here. The knowledge and possession of this favorable

evidence by this law enforcement agency charged with investigating this case imputes to the State Attorney. See *Gorham v. State*, 597 So. 2d 782 (Fla. 1992) (holding that “the state attorney is charged with constructive knowledge and possession of evidence withheld by other state agents, such as law enforcement officers.”). The exculpatory evidence was suppressed, either inadvertently or willfully, by the State Attorney’s Office.

Notably, *Brady* does not impose a due diligence requirement on a defendant, nor is a defendant required to compel production of favorable evidence which is material, in that the evidence tends to negate the guilt of the accused or tends to negate the punishment. See *Allen v. State*, 854 So. 2d 1255, 1259 (Fla. 2003); *Maharaj*, 778 So. 2d at 953-54. Rather, “a rule thus declaring ‘prosecutor may hide, defendant must seek’, is not tenable in a system constitutionally bound to accord defendants due process.” *Banks v. Drehtke*, 540 U.S. 668, 696 (2004).

At no point during the discovery process or the trial was Mr. Herrick’s counsel given a copy of the exculpatory license plate number for a vehicle registered to sexual predator Paul Fredette. Thus, this second *Brady* prong is satisfied.²

- C. The third and final prong of *Brady* is also satisfied because the evidence at issue passes the materiality inquiry where there is a ‘reasonable probability’ that had it been disclosed and introduced at trial, the verdict would have been different; and therefore, the State’s failure to disclose it prejudiced Mr. Herrick.

² It should be noted that aside from the constitutional requirements outlined in *Brady*, even Florida’s discovery rules clearly required disclosure. Fla. R. Crim. P. 3.220(b)(1)(A) requires that the names and addresses of witnesses who may have information relevant to a charged offense must be furnished in the discovery process. Specifically, the State must provide the defense “a list of names and addresses of all persons known to the prosecutor to have information that may be relevant to any offense charged or any defense thereto.” See Fla. R. Crim. P. 3.220(b)(1)(A) (emphasis added). Notably, the State violates its discovery obligation when it fails to disclose the names of witnesses and possible witness, even when the witnesses do not make statements or appear in reports. See *Smith v. State*, 882 So. 2d 1050 (Fla. 4th DCA 2004) (holding that it was a discovery violation when the State failed to disclose the name of a person who might have known information relevant to the defense, even though the name was known only to the investigating officer). Furthermore, for purposes of Fla. R. Crim. P. 3.220, the phrase “known to the prosecutor” does not limit the obligation of the State in discovery. Rather, like in the *Brady* context, the knowledge of all relevant State actors is imputed to the prosecutor. See *Wilson v. State*, 789 So. 2d 1127 (Fla. 2d DCA 2001) (holding that it is not a defense to a discovery violation by the State to say that the prosecutor was personally unaware of the information because police knowledge is imputed to the prosecutor). Thus, the State also violated Florida law in not turning over the exculpatory license plate number.

The State's failure to disclose the license plate number and the existence of other viable suspects prejudiced Mr. Herrick at his trial. In order to show that the State's failure to disclose the evidence at issue prejudiced the defendant, he must demonstrate that had the jury known of this evidence, there is a reasonable probability that the jury would have acquitted. *Mordenti*, 894 So. 2d at 170. In order to determine what constitutes a "reasonable probability of acquittal", the United States Supreme Court stated that:

The materiality inquiry is not just a matter of determining whether, after discounting the inculpatory evidence in light of the undisclosed evidence, the remaining evidence is sufficient to support the jury's conclusions. Rather the question is whether "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict."

Strickler, 527 U.S. at 290 (quoting *Kyles v. Whitley*, 514 U.S. 419, 435 (1995)). See also *Way v. State*, 760 So. 2d 903, 912 (Fla. 2000) (quoting *Young v. State*, 739 So. 2d 553, 559 (Fla. 1999) and noting that "the 'ultimate test' in determining if a *Brady* violation occurred is whether 'confidence in the outcome of the trial is undermined to the extent that there is a reasonable probability that had the information been disclosed to the defendant, the result of the proceeding would have been different'").

Here, the State's case rested on Mr. Herrick's alleged opportunity to commit the crime, albeit the opportunity suspect, and relied completely on witness statements placing Mr. Herrick at the crime scene at the time of the crime. However, defense witnesses contradicted the State's timeline by placing Mr. Herrick in bed at the time of the crime and fingerprint impressions recovered at the crime scene could not be matched to Mr. Herrick. In fact, there was no physical evidence indicating that Mr. Herrick was the perpetrator of these crimes. The defense maintained that Mr. Herrick did not commit the crime and that another individual was responsible for the attack on Ms. Hagan and Mr. Barfield.

Even though the State was in possession of the exculpatory license plate number in 1989, this evidence was not disclosed to the defense. Mr. Herrick did not learn of the connection to Paul Fredette until June 11, 2025. Additionally, law enforcement did not conduct further investigation into the license plate number that Scott Barfield observed on a car fleeing from the crime scene. Or perhaps it did but did not disclose the results. The State's failure to disclose the license plate number prohibited the defense from preparing fully for trial and effectively providing reasonable doubt for the jury. This is so because a defense investigation subsequent to the disclosure of the criminal mischief complaint with accompanying vehicle/property report, detailed above, pointed to a car registered to Paul Fredette who has a history of similar crimes, as the actual perpetrator of these crimes. The State's suppression of the license plate number substantially prejudiced Mr. Herrick, as it completely cut off his trial counsel's ability to adequately develop its reasonable doubt defense.

Had the jury known about the existence of the actual perpetrator, as revealed by the license plate number on the fleeing vehicle and subsequent defense investigation, it would have undermined the State's case against Mr. Herrick, and in light of the remaining evidence, would have created a reasonable doubt as to his guilt. There is no question that armed with this information, at minimum, there is a reasonable probability that the jury would have acquitted. Therefore, the appropriate remedy for the State's failure to disclose the license plate number is to vacate Mr. Herrick's conviction and sentence and grant a new trial. *See Floyd v. State*, 902 So. 2d 775 (Fla. 2005) (holding that the State's failure to disclose mere police reports indicating an eyewitness testimony implicating third persons constituted a *Brady* violation and warranted a new trial).

- **The State failed to disclose that six latent fingerprint lifts were ‘of-value,’ and only four belonged to Scott Barfield, while none belonged to Kevin Herrick. Thus, there are two unidentified latent lifts which must belong to the actual perpetrator.**

On July 15, 1989, Officer Steven Joiner, an evidence technician with the Largo Police Department, reported to the triplex on Audubon Road. Officer Joiner inspected the scene, where he took fifteen photographs, collected the sheets from the bed, and lifted nine fingerprints, including a partial palm print. Officer Joiner’s crime scene report indicates that he lifted two prints from the exterior of the bedroom door, one print from the exterior of the second bedroom door, and six prints, including a partial palm print, from the sliding glass door. Of the nine fingerprints lifted, Officer Joiner determined immediately that six were ‘of-value’ and affixed them to a white index card. T. 128-129. Officer Joiner then affixed the six ‘of-value’ fingerprints to a white index card. *See* Exhibit Q.

The fingerprints were taken out of evidence by the Largo Police fingerprint analyst John Barone on July 18, 1989, just days after the incident. *See* Evidence Logs attached as Exhibit R. For ten months, the Largo Police fingerprint analyst purportedly held onto the fingerprints from the scene of the crime, as well as those from Mr. Herrick, and did nothing to verify their identity. In those ten months, the State requested the results of the analysis three times. Additionally, Mr. Herrick’s first attorney requested the results, then his second attorney requested them more forcefully while Mr. Herrick sat in jail awaiting the results.

Officer Barone finally tested the fingerprints from the crime scene against Mr. Herrick’s fingerprints on May 25, 1990. Officer Barone found that the six ‘of-value’ prints identified by Officer Joiner “were not similar to” those of Mr. Herrick. *See* Officer Barone’s Reports attached as Exhibit S. Someone from the State Attorney’s Office noted “NOT GOOD!” reference these results, and after, the results changed. *See* SAO notes attached as Exhibit T. Fifteen days later, on

June 5, 1990, the same officer tested the same fingerprints against the two victims' fingerprints and found that "all *four* prints on file were identified as [matching] victim Darren Barfield." *See* Exhibit S. The State provided only the second report to the defense with an acknowledgement of tangible evidence on June 13, 1990, and only introduced via stipulation "All of the fingerprints lifted and identified by the prior witness were those of the victim Darren Scott Barfield." T. 138-139.

That stipulation is not an accurate factual statement, and one Mr. Herrick's counsel would presumably not have stipulated to if he had known of the first report. Of the six prints reported 'of-value', according to Officer Joiner, none of them were to similar to the known fingerprints of Kevin Herrick, but there is no report that states all six of those prints belonged to Darren Scott Barfield. There is a report that states, "The four latent prints on file were identified as the left index, middle, ring and thumb of victim Darren Barfield." However, there were more than four latent prints on file. All the fingerprints lifted and testified to by the prior witness in trial [Officer Joiner] were not all identified as belonging to Mr. Barfield. There are two prints 'of-value' that have not been identified, but we know they do not belong to Mr. Herrick. It is reasonable to assume they belong to the actual perpetrator of these crimes.

The prosecutor in this case did nothing to correct that false testimony. "It is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." *See Napue v. People of State of Illinois*, 79 S.Ct. 1173, 1177 (1959). There is at least one, if not two prints 'of-value' that do not match Mr. Herrick and presumably do not match Mr. Barfield, or they would have been included. Allowing stipulated testimony that all prints lifted – following Officer Joiner's testimony that there were six

prints ‘of-value’ – belonged to Mr. Barfield is the type of evidence contemplated by the United States Supreme Court in *Napue*. See further argument *infra*. Thus, these convictions must fall.

The State’s failure to disclose the first fingerprint analysis of Officer Barone constitutes a *Brady* violation and a denial of Due Process. The initial fingerprint analysis conducted by the State referenced six ‘of-value’ prints that did not match Mr. Herrick, before changing the analysis to show that only four ‘of-value’ prints existed and, according to the State, they all matched Mr. Barfield. The initial ‘of-value’ analysis done by Officer Barone matches Mr. Massey’s current analysis of the fingerprints; however, this was not the analysis introduced at trial. These were prints that were in the State’s possession for ten months before any analysis was done, and after the first analysis was NOT GOOD!, according to the prosecutor, the analysis changed to help the State’s narrative. The failure to provide both reports of fingerprint analyses done on the same set of fingerprints constitutes a violation of the requirements under *Brady* and a deprivation of Mr. Herrick’s Due Process rights.

- A. The first prong of *Brady* is satisfied because the evidence withheld by the State here was both favorable and exculpatory. It is clear that the evidence withheld in Mr. Herrick’s case was both favorable and exculpatory.

One need look no further than the prosecutor’s own words – “NOT GOOD!” – to know that the initial fingerprint report detailing that the six latent lifts ‘of-value’ reported as being dissimilar to Kevin Herrick is both favorable and exculpatory evidence to Mr. Herrick.

Thus, the first *Brady* prong is satisfied.

- B. The second prong of *Brady* is likewise satisfied where the State Attorney’s Office failed to disclose the evidence.

An exchange at the bench during the trial testimony of Officer Joiner proves that the State failed to disclose the first fingerprint report from Officer Barone detailing that ~~six~~ lifts ‘of-value’ were dissimilar to the known fingerprints of Kevin Herrick. The trial court asks of defense counsel,

“Did you receive a copy of the fingerprints?” T. at 123. Mr. Herrick’s counsel replied, “*I’ve been assured by counsel these were not a match from Kevin Herrick.*” (emphasis added). T. at 123. The prosecutor then adds, “Uh-huh. What was sent to him was *a* report about it was a match for the victim. It wasn’t a match for the Defendant but the victim.” (emphasis added). T. at 123. That back-and-forth clearly demonstrates that defense counsel relied upon the verbal recitation of his opposing counsel regarding the fingerprints not being a match to Kevin Herrick from the first analysis. The prosecutor’s response that he provided A singular report indicating that the lifts were a match to Mr. Barfield also clearly demonstrates that the only report provided to defense counsel was the second report, identifying four fingerprint lifts as belonging to Mr. Barfield.

Thus, this second *Brady* prong is satisfied.

C. The third and final prong of *Brady* is also satisfied because the evidence at issue passes the materiality inquiry where there is a ‘reasonable probability’ that had it been disclosed and introduced at trial, the verdict would have been different; and therefore, the State’s failure to disclose it prejudiced Mr. Herrick.

If six fingerprint lifts, lifted from a place where the perpetrator made contact with his hand, were reported initially as ‘of-value’ by both Officers Joiner and Barone and none belonged to Kevin Herrick and only four were identified as belonging to Scott Barfield, then there are two unidentified prints that must belong to the actual perpetrator. If a jury had heard that there were unidentified fingerprints, not belonging to Mr. Herrick or Mr. Barfield, recovered from the crime scene, there is far more than a reasonable probability that Kevin Herrick would have been acquitted. And thus, this third *Brady* prong is satisfied.

- **The State failed to disclose impeachment evidence regarding Darren “Scott” Barfield.**

The only question Mr. Leinster posed to Mr. Barfield about his criminal history was his first question on cross-examination, “Scott, have you ever been convicted of a felony?” to which Mr. Barfield answered, “No, sir, I have not.” Mr. Barfield’s answer was technically correct.

However, that is not the end of the story. Mr. Leinster requested Mr. Barfield's file but was never provided it.

Mr. Barfield was charged by Information on April 19, 1985, with Violation of Florida Comprehensive Drug Abuse Prevention and Control Act (Sale of Cocaine, a second-degree felony, and Possession of Cocaine, a third-degree felony) (case number CRC85-02852CFANO). He was also charged under the same act on the same day with Sale of Marijuana, a third-degree felony, and Possession of Marijuana, a first-degree misdemeanor. (case number CRC85-02853CFANO). He was ultimately sentenced to a withhold of adjudication, which is statutorily prohibited on a second-degree felony absent a negotiated resolution with the State Attorney's Office, placed on community control for a period of one year followed by three years of probation. The Pinellas County Clerk of Court and the CCIS docket both next show that Mr. Barfield's March 12, 1986, Motion for Early Termination of Community Control was granted, and the remainder of his community control was modified to probation. However, again that is not the whole story.

What seemingly precipitated the modification of Mr. Barfield's probation was that he, in fact, violated his probation, which is noticeably missing from both case dockets on both docketing systems. *See* Order of Modification of Probation at Exhibit U. The Order of Modification of Probation notes that Mr. Barfield violated his probation because he failed to live and remain at liberty without violating any law. Mr. Barfield was arrested by the Florida Highway Patrol on May 22, 1987, for DUI, and in return for violating his probation by getting arrested for another crime, his sentence was modified and *reduced*. Mr. Barfield also received probation for this DUI arrest.

It's also important to note contextually what was occurring nationwide in the mid-1980s regarding the sale and possession of drugs. Florida passed the aforementioned Comprehensive Drug Abuse and Prevention and Control Act. Further, the nationwide climate regarding cocaine,

and crack cocaine in particular, resulted in the 1986 Anti-Drug Abuse Act, notoriously punishing rock cocaine versus powder cocaine at a ratio of 100-to-1. Regardless, in the 1980s, we were at war with drugs, which intensified significantly during the Reagan Administration. Furthermore, statistics collected regarding Florida statewide sentencing practices demonstrate that Pinellas County has never been light on sentencing. Mr. Barfield's lawyer at the time, Ronnie Crider, confirmed during the course of the current investigation that the sentence Mr. Barfield received fell well below the Pinellas County norm.

Additionally, Mr. Barfield was arrested for Driving While License Suspended or Revoked on November 21, 1989, for which he also received a withhold of adjudication. (case number 890093957RW). He also was convicted of Driving While License Suspended or Revoked on June 13, 1990. (case number 900005937SK). Both crimes occurred during the pendency of Mr. Herrick's case, and for both, again Mr. Barfield received nominal sentences, a fact that certainly would have been admissible had Mr. Herrick's counsel known about it. *See Breedlove v. State*, 580 So. 2d 605 (Fla. 1991).

Mr. Barfield continued to get arrested after Mr. Herrick's trial: Possession of Marijuana/Possession of Paraphernalia (case number 1026536MMANO), for which he received another withhold of adjudication and a fine. It can certainly be argued, in its totality, that Mr. Barfield received a lot of breaks and deals from the Pinellas County State Attorney's Office, an office not known for cutting a lot of breaks and deals. It certainly leads one to question what relationship Mr. Barfield had with the Largo Police Department and/or the State Attorney's Office for the Sixth Judicial Circuit.

It also bears noting Scott Barfield's relationship to his friend and neighbor David Stewart, with whom he was allegedly moving a fish when Ms. Hagan was first attacked, and David

Stewart's relationship with the criminal justice system. On July 18, 1996, Mr. Stewart was charged with a ten-count Information alleging Possession of Marijuana with Intent to Sell, nine-counts of Possession of a Controlled Substance, and Possession of Paraphernalia. He pled guilty and was sentenced to one year in jail. On November 26, 2001, he was charged with Trafficking in GHB. On August 30, 2006, he was sentenced to ten years in prison, with a seven-year minimum mandatory provision. He was also charged via a two-count Information with Trafficking in Phenethylamines on May 7, 2002, and was sentenced to three years in the Florida Department of Corrections with a three-year minimum mandatory provision to be served concurrently with the ten-year sentence.

While there is no direct evidence that Mr. Barfield was working as a confidential informant, the disposition of his criminal charges reads like someone who was. Certainly, if Mr. Barfield were working as a confidential informant, that information should have been disclosed to Mr. Herrick's defense counsel. Mr. Barfield's testimony is the only true purported independent identification³ of Mr. Herrick as the perpetrator of these crimes. But for Mr. Barfield's 4 a.m. call to law enforcement to identify Mr. Herrick as the perpetrator, we would likely not be here. Anything that impeached the credibility of Mr. Barfield's testimony should have been disclosed and would very likely have impacted the outcome of this trial.

There is no evidence that any information related to Mr. Barfield's criminal conduct was ever provided to the defense. There are four material disclosures that were not made by the State: (1) Mr. Barfield had been arrested for the sale of cocaine and marijuana in 1985, and had violated his probation when he was arrested for a DUI, a fact noticeably absent from the public docketing

³ While Ms. Cheryl Hagan also identified Mr. Kevin Herrick as the perpetrator at trial, it should be noted that she testified in her deposition that it was pitch black and she could not identify the perpetrator at the time of the attack, that Mr. Barfield told her the perpetrator was Mr. Herrick, and that the police told her that they had found blood on Mr. Herrick's knife and clothes and Mr. Herrick's fingerprints on "our" doors. See Deposition of Cheryl Hagan.

systems; (2) Mr. Barfield received a deal for the aforementioned charges from the State Attorney's Office leading to community control and probation, and his community control was modified to probation *after* he violated his probation by getting arrested for another crime involving intoxicating substances; (3) in the time between the crime and trial, Mr. Barfield was subject to two more criminal proceedings for driving on a suspended license; and (4) at the time of the trial, Mr. Barfield was in the process of two civil suits by those he injured through vehicular crashes. *See Johnson v. Barfield*, Case No. 88-16822-10 (Pinellas Cir. Ct. 1988); *Cono v. Barfield*, Case No. 89-13899-19 (Pinellas Cir. Ct. 1989). Interestingly, Mr. Barfield failed to appear for multiple depositions and was held in contempt on May 1, 1990. *State v. Barfield*, Case No. 890093957RW.

- A. The first prong of Brady is satisfied because the evidence withheld by the State here was both favorable and exculpatory. It is clear that the evidence withheld in Mr. Herrick's case was both favorable and exculpatory.

As stated above, Mr. Barfield's testimony is the only true independent identification of Mr. Herrick as the perpetrator of these crimes, purportedly not tainted by law enforcement or by Mr. Barfield's identification. But for Mr. Barfield's 4 a.m. call to law enforcement to identify Mr. Herrick as the perpetrator, we would not be here. Anything that impeached the credibility of Mr. Barfield's testimony or suggested a bias or motive on his part should have been disclosed and would very likely have impacted the outcome of this trial.

Thus, the suppressed evidence is favorable, and the first *Brady* prong is satisfied.

- B. The second prong of Brady is likewise satisfied where the State Attorney's Office failed to disclose the evidence.

Mr. Herrick's counsel requested Mr. Barfield's file. There is no evidence that any information related to Mr. Barfield's criminal conduct was ever provided to the defense. There are four material disclosures that were not made by the State, discussed *supra*.

At no point during the discovery process or the trial was Mr. Herrick's counsel given a copy of the evidence impeaching Mr. Barfield's testimony. This second *Brady* prong is satisfied.

- C. The third and final prong of *Brady* is also satisfied because the evidence at issue passes the materiality inquiry where there is a 'reasonable probability' that had it been disclosed and introduced at trial, the verdict would have been different; and therefore, the State's failure to disclose it prejudiced Mr. Herrick.

The State's failure to disclose Mr. Barfield's criminal history clearly prejudiced Mr. Herrick. The State withheld favorable evidence to Mr. Herrick in that its star witness, Scott Barfield, had received preferential treatment from the very same office now soliciting his testimony and prosecuting Mr. Herrick. The State's suppression of the evidence impeaching Mr. Barfield's testimony substantially prejudiced Mr. Herrick, as it completely cut off his trial counsel's ability to adequately develop its reasonable doubt defense.

Quoting *Morrell v. State*, 297 So. 2d 579 580 (Fla. 1st DCA 1974):

so that the jury will be fully apprised as to the witness' possible motive or self-interest with respect to the testimony he gives. Testimony given in a criminal case by a witness who himself is under actual or threatened criminal investigation or charges may well be biased in favor of the State without the knowledge of such bias by the police or prosecutor because the witness may seek to curry their favor with respect to his own legal difficulties by furnishing biased testimony favorable to the State.

The constitutional right to confront one's accuser is meaningless if a person charged with wrongdoing is not afforded the opportunity to make a record from which he could argue to the jury that the evidence against him comes from witnesses whose credibility is suspect because they themselves may be subjected to criminal charges if they fail to "cooperate" with the authorities.

297 So. 2d at 580.

Had the jury known about the evidence impeaching Mr. Barfield's testimony, it would have undermined the State's case against Mr. Herrick, and in light of the remaining evidence, would have created a reasonable doubt as to his guilt. There is no question that armed with this information, at minimum, there is a reasonable probability that the jury would have acquitted.

Therefore, the appropriate remedy for the State's failure to disclose the exculpatory recorded statement is to vacate Mr. Herrick's conviction and sentence and grant a new trial. *See Floyd v. State*, 902 So. 2d 775 (Fla. 2005) (holding that the State's failure to disclose mere police reports indicating an eyewitness testimony implicating third persons constituted a *Brady* violation and warranted a new trial).

- **The cumulative effect of the suppressed evidence must be considered when determining materiality.**

It is the "cumulative effect of the suppressed evidence that must be considered when determining materiality." *citing Kyles*, 514 U.S. at 436 & n. 10, 115 S.Ct. 1555. "It is the net effect of the evidence that must be assessed." *citing Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998); *see Kyles*, 514 U.S. at 436 & n. 10, 115 S.Ct. 1555." *Way v. State*, 760 So. 2d 903, 913 (2000).

This court must assess whether there is a 'reasonable probability' that had the license plate number registered to a vehicle belonging to registered sexual predator Paul Fredette, the two unidentified latent fingerprint lifts likely belonging to the actual perpetrator, and the impeachment evidence related to Mr. Barfield been disclosed and introduced at trial, the verdict would have been different. The court must consider each subpart of this claim cumulatively as to their combined materiality. The answer is of course there is a reasonable probability that had the aforementioned evidence been disclosed to Mr. Herrick and his counsel prior to trial that the verdict would have been different. Therefore, the State's failure to disclose it prejudiced Mr. Herrick

- II. **MR. HERRICK WAS DENIED DUE PROCESS WHEN THE STATE WITHHELD CRITICAL EXCULPATORY EVIDENCE FROM DEFENSE COUNSEL AND, BY EXTENSION, THE JURY DURING DISCOVERY AND MR. HERRICK'S CRIMINAL TRIAL IN VIOLATION OF *UNITED STATES V. ALZATE*, *NAPUE V. PEOPLE OF STATE OF ILLINOIS*, AND *GIGLIO V. UNITED STATES*.**

Officer John Barone, fingerprint examiner, found that the six 'of-value' prints identified by Officer Joiner "were not similar to" those of Mr. Herrick. *See* Exhibit S. Someone from the State Attorney's Office noted "NOT GOOD!" reference these results, and after, the results changed. *See* Exhibit T. Fifteen days later, on June 5, 1990, the same officer tested the same fingerprints against the two victims' fingerprints and found that "all *four* prints on file were identified as [matching] victim Darren Barfield." *See* Exhibit S. The State provided only the second report to the defense with an acknowledgement of tangible evidence on June 13, 1990, and only introduced via stipulation "All of the fingerprints lifted and identified by the prior witness were those of the victim Darren Scott Barfield." T. 138-139.

That stipulation is not an accurate factual statement, and one Mr. Herrick's counsel would presumably not have stipulated to if he had known of the contents in total of the first report. Of the six prints reported 'of-value,' according to Officer Joiner or Officer Barone, none of them were similar to the known fingerprints of Kevin Herrick, but there is no report that states all six of those prints belonged to Darren Scott Barfield. There is a report that states, "The four latent prints on file were identified as the left index, middle, ring and thumb of victim Darren Barfield." However, there were more than four latent prints on file. All the fingerprints lifted and identified by the prior (to the stipulation being read) witness in trial [Officer Joiner] were not all identified as belonging to Mr. Barfield. There are two latent lifts 'of-value' that have not been identified, but we know they do not belong to Mr. Herrick. It is reasonable to assume they belong to the actual perpetrator of these crimes.

The prosecutor in this case did nothing to correct that false testimony. "It is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." *See Napue v. People of State of Illinois*, 79

S.Ct. 1173, 1177 (1959). According to the State's evidence, there are two latent fingerprint lifts 'of-value' that do not match Mr. Herrick and presumably do not match Mr. Barfield, or they would have been included. Allowing stipulated testimony that all prints lifted – following Officer Joiner's testimony that there were six prints 'of-value' – belonged to Mr. Barfield is the type of evidence contemplated by the United States Supreme Court in *Napue*. Thus, these convictions must fall.

On point to the current circumstances is *U.S. v. Alzate*, wherein the prosecutor made material misrepresentations at side bar and objected to testimony, from the defendant in particular, related to a box of cocaine in the interview room during the Agent's interview of Mr. Alzate. *Napue* and *Giglio* deal with false testimony. In *Alzate*, akin to what occurred in Mr. Herrick's trial, the prosecutor made "explicit factual representations at a side bar." *U.S. v. Alzate*, 47 F.3d 1103, 1110 (11th Cir. 1995).

After Mr. Alzate was convicted, the government conceded that the Agent learned of the existence of the box prior to the presentation of rebuttal evidence and that the government took no steps to correct the false impression left by the cross-examination of the defendant. The U.S. Court of Appeals for the Eleventh Circuit held the following:

Because of the undisputed facts and the government's concessions in light of those facts, this case comes down to the matter of materiality. Where there has been a suppression of favorable evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the nondisclosed evidence is material: "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383, 87 L.Ed.2d 481 (1985). A different and more defense-friendly standard of materiality applies where the prosecutor knowingly used perjured testimony, or failed to correct what he subsequently learned was false testimony. Where either of those events has happened, the falsehood is deemed to be material "if there is any reasonable likelihood that the false testimony *could have* affected the judgment of the jury." *United States v. Agurs*, 427 U.S. 97, 103, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976) (emphasis added); accord *Giglio v. United States*, 405 U.S. 150, 154,

92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972); *Napue v. Illinois*, 360 U.S. 264, 271, 79 S.Ct. 1173, 1178, 3 L.Ed.2d 1217 (1959).

As the Supreme Court has held, this standard of materiality is equivalent to the *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967), “harmless beyond a reasonable doubt” standard. *Bagley*, 473 U.S. at 679 n. 9, 105 S.Ct. at 3382 n. 9.

U.S. v. Alzate, 47 F.3d 1103, 1109-1110 (11th Cir. 1995).

Similarly, here, as discussed *supra* it is clear that 1) the withheld evidence was favorable and exculpatory; and 2) it was withheld from the defense. Now this court must apply a different standard of materiality in determining whether Mr. Herrick is entitled to relief:

A different and more defense-friendly standard of materiality applies where the prosecutor knowingly used perjured testimony, or failed to correct what he subsequently learned was false testimony. Where either of those events has happened, the falsehood is deemed to be material “if there is any reasonable likelihood that the false testimony *could have* affected the judgment of the jury.”

Id.

Without a doubt, if the prosecutor had corrected the false belief upon which the defense attorney relied, Mr. Herrick’s attorney would not have agreed to a stipulation that was a misrepresentation of fact. The prosecutor failed to correct what he knew to be as false testimony. The stipulation - “All of the fingerprints lifted and identified by the prior witness were those of the victim Darren Scott Barfield” - is false. The prior witness, Officer Joiner, testified multiple times that there were six latent fingerprint lifts ‘of-value.’ Only four of the six prints were identified as belonging to Darren Scott Barfield, while all six were identified as NOT belonging to Kevin Herrick. There are two unidentified prints where the perpetrator made contact. There is certainly a reasonable likelihood that the false testimony *could have* affected the judgment of the jury. Accordingly, Mr. Herrick is entitled to relief, and this court should vacate his judgment and sentence and award him a new trial.

CONCLUSION

Brady mandates the disclosure of evidence tending to exculpate the criminal defendant. A *Brady* violation constitutes a serious offense because it signifies that the State has violated the defendant's right to a fair trial. The State's failure to disclose the license plate number from the car fleeing the crime scene; the existence of two additional prints 'of-value', and the evidence impeaching Mr. Barfield's testimony prohibited the defense from investigating the actual perpetrator, preparing fully for trial and providing all relevant and material evidence to the jury to establish reasonable doubt. Had the jury known about the existence of the license plate number, let alone it belonging to Paul Fredette, a registered sexual predator in the area, the fact that the State ordered the Largo Police Department to retest the fingerprint analysis and only introduced the second, less exculpatory results, and that Mr. Barfield seemed to get break after break from the same office using him as a star witness to convict Mr. Herrick, it would have undermined the State's case against Mr. Herrick, and in light of the remaining evidence, would have created reasonable doubt as to his guilt. Thus, there is no question that armed with this information, the jury would have acquitted.

Further, the prosecutor knowingly elicited false testimony in violation of *Alzate*, *Napue*, and *Giglio*. Therefore, the appropriate remedy for the State's violations of Mr. Herrick's right to due process is to vacate Mr. Herrick's conviction and sentence and grant a new trial.

PRAYER FOR RELIEF

WHEREFORE, Mr. Herrick prays that this Court grant all relief to which he is entitled in this proceeding, including but not limited to:

- A. An evidentiary hearing on the allegations made herein;
- B. An opportunity to amend the motion as necessary;

C. An opportunity to reply to any pleading filed by the State;

D. The right to proceed as an indigent;

E. Funds for reasonable and necessary expenses, including those necessary to do further investigation and those incurred for experts and other witnesses who will testify at an evidentiary hearing;

F. The authority to exercise compulsory process, including the issuance of subpoenas for the production of witnesses and documentary evidence, and to undertake prehearing discovery as may be necessary for the proper development of facts;

G. That his conviction and sentence be vacated;

H. That the Information of Kevin Herrick for burglary, sexual battery, and aggravated battery associated with crimes perpetrated against Cheryl Hagan and Darren "Scott" Barfield be dismissed with prejudice;

I. That he be immediately released from state custody;

J. All other and further relief that the Court deems just and proper.

Respectfully submitted,

Counsel for Defendant-Movant, Kevin Herrick

/S/ Allison Ferber Miller

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CERTIFICATION PURSUANT TO FLA. R. CRIM. P. 3.850(n)

I hereby certify that I can read English, that I have read the foregoing motion, and that I understand its content. I further certify that the motion is filed in good faith and with a reasonable belief that it is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court; and, the facts contained in the motion are true and correct.

 4-9-26

Kevin Herrick, DC#240583
Florida State Prison
23916 NW 83rd Avenue
Raiford, FL 32083

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of foregoing has been furnished to Sara Macks, Assistant State Attorney, State Attorney's Office, 14250 49th St. N., Clearwater, FL 33762, by e-service, this 26th day of April, 2026

/S/ Allison Ferber Miller
Allison Ferber Miller, Esq.
Counsel for Mr. Herrick

ATTACHMENT A

FELONY INFORMATION
The Statute Number of the most serious
crime contained herein is 810.02

**In The Circuit Court for the Sixth Judicial Circuit of Florida,
in and for Pinellas County**

SPRING TERM, in the year of our Lord one thousand nine hundred eighty-nine
CRC89-11425CFANO-B

STATE OF FLORIDA

INFORMATION FOR

vs.

KEVIN RICHARD HERRICK
SPN000362912

BURGLARY, 1st (PBL);
SEXUAL BATTERY, LIFE;
AGGRAVATED BATTERY, 2nd

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

JAMES T. RUSSELL, State Attorney for the Sixth Judicial Circuit of Florida, in and for Pinellas County,
prosecuting for the State of Florida, in the said County, under oath, information makes that

KEVIN RICHARD HERRICK

of the County of Pinellas and State of Florida, on the 15th day of July
in the year of our Lord, one thousand nine hundred eighty-nine in the County and
State aforesaid

unlawfully and without invitation or license did enter or
remain in that certain structure, the dwelling of [redacted]
[redacted] located at [redacted] in
the City of [redacted], in the County and State aforesaid, the
property of [redacted] with the
intent to commit an offense therein, and during the course
thereof and within said structure was armed with a
dangerous weapon to-wit: a knife or scalpel, the said
structure at the time not open to the public; contrary to
Chapter 810.02, Florida Statutes, and against the peace
and dignity of the State of Florida. [C6]

COUNT TWO

And the State Attorney aforesaid, under oath as aforesaid,
further information makes that KEVIN RICHARD HERRICK, of
the County of Pinellas, State of Florida, on the 15th day
of July, in the year of our Lord, one thousand nine
hundred eighty-nine, in the County and State aforesaid,
did commit a sexual battery upon [redacted], without
the consent of [redacted] and in the process thereof did
threaten the said [redacted] with a deadly weapon, to-
wit: a knife or scalpel; contrary to Chapter 794.011(3),
Florida Statutes, and against the peace and dignity of the
State of Florida. [N2]

COUNT THREE

And the State Attorney aforesaid, under oath as aforesaid,
further information makes that KEVIN RICHARD HERRICK, of
the County of Pinellas, State of Florida, on the 15th day
of July, in the year of our Lord, one thousand nine
hundred eighty-nine, in the County and State aforesaid,
by use of a deadly weapon, to-wit: a knife or scalpel, did
knowingly and intentionally cause bodily harm to [redacted]
[redacted] by stabbing or slashing [redacted]

See Exhibit 7

10-3-90 - *Jury Verdict -*
guilty as charged
on all counts

7/22/89-ac/B-jb/4-7/45

ARRAIGNED
AUG 21 1989
PLEA *Not Guilty*
CASE SET *P.C. 10-9-89*

LAB9006440

TD 1-23-90
7/31/90 5720

contrary to Chapter 784.045
the State of Florida. B2

Florida Statutes, and against the peace and dignity of

STATE OF FLORIDA
PINELLAS COUNTY

Personally appeared before me JAMES T. RUSSELL, the undersigned State Attorney for the Sixth Judicial Circuit of Florida, in and for Pinellas County, or his duly designated Assistant State Attorney, who being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which if true, would constitute the offense therein charged; hence this information is filed in good faith in instituting this prosecution, and that testimony was received under oath from a material witness or witnesses.

James T. Russell
State Attorney for the Sixth Judicial Circuit of
the State of Florida, Prosecuting for said State

ASST.

Sworn to and subscribed before me this 4th day of AUGUST A.D. 19 89

(INFOBK/7139)
(SEAL)

Ronda Drewery
NOTARY PUBLIC

Notary Public, State of Florida
By Commission Expires Dec. 16, 1991

This information accompanies this prosecution and all charges listed on it. CRC 89-11426/27CFAN0-B

James T. Russell
Assistant State Attorney

ATTACHMENT B

FILED

1

PROBATION VIOLATOR
(Check if Applicable)

OCT 5 1990

PROBATION SUPERVISOR
CLERK CIRCUIT COURT
Karin Bennett

STATE OF FLORIDA

IN THE CIRCUIT COURT,
SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA
DIVISION: FELONY

CASE NUMBER CRC 89-11425 CFANO-8

Kevin Richard Herrick
Defendant 362912

JUDGMENT

The Defendant Kevin Richard Herrick, being personally before this
Court represented by Ed Seintzer, his attorney of record, and having:

(Check Applicable
Provision)

- Been tried and found guilty of the following crime(s)
- Entered a plea of guilty to the following crime(s)
- Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	CASE NUMBER
<u>I</u>	<u>Burglary - PBL</u>	<u>810.02</u>	<u>1st</u>	<u>89-11425</u>
<u>II</u>	<u>Sexual Battery</u>	<u>794.011(3)</u>	<u>Life</u>	<u>89-11425</u>
<u>III</u>	<u>Aggravated Battery</u>	<u>784.045</u>	<u>2nd</u>	<u>89-11425</u>

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s):

The Defendant is hereby ordered to pay the sum of twenty dollars (\$20.00) pursuant to F.S. 980.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of three dollars (\$3.00) as a court cost pursuant to F.S. 943.25(4).

- The Defendant is ordered to pay an additional sum of three dollars (\$3.00) pursuant to F.S. (943.25(4)). (This provision is optional; not applicable unless checked).
- (Check if Applicable) The Defendant is further ordered to pay a fine in the sum of _____ pursuant to F.S. 775.0835. (This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).
- The Court hereby imposes total court costs in the sum of \$ _____

Imposition of Sentence Stayed and Withheld (Check if Applicable)

The Court hereby stays and withholds the imposition of sentence as to counts _____ and places the Defendant on probation for a period of _____ under the supervision of the Department of Corrections (conditions of probation set forth in separate order.)

Sentence Deferred Until Later Date (Check if Applicable)

The Court hereby defers imposition of sentence until 11-2-90 (Date)

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

[Signature]

JUDGE

FINGERPRINTS OF DEFENDANT



Fingerprints taken by B.A. Baxley Bailiff 3257
(Name and Title)

DONE AND ORDERED IN Open Court at PINELLAS County, Florida, this 3rd day of October A.D. 19 90. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant Kevin Herrick and that they were placed thereon by said Defendant in my presence in Open Court this day.

[Signature]

JUDGE

FILED

2

JAN 4 1991

Defendant Kevin Richard Harick

Case Number 89-11425 (para B)

[Signature]

SENTENCE

(As to Count one)

Ed Leister

The Defendant, being personally before this Court, accompanied by his attorney, Ed Leister and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown.

- (Check either provision if applicable)
- and the Court having on 10/3/90 deferred imposition of sentence until this date.
 - and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW THAT

- The Defendant pay a fine of \$ 105 as the 5% surcharge required by F.S. 960.25
- The Defendant is hereby committed to the custody of the Department of Corrections
- The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one, unmarked sections are inapplicable)

- For a term of Natural life
- For a term of Life
- For an indeterminate period of 6 months to _____ years.

If "split" sentence complete either of these two paragraphs

- Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

Firearm — 3 year mandatory minimum

Drug Trafficking mandatory minimum

Retention of Jurisdiction

Habitual Offender

Jail Credit

Consecutive/Concurrent

- It is further ordered that the 3 year minimum provisions of F.S. 775.087 (2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm
- It is further ordered that the _____ year minimum provisions of F.S. 893.135 (1) are hereby imposed for the sentence specified in this count.
- The Court pursuant to F.S. 947.16 (3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
- The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084 (4) (a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- It is further ordered that the Defendant shall be allowed a total of 539 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):
- It is further ordered that the sentence imposed for this count shall run consecutive to concurrent with (check one) the sentence set forth in count _____ above.

Page _____ of _____

Defendant Kevin Richard Heuser
 Case Number 89-11425cfano-B

SENTENCE

(As to Count 400)

The Defendant, being personally before this Court, accompanied by his attorney, Ed. Lenzler, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown.

- (Check either provision if applicable)
- and the Court having on 10/30/90 deferred imposition of sentence until this date
- and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that

- The Defendant pay a fine of \$ _____ JAC as the 5% surcharge required by F. S. 960.25
- The Defendant is hereby committed to the custody of the Department of Corrections
- The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida
 (Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one, unmarked sections are inapplicable)

- For a term of Natural life
- For a term of Life years
- For an indeterminate period of 6 months to _____ years.

If "split" sentence complete either of these two paragraphs

- Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to their terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

Firearm — 3 year mandatory minimum

Drug Trafficking mandatory minimum

Retention of Jurisdiction

Habitual Offender

Jail Credit

Consecutive/Concurrent

- It is further ordered that the 3 year minimum provisions of FS.775.087 (2) are hereby imposed for the sentence specified in this court, as the Defendant possessed a firearm
- It is further ordered that the _____ year minimum provisions of F. S. 893.135 (1) () () are hereby imposed for the sentence specified in this court.
- The Court pursuant to F. S. 947.16 (3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
- The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F. S. 775.084 (4) (a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- It is further ordered that the Defendant shall be allowed a total of 539 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):
- It is further ordered that the sentence imposed for this count shall run consecutive to concurrent with (check one) the sentence set forth in count 070 above.

Page _____ of _____

Defendant Kevin Richard Henrich
Case Number 89-11425 Case-B

SENTENCE

(As to Count Three)

The Defendant, being personally before this Court, accompanied by his attorney, Ed Heister and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown

- (Check either provision if applicable)
- and the Court having on 10/3/90 deferred imposition of sentence until this date.
 - and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that

- The Defendant pay a fine of \$ _____ as the 5% surcharge required by F. S. 960.25
- The Defendant is hereby committed to the custody of the Department of Corrections
- The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one, unmarked sections are inapplicable)

- For a term of Natural life
- For a term of 15 yrs
- For an indeterminate period of 6 months to _____ years.

If "split" sentence complete either of these two paragraphs

- Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to their terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

Firearm — 3 year mandatory minimum

Drug Trafficking mandatory minimum

Retention of Jurisdiction

Habitual Offender

Jail Credit

Consecutive/Concurrent

- It is further ordered that the 3 year minimum provisions of FS 775.087 (2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm
 - It is further ordered that the _____ year minimum provisions of F. S. 893.135 (1) (1) are hereby imposed for the sentence specified in this count.
 - The Court pursuant to F. S. 947.16 (3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
 - The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F. S. 775.084 (4) (a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
 - It is further ordered that the Defendant shall be allowed a total of 539 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):
- It is further ordered that the sentence imposed for this count shall run consecutive to concurrent with (check one) the sentence set forth in count one above

Page _____ of _____

Defendant _____

Case Number _____

SENTENCE

(As to Count _____)

The Defendant, being personally before this Court, accompanied by his attorney, _____, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown.

(Check either provision if applicable)

- and the Court having on _____ deferred imposition of sentence until this date (Date)
- and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that

- The Defendant pay a fine of \$ _____ 1000 as the 5% surcharge required by F. S. 960.25
- The Defendant is hereby committed to the custody of the Department of Corrections
- The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one, unmarked sections are inapplicable)

- For a term of Natural life
- For a term of _____ years
- For an indeterminate period of 6 months to _____ years.

If "split" sentence complete either of these two paragraphs

- Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

Firearm — 3 year mandatory minimum

Drug Trafficking mandatory minimum

Retention of Jurisdiction

Habitual Offender

Jail Credit

Consecutive/Concurrent

- It is further ordered that the 3 year minimum provisions of FS.775.087 (2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm
- It is further ordered that the _____ year minimum provisions of F. S.893.135 (1)() () are hereby imposed for the sentence specified in this count.
- The Court pursuant to F. S. 947.16 (3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
- The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F. S. 775.084 (4) (a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- It is further ordered that the Defendant shall be allowed a total of _____ credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional)

It is further ordered that the sentence imposed for this count shall run consecutive to concurrent with (check one) the sentence set forth in count _____ above.

Page _____ of _____

Defendant Kevin Richard Heiner
Case Number 89-11425CFano-B

Consecutive/Concurrent
(As to other convictions)

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run consecutive to concurrent with (check one) the following:

- Any active sentence being served.
- Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Pinellas County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further ~~recommends~~ ^{orders} Restitution not applicable
in this case.

DONE AND ORDERED in Open Court at Pinellas County, Florida, this 4 day
of January A.D. 19 91

[Signature]
JUDGE

ATTACHMENT C

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

PAGES 1 - 47

MORGAN J. MOREY & ASSOCIATES
Court Reporters

A P P E A R A N C E S

FOR THE PLAINTIFF:

ROBERT HAMBRICK, ESQUIRE
Assistant State Attorney
State Attorney's Office
5100 - 144th Avenue North
Clearwater, Florida 34620

FOR THE DEFENDANT:

JANE H. BROWN, ESQUIRE
Assistant Public Defender
Public Defender's Office
5100 - 144th Avenue North
Clearwater, Florida 34620

P R O C E E D I N G S

1
2 THEREUPON,

3 CHERYL LYNN HAGAN

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

6 DIRECT EXAMINATION

7 BY MS. BROWN:

8 Q Would you state your name, please.

9 A Cheryl Lynn Hagan.

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

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

14 Q Okay. How old is your baby?

15 A Seven months now.

16 Q And are you living together?

17 A Yes.

18 Q Where?

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

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

24 A At Audubon Drive in a triplex.

25 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 hysterical 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
4 blue or black. It was dark because you could see --

5 Q What was the style of the shirt?

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

8 Q Basically didn't have sleeves?

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

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

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

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

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

22 Q Okay.

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

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

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P.M.)

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

CHERYL LYNN HAGAN

DATE

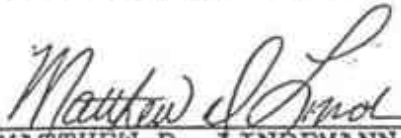
STATE OF FLORIDA)

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

ATTACHMENT D

1 for the record, and spell your last name.

2 THE WITNESS: Kevin Richard Herrick,
3 H-E-R-R-I-C-K.

4 THE CLERK: Thank you, sir. You may be
5 seated.

6 DIRECT EXAMINATION

7 BY MR. GILLICK:

8 Q. Good morning, sir.

9 A. Good morning, Mr. Gillick.

10 Q. Mr. Herrick, where are you currently residing?

11 A. Zephyrhills Correctional Institution.

12 Q. And is that part of the Florida prison system?

13 A. Yes, sir.

14 Q. How long have you been in the Florida prison
15 system pursuant to this case that brings us here
16 today?

17 A. In the Department of Corrections, since January
18 15th, 1991, I believe.

19 Q. Were you incarcerated prior to that in the
20 State system?

21 A. Yes, sir.

22 Q. In the County or State system?

23 A. Pinellas County jail from July 15th, 1989,
24 roughly 13 years this next July.

25 Q. How old are you now?

1 A. I'm 35 years old.

2 Q. How old were you in July of 1989?

3 A. 22.

4 THE COURT: Mr. Herrick, if you would
5 scoot up a little bit so that you're speaking
6 close to the microphone.

7 THE WITNESS: Is that better, sir?

8 THE COURT: That's fine.

9 Q. Mr. Herrick, did you grow up in Pinellas
10 County?

11 A. Essentially, yes, sir.

12 Q. As a teenager, or subsequent, prior to this
13 case, did you have any scrapes with the law?

14 A. Yes, sir. I've been in trouble with the law
15 since I was about 13. I ran away from home a few
16 times and got in some trouble there with just being
17 gone, I guess. And when I was 18, I was arrested in
18 Pinellas County. Ultimately, I was put on
19 probation, or community control, and violated that
20 and ended up in prison, Florida Department of
21 Corrections.

22 Q. Okay. And were you convicted of a burglary or
23 burglaries at some point?

24 A. One burglary. It was --

25 Q. Where did that burglary occur?

1 A. To my mother and father's house. I violated my
2 probation, disappeared for a few months. I returned
3 back to Florida, went into my parents' house, and
4 that was cause for a burglary charge.

5 Q. Did you steal anything or take anything when
6 you were in your parents' house?

7 A. Yes, sir. I removed two firearms from there.

8 Q. Did you sell them?

9 A. No, sir.

10 Q. Were you involved in drugs as a teenager?

11 A. Smoking pot, things of that nature, drinking.

12 Q. Have you ever been charged with any type of sex
13 crime other than this --

14 A. No, sir.

15 Q. Mr. Herrick, did you know Patrick and Theresa
16 Porrey?

17 A. Yes, sir.

18 Q. How did you know the Porrey family?

19 A. Well, when my mother met my father, my father
20 Richard Herrick, they were ultimately married. We
21 moved into his triplex there on Audubon Drive where
22 the Porreys were living, also, at the site of where
23 this crime took place in Largo. I met Patrick
24 running around with my brother riding bikes. I was
25 rather young. I imagine eight, nine, 10 years old.

1 Just neighborhood hangout kids.

2 Q. Was Patrick older than you?

3 A. Yeah, I believe Pat's probably three years
4 older than me, two or three years older than me.

5 Q. Was Patrick Porrey your friend or your
6 brother's friend?

7 A. He would be more my brother's friend. They
8 were, you know, the same age. I was like the -- I'd
9 hang out with my brother and we'd all ride bikes
10 together and run around in the woods that was there
11 at the time and build forts and things of that
12 nature. But if I had to say was he my personal
13 friend more than my brother's, no. If my brother
14 wasn't around, Pat really wouldn't have wanted to
15 hang out with me.

16 Q. And did your brother continue to live -- was he
17 living with you in 1989?

18 A. My brother?

19 Q. Yes.

20 A. No. My brother was in the Air Force at that
21 time.

22 Q. And as far as Pat Porrey, did he have any
23 scrapes with the law that you were aware of?

24 A. I'm aware that he had been in trouble with the
25 law, but specifics, I wouldn't have much idea of

1 that at all.

2 Q. Did you and Pat Porrey ever get arrested
3 together for anything?

4 A. No, sir.

5 Q. And Theresa Porrey, how did you know Theresa
6 Porrey?

7 A. As Pat's mother, simply that. You know, come
8 in, she'd -- if we were over there playing a game of
9 Risk or something at the time, she'd, you know, make
10 us something to eat, or just generally being Pat's
11 mom.

12 Q. Okay. Now, you indicated you both lived in
13 triplexes, your family and the Porrey family. Were
14 you in the same triplex or --

15 A. No, sir.

16 Q. -- separate?

17 A. Separate triplexes. Audubon Drive is like a
18 cul-de-sac, simple road. There's maybe 20 triplexes
19 on each side, 10 going down each side. At that time
20 my father and my family lived down on the circular
21 part. The Porreys lived up maybe three triplexes in
22 on Audubon Drive on the other side of the street.

23 Q. Was Pat's mom, Theresa, and your mother, were
24 they close friends?

25 A. No, sir. I'm not even sure if they had even

1 talked before. I'm sure they have, us getting in
2 trouble or something or, you know, screwing around
3 as a kid.

4 Q. In 1989, you came to live with Theresa Porrey
5 for a period, didn't you?

6 A. Yes, sir.

7 Q. And what was her physical state at the time?

8 A. She was on emphysema. Or not on emphysema,
9 excuse me. She had emphysema and was hooked on
10 oxygen to a respirator-type thing. She was kind of
11 old, a little bit frail.

12 Q. Was she able to get around and about outside?

13 A. Yeah, she could move around pretty decent, all
14 things considered.

15 Q. Was she always on oxygen?

16 A. Yes. She always had the oxygen tube. She had
17 maybe a hundred, 150 feet of cord that would allow
18 her to move around the triplex area, get out and
19 water her plants and things of that nature. She was
20 still pretty active. She didn't go anywhere as far
21 as leaving the house, but she would move around the
22 apartment pretty well.

23 Q. Did Theresa Porrey stay up late during that
24 period?

25 A. Yes. As far as I know she'd stay up, you know,

1 to 3 o'clock in the morning. She was pretty much up
2 a lot. Hard for her to sleep, I think.

3 Q. When's the last time you saw or talked to
4 Theresa Porrey?

5 A. The last time that I saw Theresa Porrey was
6 right before my arrest. The last time that I spoke
7 with her would be the night of the crime where I was
8 left alone there with her for about 20 minutes in a
9 particular portion of the sequence of events and
10 spoke with her maybe 20, 30 minutes.

11 Q. That was in July of 1989?

12 A. That would be July 15th, 1989.

13 Q. How did you come to --

14 A. Excuse me, sir. I did actually speak with her
15 on the telephone. It would have been July -- or
16 June/July, I'm thinking 1990, at one point where
17 Mr. Leinster had asked me to make sure -- at the
18 time we were going to trial and he hadn't secured
19 her videotape deposition, and he had told me --
20 explained to me that her doctor said she can't come
21 to court and testify, so he was going to take a
22 videotape deposition. At that particular time, he
23 hadn't done it. He wanted me to make sure that she
24 would be willing to videotape testimony, so at that
25 time I called her from the jail, spoke to her

1 probably 15, 20 minutes, if that much. That's the
2 last time I spoke with her.

3 Q. Did you ask Theresa Porrey to tell any lies for
4 you?

5 A. No, sir.

6 Q. Did you tell her what to say and not to say
7 during her deposition?

8 A. No, sir.

9 Q. And how did you come to live with her in 1989?

10 A. Well, in 1989, about the middle of June, I
11 guess it was, I returned from Chicago here to
12 Florida, to Pinellas County. I was staying in
13 Clearwater. I ended up looking for some old
14 friends. I was looking for phone numbers through
15 the phone book, thought of Pat, looked up Theresa's
16 number, gave her a call, called Pat. He happened to
17 be there that day and ended up coming to get me.

18 We went, had a beer, and I ended up -- he said,
19 "Where are you staying?" And I said, "Well, I'm
20 staying at this hotel." At that particular time,
21 the girl that I was living with in Chicago came back
22 to Florida with me. She went to live with her
23 mother. And he said, "Well, why what are you doing
24 in a hotel? Why don't you come down here? You have
25 a room down here if you ever need one, you know

1 that," and essentially offered me a place to stay.

2 We went and talked with his mother. She didn't
3 have a big problem with it until I could get on my
4 feet, get a job going, and things of that nature. I
5 could stay as long as I like.

6 Q. And did you pay Mrs. Porrey rent?

7 A. I hadn't paid up until that point. She knew
8 essentially that I would give her something.

9 MR. FISHKIN: I object to what
10 Mrs. Porrey knew or didn't know, Your Honor.

11 THE COURT: Sustained.

12 Q. How long did you live with Theresa Porrey prior
13 to the incident of July 14 and 15 of 1989?

14 A. I would think it would be about two-and-a-half
15 to three weeks.

16 Q. And was Patrick Porrey also living there?

17 A. Yes, sir.

18 Q. The full time that you were?

19 A. Yes, sir.

20 Q. Did he live there permanently or was he back
21 and forth?

22 A. I really don't know if he was there back and
23 forth or not. At that particular time, he was
24 there. The whole time that I stayed there he was
25 staying there. I know he had a girlfriend, Felicia,

1 in Tampa that he had stayed with before or lived
2 with before. She had lived in the triplex before.
3 I had met her a number of years before that.

4 Q. Did you stay in the same room with Patrick or
5 have your own room?

6 A. Pardon me?

7 Q. Did you have your own room or stay in the room
8 with Patrick Porrey?

9 A. We had separate bedrooms.

10 Q. And the room you were in, did it have only your
11 possessions or were there --

12 A. It was a well lived-in room. Theresa has two
13 other sons, Mark and Vaughn Porrey. Over the years
14 that I have known them growing up in that area, both
15 Pat and them had lived in that room at a particular
16 time. There was a number of clothes, dressers,
17 toys, stereos, things of that nature, a lot of
18 personal property of theirs in there.

19 Q. Okay. Other than the Porreys, who else lived
20 in that triplex?

21 A. In the triplex itself?

22 Q. Yes.

23 A. From what I now know, David and Barbara Stewart
24 lived in I would imagine it would be the west
25 triplex, west apartment of the triplex; and Scott

1 Barfield and Cheryl Hagan in the east triplex.

2 Q. And Kevin, I'd like to show you what is marked
3 as Petitioner's Exhibit 2, and ask you to take look
4 at this.

5 Mr. Herrick, do you recognize that?

6 A. Yes, sir, I do.

7 Q. What is that?

8 A. That would be a diagram of the triplex and
9 parking area that I drew.

10 Q. You drew that?

11 A. Yes, sir.

12 Q. When did you draw that?

13 A. Exact time, huh? I would imagine it was
14 probably in '95.

15 Q. So this is subsequent to your arrest?

16 A. Yes, sir.

17 Q. You were in the Florida prison system at that
18 time?

19 A. I was in Desoto Correctional Institution at
20 that time.

21 Q. And is this to a particular scale?

22 A. No, sir, but it's pretty accurate.

23 Q. And how do you have a recollection of the
24 layout of the triplex?

25 A. Well, the Porreys' triplex is identical to the

1 triplex that my father owned at the other end. I
2 lived in it, I'm familiar with all the apartments,
3 and I'm familiar with the Porreys' triplex at that
4 particular time, a couple of weeks. I have a good
5 memory. It's not too difficult to remember where
6 stuff was at and what was happening.

7 Q. Even though it's not to scale, does it show a
8 reasonable representation of the location of the
9 apartments in that triplex?

10 A. Yes, sir.

11 MR. GILLICK: Judge, I would offer
12 Petitioner's Exhibit No. 2 into evidence.

13 MR. FISHKIN: No objection.

14 THE COURT: Two is admitted.

15 (Petitioner's Exhibit No. 2 was received in
16 evidence)

17 MR. GILLICK: Judge, if it please the
18 Court, I could pass that up so the Court might
19 follow, or I could give the Court another copy.

20 THE COURT: Whichever you prefer,
21 Mr. Gillick.

22 MR. GILLICK: Okay. I will pass the
23 Petitioner's Exhibit 2 and give the witness a
24 copy.

25 Q. Mr. Herrick, in the -- let's start with the

1 left side. You have a room, it looks like. It
2 says "my bedroom;" and then there's a room, Pat's
3 bedroom; and a room in front of that, living
4 room; and above the living room is something that
5 says "master bedroom." There's also a dining
6 area in there. Would that be the Porrey
7 apartment?

8 A. Yes, sir. That's Theresa's apartment there.

9 Q. And then in the upper right section, there's
10 just a square or a box that says "David Stewart's
11 apartment;" is that correct?

12 A. Yes, sir.

13 Q. And in the lower right, a drawing of another
14 apartment. It looks like a living room, something
15 that says "baby's room," and Scott and Cheryl's
16 bedroom above that. Would that be Cheryl Hagan and
17 Darren Scott Barfield's apartment?

18 A. Yes, sir.

19 Q. And let's look at the room on the left that
20 says "my bedroom." Is there an exit that goes into
21 the apartment from there?

22 A. Into Theresa's apartment?

23 Q. Yes.

24 A. Yes. If you come where the bed is, if you were
25 laying on the bed normal ways and you walked through

1 the little area right there between the bathroom and
2 the closet, that's a hallway that leads out. You
3 would turn left and you would end up facing where it
4 says "couch," kind of elbow-type couch.

5 Q. From your bedroom, is there another exit out of
6 that room?

7 A. Yes. There's a sliding glass door directly
8 across going the same way. If you were going
9 towards the couch into the back porch, there's a
10 couch setting there, there's a dresser there, and a
11 sliding glass door.

12 Q. In July of 1989, could you actually exit
13 through that back door, the sliding door?

14 A. No, sir.

15 Q. Why not?

16 A. Well, in the inside, just alone being the
17 dresser and the couch being there, they also had
18 some accordion closet doors that were stacked up
19 across there; and on the other side outside of the
20 sliding glass door there was a number of building
21 material, weight equipment, plants, such as stuff as
22 that. It wasn't a thruway or anything like that.
23 You weren't going to go in and out through there.

24 Q. And you indicated that David Stewart lived in
25 the apartment on the top of this page. What was

1 your relationship with David Stewart?

2 A. I have never spoke to David Stewart before.

3 Q. Did anyone live with Mr. Stewart?

4 A. As far as I know, his wife Barbara. I've never
5 spoke to either one of them. I don't -- I never met
6 them.

7 Q. Okay. How about the apartment that contained
8 Cheryl Hagan and Darren Scott Barfield, did you come
9 to know them during your two-and-a-half to three
10 weeks stay with Mrs. Porrey?

11 A. Yes, sir, I did.

12 Q. And did you know them prior to moving there?

13 A. No, sir.

14 Q. Did they have any children?

15 A. Yes, sir, they had a small baby.

16 Q. What was the relationship between Mr. Barfield
17 and Ms. Hagan?

18 A. As far as I know --

19 MR. FISHKIN: I'm going to object to
20 that, Your Honor.

21 THE COURT: Overruled.

22 A. Boyfriend and girlfriend.

23 Q. And how did you come to meet Ms. Hagan and
24 Mr. Barfield?

25 A. I met Scott first, if it's all right if I call

1 him Scott. That's what I referred to him. That's
2 what he was introduced to me as. One day Pat and I
3 were doing some yard work, cutting the grass around
4 the triplex, and -- excuse me -- he was digging a
5 turtle pond on the side of his house. We struck up
6 a conversation, met, and How ya doing, Scott?
7 Scott, Kevin, you know. Pat knew him apparently
8 from living there and introduced me. We kind of
9 hung out there on the side of the triplex and
10 discussed his turtle pond and things of that nature.

11 Q. Did Mr. Barfield give you anything at that
12 time?

13 A. At that particular time, he offered to smoke
14 some pot with us.

15 Q. Did you have any pot?

16 A. Did I?

17 Q. Yes.

18 A. No, I had no pot. Did I smoke some with him?
19 Yes, to clarify that.

20 Q. Did Mr. Barfield produce the pot?

21 A. Yes, sir.

22 Q. And that would be marijuana?

23 A. Yes, sir. At that time Pat didn't smoke. Pat
24 wasn't smoking.

25 Q. Okay. And how did you meet Cheryl Hagan?

1 A. I don't recall that I met her at that
2 particular time. I don't think that I did, 'cause I
3 think what we did is we smoked the joint outside
4 there by his turtle pond. Then we went about our
5 business; he went about his. I think a day or two
6 later I'd met Cheryl coming out. We smoked
7 cigarettes and we couldn't smoke inside of our
8 triplex because of Theresa's emphysema, so we'd be
9 outside quite often to smoke.

10 At some point, I think it was in the early
11 afternoon, we were out in the courtyard area where
12 you'd come out the front door there, Pat and I. She
13 came out and was going to go get her mail, which is
14 way out pretty much off Audubon Drive, would be off
15 the paper, and the mailboxes were out there, and,
16 you know, I'd offered to -- I remember offering to
17 walk out there and check her mail for her since she
18 had her little baby with her and it was, you know,
19 mid-June, July, whatever, pretty hot. I walked out
20 there and checked her mail, and if there was
21 something there, I don't recall, and came back.

22 Q. Okay. Did you have any problems with
23 Ms. Hagan?

24 A. No.

25 Q. Did you have any problems with Scott Barfield?

1 A. No.

2 Q. Did you ever have occasion to go into Barfield
3 and Hagan's apartment?

4 A. That particular instance that I'm talking about
5 going to check her mail, right after that when I
6 came back, Pat asked me if I had any rolling
7 papers. I said, yeah, I happened to have some. He
8 said, "Well, Cheryl would like --" you know, "Why
9 don't you smoke some pot with us if you want to go
10 over and get high?" I said, "Let me go and get my
11 papers." I went into the Porrey's residence, went
12 back to my bedroom, got the papers, wherever they
13 were at in my belongings, and came back. And we
14 went in, Cheryl and I and Pat went in their house,
15 and smoked a joint.

16 Q. Was Mr. Barfield home at that time?

17 A. No, sir.

18 Q. Was Pat already in the apartment prior to you?

19 A. No.

20 Q. And were you in Hagan and Barfield's apartment
21 on other occasions?

22 A. I recall one other occasion, really, is all I
23 can remember is -- no, it would be two other
24 occasions. It would be we went -- Pat and I ended
25 over there the night before this crime took place,

1 and we were over there and ended up watching a movie
2 there, Cocoon II, if you'd like me to explain what
3 happened there.

4 Q. Yeah. What happened that evening?

5 A. That particular evening, Pat and I rented a
6 movie across the street. One of the strip malls had
7 a Blockbuster or something to that effect. We
8 rented a movie. When we came back to the Porreys'
9 house, we went to play the movie, and his particular
10 VCR was not working. It came out all fuzzy. He
11 said, "Well, go next door and ask Scott and Cheryl
12 if they have a VCR head cleaner."

13 So I went over there and knocked on the door.
14 She opened the door. I said, "Have you got VCR head
15 cleaner?" She said, "No, I don't, but if you guys
16 want to come over here, Scott's gone for the
17 night --" you know, he went to a bachelor party, or
18 something like that -- "and if you want to come
19 over and watch it here, we can watch it here." So I
20 went and told Pat, and that's what we ended up
21 doing, going over there and watching a movie.

22 Q. Okay. Did you smoke pot that night?

23 A. Yes, sir.

24 Q. With whom?

25 A. Cheryl and Pat.

1 Q. Who had the pot?

2 A. Cheryl.

3 Q. And were you attracted to Cheryl Hagan?

4 A. Sexually, no.

5 Q. Were you ever involved in a sexual situation
6 with Cheryl Hagan?

7 A. No, I wasn't.

8 Q. She had a young baby at the time?

9 A. Yes, sir.

10 Q. And you indicated that you were in the
11 apartment, I believe, those were two. There was
12 another time. When was that?

13 A. The next day about 6 o'clock, I'd went over
14 there to see if Scott wanted to play a game of
15 chess. Through our prior conversations, we had
16 discussed, you know, a mutual interest in playing
17 chess, and at that particular time I went over there
18 to see if he wanted to play. He wasn't home, and
19 Cheryl said, you know, "I'll play," and so I said
20 okay. I went and got a chessboard, came over, set
21 it up, whipped her real quick. Scott came home a
22 little bit after that, maybe 20 minutes after we had
23 been there playing chess, came home with a couple of
24 friends.

25 Q. Okay. And when Scott Barfield came home, was

1 there any problem between you and he?

2 A. No.

3 Q. What happened at that point when he came home
4 with a couple of friends?

5 A. Well, we kind of talked a little bit. He saw
6 what we were doing. He went to his little stereo
7 cabinet, he's kind of got an entertainment system
8 there, and pulled out an album that had some pot in
9 there, rolled up a couple joints, and all four of
10 us -- five of us smoked.

11 Q. Did you and Scott Barfield have any type of
12 confrontation?

13 A. No. Everything was just casual conversation:
14 Hey, how you doing; how was work; whatever, you
15 know.

16 Q. And did you stay for the evening or did you
17 leave at that time?

18 A. I was probably there maybe another hour,
19 7:30-ish or so. They said they were going out to
20 eat and see ya later, you know. I left and they
21 left.

22 Q. Did they leave with the other couple, as far as
23 you know?

24 A. I have no idea what they did.

25 Q. You left before them?

1 A. I went back into the Porreys' house, made some
2 dinner, and sat down and watched some TV.

3 Q. Okay. The times that you were in Hagan and
4 Barfield's apartment, how did you enter, the front
5 door, back door?

6 A. The front door. When I initially met them, the
7 first day that I met them, we were by the sliding
8 glass door in the back. I don't recall ever going
9 into their apartment at that particular time. I
10 know from things that I've read they said they were
11 having a barbecue one time --

12 MR. FISHKIN: I'm going to object --

13 A. -- and we were in and out.

14 MR. FISHKIN: Your Honor, I'm going to
15 object to his interjecting things that he read.

16 THE COURT: I'll sustain the objection.

17 Q. But when you visited their apartment, you went
18 through the front door as a rule?

19 A. Yes.

20 Q. Is that correct?

21 A. Whenever arriving, going over there, asking
22 them something, I'd knock on the front door.

23 Q. The night before your arrest when you and Pat
24 Porrey were there to watch a movie with Cheryl
25 Hagan, did anything unusual happen between Cheryl

1 and Patrick Porrey?

2 A. Another strange thing as far as --

3 THE COURT: Repeat the question again,
4 please, Mr. Gillick.

5 MR. GILLICK: Yes. This would be the
6 night before, Mr. Herrick has indicated that
7 he -- that Mr. Herrick and Patrick Porrey went to
8 Cheryl Hagan's apartment and watched a movie,
9 Cocoon II, and I'm asking --

10 THE COURT: You can just repeat the
11 question.

12 MR. GILLICK: Oh, that would be easier.
13 Okay.

14 Q. Mr. Herrick, the night that we described
15 when you and Patrick went to watch the movie
16 Cocoon II with Cheryl Hagan, did anything unusual
17 occur?

18 A. Yeah. When we were watching the movie --
19 another weird thing about Scott and Cheryl is that
20 they would smoke pot inside their house but they
21 wouldn't smoke cigarettes in their house, so similar
22 to the situation with Theresa, we would all go
23 outside to smoke cigarettes, put it on pause, put
24 the movie on pause, and went outside to smoke. I
25 finished essentially first, came back in, sat back

1 down. Cheryl came in, sat down.

2 At that particular time, Pat was coming
3 back through the sliding glass door. He was
4 wearing, I guess, spandex-type bicycle rider's pants
5 and he had a little belt pouch around his waist.
6 And at that time when he started coming through the
7 door, Cheryl started giggling and laughing and like,
8 you know, What are you doing, you know, What's up,
9 and she's laughing saying she thought that he was
10 exposing himself to her.

11 Q. Did anything happen between Pat and Cheryl that
12 you're aware of that night?

13 A. No, sir.

14 Q. You were arrested, sir, on July 14th, or early
15 in the morning of July 15th; is that correct?

16 A. Yes, sir.

17 Q. Earlier in the day, do you recall what you had
18 done during that day of July 14?

19 A. Yeah. Pat and I had -- I had woke up, I don't
20 remember what time, but ultimately in the
21 midafternoon time, 12 o'clock, 1 o'clock. Pat had
22 his girlfriend Felicia's Z-28, it needed a new
23 thermostat in it, and we took it down to a
24 self-service car wash down on Ulmerton, right off
25 Belcher and Ulmerton, and basically spent the

1 afternoon there putting that in.

2 Q. Did you wash the car?

3 A. Yes.

4 Q. Did you get dirty or wet when you were doing
5 the work on the car?

6 A. Yeah, greasy and everything else. Used part of
7 the wash cycle to wash the car and get the stuff off
8 us, also, you know.

9 Q. Do you recall when you arrived back at the
10 Porrey residence after washing and repairing the
11 car?

12 A. I'm thinking that it was about 5 o'clock.

13 Q. In the evening?

14 A. Yes, sir.

15 Q. Did you shower or bathe at that time?

16 A. Yeah. Pat did first, and then I did. There's
17 only one shower there in the bathroom there.

18 Q. And that evening, did Patrick Porrey go out?

19 A. Yeah. Pat left, it would have been before I
20 went over to Scott and Cheryl's to play chess, maybe
21 6 o'clock or so.

22 Q. Did you go out with him?

23 A. No. He was returning to Tampa to return the
24 car to his girlfriend's house.

25 Q. And did you stay at home --

1 A. Yes.

2 Q. -- thereafter?

3 A. Yeah, up until the point where I went over to
4 Scott and Cheryl's to play some chess.

5 Q. You said you went over to play chess. Did you
6 intend to play with Cheryl Hagan or with
7 Mr. Barfield?

8 A. With Scott, Mr. Barfield. That was -- that
9 was -- my original thought was, when I was standing
10 around outside having a cigarette, I'll go see if
11 Scott wants to play some chess, nothing to do,
12 Friday night, you know.

13 Q. And when you got there, was Scott home?

14 A. No, he was not.

15 Q. What did you do then?

16 A. I told Cheryl, I said, "When he gets home,
17 holler at him, see if he --" you know, "Tell him to
18 come over to see if he wants to play some chess or
19 something." And she said, "Well, if you want to,
20 I'll play with you." And, All right, you can play?
21 She said yeah, and so I went and got the chessboard
22 and brought it over.

23 Q. Okay. Who won the game?

24 A. I did.

25 Q. And you indicated that Mr. Barfield came home

1 while you were playing chess?

2 A. Yes, sir.

3 Q. No problems with him?

4 A. No, sir.

5 Q. Was he upset that you were there with Cheryl?

6 A. I didn't notice anything like that taking
7 place.

8 Q. Who were the other people who came home with
9 Mr. Barfield?

10 A. A young gentleman named Darryl, and I believe
11 his girlfriend Tammy.

12 Q. And you indicated you stayed around for a while
13 after everybody arrived home?

14 A. Yes.

15 Q. And they were going out for the evening to
16 dinner, you indicated?

17 A. That's what they had told me, yes, sir.

18 Q. Did you go out to dinner with them?

19 A. No, sir.

20 Q. What did you do?

21 A. Went back to the Porreys' residence, made some
22 Hamburger Helper, and watched television, watched
23 the "A-Team," and a movie with Rodney Dangerfield,
24 Easy Money.

25 Q. Was Mrs. Porrey home at that time?

1 A. Yes, sir.

2 Q. About what time was it that you went home?

3 A. It would be before 8 o'clock because that's
4 when the "A-Team" started, so I would say 7:30-ish
5 'cause I had enough time to -- like I say, I
6 cooked -- remember specifically cooking a Hamburger
7 Helper meal and getting that ready and sitting down
8 in front of the TV on the floor there and watching
9 it.

10 Q. Where was Theresa Porrey when you were home
11 that evening?

12 A. She would be in the kitchen area. When I was
13 watching TV, I know she was in the kitchen area.
14 When I was cooking it, I know she was in the kitchen
15 area 'cause she was, you know, just talking, hanging
16 out, and that's where her main, I guess, little
17 compressor-type air thing was.

18 Q. Was she awake?

19 A. Oh, yes.

20 Q. Alert?

21 A. Yes.

22 Q. You indicated you then watched a movie. What
23 did you do after watching the movie?

24 A. I went to bed, went to my bedroom and laid
25 down, read a book for about 20 minutes before dozing

1 off.

2 Q. About what time was that?

3 A. The movie ended at 11:00, so I know I went to
4 bed at 11:00. I'm guessing after 20 minutes of
5 reading. That's usually about the average time that
6 I'll last reading at that particular time at night.

7 Q. When you went to bed around 11:00-ish, where
8 was Theresa Porrey?

9 A. Theresa was in her kitchen.

10 Q. And from the kitchen, can you see the living
11 room area?

12 A. No, sir. When I went to bed, I walked in there
13 and I said, "I'm going to bed, Theresa," you know,
14 "I'll see you tomorrow," check on her, things of
15 that nature. She'd be sitting at her kitchen table,
16 or little table that's setting there. If you know
17 where the kitchen is there, she's sitting at her
18 table. And then you come out, and then once you
19 step out of the kitchen itself into the dining room
20 area, then you can see the entire apartment going
21 back, to those big sliding glass doors in the living
22 room.

23 Q. Did you actually see Mr. Barfield and Ms. Hagan
24 and their friends leave to go to dinner?

25 A. No, sir.

1 Q. Did you see them return?

2 A. No, sir.

3 Q. Do you know what time they returned from
4 dinner?

5 A. I wouldn't know if they went to dinner or came
6 back or anything like that.

7 Q. Did you ever see Mr. Barfield leave again?

8 A. No, sir.

9 Q. After you went to bed, you indicated you read
10 for about 20 minutes and went to sleep. Right?

11 A. Yes, sir.

12 Q. Did you ever get up and leave your room again
13 that night?

14 A. Yeah, when Theresa woke me up.

15 Q. What happened when Theresa woke you up?

16 A. Theresa woke me up screaming that the girl next
17 door is being raped.

18 Q. That would be Theresa Porrey who woke you?

19 A. Yes, sir.

20 Q. And prior to Theresa coming in and waking you
21 up, had you left your room for any reason --

22 A. No, sir.

23 Q. -- whatsoever?

24 Were you asleep when Theresa Porrey woke you
25 up?

1 A. Yes, sir.

2 Q. Do you know about what time it was that Theresa
3 Porrey woke you up?

4 A. No, sir. I guess from things that I've read --
5 he's going to object, but --

6 MR. FISHKIN: Your Honor, I would object
7 again.

8 THE COURT: Well, let's put it this
9 way. Ask your question, Mr. Gillick, as to what
10 time and as best he can tell, and if he needs to
11 supplement his answer, he can supplement his
12 answer, provided that the basis for his
13 information is set out in the record.

14 Q. Mr. Herrick, do you recall approximately what
15 time that Theresa Porrey awoke you?

16 A. It would be close to 1 o'clock.

17 Q. In the morning?

18 A. Yes, sir.

19 Q. This would be --

20 A. 12:45, something like that, if I recall. I
21 didn't look over and see a clock or anything like
22 that when she woke me up. I ran out of the
23 apartment to get out there and see what was going
24 on.

25 Q. Okay. And what did Theresa Porrey -- what was

1 she yelling to you when she woke you up?

2 A. "The girl next door is being raped."

3 Q. What did you do?

4 A. I immediately jumped up, asked her, "What?
5 What's going on," you know. She said, "The girl --"
6 she's steadily screaming, "The girl next door is
7 being raped. The girl next door is being raped." I
8 pulled on a pair of shorts, ran out, down the
9 hallway around, came out into the courtyard, out the
10 front door.

11 Q. When you run out the front door, was there
12 anybody else outside?

13 A. Yes.

14 Q. Who?

15 A. When I came out the front door, if you -- on
16 there, I seen David coming out of his front door
17 this way. Cheryl was standing at her door in or out
18 right about a few feet from the door.

19 Q. Let me clarify. You said David. Is that David
20 Stewart?

21 A. David Stewart, yes, sir.

22 Q. And his front door -- as you walk out of your
23 front door, would Mr. Stewart's door be to your
24 left?

25 A. Yes, sir.

1 Q. And would Hagan and Barfield's door be to your
2 right?

3 A. Yes, sir.

4 Q. Okay. I'm sorry to interrupt, but you
5 indicated that David Stewart was coming out of his
6 apartment?

7 A. Yes, sir.

8 Q. And who else was present or becoming present at
9 that time?

10 A. Cheryl was standing off to my right,
11 Mrs. Porrey was essentially behind me about the
12 time -- when I got out of the front door, she was
13 there really quick with me. Scott was -- Barfield,
14 Scott Barfield was coming down the walkway towards
15 me.

16 Q. When you walked outside, what was Cheryl Hagan
17 doing or saying?

18 A. She was screaming.

19 Q. What was she saying; do you recall?

20 A. She was saying, "Don't leave me, don't leave
21 me," over and over, crying, essentially pretty
22 hysterical it looked like to me.

23 Q. Did you leave her?

24 A. No, I didn't leave her.

25 Q. Did she indicate what happened to her?

1 A. At that particular time, no.

2 Q. Did she give a description of how she was
3 attacked?

4 A. At that particular time, no. She did later,
5 later that evening.

6 Q. To you?

7 A. Yes, sir.

8 Q. What did Cheryl Hagan tell you about her
9 attacker?

10 MR. FISHKIN: I'm going to object, Your
11 Honor.

12 THE COURT: Overruled.

13 A. At that particular time, it wasn't directly
14 to me. Theresa --

15 THE COURT: Just a moment. So the
16 record is clear, I do not take the testimony as
17 being offered for the truth of the matter
18 asserted, simply that it was said and that it
19 might be consistent with something later said by
20 Ms. Hagan. I presume that's what you're offering
21 it for, Mr. Gillick.

22 Q. You indicated that Cheryl Hagan talked with you
23 or in front of you about what had happened to her.

24 A. Yes, sir. We were all standing mostly towards
25 her door, Theresa Porrey, me, and David. I don't

1 believe Barbara Stewart was there, David's wife. I
2 know that David, me, and Theresa were there. Scott
3 may have been there, but I don't think so. I think
4 he was still sitting inside, inside his apartment.
5 She indicated that a guy had put a knife to her
6 throat and --

7 Q. Did she say it was a knife?

8 A. I believe at that time scalpel, and I
9 believe -- she stated that he tried to rape her.

10 Q. Did she point a finger at you and accuse you?

11 A. No, sir.

12 Q. There were other people present?

13 A. Yeah. You know, like I say, David, Theresa,
14 and me. By that time, Barbara might have been
15 there. You know, so many people were moving around
16 at that particular time, but I remember those two
17 being there specifically. She was standing there
18 holding her baby and everything.

19 THE COURT: Which two?

20 THE WITNESS: David Stewart and Theresa
21 Porrey.

22 Q. Do you recall if Cheryl Hagan gave a
23 description of her attacker at that time?

24 A. Not to me.

25 Q. She did not accuse you in front of Theresa

1 Porrey or David Stewart and possibly his wife; is
2 that correct?

3 A. No, sir.

4 Q. And was that specific incident when she was
5 describing what happened, was that prior to the
6 arrival of the police?

7 A. Yes, sir. That was before the police got
8 there.

9 Q. I believe you testified when you first came out
10 and Cheryl was screaming whatever she was screaming
11 that Darren Scott Barfield was --

12 A. Could I come back?

13 Q. Yes.

14 A. That last question, was that conversation where
15 she described that and told us what happened? No,
16 that was after the police got there. That was not
17 before.

18 Q. Okay. And you also indicated that, you know,
19 when Cheryl was screaming, when you came outside,
20 Cheryl was there, David Stewart was coming out, and
21 that Mr. Barfield was coming up the walkway?

22 A. Yes, sir.

23 Q. Was he walking or running or --

24 A. He was moving pretty quick. I wouldn't say he
25 was running, but he was coming back. He was

1 screaming for David to write down a tag number of a
2 vehicle that he had seen leaving.

3 Q. And do you recall anything else that
4 Mr. Barfield said at that time?

5 THE COURT: Let me stop you for a
6 moment. You just said that Mr. Barfield came up
7 screaming for Mr. Stewart to write a tag number?

8 THE WITNESS: Yes, sir.

9 THE COURT: Is that what you said?

10 All right.

11 Q. Did Mr. Barfield give any indication of why
12 he wanted a tag number written down?

13 A. He said he chased the guy to a car, and the guy
14 got in the car and drove away.

15 MR. FISHKIN: I'm going to object to
16 that and move that it be stricken. He can't know
17 why Mr. Barfield was asking someone to write down
18 a tag number, unless Mr. Barfield told him that.

19 THE COURT: I'll overrule it.

20 Q. That was a statement that Mr. Barfield made?

21 A. Yes, sir.

22 Q. You were there?

23 A. Yes, sir.

24 Q. Mr. Barfield indicated that he chased the
25 suspect who got in a car with this tag number?

1 A. Yes, sir. If I can explain what happened.

2 Q. Yes.

3 A. When he came out and I came out the front door,
4 David's writing down the number. Like I say,
5 Cheryl's screaming. He comes here; he's telling him
6 to write down the tag number. He says, "Scott, are
7 you all right? What happened?" I'm looking at
8 him. I can see that he's bleeding. And, you know,
9 like I said, Theresa's just screaming, "The girl's
10 getting raped next door." I'm wanting to know
11 what's going on, how can I help the situation. I
12 came out here to help.

13 I see that he's bleeding. I got him to
14 stop. He told him -- he got the number to David. I
15 said, "David, call the police. Make sure they get
16 the tag number." "Scott, what happened?" And he
17 explained to me then. He says, "Man, I came in,
18 this guy stabbed me." He said, "I chased him down
19 the street. He got into a car." He said, "I don't
20 know what kind of car it was. I believe that it was
21 a white car. This is the tag number."

22 Q. At that point did Darren Scott Barfield accuse
23 you of being his attacker?

24 A. No, sir.

25 Q. Did he indicate to anyone at that point that

1 you were his attacker?

2 A. No, sir.

3 Q. This was prior to the police arriving?

4 A. Prior to the police.

5 Q. Did anyone say to call the police at that
6 point?

7 A. Me.

8 Q. Who did you tell that to?

9 A. I told it to David, telling him when he got the
10 tag number written down, call the police, make sure
11 they get that tag number.

12 Q. As far as David Stewart, do you have any idea
13 where he is today?

14 A. No idea. I didn't know him then; I don't know
15 him now. I wish I did.

16 Q. Have you talked to him since that night?

17 A. I've never talked to David Stewart other than
18 that night a few questions, conversation. Other
19 than that, I've never spoke to David before or after
20 this incident.

21 Q. And did the police come?

22 A. Yes, sir.

23 Q. How long after you came outside and were
24 talking to these people did the police arrive?

25 A. I would say within three to four minutes.

1 Q. Did the police come directly to that triplex?

2 A. No, sir. When Scott and I had this
3 conversation where I had asked him if he was all
4 right and he told me about the tag number and things
5 of that nature, everybody was pretty hysterical.
6 Theresa was behind me, you know, Oh, my God, oh, my
7 God, steadily, you know. You have to see her to
8 understand how she could be. She could be pretty
9 hysterical. I got her. I said, "Theresa go sit
10 down in the kitchen," 'cause she's hyperventilating,
11 breathing really hard and steadily screaming while
12 I'm trying to figure out what's going on.

13 Dave had went in and called the police. I told
14 Scott, I said, "Look, Scott, you're okay." He's
15 looking at me pretty, you know, competently. He's
16 breathing hard, but he looks okay. He's bleeding.
17 I said, you know, "Calm down. Get Cheryl, step
18 inside, relax." I said, "Make sure that you put --"
19 one of the things that came to my mind was that you
20 need to make sure that pot that you had -- because
21 when he came home earlier that evening, he had his
22 pot in the record album. I said, "You need to make
23 sure that kind of stuff's put away. Go in your
24 house, get your stuff squared away. The police will
25 be here in a minute." At that point he went in with

1 Cheryl.

2 David came back out. And I walked to the end
3 of the walkway there out to the parking lot area and
4 waited for the police. The police officer pulled
5 up, came to the second triplex. I waived them over
6 to the Porreys' triplex area. He came in. I told
7 him where to go in and go into Scott and Cheryl's
8 apartment.

9 Q. Did you try to flee before the police got
10 there?

11 A. There was no reason to flee.

12 Q. Did you try to leave after the police got
13 there?

14 A. No.

15 Q. Had you done anything wrong that night?

16 A. No, sir.

17 Q. Did you break into Scott and Cheryl's
18 apartment --

19 A. No, I did not.

20 Q. -- on July 14th --

21 A. No, I did not.

22 Q. -- 1989?

23 A. No.

24 Q. Did you attempt or have sex with Cheryl Hagan
25 on July 14th or 15th of 1989?

1 A. No, I did not.

2 Q. Did you stab or otherwise cause bodily injury
3 to Darren Scott Barfield on July 14 or 15, 1989?

4 A. No, I did not.

5 Q. Did you run out of the apartment being pursued
6 by Darren Scott Barfield on the night of July 14th
7 or early morning July 15th of 1989?

8 A. No, I did not.

9 Q. Well, would it have been possible for you to
10 have exited the apartment without Theresa Porrey
11 seeing you?

12 A. No.

13 Q. Why?

14 A. There's no way to get out of the sliding glass
15 door. The only way out of the apartment is to walk
16 out that hallway into the living room area. You'd
17 have to walk that far to either go out the living
18 room sliding glass door or go out the front door.
19 She would see you or hear you one way or the other.

20 Q. You indicated that you did not run from Darren
21 Scott Barfield, being pursued by Barfield. Did you
22 run from the apartment and down a street at all that
23 night?

24 A. No.

25 Q. Would it have been possible for you to -- for

1 anyone to have run from the apartment several houses
2 down being pursued, get back into your apartment
3 without being observed, and come out of the
4 apartment to immediately thereafter not be sweating,
5 not having blood all over you?

6 MR. FISHKIN: I'm going to object to the
7 question, Your Honor. It's compound.

8 THE COURT: Overruled.

9 Q. Would that be possible for you to do?

10 A. No. There's no way you could do that.

11 Q. You indicated you took a shower after working
12 on the car around 5 o'clock or so that day. Did you
13 take another shower that night?

14 A. No, sir.

15 Q. Did you hide any bloody clothes or any other
16 clothes that night?

17 A. I didn't hide anything.

18 Q. Did you own a scalpel?

19 A. No, sir.

20 Q. Did you have a knife of any kind?

21 A. No, sir.

22 Q. I believe evidence came out that a knife was
23 found in the room that you were staying. Was that
24 your knife?

25 A. No, sir.

1 Q. Do you know whose knife it was?

2 A. No idea. I would imagine it was one of the
3 Porreys, one of their brothers, one of -- Pat's or
4 Pat's brothers, Mark or Vaughn.

5 Q. Did you have a knife or any weapon with blood
6 on it that night?

7 A. No, sir.

8 Q. Did you have clothes with blood on it that
9 night?

10 A. No, sir.

11 Q. Patrick Porrey. You indicated that Patrick
12 Porrey had left to go somewhere earlier that
13 evening. Was Patrick Porrey home, to the best of
14 your recollection, when his mother woke you?

15 A. The original time? No, sir.

16 THE COURT: Are you saying that you
17 didn't know he was there or what?

18 THE WITNESS: After she woke me up, I
19 never seen Patrick until 3 o'clock that morning,
20 so I don't believe that he was there.

21 Q. You said you saw him at 3 o'clock. Where was
22 that?

23 A. He woke me up at that time. I had gone back to
24 bed.

25 Q. Did Pat appear to be sober or intoxicated?

1 A. No. He seemed to be regular Pat. He wasn't
2 drunk or anything like that, just a little bit
3 pissed off.

4 Q. When you say upset, what do you mean by that?

5 A. Basically what happened is: I was back in bed;
6 I was sleeping. Pat came in the room and literally
7 jumped on top of me, said, "What's going on," you
8 know, "How did you do this? Why did you do this?
9 We let you stay here." And I got him off of me,
10 pushed him off me, pushed him off the bed, got him
11 standing up. Cheryl -- or not Cheryl. Theresa and
12 David are standing in the room also with me. I
13 pulled on a pair of pants to where I wasn't indecent
14 and said, "What are you talking about? What's going
15 on?" He says, you know, "They think you did this."
16 You know, I was, Think I did what? And he was, That
17 you attacked Cheryl and Scott. And I said, "Well,
18 man, you're nuts. I didn't do anything like this."

19 Q. Let me back up a little bit. After the police
20 initially came, did you talk to them?

21 A. Yes, sir.

22 Q. Did they take your name and birth date and
23 personal information?

24 A. Yes, sir.

25 Q. And you stayed then. Did you go back to bed?

1 A. Yes, sir.

2 Q. And then as far as you know, did the police
3 talk to Hagan and Barfield?

4 A. Yeah, while I was -- everybody was there. They
5 were in their apartment. They talked to them.
6 Scott was wheeled out on a stretcher and taken to a
7 hospital and everybody essentially left.

8 Q. Okay. And had Scott Barfield and Cheryl Hagan
9 pointed a finger at you or accused you of anything
10 at that point?

11 A. No, sir.

12 Q. Then you indicated that Pat Porrey came home.
13 Had you gone back to bed?

14 A. Yes, sir.

15 Q. Didn't flee or leave the apartment?

16 A. No.

17 Q. You indicated that Pat came in, was initially
18 upset, and what happened then? Could you
19 describe --

20 A. Well, like I said, he came in. I woke up with
21 Pat on top of me basically saying, "How did you
22 do -- Why did you do this," or such and such like
23 that. We got off the bed and we were talking. I
24 said, "I didn't do anything, Pat. I don't
25 understand why you're saying that, but your mother

1 woke me up." She's standing in the doorway, and she
2 says to him, "Hey, I woke him up," you know. And
3 through the conversation, he's saying, "Well, Darren
4 says you did it," or "Scott says you did this." I
5 said, "It's impossible. The guy said he left in a
6 car. You know, how could I have done this? Your
7 mother woke me up, and he says he left in a car. He
8 gave the police the tag number."

9 At that time David said the same thing. He
10 said, "It couldn't be, Pat." He's saying, you know,
11 "The guy left in a car," this and that. I said, "I
12 want to go -- let's go talk to Scott," you know, "I
13 want to straighten this out," 'cause, you know, I
14 didn't -- I was pretty upset about being told that I
15 just tried to rape a girl. I wanted to go talk to
16 them. They noticed that I was pretty agitated, and
17 basically said, "No, we'll go talk to him."

18 Q. Who is "we"?

19 A. Pat and David.

20 Q. David Stewart?

21 A. Yes, sir.

22 Q. Okay. Did they go talk to Hagan and Barfield?

23 A. Yeah. They left the triplex, left me there,
24 and then I sat --

25 THE COURT: When you say "they," who is

1 they?

2 THE WITNESS: That would be Pat Porrey
3 and David Stewart.

4 Q. Okay. What happened then?

5 A. I stayed there with Theresa, probably got a cup
6 of coffee or something, and tried to calm down and
7 relax and waited for them to come back.

8 Q. And did Pat Porrey and David Stewart come back?

9 A. Yes.

10 Q. What happened then?

11 A. About 30 minutes later they returned. Pat
12 says, "Come on," tells me to come with. We go back
13 into my bedroom, and he says, "What's happening,
14 man? Did you screw around with Cheryl and get
15 caught?" I said, "Look, I don't know what happened
16 over there. I have no idea." I said, "I wasn't
17 messing around with her," this, that, and the
18 other. And he says, "Well, are you sure?" And I
19 said, "Yeah, Pat, I'm sure. I don't have anything
20 to do with this." And he says, "Well --" he's
21 looking at me really hard, and he says, "Well, Scott
22 says that it was you." And I said, "Well, Scott's
23 crazy. I didn't --" you know, "Your mom woke me
24 up. The dude left in a car. I don't know why
25 Scott's saying this, but we need to go straighten

1 this out now before things get out of control."

2 He's just looking at me really hard, kind of
3 like staring me down or something. You know, I
4 said, "Let's go. Let's go take care of this now."
5 And he says, "Well, Scott says that he thinks that
6 it's you, but he's not sure that it's you." And I
7 said, "Well, we still need -- let's call the police
8 and let's do whatever it takes to get this
9 straightened out." And, you know, I might have even
10 been a little verbally threatening Scott at that
11 particular time because I was upset about it. Like
12 I said, to me, to be accused of that, was pretty
13 devastating and I wasn't happy.

14 Q. But at that point Patrick Porrey told you that
15 Scott really wasn't sure it was you?

16 A. Yes, sir. The words that I remember Pat using
17 were that "he thinks it's you, but he is not sure."

18 Q. And have you talked to Pat Porrey since that
19 night?

20 A. No.

21 Q. Have you seen Pat Porrey since that night?

22 A. No.

23 Q. Were you arrested that night or that early
24 morning?

25 A. Yeah, I was arrested that evening, that -- I

1 guess 4 o'clock in the morning, 5 o'clock in the
2 morning, somewhere around then.

3 Q. It would have been July 15th?

4 A. Yes, sir.

5 Q. What day of the week was that?

6 A. Friday. The 15th would be the Saturday,
7 Saturday morning; Friday night on the 14th.

8 Q. Tell us about your arrest. What happened?

9 A. Well, after that conversation with Pat, we had
10 went out. David was still there. He was standing
11 there with Theresa. We went out -- we all went out
12 front to have a cigarette. Theresa stayed inside.

13 We were standing out in the parking lot area
14 discussing basically what happened, what we thought
15 was happening, and, you know, thought maybe she was
16 screwing around on her boyfriend and got caught,
17 didn't understand everything that took place, and
18 they had -- at that point I still wanted to go talk
19 to talk to Scott, I wanted to straighten this out,
20 and essentially they talked me out of it saying,
21 "Look --" apparently David Stewart was with Pat
22 when they talked to Scott and Cheryl where he said
23 "I think it's Kevin, but I'm not positive," this
24 and that. You know, the whole thing, that they got
25 me calmed down, it seemed like nothing was going to

1 take place. They said nothing's going to happen.

2 We finished our cigarettes. We came back
3 inside. We were inside maybe five, six minutes,
4 couldn't have been more than 10. There was a knock
5 at the door. I remember thinking that it was David
6 Stewart at that point maybe come over to say
7 something else or whatever. He had went home when
8 we came in from finishing our cigarette.

9 I went to the door. I was closest to the
10 door. We were all in the kitchen area. I went to
11 open the door. There was about seven, eight Largo
12 police officers there, and they said, "Kevin, can we
13 talk to you a minute?" I said, "Sure." And I took
14 one step outside the door and I was grabbed and
15 handcuffed. And the officer told me, said, "We
16 found your fingerprints," pointing to Cheryl's door,
17 "on that door. You've been convicted of burglary
18 before and we know you're the one who did this." At
19 that point I was surrounded, like I said. They
20 pretty much bent me over and took me to a squad car.

21 Q. Did you deny doing it?

22 A. Yes, sir.

23 Q. And the evidence at trial indicated the police
24 found a knife in your bedroom. Was that yours?

25 A. No, sir.

1 MR. FISHKIN: Asked and answered, Your
2 Honor.

3 THE COURT: Sustained.

4 Q. Did that knife have any blood on it?

5 A. As far as I know, FDLE tested it, and no blood.

6 Q. When you were arrested, sir, did the police --
7 where did they take you?

8 A. They took me to the Largo police station there
9 on East Bay, and I don't know where the crossroad
10 is. I think it's Missouri.

11 Q. Did you deny that you were involved in the
12 wrongdoing that night?

13 A. Yes, sir.

14 Q. Did the police give you your Miranda warnings?

15 A. Yes, sir.

16 Q. Did they tell you you have a right to an
17 attorney?

18 A. Yes, sir.

19 Q. Did you ask for an attorney?

20 A. Yes, sir.

21 Q. What happened then?

22 A. Well, they told me I would -- I explained to
23 them that --

24 MR. FISHKIN: Excuse me, Your Honor. I
25 don't think there's a claim here that there was a

1 Miranda violation or a Sixth Amendment violation,
2 deprivation of counsel.

3 THE COURT: Where are we going,
4 Mr. Gillick?

5 MR. GILLICK: Judge, I'm saying that he
6 was fully cooperative with the police subsequent
7 to his arrest.

8 THE COURT: All right. Continue.

9 A. When they brought me to a little holding cell
10 there, they asked me if I'd -- first they explained
11 that I was being charged with kidnapping, attempted
12 homicide, sexual battery, armed burglary, and a
13 convicted felon in possession of a firearm. They
14 asked me if I wanted to talk about this, and I
15 explained that this was -- I said, "You guys just
16 rattled off some serious stuff, and obviously I'm
17 sitting here in handcuffs. We have a problem." I
18 said, "I would like an attorney. Is there an
19 attorney here that I can --" I said, "I'd be happy
20 to answer any questions if there's an attorney
21 present."

22 I've been arrested before, represented by Ky
23 Koch, and he had advised me that if I'm ever
24 arrested or in any type of situation being
25 questioned to ask for an attorney, so that's what I

1 did. I explained that to them.

2 THE COURT: Let me stop you here,
3 Mr. Gillick, and take a morning recess. Why
4 don't we come back at 11 o'clock?

5 (Recess at 10:43 a.m., until 11:04 a.m.)

6 THE COURT: Please continue,
7 Mr. Gillick.

8 MR. GILLICK: Thank you, Your Honor.

9 Q. Mr. Herrick, what was the attitude of the Largo
10 police officers when you informed them that you
11 would talk to them but you wanted a lawyer first?

12 A. He didn't understand that. He questioned me as
13 far as, "What do you mean you'll cooperate --" what
14 I had told them is, "I'll cooperate with you any way
15 that I can, but I won't answer any questions until
16 an attorney's present," and he said, well --

17 THE COURT: Let me say, Mr. Gillick,
18 there's no Edwards violation alleged in this
19 case, and to the extent that we're going to go
20 into whether there is or there is not, I'm
21 certainly not going to consider the conduct of
22 the Largo Police Department in connection with
23 this matter.

24 MR. GILLICK: I understand, Your Honor.
25 And I am --

1 THE COURT: At least in connection with
2 the interrogation of the Petitioner.

3 MR. GILLICK: Okay.

4 Q. Mr. Herrick, did you volunteer to give any
5 evidence to the Largo police officers?

6 A. Yeah. About 30 minutes after our initial
7 conversation, they came to the holding cell that I
8 was in, Officer Joyner and Officer Crosby, I believe
9 that it was, and asked me if I would consent to
10 giving hair samples.

11 Q. Did you?

12 A. Yes, sir.

13 Q. Voluntarily?

14 A. Yes, sir. And I told them that it may help
15 prove my innocence. Take whatever you need.

16 Q. Mr. Herrick, were you taken to the Pinellas
17 County jail that day, July 15th of 1989?

18 A. Yes, sir.

19 Q. Have you been incarcerated since?

20 A. Yes, sir.

21 Q. And did you go to trial right away?

22 A. No, not right away.

23 Q. How long was it before you got to trial?

24 A. The trial was October 2nd and 3rd of 1990.

25 Q. About 15 months later?

1 A. Yes, sir.

2 Q. Were you able to hire an attorney initially?

3 A. No, sir, initially, no.

4 Q. Were you appointed an attorney?

5 A. Yes. I was appointed a public defender,
6 Mrs. Jane Brown.

7 Q. And did Ms. Brown come to see you right away?

8 A. It seemed like about two weeks after I'd been
9 there.

10 Q. Did you tell attorney Jane Brown of your
11 version of events?

12 A. Yes, sir.

13 Q. Did Ms. Brown discuss the evidence with you?

14 A. She discussed a bloody palm print.

15 Q. What were you told about that?

16 A. That apparently a bloody palm print was found
17 at the scene on a sliding glass door; that if it was
18 mine, I would be convicted.

19 Q. What did you tell her?

20 A. I told her it wasn't mine. It couldn't be
21 mine. I wasn't there.

22 Q. Did Ms. Brown tell you about an alleged bloody
23 knife or clothes?

24 A. At our initial meeting, no, I don't believe
25 that she mentioned anything like that in our initial

1 meeting. That came later on. She had said that the
2 police had found a bloody knife and bloody clothes
3 in my room, which I was completely blown away with.
4 I didn't understand that at all. I never knew where
5 that came from.

6 Q. Well, was there a bloody knife or bloody
7 clothes in your room?

8 A. No, sir.

9 Q. Did Ms. Brown take notes while she talked with
10 you?

11 A. A little bit, yeah. I would say yeah. It
12 wasn't a very long conversation. Most of her
13 dealing with me when she first came in was that she
14 wanted to add up my prior record to determine what
15 my guideline score sheet would be -- score would be
16 to where we could negotiate a deal, at which point I
17 told her, "I'm not interested and I didn't do
18 anything," was my -- you know, I was very adamant
19 about it, that I wouldn't be taking a deal. I would
20 be going to trial if this even went that far. I
21 didn't have any idea it would go that far. I
22 figured ten days they'd figure out I didn't do
23 this. At that point in time, I still had no idea
24 that it was Scott or Cheryl making an identification
25 of me as being the person who did this.

1 Q. Okay. And was your matter set for trial by
2 Ms. Brown?

3 A. Yes, sir.

4 Q. When was it initially set?

5 A. I think the initial -- there was a pretrial
6 hearing on October 9th of 1989, and then she had
7 scheduled trial for January 23rd, 1990.

8 Q. Were you looking forward to trying this in
9 January?

10 A. Was I looking forward to doing it?

11 Q. Yes.

12 A. Going to trial?

13 I wasn't looking forward to going to trial on
14 it, but I wanted to get the matter resolved.

15 Q. And did you advise your public defender to
16 waive or not waive your speedy trial right?

17 A. To not waive. It was unequivocal on October
18 9th that I wanted to go to trial within that 180-day
19 period of time. I did not want to sit in the county
20 jail forever and basically wait a year, two years to
21 go to trial.

22 Q. Was your right to a speedy trial waived by
23 someone?

24 A. Yes, by Jane Brown.

25 Q. Were you present when that occurred?

1 A. No, sir.

2 Q. How did you come to find out about that?

3 A. Well, when -- in that particular -- Pinellas
4 County jail, when you're leaving the -- when you go
5 to court for a pretrial, you're essentially kept in
6 a holding cell. I never seen the courtroom until
7 the day I went to trial. When the bailiff comes and
8 gets you, he hands you what they call a trip
9 ticket. They walk you to an elevator with a trip
10 ticket, and when they put you on the elevator, they
11 hand you the trip ticket to give to the bailiff when
12 you get down to the floor.

13 I looked at that and noticed the trial date had
14 been set for January 23rd. By my rough
15 calculations, it was like 11 days over the 180-day
16 period. At that point in time, I knew that she had
17 waived my speedy trial rights and then became upset
18 with her.

19 Q. You were arrested in July and set for trial the
20 following January. Had Ms. Brown provided you with
21 any police reports, depositions, or laboratory
22 reports, or any type of discovery materials?

23 A. No, sir.

24 Q. Had you at that point seen a police report, lab
25 results --

1 A. No, sir.

2 Q. -- depositions?

3 A. No, sir. After that October hearing, I asked
4 my sister Lori, who testified earlier, to at least
5 go get me a police report from the Largo Police
6 Department 'cause I didn't know what was being
7 said. Up until that time in October, no depositions
8 or anything had been taken. None of the laboratory
9 testings that we now know were done had not been
10 completed at that point in time.

11 Q. After you discovered that your trial had been
12 set for January 23rd, did it go on January 23rd?

13 A. No, sir.

14 Q. Why not?

15 A. About the 17th of that January, Ms. Brown came
16 to me in the jail there, regular attorney visit-type
17 situation. At that point she informed me that David
18 and Pat had not yet shown up for their -- they were
19 scheduled for deposition testimony like December 5th
20 and they hadn't shown up, she had to reschedule it,
21 and essentially said she wasn't going to be ready by
22 the 23rd and she was going to have to postpone it.

23 Q. Did that upset you?

24 A. I wasn't very happy about it, no.

25 Q. What did you do? Did you continue with the

1 public defender's office?

2 A. Well, at that point, no. When I returned to
3 the jail cell, I ultimately talked to my parents and
4 talked to Ed Leinster, and they ultimately retained
5 him.

6 Q. How did you come to hear of Ed Leinster?

7 A. Through an inmate, William Pettit, who was in
8 the jail in the particular quad that I was in. He'd
9 been in there since I was in there. He was there
10 before me.

11 Q. Did he refer you to Mr. Leinster?

12 A. Yes. Throughout the time that we were in the
13 jail, at that particular time, he, you know, talked
14 about how good his attorney was, essentially he was
15 getting some DNA evidence thrown out of his case,
16 and this is the guy to have, and this, that, and the
17 other.

18 Q. Do you know where Mr. Leinster was officed?

19 A. I knew he was in the Orlando area. I don't
20 know where his office is, but --

21 Q. Did this Mr. Pettit call Mr. Leinster for you?

22 A. Yes, he did.

23 Q. And put you on the phone with Leinster?

24 A. Yes, he did.

25 Q. Did you talk to Leinster?

1 A. Yes, I did.

2 Q. Did you explain your case to him?

3 A. Explained it as well as I could at the time.
4 The knowledge that I had was essentially very
5 limited. By that time, I had acquired the police
6 report from my sister. The depositions that Jane
7 Brown had taken in that earlier part of December she
8 didn't provide me a copy with and she wouldn't let
9 me read them when we had our visit on the 17th, so I
10 still knew next to nothing about what was being
11 said, who was saying what, and this, that, and the
12 other.

13 I explained essentially what had happened to me
14 from arriving at the Porreys to my arrest, and to
15 this date why I was not going to trial on the 23rd
16 as was expected, 'cause he asked me, "When's your
17 trial date?" I said, "The 23rd." I said, "But it's
18 going to be postponed now because Ms. Brown's not
19 ready to go. She hasn't got these depositions from
20 Pat and David yet," this, that, and the other.

21 Q. Okay. The police report that your sister got
22 from the Largo Police Department, was that the
23 complete police file?

24 A. No, sir. That was simply Officer Brian
25 LaVigne's report.

1 Q. It didn't have the supplemental reports or any
2 laboratory results?

3 A. No, sir.

4 Q. And did Mr. Leinster ask you to write anything
5 down for him?

6 A. Yeah. In our initial conversation, our initial
7 phone conversation, at that particular time he said,
8 "Well, look, you need to --" I explained that I
9 need my parents -- you know, to talk to my parents
10 because I didn't have any money at that particular
11 time. I'd been in jail, and prior to that I
12 wouldn't have had enough money to hire an attorney
13 anyway. So our initial conversation was about
14 that.

15 My parents had spoke with him. I called them,
16 I talked to them, told them, "At least talk to the
17 guy. His price is reasonable, \$7,500. He'll take
18 payments, whatever the case may be," and explained
19 to my mom that basically I wasn't very excited about
20 Jane Brown. I didn't think that I would be
21 represented very well simply because her whole thing
22 was to take a deal.

23 Ultimately, through another conversation, once
24 they decided to hire Ed, I talked to him again. He
25 says, "Look, write everything down, write to me what

1 happened," and such and such. I wrote a letter
2 explaining essentially what had taken place up until
3 that point in time. I had also sent him -- he
4 wanted the particular police report that I had
5 'cause I told him -- he said, "Well, what do you
6 have?" I said, "I got this police report my sister
7 got me." He said, "Well, send that with it too so I
8 know what's going on." So I wrote everything down
9 and sent that to him.

10 Q. And we heard testimony that a Charles Tiffany
11 came to visit you first. Is that correct?

12 A. Yes, sir.

13 Q. Did you see Mr. Leinster in January or February
14 of 1990?

15 A. No, sir.

16 Q. Who was Charles Tiffany?

17 A. I'm guessing that in about --

18 MR. FISHKIN: I object to his guessing,
19 Your Honor.

20 THE WITNESS: Figure of speech.

21 Q. Do you know who Mr. Tiffany is?

22 A. Yes, sir, I do.

23 Q. Who is he?

24 A. Mr. Tiffany is an associate of Mr. Leinster's,
25 an attorney out of, I believe, Kissimmee, Florida.

1 Q. Did he visit you in the Pinellas County jail?

2 A. Yes, sir.

3 Q. And did you explain to him what you knew about
4 your case and your situation?

5 A. Yes, sir. I went through from the time that I
6 came to the Porreys' residence to the day that he
7 came in and talked to me.

8 Q. Did Mr. Tiffany take notes?

9 A. Yes, sir, he did.

10 Q. Have you ever seen those notes again?

11 A. No, sir.

12 Q. Are those notes included in the file that your
13 sister got from Mr. Leinster's office?

14 A. No, sir, they were not.

15 Q. Is the letter and notes that you sent to
16 Mr. Leinster included in Mr. Leinster's file that
17 your sister obtained?

18 A. No, sir. I don't believe there was any letters
19 from me that I had wrote to Mr. Leinster in those
20 files -- in that particular file.

21 Q. Do you have any idea of how many times you
22 wrote to Mr. Leinster?

23 A. I couldn't even venture to guess. Maybe six
24 times, if that. The initial letter was quite long
25 explaining things, 15-, 20-page typed letter trying

1 to explain what had happened to me.

2 Q. In your --

3 A. Nothing else was there.

4 Q. -- letters to Mr. Leinster or in the
5 information you gave to Charles Tiffany to provide
6 to Mr. Leinster, did you indicate that Patrick
7 Porrey, David Stewart, and Theresa Porrey could back
8 up your version of events?

9 A. Yes, sir.

10 Q. Did you indicate that the alleged victims,
11 Ms. Hagan and Mr. Barfield, had both indicated --
12 that neither one of them had identified you
13 initially?

14 A. Yes.

15 Q. Did you indicate in your correspondence and
16 discussions with Mr. Leinster or Mr. Tiffany that
17 the alleged victims admitted to these people that
18 they were not sure of their identification of you?

19 A. Yes, sir.

20 Q. Did you indicate that Patrick Porrey and David
21 Stewart would be important witnesses for you?

22 A. Yes.

23 THE COURT: Mr. Gillick, I am not
24 certain that you have laid a sufficient
25 foundation as to what information the defendant

1 possessed relayed by Mr. Patrick Porrey or
2 Mr. David Stewart about the victim's
3 identification of the assailant.

4 MR. GILLICK: Okay.

5 Q. Mr. Herrick, you previously discussed that when
6 you initially came out, David Stewart was out, and
7 Cheryl Hagan was outside screaming when Theresa
8 Porrey came and got you initially --

9 A. Uh-huh.

10 Q. -- that night of the incident.

11 Was David Stewart present?

12 A. Yes, he was.

13 Q. Theresa Porrey present at that time?

14 A. Yes, she was.

15 Q. And did you indicate to your attorneys that
16 both of them would be witnesses that Cheryl Hagan
17 did not identify you as the perpetrator at that
18 time?

19 A. Yes, sir. There was only -- I mean, that's
20 what happened. I explained to him what had happened
21 to me. David must have -- had to have been there.
22 He was there, so he would have to be a witness.

23 Q. And very shortly after the people that were
24 just described were there, you indicated that Darren
25 Scott Barfield came up the sidewalk from allegedly

1 chasing someone; is that correct?

2 A. Yes, sir.

3 Q. Was Theresa Porrey, Mr. Stewart, were they both
4 present when --

5 A. Yes, sir.

6 Q. -- David came up?

7 A. Yes, sir, when Scott came up.

8 Q. Scott. And were they present when Scott
9 Barfield indicated that he had chased the
10 perpetrator who got in a car?

11 THE COURT: Let me go back a moment and
12 tell you what I'm interested in, Mr. Gillick.
13 The witness has testified that Mr. Patrick Porrey
14 was not present initially when Cheryl Hagan
15 reported that she'd been attacked but that he
16 came later and eventually woke up Mr. Herrick a
17 second time.

18 It's that series of events when
19 Mr. Herrick was awakened the second time that I'm
20 speaking about, and it's my understanding from
21 his testimony that Patrick Porrey and David
22 Stewart were present at that time and went to go
23 see the victims. If you are saying that either
24 Patrick Porrey or David Stewart have some
25 information about the identifications made by the

1 victims of the assailant, you have not presented
2 much detail regarding that aspect.

3 MR. GILLICK: I'll get to that right
4 now.

5 Q. After Patrick Porrey came home that night, you
6 indicated that you had some conversation with him
7 and that he and David Stewart came to talk to you.
8 Is that right?

9 A. Yes. The first time they spoke to me, Pat,
10 David, and Theresa Porrey were present in the
11 bedroom when Pat woke me up and told me that --

12 Q. And then after you denied any involvement in
13 the wrongdoing, who went over to talk to Ms. Hagan
14 and Mr. Barfield?

15 A. Pat Porrey and David Stewart. Theresa and I
16 stayed at the triplex.

17 Q. And Pat Porrey and David Stewart subsequently
18 came back together?

19 A. Yes, sir.

20 Q. Indicated they had talked to Hagan and
21 Barfield; is that correct?

22 A. Yes, sir.

23 Q. And then you and Pat Porrey went into a
24 bedroom; is that correct?

25 A. Yeah, my bedroom.

1 Q. Did Mr. Stewart stay outside?

2 A. Yes. He stayed, as far as I know of, with
3 Theresa in the kitchen.

4 Q. Is my recollection correct that Patrick Porrey
5 indicated to you that Mr. Barfield acknowledged that
6 he was not sure of your being a suspect?

7 A. That is correct.

8 Q. This was after he and David Stewart had gone to
9 talk to Barfield and Hagan; is that correct?

10 A. Apparently, they had spoke to Scott and Cheryl
11 twice. When Pat originally came home from wherever
12 he was at, found out that something happened, went
13 and spoke to Scott and Cheryl, came and woke me up,
14 spoke to me, went and spoke to Scott and Cheryl
15 again, came back and talked to me in the bedroom
16 privately. Then we went out front and had a
17 cigarette and discussed things, came back in, and
18 the police came and arrested me. That's the
19 sequence.

20 Q. Did you provide that information to
21 Mr. Leinster in writing?

22 A. Yes, sir. Yeah. I provided it to Jane Brown,
23 to her investigator, to Mr. Tiffany, to
24 Mr. Leinster. Anybody who would ask me any
25 questions about this, they knew that that's what I

1 said took place.

2 Q. Did you indicate to Mr. Leinster at that time
3 in writing or through Mr. Tiffany the importance of
4 these witnesses as to your defense?

5 A. I think it was self-explanatory. If I
6 specifically said, "This is a crucial key witness to
7 me," I don't know what a key witness is. I don't
8 think I would say that. I think I'd just describe
9 it as, "This is what happened. These people are
10 going to have to testify on my behalf if this goes
11 to trial."

12 Q. Did you tell Mr. Leinster through
13 correspondence or through Mr. Tiffany that you had
14 voluntarily given hair samples to the police?

15 A. Yes. Yeah. Yes, you know.

16 Q. Did you think that was important?

17 A. Yeah. I put the same weight on that. I told
18 them what happened. I said, "When they came and
19 asked me, I gave them hair. They plucked hair from
20 the pubic region and the head." You know, I said,
21 "Obviously, some type of evidence was left on the
22 scene." And like I told them there when they took
23 it, it may prove my innocence, you know, it's like
24 everything else, like Theresa waking me up.
25 Everybody needs to testify to this.

1 Q. Did you indicate to Mr. Leinster in writing or
2 through Mr. Tiffany, his associate, that you left no
3 bloody prints in that apartment?

4 A. I indicated to Mr. Leinster and Mr. Tiffany and
5 everybody else, Jane Brown, that my fingerprints
6 were not in that apartment because I was not in that
7 apartment. There could not be a bloody print of
8 mine, that -- you know, Jane Brown was, "Well, if it
9 comes back, you're going to get life." And I said,
10 "You don't need to worry about it because I know
11 that they're not my prints. I was not there."

12 Q. Did you indicate to Mr. Leinster personally or
13 in writing and through Mr. Tiffany that there would
14 be no blood found on any clothes or a knife taken
15 from your room?

16 A. As far as the knife, I didn't understand where
17 a knife had come from. I knew that my personal
18 clothes particularly, my clothes would not have
19 blood on them because I didn't stab Scott. I wasn't
20 involved in this. There was no way for my stuff to
21 have blood on them. When I was informed that there
22 was bloody clothes, it blew me away; just as when I
23 was informed that Scott and Cheryl identified me as
24 the person attacking them, I was totally perplexed.

25 When I was arrested, the police officer, Well,

1 we have two eyewitness identifications of you. I
2 didn't know it was Scott and Cheryl. I never
3 dreamed it could be Scott and Cheryl because they
4 didn't say anything or do anything. I said, "How
5 could two people identify me? How could there be
6 bloody clothes in my room? How could a bloody palm
7 print be on there when it's not mine? I know it's
8 not mine. I was in bed sleeping when Theresa Porrey
9 woke me up."

10 Q. Now, you indicated Mr. Leinster didn't come to
11 the initial meeting. He sent someone named Charles
12 Tiffany. Would that have been in January or
13 February of 1990?

14 A. That's what I was saying. I was guessing it
15 was early February, March -- or February, 1990 when
16 he came there.

17 Q. When did you first see Ed Leinster?

18 A. I believe it was May 2nd, 1990.

19 Q. What was that occasion?

20 A. The trial that was scheduled for January 23rd,
21 I'm not sure if Ed had postponed that one or Jane
22 Brown had, but it ultimately came out to be
23 rescheduled for May 2nd, 1990.

24 Q. And that date when you were scheduled to go to
25 trial is the first time you saw Mr. Leinster?

1 A. Yes, sir.

2 Q. Had you talked to Mr. Leinster over the phone
3 prior to that?

4 A. Yes, we had spoke over the phone.

5 Q. How many times, roughly?

6 A. I would say three to four times, maybe more
7 than that. The initial time that I spoke to him was
8 a long conversation. The second time where he had
9 told me, "Go ahead write down -- write me a letter
10 telling me what happened." The times after that
11 were simply I would call his office. Some of the
12 times he would be there; most of the time, he
13 wouldn't be. His secretary, Gina Blinkey, I think
14 was her last name, or Binkley, would answer and say,
15 "He's not here," or she wouldn't accept the call.

16 I spoke to him a couple of times throughout
17 that time. I essentially was -- up till that time
18 he was like trying to find out information. He'd
19 say, "I don't -- you know, I'm still waiting. I'm
20 getting the case file from the PD's office," and
21 stuff like that, and essentially didn't know
22 anything. He knew as much as me, which he was able
23 to glean from the police report that I'd sent him.

24 Q. Did Ed Leinster ever provide you with a full
25 set of police reports?

1 A. No.

2 Q. Did you ever discuss the police reports in any
3 detail with him?

4 A. No, sir. I didn't discuss anything with him.

5 Q. Did Mr. Leinster ever provide you with
6 deposition copies?

7 A. No, sir.

8 Q. Did you ever specifically request copies of
9 depositions from Mr. Leinster?

10 A. Yes.

11 Q. What did he tell you?

12 A. Told me that they were 45, 50 pages apiece, and
13 he really wasn't going to copy them and send them to
14 me. He didn't have time to do that.

15 Q. Did Mr. Leinster provide you with any
16 laboratory reports or fingerprint analysis?

17 A. No, sir.

18 Q. None at all?

19 A. None.

20 Q. Did you receive anything from Ed Leinster?

21 A. The only thing I received from Ed Leinster was
22 little like memo messages that I'd be going to court
23 on a particular day. Any documentation, I never
24 received any documentation from Ed. I don't think
25 he ever wrote me a letter or anything like that.

1 Q. You indicated that your case was scheduled for
2 trial on May 2nd of 1990. Did you expect to go to
3 trial at that time?

4 A. I expected to have problems because William
5 Pettit, the inmate who initially introduced me to Ed
6 Leinster, was scheduled to go to trial on May 2nd,
7 also.

8 Q. Did Mr. Leinster ever tell you you would or
9 would not be going to trial on May 2nd?

10 A. No. Up until -- prior to that, we had a hard
11 time getting ahold of him, and essentially that day
12 he came and told me we weren't going to trial on
13 that date.

14 Q. On May 2nd, when you were set for trial, you
15 indicated Mr. Leinster came and told you that the
16 trial was not going to go that day.

17 A. Yes.

18 Q. Did he explain why?

19 A. I believe he stated that he had another trial
20 with William Pettit.

21 Q. At that time, did you ask him --

22 A. We were in conflict.

23 Q. At that time, did you ask Mr. Leinster, on May
24 2nd, for any discovery or reports?

25 A. After being told that he wasn't going to

1 provide me with the depositions, I didn't know what
2 to ask him for anymore. I'd ask him about -- you
3 know, "What about the hair analysis?" He said, "It
4 isn't done yet," or what have you. You know, "What
5 about the fingerprints?" "They aren't complete.
6 They haven't tested them yet."

7 THE COURT: Let me interrupt you for a
8 moment. On the May 2nd meeting with
9 Mr. Leinster, even though you say he did not
10 provide you with any copies of any depositions,
11 did you discuss any depositions with him, or the
12 results of the depositions, or what the deponents
13 said about the events the night the crime
14 occurred?

15 THE WITNESS: No, Your Honor. He showed
16 up. At that time, he asked me to sign a piece of
17 paper acknowledging that my trial would be
18 postponed at that point. We didn't -- it was
19 maybe a 15-minute conversation, if that. The
20 facts of my case weren't discussed at all at that
21 time.

22 THE COURT: During your phone
23 conversations up to May 2nd, do you recall
24 speaking to him about what the deponents said
25 about your case or what the State's evidence was

1 about your case?

2 THE WITNESS: No, sir. Up until -- in
3 that area of time when I could get ahold of him
4 on the telephone, he was telling me that he was
5 still waiting to get the public defender's file
6 that Mrs. Brown had made and maintained in my
7 case. Until he got that, there was nothing he
8 could do.

9 THE COURT: Well, when you saw him on
10 May 2nd, he was in Pinellas County, of course;
11 was he not?

12 THE WITNESS: Yes, he was.

13 THE COURT: Did he say to you that he
14 had the file or that he was going to get the
15 file?

16 THE WITNESS: I don't believe that it
17 was discussed at that time. Like I say, he just
18 came with a piece of yellow -- yellow piece of
19 legal paper to get me to acknowledge that my
20 trial would be postponed at that point in time.

21 THE COURT: All right.

22 Q. As far as depositions, did Ed Leinster himself
23 take any depositions in your case?

24 A. No, sir, excluding a videotape deposition of
25 Theresa Porrey.

1 Q. And that was taken the day before your trial in
2 October, wasn't it?

3 A. Yes, sir, October 1st, 1990.

4 Q. Who took the depositions of any witnesses in
5 this case?

6 A. Jane Brown.

7 Q. The public defender?

8 A. Yes, sir.

9 Q. And did she ever provide you with copies?

10 A. No, sir.

11 Q. Did she ever discuss what had occurred at the
12 depositions?

13 A. No. When she came on the 17th, January 17th,
14 before the January 23rd, 1990 trial date, she had
15 Scott and Cheryl's depositions with her. I
16 attempted to ask her questions at that point in
17 time. She would begin looking through the --
18 actually, I had asked her, "Can I read the
19 depositions? Can I have them? Can you give me a
20 copy of these so I can see what's going on?" She
21 said, "I can't copy them to you." And I said,
22 "Well, can I read them now?" And she said, "No. I
23 don't have time to sit here with you while you read
24 them. They're pretty thick." You know, I said,
25 "Well, let me take them back to my cell so I can

1 read them." She said, "No, I'm not going to let
2 these out -- you can't take them back to your cell.
3 Somebody might take them from you." She said, "Just
4 ask me some questions."

5 At that point in time, I don't know enough
6 about the facts of the case to ask anything
7 intelligent. I asked her questions: Well, you
8 know, what about the tag number? The guy's saying
9 he left him the -- Scott's saying he left him the
10 tag number, the guy left him the tag number. She'd
11 start looking through the depositions and couldn't
12 find it.

13 I said, "Well, what about the palm print?
14 Did you guys get this stuff back? Who's describing
15 what?" And that's where she's telling me, "Well,
16 this particular description, Scott says that he
17 looks one way, his hair's slicked back, and Cheryl
18 says that the guy's got long, curly hair; and one
19 says he's wearing a shirt, the other says he's not
20 wearing a shirt," this, that, and the other.

21 At the time I didn't know what to ask her, I
22 had no idea, and she didn't know what to tell me.
23 And she wouldn't let me have the depositions to
24 where I could go ahead and look at them.

25 THE COURT: Mr. Gillick, are you

1 planning on calling Mr. Doherty as a witness in
2 this case?

3 MR. GILLICK: Yes, Your Honor.

4 THE COURT: Well, he's in the back of
5 the courtroom.

6 MR. GILLICK: Oh, he is?

7 THE COURT: If you want to go ahead and
8 talk to him, you're more than welcome to.

9 MR. GILLICK: Wait outside. Thank you

10 (Mr. Doherty retires from the courtroom)

11 Q. And was your May 2nd trial date continued?

12 A. Yes, sir, it was.

13 Q. When was it set then?

14 A. I'm not positive if there was another one set
15 for June something or another. I may have had one
16 set for June. The next one that I positively
17 remember being was set for July 3rd and July 5th. I
18 remember that specifically, because they would start
19 on July 3rd, take off for July 4th, and come back on
20 the 5th.

21 Q. Okay. Did Mr. Leinster come and see you or
22 talk to you again between May 2nd and this July
23 trial date?

24 A. On July 3rd, he came up to the jail, you know,
25 ready to go to trial, except he wasn't ready to go

1 to trial.

2 Q. He said that who wasn't ready?

3 A. He'd asked me -- basically, what he said was
4 that Theresa Porrey hadn't shown -- or not hadn't
5 shown up, but she [sic] hadn't gotten the videotape
6 deposition yet, and that it was my choice to go to
7 trial without that videotape or postpone.

8 Q. Did you ask him about a deposition of Patrick
9 Porrey or David Stewart?

10 A. No.

11 Q. And did Mr. Leinster provide you with any
12 discovery materials at your July meeting?

13 A. No.

14 Q. How long did you talk to Mr. Leinster at the
15 July meeting?

16 A. Probably 15, 20 minutes, long enough for him to
17 come in and tell me -- give me my choice of whether
18 or not I wanted to proceed at trial at that point or
19 not.

20 Q. What was Ed Leinster's appearance, physical
21 appearance at that time?

22 A. Well, longish hair, parted in the middle,
23 combed back, mustache, beard.

24 Q. And at some point did you talk to Ms. -- did
25 Mr. Leinster ever discuss with you whether you

1 should or should not testify at your trial?

2 A. That was discussed in our first conversation,
3 first telephone conversation. He asked me if I had
4 a prior record. I explained somewhat of my criminal
5 history, as far as burglary with my parents' house
6 and stuff of that nature. He said, "Well, you can't
7 testify then, 'cause once they find out you're a
8 convicted felon, they'll convict you."

9 Q. Did he go into detail about the nature of your
10 prior convictions?

11 A. I didn't ask that much questions about it. It
12 was just, you know, You're a convicted felon. You
13 can't testify.

14 Q. Did he ask you your opinion or impression about
15 testifying?

16 A. No.

17 Q. Did he explain to you why he felt you could not
18 testify?

19 A. No, sir, other than, "You'll be convicted
20 because you're a convicted felon."

21 Q. And when did you actually go to trial?

22 A. On October 2nd and October 3rd of 1990.

23 Q. About 15 months after your arrest?

24 A. Yes, sir.

25 Q. And did you talk to Mr. Leinster the day

1 before?

2 A. The day before? No, sir.

3 Q. Yes.

4 A. The day of the trial.

5 Q. The week before?

6 A. No, sir.

7 Q. Did you meet with Mr. Leinster at all after
8 this brief July conference with him?

9 A. No, sir.

10 Q. Did you talk to him by phone?

11 A. I'm sure we spoke roughly by phone.

12 Q. Did Mr. --

13 A. I don't know the number of times. It was
14 difficult to get ahold of Mr. Leinster on the
15 telephone by that point. At one point I asked my
16 mother to call him because I wouldn't get ahold of
17 him for so long. He decided to call my mother back
18 collect.

19 Q. At that point, prior to your trial in October
20 of 1990, had you ever been through a trial?

21 A. No, sir.

22 Q. Had you ever seen a trial?

23 A. Television.

24 Q. How old were you?

25 A. When I was going to trial? Well, I was

1 convicted on my 24th birthday, October 3rd.

2 Q. Prior to trial, did Mr. Leinster ever sit down
3 with you and discuss the procedure of the trial?

4 A. No, sir.

5 Q. Did you ever discuss the evidence that might be
6 presented at trial by either side?

7 A. No, sir. As far as the discussions on
8 evidence, he had -- through our phone conversations,
9 I knew that the fingerprints did not match me, and
10 we had asked him about the hair analysis, the hair
11 comparisons. At that particular time, I'm sure I
12 didn't use the words "hair analysis." I said, "What
13 about the hair that I submitted, that I voluntarily
14 gave you? You know, what's happening with that?"
15 He said, "It's inconclusive." He said, "It ain't
16 going to help."

17 Q. He told you that the hair analysis was
18 inconclusive?

19 A. Inconclusive.

20 Q. It would not help?

21 A. Yeah.

22 Q. Did he ever show you a report on the hair
23 analysis?

24 A. I had never seen a report until later acquiring
25 them through one of my sisters.

1 Q. This would be after you were convicted?

2 A. This was in -- I believe I acquired them in
3 1995.

4 Q. And did Mr. Leinster ever discuss with you a
5 trial strategy for your defense?

6 A. No, sir. He didn't discuss anything with me.

7 Q. Did he tell you what witnesses he intended to
8 present?

9 A. No.

10 Q. Did you expect that he would present Patrick
11 Porrey and David Stewart, as you had requested?

12 A. It seemed logical, being that they went through
13 this series of events with me. I believed that
14 everybody who was involved in this situation would
15 have testified.

16 Q. Did he ever tell you he was not going to
17 present them?

18 A. No. If he had told me that, I would have never
19 went to trial without them, and Mr. Leinster would
20 have been fired.

21 Q. Did you expect and anticipate that Mr. Patrick
22 Porrey and David Stewart would testify?

23 A. Yes.

24 Q. When the trial started, did you anticipate
25 that?

1 A. Yes.

2 Q. What made you anticipate it at the start of the
3 trial?

4 A. In the initial -- picking the -- going through
5 the panel of jurors, they read everybody's name who
6 was involved in this case, including Pat and
7 David's, mine, I believe they may have even read my
8 parents, Theresa Porrey, police officers, the whole
9 witness list of people, different, who I now know
10 are FDLE technicians, analysis people. I assumed
11 that this was the witness list, and they were asking
12 the jury, Do you know any of these people because
13 they're witnesses in this case? They're going to
14 testify.

15 Q. Do you know when Ed Leinster took Theresa
16 Porrey's deposition?

17 A. October 1st, the day before the trial.

18 Q. Was that a video deposition?

19 A. Yes, sir.

20 Q. Due to her ill health?

21 A. Yes.

22 Q. Did Mr. Leinster show you a copy of her
23 deposition?

24 A. No, sir. I've never seen the video. When they
25 showed it at trial was the first I heard it, and it

1 was positioned in such a way that I couldn't see it
2 being played to the jury.

3 Q. Could you see who was on the video or in the
4 background of the video?

5 A. No, sir.

6 Q. And at the time of trial, the start of your
7 trial, had you ever seen the depositions of Cheryl
8 Hagan or Darren Scott Barfield?

9 A. No, sir.

10 Q. Any witness at all?

11 A. None.

12 Q. As far as the trial itself, there would have
13 been a jury selection, correct?

14 A. Yes, sir.

15 Q. Did Mr. Leinster explain to you what that was?

16 A. No.

17 Q. Did he explain the importance of it?

18 A. No, sir.

19 Q. Did Mr. Leinster ask your opinion about any of
20 the potential jurors?

21 A. No, sir.

22 Q. Did he talk to you at all while he was
23 selecting a jury on your behalf?

24 A. No, sir.

25 Q. Did he give you a pen and some paper to write

1 notes to him?

2 A. No, sir.

3 Q. In the trial itself, after the jury was
4 selected, did -- obviously, Mr. Leinster
5 cross-examined witnesses. Is that correct?

6 A. Yes, he did.

7 Q. Did he discuss their testimony with you prior
8 to cross-examining them?

9 A. No, sir.

10 Q. Mr. Leinster ask you any questions about the
11 witnesses' testimony?

12 A. No, sir.

13 Q. Did Mr. Leinster ask you if the witnesses had
14 left anything out or said anything that wasn't true
15 during their testimony?

16 A. No, sir. We didn't have any discussion while
17 he was doing that. When they would take a break, I
18 was taken to the holding cell, just like here, and
19 he was gone. He didn't come talk to me, didn't ask
20 me nothing when we were sitting at the table or any
21 other time.

22 Q. When they actually selected jurors and kicked
23 off potential jurors to exercise challenges, were
24 you present for that?

25 A. Yes, sir. At the judge's bench? No, sir.

1 When they exercised cause challenge, stuff like
2 that, no. I was left at the defense table.

3 Q. Mr. Leinster went up without you?

4 A. Yes, sir.

5 Q. Did he ask your opinion or impression about
6 anyone in that jury panel?

7 A. No, sir.

8 Q. And did Mr. Leinster present any physical
9 evidence of laboratory or fingerprint analysis
10 during your trial?

11 A. No, sir.

12 Q. Did he discuss fingerprint or laboratory
13 analysis with you prior to your trial?

14 A. Prior to my trial?

15 Q. Yes.

16 A. The discussion that we had was -- like I say,
17 he told me the results of the hair analysis were
18 inconclusive, the fingerprints didn't match me,
19 which I had told him that to begin with, that
20 they're not going to match me. I told everybody
21 that.

22 Q. Did Mr. Leinster even have copies of any
23 laboratory reports?

24 A. I wouldn't know. I know now from -- through
25 the civil suit that -- I acquired his case file,

1 that the hair analysis reports were not in there.
2 Whether or not the fingerprints, fingerprints from
3 Largo Police Department were in there, I'm not
4 positive. I'd have to look at the index that I had
5 made when I -- as soon as I acquired his case file,
6 I made a index of every document that was contained
7 therein and sent him a copy and asked him to verify
8 that this was what it was. And without looking at
9 that, I don't recall what was exactly in there.

10 Q. Did Mr. Leinster ever show you any photographs
11 of the crime scene?

12 A. No.

13 Q. Did Mr. Leinster even have photographs of the
14 crime scene?

15 A. No. And when Mr. Bulone went to introduce them
16 at trial, Ed got up and essentially said, "I've
17 never seen them," meaning him, that he's never seen
18 them prior to trial. I'd never seen them. I'd
19 never seen them until my sister went down to the
20 courthouse and purchased them for me.

21 Q. That was after your trial?

22 A. Long after my trial.

23 Q. The hair analysis report, you indicated
24 Mr. Leinster told you it was inconclusive?

25 A. Yes, sir.

1 Q. Was it inconclusive as to your hair?

2 A. No, sir, it was certainly not.

3 Q. What did the hair analysis --

4 THE COURT: Let me say, Mr. Gillick, the
5 lab report will speak for itself. If you intend
6 to offer it as evidence, you may do so.

7 MR. GILLICK: Okay.

8 Q. And did Mr. Leinster ever tell you what the
9 fingerprint results were?

10 A. Other than they did not match me, no.

11 Q. Mr. Leinster ever tell you what the blood
12 analysis results were?

13 A. I don't believe Mr. Leinster ever told me that
14 there was really an analysis conducted on them. I
15 don't recall any conversation specifically as far
16 as -- I know that the knife was -- a knife was found
17 and that bloody clothes were supposedly found, but
18 as far as any discussion as to what the results
19 were, I don't recall him ever telling me what they
20 were one way or the other.

21 Q. How long did your trial in state court last?

22 A. Two days.

23 Q. Two full days?

24 A. I don't know the hours of it, what time, you
25 know, 3 o'clock, or what have you, when it was

1 finished.

2 Q. Was the first day a full day?

3 A. It seemed like it. It seemed like it went till
4 like 5:00, 5:00 or so.

5 Q. What happened at the end of the first day of
6 trial? Did you confer with Mr. Leinster?

7 A. No. He left. They took me back to the jail.

8 Q. Did Mr. Leinster come to the jail to talk to
9 you?

10 A. No.

11 THE COURT: Let me interrupt you for a
12 moment, Mr. Gillick. If you would look to -- if
13 you have the Respondent's exhibit list in front
14 of you.

15 MR. GILLICK: Yes.

16 THE COURT: So that there's not a need
17 to duplicate exhibits, if you would look to
18 Exhibit No. 30, the FDLE crime laboratory
19 reports.

20 MR. GILLICK: Yes, Your Honor.

21 THE COURT: Do these include all the
22 crime laboratory reports that are at issue in
23 this case that you say pertain to evidence that
24 should have been admitted or submitted by
25 Mr. Leinster on Mr. Herrick's behalf?

1 MR. GILLICK: Give me just one moment,
2 Your Honor.

3 THE COURT: Unless you intend to
4 introduce everything separately.

5 MR. GILLICK: Can I have just a moment
6 with my client, Your Honor?

7 THE COURT: Sure. I didn't mean to --
8 I'll tell you what, why don't we do this? Why
9 don't you just continue with your examination,
10 and then at the lunch break take your time in
11 reviewing it with him to make certain that --

12 MR. GILLICK: Thank you.

13 THE COURT: -- what I've asked is
14 correct.

15 Q. And at the end of day one, you were taken back
16 to jail, correct?

17 A. Yes, sir.

18 Q. Mr. Leinster did not confer with you that day
19 about what had happened and what you might expect?

20 A. No, sir. I saw him the next morning.

21 Q. The next morning. Did he come to jail, or when
22 did you see him on the second day --

23 A. I'm not positive if he came in that morning
24 into the holding cell to speak with me. I know that
25 he did come in the first morning to speak with me to

1 tell me about the prosecutor's plea bargain offer.

2 Q. Okay. What did Mr. Leinster tell you on day
3 one about the plea bargain offer?

4 A. He said that the State had been offering him
5 plea deals all that morning, starting out around 30
6 years and coming down to five. He said he felt he
7 ought to tell me about that. And at that point I
8 told him, "I can't plead guilty to something I
9 didn't do." He said, "Well, let's go pick a jury."

10 Q. On day two, did Mr. Leinster talk to you before
11 the trial started?

12 A. I'm not sure if he did or not. I don't
13 recall. If it was, it was very short. It wouldn't
14 have been very long, and it wasn't anything of
15 substance because I don't remember it.

16 Q. Did he ever tell you what he intended to
17 present for the defense?

18 A. No, sir.

19 Q. Did he ever tell you that Patrick Porrey and
20 David Stewart were not present and were not going to
21 be witnesses?

22 A. No, sir.

23 Q. At that time, did you still expect they would
24 be --

25 A. Yes.

1 Q. -- witnesses to exculpate you?

2 A. Yes, sir.

3 THE COURT: Did you have any discussion
4 with Mr. Leinster about what the likely sentence
5 would be if you were convicted, namely discussing
6 with him the application of Florida's sentencing
7 guidelines?

8 THE WITNESS: She [sic] told me I'd get
9 life.

10 Q. And then you went on and continued the trial on
11 day two, correct?

12 A. Yes, sir.

13 Q. How long was your conversation with
14 Mr. Leinster prior to commencing the trial on day
15 two?

16 A. I don't know. I'm not sure that we had a
17 conversation that day.

18 Q. Did Mr. Leinster put on any evidence on your
19 behalf?

20 A. He presented the videotaped deposition of
21 Theresa Porrey and then asked me to sign a piece of
22 paper, sign my name on a piece of paper.

23 Q. And you indicated you could not actually view
24 Theresa Porrey's video?

25 A. No, sir.

1 Q. Could you hear it?

2 A. Yes, sir.

3 Q. Did Mr. Leinster ask you any questions about
4 what had been said on the video?

5 A. No, sir.

6 Q. Did you hear any reference to Patrick Porrey on
7 the video?

8 A. I believe at the time I heard Pat's voice on it
9 asking his mother if he's okay -- she's okay.

10 Q. And --

11 A. I remember her asking [sic] a question to, You
12 can ask my son, to a particular question, one that
13 either Mr. Leinster or Mr. Bulone had asked,
14 referred him to ask her son about it. I think it
15 was referring to the kind of stuff that was blocking
16 the sliding glass doors and things of that nature.

17 Q. And then after Mrs. Porrey's testimony and
18 Mr. Leinster had you sign a piece of paper in front
19 of the jury, did you expect Patrick Porrey would
20 testify?

21 A. Yeah. I expected everybody to testify, to
22 continue the trial, continue or what have you. I
23 wasn't sure what was going to happen.

24 Q. What happened then?

25 A. I guess he rested my case.

1 Q. Were you shocked?

2 A. I wouldn't say that I was shocked in that I
3 really didn't understand too much about what was
4 going on, so it was hard to be, you know, shocked as
5 far as, you know, What do you mean, what does that
6 mean? It was more like he rested and they went in
7 to talk about jury instructions and things of that
8 nature, and trying to follow and understand what was
9 taking place was more my concern, as opposed to
10 who's testifying or what's going to happen now.

11 Actually, no, what happened was, the prosecutor
12 had put on Scott and Cheryl for rebuttal testimony,
13 went right into more testimony. Then after they
14 testified, they go into jury instructions, things of
15 that nature, you know.

16 Q. Did --

17 A. It was more like sitting there watching things
18 take place on TV, watching a bunch of people go
19 about their business and not being included in
20 anything, just sit there and be quiet.

21 Q. Did Mr. Leinster then discuss his closing
22 argument with you?

23 A. No.

24 Q. After closing arguments, I assume the jury went
25 out?

1 A. Yes.

2 Q. And did you and Mr. Leinster talk at that time?

3 A. No, sir.

4 Q. What happened?

5 A. They put me in the holding cell, and we waited.

6 Q. Did Mr. Leinster come in and talk to you in the
7 holding cell?

8 A. No.

9 Q. And did the jury come back with any questions?

10 A. The jury came back. They had requested to see
11 Theresa's video again, at which point they brought
12 back into the courtroom -- brought me back into the
13 courtroom. It basically took place. And Judge
14 Downey let them know that there was a jury question,
15 that they wanted to see the video. Nobody had
16 objections. They said okay, brought me back into
17 the holding cell, and that was it. I assume the
18 video was taken into the jury room.

19 Q. Let me back up. Did Mr. Leinster object to the
20 video being taken back to the jury room?

21 A. No, sir.

22 Q. After Mr. -- let me back up. After
23 Mr. Leinster had shown Theresa Porrey's video
24 deposition and had you sign something, did he
25 discuss with you the potential for your testifying

1 on your own behalf?

2 A. No, sir. Since our first conversation where he
3 said, "You can't testify," my testifying never came
4 up again in any of conversations.

5 Q. After the jury took the video into the jury
6 room, how long was it before they came back with a
7 verdict?

8 A. I have no idea. I didn't have a watch. They
9 don't have -- let you have a watch in the county
10 jail, and it wasn't very long, you know. The next
11 thing I knew, the bailiff came and said, "We have a
12 verdict. Come on."

13 Q. What was the verdict?

14 A. They found me guilty.

15 Q. Were you guilty of the crimes?

16 A. No, sir.

17 Q. After you were found guilty, what happened
18 immediately thereafter?

19 A. I was fingerprinted and taken back to the
20 holding cell. Mr. Bulone wanted to have sentencing
21 at that point in time. Mr. Leinster essentially
22 stood up and said he has no idea what my prior
23 record was and hasn't discussed it with me and why
24 not set a presentence investigation. And I was
25 taken back to the holding cell and given a bologna

1 sandwich and a pint of milk and taken back to jail.

2 Q. Did Mr. Leinster come to see you?

3 A. No.

4 Q. Did Mr. Leinster ever come see you --

5 A. No.

6 Q. -- after that?

7 A. No.

8 Q. When was your case set for sentencing?

9 A. It was originally set for sentencing in 30
10 days. Judge Downey had set it off 30 days to, I'm
11 thinking, November 4th. Something like that sounds
12 familiar. It was postponed at that point until like
13 December 6th, December 5th, something around there.
14 We appeared in the courtroom for sentencing on
15 December 5th, at which point Mr. Leinster had filed
16 a motion to vacate some of my prior felonies, at
17 which point he asked for more time.

18 Mr. Bulone responded essentially what
19 Mr. Leinster was trying to do was not going to be
20 successful to begin with, no reason to give any more
21 time. Judge Downey was considerate enough to go
22 ahead -- I remember him telling both Mr. Leinster
23 and Mr. Bulone that he would give me every
24 opportunity to show him why a life sentence
25 shouldn't be imposed and went ahead and scheduled

1 things for January 4th, 1991.

2 Q. Had Mr. Leinster been paid additional monies to
3 file this motion to vacate?

4 A. Yes, sir.

5 Q. By whom?

6 A. My parents.

7 Q. And you eventually were sentenced on January
8 4th of 1991?

9 A. Yes, sir.

10 Q. And was the motion to vacate heard at that
11 time?

12 A. Yes, sir, it was.

13 Q. And had Mr. Leinster, prior to your sentencing
14 on January 4th of '91, discussed the sentencing
15 procedure, what you would do, what your rights were,
16 or anything of that nature?

17 A. Not that I recall.

18 Q. Had he ever come to meet with you prior to --

19 A. No. I had never seen him again until the day
20 of sentencing, on that December, then -- in the
21 courtroom on December, and then in Judge Downey's
22 office on January 4th.

23 Q. At the January 4th sentencing, what were you
24 eventually sentenced to?

25 A. I was sentenced to two life sentences and 15

1 years concurrent.

2 Q. And at the sentencing, did Mr. Leinster have
3 anyone with him?

4 A. Yeah, his daughter, child.

5 Q. How old was she?

6 A. Three or four years old.

7 Q. What was she doing during your sentencing?

8 A. She was literally just hanging around him,
9 crawling on him, and I don't know how to describe it
10 other than playing around him and crawling over his
11 lap, climbing up his arm, holding onto his head. He
12 would hold her, pick her up.

13 MR. FISHKIN: Your Honor, I'm going to
14 object to the relevance of all this.

15 THE COURT: Let's move on, Mr. Gillick.

16 MR. GILLICK: Okay.

17 Q. And at your sentencing, did you attempt to talk
18 to the judge?

19 A. Yes, I did.

20 Q. Well, first, did Mr. Leinster call you as a
21 witness?

22 A. Yes, he did.

23 Q. Were you aware he was going to call you as a
24 witness?

25 A. No. I had no idea.

1 Q. What did he call you -- for what purpose did he
2 call you?

3 A. Well, you would have to understand the nature
4 of the motion to vacate the prior felonies. I can
5 explain briefly.

6 Q. Could you briefly?

7 A. Some of the prior felony convictions that I
8 have is ones of burglary, and there's two grand
9 theft of firearms as a result of me going into my
10 parents' house and removing the firearms. It was
11 Mr. Leinster's initial theory, I guess, from what I
12 can gather from the discussion that we had about it
13 and my parents and everybody else involved, is that
14 if you remove the burglary and the grand theft
15 charge convictions from my score sheet, that would
16 bring me below the sentencing guidelines category
17 for life, the score for life.

18 It was his belief that because they were my
19 parents, my parents had pressed the charges against
20 me in an effort to address a behavior problem they
21 felt that I was having at that particular time when
22 I was 18 years old.

23 And as it turned out, the way things work in
24 Florida, having not known about the way that the
25 scoring matrix works as far as prior records

1 being -- different degree of felonies being scored
2 against you and so and so, it turns out that as a
3 result of those particular charges I scored into a
4 life category. He was essentially asking Judge
5 Downey to remove them and --

6 Q. In fact, would that have made any difference in
7 your scoring?

8 A. At that particular time, no. I still scored
9 into life because of victim injury points. What
10 Mr. Leinster attempted to do was to score the
11 guideline score sheet as only using one victim
12 injury, which would assess 40 points for the
13 stabbing of Mr. Barfield. And he neglected to
14 consider or total in there 40 points for penetration
15 to Cheryl Hagan. And Mr. Bulone pointed that out to
16 Mr. Leinster and Judge Downey, and at that point
17 Judge Downey essentially went ahead and denied the
18 motion. He said it's not because it doesn't have
19 merit but because he feels that it was moot.

20 To get to the question as far as him -- what he
21 wanted me to testify to, I'm not sure because he
22 didn't discuss it with me. And the next thing I
23 know they were arguing the motion. He said, "I
24 would ask Mr. Herrick be sworn." At that point I
25 found out that I would be testifying. He asked me

1 essentially what was going on; did I feel that I had
2 permission to take the guns. He had proffered
3 testimony that my father would have said that I had
4 permission or that I was okay to go into the house
5 and that I could take the guns. He asked me that,
6 and I can't sit there and lie. I'm under oath. I
7 told him, you know, "Nobody ever told me that I
8 couldn't use the guns," attempting to mitigate it
9 the best that I could from not knowing what was
10 going on. And that was essentially my testimony.
11 Mr. Bulone crossed.

12 Q. And you were, in fact, sentenced, as you
13 discussed?

14 A. Yes, sir.

15 Q. After your sentence, did you request that the
16 judge take some action?

17 A. It was actually prior to the sentencing. When
18 he denied the motion to vacate the judgments and
19 convictions, he asked if there was anything else
20 that anybody wanted to say. He asked me if I had
21 anything to say. I told him, "Yeah, I didn't do
22 this." He said, "I understand." He was about to
23 sentence me, and I asked him, I said, "What I'd like
24 to know, Your Honor, is your opinion of the evidence
25 that came in against me here because I don't

1 understand this."

2 Q. What did the judge say?

3 A. He told me that it would be inappropriate at
4 that time for him to do that. He said that he
5 hadn't been -- his job -- that's not his job in a
6 jury trial situation, that his job is to determine
7 whether or not I get a fair trial, and he hasn't
8 been -- based on the evidence that came in. He
9 said, "I haven't been asked to do that yet, to make
10 that ruling. That comes after sentencing if and
11 when your attorney files a motion for new trial."
12 He says, "If and when your attorney does, in fact,
13 file one, then my opinions and judgments will come
14 into play."

15 He told me I needed distinctions there.
16 And he said the jury's made a decision, and that's
17 what he has to live by at that time.

18 Q. Okay. Did you then ask Ed Leinster to file a
19 motion for a new trial?

20 A. After I was sentenced and he took us out of
21 chambers, while going back, the bailiff stopped and
22 Ed was standing there with me in the hallway, and I
23 said, "I want this to happen. I want to know the
24 opinions I want." And he said, "I've already filed
25 one. The judge will rule on it."

1 Q. Have you seen Ed Leinster since that day?

2 A. No, other than the news.

3 MR. GILLICK: Judge, this might be a
4 good time to take a lunch break, if you'd like,
5 and then we can get into the procedural aspects
6 after lunch.

7 THE COURT: All right. How are we
8 making out on time?

9 MR. GILLICK: I would expect a half an
10 hour to an hour regarding the procedural aspects
11 now that we're done with the trial and
12 convictions regarding Mr. Herrick's
13 postconviction problems of procedures.

14 THE COURT: How long do you think it's
15 going to take for the Respondent's side of the
16 case, Mr. Fishkin?

17 MR. FISHKIN: On cross, Your Honor?

18 THE COURT: Altogether. And the reason
19 I ask that, when I had scheduled this some time
20 ago, I had informed you that I had a proceeding
21 at 1:30 tomorrow, and I just need to know how to
22 arrange my day.

23 MR. FISHKIN: We have, I think, a total
24 of nine witnesses. Most of them will be very,
25 very brief. We'll have two long or substantive

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AFTERNOON SESSION

MR. GILLICK: Could I have Petitioner's Exhibit No. 1? That's Mr. Leinster's file.

MR. GILLICK: May I approach, Your Honor?

THE COURT: You may.

DIRECT EXAMINATION (Cont.)

BY MR. GILLICK:

Q. Mr. Herrick, I'd like to show you what's been marked as Petitioner's Exhibit No. 1 and ask you to take a look at that. And that's been identified previously as Mr. Leinster's file.

Is that familiar with you?

A. It appears that it would be the same documents that I received a copy of, and yes.

Q. And Mr. Herrick, at the very front of that file there is an index. Is that something that came with the file or was prepared by you?

A. No, sir. I created this when I obtained a copy of it. When my sisters mailed it to me, I inventoried it and documented what was there.

Q. And how many pages is in the index that you created?

A. Five.

Q. Okay. Thank you.

1 A. The first top five pages.

2 THE COURT: Mr. Gillick, is Petitioner's
3 No. 1 the document that you obtained from the
4 Petitioner himself?

5 MR. GILLICK: To my understanding, it
6 is, Your Honor. I believe that was the
7 testimony. The first five pages are not -- the
8 first five pages are an index that was prepared
9 by Mr. Herrick.

10 THE COURT: No, I understand that, but
11 Ms. Russo's testimony was that appeared to be the
12 exhibit -- that exhibit appeared to be what she
13 had obtained originally from Mr. Leinster,
14 although she was not certain of that. And this
15 witness had said that it appears to be what he
16 had indexed and obtained from Ms. Russo. And I'm
17 just asking you, as an officer of the court,
18 whether you obtained that from the Petitioner.

19 MR. GILLICK: I obtained that from
20 Mr. Herrick.

21 THE COURT: Okay.

22 Q. Mr. Herrick, before we broke for lunch, you
23 indicated that you had asked Mr. Leinster -- after
24 receiving some information from the Court, you asked
25 Mr. Leinster to file a motion for new trial.

1 A. Yes, sir.

2 Q. Did he do so?

3 A. He had already filed one, he told me, at that
4 point when we were standing in the hallway. And I
5 said, "I want to file it. I want to do that." And
6 he says, "We've already done that." He said that
7 the judge will rule on that particular motion.

8 Q. Had he given you a copy of that motion?

9 A. No, sir.

10 Q. And the motion that he did file, was that
11 timely filed?

12 A. I ultimately learned that it was not.

13 Q. And what do you mean that it was not?

14 A. The certificate of service date, after
15 acquiring a copy of it through the court system,
16 they may have got it. When I got his particular
17 file, I actually seen the motion that he drafted and
18 sent to the court, and the certificate of service
19 date was marked the 18th, I believe, of October of
20 1990. I was convicted on October 3rd.

21 Q. So it was actually filed before you were
22 sentenced?

23 A. Yes, sir.

24 Q. And did Mr. Leinster ever file a proper motion
25 for a new trial?

1 A. It appears that he attempted to file another
2 one after my sentencing. There was another document
3 created called Motion for New Trial. It has no
4 record of being filed with the court, but he
5 believes that it was sometime in, I think, July of
6 '95, around there sometime. One of his secretaries
7 or paralegals, Ms. Samuels, wrote Bernie McCabe, the
8 State Attorney of the Sixth Judicial Circuit, and
9 asked if they had a copy of it. She felt that it
10 might possibly have been filed with them by
11 mistake. It turned out that it was apparently
12 Ms. C. Marie King provided her with a copy of the
13 particular motion and it was dated somewhere around
14 January 8th, but Ms. King pointed out that it wasn't
15 a correct certificate of service date.

16 MR. FISHKIN: Objection to what Ms. King
17 pointed out, Your Honor.

18 THE COURT: Sustained.

19 Q. And was that second motion for new trial timely
20 filed?

21 A. No, sir, it was not.

22 Q. Did you ever get a motion for new trial ruled
23 upon?

24 A. No, sir.

25 Q. Did you ever have an opportunity to go before

1 the court and present your evidence for a motion for
2 new trial?

3 A. No, sir.

4 Q. Did Mr. Leinster file a notice of appeal in
5 your case?

6 A. Yeah, but it was apparently lost or filed with
7 the State Attorney's office. They ultimately got a
8 belated appeal about six, seven months later, after
9 my conviction.

10 Q. Okay. When you say a belated appeal, was that
11 one that was not timely filed?

12 A. Apparently, Mr. Leinster had to file what I
13 know has been documented or called or entitled a
14 Motion for Belated Appeal to the clerk of court. Me
15 and my family -- I was sent to prison in January of
16 '91 -- we attempted to call Mr. Leinster as far as
17 finding out what's going on with the motion for new
18 trial, what's going on with the appeal, what issues
19 would be raised, this, that, and the other, you
20 know, basically what is going to happen. I've been
21 sentenced to life; we're trying to figure out what's
22 happening, when I can get out.

23 MR. FISHKIN: Your Honor, I'm going to
24 object. The witness is testifying to what other
25 people were doing and his own personal beliefs.

1 THE COURT: Well, as to his own personal
2 beliefs, to that extent this objection is
3 overruled, as to his comments regarding others
4 and what others may have done, the objection is
5 sustained.

6 MR. FISHKIN: Just to clarify, Your
7 Honor, when I say his own personal beliefs, his
8 own personal beliefs as to why it's important to
9 him because he was sentenced to life in prison
10 and all that.

11 THE COURT: The ruling's the same as to
12 that.

13 Q. Mr. Herrick, when did you say that the notice
14 of appeal was, in fact, filed?

15 A. As far as I know, none was ever filed with the
16 clerk of court until six, seven months later, Judge
17 Downey granted a belated appeal and Alynnggee
18 Amboffel (ph) filed a notice of appeal.

19 Q. Did Mr. Leinster send you a copy of the notice
20 of appeal?

21 A. No, sir.

22 Q. Did he ever discuss an appeal with you?

23 A. No, sir.

24 Q. Did you ever talk to Mr. Leinster after your
25 sentencing in January of 1990?

1 A. No, sir.

2 Q. Did he ever send you anything?

3 A. No, sir.

4 Q. Did your appeal come to be heard at some point,
5 or did someone do an appeal on your behalf?

6 A. Alynngée Amboffel of the public defender's
7 office here in Bartow, I believe it is.

8 Q. Did she file a brief?

9 A. She filed what's called an Anders brief, sent
10 me a letter, a copy of her brief, said no reversible
11 error, essentially nothing she could do.

12 Q. And did you file your own brief at that time?

13 A. No, sir. I didn't know how. I didn't have any
14 idea what to do.

15 Q. What was your education level when you were
16 convicted?

17 A. I'd completed a GED while I was in prison
18 before at River Junction Correctional Institution.
19 Prior to that, I dropped out of school in the tenth
20 grade.

21 Q. Mr. Herrick, did you have any formal legal
22 training of any kind?

23 A. No, sir.

24 Q. Did you have any legal writing or research
25 experience?

1 A. No, sir.

2 Q. And what happened with the Anders brief that
3 was filed?

4 A. I guess the court agreed. They just sent what
5 I now know is a blanket opinion, no written opinion,
6 per curiam affirmed.

7 Q. Did you receive a copy of that?

8 A. Yes, I did.

9 Q. And did you file anything thereafter --

10 A. Did I file anything as far as postconviction?

11 Q. -- in your case?

12 A. Related to the direct appeal?

13 Q. Yes.

14 A. No, sir.

15 Q. Okay. At some point did you file any pleadings
16 in your case?

17 A. Yes, sir.

18 Q. Pro se, or on your own?

19 A. All pro se, yeah. From that point on, it was
20 on my own.

21 Q. Did you have an attorney assist you?

22 A. No. I asked the court -- that was the first
23 thing that I filed was a motion for appointment of
24 counsel to the circuit court in Pinellas County.

25 Q. And what happened to that motion?

1 A. They never responded.

2 Q. Did you ever get a ruling on that?

3 A. Yeah. When Judge Downey ruled on my original
4 postconviction, I believe he denied that, also.

5 Q. You indicated at some point you filed an
6 original motion for postconviction relief.

7 A. Yes, I did.

8 Q. Do you recall how that was titled?

9 A. Defendant's Motion for Postconviction Relief, I
10 believe.

11 Q. Did you have any legal assistance?

12 A. I had befriended another inmate who was hanging
13 out in the law library working there, and Chris
14 Helton was assisting me or trying to similarly --
15 you know, we were both in the same boat, sitting in
16 prison and trying to figure out what to do.

17 Q. And did you understand what that motion for
18 postconviction relief was?

19 A. I'm not sure I know how to answer that question
20 or can answer that question. Did I understand what
21 it was in the sense that it was something to let the
22 judge know what was wrong with my conviction? Yes.
23 Did I understand the procedural requirements of it
24 and everything that could be raised in it? No; or
25 what couldn't be or what could be, no.

1 Q. Do you recall a date that you filed that?

2 A. It was about May 20th, '93, something like
3 that.

4 Q. And what was the outcome of that?

5 A. Summarily denied.

6 Q. Did you have a hearing?

7 A. No, sir.

8 Q. Did the State Attorney or anyone respond to
9 your motion?

10 A. No, sir.

11 Q. And were you given any reason why that was
12 denied?

13 A. It addressed the merits of the issues raised.
14 I don't think that I was very accurate. For
15 instance, one issue was -- the first issue is, I'd
16 raised something similar to that I was denied
17 effective assistance of counsel for Mr. Leinster's
18 failure to object to questions and answers posed to
19 Theresa Porrey during her videotaped deposition.
20 From memory of what took place, I felt that there
21 was some things, after reading some law books, that
22 he shouldn't have -- Mr. Bulone shouldn't have been
23 able to ask her, particularly about being threatened
24 to be sued and some things of that nature.

25 The judge responded to that by saying that

1 I'm not allowed to object to a discovery deposition;
2 and this wasn't a discovery deposition in that it
3 was perpetuated testimony being brought in in lieu
4 of live testimony where any objections that would
5 have normally been able to have been made in the
6 courtroom to that particular witness testifying
7 should be able to make. I just felt that it wasn't
8 addressed properly.

9 Q. Did you appeal the judge's denial of your
10 motion?

11 A. Yes, sir.

12 Q. To whom?

13 A. The Second District Court of Appeal.

14 Q. What happened with that?

15 A. The same thing, no written opinion, per curiam
16 affirmed.

17 Q. Did you subsequently file another motion for
18 postconviction relief?

19 A. Yes. I filed a second -- could I back up to
20 the first motion? I did file a motion for rehearing
21 at the same time I filed a notice of appeal on that.

22 Q. And what happened with your motion for
23 rehearing?

24 A. Well, because I filed a notice of appeal at the
25 same time, the motion for rehearing was dismissed.

1 Q. Were you familiar with the procedures at the
2 time you filed that?

3 A. No, sir. I was led to believe that if I file
4 both at the same time in the same envelope, they
5 both went at the same time; that in the event that
6 they denied the motion for rehearing, the notice of
7 appeal would mature and things would take place, the
8 events would take place to secure the appeal.

9 Q. And now to a second motion for postconviction
10 relief. Did you file one?

11 A. Yes, I did.

12 Q. When?

13 A. I'm thinking August of 1994.

14 Q. And in August of 1994, were there any
15 additional grounds that you hadn't raised in your
16 first motion?

17 A. Yes, there were.

18 Q. What grounds?

19 A. Well, to explain, I guess, just to try to go
20 through each one, the most important ground would be
21 the failure to timely file a motion for new trial.
22 And the reason why that is in the second motion and
23 was not in the first motion is because at the time
24 when I filed my first motion, I didn't know it was
25 untimely. I'd raised it in my first motion as

1 saying that the court denied me due process in
2 failing to rule on the motion.

3 I was led to believe by Mr. Leinster that
4 the motion was timely filed; that when we were
5 standing in the hallway and I asked him about it,
6 that it would be filed. Therefore, when Judge
7 Downey denied my first motion, he informed me that,
8 Hey, your motion for new trial was not timely filed;
9 therefore, you weren't denied due process. That
10 happened on December 1st, 1993. August, I think it
11 was August 4th that I filed the second motion for
12 postconviction relief. I filed the issue raising
13 for the first time ineffective assistance based upon
14 Mr. Leinster's failure to timely file the motion for
15 new trial.

16 Q. Any other additional issues?

17 A. There was quite a few. All of the other issues
18 had not been presented in -- other than, I think, I
19 again raised the videotape motion, the issue
20 regarding Theresa Porrey's -- Mr. Leinster's failure
21 to object to the questions and answers simply
22 because I felt that I was given a very insufficient
23 response and ruling by the court in the first time.
24 I couldn't -- without seeing a list of them, I
25 couldn't recite each issue. There were some

1 regarding Pat Porrey, David Stewart, failure to
2 investigate the tag number, things of that nature.

3 By that time that I'd filed that motion, I'd
4 also filed the legal malpractice suit against
5 Mr. Leinster on January 4th, 1994, and was
6 essentially attempting to litigate any way that I
7 could to prove my innocence. The same issues -- by
8 that time, I knew there were problems procedurally,
9 not so much procedurally in 3.850 but in the
10 criminal judicial system. From what I was seeing in
11 other people's cases taking place, I was concerned
12 with how things were going to come out.

13 And in that endeavor to seek any possible
14 way of showing my innocence, I decided that a legal
15 malpractice claim would be appropriate. At that
16 time, I'd been learning more about the law, and by
17 the time I filed the legal malpractice, had a better
18 idea of understanding of collateral relief and
19 various aspects of what to do.

20 Q. Did you file that action against Mr. Leinster
21 on your own?

22 A. Yes, I did.

23 Q. And what was the outcome of your second motion
24 for postconviction relief?

25 A. On June 5th, just about a year later, Judge

1 Susan Schaeffer denied the motion.

2 MR. FISHKIN: Excuse me, Your Honor.

3 I'd just like to inquire of counsel, are we just
4 going to go through the entire procedural
5 history, which is part of the record?

6 MR. GILLICK: No. I'm going to have him
7 explain his postconviction motions.

8 MR. FISHKIN: That's all a part of the
9 record in this.

10 MR. GILLICK: It is, but there are
11 explanations that I believe I have a right to
12 talk about.

13 THE COURT: Well, I'm assuming,
14 Mr. Gillick, that you are trying to establish
15 cause and prejudice.

16 MR. GILLICK: Yes, Your Honor.

17 THE COURT: Well, let's confine it to
18 that and whatever information is necessary to
19 understand the cause and prejudice argument.

20 MR. GILLICK: Okay. Thank you.

21 Q. And did Judge Schaeffer deny that with or
22 without prejudice?

23 A. At that time she had denied it saying that I
24 had already filed a motion for postconviction relief
25 and failed to explain why these particular issues

1 were not raised in the first motion. At that time I
2 filed a motion for rehearing.

3 Q. Did you receive a response in that regard from
4 Judge Schaeffer?

5 A. For the denial?

6 Q. Yeah.

7 A. I'm not sure what your question is.

8 Q. You said you filed a motion for rehearing. Did
9 Judge Schaeffer respond to that?

10 A. Yes, she did.

11 Q. In what manner?

12 A. She denied the motion for rehearing without
13 prejudice to me filing an amended 3.850.

14 Q. And did you subsequently file an amended 3.850?

15 A. Ultimately, I did, yes.

16 Q. And amended your prior motion?

17 A. Yes, I did.

18 Q. Was it a new motion or simply an amendment?

19 A. Simply an amendment of the second motion.

20 Q. When did you file that?

21 A. I believe that it was filed January 8th, 1996.

22 Q. And what was the outcome of that?

23 A. Judge Peters, another judge, apparently took
24 over the case. He denied it in the same form that
25 Susan Schaeffer did, saying that I had already filed

1 a motion for postconviction relief and I didn't
2 explain why these issues weren't raised in there.
3 In addition, he addressed that the motion for new
4 trial issue, I discovered it by Judge Downey's
5 December 1st, 1993 order denying my first motion for
6 postconviction relief, that I had not filed within
7 two years of discovering that.

8 Q. Okay. In your amended motion, was there
9 information in there that you could not have
10 discovered prior to filing your first postconviction
11 motion?

12 A. Yes, sir.

13 Q. What information?

14 A. The hair analysis report by FDLE that
15 Mr. Leinster had, like I testified to before, that
16 led me to believe that that was inconclusive, that
17 the testing results were inconclusive. After filing
18 a legal malpractice suit against him, I asked for a
19 production of his case file. I had received the
20 copy of that case file that you've introduced there,
21 went through it, and discovered that there were no
22 FDLE reports regarding hair analysis. At that point
23 in time, using my sisters, I asked them to contact
24 FDLE and determine whether or not I could acquire a
25 copy of these reports that detailed examination

1 results.

2 Ultimately, after going back to -- being
3 directed to go back to Largo Police Department, get
4 the evidence numbers, and various things that they
5 require, one of my sisters, Vicki, had contacted
6 FDLE, acquired the reports and sent them to me. I
7 discovered for the first time that these hair
8 analysis results were not inconclusive, as
9 Mr. Leinster says; that they exculpate me as far as
10 being my hair is not found in that bed where the
11 evidence was found, where hair was found.

12 At that point in time, I drafted a
13 supplemental issue to my second motion for
14 postconviction relief and sent it -- I'm thinking
15 that it was right when Judge Schaeffer originally --
16 her June 5th denial came to me, I believe they
17 crossed in the mail. It was right at that same time
18 I had sent it between the 4th and maybe the 8th of
19 June, 1995.

20 At that point, I received Judge Schaeffer's
21 denial, went through the process of rehearing where
22 she granted -- or essentially said without prejudice
23 file an amended motion. I didn't receive that order
24 immediately. I received it in December of '95. I
25 amended -- once receiving it, found out that I could

1 amend my motion, I amended it, and included in my
2 explanations of why these particular issues were not
3 raised in my original postconviction motion, why the
4 hair analysis issue was not raised in either of the
5 first or second but presented by the supplemental
6 issue, and immediately sent it to the court.

7 Q. When was your state postconviction process
8 exhausted, if you know?

9 A. It would be, I believe, at the conclusion of
10 the -- when the mandate was issued from the Second
11 District Court of Appeal on appealing the denial of
12 my amended motion, which would be October 7th, 1996.

13 Q. And you've previously discussed that
14 Mr. Leinster failed to properly file a motion for --
15 basically a motion for new trial for the judge to
16 review. What is the importance of that?

17 A. From my understanding of the concepts in the
18 motion for new trial, the motion for new trial
19 allows the trial judge to sit as an additional juror
20 as a safety valve in cases where the evidence is
21 technically sufficient to withstand the motion for
22 judgment of acquittal. However, the weight of the
23 evidence goes against the jury's verdict. It gives
24 them an opportunity to determine the credibility of
25 the witnesses and the weight of the evidence. In my

1 case, there was no evidence. There was nothing.
2 Scott and Cheryl's testimony, two people giving
3 different descriptions.

4 MR. FISHKIN: Your Honor, I'm going to
5 object to --

6 THE COURT: Sustained.

7 Q. And Mr. Herrick, during our break, did you have
8 the opportunity to look over the FDLE report,
9 laboratory reports, and so forth?

10 A. Yes, sir.

11 Q. And did you notice anything missing therefrom?

12 A. No, sir. I didn't notice anything missing.

13 Q. Were there any reports regarding fingerprint
14 identification?

15 A. Fingerprints?

16 Q. Yes.

17 A. The ones that you had shown me? I don't
18 believe those are FDLE. The fingerprints aren't. I
19 believe they're done by Largo Police Department.

20 Q. I'd like to show you what is being marked as
21 Petitioner's Exhibit 3 and 4 and ask you to look at
22 Exhibit No. 3 and see if you can recognize that.

23 And do you recognize Petitioner's Exhibit 3,
24 sir?

25 A. Yes, sir.

1 Q. And take a look at No. 4.

2 (Counsel confer)

3 MR. GILLICK: Judge, I'm advised they're
4 in apparently another exhibit, No. 33, so I will
5 not need to introduce these.

6 THE COURT: All right. Well, let's make
7 sure that by the end of this particular hearing,
8 that is, after Mr. Herrick's hearing is about to
9 close, I want to make certain that any lab report
10 or fingerprint report or any type of scientific
11 or expert report that Mr. Herrick contends his
12 lawyer should have introduced but didn't is part
13 of the record so that there is no longer any
14 claim that we've missed something.

15 MR. GILLICK: Okay. I understand.

16 Q. Well, let me clarify this, then. Exhibit
17 No. 3, sir --

18 THE COURT: Perhaps the easier way to go
19 about it or the more appropriate way to go about
20 it would be to ask Mr. Herrick when he filed his
21 third Rule 3.850 motion, in which one of his
22 claims was that counsel failed to investigate or
23 present results of microanalysis testing on hair
24 fibers recovered from the scene and hair samples
25 submitted by Mr. Herrick. What is he talking

1 about? And let me ask -- just a moment. Just a
2 moment, please.

3 Counsel, I'm looking at the
4 preevidentiary hearing stipulation which purports
5 to summarize each postconviction motion, and I
6 note that the third postconviction motion is
7 referenced on Page 6, 7, 8, and 9, which includes
8 the history of that particular motion from its
9 filing until its ultimate appellate conclusion;
10 and scanning those paragraphs, I do not see
11 anything about fingerprints. I see it about hair
12 analysis and microanalysis. Was the fingerprint
13 examination or testing a part of that particular
14 Rule 3.850; do you know, Mr. Gillick?

15 MR. GILLICK: Without looking at that
16 particular motion, I don't know offhand, Your
17 Honor.

18 THE COURT: Okay.

19 MR. GILLICK: I can find out quickly.

20 Q. Mr. Herrick, do you know --

21 A. I don't believe that it was, no, sir.

22 Q. Okay.

23 A. The fingerprints weren't -- I don't recall ever
24 raising anything on fingerprints, simply because as
25 far as I knew at trial, they told me that the

1 fingerprints weren't mine; they all matched Scott.

2 Q. Did Mr. Leinster ever show you a fingerprint
3 report?

4 A. No, sir.

5 Q. Do you know when you obtained copies of
6 fingerprint analysis reports, if you did?

7 A. These particular reports, I believe, I acquired
8 from the State Attorney's office by access to public
9 records.

10 Q. Do you recall when that was?

11 A. It would have been in -- after '96, possibly
12 after May of '96, 'cause I was at Hardy Correctional
13 Institution at that time. Maybe October of '96,
14 about then.

15 Q. How does that relate to -- would that be
16 subsequent to or prior to your filing --

17 A. It would be after.

18 Q. -- the amended motion?

19 A. After.

20 MR. GILLICK: May I have just a
21 moment --

22 THE COURT: Sure.

23 MR. GILLICK: -- with my client?

24 (Counsel for Petitioner and his client
25 confer)

1 MS. McCARTHY: Your Honor, while he's
2 speaking with his client, can I just do some
3 witness control outside to --

4 THE COURT: Sure.

5 MS. McCARTHY: -- coordination, because
6 it looks like we're running quite a bit behind
7 our own --

8 THE COURT: All right.

9 MS. McCARTHY: -- preplanned schedule.

10 Q. Mr. Herrick, we've previously discussed that
11 you filed a second motion for postconviction relief
12 that Judge Susan Schaeffer denied. You requested a
13 rehearing and that was denied, correct?

14 A. Yes, sir.

15 Q. Did you receive a copy of that denial?

16 A. No, sir.

17 Q. When did you finally get a copy of the judge's
18 denial?

19 A. On about December 8th, '96. That's when I
20 learned that it was without prejudice to amending
21 that motion.

22 Q. And when did you then amend after receiving the
23 denial in December?

24 A. January 8th, within 30 days or so. It took a
25 little bit to put everything together and finally

1 got it filed about 30 days later, January 8th, '96.

2 MR. GILLICK: Okay. I've got nothing
3 further, Your Honor.

4 THE COURT: Okay. Mr. Fishkin.

5 Mr. Fishkin, before you begin, it might
6 be wise for us to stop a moment and let me ask
7 Mr. Herrick a couple of questions -- and
8 Mr. Gillick, you can follow-up -- because I want
9 to make certain that I understand what
10 Mr. Herrick's claims of ineffective assistance of
11 counsel are.

12 You are saying, Mr. Herrick, that your
13 lawyer should have done certain things. In
14 particular, what is it that he should have done
15 that he didn't do?

16 THE WITNESS: I believe that
17 Mr. Leinster should have used the FDLE hair
18 analysis reports, or Marilyn Hildreth [sic], who
19 had committed or had done those analysis, to
20 demonstrate to the jury that the hair fibers that
21 were found on the scene of the crime did not
22 belong to me.

23 THE COURT: Okay.

24 THE WITNESS: I believe that
25 Mr. Leinster should have timely filed a motion

1 for new trial, in that it would have given me the
2 opportunity to have the trial court address the
3 police telling Scott and Cheryl that bloody
4 clothes and a bloody knife was found in my room,
5 that my fingerprints were found in their house,
6 when that was, in fact, not true. It would have
7 given me the opportunity to have him, like I
8 spoke before, weigh the credibility of the
9 witnesses of their testimony. It would have
10 given me the opportunity to raise any other
11 issues that an attorney could come up with at
12 that time.

13 I feel that at that time
14 constitutionally -- at a time motion for new
15 trial is filed, I'm constitutionally entitled to
16 representation. I wasn't given that opportunity
17 at all. Even when I raised in the 3.850 motions
18 that he failed to timely file the motion for new
19 trial, the State Attorney responded that
20 everything is harmless, and I don't understand
21 how you can say that it's harmless if you've
22 never given me an opportunity to raise the issues
23 themselves and have them supplemented with
24 evidence and argument from counsel.

25 THE COURT: All right. So as I

1 understand it, the failure of Mr. Leinster to
2 file a timely motion for new trial prejudiced you
3 because the trial court judge did not get an
4 opportunity to weigh the credibility of the
5 witnesses; and had he done so, he would have
6 ruled in your favor.

7 THE WITNESS: I believe that's
8 reasonably probable.

9 THE COURT: Okay. Anything else about
10 the motion for new trial?

11 THE WITNESS: Just the police
12 misconduct. Are you familiar with that?

13 THE COURT: What are you speaking
14 about?

15 THE WITNESS: Throughout the
16 investigation, the police, when they arrested me,
17 they went into my bedroom and took a pair of
18 pants of mine and a shirt, a red shirt and a pair
19 of blue jeans. They recovered a firearm, a
20 knife, and they had apparently, through
21 deposition and trial testimony of Scott and
22 Cheryl, told them that there was blood on those
23 pants and that there was blood on the knife and
24 that my fingerprints were found in their
25 apartment.

1 When Scott and Cheryl after 15 months
2 came to testify at trial, they still believed
3 this to be true when, in fact, FDLE shows that --
4 the serologist analysis shows that there were no
5 blood on the knife, there was no blood on any
6 pants and that my fingerprints from Largo Police
7 Department analysis, my fingerprints are not in
8 their house. In my opinion, that changes
9 their -- it contaminates their entire testimony.
10 For 15 months, they believed that these things
11 are true. It contaminates their testimony, and I
12 can never test that, the reliability of that in a
13 courtroom setting, 'cause no matter what you say
14 to them, they're convinced that I had to have
15 done it when, in fact --

16 THE COURT: And as I take it, you have
17 never challenged in any of your Rule 3.850's that
18 your lawyer should have filed a motion before the
19 trial saying that the out-of-court identification
20 was wrong, was impermissible, was
21 unconstitutional.

22 THE WITNESS: No, sir, I did not.

23 THE COURT: You've only raised it in
24 connection with your motion for new trial?

25 THE WITNESS: Yes, sir.

1 THE COURT: What else?

2 THE WITNESS: The videotape going into
3 the jury room. At that particular time, they
4 came in and asked to see the videotape again. I
5 don't know how much of it they watched. I
6 believe Mr. Leinster should have required them to
7 have it in the courtroom. I think the judge
8 should have done it in the courtroom. That way,
9 at least we'd all know that they watched the
10 entire video and all the testimony. Rather, I
11 don't know if they started from the beginning or
12 started from the prosecutor's side.

13 THE COURT: And do you recall, and if
14 you don't, that's fine, I'll find it, but in what
15 Rule 3.850 you addressed that particular issue?

16 THE WITNESS: In my first motion for
17 postconviction relief, it's incorporated in the
18 first issue there, like the example that I gave
19 before was that I had raised Mr. Leinster's
20 failure to object to questions. And in addition
21 to it, I stated he failed to object to the video
22 being taken into the jury room.

23 THE COURT: Okay. Anything else?

24 THE WITNESS: Thinking off the top of my
25 head, I think that's --

1 THE COURT: Mr. Gillick, if you wish
2 to --

3 MR. GILLICK: If I may, Your Honor,
4 there was another issue regarding failure to
5 investigate the exculpatory testimony of Patrick
6 Porrey and David Stewart.

7 Q. Is that important to you, sir?

8 A. It's important. I think that it -- you know,
9 honestly, I don't know that it's exhausted properly
10 in the second motion. I believe that the second and
11 amended motion are one and the same, a continuation
12 of each. I couldn't raise it in my first one simply
13 because I didn't know how. I didn't know what to
14 raise. I did the best that I could. And under the
15 circumstances, the only thing I could do is
16 continue.

17 It's things like that -- if I was allowed
18 to consult with an attorney to represent me in a
19 motion for new trial, I could have said -- thinking
20 clearly say, you know, "Look, I also have these
21 witnesses, Patrick and David, that could have
22 testified to this that Mr. Leinster didn't call;" or
23 if Mr. Leinster is still representing me at that
24 time, tell the judge, "Hey, when it's going on in
25 the trial, I didn't know what to say to who or what

1 to do or who to complain to, or if I can complain."
2 The only thing I know is they convicted me of
3 something I didn't do and then start screaming that
4 they want to give me life.

5 MR. GILLICK: Thank you, Your Honor.

6 THE COURT: All right, Mr. Fishkin.
7 Thank you for giving me a moment.

8 CROSS-EXAMINATION

9 BY MR. FISHKIN:

10 Q. During the course of the trial, there was no
11 evidence presented, no forensic evidence presented,
12 linking you to the crime scene; is that correct?

13 A. That's correct, sir.

14 Q. And that fact was brought out to the jury; was
15 it not?

16 A. Yes, sir.

17 Q. In fact, Mr. Leinster, in his opening
18 statement, made reference to the fact that there was
19 absolutely no physical evidence connecting you to
20 the scene of the crime; isn't that correct?

21 A. Yes, but I don't think what Mr. Leinster said
22 was evidence that the jury could consider.

23 Q. Did Mr. Leinster say that in his opening
24 statement?

25 A. I think the judge did.

1 Q. Did Mr. Leinster say in his opening statement
2 that there was no physical evidence connecting you
3 to the scene of the crime?

4 A. I would think he did, yes.

5 Q. He told that to the jury, didn't he?

6 A. Yes, I would think that he did.

7 Q. And through the course of the trial, no
8 physical evidence was presented to that jury linking
9 you in any way to that crime; is that correct?

10 A. That is correct.

11 Q. And in summation, Mr. Leinster hammered the
12 fact to the jury that no physical evidence was
13 presented connecting you to the crime; is that
14 correct?

15 A. That is correct.

16 Q. Okay. Now, you've made a claim that the
17 failure to call the hair expert prejudiced you.

18 A. Uh-huh.

19 Q. How?

20 A. How?

21 Q. Tell us how it prejudiced you.

22 A. Well, I believe it prejudiced me in that it was
23 the only physical evidence available that
24 demonstrates that I didn't commit this crime and
25 that there's somebody else out there that did.

1 There's hair fibers left in the bedsheets that this
2 person was on top of. Those hair fibers are not
3 mine.

4 Q. How do you know there were hair fibers? Does
5 the lab report say there were hair fibers found on
6 the bedsheet that were not --

7 A. I believe that the Largo police report requests
8 that -- requesting hair analysis to be done, it says
9 that there was hair.

10 Q. I'm not talking about the request. I'm talking
11 about the actual report. Did the actual report find
12 anything connecting --

13 A. Can I see the report? I believe the report
14 says that it was my hair, Cheryl's hair, and Scott's
15 hair was tested against hair fibers or debris in the
16 sheets.

17 Q. And none were found?

18 A. None matched.

19 Q. None were found matching you anyway; is that
20 correct?

21 A. Correct.

22 Q. Now, in fact, let me refer you --

23 MR. FISHKIN: Unfortunately, Your Honor,
24 Exhibit 33 is not paginated, but in there on
25 Page 2 of the lab report, it shows the results of

1 the hair analysis.

2 (Counsel confer)

3 Q. Let me show it to you. I'd like you to take a
4 look at this paragraph.

5 Do you recall that? Do you recall seeing that?

6 A. Yes.

7 Q. All right. Now, that paragraph basically talks
8 about hair debris removed or debris removed from
9 your pants; is that correct? Now, by the way --

10 A. I would say removed from a pair of pants, yeah.

11 Q. Well, it says from your pants, whether they --
12 that's what it says, doesn't it? Is that what it
13 says?

14 A. That's what it says.

15 Q. Okay. Now, by the way, Cheryl died her hair,
16 didn't she?

17 A. I wouldn't know.

18 Q. You don't know?

19 A. No, I do not know.

20 Q. But a hair was found that had been chemically
21 lightened that was both consistent and inconsistent
22 with Cheryl Hagan's hair. Isn't that what it says?

23 A. That's what that report says, yes, sir.

24 Q. Okay. So, theoretically, if a hair expert had
25 gotten up on the stand, that expert would have

1 testified that there was a hair that was similar to
2 in some respects and dissimilar to in some respects
3 Cheryl Hagan's hair. Right?

4 A. Taken out of the pair of pants that they found,
5 correct.

6 Q. That's correct.

7 A. That's what they could have testified to.

8 Q. And Mr. Leinster, by not calling a hair expert,
9 kept that out; did he not?

10 A. I don't know.

11 Q. Well, did that information ever go to the jury?

12 A. No. That stuff was not brought before the
13 jury. I personally don't believe that that
14 particular analysis for those pants would have been
15 allowed before the jury.

16 Q. Why wouldn't they have been allowed?

17 A. Well, sir, if you're familiar with the sequence
18 of events of what Scott testified to -- you've read
19 the transcripts, I take it -- in the room where
20 he's stabbed, he's stabbed by a naked man.

21 Q. What difference does it make?

22 A. I'll show you. He's stabbed by a naked man.
23 The man has blood all over him. At that point the
24 man pulls on his pants. These particular pants, if
25 you try to make the relevance of that particular

1 paragraph and that hair found in those pants
2 admissible, there would be blood on these pants. We
3 know that there's blood left on the sliding glass
4 doors and the door handle to the bedroom at that
5 particular time. If there's blood after he pulls on
6 his pants left on those items, there would have been
7 blood on those pants. There's no blood on those
8 pants that they tested right there for that hair.

9 Q. Mr. Herrick, have you ever listened to a
10 forensic expert testify?

11 A. No, sir.

12 Q. Do you have any idea about what hair transfer
13 is, transference?

14 A. No, sir.

15 Q. So you don't know the significance of this
16 paragraph, is that fair, in the hands of an expert?

17 A. I know the significance of no blood being on
18 those pants. It means that those pants weren't the
19 pants worn by the person in that room who stabbed
20 Scott.

21 Q. Do you know the significance --

22 THE COURT: Mr. Fishkin, your questions
23 are argumentative in form. It seems to me that
24 the significance is for me to determine and not
25 for Mr. Herrick to determine.

1 MR. FISHKIN: All right.

2 THE COURT: So if you have evidence that
3 you intend to present showing the lack of
4 significance or the significance, that's
5 something different.

6 MR. FISHKIN: We'll do that, Your Honor.

7 Q. Now, you claim as one of your grounds that
8 Mr. Bulone should not have been allowed to ask
9 Theresa Porrey about her fear of a lawsuit during
10 the videotaped deposition. Did you say that?

11 A. That was an example of what I remembered of
12 hearing on the video that I felt was inappropriate.

13 Q. Okay. And you think that would not be
14 allowable testimony?

15 A. I'm not sure if she answered it in the sense
16 that, no, she wasn't. And then he kept it a point
17 where she got to saying she's scared now of being
18 sued because he keeps bringing it up.

19 Q. Well, would that be legitimate testimony,
20 though?

21 A. I have no idea, sir. I raised the issue simply
22 because I didn't think it was right.

23 Q. So you don't know the answer, okay.

24 A. I don't know the law to that, no.

25 Q. Ms. Porrey was the only witness who testified

1 on your behalf; is that correct?

2 A. That's the only witness Mr. Leinster called.

3 Q. All right. And she testified as to alibi?

4 A. Essentially, yes, that she came and woke me up.

5 Q. Okay. Mr. Leinster, again, in summation was
6 very strong with the jury about how you couldn't
7 have done it because she woke you up at the time
8 that it was happening; is that correct?

9 A. I believe so. I would have to reread the
10 transcripts.

11 Q. And do you think that it prejudiced you that
12 your only witness was allowed to repeat her
13 testimony more than once to the jury?

14 A. I believe that it very well could prejudice me
15 if all's they watched was the State Attorney's
16 cross-examination.

17 Q. And you don't know what they watched?

18 A. We have no idea.

19 Q. For all you know, they were watching her direct
20 testimony about her waking you up?

21 A. That's very possible.

22 Q. And that would have benefited you and not
23 prejudiced you; is that correct?

24 A. I think that in order to be fair, you'd need to
25 have the whole thing played. Whether it benefits me

1 or prejudices me to give only portions of testimony
2 is not fair for either me or the State, but I think
3 I'm the one that has it all to lose.

4 Q. You weren't worried about prejudice to the
5 State, were you?

6 A. I want the truth to come out. If that means
7 giving everybody the opportunity to be fair, that's
8 fine with me.

9 Q. And the only other ones you wanted to be heard
10 were David Stewart and Patrick Porrey; is that
11 correct?

12 A. And the hair analysis people.

13 Q. Now, if I remember correctly from your
14 testimony, you never spoke to David Stewart again
15 after that night?

16 A. No, sir.

17 Q. And you haven't spoken to Patrick Porrey since
18 that night?

19 A. No, sir.

20 Q. By the way, do you have Patrick's deposition?
21 Do you have a copy of that?

22 A. I have a copy of it, yes.

23 Q. Do you have a copy of the other witness
24 depositions in this case?

25 A. Yes.

1 Q. How long have you had them?

2 A. After I was convicted in '91, my sister Lori
3 purchased them for me. I was at Okaloosa
4 Correctional Institution. So I would say since the
5 middle of '91, '92, beginning of '92, in that area.

6 Q. So you had them before you filed your first
7 3.850?

8 A. Yes, I did.

9 Q. Now, you were aware on the second day of trial
10 when the jury went out that Patrick Porrey and David
11 Stewart had not testified; were you not?

12 A. Excuse me. Yes, I was.

13 Q. Now, also, do you know whether Patrick Stewart
14 was ever found by anybody?

15 A. Patrick Stewart?

16 Q. I mean David Stewart. I'm sorry.

17 A. No, sir. I don't know if anybody's talked to
18 him or where he is or where he could be.

19 Q. And you don't know if anyone could find him?

20 A. No, sir.

21 Q. You don't know if he --

22 A. I know my family has done a lot of looking.
23 I'm sure Mr. Gillick has done a lot of looking. I
24 don't know where he is, don't know where to look
25 anymore.

1 Q. So you don't know if David Stewart wanted to be
2 found?

3 A. I couldn't venture a guess, sir. I have no
4 idea.

5 Q. Would it be fair to say that you don't know
6 what David Stewart might have said had he been
7 found?

8 A. No, sir. Given the fact that he's under oath
9 and he's supposed to testify truthfully, the events
10 as I had testified to them are what he would testify
11 to in that that's what's happened.

12 Q. I believe you said that he went with Patrick
13 Porrey twice to talk to Darren Barfield, or Scott
14 Barfield -- Darren's his first name, isn't it?

15 A. Yes, sir.

16 Q. -- prior to your being arrested?

17 A. That is my understanding, yes.

18 Q. And you also, by the way, don't know whether
19 Patrick wanted to be found, do you, at that time?

20 A. I don't know. I haven't spoke to him.

21 Q. And you don't know what Patrick might have said
22 to either the State or to Mr. Leinster if, in fact,
23 he had been found and did talk to them?

24 A. Again, it would be consistent to what I've
25 testified to in that they would be testifying

1 truthfully. Those are the events that took place.

2 Q. And that's your supposition, that they would
3 testify consistently with what you've said?

4 A. At that particular time, I believe they would
5 have.

6 Q. But you don't know that? Is that fair?

7 A. I know it as much as you would know it. I
8 mean, how do I know what they would testify to other
9 than the events that I know them to be? They were
10 present for a particular series of events. It would
11 be consistent with what I've said. I don't know
12 what else to tell you.

13 Q. In your first 3.850 filed, what was it, May
14 19th, 1993?

15 A. May 19th, May 20th, something like that.

16 Q. You raise no issue about Patrick Porrey or
17 David Stewart being available as alibi witnesses and
18 not being called, did you?

19 A. No, I did not.

20 Q. Yet you knew about it?

21 A. Yes, I knew about it.

22 Q. Nothing prevented you from raising it?

23 A. A lack of knowledge.

24 Q. A lack of knowledge that you had alibi
25 witnesses who the defense lawyer didn't call?

1 A. No, sir, lack of knowledge of what exactly I
2 could, should, or am supposed to put in my motion
3 for 3.850.

4 Q. Well, you put in he failed to make appropriate
5 motions as to admissibility of questions and answers
6 posed to the witness Theresa Porrey.

7 A. Yes.

8 Q. How is that different than ineffectiveness by
9 not calling essential witness?

10 A. I'm not positive of what could be raised in a
11 3.850 and what couldn't be raised. You yourself, as
12 a practicing attorney, know that some things you can
13 raise in collateral relief. At that time I don't
14 understand collateral relief. The only thing I
15 understand is I've been convicted of something I
16 didn't do.

17 Q. Let's get down to what this trial was really
18 about. Without Patrick Porrey, who was basically
19 not an alibi witness but a witness who would attack
20 the credibility of Darren Barfield; is that correct?

21 A. Yeah. He would testify that when he spoke to
22 him before he called the police, he told him he
23 wasn't sure it was me.

24 Q. Now --

25 A. That's what it comes down to.

1 Q. But without that, this is basically a case of
2 your word or Mrs. Porrey's word in this case against
3 that of Darren Barfield?

4 A. No, sir. I believe that it more could be
5 better characterized as a three-way swearing contest
6 between what Darren testifies to, what Cheryl
7 testifies to, and what Theresa testifies to, because
8 Darren and Cheryl's testimony is in just as much
9 conflict as Theresa's is.

10 Q. Well, Cheryl never identified you.

11 A. I would agree with you there, sir.

12 Q. Cheryl said she thought it was her neighbor but
13 she couldn't be sure; isn't that right?

14 A. That is correct, sir.

15 THE COURT: Are you saying this is in
16 the trial testimony, Mr. --

17 MR. FISHKIN: That's correct, Your
18 Honor.

19 THE COURT: Well, you may want to read
20 the trial testimony again 'cause that's not what
21 she says.

22 MR. FISHKIN: Okay.

23 THE COURT: One of the questions
24 asked --

25 MS. MCCARTHY: She thought it was him

1 from the get-go.

2 MR. FISHKIN: Yeah.

3 THE COURT: One of the questions
4 asked -- just a moment.

5 MR. FISHKIN: Page 28, Your Honor,
6 starting at Line --

7 THE COURT: I know. I'm not referring
8 to that.

9 MR. FISHKIN: I'm sorry?

10 THE COURT: I said I'm not referring --
11 I'm referring to my notes. Just a moment.

12 Page 116 of the record, or Page 30 of
13 the trial transcript, question by the
14 prosecutor: Now, was there anything that you
15 observed or heard or anything like that would
16 indicate to you that it was not Kevin Herrick
17 that did this to you?

18 Answer: No.

19 MR. FISHKIN: Yes, I'm referring to
20 qualifying questions.

21 Let me ask you this: Before you even
22 spoke to Scott about who this was, did you have
23 an idea about who the attacker was?

24 Yes.

25 Who was that?

1 Kevin Richard Herrick.

2 Why did you feel that, what
3 observation?

4 Just everything. It was just like in
5 the dark shirt, he always wore the same shirts
6 when he was walking around the apartment. It was
7 like the dark shirt. And his build, the outline
8 of his hair, just everything. Not only that, but
9 it was just everything that led up to it. I just
10 thought it was him. It just looked like him in
11 the dark. I couldn't see him, but I just had a
12 feeling.

13 Q. In any event, the main testimony was Darren,
14 was Scott, correct?

15 A. (Nods head up and down.)

16 Q. Who said from the get-go, he knew it was you,
17 but he didn't initially tell the police. Is that
18 correct?

19 A. I believe that would be correct.

20 Q. And then when he was released from the hospital
21 after he was taken to the hospital, he called the
22 police and told them it was you. Is that what he
23 testified to?

24 A. That's what he testified to.

25 Q. Now, in Mr. Porrey's deposition, did he not

1 indicate that his conversation with Mr. Barfield was
2 after you were arrested, not before?

3 A. I don't know if he indicated that in his
4 deposition or not. I know that the conversation he
5 had with Mr. Barfield would have been before my
6 arrest.

7 I would also point out that Pat's
8 deposition was taken 12-and-a-half years after these
9 events took place. I don't expect his memory to be
10 a lot. I think as a result of Mr. Leinster's
11 failure to secure his testimony and put it in the
12 record, I've lost a lot already in that testimony.

13 MR. FISHKIN: Page 24 of the deposition,
14 Your Honor.

15 Q. I believe it was in the courtyard, and even
16 I -- I can remember even to this day that after they
17 took Kevin away, Darren said something, he wasn't
18 for sure if Kevin was the one.

19 He told you that?

20 Yeah. I remember him saying that he wasn't
21 too sure 'cause it was dark, he said.

22 A. That sounds to me like he's talking about
23 talking in the courtyard and not the conversation
24 that he had with him over at Cheryl's mother's
25 house.

1 Q. You'd indicated that Mr. Porrey was not there
2 when this incident occurred and that you saw him for
3 the first time about three hours later. Is that
4 correct?

5 A. You're speaking of Patrick?

6 Q. Patrick.

7 A. Yes. Yeah, he woke me up.

8 Q. Three hours later?

9 A. Essentially three hours. I don't recall the
10 exact time that he woke me up.

11 Q. But it was substantially after this event had
12 occurred?

13 A. Yes, sir.

14 Q. It was after Mrs. Porrey woke you up, you went
15 outside, and then you went back inside and went to
16 sleep?

17 A. Yes, sir. Theresa woke me up, the police came,
18 investigated, Scott was taken to the hospital, and
19 everybody left. Theresa's sister, who lived down
20 the triplex down the way, had come and was
21 comforting her, relaxing her. I went to bed. Pat
22 came in and woke me up. Excuse me.

23 Q. And yet in his deposition, Patrick said that he
24 woke you up initially.

25 A. Yes, he did. What Patrick is speaking of there

1 is waking me up.

2 Q. Page 17. All I remember doing is waking him up
3 out of his sleep, out of the room. That's all I can
4 remember. I don't know, he might have went outside
5 when we all were standing out trying to figure out
6 what was happening while people were outside,
7 Cheryl, Darren, David, and you.

8 Did Cheryl Hagan at that point accuse him of
9 anything?

10 No.

11 That was before the police came, wasn't it?

12 A. No. That would have -- before the police came
13 and arrested me. I don't --

14 Q. The police came --

15 A. I was never in the presence of Scott and Cheryl
16 with Patrick Porrey. That's what I'm talking about
17 as far as 12-and-a-half years later of Pat's
18 testimony, because Mr. Leinster didn't secure it,
19 Pat's testimony is in some respects good and some
20 things I don't think he remembers clearly.

21 You know, what were you doing 12-and-a-half
22 years ago? I remember things very clearly simply
23 because this has been my life for the last 13 years
24 of battling this conviction. I know what I did that
25 night. I know what was going on. I know where

1 things were. Pat has no reason to really think
2 about it. When you get Scott and Cheryl in here and
3 they testify, they aren't going to remember things
4 very well either.

5 Q. They remembered things pretty well during the
6 trial, didn't they?

7 A. No. I think there's a couple of spots in there
8 where they're, I don't remember, I can't remember
9 details, little details; but I can tell you
10 important things such as that. You know, like I
11 say, if you never talk to him and then bring it up
12 12-and-a-half years later, 13 years later, they're
13 not going to remember.

14 THE COURT: Let me stop here. We're
15 getting argumentative in nature. I mean, this
16 dialog here is not assisting me any in deciding
17 what I'm supposed to decide.

18 Q. Now, were you sharing a room with Patrick?

19 A. No, sir.

20 Q. You had your own room?

21 A. Yes, sir.

22 Q. Patrick had his own room?

23 A. Yes, sir.

24 Q. You were not paying rent. You were a guest in
25 the house; is that right?

1 A. Essentially a guest, and when I could get a job
2 and get things going, then I would, you know, pitch
3 in and show my appreciation for their letting me
4 stay there.

5 Q. And when you last saw Mrs. Porrey, did you
6 indicate she was in the kitchen?

7 A. No, when I was --

8 Q. Prior to waking you up.

9 A. Prior to waking me up? Yeah, she was in the
10 kitchen area.

11 Q. Okay. And that kitchen area had a wall so you
12 couldn't see -- I think you indicated you couldn't
13 see the living room from the kitchen --

14 A. No, you couldn't.

15 Q. -- from the table.

16 A. No, you could not, unless you were at the
17 doorway looking through. It has little pillars and
18 stuff in there. But other than that -- if you were
19 just looking over, you would not see the living
20 room.

21 Q. And is it your testimony that she woke you up
22 when she heard screaming, or is that what she told
23 you?

24 A. It's my testimony that she woke me up screaming
25 that the girl next door was being raped. I know

1 that her testimony is she heard screaming and went
2 up and came back and woke me up.

3 Q. Now, that was from the videotape?

4 A. Yeah.

5 Q. When is the last time you saw the videotape?

6 A. I've never seen the video. I heard it during
7 my trial.

8 Q. And did you take notes during your trial?

9 A. No, I did not.

10 Q. So is this your memory today based on what you
11 heard 13 years ago?

12 A. My family has also purchased a copy of the
13 videotape. I know what's being said on it.

14 Q. So did they tell you what was being said on it?

15 A. Yes, they did.

16 Q. So is part of your testimony based upon what
17 they told you?

18 A. Part of my testimony as opposed to what, which
19 part?

20 Q. I don't know.

21 A. Neither do I.

22 Q. Your testimony about the videotape, is that
23 what someone else told you?

24 A. I would say it's probably a little bit of both,
25 remembering what was done and what they've told me,

1 what they've written down for me, as far as what's
2 on the video. As far as my testimony of her waking
3 me up screaming, "The girl next door is being
4 raped," that's my personal knowledge of what
5 happened to me.

6 Q. And how long was it from the time that you got
7 outside until the police actually arrived?

8 A. I don't think it was more than five, six
9 minutes, simply because when he came back telling
10 David to write down the tag number, Dave went in, I
11 believe, and was on the telephone calling the
12 police. I got everybody calmed down, got Theresa
13 inside her kitchen, got her back inside to relax,
14 sit down and quit hyperventilating. I instructed
15 him to go inside and take care of his pot. I
16 stepped out front, and it couldn't have been two,
17 three minutes after that that the first squad car
18 pulled up.

19 Q. And when did Cheryl and Darren confide in you
20 about what had happened?

21 A. When did Cheryl and Darren?

22 Q. Yeah.

23 A. Darren, Scott, told me that -- when I came out
24 the front door and he was coming back at that
25 particular time, he told me he chased the guy to the

1 car, he got in the car, and he left the tag number
2 to David, blah, blah, blah. Later on that evening,
3 once the police had come, the EMT's had come, fire
4 rescue had come, Scott was inside. I don't recall
5 if he ever came out again until he was on the
6 stretcher being wheeled away.

7 During that period of time, Cheryl came out
8 her door, stood there with me, Theresa, and David,
9 and possibly David's wife, and told us that the guy
10 put a scalpel to her neck and tried to rape her.

11 Q. Now, knowing that Mrs. Porrey is dead, that
12 David has never been found and Barbara has never
13 been found, essentially, there's nobody to
14 corroborate, except for Darren and Cheryl, this
15 story about what they're telling you; is that
16 correct?

17 A. I don't understand your question. Corroborate
18 the story who's telling what?

19 Q. I'll withdraw the question.

20 THE COURT: Anything else, Mr. Fishkin?

21 MR. FISHKIN: If I can have a moment,
22 Your Honor.

23 (Counsel for Respondent confer)

24 MR. FISHKIN: Nothing else, Your Honor.

25 MR. GILLICK: Briefly, Your Honor.

1 says she believes that because the police found the
2 knife and bloody clothes in my room. That is not
3 true. So do I believe that she herself identified
4 from her personal knowledge of what she's seen that
5 it's me? No, I do not believe that that is what
6 took place in trial.

7 Q. Okay. Thank you.

8 MR. GILLICK: Nothing further.

9 THE WITNESS: Could I -- Mr. Gillick.

10 Q. Yes.

11 A. I have one -- when you discussed that report
12 there, the significance of those pants, when you
13 look at those pants -- they also recovered a
14 T-shirt. They took a T-shirt. Cheryl describes
15 these particular clothes. Apparently, by seizing
16 them and taking them into evidence, they believe
17 that these clothes were used. These are the pants
18 that they say had blood on them. Did not. Cheryl
19 describes the person as wearing a dark black or blue
20 T-shirt. What they recovered there and took and
21 sent to FDLE was a red T-shirt.

22 That's what I was trying to point out to
23 Mr. Fishkin, that those clothes are not the clothes
24 that could possibly have been used in that attack.
25 One, there's no blood on them; the shirt is

1 different; the pants are different; there's no large
2 belt buckle on these pants, as Cheryl says that this
3 attacker has on his pants. There's no nothing.

4 This little hair that he makes significance
5 that the hair analysis would come out and say, well,
6 it looks like it could be Cheryl's and it might not
7 be Cheryl's, the bottom line is that these pants
8 can't be shown to have been placed in there. The
9 only relevant evidence coming from there is the
10 stuff that is found in the bedsheets, and the stuff
11 that is found in the bedsheets does not match my
12 hair that I voluntarily gave them.

13 Q. Did Cheryl have hair when she testified at
14 trial?

15 A. Did she have what?

16 Q. Did she have hair, or was she bald?

17 A. She had hair, sir.

18 Q. There was plenty of other hair they could have
19 taken from her to test, right?

20 A. Yes, sir.

21 Q. Okay. Thanks.

22 MR. GILLICK: No further questions.

23 THE COURT: All right. Thank you, sir.

24 MS. MCCARTHY: Your Honor, just as a --
25 I know this would be taking out of order, but we

ATTACHMENT E

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY

STATE OF FLORIDA,

Plaintiff,

vs.

KEVIN R. HERRICK,

30292 Defendant

) CASE NO: 8911425 CFANO- B
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FILED
IN COURT NO.
10 DEC 20 PM 3:4
CHARLEEN F. JENSEN
OFFICE OF CLERK OF COURT

PLACE: Public Defender's Office
Criminal Courts Complex
5100-144th Avenue North
Clearwater, Florida 34620

DATE: November 30, 1989

TIME: Commencing at 11:14 a.m.

REPORTED BY: DOREEN M. DEUTSCH, R.P.R.
Notary Public
State of Florida at Large
Deputy Official Court Reporter
Sixth Judicial Circuit

TAKEN BY: The Defendant herein

THE DEPOSITION OF

STEVEN McMULLEN

ORIGINAL

PAGES 1-9

MORGAN J. MOREY & ASSOCIATES
ROBERT A. DEMPSTER, OFFICIAL COURT REPORTERS
Clearwater, Florida

A P P E A R A N C E S

FOR THE PLAINTIFF:

KENDALL DAVIDSON, ESQUIRE
Assistant State Attorney
5100-144th Avenue North
Clearwater, Florida 34620

FOR THE DEFENDANT:

JANE BROWN, ESQUIRE
Assistant Public Defender
5100-144th Avenue North
Clearwater, Florida 34620

* * * * *

P R O C E E D I N G S

1
2 THEREUPON,

3 STEVEN McMULLEN

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

6 DIRECT EXAMINATION

7 BY MS. BROWN:

8 Q State your name and your employment, please.

9 A Steven McMullen, police officer, City of Largo.

10 Q And do you have any special assignment?

11 A I'm a police officer, canine.

12 Q And in this case arising out of an incident --
13 what is the date? July 15th, what was your role?

14 A Myself and Officer Lavigne were the first
15 officers on the scene. He attempted to speak with the two
16 involved and get a description of what happened. He
17 briefly told me what happened, and I --

18 Q Who told you?

19 A Officer Lavigne.

20 Q Okay.

21 A He briefly told me what happened. Said that a
22 possible sexual battery and a stabbing had occurred and
23 that one of the victims had chased the man down the
24 street.

25 Q Did he give you any more detail about this

1 chase, about where it may have gone? And did he say
2 anything about a motor vehicle?

3 A He didn't say anything about a car. He said
4 there possibly was one, but that was over in an apartment
5 complex which sat to the south of this residence. He told
6 me that they -- that the one victim, the male,
7 Darrin Barfield -- who had been stabbed -- chased the
8 assailant eastbound down Audobon and then went in between
9 houses and lost him.

10 At that time I took the dog out and attempted to do
11 an area search and the dog began to track, but we were
12 only able to track where the one victim had walked and
13 ran, and basically he had walked back to the scene.

14 We then went over the fence into the apartment
15 complex and attempted an area check and a track there, but
16 met with negative results.

17 Q Okay. Was there any attempt to identify the
18 defendant as the culprit by use of the dog?

19 A By use of the dog?

20 Q Yes.

21 A There is no possible way. By that time there
22 was four people from the fire department, two people from
23 Sunstar. Everybody was on the scene. The only person --
24 the dogs are trained to track on the freshest scents, and
25 the freshest scent available was that of the one victim,

1 and the dog tracked back for where he first walked and
2 then where he had gone back.

3 Q What was the turn-around point?

4 A Turn-around point was the fence.

5 Q And that fence is south?

6 A The fence is on Audobon Drive. The occurred
7 sits on the south side of Audobon Drive, okay. They ran
8 out the front of -- the front of these, like I said, on
9 the south and then towards the south. And behind there is
10 a wooden picket fence that separates that little road from
11 Laguna Vista Apartments.

12 Q I see. So, basically, out the front door and
13 then around back?

14 A Out the front door, east. East three or four
15 houses and then south.

16 Q South, okay. Was that between buildings?

17 A Yes, ma'am.

18 Q Okay. Did this victim tell you that the police
19 had been called while he was pursuing this person, or did
20 he call the police? Do you have any idea what the
21 sequence was with reference to the chase?

22 A I really can't tell you what happened. I was
23 just -- I was the one in the area. They sent me.

24 Q Did you see the defendant?

25 A Did I see -- no, I didn't.

1 Q Would you know the defendant if you fell over
2 him?

3 A No, I wouldn't. When we went in, arrested him,
4 he took a position to the rear. And I never was called to
5 the front of the residence where they arrested him till
6 after they took him away.

7 Q Did you see him around the scene when you were
8 doing your tracking thing?

9 A If I did.

10 Q Part of the crowd?

11 A I wouldn't even know. He wasn't identified to
12 me as a suspect in this or anything. There was a lot of
13 people there. It's, you know, two -- three or two
14 apartments sit there, I think, and there's a lot of
15 commotion between both of those also.

16 Q Did you have any later involvement in this
17 case?

18 A Later on I went into -- after the one victim,
19 Darrin, was released from the hospital I went and picked
20 up a written statement from him and transported that to
21 Officer Lavigne.

22 Q Did he make any statements to you then?

23 A Just that he was upset, obviously.

24 Q Did he tell you why there was such a delay in
25 identifying the culprit?

1 A I don't know what happened with all that, no.
2 Like I said, the next thing I know I was called by Officer
3 Nilsson, who was Acting Sergeant, about the arrest. We
4 were going to arrest him in where I was supposed to take a
5 position since I had been in the backyard and I knew how
6 to get back there without being seen.

7 MS. BROWN: Okay. I have nothing further.

8 MR. DAVIDSON: I don't have anything. We'll
9 put you down for a read.

10 THE DEPONENT: Oh, yeah.

11 (THEREUPON, THE DEPOSITION WAS CONCLUDED AT
12 11:19 A.M.)

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READ AND SIGN

I have read the foregoing pages
and, except for any corrections
or amendments I have indicated
on the sheet attached for such
purposes, I hereby subscribe to
the accuracy of this transcript.

SIGNATURE OF DEPONENT

DATE

1 STATE OF FLORIDA)

2 COUNTY OF PINELLAS)

3 I, DOREEN M. DEUTSCH, Notary Public for
4 the State of Florida at Large,

5 DO HEREBY CERTIFY that the foregoing deposition was
6 taken before me at the time and place set forth; that the
7 Deponent was by me duly sworn on oath; that I
8 stenographically reported the examination and testimony of
9 said Deponent; and that the foregoing Transcript of
10 Deposition, pages 1 through 8, inclusive, is a true and
11 correct transcription of my stenographic report.

12 I FURTHER CERTIFY that I am not related to nor
13 employed by any of the parties to the instant cause of
14 action of Counsel therein, and that I have no interest in
15 the events or outcome thereof.

16 IN WITNESS WHEREOF, I have hereunto affixed my hand
17 and official seal this 27th day of December, 1989, at
18 Clearwater, Pinellas County, Florida.

19

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Doreen M. Deutsch
DOREEN M. DEUTSCH, R.P.R.
Deputy Official Court Reporter
Notary Public
State of Florida at Large
My Commission Expires: 12/5/92

ATTACHMENT F

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY

STATE OF FLORIDA,)
) CASE NO: 8911425 CFANO- B
)
) Plaintiff,)
)
) vs.)
)
) KEVIN R. HERRICK,)
)
) Defendant)

FILED
CL COURT R.
NOV 30 11 30 AM '89
CHARLEEN F. HERRICK

PLACE: Public Defender's Office
Criminal Courts Complex
5100-144th Avenue North
Clearwater, Florida 34620

DATE: November 30, 1989

TIME: Commencing at 11:02 a.m.

REPORTED BY: DOREEN M. DEUTSCH, R.P.R.
Notary Public
State of Florida at Large
Deputy Official Court Reporter
Sixth Judicial Circuit

TAKEN BY: The Defendant herein

THE DEPOSITION OF

HOWARD CROSBY

ORIGINAL

PAGES 1-12

MORGAN J. MOREY & ASSOCIATES
ROBERT A. DEMPSTER, OFFICIAL COURT REPORTERS
Clearwater, Florida

A P P E A R A N C E S

FOR THE PLAINTIFF:

KENDALL DAVIDSON, ESQUIRE
Assistant State Attorney
5100-144th Avenue North
Clearwater, Florida 34620

FOR THE DEFENDANT:

JANE BROWN, ESQUIRE
Assistant Public Defender
5100-144th Avenue North
Clearwater, Florida 34620

* * * * *

P R O C E E D I N G S

1
2 THEREUPON,

3 HOWARD CROSBY

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

6 DIRECT EXAMINATION

7 BY MS. BROWN:

8 Q Would you state your name, please.

9 A Howard Crosby.

10 Q And how are you employed?

11 A Canine officer, Largo Police.

12 Q Officer Crosby, were you called to the scene of
13 an alleged sex battery and burglary on July 15th?

14 A Yes.

15 Q Okay. Would you describe what happened when
16 you got there?

17 A When I got there everything was over with. I
18 spoke to the victim, Cheryl Hagan, and she just went
19 through what happened.

20 Q What did she tell you?

21 A She stated that -- I asked her who the suspect
22 was or if she knew him, and she told me she thinks it was
23 her next-door neighbor, but she wasn't positive. She said
24 a few things that she noticed and that's why she thinks
25 -- she thought it was him.

1 Q What did she say that made her suspect him?

2 A That his -- when he we went to put his pants
3 on, his belt buckle was large like the one the suspect
4 wears; his voice; his hair. She was all shaken up. She
5 was very upset at the time and she just wasn't saying
6 anything positive that was absolutely him, but she kept
7 saying she thinks it was him.

8 And I guess when her boyfriend and him got in a
9 fight after her boyfriend was stabbed, the suspect tried
10 going out the sliding glass door. Evidently the suspect
11 always comes in the sliding glass door instead of using
12 the front door.

13 Q Did she tell you that?

14 A Yeah. He found the door was locked and they
15 kept telling him, Go out the front door, Go out front
16 door. He held them at knife point. She said he was real
17 familiar with the apartment, about using the sliding glass
18 doors.

19 The way these houses are, or apartments, you walk up
20 one sidewalk and there's an apartment and then there's two
21 right across from each other, so all the front doors are
22 racing the main sidewalk going up, and there's like
23 clusters of -- I think it's three apartments.

24 Q Okay. Did you talk to her boyfriend?

25 A No.

1 Q Was he already gone when you got there, or?

2 A No, he wasn't gone yet when we got there --
3 when I got there, but he was being treated. He was -- she
4 had mentioned to him that she thought it was the suspect.

5 Q She did that in your presence?

6 A Yean. And he said that, I think so too, but he
7 wouldn't give a positive answer, either. Now, the suspect
8 was standing outside during this time. I went out there.

9 I noticed that he was very nervous, and I talked to
10 him. I asked what he was doing there and he said he lives
11 in the next-door apartment. So I got his name and
12 everything and the way he was look -- and he was looking
13 around. He was acting very suspicious and nervous.

14 Q Was anybody else -- were any other neighbors
15 there?

16 A Yeah. I don't know what their names were. I
17 think they were across from her.

18 Q Did you talk to either of them?

19 A No.

20 Q Did you hear either of them say anything?

21 A No. They were there -- I don't think they were
22 there prior to us getting there, but I think when they saw
23 the police cars, then they came out and they heard her
24 screaming.

25 Q Now, you say the defendant was acting nervous.

1 Would you be a little more specific? What led you to that
2 conclusion?

3 A He wouldn't look at me in the eyes. I can tell
4 that his chest was pounding. I could tell he had a rapid
5 heart beat. He was wearing a tank top-type shirt.

6 Q What color?

7 A I believe it was red. Let me check. I believe
8 it was. It was a red shirt. I'm not positive.

9 Q But it was a tank top, you believe that?

10 A Right.

11 Q What kind of pants was he wearing?

12 A Jeans. He cooperated with me. He gave me his
13 name and where he lived, his date of birth and everything,
14 and I told him I was just getting names from everybody at
15 the scene.

16 Q I'd like to step back a little bit when you
17 said while you were talking to the victim, Cheryl --

18 A Yeah.

19 Q And the other victim was being bandaged?

20 A Right.

21 Q Was that what was going on? Okay. Can you
22 tell me as precisely as possible how this reference to the
23 defendant occurred?

24 A From her talk to me?

25 Q Well, both to you and to the other gentleman,

1 the other victim. I think he's been referred to as Scott
2 and as Darrin. I think his name is Darrin Scott.

3 A Well, I was just sitting there and I was
4 talking to her. First of all, it was a madhouse in
5 there. Her boyfriend was -- he wouldn't settle down and
6 he was moving around a lot. He was getting up and we're
7 trying to calm him down.

8 She is very upset, holding the baby. I got her into
9 the other room and that's when I asked her, Tell me what
10 happened. And that's when she told me the things that
11 happened. She gave a written statement in here as to what
12 happened. And she kept referring to the suspect -- she
13 kept saying that she is almost sure that it was the
14 next-door neighbor, which is the defendant.

15 And then she made a mention of that to her
16 boyfriend. I believe he was being put on the stretcher,
17 or they were about to put him on the stretcher.

18 Q How did she express that, do you remember?

19 A I think -- I'm not positive. I think she just
20 asked him, Don't you think -- didn't it look like the
21 next-door neighbor? But I'm not positive about how she
22 asked him.

23 Q And what was his response?

24 A I'm sorry?

25 Q What was his response?

1 A He said that he thinks so, too, and then I
2 guess evidently he called up later. I don't know what
3 happened, you know, when he called up. He talked to
4 someone else. Later on I guess they got that all
5 straightened out exactly who it was.

6 Q Okay. All right. So, did anyone say anything
7 to you about pursuing the suspect to a car, or a tag
8 number?

9 A No.

10 Q Okay. So what did you do after you spoke with
11 her?

12 A I went back to the police department later on
13 that night.

14 Q Excuse me. You were canine? You were there
15 with your dog?

16 A No. Officer McMullen was canine. I'm a canine
17 officer. I was just backup. I didn't do any tracks or
18 anything.

19 Q Okay.

20 A We went back to the police department. Later
21 on that night, they said that they arrested the suspect
22 and they brought him to the police department.
23 Officer Lavigne and myself, we took him into an
24 interrogation room. I was just there as a witness.
25 Officer Lavigne was going to do all the interrogation.

1 Q What was he wearing then, do you remember?

2 A Not offhand, but they have him booked in as
3 jeans and a tank top -- or, sleeveless shirt he has him
4 booked in as, but I'm not positive. He read him his
5 rights. He didn't want to talk to us. What he said was
6 that he would cooperate with us but he would -- he would
7 not give us any written or verbal statements unless he
8 sees his attorney; that's what his attorney told him to
9 do.

10 Q By "cooperate", I take it you mean by providing
11 hair samples?

12 A Evidently, yeah. Later on he did, but when he
13 said that I was -- I was asking -- I said, What do you
14 mean, "cooperate" with us but not going talk with us?

15 I was just told by my attorney not to say anything
16 or write anything down. And I said, Okay.

17 And then later on Officer Joiner came in, and
18 Lavigne and he went back to the holding cell where we put
19 the suspect and asked him if he would consent to samples
20 of pubic and head hair for comparisons.

21 And I told him that he didn't have to, you know, if
22 he didn't want to. And he stated, Go ahead. It may prove
23 my innocence. So I witnessed Officer Lavigne pull pubic
24 and head hairs and place them in a plastic bag and seal
25 it.

1 Q Do you know what was done with those samples?

2 A No.

3 Q Was there any discussion about collecting blood
4 or saliva?

5 A Not in front of me.

6 Q Okay. Did you do anything else on this case?

7 A No.

8 Q All right. Were you involved in the search of
9 his --

10 A House?

11 Q Yes.

12 A No.

13 MS. BROWN: I have no further questions.

14 MR. DAVIDSON: I don't have any. You'll read?

15 THE DEPONENT: Yes.

16 (THEREUPON, THE DEPOSITION WAS CONCLUDED AT
17 11:12 A.M.)

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READ AND SIGN

I have read the foregoing pages
and, except for any corrections
or amendments I have indicated
on the sheet attached for such
purposes, I hereby subscribe to
the accuracy of this transcript.

SIGNATURE OF DEPONENT

DATE

1 STATE OF FLORIDA)

2 COUNTY OF PINELLAS)

3 I, DOREEN M. DEUTSCH, Notary Public for
4 the State of Florida at Large,

5 DO HEREBY CERTIFY that the foregoing deposition was
6 taken before me at the time and place set forth; that the
7 Deponent was by me duly sworn on oath; that I
8 stenographically reported the examination and testimony of
9 said Deponent; and that the foregoing Transcript of
10 Deposition, pages 1 through 11, inclusive, is a true and
11 correct transcription of my stenographic report.

12 I FURTHER CERTIFY that I am not related to nor
13 employed by any of the parties to the instant cause of
14 action of Counsel therein, and that I have no interest in
15 the events or outcome thereof.

16 IN WITNESS WHEREOF, I have hereunto affixed my hand
17 and official seal this 27th day of December, 1989, at
18 Clearwater, Pinellas County, Florida.

19
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Doreen M. Deutsch
DOREEN M. DEUTSCH, R.P.R.
Deputy Official Court Reporter
Notary Public
State of Florida at Large
My Commission Expires: 12/5/92

ATTACHMENT G

CRIME SCENE PROCESSING REQ. ST

REPORT # _____ OFFENSE: ATT HOMICIDE DATE AND TIME OCCURRED: 07-15-89 0001-0015

INDOOR SCENE ONLY: OUTDOOR SCENE ONLY: INDOOR AND OUTDOOR SCENE:

LOCATION _____ GRID: _____ ZONE: _____ BUSINESS: RESIDENTIAL:

VICTIM'S NAME: _____ CONTACT PHONE # _____

TYPE(S) OF CRIME SCENE PROCESSING REQUESTED:

- PHOTOGRAPHS TIRE IMPRESSIONS PAINT CHIPS
- LATENT LIFTS TOOL MARKS HAIRS/FIBERS
- SHOE PRINTS BLOOD COLLECTION GLASS/GLASS FRAGMENTS

OTHER: MASTER BEDROOM QUEEN SIZE BED SHEETS FOR HAIR FIBERS.

VEHICLE PROCESSING: N/A

INSIDE ONLY OUTSIDE ONLY INSIDE AND OUTSIDE

MAKE: _____ COLOR: _____ TAG #: _____ VIN #: _____

LOCATION OF VEHICLE: ABC L.P.D. OTHER: _____

INVESTIGATING OFFICER: B. LAVIGNE SPN #: 849482 SHIFT: A

REQUEST APPROVED BY: _____ DATE OF REQUEST: 07-15-89
SHIFT SUPERVISOR

I.D. UNIT USE ONLY

CRIME SCENE REPORT

DATE REQUEST RECEIVED: 07-15-89 PROCESSED BY: OFC. STEPHEN D. JOINER

DATE PROCESSED: 07-15-89 TIME OF ARRIVAL: 0110 DEPARTURE: 0240

THE ABOVE SCENE WAS PROCESSED AND THE FOLLOWING EVIDENCE COLLECTED:

I PHOTOGRAPHED THE ENTIRE SCENE; 15 B&W PRINTS. I DUSTED ALL PERTINENT AREAS FOR LATENT FINGERPRINTS. I LIFTED TWO PRINTS FROM THE EXTERIOR SIDE OF THE MASTER BEDROOM DOOR KNOB. I LIFTED ONE PRINT FROM THE EXTERIOR SIDE OF THE SECOND BEDROOM DOOR KNOB. I LIFTED SIX PRINTS, TO INCLUDE A PARTIAL PALM PRINT, FROM THE INTERIOR SIDE OF THE SLIDING GLASS DOOR LOCATED IN THE LIVING ROOM. I COLLECTED THE BEIGE SATIN QUEEN SIZE SHEETS FROM THE BED IN THE MASTER BEDROOM; THE POSSIBILITY EXISTS THAT THESE SHEETS CONTAIN SOME SORT OF HAIR FIBERS I PLACED ALL EVIDENCE ITEMS COLLECTED INTO LPD PROPERTY FOR SAFEKEEPING.

PHOTOS TAKEN: YES NO #B&W ROLLS 1 #COLOR ROLLS _____

Stephen D. Joiner
I.D. TECHNICIAN 0117/105937

ATTACHMENT H



ATTACHMENT I



Florida Department of
Law Enforcement

James T. "Tim" Moore
Commissioner

Division of Local Law
Enforcement Assistance
Orlando Regional
Crime Laboratory

500 West Robinson Street
Orlando, Florida 32801
(407) 423-6800
SUNCOM 344-6800

June 29, 1990

TO: Chief J.M. Gallenstein
Largo Police Department
100 East Bay Drive
Largo, FL 34640

FDLE LAB NO. 89 07 3 4303
Agency No. 89-6440

ATTN: Det. Anderson

SUBPOENAS PERTAINING TO
THIS CASE SHOULD REFER TO
FDLE LAB NO. 89 07 3 4303

RE: KEVIN RICHARD HERRICK
Attempted Homicide/
Attempted Sexual Battery

[REDACTED]
PINELLAS COUNTY
071589

Marianne M. Hildreth
Senior Crime Laboratory Analyst
Microanalysis

REFERENCE:

This report has reference to the following exhibits which were submitted to this laboratory on January 11, 1990 (Submission 001) by certified mail #349 131, April 18, 1990 (Submission 002) by UPS #15531377033 and June 14, 1990 (Submission 003) by UPS Next Day Air #15531376865.

EXHIBITS:

The following exhibits are contained in Submission 001:

- 1A Debris recovered from the bedsheets
- 1B(1) Known head hair sample collected from Herrick
- 1B(2) Known pubic hair sample collected from Herrick
- 1C Debris recovered from Herrick's pants
- 1D Debris recovered from Herrick's shirt

The following exhibits are contained in Submission 002:

- 1 Known plucked head hair sample collected from **[REDACTED]**
- 2 Known combed head hair sample collected from **[REDACTED]**
- 3 Known plucked pubic hair sample collected from **[REDACTED]**
- 4 Known combed pubic hair sample collected from **[REDACTED]**

Hagan

The following exhibits are contained in Submission 003:

- 5 Known plucked head hair sample collected from Barfield
- 6 Known combed head hair sample collected from Barfield

SGE 7/1/91
712

Chief J.M. Gallenstein
Page 2
FDLE LAB NO. 89 07 3 4303

RESULTS:

The known hair samples collected from Herrick (1B1 and 1B2), Hagan (1 thru 4) and Barfield (5 and 6) were used for comparison with the questioned hairs contained in Exhibits 1A, 1C and 1D.

No hairs microscopically like those contained in Herrick's known hair samples were found in the debris recovered from the bedsheets (1A).

No hairs microscopically like those contained in Hagan's or Barfield's known hair samples were found in the debris recovered from Herrick's shirt (1D).

Contained within the debris recovered from Herrick's pants (1C) is one Caucasian head hair which appears to have been chemically lightened. Macroscopic and microscopic examinations and comparisons of this hair with the known head hair samples collected from Herrick and Barfield revealed significant differences indicating it did not originate from the sources represented by Exhibits 1B1, 5 or 6. Further examinations and comparisons of this hair with the known head hair sample collected from Hagan (1 and 2) revealed both similarities and dissimilarities such that no conclusion could be reached as to whether or not this hair could have originated from the source represented by Exhibits 1 and 2.

REMARKS:

Exhibits in this case are being returned by certified mail.

The debris recovered from the above-listed exhibits was recovered by a crime laboratory technician as part of the laboratory's standard operating procedure.

MMH/cm



890734303

23-90 Received from vault via P.K. ⇒ 1 brn tape-sealed (Gmc) and red evid. tape-sealed (PAB) man. env. "... 890734303... cert # 349131..." cont ⇒

2-2-90 1 red evid. tape-sealed (SB 1/5/90) man. env. "... item 1(B)... debris items 1(A), 1(C), 1(D)... " cont ⇒

a) 1 red evid. tape-sealed manila envelope "... Hair Samples... 1B..." cont ⇒

#1B(1) ⇒ 1 heat-sealed plastic bag "89-6440... 07-15-89..." cont ⇒
 ~ 20 brn C head hrs. ~1" to ~9" long
 all 14 hrs mtd - 5 slides - permount

#1B(2) ⇒ 1 heat-sealed plastic bag "89-6440... 07-15-89..." cont ⇒
 ~ 25 brn C pubic hrs. ~1/2" to ~2" long
 16 hrs mtd - 3 slides - permount

(bedsheets)

b) 1 red evid. tape-sealed (SB 1/5/90) white paper fold "... 1(A)..." cont ⇒
 sand, misc. fibers, few leaf frags, ~20 lt brn/brn C body hrs, ~15
 lt brn periph C hrs + feces, ~15 anim. hrs, 6 lt brn C h hrs, 3 brn C phrs,
 1 brn C body/facial hr
 10 hrs mtd - 3 slides - permount

1-1-90
 (pants)

c) 1 red evid. tape-sealed (SB 1/5/90) white paper fold "... 1(C)..." cont ⇒
 sand, misc. fibers, plant material, ~5 anim. hrs, ~7 lt brn C h hrs,
 1 lt brn C h hrs, 1 lt brn C h hrs.

890734303

6-90 (shirt)

d) 1 red ets (B 1/5/90) white p. fold .. 1 (D).. "cont ⇒
 sand, misc. fibers, ~5 anim hrs, ~5 Cbhrs, 1 bm c phr, ~3 lbm/bm
 Chhrs.

4 hrs mtd - 1 slide - permount

20-90

sub 02

Received from vault via E. Damps ⇒ 1 brn tape-sealed brn box "890734303..
 pk.. "cont ⇒ 1 clear t.s (JLC) .. plucked and combed scalp and
 pubic hair... "bm.p. bag cont ⇒

#2A ⇒ 1 clr. tape-sealed man. env. "scalp hair plucking.. 4/16/90..
 cont ⇒ folded pc. light green tissue cont ⇒ ~35 dbm/bld
 Chhrs ~ 2 1/2" to ~ 1" long (appear blchd.)

14 hrs mtd - 4 slides - permount

#2B ⇒ 1 clr. tape-sealed man. env. "scalp hair combings" cont ⇒
 folded pc. of light green tissue cont ⇒ black comb and ~20
 bld Chhrs / frags < 1/2" to ~ 1" long

#2C ⇒ 1 clr. tape-sealed man. env. "pubic hair pluckings.." cont ⇒
 folded pc. white tissue cont ⇒ ~15 bm c phrs ~ 3/4" to ~ 2"
 long

13 hrs. mtd - 2 slides permount

#2D ⇒ 1 clr. tape-sealed man. env. "pubic hair combings.. 4/16/90.." cont ⇒
 folded light green tissue cont ⇒ black comb comb

890734303

-20-90

1 anim. hr. frag. (colorless)

-23-90

microscopic comparisons:

(bleached)

thru

-25-90

~~██████████~~ HHS ⇒ C; color prox. $\frac{3}{4}$ " to $1\frac{1}{2}$ " gray brown or med. brn then

immediate color change to yellow → further down, possible 2nd change to light yellow/colorless; rts. ana, tel; num. small cf prox - small # continue down length; medulla frag. to discont, mod, mostly dk; cuticle mod + clear prox. then thin distally; scale protrusion distally; prox. pigm. lt/mod dens, mod. grn sz, mostly peripheral for lighter density hairs - more even for mod density hrs - absent (no pigm.) where bleached; cortex striated distally; tips cut

Herrick HHS ⇒ C; rts. ana, tel, cut; brn or dk. brn → golden brn or golden-brown whole length; num. small cf prox; cut. thin + clear; medulla absent most hairs - few fragmented, mod. lt + dk; pigm. mod density, sm/mod size, even, smooth; tips broken, cut

~~██████████~~ PHS ⇒ C; rts. tel; lt yellow → lt red brn; mod # sm cf prox; cuticle mod + clear; medulla mod. contin. dark; pigm. lt density, sm. grn sz, even distrib, smooth; tips tap.

Herrick PHS ⇒ C; rts tel, ana; lt yellow brn. or med. brn; tel. hrs mod. to numerous cf prox; cuticle thin + clear - cracked distally - lateral splits across shaft; med. discon. thin, lt + dk; pigm. lt/mod dens, mod sz. gms. sl. periph distrib, gen. disp; small short streaks in cortex, esp proximally; shouldering; tips split

1-26-90
thru
6-29-90

Barfield HHS ⇒ C; rts. ^{cut} ana; lt brn → yellow brn; ~~lt brn~~ sm # sm cf prox only; cuticle thin + clear; med. absent most hrs - frag thin lt + dk few hrs - coarser hrs discon distally, mod, clr; pigm. lt dens. sm. grn sz, even, gen. disp; tips cut

890734303

sub.03

20-90 Received from vault via ED. ⇒ 1 clr. + s. (ED) ups Next Day Air envelope
 "890734303.. sub 003.. 6/14/90.. " cont ⇒

26-90 1 clr. + s. (JLB) brn p. bag "... plucked hair sample.. combed hair sample...
 J. Barone.. 6-5-90.. " cont ⇒

2 clear + s. wh. p. folds:

#5 ⇒ 1 clr. + s. (JLB) wh. p. fold "plucked hair.. Darren Barfield
 cont ⇒ ~35 lt brn / brn chhrs ~3" to ~8 1/2" long
 12 hrs. mtd - 3 slides - permount

#6 ⇒ 1 clr. + s. (JLB) wh. p. fold "combed hair.. " cont ⇒ black
 comb and ~30 lt brn / brn chhrs ~2" to ~11" long

SWEEP

SEROLOGY LATENTS FIREARMS
 CHEMISTRY DOCUMENTS CRIME SCENE
 TOXICOLOGY PHOTOGRAPHY OTHER

EVID MATL	REQ	S & R	EXAMS	ANAL	DATE
TRACE					
HAIR Sm.	✓			mmh.	6-29-90
TEXTILES					
PAINT					
GLASS					
PLASTIC					
SOIL					
BLDG MATL					
FRT MATCH					
SHOE					
TIRE					
FILAMENT					

RUSH

NCE 101ERA 7-2-90
 mmh 7-3-90
 OUT 001 HH 4-17-90

**CITY OF LARGO POLICE DEPARTMENT
PROPERTY/EVIDENCE REPORT**

CASE NO. 07-6440
CONNECTING CASE NO. DONE

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROLLING NO. 89-6440
BIN # 0-48
COMPUTER ENTERED
DATE 7/17/89 BY Duel

DATE 07 15 89 00 17
MO DAY YEAR TIME

OFFENSE THEFT
LOCATION 4017 AUDUBON DR.

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES IF YES, BOOKING OFFICER'S SIGNATURE

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
NAME _____
ADDRESS _____
CITY/STATE SEE BELOW
ZIP _____ D.O.B. _____
TELEPHONE NO. _____
RES. _____ BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY Duel
TIME RECEIVED 1030 HOURS
DATE 07 17 89
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

OFFICER RECOVERING PROPERTY SIGNATURE Stephan Jarvis SPN # 105937
OFFICER TRANSPORTING PROPERTY SIGNATURE Stephan Jarvis SPN # 105937

PERSON STATUS PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)
STATUS NAME LAST HARAN FIRST CHERYL MIDDLE LYNN RACE W SEX F DATE OF BIRTH 08 08 67

STREET NO. 4017 STREET NAME AUDUBON DRIVE BLDG. # _____ APT. # _____ LOT # _____ CITY LARGO STATE FL ZIP NO. 34640

REMARKS SHEETS (ON TOP OF WHICH INCIDENT OCCURRED) TAKEN FROM PLUMB.
TELEPHONE NO. HOME 384962 BUSINESS DONE

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. 07 PROPERTY USE ONLY CASE NO. 89-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>E</u>		<u>1.</u>	<u>SHEETS</u>	<u>N/A</u>	<u>VNL</u>	<u>(1) PAIR OF QUEEN SIZE, BEIGE SATIN SHEETS (FITTED COVER)</u>
		<u>2.</u>				
		<u>3.</u>				
		<u>4.</u>				
		<u>5.</u>				
		<u>6.</u>				
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		<u>12.</u>				
		<u>13.</u>				
		<u>14.</u>				
		<u>15.</u>				
		<u>16.</u>				

REPORTING OFFICER: Stephan Jarvis 0117 DATE/TIME REPORT COMPLETED 07 15 89 08 55
SPN # 105937 MO DAY YR TIME
REVIEWED & APPROVED BY: P.B. Phillips RANK _____ (SIGNATURE) SUPERVISOR PAGE 1 OF 1

**CITY OF LARGO POLICE DEPARTMENT
PROPERTY/EVIDENCE REPORT**

CASE NO. 89-6490
CORRECTING CASE NOS. None

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. 89-6490
BIN # D48
COMPUTER ENTRY DATE 11/17/89

DATE 07 17 89 08 17
MO DAY YEAR TIME

OFFENSE MURDER
LOCATION AUDOBON DR

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES

IF YES, BOOKING OFFICER'S SIGNATURE _____

- PROPERTY MAY BE
- RELEASED TO OWNER
 - HOLD CASE PENDING
 - STATUS CHANGED
 - DESTROYED
 - PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
NAME _____
ADDRESS see below
CITY/STATE below
ZIP below
TELEPHONE NO. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY: [Signature]
TIME RECEIVED 1030 HOURS
DATE 07 17 89
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

PROCESSING: PCSO FBI PDLE

OFFICER RECOVERING PROPERTY SIGNATURE [Signature] SPN # 81948C OFFICER TRANSPORTING PROPERTY SIGNATURE [Signature] SPN # 81948C

PERSON STATUS: FO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS S NAME LAST HERRICK FIRST KEVIN MIDDLE TRIMARA RACE W SEX M DATE OF BIRTH 07 03 66

STREET NO. 4015 STREET NAME AUDOBON DR. BLDG. # _____ APT. # _____ LOT # _____ CITY LARGO STATE FL ZIP NO. 34640

REMARKS HAIR FIBERS OF SUSPECT WITH UNIFORM FOR ANALYSIS. TELEPHONE NO. HOME 5351195 BUSINESS None

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN # D48 PROPERTY USE ONLY CASE NO. 89-6490

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>E</u>		<u>1</u>	<u>HAIR</u>	<u>N/A</u>	<u>N/A</u>	<u>HEAD HAIR OF SUSP.</u>
<u>E</u>		<u>2</u>	<u>HAIR</u>	<u>N/A</u>	<u>N/A</u>	<u>PUBIC HAIR OF SUSP.</u>
		<u>3</u>				
		<u>4</u>				
		<u>5</u>				
		<u>6</u>				
		<u>7</u>				
		<u>8</u>				
		<u>9</u>				
		<u>10</u>				
		<u>11</u>				
		<u>12</u>				
		<u>13</u>				
		<u>14</u>				
		<u>15</u>				
		<u>16</u>				

REPORTING OFFICER: [Signature] SPN # 0117/101517 DATE/TIME REPORT COMPLETED: 07 17 89 08 17
MO DAY YR TIME
REVIEWED & APPROVED BY: [Signature] SUPERVISOR PAGE 1 OF 1
RANK (SIGNATURE)

CITY OF LARGO POLICE DEPARTMENT PROPERTY/EVIDENCE REPORT

CASE NO. 89-6440

CONNECTING CASE NOS.

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
BOOKING NO. 000740
MUNICIPAL # 44
COMPLAINT ENTRY DATE 7/17/90

DATE 07/16/90 1500
MO DAY YEAR TIME

OFFENSE Att. Homicide
LOCATION 4013 Audubon Dr.

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES IF YES, BOOKING OFFICER'S SIGNATURE

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
NAME _____
ADDRESS _____
CITY/STATE _____
ZIP _____ D.O.B. _____
TELEPHONE NO. _____ RES. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY [Signature]
TIME RECEIVED 11:40 HOUR
DATE 7/17/90
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

PROCESSING: LPD PCSO FBI POLE

OFFICER RECOVERING PROPERTY SIGNATURE [Signature] SPN # 91479 OFFICER TRANSPORTING PROPERTY SIGNATURE [Signature] SPN # 90477

PERSON STATUS: PO-OWNER G-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS NAME LAST HAGAN, CHERYL FIRST LYNN MIDDLE _____ RACE W SEX F DATE OF BIRTH 03/29/67

STREET NO. STREET NAME LRA 4013 AUDUBON DR. BLDG # APT. # LOT # _____ CITY LARGO STATE FL ZIP NO. 34641

REMARKS REC'D FROM JANE JANNING, ARNP, S.A.U.C. TEAM TELEPHONE NO. HOME 355-3226 BUSINESS LIN

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK SIGNATURE [Signature] PROPERTY USE ONLY CASE NO. 000740

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
14	E	1	HAIR SAMPLES	—	—	COLLECTED FROM VICTIM
		2				PLUCKED AND COMBED
		3				SCALP AND PUBIC HAIR
		4				
		5				
		6				
		7				
		8				
		9				
		10				
		11				
		12				
		13				
		14				
		15				
		16				

REPORTING OFFICER [Signature] DATE/TIME REPORT COMPLETED 07/16/90 20:15:35
REVIEWED & APPROVED BY [Signature] SUPERVISOR PAGE 1 OF 1

CITY OF LARGO POLICE DEPARTMENT

PROPERTY/EVIDENCE REPORT

CASE NO. 89-6440

CONNECTING CASE NOS. _____

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
 (1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
 (4) NARCOTIC/DRUG IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
 CONTROL UNIT
R00-20-3
 BIN NO. 148
 COMPUTER ENTRY
 DATE 6/5/90 BY [Signature]

DATE 06 05 90 09 57
 MO DAY YEAR TIME

OFFENSE Att. Homicide
 LOCATION 4017 Audobon Dr.

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING?
 NO YES (EXCEPT F.P. CHIEF)
 IF YES, BOOKING OFFICER'S SIGNATURE: [Signature]

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
 NAME: Hagan, D. Barfield
 ADDRESS: 4017 Audobon Dr.
 CITY/STATE: Largo FLA
 ZIP: 34640-0008
 TELEPHONE NO. _____

PROPERTY RECEIVED BY [Signature]
 TIME RECEIVED 10:30 HOUR
 DATE 060590
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

OFFICER RECOVERING PROPERTY: SIGNATURE [Signature] SPN 98536
 OFFICER TRANSPORTING PROPERTY: SIGNATURE [Signature] SPN 98536

PERSON STATUS: PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)
 STATUS: V NAME LAST: Barfield FIRST: Darren MIDDLE: _____ RACE: W SEX: M DATE OF BIRTH: 05 01 66

STREET NO. 4017 STREET NAME Audobon Dr. BLDG. APT. # _____ LOT # _____ CITY Largo STATE FLA ZIP NO. 34640

REMARKS: Victim # Hagan, Cheryl-Lynn 3-29-69 DOB
 TELEPHONE NO. _____
 HOME _____
 BUSINESS _____

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. 148 PROPERTY USE ONLY CASE NO. 89-6440

15
16
17
18

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
E	✓	1	Plucked Hair	from Darren Barfield		
E	✓	2	Combed Hair	w/comb, from Darren Barfield		
E		3	Voluntary Elim.	Prints from Darren Barfield		
E		4	Voluntary Elim.	Prints from Cheryl Hagan		
		5				
		6				
		7				
		8				
		9				
		10				
		11				
		12				
		13				
		14				
		15				
		16				

REPORTING OFFICER: [Signature] SPN 98536

REVIEWED & APPROVED BY: [Signature] SPN 0251590

DATE/TIME REPORT COMPLETED: 06 05 90 10 03
 NO. _____ DAY _____ YR _____ TIME _____
 SUPERVISOR PAGE _____ OF _____

FLORIDA DEPARTMENT OF LAW ENFORCEMENT
REQUEST FOR EXAMINATION OF PHYSICAL EVIDENCE

LAB USE ONLY

Is This First Submission? YES NO

If No, Lab Case No. _____

If Narcotics, Sale Possession

SUBMITTING AGENCY ADDRESS:
Largo Police Department
100 East Bay Drive
Largo, Florida 34640

REPORT TO Officer Brian LaVigne
TELEPHONE 813-587-6717

#44

Lab Case No. 890734303

Sub. No. _____
OFFENSE Att. Homicide/Att. Sexual Battery
OFF DATE 07-15-89 COUNTY Pinellas
AGY CASE NO. 89-6440

DELIVERED VIA Samuel Zellars

RECEIVED BY T. Smith
LAB/TIME 03 10:00 DATE 7-26-89

Do Not Write In This Space

LAB 03	UPDATE _____	LAB NO. 890734303
DATE 072689		SUB. 01
VIA Zellars		7 ITEMS 03
CO 52	AGY TYPE PD	ORI FL0520800
7 OFF 0200	DATE 071589	AGY 896440
CHEM _____	DOC _____	CASE NO. _____
FIRE _____	LAT _____	MIC S
1 TOX _____	PHOTO _____	SER P
		OSC _____

tys

VICTIMS (Last name first)

1 _____
2 _____

SUBJECTS (Last name first)

3 HERRICK, Kevin Richard
4 _____
5 _____
6 _____

PLEASE TYPE THIS FORM

Use remaining space and additional sheets for (1) listing and describing items to be examined (2) analyses requested, and (3) summary of case.

1. a) One (1) set of beige satin sheets
b) Hair fibers obtained from subject
c) subject's pants
d) subject's shirt
e) Knife obtained from subject
2. a) If hair fibers are lifted from the sheets, compare them with hair fibers obtained from the subject. (Subject consented to give hair samples).
b) Identify stains on pants, shirt and knife as to whether stains are blood. If they are blood stains, please identify if human blood and from which blood group type.
3. The subject entered the victim's residence without permission. The victim was sleeping in the bedroom on her bed. The subject laid on top of the victim, placing his genitals in her face. During this act, the subject held a scalpel against the victim's throat demanding that she perform a sex act.

RECD: 2 sealed paper bags; 1 sealed manila envelope

FLORIDA DEPARTMENT OF LAW ENFORCEMENT
 REQUEST FOR EXAMINATION OF PHYSICAL EVIDENCE

LAB USE ONLY

Is This First Submission? YES NO

Lab Case No. 890734303

Lab Case NO. _____
 If Narcotics, Sale Possession

Sub. No. 001

SUBMITTING AGENCY ADDRESS:
Largo Police Department
100 East Bay Drive
Largo, Fla 34640
 REPORT TO OFFICER Brian DeVigne
 TELEPHONE (313) 587-6717

OFFENSE Att. Homicide/Att. Sexual Batter
 OFF DATE 07-15-89 COUNTY Pinellas
 AGY CASE NO. 89-6440

DELIVERED VIA Cert. 349 131

RECEIVED BY G.M. MCKNIGHT
 LAB/TIME 05/3:40 PM DATE 011190

Do Not Write In This Space

LAB <u>35</u>	UPDATE <u>T</u>	LAB NO. <u>890734303</u>
DATE <u>011190</u>		SUB. <u>001</u>
VIA <u>CERT #349131</u>		ITEMS <u>1</u>
CO <u>52</u>	AGY TYPE <u>PD</u>	ORI <u>FLO520800</u>
OFF <u>090C</u>	DATE <u>071589</u>	AGY <u>896440</u>
		CASE NO. _____
CHEM _____	DOC _____	MIC <u>P</u>
FIRE _____	LAT _____	SER _____
TOX _____	PHOTO _____	CS _____

VICTIMS
 1 [REDACTED]
 2 _____

SUBJECTS
 3 HERRICK, Kevin Richard
 4 _____
 5 _____
 6 _____

PLEASE TYPE THIS FORM

Use remaining space and additional sheets for (1) listing and describing items to be examined (2) analyses requested, and (3) summary of case.

ITEMS SUBMITTED:

ITEM 1 (B) -- Suspect Hair/Fibers

DEBRIS ITEMS-- 1(A), 1(C), 1(D).

ATTN: RUSH STATUS
 TRIAL SET FOR 01-23-89

ANALYSIS REQUESTED:

MICROANALYSIS

EVIDENCE RECD IN TAMPA ON 07-26-89 BY T. SMITH. TRANSFERRED TO ORLANDO ON 01-09-90 BY T. SMITH

RECEIVED ONE SEALED MANILA ENVELOPE. OPENED TO OBTAIN CASE TRACKING FORM.

Evidence Return: Exhibit(s) 1B/debris 1A, 1C, 1D + slides
 To _____ Date mmh/7-2-90
 From _____ Date _____ Analyst _____

JAMES T. MOORE, Commissioner

FLC DA DEPARTMENT OF LAW ENFORCEMENT
REQUEST FOR EXAMINATION OF PHYSICAL EVIDENCE

LAB USE ONLY

Is This First Submission? YES NO

If No, Lab Case No. 890734303

If Narcotics, Sale Possession

SUBMITTING AGENCY ADDRESS:
LARGO POLICE DEPARTMENT
100-East Bay Drive
Largo Fla. 34640

REPORT TO Officer Brian LaVigne
TELEPHONE (813) 587-6717

Lab Case No. 890734303

Sub. No. 017

OFFENSE Att. Homicide/Att. Sex Battery
OFF DATE 07-15-89 COUNTY Pinellas
AGY CASE NO. 89-6440

DELIVERED VIA UNITED PARCEL SERVICE 15531377033

RECEIVED BY P. KRAUCHINAS
LAB/TIME 05/9-40A DATE 081890

Do Not Write In This Space

LAB <u>05</u>	UPDATE <u>T</u>	LAB NO. <u>890734303</u>
DATE <u>081890</u>		SUB. <u>002</u>
VIA <u>UPS 15531377033</u>		7 ITEMS <u>01</u>
CO <u>52</u>	AGY TYPE <u>PI</u>	ORI <u>FL0520800 1</u>
7 OFF <u>110A</u>	DATE <u>071589</u>	AGY <u>896440</u>
CASE NO.		
CHEM _____	DOC _____	MIC <u>p</u>
FIRE _____	LAT _____	SER _____
1 TOX _____	PHOTO _____	OSC _____

VICTIMS (Last name first)

1 [REDACTED]
2 _____

SUBJECTS (Last name first)

3 Herrick, Kevin Richard
4 _____
5 _____
6 _____

PLEASE TYPE THIS FORM

Use remaining space and additional sheets for (1) listing and describing items to be examined (2) analyses requested, and (3) summary of case.

RECEIVED DIRECT FROM CONTRIBUTOR

ITEMS SUBMITTED:

- Item 1- known plucked head hair from victim
- Item 2- Known combed head hair from victim
- Item 3- Known plucked pubic hair from victim
- Item 4- Known combed pubic hair from victim

ANALYSIS REQUESTED: Samples from victim requested by FDLE

SUMMARY OF CASE: See previous analysis

RECEIVED ONE SEALED BOX

DISPOSITION OF EVIDENCE	
RETURNED	BY <u>Express Mail # 3207622 X</u>
EXHIBITS	<u>1-4 + microscope slides</u>
DATE	<u>7-2-90 mmh.</u>
RECEIVED	BY _____

ROBERT R. DEMPSEY
COMMISSIONER

Date Analyst

FLORIDA DEPARTMENT OF LAW ENFORCEMENT
REQUEST FOR EXAMINATION OF PHYSICAL EVIDENCE

LAB USE ONLY

Is This First Submission? YES NO

If No, Lab Case No. 890734303

Acquisition, Sale Possession

SUBMITTING AGENCY ADDRESS:
LARGO POLICE DEPARTMENT
100-East Bay Drive
Largo Fla. 34640

REPORT TO Officer Brian LaVigne
TELEPHONE (813) 587-6717

Lab Case No. 890734303

Sub. No. 002

OFFENSE Att. Homicide/Att. Sex Battery

OFF DATE 07-15-89 COUNTY Pinellas

AGY CASE NO. 89-6440

DELIVERED VIA UNITED PARCEL SERVICE 15531377033

RECEIVED BY P KRAUCHUNAS

LAB/TIME 05/9:40A DATE 041890

Do Not Write In This Space

LAB <u>35</u>	UPDATE <u>T</u>	LAB NO. <u>890734303</u>
DATE <u>041890</u>		SUB. <u>002</u>
VIA <u>UPS 15531377033</u>		7 ITEMS <u>01</u>
CO <u>52</u>	AGY TYPE <u>PD</u>	ORI <u>FL0520800</u>
7 OFF <u>110A</u>	DATE <u>071589</u>	AGY <u>896440</u>
CASE NO. _____		
CHEM _____	DOC _____	MIC <u>p</u>
FIRE _____	LAT _____	SER _____
1 TOX _____	PHOTO _____	OSC _____

PLEASE TYPE THIS FORM

VICTIMS (Last name first)

1 [REDACTED]

2 _____

SUBJECTS (Last name first)

3 Herrick, Kevin Richard

4 _____

5 _____

6 _____

Use remaining space and additional sheets for (1) listing and describing items to be examined (2) analyses requested, and (3) summary of case.

RECEIVED DIRECT FROM CONTRIBUTOR

ITEMS SUBMITTED:

Item 1- known plucked head hair from victim

Item 2- Known combed head hair from victim

Item 3- Known plucked pubic hair from victim

Item 4- Known combed pubic hair from victim

ANALYSIS REQUESTED: Samples from victim requested by FDLE

SUMMARY OF CASE: See previous analysis

RECEIVED ONE SEALED BOX

ROBERT R. DEMPSEY
COMMISSIONER

Date

Analyst



Florida Department of
Law Enforcement

James T. "Tim" Moore
Commissioner

Division of Local Law
Enforcement Assistance
Orlando Regional
Crime Laboratory

500 West Robinson Street
Orlando, Florida 32801
(407) 423-6800
SUNCOM 344-6800

April 09, 1990

TO: Chief Joseph Gallenstein
Largo Police Department
100 East Bay Drive
Largo, FL 34640

ATTN: Officer Brian LaVigne

RE: KEVIN RICHARD HERRICK
Att. Homicide/Att. Sexual Battery
[REDACTED]
PINELLAS COUNTY
071589

FDLE LAB NO. 89 07 3 4303
Agency No. 89-6440

SUBPOENAS PERTAINING TO
THIS CASE SHOULD REFER TO
FDLE LAB NO. 89 07 3 4303

nimb.
Marianne M. Hildreth
Senior Crime Laboratory Analyst
Microanalysis

REFERENCE:

This report has reference to the following exhibits which were submitted to this laboratory on January 11, 1990 by certified mail 349 131.

EXHIBITS:

- 1A Debris recovered from the bedsheets
- 1B(1) Known head hair sample collected from Herrick
- 1B(2) Known pubic hair sample collected from Herrick
- 1C Debris recovered from Herrick's pants
- 1D Debris recovered from Herrick's shirt

RESULTS:

The debris recovered from the bedsheets (1A), pants (1C) and shirt (1D) contains several Caucasian head hairs and pubic hairs which are suitable for comparison purposes. However, no comparative examinations could be performed on these hairs due to the lack of known head and pubic hair samples from [REDACTED]. It is requested that approximately thirty to fifty

SGR 4/16/90

unt 12/1/90

Chief Joseph Gallenstein
Page Two
FDLE Lab. No. 89 07 3 4303

full-length hairs be pulled from various areas around the head/pubic region in order to form an adequate known head/pubic hair sample of an individual.

The known hair samples collected from Herrick, 1B(1) and 1B(2), are sufficient for comparison purposes.

REMARKS:

These exhibits are being retained in the laboratory pending the submission of [REDACTED] known hair samples.

MMH:mas

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
REQUEST FOR EXAMINATION OF PHYSICAL EVIDENCE**

LAB USE ONLY

Is This First Submission? YES NO

If No, Lab Case No. 89-0734303

If Narcotics, Sale Possession

SUBMITTING AGENCY ADDRESS:
LARGO POLICE DEPT.
100 EAST BAY DR.
LARGO, FL. 34640

REPORT TO DET. ANDERSON
TELEPHONE 813-587-6728 ext. 3412

Lab Case No. _____

Sub. No. _____
OFFENSE ATTEMPT HOMICIDE
OFF DATE 07/15/89 COUNTY PINELLAS
AGY CASE NO. 89-6440

DELIVERED VIA: _____

RECEIVED BY: _____

LAB/TIME: _____ DATE: _____

VICTIMS (Last name first)

- 1 HAGAN, CHERYL LYNN
- 2 BARFIELD, DARREN SCOTT

SUBJECTS (Last name first)

- 3 HERRICK, KEVIN RICHARD
- 4 _____
- 5 _____
- 6 _____
- 8 _____

LAB _____	UPDATE _____	LAB NO. _____
DATE _____		SUB. _____
VIA _____		7 ITEMS _____
CO _____	AGY TYPE _____	ORI _____
7 OFF _____	DATE _____	AGY _____
		CASE NO. _____
CHEM _____	DOC _____	MIC _____
FIRE _____	LAT _____	SER _____
TOX _____	PHOTO _____	OSC _____

PLEASE TYPE THIS FORM

Use remaining space and additional sheets for (1) listing and describing items to be examined (2) analyses requested, and (3) summary of case.

1. EXHIBITS

- #5 PLUCKED HEAD HAIR FROM V2 DARREN BARFIELD
PACKAGE MARKED E1 FOR IDENTIFICATION PURPOSES
- #6 COMBED HAIR AND COMB
HAIR OBTAINED FROM V2 BARFIELD
PACKAGE MARKED E2 FOR IDENTIFICATION PURPOSES

2. REQUIRED ANALYSES

COMPARE EXHIBITS 5 AND 6 WITH PREVIOUSLY SUBMITTED EXHIBITS:

- 1A SATIN BED SHEET
- 1C SUBJECT'S PANTS
- 1D SUBJECT'S SHIRT

EXHIBITS 1A, 1C and 1D ARE CURRENTLY IN THE CUSTODY OF FDLE
DETERMINE WHETHER EXHIBITS 5 AND 6 ARE OF THE SAME ORIGIN AS EXHIBITS 1A, 1C and 1D.

3. SUMMARY

THE SUBJECT ENTERED THE VICTIM'S RESIDENCE WITHOUT PERMISSION, SUBSEQUENTLY ENTERING HER, VICTIM 1 HAGAN'S BEDROOM. THE SUBJECT LAID ON TOP OF V1 HAGAN, PLACING HIS GENITALS IN HER FACE, AND A SCALPEL AGAINST HER THROAT, DEMANDING THAT SHE PERFORM A SEX ACT.

AFFIDAVIT

I, Lori L. Russo, hereby depose and say that I called the Florida Department of Law Enforcement on or about March 22, 1995. I called at the direction of my brother, Kevin Herrick, to find out the hair analysis test done on case #CRC89-11425CFANO. I was told by Marianne Hildreth that the results of these tests could not be disclosed to me. Someone from the lab would have to be subpoenaed for deposition.



Lori L. Russo

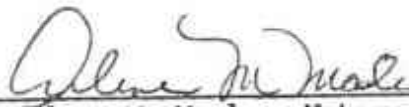
State of Florida

County of Manatee

The foregoing instrument was acknowledged before me this 26th Day of May 1995 by Lori L. Russon who produced FDL #R200532648040 as identification and who did take an oath.

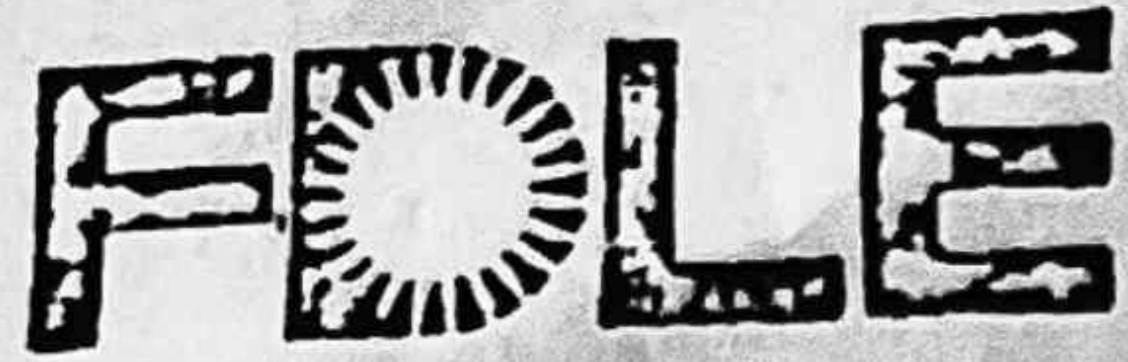


ARLENE M MARLER
My Commission CC416473
Expires Oct. 25, 1998
Bonded by HAI
900-432-1558

By 

Arlene M. Marler, Notary Public

ATTACHMENT J



Florida Department of
Law Enforcement

James T. "Tim" Moore
Commissioner

Division of Local Law
Enforcement Assistance
Tampa Regional
Crime Laboratory

4000 W. Buffalo Ave.
P.O. Box 151776
Tampa, Florida 33684
(813) 871-7125
SUNCOM 542-7125

January 9, 1990

TO: Honorable Joseph Gallenstein
Chief of Police
Largo Police Department
100 East Bay Drive
Largo, Florida 34640

FDLE LAB NO. 89 07 3 4303
Agency No. 89-6440

ATTN: Officer Brian LaVigne

SUBPOENAS PERTAINING TO
THIS CASE SHOULD REFER TO
FDLE LAB NO. 89 07 3 4303

RE: KEVIN RICHARD HERRICK
Attempted Homicide/Attempted
Sexual Battery
CHERYL LYNN HAGAN
Pinellas County
07-15-89

Karen L. Ostman
Karen L. Ostman
Crime Laboratory Analyst
Serology Section

REFERENCE:

This report is in reference to the following exhibits which were submitted on July 26, 1989 by Larry Zellers.

EXHIBITS:

- 1a. beige satin bedsheets
- 1e. folding blade pocket knife

RESULTS:

Examination of exhibit 1a failed to demonstrate the presence of semen stains.

Examination of exhibit 1e failed to demonstrate the presence of blood stains.

REMARKS:

All exhibits will be retained at this laboratory for pickup at your earliest convenience.

KLO:skg

Records

FDLE



Florida Department of
Law Enforcement

Division of Local Law
Enforcement Assistance
Tampa Regional
Crime Laboratory

4000 W. Buffalo Ave.
P.O. Box 151776
Tampa, Florida 33684
(813) 871-7125
SUNCOM 542-7125

James T. "Tim" Moore
Commissioner

July 2, 1990

TO: Honorable J.M. Gallenstein
Chief of Police
100 East Bay Drive
Largo, Florida 34640

FDLE LAB NO. 89 07 3 4303
Agency No. 89-6440

ATTN: Property Control Unit

SUBPOENAS PERTAINING TO
THIS CASE SHOULD REFER TO
FDLE LAB NO. 89 07 3 4303

RE: KEVIN RICHARD HERRICK
Att. Homicide/Att. Sex Battery
CHERYL LYNN HAGAN
DARRIN BARFIELD
Pinellas County
July 15, 1989

Karen L. Ostman emb
Karen L. Ostman
Crime Laboratory Analyst
Serology Section

REFERENCE:

This report is in reference to the following exhibits which were submitted on June 12, 1990 by Sergeant M.Y. Smiter.

EXHIBITS:

(02)

1. One tube of blood represented as being from Darrin Barfield
2. beige satin sheets [previously submitted in (01)]
3. red shirt
4. blue jeans
5. folding blade pocket knife [previously submitted in (01)]

RESULTS:

Exhibit (02) 1, the liquid blood sample, is blood group "O".

Examination of Exhibits (02) 2, 3 and 4 failed to demonstrate the presence of blood stains.

Exhibit (02) 5 was not re-examined.

REMARKS:

All exhibits will be retained at this laboratory for pickup at your earliest convenience.

KLO:dna

ATTACHMENT K

DECLARATION OF AMANDA LEWIS, PH.D.

I, Amanda Lewis, Ph.D., declare under penalty of perjury as follows:

Background and Qualifications

1. My name is Amanda Lewis. I am over the age of eighteen and competent to make this declaration.
2. I hold a Ph.D. in Criminology, Law, and Society.
3. I am currently an Assistant Teaching Professor at Georgetown University, where I teach courses in interdisciplinary social science and criminal justice.
4. I previously served as a Research Associate with the Georgetown University Prisons and Justice Initiative, where my work focused on wrongful conviction investigation and post-conviction case review.
5. I am also a registered private investigator in the Commonwealth of Virginia.
6. My academic and investigative work focuses on wrongful convictions and post-conviction investigation.
7. In the matter of State v. Kevin Herrick, Case No. CRC89-11425CFANO, I served as a defense investigator and post-conviction research consultant.
8. The statements contained in this declaration are based on my personal knowledge unless otherwise indicated.

Scope of Investigation

9. Between approximately March 2025 and April 2026, I conducted investigative work related to Mr. Herrick's case.
10. My investigation included:
 - review of discovery materials and case records
 - public records requests to state and local agencies
 - background research using public records databases
 - field investigation and site visits
 - outreach to potential witnesses
 - recovery and preservation of physical items
 - consultation with forensic experts
11. My investigation focused on identifying previously undisclosed evidence, evaluating the forensic conclusions presented at trial, and determining whether additional investigative leads or alternative suspects existed.

Review of Discovery Materials

12. In early March 2025, I reviewed approximately 1,600 pages of documents produced by the Pinellas County State Attorney's Office.
13. During this review, I located a two-page vehicle/property report embedded within the discovery production.
14. The document appeared unusual compared with other records in the file.
15. Specifically, the report lacked a visible case number and did not clearly identify the investigation to which it related.
16. Because the document lacked identifying information, its relevance to the underlying investigation was not immediately apparent.

Contents of the Vehicle Property Report

17. The report referenced a vehicle associated with an August 8, 1989 criminal mischief complaint.
18. The report included both a vehicle identification number (VIN) and a license plate number.
19. Despite the presence of the VIN, the report did not identify the registered owner of the vehicle, even though VIN numbers are typically used to determine vehicle ownership.
20. The report also referenced contact with a "park manager."
21. However, the document did not identify the name or location of the park referenced in that entry.
22. Because the report lacked a case number and identifying information linking it to a particular investigation, the document appeared within the discovery production without clear context explaining its significance.
23. At the time I first located the document, it was not clear whether the report related to the Herrick investigation or had been included in the file inadvertently.

Identification of the Vehicle Owner

24. Because the vehicle/property report did not identify the registered owner of the vehicle despite containing the VIN and license plate number, I submitted a public records request to the Florida Department of Highway Safety and Motor Vehicles (DHSMV) seeking to determine the identity of the vehicle's registered owner.
25. The response to that request was returned on April 28, 2025, to a shared MuckRock account used for public records requests associated with the Making an Exoneree Program at Georgetown University.
26. At the time, I had been advised by a Florida investigator that the vehicle/property report may have been mistakenly included in the discovery materials and might not be connected to the Herrick case.

27. As a result, I was not actively monitoring that account for a response related to this request.
28. On June 11, 2025, while reviewing records during a training session with law students, I located the DHSMV response within the MuckRock account.
29. The DHSMV records identified Paul Fredette as the registered owner of the vehicle associated with the VIN and license plate referenced in the vehicle/property report.
30. I informed Kevin Herrick and other members of his defense team of this discovery on June 11, 2025.
31. Following this discovery, I began conducting background research regarding Paul Fredette.

Background of Paul Fredette Identified During Investigation

32. After identifying Paul Fredette as the registered owner of the vehicle referenced in the vehicle/property report, I conducted additional background research concerning him.
33. Public records revealed that Paul Fredette had previously been charged in 1979 with sexual battery involving his minor daughter.
34. According to investigative reports associated with that case, the abuse had occurred over a period of several years prior to the charge being filed.
35. Court records indicate that Fredette ultimately confessed to the abuse after initially being found incompetent to stand trial.
36. I reviewed investigative materials associated with that case during the course of my investigation.
37. During my investigation I also spoke with Rita Rudny, who had known members of the Fredette family for many years and was familiar with Paul Fredette through his niece, Annette Gendron.
38. Ms. Rudny described Fredette as socially isolated and prone to anger and heavy drinking, and indicated that family members had described him as abusive within the household.
39. Ms. Rudny also indicated that Fredette had a longstanding history of inappropriate conduct involving girls and young women and was widely viewed by family members as lacking empathy and exhibiting rigid and socially unusual behavior.
40. Ms. Rudny also described aspects of Paul Fredette's background that had been discussed within the family. According to Ms. Rudny, Fredette had sustained a traumatic brain injury during childhood and was described by family members as having longstanding behavioral and social difficulties.
41. Ms. Rudny indicated that Fredette was known within the family as socially withdrawn and prone to angry outbursts, and that he often displayed rigid or black-and-white thinking in his interactions with others.
42. She further explained that in later years Fredette became intensely focused on religious materials and was known to spend long periods listening to recorded sermons and religious broadcasts.
43. According to Ms. Rudny, members of the family described Fredette as having difficulty maintaining normal relationships and as lacking empathy in his interactions with others.

44. During my investigation I also located a newspaper advertisement from the mid-1980s indicating that Paul Fredette operated a lawn-care service in the area. The advertisement indicated that Fredette performed lawn mowing and related services for local residences.

Residence of Paul Fredette

45. Public records indicated that Paul Fredette lived at Westgate Mobile Home Park during the relevant time period.
46. Westgate Mobile Home Park is located approximately three minutes from the scene of the July 1989 attack on Cheryl Hagan and Scott Barfield.
47. The vehicle/property report referenced contact with a "park manager," although the report did not identify the location of the park referenced in the entry.
48. Because Fredette resided at Westgate Mobile Home Park in close proximity to the crime scene, I conducted investigative outreach in that area.

Potential Connections Identified During Investigation

49. During the course of my investigation, I examined whether Paul Fredette or members of his family may have had connections to individuals associated with the victims.
50. Public records research revealed that Paul Sullivan, who had previously been married to Rosiland Sullivan (also known as Rosiland Townsend), was later romantically involved with Carol Fredette, the sister of Paul Fredette.
51. Public records and investigative reports indicate that Rosiland Sullivan/Townsend was a first-degree relative of Cheryl Hagan, although because Rosiland Sullivan is deceased I have not been able to independently confirm the precise nature of that relationship.
52. Property records indicate that Paul Sullivan and Carol Fredette jointly purchased property together in 1986, reflecting an ongoing relationship during the time period surrounding the 1989 attack.
53. During my investigation I also reviewed a 1990 Largo Police Department incident report involving Michael Fredette, the son of Paul Fredette.
54. In that incident, Michael Fredette was arrested after assaulting a police officer and a paramedic.
55. The report listed Paul Fredette and Dawn Higgs as witnesses to that incident, indicating that they were present together at the time.
56. Public records and witness information indicate that Dawn Higgs was Michael Fredette's girlfriend and attended high school with Cheryl Hagan and Scott Barfield.
57. During my investigation I also identified potential connections through employment at Honeywell.
58. Barbara Forrester confirmed that herself and David Stewart, who lived in the triplex next door to the victims at the time of the attack, were both employed at Honeywell during the relevant time period.

59. Additionally, Rita Rudny, as well as children of Paul Sullivan, confirmed that Carol Fredette and Paul Sullivan worked at Honeywell during that same period.
60. In addition, George Barfield, the father of Scott Barfield, was also employed at Honeywell during that time.
61. I have not confirmed whether all of these individuals knew each other through their employment.
62. However, during my correspondence with Barbara Forrester, she indicated that she socialized with other Honeywell employees during that period.
63. Rita Rudny, who was familiar with Carol Fredette and Paul Sullivan, also indicated that they socialized with other Honeywell employees at the time.

Confirmation of Victim Name Redaction

64. After identifying Paul Fredette as the registered owner of the vehicle referenced in the report, I sought clarification regarding why the vehicle/property report appeared in the discovery materials without identifying information linking it to the Herrick investigation.
65. On July 15, 2025, the Office of the State Attorney for the Sixth Judicial Circuit confirmed in writing that the victim's name had been redacted from the report pursuant to Florida's public records exemption for sexual offense victims under Section 119.071(2)(h), Florida Statutes.
66. The removal of the victim's name from the report obscured the connection between the document and the underlying investigation.

Largo Police Department Records and Evidence Destruction

67. On June 13, 2025, I obtained records from the Largo Police Department relating to the physical evidence collected in Mr. Herrick's case.
68. Those records indicated that most physical evidence associated with the investigation had been destroyed on August 4 and August 5, 1992.
69. These destruction dates occurred immediately prior to the issuance of the appellate mandate in Mr. Herrick's direct appeal.
70. The records also revealed that chain-of-custody documentation for some items of evidence was incomplete or missing, including documentation related to the firearm referenced at trial.
71. In response to my requests, Dominick Precopio of the Largo Police Department located thirty-seven pages of surviving records preserved on microfilm.
72. These records contained documentation relating to the destruction of evidence as well as references to additional investigative materials created during the original investigation.
73. The materials referenced supplemental investigative reports authored by Officers Paulson and Hollingsworth.

74. These supplemental reports were not included in the discovery materials previously provided in this case, and prior to reviewing the Largo Police Department records I was unaware that those reports existed.
75. The surviving Largo Police Department records also indicate that a 911 call was received the night of the attack in which a license plate number was reported.
76. I have not located any record showing that the 911 recording, dispatch documentation, or any BOLO notice referencing that license plate number was provided to the defense.
77. The Paulson and Hollingsworth reports referenced in the Largo Police Department records are not present in the materials produced by the State Attorney's Office, suggesting that they may not have been included in the discovery materials available to the prosecution or the defense.
78. Prior to obtaining these records from the Largo Police Department in 2025, neither I nor other members of the defense team were aware that these materials existed.
79. Based on my review of the discovery materials produced by the State Attorney's Office in this case, I have not located any record showing that the following materials were provided to the defense at the time of trial: (a) the 911 recording in which a license plate number was reportedly provided, (b) any BOLO or dispatch notice relating to that license plate number, or (c) the supplemental investigative reports authored by Officers Paulson and Hollingsworth that are referenced in the surviving Largo Police Department records. Prior to obtaining the Largo Police Department records in 2025, neither I nor other members of the defense team were aware that these materials existed.

Declaration

I declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

Executed this 22 day of April, 2026.

Amanda Lewis

Amanda Lewis, Ph.D.

ATTACHMENT L

SUPPLEMENT/CONTINUATION

ADMIN.	Agency ORI Number FLO 5 2 0 8 0 0	by Name LARGO POLICE DEPARTMENT	1 Orig 2. Sup <u>2</u>	JUV	
Offense Description <u>Criminal Mischief</u>					

I received a phone call from the park manager. She had seen the suspect vehicle enter the park and obtained the tag number for the vehicle. W-2

Re advised I am going to try to find the owner of this vehicle to interview him.

8/11/89
MP

ND

NARRATIVE/CONTINUATION

ADMINISTRATION	Scene Proc. # <u>10</u>	By <u>NSA</u>	Photos Y-N <u>N</u>	Latent Proc. # <u>N</u>	
Officer(s) Reporting <u>Sgt. [Signature]</u>		ID Number(s) <u>938/8494502</u>		Unit <u>1213</u>	Date <u>8/8/89</u>
Officer Reporting (If Applicable) <u>Sgt. [Signature]</u>		ID Number <u>11699</u>	Route To	Referred To	Assigned To
Case Status <u>Inactive</u>	Clearance Type # 1 Arrest 3 Unfounded 2 Exceptional	Exception Type: 1 Extradition Declined	2 Arrest of Primary Offense Secondary Offense Without Prosecution	3 Death of Offender 4 V/W Refused 5 Prosecution Decl To Cooperate & Juv No Custody	A Adult J-Juv
State Attorney Information		# ARR	Date Cleared	# Veh. Rec.	Page 1 of 3

89-89ND

VEHICLE/PROPERTY REPORT

Agency Name
LAND POLICE DEPARTMENT

Agency Off. Number
FLO 5 2 0 8 0 0

1. Orig.
2. Sup. **JUV**

ADMIN					
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CODES	Person Code: 1. Victim 2. Witness 3. Report Per 4. Law Enfor 5. Suspect A. Arrested P. Property Missing O. Owner E. Escaped M. Missing R. Recovered Z. Other	Status Code: 1. Stolen 2. Recovered 3. Stolen and Recovered 4. Suspicious 5. Impounded 6. Abandoned 7. Fair Return 8. Seized 9. Other	Type: 1. Auto 2. Truck/Van 3. Motorcycle 4. Camper/Trailer 5. Bus 6. Trailer 7. Boat 8. Aircraft 9. Other	Recovery Location: 1. Family Residence 2. Apt. Complex 3. Housing Project 4. Commercial 5. Industrial 6. Park/Playground 7. Shopping Mall 8. Woods 9. Water 0. Other	Recovery Code: 1. Stolen / Recovered 2. Local / Local 3. Other / Local
--------------	--	--	--	--	---

VEHICLE/VESSEL	Per. Cat. # 311	Veh. # 411	Status 75	Year 89	Make Datsun	Model Station Wagon	Style Passenger Vehicle
	Tag Reg./Doc. # EZS11W	Reg. State FL	Reg. Yr 89	Decal Number -	Tag Type -		
	VIN/Hull/EAM WPLFLO10G084			Est. Value unk. 11	Damage -		
	Lock? <input type="checkbox"/>	Keys? <input type="checkbox"/>	Color/Color <input type="checkbox"/>	Identifying Characteristics			
	Owner Cont. # -	Ins. Co./Policy Number unk	Lein Holder unk				
	Vessel Name DIA	Length	Hull Material	Propulsion	Boat Type		
	Trailer Make DIA	VIN	Color	Tag Number	Tag State	Tag Year	
	Towed by DIA	Storage Location			FCIC/NCIC Entered		

RECOVERY	Recovery Address/Geographic Indicator	Date Recovered	Value Recovered
	Rec. Loc. Code	Original Reporting/Recovering Agency	Hold? Reason/Authority
	Method of Theft: 0. N/A 1. Keys 2. Tow Truck 3. Hot Wire 4. Steering Column 5. Ignition Punch 6. Unknown		Components Stripped: 0. N/A 1. VIN Plate 2. Tires/Wheels 3. Radio/CB 4. Battery 5. Interior 6. Transmission 7. Engine Parts 8. Major Body Parts 9. Tag/Decal Stolen 10. Other/Seized

CODES	Status Code: 1. Stolen 2. Recovered 3. Stolen and Recovered 4. Recovered for Other Jurisdiction 5. Lost 6. Found 7. Safekeeping 8. Evidence/Seized 9. Other	Property Type: A. Auto Accessory/Part B. Bicycle C. Camera/Photo Equipment D. Drug E. Equipment/Tool F. Food/Liquor/Consumable G. Gun H. Household Appliance/Good I. Plant/Grove J. Jewelry/Precious Metal K. Clothing/Fur L. Livestock M. Musical Instrument N. Construction Machinery O. Office Equipment P. Art/Collection Q. Computer Equipment R. Radio/Stereo S. Sports Equipment T. TV/Video/VCR U. Currency/Negotiable V. Credit Card/Non-negotiable W. Boat Motor X. Structure Y. Farm Equipment Z. Miscellaneous
--------------	--	--

PROPERTY	Per. Cat. #	Item #	Status	Prop. Tp.	Damage	Quantity	Name	Brand
	Model Name/Number			Serial Number			Owner Applied Number	
	Description							
	Value	Recovered Value	Date Recovered	Disposition		FCIC/NCIC		

BIKE	Size	# Gears	Frame B. Boy G. Girl	Brakes	Handlebars	Tires	Type/Color Seat	Color: Frame/Trim
-------------	------	---------	----------------------------	--------	------------	-------	-----------------	-------------------

PROPERTY	Per. Cat. #	Item #	Status	Prop. Tp.	Damage	Quantity	Name	Brand
	Model Name/Number			Serial Number			Owner Applied Number	
	Description							
	Value	Recovered Value	Date Recovered	Disposition		FCIC/NCIC		

PROPERTY	Per. Cat. #	Item #	Status	Prop. Tp.	Damage	Quantity	Name	Brand
	Model Name/Number			Serial Number			Owner Applied Number	
	Description							
	Value	Recovered Value	Date Recovered	Disposition		FCIC/NCIC		

DOCUMENT	Veh. #	Veh. #	Sus. #	Doc. #	Status Type: 1. Purged 2. Utilized	Accountant: 3. Current 4. Inad. Funds 5. Account Closed	Proof Used: 6. Purged & Utilized 7. Other	Type: 1. Check 2. Credit Card	Identification: 3. Money Order 4. Stored Certificate 5. ATM/Debit Card 6. Identification 7. Prescription 8. Other
	Bank/Card Issuer		Acct. No.	Doc./Serial #	Printed Name	Payable To			
	Face Signature			Endorsement	Other Name	Service/Property Received			
	ID. Type(s)			ID. Number(s)	Date	Amount			

CODES	Activity: P. Possess S. Sell B. Buy T. Traffic R. Smuggle D. Driver Use K. Dispense/Distribute M. Manufacture/Produce C. Cultivate U. Unknown Z. Other	Type: A. Amphetamine B. Barbiturate C. Cocaine E. Heroin H. Halonogen M. Marijuana O. Down/Derivative R. Paraphernalia S. Equipment T. Synthetic U. Unknown Z. Other	Unit: 1. Gram 2. Milligram 3. Kilogram 4. Ounce 5. Pound 6. Ton 7. Liter 8. Milliliter 9. Dose Unit/mlr
--------------	---	--	--

DRUGS	Act.	Type	Description	Quantity	Unit	Est. Street Value
	Act.	Type	Description	Quantity	Unit	Est. Street Value
	Act.	Type	Description	Quantity	Unit	Est. Street Value

ADM	Officer(s) Reporting	ID. Number(s)	Unit	Date	Page	Page
	<i>[Signature]</i>	0138/5404EC	1023	8/8/89	2	OR 2

ATTACHMENT M



OFFICE OF THE STATE ATTORNEY
SIXTH JUDICIAL CIRCUIT OF FLORIDA
PASCO AND PINELLAS COUNTIES

BRUCE BARTLETT

State Attorney

August 13, 2025

Allison Miller
allisonferbermiller@gmail.com

RE: PUBLIC RECORD REQUEST -- PRR24-00514
HERRICK, KEVIN RICHARD -- CASE # 89-11425CFANO

Ms. Miller:

This letter is being sent to you regarding the email received by our office on August 7, 2025.

We continue to stand by our original exemptions applicable to that public records request, which were sections: 119.071(2)(h), 119.071(4)(c), 119.071(5)(a), 119.0712(2), and 365.171, Florida Statutes. This includes the redactions on the page you attached to your email.

Kind regards,
BRUCE BARTLETT, State Attorney

A handwritten signature in cursive script, appearing to read "Sara Macks".

Sara Macks
Assistant State Attorney

SM/re

ATTACHMENT N



OFFICE OF THE STATE ATTORNEY
SIXTH JUDICIAL CIRCUIT OF FLORIDA
PASCO AND PINELLAS COUNTIES

BRUCE BARTLETT
State Attorney

September 22, 2025

ALLISON MILLER
allisonferbermiller@gmail.com

RE: REQUEST – KEVIN HERRICK

Dear Ms. Miller:

State Attorney Bruce Bartlett, as custodian of the records, has asked me to respond to your request received by our office on September 16, 2025, regarding our office providing pages of a report to the Innocence Project regarding the above- individual's file.

Please be advised that we gave everything from our file regarding the above-referenced individual, and this report was one of those documents included in the file.

Kind regards,
BRUCE BARTLETT, State Attorney

A handwritten signature in cursive script, appearing to read "Sara Macks".

Sara Macks
Assistant State Attorney

SM/sjt
Enc.

ATTACHMENT O



Allison Ferber Miller <allisonferbermiller@gmail.com>

State of Florida v. Kevin Herrick, 8911425CFANO

13 messages

Allison Ferber Miller <allisonferbermiller@gmail.com>

Wed, Nov 12, 2025 at 9:54 AM

To: smacks@co.pinellas.fl.us

Sara:

I guess the better question would be: why was the criminal mischief report in Kevin Herrick's file? I was expecting an additional letter from you and realized that you likely believed your letter sufficiently answered my question. What is the connection between this report and Kevin Herrick?

I am happy to talk at your convenience if that's easier - 321-945-7615.

Thanks,
Allison Miller

Counsel for Kevin Herrick

Macks, Sara <SaraMacks@flsa6.gov>

Wed, Nov 12, 2025 at 10:31 AM

To: Allison Ferber Miller <allisonferbermiller@gmail.com>

I don't think I can answer that question. That may be a better question for the police department. I provided you with the original report and all of its supplements, including the one you are currently referencing.

-Sara

From: Allison Ferber Miller <allisonferbermiller@gmail.com>**Sent:** Wednesday, November 12, 2025 9:54 AM**To:** Macks, Sara <SaraMacks@flsa6.gov>**Subject:** State of Florida v. Kevin Herrick, 8911425CFANO

Sara:

I guess the better question would be: why was the criminal mischief report in Kevin Herrick's file? I was expecting an additional letter from you and realized that you likely believed your letter sufficiently answered my question. What is the connection between this report and Kevin Herrick?

I am happy to talk at your convenience if that's easier - 321-945-7615.

Thanks,

Allison Miller

ATTACHMENT P



Phoenix Forensic Consultants, LLC.

4121 Seton Circle, Palm Harbor, FL. 34683

Peter Massey

203-824-2291 phoenix4n6@gmail.com

REPORT

By: Peter Massey

Re: State of FL v Kevin Herrick

Nature of

Incident: Sexual Battery

Date of

Incident: July 15, 1989

Location of

4017 Audubon Drive
Largo, Florida 34640

Parties

Involved: Victim: Unidentified

Accused: Kevin Herrick

Contacted By: Amanda Lewis, Ph.D.
Research Associate | Adjunct Lecturer
Georgetown Prisons and Justice Initiative
al1683@georgetown.edu | (828)808-1286

Date of Request: October 24, 2025

Date of Report: March 8, 2026

Items Submitted for Review:

- 1- Digital files to include "ALL POLICE REPORTS"
- 2- Images of developed friction ridges
- 3- Court transcripts

Terms and Definitions

For purposes of this report, the following definitions and acronyms apply.

1-Collection

The process of transitioning a developed friction ridge impression into a tangible form for transport and laboratory analysis. Collection may or may not be the same as preservation.

2-Contamination

The undesirable introduction of a substance to an item at any point in the forensic process. (ISO/FDIS 21043-1:2018[E]). NOTE This includes undesirable transfer of a substance within an item or between items, also referred to as cross-contamination.

3-Detection

The process of identifying the presence of friction ridge impressions.

4-Development

The process of making an impression visible and, in most cases, is also the equivalent of locating the impression.

5-Forensic light source (FLS)

A filtered light source that may be fixed or tunable to a variety of spectral ranges. (OSAC Lexicon)

6-Friction Ridge Impression

An impression from the palmar surfaces of the hands or fingers, or from the plantar (sole) surfaces of the feet or toes. (OSAC Lexicon)

7-Friction Ridge Processing

The scientific procedure of executing or performing a series of techniques to visualize the impression of the raised portion of the epidermis on a surface.

8-Preservation

The process of keeping the impression in the best possible condition.

9-Processing Method

The scientific procedure of executing or performing a series of techniques for friction ridge development or enhancement.

10-Scene

A place or object that is subject to and/or requires forensic examination. (ISO/FDIS 21043-1:2018[E])

NOTE A crime scene is a common description of a scene where a presumed crime has been committed. The scene can be a person or an animal.

11-Scene investigation

The act of identifying, documenting, preserving, and collecting physical evidence from a scene.

12-Scene investigator

An individual, however named, who is responsible for performing elements of a scene investigation that may or may not involve a potential criminal act.

13-Technique

The execution or performance of carrying out a particular task.

14-Analysis (phase of the examination process)

The interpretation of observed data in a friction ridge impression in order to categorize its suitability/utility.

15-Comparison (phase of the examination process)

The search for and detection of similarities and dissimilarities in observed data between friction ridge impressions.

16-Complexity (of a comparison)

A characteristic of a comparison in which the attributes of one or both impressions may require additional consideration and quality assurance measures relating to the evaluation of a source conclusion.

17-Complexity (of an impression)

A characteristic of an impression whose attributes may require additional consideration and quality assurance measures.

18-Evaluation (phase of the examination process)

The weighting of the aggregate strength of the evidence (observed similarities and dissimilarities when considering two competing propositions) between the observed data in the friction ridge impressions being compared in order to formulate a source conclusion.

19-Examiner (friction ridge) – (compare to trainee)

An individual who has successfully completed their FSP's training program, and is authorized to conduct independent friction ridge examinations for the FSP by observing and interpreting data, making decisions, forming conclusions and opinions, issuing reports and/or providing testimony. Use of the term "examiner" in these documents refers to a "friction ridge examiner" and not a "Trainee." Refer to those definitions for further clarification.

**20-Exemplar impression
exemplar or known
exemplar prints**

The deliberately recorded images or impressions from the friction ridge skin of an individual.

NOTE Examples may include, but are not limited to, inked ten-prints, inked palm prints, Livescan prints, powder and lift prints, casted/molded prints, or photographs of friction ridge skin.

21-FSP

forensic service provider

Organization or individual that conducts and/or supplies forensic services.

**22-Friction ridge detail
friction ridge features**

The combination of ridge flow, ridge characteristics, and ridge structure of friction ridge skin, as reproduced and observed in an impression. The observed data used to compare and interpret similarity or dissimilarity between impressions.

23-High quality impression

An impression with observed data that are unambiguous and self-evident due to high clarity and quantity.

24-Interpretation

Explanations for the observations, data, and calculations.

25-Minutia

The point where a friction ridge terminates, or splits into two or more ridges. A subset of the friction ridge detail/features traditionally consisting of ridge endings, bifurcations, and dots, or any combination thereof, used to compare and interpret similarity and dissimilarity between two impressions.

26-Observed data

Any information seen within an impression that an examiner may rely upon to reach a decision, conclusion, or opinion. This not only includes minutiae, but attributes such as clarity, scars, creases, edge shapes, pore structure, and other friction ridge features.

27-Questioned impression (also questioned image or questioned item)

An impression or image of friction ridge skin whose source or identity is unknown; it can include latent impressions, impressions from an unknown source or a known source.

28-Suitability (synonym of utility)

The usefulness of an impression for a further step in the examination process, such as comparison or Automated Biometric Identification System (ABIS) entry.

29-Suitability decision (synonym of utility decision)

A decision made by an examiner in accordance with FSP policy and/or procedure as to whether or not an impression will proceed to the next step in the examination process.

30-Suitability for Automated Biometric Identification System (ABIS) searches (synonym of utility for Automated Biometric Identification System (ABIS) searches)

A decision made by an examiner in accordance with FSP policy and/or procedure as to whether or not an impression will proceed to an ABIS database search.

NOTE This designation is often referred to as "suitable for ABIS/AFIS" or "of value for ABIS/AFIS."

31-Trainee [compared to examiner (friction ridge)]

An individual not yet authorized to conduct independent friction ridge examinations for the FSP; usually still in training and has not yet successfully completed their FSP's training program.

NARRATIVE:

On July 24, 2025, Dr. Amanda Lewis contacted this writer requesting assistance with a possible wrongful conviction case. The incident can be synopsised as a home invasion, sexual assault, and attempted murder, by virtue of a folding knife. This incident occurred on July 15, 1989, in Largo Florida. On July 15, 1989, between the hours of 0115 hours and 0240 hours Officer Stephen D. Joiner was tasked with scene processing. The crime scene was processed for the development of latent friction ridges, and any other items of evidentiary nature.

While standards did not exist in 1989-1990, certain protocols pertaining to the locating, developing latent friction ridge impression, documenting those impressions, collecting developed latent friction ridge impressions, identifying those impressions, and properly reporting on any and all developed latent (or patent) friction ridge impressions, were in place, and documented in multiple scientific papers, textbooks, and in trainings associated with fingerprints.

The following standards have been developed, based on over 100 years of experiments and protocols. These standards set the basis of what should have been done in this matter.

Friction ridge impressions are unique and persistent throughout a lifetime, absent an injury to the skin or upon decomposition after death. Friction ridge impressions are chance impressions that can be left on a surface in the form of fingerprints, palmprints, or foot impressions. When friction ridge skin comes into contact with a surface, an impression may be left behind that may be identified to a specific source. There are several factors involved in the deposition and development of friction ridge impressions, which includes, but is not limited to, skin conditions, environmental factors, handling of the evidence at the time of collection, and the manner in which the evidence is packaged.

Friction ridge impressions may be visible to the naked eye or may need various development and enhancement methods to be observed and collected. The three categories of friction ridge impressions are latent, patent, and plastic. In this matter, only latent friction ridge impressions were developed and collected. Officer Joiner should have also considered additional evidence collection, such as DNA and trace evidence, before selecting a processing method. Even in the early days of DNA testing, swabs should have been taken, by Officer Joiner of the areas around where the latent friction ridge impressions were developed. He did not.

A variety of powder processing methods can be utilized such as magnetic or non-magnetic, both available in a variety of colors (including fluorescent). Once a latent friction ridge impression has been developed, the latent impressions should be documented through photography. Scene notes should be taken outlining the locations, compositions, orientation, and features of any discovered impressions. The lift backing should note, at a minimum, case number, date the impression was lifted, the investigator who lifted it, an identifying number, and the location, description, and orientation of where the impression was lifted.

Unfortunately, and this is the crux of this matter- determining the amount of developed latent friction ridge impressions- taken by Officer Joiner. Should he have labelled each lift card with its own unique identifier, entered that specific information on an evidence log sheet, and included detailed information in his report, we may not be asking the question as to how many lifts were collected.

There was some information as to where some of the latent friction ridge impressions were developed, such as, inside sliding glass door. Unfortunately, Officer Joined failed in this most important aspect of documenting his work. NO images of the developed latent friction ridge impressions were photographed in situ, prior to lifting. The importance of photographing in situ cannot be understated. Often, during the lifting process, the developed friction ridge impressions are damaged, making a difficult or impossible identification. We will never know for sure the true quality of what was developed.

Patent impressions should be documented through photography. Scene notes should be taken outlining the locations, orientation, compositions, and features of any discovered impressions. During his testimony, Officer Joiner that he observed and photographed "smudgy blood impressions or prints just adjacent to the doorknob." Unfortunately, Officer Joiner's images are not sufficient to show any of these "smudgy blood impressions or prints just adjacent to the doorknob." This is a concern as to the thoroughness of the crime scene investigation.

Officer Joiner in his report of the same date, stated that, "I photographed the entire scene; 15 B&W prints. I dusted all pertinent areas for latent fingerprints. I lifted two prints from the exterior side of the master bedroom doorknob. I lifted one print from the exterior side of the second bedroom doorknob. I lifted six prints, to include a partial palm print, from the interior side of the sliding glass door located in the living room. I collected the beige satin queen size sheets from the bed in the master bedroom; the possibility exists that these sheets contain some sort of hair fibers. I placed all evidence items collected into LPD property for safekeeping."

On May 21, 1990, Evidence submitted by Office LaVigne was examined by John Barone on May 21-22, 1990. In a report dated May 23, 1990, Officer Barone stated that he examined, "six partial latent impressions from sliding glass door, and Zerox (sic) copy of fingerprints from Kevin R. Herrick." In the 'Results of Examination' section of the report, Officer Barone indicated, "The six partial fingerprints were not similar to the known fingerprints of Kevin Herrick."

Further, in a report examined and submitted on June 5, 1990, Officer Barone stated the following:

E-1 Plucked hair from victim Darren Barfield

E-2 Combed hair of victim Darren Barfield

E-3 Voluntary elimination fingerprints of Darren Barfield

E-4 Voluntary elimination fingerprints of Darren Barfield

(No evidence number assigned) Latent prints (4 of value) on file from crime scene

E1 + E2 collected for FDLE analysis.

Officer Barone stated in the 'Results of Examination' section, "Items E1 + E2 submitted to property. The four latent prints of file were identified as the left index, middle, ring, and thumb of Darren Barfield."

As a result of the investigation by the Largo Police Department, Kevin Herrick was subsequently arrested and held on bond until trial.

At trial, Officer Stephen Joiner testified on the behalf of the State. Concerns of what Officer Joiner testified to are listed below.

Officer Joiner was asked by the State to define a latent fingerprint. He responded that, "A latent fingerprint is a print which can be used to compare with other fingerprints." As was indicated in the glossary above, which is from The Organization of Scientific Area Committees for Forensic Sciences (OSAC), that while partially accurate, it can be used for comparison purposes, Officer Joiner's testimony was only a partially correct answer.

Officer Joiner was asked by the State "What sort of training do you have as far as lifting latent fingerprints?" His reply was that "I went through an 88-hour course sponsored by the department which is taught by the identification person their John Barone." Without delving further, it is uncertain exactly what training, and experience did John Barone have? For all we know Officer Barone could have taught incorrect information during that 88-hour course. What was the syllabus? What was the practical experience part? Officer Joiner was asked by the State if "There is a way to tell as far as how well the powder sticks to the print.?" A major blunder of Officer Joiner came in his response. He stated, "If it comes up real good, then it's pretty much a fresh print. You can tell if it's an old print if the powder is not affixing itself too well to the surface because the fingerprint is basically picking up the oils left behind by the skin. You can tell by looking at it. It's hard to explain, but you can tell if it's a fresh or old print." This is categorically FALSE! There is NO scientific data to support his response. Experience might be the rationale as to why he responded this way. One should NEVER testify to this fact as there is only anecdotal data to back it up. There are other possible explanations to why he believed the prints were fresh.

Officer Joined was asked by the State, "What process do you go about doing this lifting the latent fingerprints? Officer Joiner's response was "As far as lifting the prints, it's lifted with a black graphite powder and a brush. You put a little bit of the powder on there, and using the brush, going over the area of the print and then taking a marking type tape, putting it over the print and then smoothing it to get the air bubbles out, capturing that print. You lift the tape in the same manner it was applied and taking that piece of tape, put it on a three by five index card and the print comes up very nicely." He should have testified that a color contrasting your substrate would have been the correct answer. There is no definition as to what "very nicely" is.

Officer Joined was asked by the State, "Now, from your experience of the person that handles or touches a door or paper or anything, will that always leave a fingerprint?" His response, "Yes." This is flat out an incorrect answer. There are many variables that may or may not leave friction ridges and these were not explored.

One of the bigger concerns this writer has is that Officer Joiner testified as he was an expert in the field. One must question his training, what was included in the syllabus of that 88-hour training course by

Officer Barone, his experience, as it relates to friction ridge surfaces and impressions, and his discernment of what patent or developed latent friction ridge impressions were 'of value'. This determination is usually made by the person who is trained in taking a known standard 10-print card and compares that with the recovered friction ridge impressions .

Another concern of this writer is the discrepancy in the number of friction ridge impressions that were collected by Officer Joiner, admitted to evidence by Officer Joiner, examined by Officer Barone, photographed, and were delivered to the State. In Officer Joiner's testimony he stated, "I lifted two prints from the exterior side of the plaster bedroom doorknob. I lifted one print from the exterior side of the second bedroom doorknob which would be the baby's room. I lifted six prints to include 1 partial palm print from the interior side of the sliding glass door in the living room. There were nine prints that I lifted all together."

According to Officer Joiner's report of July 15, 1989, he wrote that, "I lifted two prints from the exterior side of the master bedroom doorknob. I lifted one fingerprint from the exterior side of the second bedroom doorknob. I lifted six prints, to include a partial palm print, from the interior side of the sliding glass door located in the living room." That would be a total of 9 to include "a partial palm print."

On a Largo Police Department property/evidence form, Officer Joiner wrote that the seized "prints lifted from the crime scene", and further defined that as stating, "8 prints affixed (6) to white index cards." It becomes very difficult to truly determine which lift corresponds to what evidence item. This is clearly a concern in a chain of custody issue.

In a report by Officer LaVigne, dated July 15, 1989, he wrote that latents lifted from: Interior side of sliding glass door." This is accompanied by an image of a lift card of developed latent friction ridge impressions. They are marked as "L. Ring D-Barfield 6-5-90; I L.M. D. Barfield 6-5-89 JB; I L. Ind D. Barfield JB 6-5-90;" with another notation of, "No Value." There is a written notation of ISP near what is marked as L.M D. Barfield 6-5-90. This writer has reviewed this lift card. This writer's opinion is that there are 4 developed friction ridge impressions with sufficient characteristics to effect an identification, if known impressions are available. This does NOT include the area where Officer Barone wrote, "no value", of which we agree on. There is also a singular developed latent friction ridge impression mounted on a lift or backing card. It is also dated 7-15-89 by Officer Joiner, with Officer LaVigne as the investigating officer. It states that it is a latent lifted from, "interior side of sliding glass door." It is marked by Officer Barone as "L thumb 6-5-90 DB Barfield." It is agreed that this developed latent friction ridge is of value and identifiable.

On a form dated July 18, 1989, Officer Brian LaVigne submitted to Officer Barone "prints, latent prints and to examine" such. Without proper notation it becomes impossible to determine what is referenced.

On May 23, 1990, Officer Barone wrote to in a report Officer B. LaVigne that he received, on May 21, 1990, two items. One was six partial latent impressions from sliding glass door. Two was Zerox (sic) copy of fingerprints from Kevin R. Herrick. Under the results section of said report, Officer Barone wrote, "The six partial latent prints were not similar to the known fingerprints of Kevin Herrick." He indicated that he conducted his examination on May 21 and 22, 1990.

On June 5, 1990, Officer Barone wrote in a report to Officer LaVigne that he examined, "Latent prints (4 of value) on file from crime scene. No evidence number was assigned these items, which has led to confusion. He also noted in the same report that he examined, "E-3 and E-4 Voluntary elimination fingerprints of Darren Barfield." He made this examination on June 5, 1990. For his results of the examination section of said report, Officer Barone wrote, "Items E-1 and E-2 were submitted to property." He further wrote that, "The four latent prints on file were identified as the left index, middle, ring, and thumb of victim, Darren Barfield." It does not indicate what he did with them, causing a chain of custody issue.

While this writer has been provided with images of two lift or backing cards by Dr. Lewis, it is impossible to determine exactly the definition of the original nine (9) developed latent friction ridge impressions, as written and testified to by Officer Joiner. It is practice noting that each backing or lift card with a singular evidence number for reference. In this matter that was not performed. This writer cannot speak for Officer Joiner, what was presented to this writer was in his opinion the following: a singular lift or backing card with a one developed friction ridge surface enhanced, that is of value to be identified; and a second lift or backing card with four (4) areas of developed friction ridge surface enhanced, that is of value to be identified. There are several areas that possess insufficient ridge characteristics to effect an identification. While Officer Joiner may have though the smudged area on this lift or backing card, it is inaccurate to classify it as a partial palm. To this writer, in his training and experience, these represent only two (2) lifts or backing cards, not 9. It is very possible that evidence was lost, misplaced, or held by the Court. What can be said is what was produced is not consistent with Officer Joiner's report or testimony.

With deep concern of this writer is the actions of Officer Barone. He was the teacher in the 88-hour course that Officer Joiner took. Without knowing his qualifications, training, and experience, one has no basis to establish the significance of that 88-hour course. There are numerous training organizations that offer training in fingerprint science. In 1989, the leader was the FBI. They offered three courses in fingerprint science. The idea of certification that we strongly seek in this era, was not a part of the training process. Most was from mentors. Again, we just do not know enough about Officer Barone's training, experience and expertise to truly opine, other than it is concerning.

It is also not uncommon, for several reasons, to delay the transmitting of evidence to a lab or person of expertise. The time between seizure and examination is not something to be concerned about.

In summation, the comparison value of the developed latent friction ridges were not properly evaluated. Upon assessing the available developed latent friction ridge lifts, a total of five determined to be fingers- it was determined that all were of value, to be compared to known inked impressions, and a developed partial palm friction ridge lift which was determined to be of no value. One of the developed latent friction ridge lifts, specifically the one that has not been identified by Officer Barone as of value, is of sufficient ridge characteristics to effect an identification. This may be due to insufficient training of both Officers Barone and Joiner. This further raises questions about their competence. It also raises concerns regarding a chain of custody issue as it relates to evidence recovered by Officer Joiner, as his reports and what was examined did not correlate with each other.

Respectively Submitted,

Peter Massey

Peter Massey
Director
Phoenix Forensic Consultants, LLC

ATTACHMENT Q

CITY OF LARGO POLICE DEPARTMENT PROPERTY/EVIDENCE REPORT

CASE NO. 89-6440
CONNECTING CASE NOS. None

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. 89-6440
BIN # SLA
COMPUTER ENTRY DATE 7/17/87 BY [Signature]

DATE 07 15 89 00 15
MO DAY YEAR TIME

OFFENSE MT HOMICIDE
LOCATION 4017 ANDERSON DR

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES

IF YES, BOOKING OFFICER'S SIGNATURE: _____

- PROPERTY MAY BE
- RELEASED TO OWNER
 - HOLD CASE PENDING
 - STATUS CHANGED
 - DESTROYED
 - PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
NAME _____
ADDRESS _____
CITY/STATE LARGO FL
ZIP 32042
TELEPHONE NO. _____
RES. 1 BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY [Signature]
TIME RECEIVED 0300 HOURS
DATE 07/17/87
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

OFFICER RECEIVING PROPERTY
SIGNATURE [Signature] SPN # 10937

OFFICER TRANSPORTING PROPERTY
SIGNATURE [Signature] SPN # 10937

PERSON STATUS PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS NAME LAST HAGAN FIRST CHELYN MIDDLE LYNN RACE W SEX F DATE OF BIRTH 03/29/64

STREET NO. 4017 STREET NAME ANDERSON DRIVE BLDG. --- CITY LARGO STATE FL ZIP NO. 32042

REMARKS PRINTS LIFTED FROM CRIME SCENE

TELEPHONE NO. --- HOME --- BUSINESS ---

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>E</u>		<u>1</u>	<u>PRINTS</u>	<u>N/A</u>	<u>N/A</u>	<u>(B) PRINTS AFFIXED (C) TO WHT INDEX CARD.</u>
		<u>2</u>				
		<u>3</u>				
		<u>4</u>				
		<u>5</u>				
		<u>6</u>				
		<u>7</u>				
		<u>8</u>				
		<u>9</u>				
		<u>10</u>				
		<u>11</u>				
		<u>12</u>				
		<u>13</u>				
		<u>14</u>				
		<u>15</u>				
		<u>16</u>				

Cleared

REPORTING OFFICER:

[Signature] SPN # 10937

DATE/TIME REPORT COMPLETED

REVIEWED & APPROVED BY:

[Signature] (SIGNATURE)

07 15 89 03 15
MO DAY YR TIME

SUPERVISOR PAGE 2 OF 1

ATTACHMENT R

CITY OF LABGO POLICE DEPARTMENT

PROPERTY/EVIDENCE REPORT

CASE NO. 89-6440
 CORRECTING CASE NOS.

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
 (1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
 (4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
 CONTROL NO. 89-6440
 BIN # D48
 COMPUTER ENTRY DATE 7/24/89 BY JZ

DATE 07 15 89 07 30
 MO DAY YEAR TIME

OFFENSE Att Homicide
 LOCATION 4017 Audobon

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES IF YES, BOOKING OFFICER'S SIGNATURE: _____

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
 NAME Kevin Herrick
 ADDRESS 4015 Audobon
 CITY/STATE Largo FL
 ZIP 31640 DOB 10/2/66

PROPERTY USE ONLY
 PROPERTY RECEIVED BY: JZ
 TIME RECEIVED 1030 HOURS
 DATE 07 17 89
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

OFFICER RECOVERING PROPERTY SIGNATURE _____ SPN # _____ OFFICER TRANSPORTING PROPERTY SIGNATURE _____ SPN # _____

PERSON STATUS PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS S NAME LAST Herrick FIRST Kevin MIDDLE Richard RACE W SEX M DATE OF BIRTH 10 03 66

STREET NO. 4015 STREET NAME Audobon Dr BLDG. # _____ APT. # _____ LOT # _____ CITY Largo STATE FL ZIP NO. 31640
 REMARKS _____ TELEPHONE NO. HOME 5351195 BUSINESS _____

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. D48 PROPERTY USE ONLY CASE NO. 89-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
E	1.	wallet	-	unk	Black 3 fold	
E	2.	license	-	DHS MV	H62051666363	
E	3.	Shirts	Herrick	-	Islander	Red t-top XL
E	4.	Pocket knife	-	unk	br handle copper ends	Silver black
E	5.	JEANS	-	Rustler	blue jeans	
	6.					
	7.					
	8.					
	9.					
	10.					
	11.					
	12.					
	13.					
	14.					
	15.					
	16.					

CLEARED

Court order dated 01/13/94 v. Caphart

REPORTING OFFICER: [Signature] DATE/TIME REPORT COMPLETED: 07 15 89 07 00
 MO DAY YR TIME
 REVIEWED & APPROVED BY: [Signature] SPN # 89918C SUPERVISOR PAGE 1 OF 1
 RANK (SIGNATURE)

CITY OF LARGO POLICE DEPARTMENT PROPERTY/EVIDENCE REPORT

CASE NO. 89-6440
CONNECTING CASE NOS.

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. 89-6440
BIN # W1
COMPUTER ENTRY DATE 11/17/89 BY S. J. [Signature]

DATE 07 15 89 07 30
MO DAY YEAR TIME

OFFENSE Att Homicide
LOCATION 407 Audobon

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES

IF YES, BOOKING OFFICER'S SIGNATURE: _____

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
NAME Kevin Herrick
ADDRESS 4015 Audobon
CITY/STATE Largo FL
ZIP 34640 D.O.B. 10/03/66
TELEPHONE NO. 5351195 RES. _____ BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY: [Signature]
TIME RECEIVED 1030 HOUR
DATE 071789
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

EXPLAIN _____

PROCESSING: LPD PCSO FBI FDLE

OFFICER RECOVERING PROPERTY SIGNATURE _____ SPN # 51948
OFFICER TRANSPORTING PROPERTY SIGNATURE _____ SPN # 51948

PERSON STATUS: PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS NAME LAST FIRST MIDDLE RACE SEX DATE OF BIRTH
11/15 Herrick Kevin Richard W M 10 03 66

STREET NO. STREET NAME CITY STATE ZIP NO.
4015 Audobon Largo FL 34640

REMARKS
TELEPHONE NO. HOME 5351195
BUSINESS _____

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. W1 PROPERTY USE ONLY CASE NO. 89-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>E</u>		<u>1</u>	<u>45 Ruger</u>	<u>46-17795</u>	<u>Ruger</u>	<u>blk w/ wood handle</u>
<u>E</u>		<u>2</u>	<u>Bullets</u>			<u>15 cal.</u>
		<u>3</u>				
		<u>4</u>				
		<u>5</u>				
		<u>6</u>				
		<u>7</u>				
		<u>8</u>				
		<u>9</u>				
		<u>10</u>				
		<u>11</u>				
		<u>12</u>				
		<u>13</u>				
		<u>14</u>				
		<u>15</u>				
		<u>16</u>				

CLEARED

Court Order dated 11/13/94 v. Caphart

REPORTING OFFICER: _____ SPN # 51948 DATE/TIME REPORT COMPLETED 07 15 89 07 00
MO DAY YR TIME
REVIEWED & APPROVED BY: A.B. T. [Signature] SUPERVISOR PAGE 1 OF 1
RANK (SIGNATURE)

**CITY OF LARGO POLICE DEPARTMENT
PROPERTY/EVIDENCE REPORT**

CASE NO. 89-6440

CONNECTING CASE NOS. DONE

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. 89-6440
BIN # 548
COMPUTER ENTRY DATE 7/17/89 BY S. J. [Signature]

DATE 07 15 89 08 15
MO DAY YEAR TIME

OFFENSE MURDER
LOCATION AUDOBON DR

- EVIDENCE
 NON-EVIDENCE
 FOUND
 RECOVERED
 MISSING/LOST
 SEIZED/SAFE KEEPING
 OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES IF YES, BOOKING OFFICER'S SIGNATURE:

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT NAME OWNER
ADDRESS SEE BELOW
CITY/STATE FLOR
ZIP 34640
TELEPHONE NO. _____ RES. _____ BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY: [Signature]
TIME RECEIVED 1030 HOURS
DATE 071789
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

EXPLAIN _____

PROCESSING: LPD PCSO FBI FDLE

OFFICER RECOVERING PROPERTY SIGNATURE [Signature] SPN # 21948C

OFFICER TRANSPORTING PROPERTY SIGNATURE [Signature] SPN # 21948C

PERSON STATUS PO OWNER C COMPLAINANT V VICTIM S SUSPECT RF RECEIVED FROM O OTHER (EXPLAIN)

STATUS S NAME LAST HEERICK FIRST KEVIN MIDDLE RILHARD RACE N SEX M DATE OF BIRTH 03 06 66

STREET NO. 515 STREET NAME AUDOBON DR. BLDG. # _____ APT. # _____ LOT # _____ CITY LARGO STATE FL ZIP NO. 34640

REMARKS HAIR FIBERS OF SUSPECT, WITH LAMEN, FOR ANALYSIS. TELEPHONE NO. HOME 5351195 BUSINESS DONE

PROPERTY STATUS: E EVIDENCE NE NON-EVIDENCE O OTHER P PROCESS PLEASE CHECK BIN NO. 548 PROPERTY USE ONLY CASE NO. 89-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>E</u>		<u>1</u>	<u>HAIR</u>	<u>N/A</u>	<u>N/A</u>	<u>HEAD HAIR OF SUSP.</u>
<u>E</u>		<u>2</u>	<u>HAIR</u>	<u>N/A</u>	<u>N/A</u>	<u>PUBIC HAIR OF SUSP.</u>
		<u>3</u>				
		<u>4</u>				
		<u>5</u>				
		<u>6</u>				
		<u>7</u>				
		<u>8</u>				
		<u>9</u>				
		<u>10</u>				
		<u>11</u>				
		<u>12</u>				
		<u>13</u>				
		<u>14</u>				
		<u>15</u>				
		<u>16</u>				

CLEARED

* Court Order dated 01/13/94 V. Chapman

REPORTING OFFICER: [Signature] SPN # 0117/101537

DATE/TIME REPORT COMPLETED 07 15 89 08 15
MO DAY YR TIME

REVIEWED & APPROVED BY: [Signature] RANK _____ (SIGNATURE)

SUPERVISOR PAGE 1 OF 1

CITY OF LARGO POLICE DEPARTMENT PROPERTY/EVIDENCE REPORT

CASE NO. 87-6440
CONNECTING CASE NOS. DONE
DATE 07 / 15 / 89 0015
MO DAY YEAR TIME

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. 89-6440
BIN # D-48
COMPUTER ENTRY DATE 7/17/89 BY [Signature]

OFFENSE: ATT. HOMICIDE
LOCATION: 4017 AUDOBON DR.

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES IF YES, BOOKING OFFICER'S SIGNATURE

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
NAME: _____
ADDRESS: _____
CITY/STATE: SEE BELOW
ZIP: _____ D.O.B.: _____
TELEPHONE NO.: _____
RES. _____ BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY: [Signature]
TIME RECEIVED: 1030 HOURS
DATE: 071789
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

EXPLAIN _____

PROCESSING: PCSO FBI FDLE LPD

OFFICER RECOVERING PROPERTY SIGNATURE: [Signature] SPN # 105937
OFFICER TRANSPORTING PROPERTY SIGNATURE: [Signature] SPN # 105937
PERSON STATUS: PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS: NAME LAST: HAGAN FIRST: CHERYL MIDDLE: LYNN RACE: W SEX: F DATE OF BIRTH: 03 21 67

STREET NO. STREET NAME: 4017 AUDOBON DRIVE BLDG. # APT. # LOT # CITY: LARGO STATE: FL ZIP NO.: 34640

REMARKS: SHEETS (ON TOP OF WHICH INCIDENT OCCURRED) TAKEN FROM SCENE
TELEPHONE NO. HOME: 384962 BUSINESS: JUNE

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. D48 PROPERTY USE ONLY CASE NO. 87-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
E		1.	SHEETS	N/A	UNK	(1) PAIR OF QUEEN SIZE, BEIGE SATIN SHEETS (FITTEAS COVER)
		2.				
		3.				
		4.				
		5.				
		6.				
		7.				
		8.				
		9.				
		10.				
		11.				
		12.				
		13.				
		14.				
		15.				
		16.				

CLEARED

* Court Order dated 1/3/94 v. Caphart

REPORTING OFFICER: [Signature] SPN # 105937 DATE/TIME REPORT COMPLETED: 07 / 15 / 89 0015
REVIEWED & APPROVED BY: [Signature] RANK: _____ (SIGNATURE) SUPERVISOR: _____ PAGE 1 OF 1

**CITY OF LARGO POLICE DEPARTMENT
PROPERTY/EVIDENCE REPORT**

CASE NO. 89-6440
CONNECTING CASE NOS.

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. D001405
BIN # D-48
COMPUTER ENTRY DATE 4/17/90 BY WPC

DATE 04 / 16 / 90 15 : 00
MO DAY YEAR TIME

OFFENSE MURDER
LOCATION 4013 AUDUBON DR.

- EVIDENCE
 NON-EVIDENCE
 FOUND
 RECOVERED
 MISSING/LOST
 SEIZED/SAFE KEEPING
 OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING?
 NO YES

IF YES, BOOKING OFFICER'S SIGNATURE:

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT NAME _____
ADDRESS _____
CITY/STATE _____
ZIP _____ D.O.B. _____
TELEPHONE NO. _____
RES. _____ BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY V. Caphart
TIME RECEIVED 0740 HOURS
DATE 04/17/90
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

OFFICER RECOVERING PROPERTY SIGNATURE [Signature]

SPN # 98479

OFFICER TRANSPORTING PROPERTY SIGNATURE [Signature]

SPN # 98479

PERSON STATUS PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS V NAME LAST HAGAN, CHERYL FIRST LYNN MIDDLE _____ RACE W SEX F DATE OF BIRTH 03 27 67

STREET NO. STREET NAME LRA 4013 AUDUBON DR. BLDG # _____ APT. # _____ LOT # _____ CITY LARGO STATE FL. ZIP NO. 34641

REMARKS REC'D FROM JANE FANNING, ARNP, S.A.V.E. TEAM TELEPHONE NO. _____ HOME 535-5326 BUSINESS LINE

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK SIN NO. D-48 PROPERTY USE ONLY CASE NO. 89-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
14	E	1.	HAIR SAMPLES	—	—	COLLECTED FROM VICTIM, PLUCKED AND COMBED SCALP AND PUBIC HAIR.
		2.				
		3.				
		4.				
		5.				
		6.				
		7.				
		8.				
		9.				
		10.				
		11.				
		12.				
		13.				
		14.				
		15.				
		16.				

CLEARED

* Court order dated 01/13/94 V. Caphart

REPORTING OFFICER [Signature] SPN # 36

DATE/TIME REPORT COMPLETED 04 / 16 / 90 15 : 30
MO DAY YR TIME

REVIEWED & APPROVED BY: [Signature] RANK _____ (SIGNATURE) _____

SUPERVISOR PAGE 1 OF 1

**CITY OF LARGO POLICE DEPARTMENT
PROPERTY/EVIDENCE REPORT**

CASE NO. 89-6440

CONNECTING CASE NOS. _____

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. B002033
BIN # D48
COMPUTER ENTRY DATE 6/5/90

DATE 06 05 90 09 57
MO DAY YEAR TIME

OFFENSE Att. Homicide
LOCATION 4017 Audubon Dr.

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER _____

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES
(except F.P. Cards) J. Baran
PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER
PROCESSING: PCSO FBI FDLE
 LPD
CLAIMANT OWNER
NAME Hagan, D. Barfield
ADDRESS 4017 Audubon Dr.
CITY/STATE Largo FLA
ZIP 34640 DDB
TELEPHONE NO. _____
RES. _____ BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY J. Baran
TIME RECEIVED 1030 HOURS
DATE 060590
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

OFFICER RECOVERING PROPERTY SIGNATURE J. Baran 98536 SPN # 5016
OFFICER TRANSPORTING PROPERTY SIGNATURE J. Baran 98536 SPN # 5016

PERSON STATUS PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS NAME LAST Barfield FIRST Darren MIDDLE _____ RACE W SEX M DATE OF BIRTH 05 31 66

STREET NO. 4017 STREET NAME Audubon Dr. BLDG. # _____ APT. # _____ LOT # _____ CITY Largo STATE FLA ZIP NO. 34640

REMARKS Victim # Hagan, Cheryl Lynn 3-29-69 DOB
TELEPHONE NO. _____
HOME _____
BUSINESS _____

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. D48 PROPERTY USE ONLY CASE NO. 89-6440

15
16
17
18

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
E	✓	1.	Plucked Hair	from Darren Barfield		
E	✓	2.	Combed Hair	w/comb, from Darren Barfield		
E		3.	Voluntary Elim. Prints	from Darren Barfield		
E		4.	Voluntary Elim. Prints	from Cheryl Hagan		
		5.				
		6.				
		7.				
		8.				
		9.				
		10.				
		11.				
		12.				
		13.				
		14.				
		15.				
		16.				

CLEARED

* Court order dated 01/13/94 v. Copart

REPORTING OFFICER: J. Baran 98536 SPN # 5016
REVIEWED & APPROVED BY: S. Smith 02511590
RANK _____ (SIGNATURE)

DATE/TIME REPORT COMPLETED
06 05 90 1003
MO DAY YR TIME
SUPERVISOR PAGE _____ OF _____

CITY OF LARGO POLICE DEPARTMENT

PROPERTY/EVIDENCE REPORT

CASE NO. <u>89-6440</u>	SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS: (1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY (4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS	PROPERTY USE ONLY CONTROL NO. <u>8002034</u>
CONNECTING CASE NOS.	DATE <u>06</u> <u>05</u> <u>90</u> <u>1045</u> MO DAY YEAR TIME	BIN # <u>REF</u>
	OFFENSE <u>Alt. Homicide</u>	COMPUTER ENTRY DATE <u>06/05/90</u> BY <u>[Signature]</u>
	LOCATION <u>4017 Audobon Dr.</u>	

<input checked="" type="checkbox"/> EVIDENCE <input type="checkbox"/> NON-EVIDENCE <input type="checkbox"/> FOUND <input type="checkbox"/> RECOVERED <input type="checkbox"/> MISSING/LOST <input type="checkbox"/> SEIZED/SAFE KEEPING <input checked="" type="checkbox"/> OTHER <u>requested</u> EXPLAIN _____	CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES IF YES, BOOKING OFFICER'S SIGNATURE: _____	PROPERTY MAY BE <input type="checkbox"/> RELEASED TO OWNER <input checked="" type="checkbox"/> HOLD CASE PENDING <input type="checkbox"/> STATUS CHANGED <input type="checkbox"/> DESTROYED <input type="checkbox"/> PHOTO AND RELEASE TO OWNER PROCESSING: <input type="checkbox"/> PCSO <input type="checkbox"/> FBI <input checked="" type="checkbox"/> FDLE <input type="checkbox"/> LPD
		PROPERTY USE ONLY PROPERTY RECEIVED BY: <u>[Signature]</u> TIME RECEIVED <u>1530</u> HOURS DATE: <u>060590</u> <input type="checkbox"/> RECEIVED IN PERSON <input checked="" type="checkbox"/> REMOVED FROM LOCKER
		CLAIMANT <input type="checkbox"/> OWNER <input type="checkbox"/> NAME _____ ADDRESS _____ CITY/STATE _____ ZIP _____ U.O.B. _____ TELEPHONE NO. _____ RES. _____ BUS. _____

OFFICER RECOVERING PROPERTY SIGNATURE: <u>[Signature]</u> SPN # <u>00404315</u>	OFFICER TRANSPORTING PROPERTY SIGNATURE: <u>[Signature]</u> SPN # <u>00404315</u>
--	--

PERSON STATUS: PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS	NAME LAST	FIRST	MIDDLE	RACE	SEX	DATE OF BIRTH
	<u>S Herrick</u>	<u>Kevin</u>	<u>Richard</u>	<u>W</u>	<u>M</u>	<u>10/13/66</u>
STREET NO.	STREET NAME		BLDG. #	CITY	STATE	ZIP NO.
	<u>4015 Audobon Dr.</u>			<u>Largo</u>	<u>FL.</u>	<u>34640</u>
REMARKS	<u>indicated upon returning to LPD from</u> <u>Miss. Health Dept</u>					TELEPHONE NO. HOME <u>535-1195</u> BUSINESS _____

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK						BIN NO. <u>REF</u>	PROPERTY USE ONLY CASE NO. <u>89-6440</u>
STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)	
<u>11</u>	<u>E</u>	<u>1</u>	<u>blood</u>	<u>-</u>	<u>-</u>	<u>2 vials, (1 w/ rust colored cap & other w/ purple cap) Both 7 ml Draw, Drawn from victim Barfield</u>	
		<u>A1</u>					
		<u>A1</u>					
		<u>A1</u>					
		<u>A1</u>					
		<u>8.</u>					
		<u>7.</u>					
		<u>8.</u>					
		<u>9.</u>					
		<u>10.</u>					
		<u>11.</u>					
		<u>12.</u>					
		<u>13.</u>					
		<u>14.</u>					
		<u>15.</u>					
		<u>16.</u>					

CLEARED

* Court order dated 01/13/94 v. Caphart

REPORTING OFFICER: <u>[Signature]</u> SPN # <u>00404315</u>	DATE/TIME REPORT COMPLETED: <u>05</u> <u>90</u> <u>1200</u> DAY YR TIME
REVIEWED & APPROVED BY: <u>[Signature]</u> RANK <u>[Rank]</u> (SIGNATURE)	SUPERVISOR PAGE <u>1</u> OF <u>1</u>

CITY OF LARGO POLICE DEPARTMENT

PROPERTY/EVIDENCE REPORT

CASE NO. 89-6440
CONNECTING CASE NOS.

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. 89-6440
BIN # LAT
COMPUTER ENTRY
DATE 7/17/89 BY [Signature]

DATE 07 19 89 08 15
MO DAY YEAR TIME

OFFENSE Att Homicide
LOCATION 4017 Audobon

EVIDENCE
 NON-EVIDENCE
 FOUND
 RECOVERED
 MISSING/LOST
 SEIZED/SAFE KEEPING
 OTHER
EXPLAIN _____

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES IF YES, BOOKING OFFICER'S SIGNATURE: _____
PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER
PROCESSING: LPD
 PCSO FBI FDLE

CLAIMANT OWNER
NAME _____
ADDRESS _____
CITY/STATE _____
ZIP _____ D.O.B. _____
TELEPHONE NO. _____
RES. _____ BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY: [Signature]
TIME RECEIVED: 1030 HOURS
DATE 07 17 89
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

OFFICER RECOVERING PROPERTY SIGNATURE [Signature] SPN # 819162 OFFICER TRANSPORTING PROPERTY SIGNATURE [Signature] SPN # 819161

PERSON STATUS PG-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS S NAME LAST Herrick FIRST Kevin MIDDLE Richard RACE W SEX M DATE OF BIRTH 10 03 63

STREET NO. 4015 STREET NAME Audobon BLDG. # _____ APT. # _____ LOT # _____ CITY Largo STATE FL ZIP NO. 31610
REMARKS _____ TELEPHONE NO. HOME 5351195 BUSINESS _____

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. LAT PROPERTY USE ONLY CASE NO. 89-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>E</u>		<u>1.</u>	<u>Latent Prints</u>	<u>-</u>	<u>-</u>	<u>Latent prints</u>
		<u>2.</u>				
		<u>3.</u>				
		<u>4.</u>				
		<u>5.</u>				
		<u>6.</u>				
		<u>7.</u>				
		<u>8.</u>				
		<u>9.</u>				
		<u>10.</u>				
		<u>11.</u>				
		<u>12.</u>				
		<u>13.</u>				
		<u>14.</u>				
		<u>15.</u>				
		<u>16.</u>				

CLEARED

REPORTING OFFICER: [Signature] SPN # 819162 DATE/TIME REPORT COMPLETED: 07 19 89 07 30
MO DAY YR TIME
REVIEWED & APPROVED BY: [Signature] SUPERVISOR PAGE 1 OF 1
RANK (SIGNATURE)

**CITY OF LARGO POLICE DEPARTMENT
PROPERTY/EVIDENCE REPORT**

CASE NO. 89-6440
CONNECTING CASE NOS. NONE

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. 89-6440
BIN # NG-D
COMPUTER ENTRY DATE 11/18/89

DATE 07 15 89 06 15
MO DAY YEAR TIME

OFFENSE MURDER
LOCATION 4017 AUDOBON DR

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES
IF YES, BOOKING OFFICER'S SIGNATURE: _____

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
NAME _____
ADDRESS _____
CITY/STATE LARGO
ZIP _____ D.O.B. _____
TELEPHONE NO. _____ RES. _____ BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY [Signature]
TIME RECEIVED 1030 HOURS
DATE 07/17/89
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

OFFICER RECEIVING PROPERTY
SIGNATURE [Signature] SPN # 10937

OFFICER TRANSPORTING PROPERTY
SIGNATURE [Signature] SPN # 10937

PERSON STATUS PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS NAME LAST HAGAN FIRST CHELYN MIDDLE LYNN RACE W F SEX F DATE OF BIRTH 03 29 62

STREET NO. 4017 STREET NAME AUDOBON DR CITY LARGO STATE FL ZIP NO. 34640

REMARKS PHOTOS OF SCENE
TELEPHONE NO. HOME 384962 BUSINESS NONE

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. NG-D PROPERTY USE ONLY CASE NO. 89-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>5 E</u>		<u>1.</u>	<u>FILM</u>	<u>N/A</u>	<u>KODAK</u>	<u>(1) 35mm ROLL OF FILM</u>
		<u>2.</u>				<u>114400 35mm FILM.</u>
		<u>3.</u>				
		<u>4.</u>				
		<u>5.</u>				
		<u>6.</u>				
		<u>7.</u>				
		<u>8.</u>				
		<u>9.</u>				
		<u>10.</u>				
		<u>11.</u>				
		<u>12.</u>				
		<u>13.</u>				
		<u>14.</u>				
		<u>15.</u>				
		<u>16.</u>				

CLEARED

REPORTING OFFICER [Signature] SPN # 10937 DATE/TIME REPORT COMPLETED 07 15 89 06 15
MO DAY YR TIME
REVIEWED & APPROVED BY: [Signature] SUPERVISOR PAGE 1 OF 1
RANK (SIGNATURE)

CITY OF LARGO POLICE DEPARTMENT

PROPERTY/EVIDENCE REPORT

CASE NO. 89-6440

CONNECTING CASE NOS. NONE

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
 (1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
 (4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY

CONTROL NO. 89-6440

BIN # LAT

COMPUTER ENTRY DATE 7/17/89

DATE 07 15 89 00 15
 MO DAY YEAR TIME

OFFENSE ATT HOMICIDE
 LOCATION 4017 ANDERSON DR

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES

IF YES, BOOKING OFFICER'S SIGNATURE:

- PROPERTY MAY BE
- RELEASED TO OWNER
 - HOLD CASE PENDING
 - STATUS CHANGED
 - DESTROYED
 - PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
 NAME _____
 ADDRESS _____
 CITY/STATE FLA
 ZIP 33040
 TELEPHONE NO. _____
 RES 1 BUS _____

PROPERTY USE ONLY
 PROPERTY RECEIVED BY RZ
 TIME RECEIVED 1030 HOURS
 DATE 07 17 89
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

PROCESSING: LPD PCSO FBI FDLE

OFFICER RECOVERING PROPERTY SIGNATURE: Stephen J. Jarvis SPN # 105937 OFFICER TRANSPORTING PROPERTY SIGNATURE: Stephen J. Jarvis SPN # 105937

PERSON STATUS PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS NAME LAST HAGAN FIRST CHEYL MIDDLE LYNN RACE W SEX F DATE OF BIRTH 03 29 69

STREET NO. 4017 STREET NAME ANDERSON DR BLDG. # _____ APT. # _____ LOT # _____ CITY LARGO STATE FL ZIP NO. 33040

REMARKS PRINTS LIFTED FROM CRIME SCENE TELEPHONE NO. _____ HOME 804962 BUSINESS NING

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. LAT PROPERTY USE ONLY CASE NO. 89-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>E</u>		<u>1</u>	<u>PRINTS</u>	<u>N/A</u>	<u>N/A</u>	<u>(8) PRINTS AFFIXED</u>
		<u>2</u>				<u>(6) TO WHT INDEX</u>
		<u>3</u>				<u>CARDS</u>
		<u>4</u>				
		<u>5</u>				
		<u>6</u>				
		<u>7</u>				
		<u>8</u>				
		<u>9</u>				
		<u>10</u>				
		<u>11</u>				
		<u>12</u>				
		<u>13</u>				
		<u>14</u>				
		<u>15</u>				
		<u>16</u>				

CLEARED

REPORTING OFFICER: Stephen J. Jarvis SPN # 105937 DATE/TIME REPORT COMPLETED 07 15 89 03 15
 MO DAY YR TIME

REVIEWED & APPROVED BY: A.S. T. Suber SUPERVISOR PAGE 2 OF 1

PROPERTY INFORMATION

INCIDENT NUMBER :
INCIDENT DATE : 07/15/89
TIME : 00:39
DISP : 0913 MURDER - ATTEMPT (EXPLAIN)
LOCATION :
GRID :
REPORT OFFICER : 0138 LAVIGNE, BRIAN R
PROP/REPORT DATE: 07/15/89
PERSON INFO ## : 001
SUSPECT INFO ## : 01
ARTICLE INFO ## : 014
ENTRY CLERK : MYS
STATUS OF PROP. : PR PARTIAL RELEASED
MISD/FELONY CASE: F

PERSON INFORMATION (VICTIM/WIT.OWNER) VAL: 1

MASTER NAME ### :
STATUS : V VICTIM
LAST NAME :
FIRST NAME :
MIDDLE NAME :
RACE : W WHITE
SEX : F FEMALE
DATE OF BIRTH :
ADDRESS :
CITY :
STATE :
ZIP CODE :
HOME PHONE :

PERSON INFORMATION (VICTIM/WIT.OWNER) VAL: 1

MASTER NAME ### : 186930
STATUS : S SUSPECT
LAST NAME : HERRICK
FIRST NAME : KEVIN
MIDDLE NAME : R
RACE : W WHITE
SEX : M MALE
DATE OF BIRTH : 10/03/66
ADDRESS : 4015
CITY :
STATE :
ZIP CODE :
HOME PHONE : 535-1195

ARTICLE INFORMATION SCREEN VAL: 1

DATE PROP/BOOKED: 07/17/89
 BIN NUMBER : LAT
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0138 LAVIGNE, BRIAN R
 PROCESSING CODE : PD2 LATENT EXAMS
 DATE SENT : 07/18/89
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : Z MISCELLANEOUS
 PROPERTY TYPE : OTH OTHER
 ARTICLE : PRINTS
 DESCRIPTION : LATENT PRINTS

FINAL DISPOSITION OF PROPERTY VAL: 1

RELEASED TO : JOHN BARONE
 DATE RELEASED : 07/18/89
 RELEASE CLERK : LZ
 PROP/DISP CODE : I INTERNAL RELEASE

ARTICLE INFORMATION SCREEN VAL: 2

DATE PROP/BOOKED: 07/17/89
 BIN NUMBER : LAT
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0117 JOINER,STEPHEN DREW
 PROCESSING CODE : PD2 LATENT EXAMS
 DATE SENT : 07/18/89
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : Z MISCELLANEOUS
 PROPERTY TYPE : OTH OTHER
 ARTICLE : PRINTS
 DESCRIPTION : 8 PRINTS AFFIXED 6 TO WHT CARD

FINAL DISPOSITION OF PROPERTY VAL: 2

RELEASED TO : JOHN BARONE
 DATE RELEASED : 07/18/89
 RELEASE CLERK : LZ
 PROP/DISP CODE : I INTERNAL RELEASE

ARTICLE INFORMATION SCREEN VAL: 3

DATE PROP/BOOKED: 07/17/89
 BIN NUMBER : W2
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0138 LAVIGNE, BRIAN R
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : G GUN
 PROPERTY TYPE : OTH OTHER

ARTICLE : GUN
 OTHER BRAND : RUGER
 MODEL : .45 CAL
 SERIAL NUMBER : 4617795
 DESCRIPTION : BLK W/WOOD HANDLE

ARTICLE INFORMATION SCREEN VAL: 4

DATE PROP/BOOKED: 07/17/89
 BIN NUMBER : W2
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0138 LAVIGNE, BRIAN R
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : Z MISCELLANEOUS
 PROPERTY TYPE : OTH OTHER
 ARTICLE : BULLETS
 DESCRIPTION : .45 CAL

ARTICLE INFORMATION SCREEN VAL: 5

DATE PROP/BOOKED: 07/17/89
 BIN NUMBER : NGD
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0117 JOINER,STEPHEN DREW
 PROCESSING CODE : PD4 FILM B&W
 DATE SENT : 07/18/89
 DATE RETURNED : 09/11/89
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : Z MISCELLANEOUS
 PROPERTY TYPE : OTH OTHER
 ARTICLE : FILM
 OTHER BRAND : KODAK
 DESCRIPTION : 24 EXPOSURE BLK/WHT

FINAL DISPOSITION OF PROPERTY VAL: 5

RELEASED TO : LARRY ZELLERS
 DATE RELEASED : 09/12/89
 RELEASE CLERK : VPC
 PROP/DISP CODE : I INTERNAL RELEASE
 REMARKS :
 TO BE FILED IN NEGATIVE FILE DRAWER.

5/24/90 1 SET OF 14 PRINTS TO SAO JOE BULONE. TO BE DELIVERED BY
 COURT LIASON T.DRISCOLL. L2

ARTICLE INFORMATION SCREEN VAL: 6

DATE PROP/BOOKED: 07/17/89
 BIN NUMBER : D48

STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0117 JOINER,STEPHEN DREW
 PROCESSING CODE : FDL F.D.L.E.
 DATE SENT : 07/26/89
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : Z MISCELLANEOUS
 PROPERTY TYPE : OTH OTHER
 ARTICLE : HAIR
 DESCRIPTION : HEAD HAIR OF SUSPECT

ARTICLE INFORMATION SCREEN

VAL: 7

DATE PROP/BOOKED: 07/17/89
 BIN NUMBER : D48
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0117 JOINER,STEPHEN DREW
 PROCESSING CODE : FDL F.D.L.E.
 DATE SENT : 07/26/89
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : Z MISCELLANEOUS
 PROPERTY TYPE : OTH OTHER
 ARTICLE : HAIR
 DESCRIPTION : PUBIC HAIR OF SUSPECT

ARTICLE INFORMATION SCREEN

VAL: 8

DATE PROP/BOOKED: 07/17/89
 BIN NUMBER : D48
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0117 JOINER,STEPHEN DREW
 PROCESSING CODE : FDL F.D.L.E.
 DATE SENT : 07/26/89
 DATE RETURNED : 01/29/90
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : Z MISCELLANEOUS
 PROPERTY TYPE : OTH OTHER
 ARTICLE : SHEETS
 DESCRIPTION : 1 PR QUEEN SIZE BEIGE SATIN

ARTICLE INFORMATION SCREEN

VAL: 9

DATE PROP/BOOKED: 07/20/89
 BIN NUMBER : D48
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0138 LAVIGNE, BRIAN R
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : Z MISCELLANEOUS
 PROPERTY TYPE : OTH OTHER
 ARTICLE : WALLET

DESCRIPTION : BLACK TRIFOLD

ARTICLE INFORMATION SCREEN VAL: 10

DATE PROP/BOOKED: 07/20/89
 BIN NUMBER : D48
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0138 LAVIGNE, BRIAN R
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : Z MISCELLANEOUS
 PROPERTY TYPE : OTH OTHER
 ARTICLE : FLA DRIVERS LICENSE
 SERIAL NUMBER :

ARTICLE INFORMATION SCREEN VAL: 11

DATE PROP/BOOKED: 07/20/89
 BIN NUMBER : D48
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0138 LAVIGNE, BRIAN R
 PROCESSING CODE : FDL F.D.L.E.
 DATE SENT : 07/26/89
 DATE RETURNED : 01/29/90
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : K CLOTHING/FUR
 PROPERTY TYPE : OTH OTHER
 ARTICLE : SHIRT
 OTHER BRAND : ISLANDER
 DESCRIPTION : RED TOP XL

ARTICLE INFORMATION SCREEN VAL: 12

DATE PROP/BOOKED: 07/20/89
 BIN NUMBER : D48
 STATUS/PROPERTY : E EVIDENCE
 SUBMITTING OFC : 0138 LAVIGNE, BRIAN R
 PROCESSING CODE : FDL F.D.L.E.
 DATE SENT : 07/26/89
 DATE RETURNED : 01/29/90
 PROPERTY RELEASE: H HOLD CASE PENDING
 QUANTITY/AMOUNT : 1
 PROPERTY CODE : Z MISCELLANEOUS
 PROPERTY TYPE : OTH OTHER
 ARTICLE : POCKET KNIFE
 DESCRIPTION : BROWN/COPPER SILVER BLADE

ARTICLE INFORMATION SCREEN VAL: 13

DATE PROP/BOOKED: 07/20/89
 BIN NUMBER : D48

STATUS/PROPERTY : E EVIDENCE
SUBMITTING OFC : 0138 LAVIGNE, BRIAN R
PROCESSING CODE : FDL F.D.L.E.
DATE SENT : 07/26/89
DATE RETURNED : 01/29/90
PROPERTY RELEASE: H HOLD CASE PENDING
QUANTITY/AMOUNT : 1
PROPERTY CODE : K CLOTHING/FUR
PROPERTY TYPE : OTH OTHER
ARTICLE : PANTS
OTHER BRAND : RUSTLER
DESCRIPTION : BLUEJEANS

ARTICLE INFORMATION SCREEN

VAL: 14

CONTROL NUMBER : B001405
DATE PROP/BOOKED: 04/17/90
BIN NUMBER : D48
STATUS/PROPERTY : E EVIDENCE
SUBMITTING OFC : 0036 CARROLL, JOHN L
PROPERTY RELEASE: H HOLD CASE PENDING
QUANTITY/AMOUNT : 1
PROPERTY CODE : Z MISCELLANEOUS
PROPERTY TYPE : OTH OTHER
ARTICLE : HAIR SAMPLES
DESCRIPTION : COLLECTED FROM VICTIM

FINAL DISPOSITION OF PROPERTY

VAL: 14

REMARKS :
PLUCKED AND COMBED SCALP AND PUBIC HAIR.
RECEIVED FROM JANE FANNING, ARNP, S.A.V.E. TEAM.

**CITY OF LARGO POLICE DEPARTMENT
PROPERTY/EVIDENCE REPORT**

CASE NO. 99-6440
CONNECTING CASE NOS. _____

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. _____
BIN # _____
COMPUTER ENTRY DATE _____

DATE 06 05 90 0957
MO DAY YEAR TIME

OFFENSE ATT: Homicide
LOCATION 4017 Audubon Dr.

EVIDENCE
 NON-EVIDENCE
 FOUND
 SEIZED/SAFE KEEPING
 OTHER _____

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING?
 NO YES (EXCEPT P.A. CARDS)

IF BOOKING OFFICER'S SIGNATURE: [Signature]

PROPERTY MAY BE

DESTROYED
 PHOTO AND RELEASE TO OWNER
 PROCESSING
 LFD
 PCSO FBI SOLE

CITY/STATE Largo FL
ZIP 84640008
TELEPHONE NO. _____
RES. _____ BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY _____
TIME RECEIVED _____
DATE: _____
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

OFFICER RECOVERING PROPERTY SIGNATURE [Signature] SPN # 98536 5016
OFFICER TRANSPORTING PROPERTY SIGNATURE [Signature] SPN # 98536 5016

PERSON STATUS: PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS: ✓ NAME LAST _____ FIRST _____ MIDDLE _____ RACE _____ SEX _____ DATE OF BIRTH _____

STREET NO. _____ STREET NAME _____ BLDG. # _____ CITY _____ STATE _____ ZIP NO. _____
APT. # _____ LOT # _____

REMARKS Victim # _____ TELEPHONE NO. _____
HOME _____
BUSINESS _____

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. _____ PROPERTY USE ONLY CASE NO. _____

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT., SIZE, COLOR, STYLE)
E	✓	1	Plucked Hair from			
E	✓	2	Combed Hair w/ comb, from			
E		2	Voluntary Elim. Prints from			
E		4	Voluntary Elim. Prints from			

CLEARED

REPORTING OFFICER: [Signature] SPN # 98536 5016 DATE/TIME REPORT COMPLETED: 06 05 90 1003
MO DAY YR TIME

REVIEWED & APPROVED BY: [Signature] RANK _____ SUPERVISOR PAGE _____ OF _____
(SIGNATURE)

WHITE - PROPERTY UNIT GREEN - RECORDS BUREAU CANARY - INVESTIGATIONS BUREAU PINK - ADMIN. SVCS BUREAU GOLDENROD - OFFICER'S RECEIPT

Item # 17
18

Elim Finger Prints

Sign out By *[Signature]*
Date 10-2-90
Time 11:00 pm

Witness: SA. W. Y. Smith

Item #17 + 18

Received by Norma Cook
Date 10-4-90
Time 0650

Destroyed 8/4/92

WY

RECEIVED

**CITY OF LARGO POLICE DEPARTMENT
PROPERTY/EVIDENCE REPORT**

CASE NO. 89-6440
CONNECTING CASE NO. NONE

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/INSTRUMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. 89-6440

DATE 07 15 89 00 15
MO DAY YEAR TIME

OFFENSE ATT HOMICIDE
LOCATION 1017 AVULGON DR

BIN # 42
COMPUTER ENTRY DATE 7/17/89 BY [Signature]

- EVIDENCE
 NON-EVIDENCE
 FOUND
 RECOVERED
 MISSING/LOST
 SEIZED/SAFE KEEPING
 OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES IF YES, BOOKING OFFICER'S SIGNATURE:

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER
PROCESSING: PCSO FBI FDLE LPD

CLAIMANT OWNER
NAME _____
ADDRESS _____
CITY/STATE SEE BELOW
ZIP _____ DOB _____
TELEPHONE NO. _____
REG. _____ BUS. _____

PROPERTY USE ONLY
PROPERTY RECEIVED BY [Signature]
TIME RECEIVED 10:30
DATE 07 17 89
 RECEIVED BY PERSON
 REMOVED FROM LOCKER

OFFICER RECEIVING PROPERTY SIGNATURE [Signature] SPN # 105937 OFFICER TRANSFERRING PROPERTY SIGNATURE [Signature] SPN # 105937

PERSON STATUS PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS NAME LAST _____ FIRST _____ MIDDLE _____ RACE _____ SEX _____ DATE OF BIRTH _____

STREET NO. _____ STREET NAME _____ BLDG. # _____ CITY _____ STATE _____ ZIP NO. _____
APT. # _____ LOT # _____

REMARKS SHEETS (ON TOP OF WHICH INCIDENT OCCURRED) TAKEN FROM CLUB
TELEPHONE NO. _____
HOME _____
BUSINESS NONE

PROPERTY STATUS E-EVIDENCE NE-NON-EVIDENCE O-OTHER P PROCESS PLEASE CHECK BIN NO. D48 PROPERTY USE ONLY CASE NO. 89-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>E</u>		<u>1.</u>	<u>SHEETS</u>	<u>N/A</u>	<u>VNZ</u>	<u>(1) PAIR OF QUEEN SIZE, BEIGE SATIN SHEETS (FITTED COVER).</u>
		<u>2.</u>				
		<u>3.</u>				
		<u>4.</u>				
		<u>5.</u>				
		<u>6.</u>				
		<u>7.</u>				
		<u>8.</u>				
		<u>9.</u>				
		<u>10.</u>				
		<u>11.</u>				
		<u>12.</u>				
		<u>13.</u>				
		<u>14.</u>				
		<u>15.</u>				
		<u>16.</u>				

CLEARED

REPORTING OFFICER [Signature] SPN # 105937 DATE/TIME REPORT COMPLETED 07 15 89 00 15
MO DAY YEAR TIME

REVIEWED & APPROVED BY [Signature] SUPERVISOR PAGE 1 OF 1
RANK _____ (SIGNATURE)

**CITY OF LARGO POLICE DEPARTMENT
PROPERTY/EVIDENCE REPORT**

CASE NO. 89-6440
CONNECTING CASE NOS. None

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS
(1) UNDEVELOPED FILM (2) LATENT FINGER PRINTS (3) MONEY
(4) NARCOTIC/DRUG/IMPLEMENTS (5) BLOOD SAMPLES (6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. 89-6440
BIN # D48
COMPUTER ENTRY
DATE 7/17/89

DATE 07 15 89 02 11
MO DAY YEAR TIME

OFFENSE MURDER
LOCATION 5017 AUBOBON DR

- EVIDENCE
 NON-EVIDENCE
 FOUND
 RECOVERED
 MISSING/LOST
 SEIZED/SAFE KEEPING
 OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES IF YES, BOOKING OFFICER'S SIGNATURE

- PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
NAME
ADDRESS SEE BELOW
CITY/STATE
ZIP
TELEPHONE NO

PROPERTY USE ONLY
PROPERTY RECEIVED BY: [Signature]
TIME RECEIVED 1030 HOURS
DATE 071789
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

PROCESSING: LPD PCSO FBI FOLE

OFFICER RECOVERING PROPERTY SIGNATURE [Signature] SPN # SPN157 OFFICER TRANSPORTING PROPERTY SIGNATURE [Signature] SPN # SPN157

PERSON STATUS PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS S NAME LAST HEARRICK FIRST KEVIN MIDDLE RICHARD RACE W SEX M DATE OF BIRTH 7/10/66

STREET NO. 5015 STREET NAME AUBOBON DR. BLDG # 1 CITY LARGO STATE FL ZIP NO. 34640

REMARKS HAIR FIBERS OF SUSPECT, WITH LAMINENT, FOR ANALYSIS. TELEPHONE NO. HOME 351195 BUSINESS None

PROPERTY STATUS: E-EVIDENCE NE-NON-EVIDENCE O-OTHER P-PROCESS PLEASE CHECK BIN NO. D48 PROPERTY USE ONLY CASE NO. 89-6440

STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>6</u>	<u>E</u>	<u>1</u>	<u>HAIR</u>	<u>N/A</u>	<u>N/A</u>	<u>HEAD HAIR OF SUSP.</u>
<u>7</u>	<u>E</u>	<u>2</u>	<u>HAIR</u>	<u>N/A</u>	<u>N/A</u>	<u>PUBIC HAIR OF SUSP.</u>
		<u>3</u>				
		<u>4</u>				
		<u>5</u>				
		<u>6</u>				
		<u>7</u>				
		<u>8</u>				
		<u>9</u>				
		<u>10</u>				
		<u>11</u>				
		<u>12</u>				
		<u>13</u>				
		<u>14</u>				
		<u>15</u>				
		<u>16</u>				

CLEARED

REPORTING OFFICER Stephen J. Terini SPN # 0117/101547 DATE/TIME REPORT COMPLETED 07 15 89 02 11
MO DAY YR TIME

REVIEWED & APPROVED BY: A/S. Terini RANK (SIGNATURE) SUPERVISOR PAGE 1 OF 1

WHITE - PROPERTY UNIT GREEN - RECORDS BUREAU CANARY - INVESTIGATIONS BUREAU PINK - ADMIN SVCS BUREAU GOLDENROD - OFFICER'S RECEIPT

**CITY OF LARGO POLICE DEPARTMENT
PROPERTY/EVIDENCE REPORT**

4/10 ✓

CASE NO. 89-6440
CONNECTING CASE NOS.

SEPARATE FORMS MUST BE MADE ON THE FOLLOWING ITEMS:
1) UNDEVELOPED FILM 2) LATENT FINGER PRINTS 3) MONEY
4) NARCOTIC/DRUG SUPPLEMENTS 5) BLOOD SAMPLES 6) FIREARMS

PROPERTY USE ONLY
CONTROL NO. 89-6440
BIN # D48
COMPUTER ENTRY DATE: 1/29/89 BY: DF

DATE 07 19 89 04 30
NO DAY YEAR TIME

OFFENSE Att Homicide
LOCATION 4017 Audobon

- EVIDENCE
- NON-EVIDENCE
- FOUND
- RECOVERED
- MISSING/LOST
- SEIZED/SAFE KEEPING
- OTHER

CAN ARTICLE BE RETURNED TO OWNER AFTER PROCESSING? NO YES IF YES, BOOKING OFFICER'S SIGNATURE

PROPERTY MAY BE
 RELEASED TO OWNER
 HOLD CASE PENDING
 STATUS CHANGED
 DESTROYED
 PHOTO AND RELEASE TO OWNER

CLAIMANT OWNER
NAME Kevin Herrick
ADDRESS 4019 Audobon
CITY/STATE Largo, FL
ZIP 31640 DOB 1/2/66
TELEPHONE NO. 5351199 RES. BUS.

PROPERTY USE ONLY
PROPERTY RECEIVED BY: [Signature]
TIME RECEIVED: 10:30
DATE: 07/17/89
 RECEIVED IN PERSON
 REMOVED FROM LOCKER

OFFICER RECEIVING PROPERTY SIGNATURE [Signature] SPN # 59452

OFFICER TRANSPORTING PROPERTY SIGNATURE [Signature] SPN # 59452

PERSON STATUS: PO-OWNER C-COMPLAINANT V-VICTIM S-SUSPECT RF-RECEIVED FROM O-OTHER (EXPLAIN)

STATUS: S NAME LAST: Herrick FIRST: Kevin MIDDLE: Richard RACE: W SEX: M DATE OF BIRTH: 10/03/62

STREET NO.: 4019 STREET NAME: Audobon Dr BLDG # APT # LOT # CITY: Largo STATE: FL ZIP NO.: 31640

REMARKS: TELEPHONE NO. HOME: 5351199 BUSINESS:

PROPERTY STATUS	E - EVIDENCE	NE - NON EVIDENCE	D - OTHER	P - PROCESS PLEASE CHECK	BIN NO. <u>D48</u>	PROPERTY USE ONLY CASE NO. <u>89-6440</u>
STATUS	P	ITEM	ARTICLE	SERIAL NUMBER	MANUFACTURER	ADDITIONAL DESCRIPTION (WEIGHT, AMT, SIZE, COLOR, STYLE)
<u>E</u>		<u>1</u>	<u>wallet</u>	<u>-</u>	<u>unk</u>	<u>Black 3 fold</u>
<u>E</u>		<u>2</u>	<u>license</u>	<u>-</u>	<u>D15MV</u>	<u>H620 51666 363</u>
<u>E</u>		<u>3</u>	<u>shirt</u>	<u>-</u>	<u>Islander</u>	<u>Red t-top XL</u>
<u>E</u>		<u>4</u>	<u>Pocket knife</u>	<u>-</u>	<u>unk</u>	<u>no handle approx 5 1/2" silver blade</u>
<u>E</u>		<u>5</u>	<u>jeans</u>	<u>-</u>	<u>Puettler</u>	<u>blue jeans</u>
		<u>6</u>				
		<u>7</u>				
		<u>8</u>				
		<u>9</u>				
		<u>10</u>				
		<u>11</u>				
		<u>12</u>				
		<u>13</u>				
		<u>14</u>				
		<u>15</u>				
		<u>16</u>				

CLEARED

REPORTING OFFICER: [Signature] SPN # 59452 DATE/TIME REPORT COMPLETED: 07 19 89 07 00
REVIEWED & APPROVED BY: [Signature] (SIGNATURE) SUPERVISOR PAGE 1 OF 1

PROPERTY CUSTODY

AUCTION/RETENTION ARTICLE DISPOSITION

ARTICLES MARKED BY RETENTION A AUCTION

ITEM	RVA	RELEASED TO	DATE	RETURNED BY	DATE	CLERK

DUPLICATE

COMMENTS

ITEM NUMBERS

1	2	3	4	5
---	---	---	---	---

Signed in by: Bob
 Returned by: Bob
 SPN # SPN
 Date 7/25/90
 TIME 1145 MS.

1	2	3	4	5
---	---	---	---	---

Signed in by: M. Y. Switzer
 Returned by: TO FILE
 SPN # 1590
 Date 7/25/90
 TIME 1200

3	4	5
---	---	---

Signed in by: S. J. Zolay
 Returned by: TO FILE
 SPN # ---
 Date 7/26/90
 TIME 0900

3	4	5
---	---	---

Signed in by: [Signature]
 Returned by: [Signature]
 SPN # ---
 Date 1/25/90
 TIME 1030

3	4	5
---	---	---

Signed in by: Sgt. M. Y. Switzer
 Returned by: Deliver to FILE LAB
 SPN # 1590
 Date 6/13/90
 TIME 1000 W.S.

3	4	5
---	---	---

Signed in by: Sgt Switzer
 Returned by: Return Prop From Lab / Hudson
 SPN # 1550
 Date 7/31/90
 TIME 1100 W.S.

FINAL DISPOSITION

RECEIVED FOR THE USE OF FEDERAL BUREAU OF INVESTIGATION THE ITEMS LISTED IN THIS PROPERTY CERTIFY THAT THE ABOVE DESCRIBED TO THE POSSESSION AND RELEASE TO THE ABOVE LISTED PARTNER AT HIS OWN RISK AND ALL HIS RESPONSIBILITY

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

RELEASED TO: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

AUTHORIZED BY: _____

RELEASED BY: [Signature]

DESTROYED BY: [Signature]

DATE: _____ TIME: _____ OFFICE: _____

ATTACHMENT S

CRIME SCENE PROCESSING REQUEST

REPORT #: 89-6440 OFFENSE: ATT HOMICIDE DATE AND TIME OCCURRED: 07-15-89 0001-0015

INDOOR SCENE ONLY: [X] OUTDOOR SCENE ONLY: [] INDOOR AND OUTDOOR SCENE: []

LOCATION: _____ GRID: 361 ZONE: 15 BUSINESS: [] RESIDENTIAL: [X]

VICTIM'S NAME: _____ CONTACT PHONE #: _____

TYPE(S) OF CRIME SCENE PROCESSING REQUESTED:

- [X] PHOTOGRAPHS [] TIRE IMPRESSIONS [] PAINT CHIPS
[X] LATENT LIFTS [] TOOL MARKS [] HAIRS/FIBERS
[] SHOE PRINTS [] BLOOD COLLECTION [] GLASS/GLASS FRAGMENTS

OTHER: MASTER BEDROOM QUEEN SIZE BED SHEETS FOR HAIR FIBERS.

VEHICLE PROCESSING: N/A

[] INSIDE ONLY [] OUTSIDE ONLY [] INSIDE AND OUTSIDE

MAKE: _____ COLOR: _____ TAG #: _____ VIN #: _____

LOCATION OF VEHICLE: [] ABC [] L.P.D. [] OTHER: _____

INVESTIGATING OFFICER: B. LAVIGNE SPN #: 849482 SHIFT: A

REQUEST APPROVED BY: _____ DATE OF REQUEST: 07-15-89
SHIFT SUPERVISOR

I.D. UNIT USE ONLY!

CRIME SCENE REPORT

DATE REQUEST RECEIVED: 07-15-89 PROCESSED BY: OFC. STEPHEN D. JOINER

DATE PROCESSED: 07-15-89 TIME OF ARRIVAL: 0110 DEPARTURE: 0240

THE ABOVE SCENE WAS PROCESSED AND THE FOLLOWING EVIDENCE COLLECTED:
I PHOTOGRAPHED THE ENTIRE SCENE; 15 B&W PRINTS. I DUSTED ALL PERTINENT AREAS FOR LATENT FINGERPRINTS. I LIFTED TWO PRINTS FROM THE EXTERIOR SIDE OF THE MASTER BEDROOM DOOR KNOB. I LIFTED ONE PRINT FROM THE EXTERIOR SIDE OF THE SECOND BEDROOM DOOR KNOB. I LIFTED SIX PRINTS, TO INCLUDE A PARTIAL PALM PRINT, FROM THE INTERIOR SIDE OF THE SLIDING GLASS DOOR LOCATED IN THE LIVING ROOM. I COLLECTED THE BEIGE SATIN QUEEN SIZE SHEETS FROM THE BED IN THE MASTER BEDROOM; THE POSSIBILITY EXISTS THAT THESE SHEETS CONTAIN SOME SORT OF HAIR FIBERS. I PLACED ALL EVIDENCE ITEMS COLLECTED INTO LPD PROPERTY FOR SAFEKEEPING.

PHOTOS TAKEN: [X] YES [] NO #B&W ROLLS 1 #COLOR ROLLS _____

Signature: Stephen D. Joiner 0117/105937

I.D. TECHNICIAN

100 East Bay Drive
Largo, Florida 34640

LARGO POLICE DEPARTMENT LABORATORY

587-6717
Ext. 3306

EXAMINATION RESULTS

DATE 5-23-90

TO: Officer B. LaVigne

REF: LAB CASE #: L90-138

LPD CASE #: 89-6440

OFFENSE: Att. Homicide

OCCURRED: 7-15-89

LOCATION: _____

SUSPECTS: Herrick, Kevin R.

DATE EVIDENCE RECEIVED 5-21-90 SUBMITTED BY LaVigne DATE EXAMINED 5-21/22/90

ITEM #

1 Six partial latent print impressions from sliding glass door

2 Zerex copy of fingerprints from Kevin R. Herrick

RESULTS OF EXAMINATION

The six partial latent prints were not similar to the known fingerprints of Kevin Herrick.

Examination By: [Signature]

LPD Property #: _____

Officer ()

Records ()

Lab File ()

SAO ()

Court Liason ()

EXAMINATION RESULTS

DATE 6-5-90

TO: Officer B. LaVigne

REF: LAB CASE #: L90-138 (supplemental)

LPD CASE #: 89-6440

OFFENSE: Attempted Homicide

OCCURRED: 7-15-89

LOCATION: 4017 Audubon Dr.

SUSPECTS: Herrick -

DATE EVIDENCE RECEIVED 6-5-90 SUBMITTED BY n/a DATE EXAMINED 6-5-90

ITEM #

- E1 Plucked hair from victim Darren Barfield
- 2 Combed hair from victim Darren Barfield
- E3 Voluntary elimination fingerprints of Darren Barfield
- E4 Voluntary elimination fingerprints of Darren Barfield
- Latent prints (4 of value) on file from crime scene.
- * E1 + E2 collected for FDLE Analysis.

RESULTS OF EXAMINATION

Items E1 + E2 were submitted to Property.

The four latent prints on file were identified as the Left Index, Middle, Ring and Thumb of victim Darren Barfield.

Examination By: [Signature]

LPD Property #: _____

Officer () Records () Lab File () SAO () Court Liason ()

ATTACHMENT T

7/2/89	Ordered judgment + sentence
AUG 31 1989	AD-BT
12-1-89	72-hr letter to Off. Brian Longne - LPD sh
12-6-89	Data entry to add Patricia Poney; Add. not to PD sh (12-11-89)
12-12-89	2nd request 72-hr ltr sh
12-29-89	3rd request 72-hr ltr sh
2-27-90	Data entry to add Theresa Poney; add not to other.
3-19-90	I called Rosemary Howat ^H , FDLE Tampa (87-7125), and she will send me a copy of the report. Case #
	I called Mariann Hildreth, Orlando Crime Lab, (407-423-6800), and she said that she needs hair sample from the victim. She stated that she called LPD but that they failed to call her back. I told her to call the chief of police. She will call me back. Job.
3-26-90	I called Mariann Hildreth as to status. She didn't call LPD but will and will call me back. Job.
3-26-90	Data entry to add Karen Latman + Mariann Hildreth; Hand. not sup'g is for stand by to hold; Adm. Job - Latman's report to T. Sunday Sh.
4-11-90	V called Concerned that there hasn't been any one-on-one conversation with atty. handling T. Concerned that it's taking so long to go to T. will call back Monday afternoon Sh.
4-11-90	I spoke to Sty Smith regarding

FDLE. She said that she will ~~now~~ "take care" of Lavigne for his negligence. She called victim and set up time to get hair. Gaff I was set up for 7:00 on 4-16-90

4-16-90 - I called victim and left message for her to call me. Gaff
 - mom's #.

- she said has no interest.

- I called at
work and left message to call.

4-16-90 Ed Linsale is going to move to continue this case. There is an Agg Rape case set before Judge Walker on 5/2 + that case has been continued so many times Judge will not allow any more continuances for any reason. Set Depo on Parny for 5-11-90 at 2:00 p.m. sh. Remise on Patrick Parny for 4/30/90-9:30am Deposition to Linsale; S. Dep. DT for med. on indivd Kanaly (and Regate) sh

4-27-90 - I spoke to Mariann Hildreth who said to find out if the V's hair was bleached back then.

4-30-90 - I spoke to V, who said that her ends were bleached with black roots. She said a good idea to get the boyfriend's hair. I called Sgt Smith, LPD and told her to pluck the hair of Jack

5-22-90 - V spoke to He will
 call Sgt Smith

5-23-90 - I left message ~~to~~ for Sgt Smith to find out about the V's clothes. She will find out about E/P's.

5-24-90	<p>1) Ordered complete report from Tom.</p> <p>2) CID memo to locate Patrick + Theresa Downey</p> <p>3) Data entry to add Dr. Horvath and lab to Thomas (copy of memo + add Dr. J. develop to file for T.</p> <p>4) Develop to FILE memo for standing</p> <p>5) CID memo for certified J+S on Miller Co - Europe</p> <p>6) No add. depts filed.</p> <p>7) No J+S to add in Theresa Downey; ordered J+S: 21-5200, 22-221000 + 24-112200 for Patrick Downey, et</p>
5-25-90	<p>I called FDLE re the bloody shirt I spoke to Kathy Gunther LAPD states that FDLE has it. FDLE will call me back. I got results on f/ps - NOT GOOD!</p>
6-1-90	<p>Notice of hearing - M/Classification;</p>
6-6-90	<p>Add writ</p>
6-5-90	<p>meeting at LPD with Barone, Sta Smith, Lavigne, and me</p> <p>- we to have hair of _____ and blood of _____</p>
6-23-90	<p>Trial Prep - (KC)</p> <p>J+S are in file - OUT of Co have been ordered previously</p> <p>No new depts filed</p> <p>WID's have been served</p> <p>Will check w/ Mary Monday on confirmation letters.</p>

ATTACHMENT U

STATE OF FLORIDA

In the _____ Circuit _____ Court

VS

Pinellas County, Florida

Darren Scott Barfield
Defendant

No. CRC-85-02853CPANO-C
CRC-85-02853CPANO-C

Order of Modification of Probation

NOV 4 2 11
KATHLEEN M. SHAW
CLERK OF COURT

THIS CAUSE coming on to be heard, and being heard in the Spring term of this Court before the Honorable Undersigned Judge, and it appearing that Darren Scott Barfield hereinafter referred to as the aforesaid, was on the 8th day of July, A.D. 1985 placed on probation for the offense of VPCDAPACA (Possession of Cocaine) - Count II; in the Circuit Possession of Marijuana, Count II; Court of Pinellas County, for a term of three years consecutive to one year Community Control. in accordance with the provisions of Chapter 948 Florida Statutes, and,

It further appearing that the aforesaid has not properly conducted himself, but has violated the conditions of his probation in a material respect by Violation of Condition (5) which states, "You will live and remain at liberty without violating any law. A conviction in a court of law will not be necessary in order for such a violation to constitute a violation of your probation."

IN THAT, probationer was arrested by the Florida Highway Patrol at the intersection of SR 55 (US-19) and Belleair Road in Clearwater on 5/2/87 for Driving Under the Influence.

IT, THEREFORE, IS ORDERED AND ADJUDGED that the probation of the aforesaid defendant, ought to be modified, and it is hereby modified in accordance with Section 948.03 Florida Statutes, in the following manner:

Condition (14) which will state that subject be ordered to successfully complete PCAS.

I, the undersigned probationer, do request and consent to Modification of Probation as set forth above.

I hereby acknowledge I am cognizant of my right to counsel and hearing in this matter and do freely and voluntarily waive my right to same.

Darren Barfield
(Probationer)

12-30-87
(Date)

Thom Canty
(Witness)

IT IS FURTHER ORDERED, That the Clerk of this Court file this order in his office, enter a copy of same in the Minutes of the Court, and forthwith provide certified copies of same to the Probation Officer for his use in compliance with the requirements of law.

DONE AND ORDERED IN OPEN COURT, this 4 day of Nov A.D. 1987

Thom Canty
Judge Presiding

A certified copy of this order has been delivered to Probationer, who had been instructed regarding same.

This the _____ day of _____, A.D. 19 _____

Probation Officer