

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COPY

KEVIN RICHARD HERRICK,

Plaintiff,

vs.

Case No.: 8:97-2205-CV-T-23MAP

MICHAEL W. MOORE,
Secretary, Department of
Corrections, State of Florida,

Defendant.

DEPOSITION OF:

PATRICK PORREY

TAKEN:

Pursuant to Notice by
Counsel for Plaintiff

PLACE:

Law Offices of
Carrington & Carrington, P.A.
619 Turner Street
Clearwater, Florida 33756

DATE:

Thursday, August 9, 2001

TIME:

10:05 a.m. - 11:26 a.m.

BEFORE:

Deborah A. Sabella, RPR
Notary Public,
State of Florida at Large

ORIGINAL
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1 APPEARANCES:

2
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11 PATRICIA A. MCCARTHY, ESQUIRE
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15 Tampa, Florida 33607
16 Attorneys for Defendant
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25

I N D E X

WITNESSPAGE

Called by the Plaintiff:

PATRICK PORREY

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EXHIBITS

(none)

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1 The deposition, upon oral examination, of
2 PATRICK PORREY, taken pursuant to notice by counsel
3 for Plaintiff at the Law Offices of Carrington and
4 Carrington, P.A, 619 Turner Street, Clearwater,
5 Florida, on Thursday, August 9, 2001, at 10:05 a.m.,
6 before Deborah A. Sabella, Registered Professional
7 Reporter, Notary Public, State of Florida at Large.
8 Thereupon,

9 PATRICK PORREY,
10 having been duly sworn to tell the truth, the whole
11 truth, and nothing but the truth, was examined and
12 deposed as follows:

13 DIRECT EXAMINATION

14 BY MR. GILLICK:

15 Q Good morning, Pat. My name is Mike Gillick.
16 I'm an attorney. I represent Kevin Herrick in a
17 federal habeas corpus case in Tampa. Kevin has
18 provided me with your name as a person potentially
19 having some information regarding his situation. And
20 the purpose of this deposition today is just so that
21 we can find out what information you have or don't
22 have in the case.

23 I'm appearing by telephone from Colorado. If
24 you have any problems hearing me or I get going too
25 fast or get too confusing, just stop me, slow me down

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1 and make sure you answer to your satisfaction. Okay?

2 A All right, Mike.

3 Q All right. Would you -- to get started, Pat,
4 would you state your full name for the record?

5 A My name is Patrick O'Shane James Porrey.

6 Q And how do you spell your last name?

7 A P-o-r-r-e-y.

8 Q Okay. And, Mr. Porrey, what's your date of
9 birth?

10 A 6/12/64.

11 Q That makes you how old now?

12 A I'm 37, 38, somewhere in there. I don't
13 know.

14 Q Okay. And what is your address?

15 A 1205 Omaha Circle.

16 Q And what city?

17 A Palm Harbor, Florida.

18 Q The ZIP code there?

19 A 33 -- 33653 or something like that. I don't
20 know. Sorry.

21 Q Okay. And where are you employed, sir?

22 A Reliance.

23 Q And where is that?

24 A That's 405 North Orange Street, Ozone.

25 Q And what's the phone number there?

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- 1 A 772-1929.
- 2 Q How long have you been employed there?
- 3 A About three years.
- 4 Q What type of work do you do?
- 5 A I do -- I do a lot of construction for the
6 company. I also put in sensors in gas stations to
7 detect fuel leaks, kind of like an EPA thing.
- 8 Q Okay. Are you currently on probation or
9 parole?
- 10 A No.
- 11 Q Okay. And, Patrick, I understand your
12 mother's name is Teresa; is that correct?
- 13 A Yes. She is deceased now, but yes.
- 14 Q Okay. When did she pass away?
- 15 A Four years ago.
- 16 Q And she lived in Pinellas County?
- 17 A Yes, sir. Largo.
- 18 Q How long have you lived in Pinellas County?
- 19 A Since '74.
- 20 Q Quite a while then. Do you know Kevin
21 Herrick?
- 22 A Yes. I grew up with him.
- 23 Q Where did you grow up with him?
- 24 A On Audubon Drive in Largo.
- 25 Q About what ages were you when you guys met

1 and grew up together?

2 A Seven, eight.

3 Q And how long did you actually hang around
4 together as kids?

5 A Probably until we were about 13, 14. And
6 then they moved away, and then we ran into each other
7 and hooked up again probably when we were about 18,
8 19, 20 years old -- of age.

9 Q You lost contact with him for four or five
10 years maybe?

11 A Yeah.

12 Q Did your mom -- or did you know Kevin
13 Herrick's mother?

14 A Yes.

15 Q Do you recall her name?

16 A No, I -- I really can't remember. I always
17 used to call her just Mrs. Herrick.

18 Q Okay. Was she in any close relationship with
19 your mom?

20 A Just neighbors.

21 Q Okay. And you said you and Kevin hooked up
22 again when you were 18 or 19. How did that come
23 about?

24 A Just ran into each other. I guess he stopped
25 by and -- to see mom or see what -- if any of us kids

1 were around.

2 Q Okay. And did -- did you get real close with
3 him, or did you just see him occasionally after that?

4 A Oh, yeah, we -- we became good friends and,
5 you know, just rekindled old friendship and stuff like
6 that.

7 Q Okay. And at some point did Kevin move in
8 with your mother?

9 A Yeah. Yeah. Yes, he did.

10 Q Okay. And what address was that or street?

11 A 4015 Audubon Drive, Largo, Florida.

12 Q Was that in a triplex?

13 A Yes, it was.

14 Q Did she have an apartment there?

15 A She had two apartments. She lived in the
16 middle.

17 Q Okay. And the apartments -- the triplex, was
18 that sort of an L-shape?

19 A Well, actually, it was more of a -- the
20 middle apartment sat back from the two apartments on
21 each -- on each side. One was on the east side and
22 one was on the west side.

23 Q Okay. And Kevin at some point moved in with
24 your mom?

25 A Yeah. He stayed in the back room.

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1 Q Okay. Did he rent that room from her?

2 A Yes, he did.

3 Q Okay. And were you staying with your mom at
4 the same time?

5 A Yes. I was -- I had a separation with my --
6 my future wife.

7 Q Okay. What is her name?

8 A My wife's name?

9 Q Yes.

10 A Felicia Porrey.

11 Q Okay. And you said your mom owned two
12 apartments.

13 A It was three, but she lived in the middle.

14 Q Okay. And who was living in her other
15 apartment at the time of the incident in 1989?

16 A I know a young couple was on the -- on the
17 east side, and I can't recollect who was on the west
18 side.

19 Q Okay. There was an incident that occurred on
20 July 14 or 15 of 1989, wherein a Cheryl Hagen and
21 Darren Scott Barfield alleged that they were attacked
22 by someone. And they lived right next door to your
23 mother?

24 A Yeah. 4013.

25 Q Okay. Are you --

1 A No. I'm sorry. 4017. The other apartment
2 was 4013.

3 Q Okay. And that apartment where Cheryl and
4 Darren lived, was that your mother's -- one that she
5 owned or not?

6 A Yes.

7 Q Okay. Did you know Cheryl or Darren at all
8 before they moved into the apartment?

9 A No, I did not.

10 Q Did you come to know them in any manner after
11 they moved into the apartment?

12 A Yes.

13 Q And did -- can you describe Cheryl to me?

14 A Well, she was about five four, blonde hair at
15 the time. I don't know what she looks like now. I
16 haven't seen her in a long time. But five four,
17 blonde hair. I don't remember what her color of her
18 eyes were. I know she had just had had a child or was
19 pregnant at the time. It's been so long. I don't
20 remember.

21 Q And do you recall about how old she was at
22 the time?

23 A Oh, yeah. She was probably about my age, in
24 her early twenties.

25 Q And what about Darren Scott Barfield? Can

1 you recall a description of him?

2 A Sandy blonde hair, kind of about five seven,
3 five eight, five nine, somewhere in there, kind of
4 slender. He was also our age.

5 Q Okay. Do you know where they reside now?

6 A No, I do not.

7 Q Do you know if they were married at the time
8 or just boyfriend-girlfriend?

9 A Just all I knew was boyfriend-girlfriend.

10 Q Okay. And did you know a David Stuart?

11 A Yeah. That's who was living, I believe, next
12 door.

13 Q Yeah, that's my understanding.

14 A Yeah, David was living next to -- he was
15 living in 4013.

16 Q And about how old was David?

17 A David was probably our age too, maybe a
18 little older -- a couple of years older.

19 Q And do you know -- do you know where David is
20 today?

21 A Sure don't.

22 Q When is the last time you had any contact
23 with him?

24 A I believe I probably ran into him maybe one
25 year after he moved out of the apartment --

1 Q Okay.

2 A -- at a grocery store or something. I don't
3 recall.

4 Q Okay. Do you know what type of work he did
5 back then?

6 A I can't recollect. Sorry.

7 Q Okay. So you don't know where Cheryl, Darren
8 or David are today; is that right?

9 A That's correct.

10 Q Okay. The -- were you home at the time of
11 the incident where Cheryl and Darren were allegedly
12 attacked?

13 A No, I was not.

14 Q Okay. Do you recall where you were?

15 A Yeah. I was across the street over at -- I
16 think it was called Poor Boys.

17 Q What is that?

18 A It's a bar/restaurant.

19 Q Okay. And the -- my understanding -- and you
20 can maybe fill in some gaps -- Kevin Herrick told me
21 that the day of that incident that you and he went to
22 fix your girlfriend's car -- Felicia's Camaro, Z28 or
23 something, had thermostat problems. Do you recall
24 that?

25 MR. FISHKIN: I'm going to object to the

1 form of the question. Go ahead. You may
2 answer.

3 A Yes.

4 BY MR. GILLICK:

5 Q Okay. What kind of car was that?

6 A That was a red Iroc.

7 Q And do you recall where you went to work on
8 the car?

9 A No. No, I don't.

10 Q Could it have been a -- a self-service car
11 wash?

12 A Yes. You're bringing it back to my
13 attention. Yes, it could have been.

14 Q Okay. And do you recall if you guys also
15 washed her car before you took it back?

16 A Yes. I believe it was up on Ulmerton now,
17 now that I think of it.

18 Q Okay. And had -- to another subject now, did
19 you and Kevin ever go to Cheryl Hagen's apartment and
20 watch a video?

21 A Yes.

22 Q Do you recall what the video was?

23 A No.

24 Q Could it have been Cocoon?

25 A Oh, yeah. It was the movie that was made in

1 St. Petersburg or something like that.

2 Q Okay. And did that occur shortly before this
3 incident where Cheryl allegedly was attacked?

4 A Yes.

5 Q Do you recall if it happened the night
6 before?

7 A The day before we went and watched the movie,
8 is that what you're --

9 Q Uh-huh.

10 A Yeah, something like that.

11 Q Okay. And do you recall how it came about
12 that you went over to Cheryl's apartment to watch the
13 movie?

14 A Yeah. She come over and -- I don't remember
15 exactly. I think I was out back pulling weeds or
16 something like that or working in the shed. And she
17 come out and was talking to us, and I believe we all
18 walked over there and she said she had -- she had that
19 new movie Cocoon or something, and we went in and
20 watched some of it.

21 Q Okay. Was her boyfriend Darren Barfield home
22 at the time?

23 A No, he was not.

24 Q Do you recall where he was?

25 A I believe he was at work.

1 Q Okay. Is it possible she told you that he
2 was gone to a bachelor party?

3 MR. FISHKIN: I'm going to object to the
4 form of the question, and also the leading
5 nature of questions suggesting the answers.
6 Go ahead.

7 A I don't remember that part.

8 BY MR. GILLICK:

9 Q Okay. Do you recall where Darren Barfield
10 worked?

11 A No.

12 Q Did you call him Darren or Scott?

13 A Did I call him -- I didn't even really -- I
14 guess it was Darren.

15 Q Okay. That's always confusing. I go by my
16 middle name and I confuse myself sometimes, so bear
17 with me there. And you were not home -- I believe you
18 testified you weren't home when the actual incident
19 occurred; is that right?

20 A Correct. I -- I came home directly after
21 when it had -- I guess had just taken place.

22 Q Okay. Do you recall how you heard about the
23 incident?

24 A Yeah. Everybody was outside. I believe my
25 mother said something about it. They were outside,

1 and I believe Darren come running back and said he
2 chased some guy down the street.

3 Q Okay. Did the -- Darren say he chased some
4 guy?

5 A Yes, he did.

6 Q Did he say anything about a car or a license
7 plate?

8 A You know, this happened so long ago, I don't
9 even remember exactly what all he said, but I know he
10 chased the guy a distance on foot. I don't recall if
11 he jumped in a car or not and sped away or not.

12 Q Okay. And was -- you said people were all
13 outside. Was your mother outside?

14 A She had walked outside, but she stayed in the
15 kitchen looking through the window.

16 Q Did her kitchen look into the courtyard where
17 people were?

18 A Yes.

19 Q And was Cheryl Hagen outside?

20 A Yes.

21 Q And Darren came out. How about David Stuart?
22 Did you recall if he was outside?

23 A Yeah, I believe David came out too.

24 Q Okay. What about David, did he have a
25 girlfriend or a wife at the time?

1 A He had just went -- I believe went through a
2 separation.

3 Q Okay. And do you recall what time of day or
4 night this was that you returned home and --

5 A Oh, it could have been anywhere from 8:00 to
6 10:00, somewhere in there.

7 Q It's been a long time, hasn't it?

8 A Yes. Actually, I didn't even know Kevin was
9 still going through all this. I thought he got out of
10 it.

11 Q Okay. And was Kevin Herrick outside when you
12 got home?

13 A No.

14 Q How -- did you have any contact with Kevin
15 Herrick that night?

16 A No. He stayed home. I went out.

17 Q Okay. But when you came home and found this
18 incident had occurred, did you have any contact with
19 Kevin then?

20 A All I remember doing is waking him up out of
21 the -- out of the room. That's all I can remember
22 about that. I don't know if he -- he might have went
23 outside when we were all standing out trying to figure
24 out what had happened.

25 Q While people were outside -- Cheryl, Darren,

1 David and you -- did Cheryl Hagen at that point accuse
2 Kevin Herrick of being her attacker?

3 A No.

4 Q Do you recall what she was saying occurred?

5 A She said a guy -- somebody had come in there,
6 and she had thought at first it was her boyfriend
7 and -- and I guess put his hand over her mouth or
8 something like that. And she said she russled a
9 little bit or whatever, and I think that's when her
10 boyfriend had come in and then the attacker fought the
11 boyfriend.

12 Q The boyfriend would be Darren Barfield?

13 A Correct.

14 Q Okay. And then she said that Darren fought
15 with her attacker?

16 A Yes.

17 Q Do you recall what else she said?

18 A No. I know that Darren had said something
19 about being cut, but if I recall, it's just -- it was
20 like a little scratch or something.

21 Q Do you recall if you saw any blood?

22 A No, not really. I don't -- I can't recall
23 that.

24 Q Okay. And at that point out in the courtyard
25 shortly after the incident, did Cheryl or Darren

1 accuse Kevin Herrick of being the attacker?

2 A No, they did not. In fact, we were all
3 standing around wondering I believe something about
4 how the person got in and all that.

5 Q Okay. Do you recall if they described the
6 attacker to you?

7 A I think they did, but I don't remember what
8 they said.

9 Q Okay.

10 A Like I said, it's been a long time.

11 Q When they described the attacker, did it make
12 you think of Kevin Herrick?

13 A No.

14 Q And you said you went in and woke up Kevin
15 Herrick?

16 A Yes, I did.

17 Q How many bedrooms did your mom's apartment
18 have?

19 A Three.

20 Q And which bedroom would Kevin have been in?

21 A He was in the south -- southeast bedroom.

22 Q Okay. Was his door shut? Do you recall?

23 A Yeah, the bedroom door was shut. It also had
24 sliding glass doors, but the glass -- sliding glass
25 doors did not open anymore because they were off the

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1 tracks, and plus there was stuff all in front of them.

2 Q By "stuff," would that be construction
3 material-type?

4 A Yeah. Yes.

5 Q Could it have been possible for Kevin Herrick
6 to go in and out of that sliding glass door?

7 A No.

8 Q Was your mother awake during the incident?

9 MR. FISHKIN: I'm going to object to the
10 question. He has already said he wasn't there.
11 Go ahead.

12 BY MR. GILLICK:

13 Q Okay.

14 A Well, from what my mother had told me, yes,
15 she was.

16 MR. FISHKIN: I'm going to object to that
17 also. It's hearsay.

18 BY MR. GILLICK:

19 Q Okay.

20 A What about her tapes?

21 Q Yeah, and I will get to that. But when you
22 went in, was Kevin Herrick asleep?

23 A Yes.

24 Q And what did you do when you went in?

25 A I told him to get up out of bed.

1 Q And how was he dressed? Do you recall?

2 A Yeah. He was in his boxer shorts and a
3 T-shirt.

4 Q Did he appear to be wet?

5 A No.

6 Q Did you observe any wet clothing in the room?

7 A No.

8 Q Did you see a bloody knife in the room?

9 A No.

10 Q And you told Kevin to get up. Did he get up?

11 A Yes. He got dressed and walked outside.

12 Q All right. And was he outside when Cheryl
13 and Darren were outside?

14 A Yes, he was.

15 Q Did they accuse him of anything at that
16 point?

17 A No, they did not. If I can recollect right,
18 we walked down the street, all -- me, Kevin and Darren
19 walked down the street and he was telling us which way
20 the guy ran or something like that.

21 Q Okay. And did -- was there ever an incident
22 while you were present at that point between Kevin and
23 Cheryl and Darren? Any accusations going back and
24 forth?

25 A No.

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1 Q Okay. And what happened then? Did the
2 police come?

3 A Yes, sir, they did.

4 Q Were you present when the police arrived?

5 A Yes.

6 Q When the police arrived did you see Cheryl or
7 Darren accuse Kevin Herrick of anything?

8 A Well, I believe the police officers went into
9 the apartment, and I guess Cheryl and Darren were
10 telling them what happened. I had went back inside.
11 I believe Kevin did too, and I believe Kevin went back
12 to sleep.

13 Q Okay.

14 A And I think I was talking with my mom. And I
15 walked back outside, and I believe they started asking
16 questions who Kevin was and stuff like that.

17 Q Okay. You said you talked to your mom. What
18 did your mom tell you about the incident?

19 MR. FISHKIN: I'm going to object as
20 hearsay.

21 BY MR. GILLICK:

22 Q Okay. But you can go ahead and answer the
23 question.

24 A Can you say that again?

25 Q Yeah. What did your mom tell you that she

1 observed or heard about this incident?

2 A She said -- all she said there was a bunch of
3 commotion, and she was -- I know she was really shaken
4 up that somebody had broken into the tenant's house.

5 Q Did she say anything about Kevin coming or
6 going during the night?

7 MS. MCCARTHY: Same objection that
8 Mr. Fishkin raised.

9 A No. She said Kevin was home in the room.
10 BY MR. GILLICK:

11 Q Okay. And did she tell you that she was
12 awake the whole time?

13 A Yes, she did.

14 Q Okay.

15 A Well, I know that for a fact, because my
16 mother never slept. She was a night owl. She would
17 go to bed, you know, anywhere from 2 to 3 o'clock in
18 the -- at night.

19 Q Okay. And from Kevin's room, would he have
20 to pass through the living area where your mother
21 would be if he did leave?

22 A Yes.

23 Q After the initial observations in the
24 courtyard when you came home, did you subsequently
25 talk to Darren Barfield and Cheryl that same evening

1 about what had occurred?

2 A Yes. They told me that's -- he came up to me
3 and told me that -- that she was attacked. He fought
4 with the guy.

5 Q At some point did they accuse Kevin Herrick
6 or tell you they thought Kevin Herrick was the
7 attacker?

8 A No, not at one point. Not until after the
9 police arrived.

10 Q Okay. And what -- where was that when you
11 talked to them later?

12 A Where was --

13 Q Where did you talk to Cheryl and Darren later
14 that same night? Was it in their apartment or yours
15 or somewhere else?

16 A I believe it was in the courtyard, and even
17 I -- I can remember even to this day that after they
18 took Kevin away Darren said something he wasn't for
19 sure if Kevin was the one.

20 Q He told you that?

21 A Yeah. I remember him saying that. He wasn't
22 too sure because it was dark he said.

23 Q Did -- did Cheryl ever make a statement
24 identifying Kevin to you?

25 A No, not until after he was arrested and the

1 police had talked to her.

2 Q And was that the same night or another day
3 that you talked to Cheryl?

4 A I think it might have been the next day. I'm
5 not -- I'm not for sure.

6 Q Okay. But after the police had arrested
7 Kevin, did Cheryl ever talk to you about this
8 incident?

9 A Boy. It's been a long time. I can't
10 remember.

11 Q Okay. Do you recall if Cheryl at any time
12 ever told you that she thought it was Kevin Herrick
13 who attacked her?

14 A No. I don't remember anything like that.

15 Q Okay. Did you ever have a conversation with
16 Kevin Herrick, or do you recall ever having a
17 conversation with Kevin Herrick asking him if he ever
18 had sex with Cheryl Hagen?

19 A No. I don't remember asking him that. I
20 know she was pretty friendly.

21 Q Okay. What was Cheryl Hagen like? Was she
22 reserved or was she flirtatious or --

23 A Oh, she was flirtatious.

24 Q In what way, Mr. Porrey?

25 A I don't know. I wouldn't know how to say it.

1 I mean there's ladies present.

2 Q Okay. Did she ever expose herself to you
3 or --

4 A Well, I just --

5 MR. FISHKIN: I'm going to object to the
6 form of the question. It has nothing to do
7 with the issue at hand.

8 BY MR. GILLICK:

9 Q Okay. Did -- I'll ask you again and you can
10 answer. Did Cheryl Hagen ever expose herself to you
11 in front of you?

12 A Well, she would wear like nightgowns and
13 stuff like that, robes and stuff.

14 Q And do you know if she was seeing any other
15 men other than her boyfriend, Darren?

16 MR. FISHKIN: Object again to the form
17 of the question as irrelevant, plus it's --
18 you haven't created a foundation for how he
19 might have that kind of information.

20 A Do you want me to answer that?

21 MR. FISHKIN: You can answer.

22 BY MR. GILLICK:

23 Q Please.

24 A I believe she was.

25 Q Okay. And what led you to believe that

1 Cheryl was seeing other men other than Darren
2 Barfield?

3 A Well, the day we went over and watched the
4 movie.

5 Q What happened then?

6 A Well, she was just real -- she was just
7 real -- real, real friendly. You know, it was like as
8 soon as her boyfriend would leave, you know, she would
9 be knocking on the door wanting something done in her
10 apartment or something. I had seen one or two guys go
11 in and out of there when -- when he wasn't home.

12 Q And did these things happen within any short
13 period of her alleged attack of July 14 or 15?

14 A Yes.

15 Q And --

16 A If fact, I was mowing the yard one time, and
17 it was probably a few days before all that, and I seen
18 one of -- I thought was one of his friends going in
19 the back door.

20 Q The back door of her apartment?

21 A Yes.

22 Q Was Darren gone at the time?

23 A Yes, he was.

24 Q All right. Did you ever talk to Kevin
25 Herrick before he was arrested about Cheryl and Darren

1 accusing him of being involved in this?

2 A Yes, because the police officers, I believe,
3 stated something about they wanted to talk to Kevin,
4 and I -- I believe I asked him or something about did
5 he have anything to do with it, and he said no.

6 Q Okay. Did he get mad?

7 A Yes.

8 Q Did you -- do you recall if you and Kevin
9 Herrick talked about Cheryl fooling around with other
10 men?

11 A Yeah. We both made a comment to each other
12 about how flirtatious she was.

13 Q And when you -- the night of this incident
14 when you went in to wake up Kevin, did he have any
15 blood on him?

16 A No, he did not.

17 Q Was he wet?

18 A No.

19 Q Did he appear to have been in a fight?

20 A No.

21 Q Was he sweating profusely?

22 A No.

23 Q Did he appear to be sleeping?

24 A Yes. He had bed head.

25 Q Okay. Have you seen Kevin Herrick since the

1 night of his arrest in July of 1989?

2 A No, I haven't.

3 Q Did you ever go to jail and visit him?

4 A I don't think I did. I might have once. I
5 don't remember. Like I said, this has been a long,
6 long time.

7 Q Did Kevin Herrick ever ask you to lie for him
8 in this case?

9 A No.

10 Q Did Kevin Herrick ever ask you to say
11 anything that wasn't true in this case?

12 A No, he did not. In fact, I thought this was
13 a bunch of crap. Excuse me.

14 MR. FISHKIN: Object to the witness's own
15 opinion.

16 BY MR. GILLICK:

17 Q Okay. Did anyone on Kevin Herrick's behalf
18 ever ask you to say anything that was not true in this
19 case?

20 A No.

21 Q And do you recall how long you lived in the
22 apartment after Kevin was arrested in July of 1989?

23 A You know, I'd get in a fight with my
24 girlfriend and I would move back, and it was back and
25 forth. I have always lived, you know, back and forth

1 there. Plus when my mom was real sick I would always
2 go stay there.

3 Q Okay. Do you recall how long your mom
4 continued to live there after this incident?

5 A When was -- where was this incident?

6 Q The incident on Audubon?

7 A Yeah, which year was this in?

8 Q This was 1989. July of 1989.

9 A Probably she -- well, she died four years
10 ago. She lived there until -- until four years ago.

11 Q Okay. Did you ever find a knife or weapon of
12 any kind in Kevin's room?

13 A Yeah, I believe a gun was found.

14 Q Did you ever find a knife in there?

15 A No.

16 Q Do you recall who found the gun?

17 A The police did.

18 Q Okay. You talked about your mom's video.
19 Are you aware that your mom had a video deposition in
20 this case?

21 A Yes. I was there. I believe I walked -- I
22 believe I walked in while she was doing it.

23 Q Okay. Do you recall who else might have been
24 present?

25 A I believe a -- there was two or three people

1 present. I believe a lawyer and somebody from the
2 state I think.

3 Q Okay. The lawyer, do you recall if his name
4 was Ed Leinster?

5 A It was something like that I believe.

6 Q Okay. Did you talk to Mr. Leinster?

7 A I asked -- I even said a few things to him.

8 Q Okay. Did Mr. Leinster ask you any questions
9 about this incident where Kevin Herrick was arrested?

10 A Yes, something similar like what you're
11 doing.

12 Q Was Mr. Leinster aware that you were present
13 that night? Did you make him aware of that?

14 A Oh, yes.

15 Q Did Mr. Leinster ask you to come and testify
16 in court?

17 A He said that my mom's video would be enough,
18 and if he needed me -- I gave him an address where he
19 could reach me and -- and a phone number.

20 Q Okay. Are you still there?

21 A Yes.

22 Q Okay. Did Mr. Leinster ever call you to
23 testify?

24 A No.

25 Q Did he take notes of your conversations with

1 him?

2 A Yes, he did.

3 Q Did you tell Mr. Leinster -- or what did you
4 tell Mr. Leinster? Do you recall?

5 A Well, I'm sure I told him a lot more than
6 what I can think of now because it was, you know --
7 but basically the same things right now, but probably
8 more detail, because I don't -- I can't recollect --
9 like I said, it's been so long.

10 Q Okay. Did you -- do you recall if you told
11 Mr. Leinster that you talked to Cheryl and Darren
12 immediately after this incident?

13 A Yes, I did.

14 Q And did you tell Mr. Leinster that they did
15 not identify Kevin Herrick as the assailant?

16 A Yes, I did.

17 Q Do you recall if you talked to the state
18 attorney about this incident?

19 A I believe there was some -- when they were
20 doing the video I had -- I was asked a few questions
21 and he was present --

22 Q Okay.

23 A -- or somebody was present. There was a
24 bunch of people in there. I didn't really know who
25 everybody was. Like I said, I believe I had walked in

1 when mom was starting the interview.

2 Q Okay. Let me look real quickly. Mr. Porrey,
3 is there anything else about this incident that you
4 recall that we have not discussed today?

5 A Not offhand.

6 Q Okay. I have no further questions at this
7 time.

8 MR. FISHKIN: Okay.

9 MS. MCCARTHY: All right. I have some.
10 Do you, Rich?

11 MR. FISHKIN: Yeah. I've got a lot.

12 MS. MCCARTHY: Do you want to ask now and
13 then I will just finish up?

14 MR. FISHKIN: Yeah.

15 MS. MCCARTHY: All right. If you don't
16 mind, Mike, we're going to each ask a few
17 questions --

18 MR. GILLICK: Okay. Fine.

19 MS. MCCARTHY: -- and hopefully keep it to
20 a minimum.

21 MR. GILLICK: I should have called collect.
22 Okay.

23 CROSS-EXAMINATION

24 BY MR. FISHKIN:

25 Q Mr. Porrey, let's start off with some basics.

1 First of all, have you ever been convicted of a crime?

2 A Yes, I have.

3 MR. GILLICK: Rich, excuse me. Could you
4 get a little closer to the microphone, please, or
5 the telephone.

6 MR. FISHKIN: I will speak up. Can you hear
7 me?

8 MR. GILLICK: Okay. That's better.

9 MR. FISHKIN: Okay, Mike. I will repeat the
10 question. I asked him if he has ever been convicted
11 of a crime.

12 A Yes, I have.

13 BY MR. FISHKIN:

14 Q How many times?

15 A I'm an ex-con.

16 Q How many felonies have you been convicted of?

17 A With driving? I don't know. Four or five.

18 Q All right. When is the last time?

19 A Three years ago.

20 Q When -- have you been in prison?

21 A Yes, I have.

22 Q When was the last time you got out?

23 A '87.

24 Q '87?

25 A '88.

1 Q All right. Have you been convicted of any
2 felonies since then?

3 A Driving.

4 Q Now, you indicated that you were staying at
5 your mother's house because you had had -- you had one
6 of your on-and-offs with your girlfriend; is that
7 right?

8 A That's correct.

9 Q And that's your girlfriend who is currently
10 your wife?

11 A Correct.

12 Q All right. How long before this incident was
13 your latest off, if you will, with your girlfriend?

14 A You mean when was the last time I lived at
15 mom's?

16 Q No. You indicated on the night of this
17 incident you were living at your mother's house
18 because you had had a fight or whatever, a
19 disagreement with your girlfriend.

20 A I had been there about two weeks.

21 Q Okay. I assume from -- from that that prior
22 to that you were living somewhere else either with
23 your girlfriend or living somewhere else?

24 A Correct.

25 Q And had you been living at somewhere else for

1 a period of time prior to moving back to your mother's
2 house?

3 A Correct.

4 Q About how long?

5 A I believe about a year.

6 Q Okay. Now, while you were living with your
7 girlfriend, did you -- how often would you go over to
8 your mother's house during that year prior to the two
9 weeks when you moved back?

10 A Oh, all the time.

11 Q Okay. Did you do work around the house,
12 things like that?

13 A Correct.

14 Q Okay. Now, how long had Cheryl and Darren
15 rented the apartment -- the east apartment, the 4017,
16 from your mother? Do you know?

17 A They had been there a little ways -- a little
18 time. They had probably been there about three or
19 four months --

20 Q Okay.

21 A -- that I recollect. I couldn't tell you
22 exactly.

23 Q Prior to moving back -- the two weeks prior
24 to the incident when you moved back, had you had
25 occasion to spend much time with Cheryl and/or Darren?

1 A Just "Hi" and "Bye."

2 Q Just "Hi" and "Bye"?

3 A Yeah.

4 Q Okay. Therefore, it would be fair to say,
5 would it not, that all of these conclusions about
6 Cheryl's promiscuousness and her having men come and
7 go all had to be within that two-week period of time
8 that you were there?

9 A Correct.

10 Q All right. Now, you indicated that Cheryl
11 was either pregnant or had just had a baby?

12 A Something like that. I think she -- they had
13 a little one.

14 Q They had a little one? Very young?

15 A Yeah, something like that, if I can -- if I
16 remember right.

17 Q So at the time that Cheryl was, as you put
18 it, promiscuous she had just had a child?

19 A Yes.

20 Q And the promiscuousness that you base this on
21 is seeing her in a bathrobe?

22 A No. I had her approach me.

23 Q Okay. And she was friendly?

24 A Very friendly.

25 Q Okay. Now, the friend of Darren's that you

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1 saw go into her house, did you follow him in?

2 A No. I watched him walk in though.

3 Q Okay. Did you look in the window while he
4 was there?

5 A No.

6 Q So you have no idea what took place, if
7 anything? You have to answer.

8 A No. I don't have no clue what happened.

9 Q And you don't know if he was delivering a
10 message or some medication or anything on behalf of
11 Darren? You just don't know?

12 A Well, it just seemed weird he went to the
13 back door.

14 Q You don't know; is that --

15 A No, I don't know.

16 Q -- is that fair?

17 A That's fair.

18 Q Okay. Now, did you talk to the police the
19 night of the incident?

20 A Yes, I did.

21 Q And did you tell them every -- what you knew
22 about the incident?

23 A Yes, I did.

24 Q And did they take notes and write down what
25 you told them?

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1 A I believe they did.

2 Q Okay. In fact, you and your mother gave the
3 police permission, did you not, to search Kevin's
4 room?

5 A I believe my mom did.

6 Q And you were in there when they searched,
7 weren't you?

8 A Yes, I was.

9 Q And, in fact, didn't you point out where the
10 gun could be found?

11 A No, I did not.

12 Q You didn't tell the police to look under the
13 mattress?

14 A No, I did not.

15 Q All right. You didn't tell the police to
16 look under the mattress and that --

17 A No. They started searching the room.

18 Q When they looked under the mattress they
19 found a gun, didn't they?

20 A Yes, they did.

21 Q They also found a pocketknife, didn't they?

22 A Not that I remember.

23 Q You don't remember that?

24 A No.

25 Q Okay. You told the police everything you

1 knew about this incident, didn't you?

2 A That I knew.

3 Q Okay. And did you tell the police
4 essentially the same thing that you told Mr. Leinster
5 when he was taking your mother's deposition and asking
6 you the same questions?

7 A I believe I did.

8 Q So whatever you told the police you told
9 Mr. Leinster; is that fair?

10 A That's fair.

11 MR. GILLICK: Object. That's leading.

12 MR. FISHKIN: This is cross-examination,
13 Counselor.

14 MR. GILLICK: I understand. You can answer.

15 MR. FISHKIN: He did.

16 MR. GILLICK: I'm sorry. I didn't hear the
17 answer.

18 BY MR. FISHKIN:

19 Q Do you want to --

20 A I believe I did tell the police what I told
21 the -- the same thing that I told his attorney.

22 Q Okay. Now, when the incident occurred you
23 weren't home. I believe you said that?

24 A Correct.

25 Q You were across the street at a bar and

1 restaurant?

2 A Right.

3 Q And what time of night was that? Do you
4 recall?

5 A No, not really. I believe it was
6 somewhere -- I think it was early. I think it was
7 like in between 8:00 and 10:00, but I might be wrong.

8 Q Okay. So you don't really know exactly what
9 time this incident occurred?

10 A No, I sure don't. For all I know it could
11 have been around 11 o'clock. I have no clue.

12 Q Okay. And what were you doing at this bar
13 and restaurant?

14 A Playing pool.

15 Q Were you drinking?

16 A Having a couple of beers, yes.

17 Q Okay. How many beers would you say you had
18 that night?

19 A Not very many.

20 Q How many beers would you say you had that
21 night?

22 A Two or three.

23 Q Okay. Now, did you come right over when you
24 heard a commotion, or do you know how long after the
25 incident occurred that you actually -- was it that you

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1 actually came back to your mother's house?

2 A Well, I was walking across the street and I
3 seen people out in front of the house.

4 Q Okay. But do you know how long they had been
5 out in front of the house?

6 A No.

7 Q So you don't know how many seconds, minutes,
8 hours before --

9 A Well, they had told me it just had happened.

10 Q Okay. But you don't know?

11 A Correct.

12 Q You have no knowledge -- you have no personal
13 knowledge?

14 A Right.

15 Q All right. Now, how long were you out
16 there -- well, let me -- strike that. When you got
17 there was Kevin out there?

18 A No.

19 Q Okay. How long was it before the police
20 came?

21 A Twenty minutes, something like that.

22 Q Did Kevin come out prior to the police
23 arriving?

24 A Not that I remember. I believe I woke him
25 up.

1 Q When you say you woke him up, would that have
2 been after the police arrived?

3 A Well, I think he went back to bed.

4 Q Well --

5 A I woke him up prior to the police coming, but
6 after the police were there for a while investigating
7 it I know -- I think he went back in the room and went
8 back to sleep.

9 Q Well, you think he went back to the room.
10 Now, when you went in and woke him up, how long was
11 that after you arrived back at the scene?

12 A Say that again?

13 Q Yeah. You have indicated that prior to the
14 police arriving you went inside and you woke Kevin up?

15 A Right.

16 Q All right. How long after you arrived did
17 you go inside and wake Kevin up?

18 A Three, four, five minutes, somewhere in
19 there.

20 Q Okay. And that's your best estimate today,
21 11, 12 years after the event; is that right?

22 A Yeah.

23 Q Could it have been 10 or 15 minutes?

24 A No, it was -- no, it was sooner than that. I
25 don't -- I don't -- you know, it's been so long I

1 can't remember really.

2 Q Okay. That's fair. Now, when you say you

3 woke him up, what did you do to wake him up?

4 A Knocked on the door --

5 Q Okay.

6 A -- and opened it and told him -- I probably

7 kicked the end of the bed, "Get up, Kev," you know.

8 Q Okay. Now, you said you woke him up. How do

9 you know he was asleep?

10 A Because his eyes were closed when I walked

11 in.

12 Q Okay. My eyes are closed. Am I asleep?

13 A No.

14 Q All right. So based upon his eyes being

15 closed when you walked in that's how you know -- you

16 thought he was asleep?

17 A He was sleeping.

18 Q Well, would it be fair to say that you don't

19 know whether he was asleep? He just looked to you as

20 if he was asleep?

21 A Well, like I said, he had bed head, so --

22 Q What's bed -- what is "bed head"?

23 A Well, you know when your hair is to the side?

24 Q In other words, his hair was tousled?

25 A Yeah. It looked -- it was like he had been

1 sleeping, bed head.

2 Q All right. So then based on that you assumed
3 he was asleep?

4 A Mom said he was asleep too.

5 Q Okay. And how long had he been asleep? Do
6 you have any idea?

7 A No, I don't.

8 Q Okay.

9 A I believe my mother said he was watching TV
10 then went to bed.

11 Q Well, besides what your mother told you --
12 we're talking about what you know, not what your
13 mother may or may not have know.

14 A I wasn't there.

15 Q You weren't there. Okay. Thank you.

16 Now, Darren after the police arrived was
17 taken to the hospital, wasn't he?

18 A I'm -- I don't remember that.

19 Q Well, Darren was taken -- Darren left, didn't
20 he?

21 A I believe they drove somewhere. I don't know
22 if he was taken by an ambulance or anything like that.

23 Q But you don't know where was taken?

24 A No. I don't remember that part, no.

25 Q Okay. And after he was taken to -- did you

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1 talk to him after he came back from wherever he was
2 taken?

3 A I might have. I don't remember.

4 Q So all of the conversation that you have
5 recounted here between Cheryl, Darren and yourself
6 occurred before the police arrived; is that right?

7 A Yes.

8 Q And at that time they were equivocal as to
9 who may have been the perpetrator of this crime?

10 A What do you mean by "equivocal"?

11 Q Well, they weren't -- they were vague. They
12 didn't tell you that they knew who it was or anything
13 like that?

14 A Well, he had described -- he described the
15 guy he tussled with --

16 Q Okay.

17 A -- and it certainly -- it didn't describe
18 Kevin at all.

19 Q And you told that to the police?

20 A Yes, I did.

21 Q And you told the police what he described to
22 you?

23 A I believe I did.

24 Q And they wrote it down?

25 A I'm sure they did.

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1 Q All right. Okay. By the way, was Kevin
2 actually paying rent to your mother?

3 A Yeah, he would give her money.

4 Q Weren't you kind of upset with him that night
5 because he hadn't been paying her rent?

6 A I don't remember anything like that. He was
7 more like family, so --

8 Q I see. So you wouldn't have said that to the
9 police, would you?

10 A I don't know if I did or if I didn't.

11 Q And if you told it to the police it would
12 have been true, wouldn't it? You didn't lie to the
13 police, did you?

14 A No.

15 Q Okay. So whatever you told the police was
16 accurate and your complete recollection of the
17 incident that night; is that fair?

18 A That's fair.

19 Q And it was right immediately after that
20 incident, within minutes or an hour of that -- that
21 thing occurring; is that right?

22 A Correct.

23 Q And everything you're telling us here today
24 is your recollection or re-creation 12 years after the
25 event; is that correct?

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1 A That's correct.

2 Q All right.

3 CROSS-EXAMINATION

4 BY MS. MCCARTHY:

5 Q Just a few questions, Mr. Porrey. You had
6 indicated that you had been in prison. How many times
7 were you incarcerated in the Department of
8 Corrections?

9 A Twice.

10 Q Two different stints. What was the first
11 incarceration for?

12 A What does that have to do with anything here?

13 Q If you will go ahead and answer the question.

14 A What was the -- what --

15 Q What was the first conviction you had that --
16 for which you were incarcerated in the Department of
17 Corrections?

18 A I think it was grand theft or something like
19 that.

20 Q Okay.

21 A The second one was violation of probation.

22 Q Was it community control?

23 A Yes.

24 Q Okay. You were on like a house arrest for --
25 for what?

1 A For the first charge.

2 Q For the first charge?

3 A Yes.

4 Q Was there a reduction of a -- a robbery to a
5 lesser? Were you initially charged at any time with a
6 robbery and then had pled to a reduced charge?

7 A Yes, something like that, I believe.

8 Q Okay. Was that the grand theft?

9 A I believe it was, yeah.

10 Q Okay. And the first time you went to prison,
11 how long were you in custody?

12 A 18 months --

13 Q Okay.

14 A -- somewhere there.

15 Q And how long were you out before you were
16 charged with violating your community control or was
17 it control release?

18 A It was -- I don't remember what it was.
19 Let's see. I went in in '82, got out '84. I went
20 back I think it was '86, got out '87, something like
21 that. I don't remember what it was.

22 Q Okay. When you were released the second
23 time, you didn't have any kind of supervision after
24 that?

25 A No, I don't think I did.

1 Q Okay.

2 A I don't remember if I did or if I didn't.

3 Q All right. Now, you mentioned that you had
4 been arrested for driving. Did you mean driving while
5 intoxicated?

6 A No, driving on a suspended license.

7 Q Oh, driving while on a suspended license. As
8 a felony count?

9 A (Witness nods head.)

10 Q When was that?

11 A I have had quite a few of them.

12 Q Okay. But not a quite a few felonies?

13 A Well, each one kept racking up, so --

14 Q Right. Until you got hit with the felony?

15 A Yeah.

16 Q How many -- do you know how many felony
17 counts --

18 A I think I got five of them -- four of them or
19 something like that.

20 Q Four or five. Have you -- are you -- did you
21 have to complete any supervision recently in the
22 recent past?

23 A No.

24 Q When was your last arrest?

25 A That was in '95, '97, somewhere in there.

1 Q Okay. Do you have a driver's license now?

2 A Yes, I do.

3 Q Okay. Did you -- at the time of this
4 incident that we have all been discussing leading to
5 Mr. Herrick's arrest, were you on any form of
6 supervision?

7 A Not that I remember, no.

8 Q Okay.

9 A I don't think I was.

10 Q Now, you had indicated that you had a
11 relationship at the time with Felicia, then who you
12 married subsequently?

13 A Uh-huh.

14 Q Are you divorced from her now?

15 A No.

16 Q Okay. You're currently married?

17 A Yes.

18 Q Okay. How long had you been at the Poor Boys
19 before you returned back over to your mother's
20 apartment complex?

21 A It was a couple of hours, somewhere in there.

22 Q And who were you with at Poor Boys?

23 A Just some friends I guess. I don't remember
24 who all was there.

25 Q What would you have been drinking there?

1 A Budweiser.

2 Q Okay. And what friends? Can you name a
3 friend?

4 A No. It's been so long. I don't really know
5 who was there and who wasn't.

6 Q Did you just walk over there? Is it just
7 like right across the street? You didn't need to
8 drive over there and --

9 A Yeah.

10 Q -- then you came back?

11 A Yeah. Right. It's just a local place.

12 Q Do you recall the bartender?

13 A No.

14 Q When you came back you didn't immediately see
15 Kevin outside, did you?

16 A No.

17 Q Because I believe there was -- you had been
18 asked by Mr. Gillick who was outside, and at one point
19 I wrote down that you said "everyone," but at that --
20 at the initial return to your mother's apartment
21 complex it's clear that Kevin wasn't there when
22 everyone else was outside?

23 A Right. I think -- I think it was the
24 neighbor was out there and Darren.

25 Q Mr. Stuart was out there?

1 A Yeah, Mr. Stuart and Darren and the girl was
2 out there.

3 Q And --

4 A Mom was -- I think Mom was out there too.

5 Q Were the police there?

6 A No.

7 Q It was right before the police arrived?

8 A Right.

9 Q Okay. Was there a commotion? Were people --
10 I mean was it loud enough to draw your attention?

11 A Yes. That's why I -- in fact, I picked up my
12 pace because I -- I had first thought it was something
13 wrong with Mom.

14 Q Right. And she was ill at the time?

15 A Yes.

16 Q Well, I'm sorry to hear about your loss.
17 Now, when you were outside and you were trying to --
18 to find out what had happened, how long would you say
19 from the moment that you had arrived and picked up
20 your pace and saw that there was a -- you know,
21 agitation going on and this incident that occurred,
22 until you decided to go get Kevin?

23 A I think I stated before within five -- five
24 minutes, somewhere in there like that, because I ran
25 inside and --

1 Q Okay. Could it have been a few minutes
2 longer? I know you said you don't recall what friends
3 you were with for three hours. Are you clear on the
4 minutes or the time that transpired from the time you
5 arrived at the scene until you went back to the room?

6 A Like I say, I'm pretty sure it was shortly
7 after that.

8 Q Okay. Would it have been as long as 10
9 minutes?

10 A I don't think so. I think it was -- because
11 Darren said something to me about he chased the guy or
12 whatever --

13 Q Okay.

14 A -- down the road.

15 Q And that had already had happened by the time
16 you had arrived on the scene?

17 A Right.

18 Q Okay. Was Cheryl crying?

19 A Yes, she was.

20 Q Okay.

21 A I believe she was. She was pretty shaken.

22 Q And so just from your observations as a
23 layperson, it didn't appear that she was making
24 anything up? She was truly traumatized from what you
25 could tell?

1 A She could have been. I don't know.

2 Q Okay. Now, did you -- now, you said your
3 mother had watched by a window the --

4 A Yeah. She was on oxygen at the time.

5 Q So she hadn't ever gone outside? She wasn't
6 outside there?

7 A She could have walked out there. I believe
8 she did walk out for a period and then I made her go
9 back inside.

10 Q And then Kevin didn't come out voluntarily at
11 any time during that period of time? I mean he didn't
12 walk out and come back in or anything during that --

13 A I don't think so. I -- I think I woke him up
14 or something.

15 Q Were you upset with him? If an officer had
16 testified that you appeared upset with him, would that
17 be accurate?

18 MR. GILLICK: I'm sorry. I didn't hear
19 the question.

20 BY MS. MCCARTHY:

21 Q If an officer testified that you appeared
22 upset with him at any time that night, would that be
23 accurate?

24 A I think I was mad about the gun being
25 underneath the -- the bed; but other than that, I

1 didn't think -- I wasn't upset about him being
2 arrested for them saying he did that.

3 Q When you went back there, what was he
4 wearing?

5 A He was in his shorts -- his boxer shorts and
6 then like a T-shirt, I believe -- a black T-shirt.

7 Q Did he put on any clothes before he went
8 outside?

9 A Yes, he did.

10 Q Do you remember what he wore?

11 A No.

12 Q Okay. And could you tell whether he had been
13 drinking?

14 A No. He was home.

15 Q No. No. But could you tell whether he had
16 consumed any alcohol?

17 A No.

18 Q And what was -- was there anyone else in the
19 house besides your mother?

20 A Just Kevin.

21 Q When you had left to go over to Poor Boys,
22 was Kevin in the apartment in the -- in his room --
23 back room?

24 A I don't know. I believe he was with Mom.

25 Q But he was in the house?

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1 A He was in the house.

2 Q Okay. And when you left, did you know
3 whether Cheryl or Darren were at home?

4 A No, I don't know. I don't remember anything
5 like that.

6 Q Okay. Was there ever a time that -- to your
7 knowledge, that Kevin had ever gone over to her house
8 when Darren was gone?

9 A Yeah, me and him did. We watched a movie.
10 Other than that --

11 Q Besides the Cocoon?

12 A No.

13 Q Okay. And when did that happen in relation
14 to this report?

15 A It might have been the day before or
16 something like that.

17 Q Okay. You don't recall whether you visited
18 Kevin in jail?

19 A No, I don't. Sorry.

20 Q Okay. Did you correspond with him? In other
21 words, write back and forth?

22 A No. Not that I know of, no.

23 Q Do you know whether he tried to call you
24 or -- at your home --

25 A Not that I know of.

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1 Q -- or through your mother?

2 A He might have tried to get ahold of me
3 through Mom, but I don't -- I don't remember.

4 Q Okay.

5 A Actually, I thought he was in -- I thought he
6 had been -- what do they say -- this had been over
7 with.

8 MR. FISHKIN: Dismissed?

9 A Yeah.

10 BY MS. MCCARTHY:

11 Q Okay.

12 A I thought this had been -- it wasn't -- he
13 wasn't found guilty and all that after everything was
14 done.

15 Q I may be mistaken, but I -- as I understood
16 your initial testimony, it was that you were very
17 close. But I mean what happened? Did you just drop
18 contact with him after the arrest and --

19 A Well, he -- him and his brother -- actually,
20 I was closer with his brother. His brother was my
21 best friend, and he was -- he was my best friend's
22 little brother.

23 Q Okay.

24 A Kevin was younger than me.

25 Q So you-all didn't have a tight friendship?

1 A Oh, we all three of us --

2 Q You all did?

3 A Yeah. Yeah.

4 Q Okay. But once the arrest took place, you
5 basically -- did you just wash your hands of the
6 situation and --

7 A Well, I never heard from him again for a long
8 time, you know, so --

9 Q Okay. But if you were really close, you
10 didn't make any attempt to find out what had happened
11 with this charge?

12 A No. I believe maybe Mom had said he called
13 or something like that, but I don't really remember if
14 I did go see him or not and --

15 Q Was your mom close to Kevin?

16 A Yes, she was.

17 Q Did you attend his trial?

18 A No.

19 Q Any portion of it?

20 A No.

21 Q Did you hear from his brother about what had
22 happened?

23 A No.

24 Q Did you lose contact with his brother as
25 well?

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1 A I believe his sister had contacted me one
2 time in Tarpon, and that was the last I heard of
3 something like that.

4 Q And you talked to her?

5 A Briefly.

6 Q What did you tell Kevin's sister?

7 A That -- something about the -- something
8 about the attorneys were going to talk to Mom or
9 something.

10 Q Was that before his trial?

11 A Yes.

12 Q Okay. And that's -- I think you had
13 indicated that day you came to the deposition -- or
14 came in while she was having her deposition. Can you
15 tell us, did you hear any of the -- your mother's
16 testimony?

17 A Yes.

18 Q And who was questioning her? Do you
19 remember? Was it Kevin's attorney?

20 A Yeah, he was; and somebody else was too, I
21 believe.

22 Q Okay. So this attorney after the deposition
23 spoke with you?

24 A Yes, and while -- during too.

25 Q And during it. And he took -- he took some

1 notes of what you had told him?

2 A I believe he did.

3 Q Okay. Did he appear to be interested in what
4 you had to say?

5 A I thought he was.

6 Q Okay. And you were fully cooperative and
7 told him everything that you knew about the incident?

8 A That I can remember, yeah.

9 Q That you could recall at the time. Of
10 course, that was a lot closer to the time of the
11 offense, correct?

12 A Yes, I believe so.

13 Q All right. Now, did you look at Kevin's
14 shoes or socks anywhere near his bed or in his room
15 when you came in and woke him up? Wasn't your focus
16 pretty much on getting him outside?

17 A I don't remember. I'm sorry.

18 Q Okay. Now, you had indicated that there was
19 some -- some kind of communication you had with
20 Mr. Herrick that night about how allegedly flirtatious
21 Cheryl was?

22 A No. I believe that was either the day that
23 we watched -- watched the movie afterwards or it might
24 have been that night. I don't remember, but I was --
25 I even made a comment to my mom about this, about her

1 getting caught with somebody and --

2 Q Okay.

3 A -- and yelling.

4 Q It was my understanding from your testimony
5 with Mr. Gillick that you had indicated that you had
6 asked, "Did you have anything to do with it?" And
7 then Kevin said no that night -- that night, and that
8 you said he, in fact, commented -- you-all commented
9 how flirtatious she was. What were his exact words to
10 you?

11 A No, he didn't do it, or something like that.
12 If you're -- if you're stating that I -- if I said,
13 "Kevin, did you do this?" And then he said no.

14 Q No. I'm looking at what were his specific
15 words that night with respect to Cheryl --

16 A I --

17 Q -- because you had --

18 A I don't know.

19 Q So he didn't at that time, after he said he
20 didn't do it, say that she was flirtatious or words to
21 that effect?

22 A No. No. No.

23 Q It wasn't at that time?

24 A No.

25 Q Okay. Did you give a written statement to

1 the police officers -- any of the police officers
2 there?

3 A I didn't write anything, if that's what you
4 mean. I don't remember writing anything.

5 Q And didn't give any written statement to --

6 A They might have wrote down some things.

7 Q -- anyone? Okay. Did you have occasion to
8 go up to the state attorney's office and talk to them?

9 A Not that I remember on this.

10 Q The prosecutor or someone in the state
11 attorney's office?

12 A I don't remember. I might have. I don't
13 remember. I really truly don't remember.

14 Q Okay. You were -- the reason I ask you is
15 you were listed on at least two witness lists on
16 behalf of the state as a witness. Do you think it's
17 possible you did speak with them --

18 A I don't remember.

19 Q -- or you just --

20 A I don't think I ever did.

21 Q Okay. Now, you remained close to your mother
22 during the period of time that there was a deposition
23 taken of her testimony and that -- and until her
24 passing, correct?

25 A Yes.

1 Q So at no time did she tell you what had
2 happened with Kevin's case?

3 A No, not -- I don't think Kevin came up much.
4 You know, mom was sick, so --

5 Q I understand that. Once Kevin -- well, you
6 have indicated you lost track of what happened with
7 him. So is it fair to say that you never received any
8 correspondence from him in prison?

9 A No, I never received no mail from him.

10 Q Or you never wrote him?

11 A Not that I can remember, no.

12 Q Okay.

13 A He might have wrote Mom or something like
14 that, but I don't know.

15 Q Okay. Did you ever go down to the lawyer's
16 office and speak with him, Kevin's lawyer?

17 A I don't remember.

18 Q Did you ever call the lawyer and say, "Why
19 haven't I -- why wasn't I called" or inquire as to why
20 you weren't used as a witness?

21 A Not that I know of. I know -- I know that --
22 the reason why they -- because I wasn't there when
23 it -- the initial thing happened, but Mom was. So
24 they used her -- they were supposed to -- to use
25 her -- her videotape.

1 Q Okay. Did you tell the lawyer when he asked
2 you some questions, do you recall, about your
3 background a little bit and whether you had been in
4 prison before?

5 A If I had been in prison? He never asked me
6 nothing like that. I don't think he did.

7 Q All right. Did you have any contact with the
8 victims after that night?

9 A Well, they were still tenants, and then they
10 moved out. That's all I know.

11 Q Okay. And what about Mr. Stuart, did you
12 remain friends with him or were you friends with him
13 in the first place?

14 A Well, we were friends, but, you know, other
15 than that --

16 Q Okay. Did you talk with him about the
17 incident?

18 A I believe we had talked maybe one time or
19 something like that a long, long time ago, but --
20 thinking it was bogus -- all of this was bogus.

21 Q Did you get along with Darren?

22 A Yeah.

23 Q Okay.

24 A Yeah.

25 Q You had indicated there were about four years

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1 you had lost contact with Kevin and kind of had a
2 reunion of sorts. Was that -- and Mr. Gillick had
3 asked you about that -- was that four-year period the
4 period you were having some problems and in custody?

5 A Was I?

6 Q Yeah, when you were? Was that the four-year
7 period you were talking about?

8 A Well, I had been probably in prior to that,
9 yeah, but that's not the reason why we lost contact.
10 I had thought he had moved back to his father up in
11 Chicago or something.

12 Q Do you know whether Kevin was aware of
13 whether you had been incarcerated before in prison?

14 A Yeah, Kevin knew I had been in prison.

15 Q Okay. And, of course, he knew your mother
16 well?

17 A Uh-huh.

18 Q Okay. All right. And can you tell me --
19 explain to me just a little bit more -- I won't keep
20 you much longer -- the financial arrangement that your
21 mother had with him for staying there, if any?

22 A I think it was something like 50 bucks a week
23 or something like that, if he could.

24 Q And what about food? Did she feed him or did
25 he take care --

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1 A My mom fed everybody.

2 Q Okay. Now, you indicated he had a brother,
3 but he didn't live with you-all.

4 A No. Kevin's brother?

5 Q Uh-huh.

6 A No. No. No. Mark was, I guess, in the Air
7 Force or something like that.

8 Q Okay. Were you aware of any prior brushes of
9 Kevin's with the law prior to this incident?

10 A No. I know him and his dad had a falling
11 out -- well, his stepfather, Mr. Herrick.

12 Q Okay.

13 A I know they had had a falling out, but --

14 Q All right. Now, you gave us a number here
15 just for contact purposes. Is this Reliance, the
16 772-1929? Do you have a home phone number?

17 A No, I don't.

18 Q Do you have a cell?

19 A No, I don't.

20 Q Okay.

21 A I dropped mine in the water, so I have to get
22 a new one.

23 Q Any other contact phone number?

24 A That's it right there.

25 Q Okay. Are you renting or owning your home

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1 right now?

2 A I rent.

3 Q Okay. Let me see if I got that right. Is it
4 1205 Omaha Drive?

5 A Omaha Circle.

6 Q Omaha Circle in Palm Harbor?

7 A Uh-huh.

8 Q Is that an apartment or a house?

9 A An apartment.

10 Q All right. All right. I have no further
11 questions.

12 MR. GILLICK: I have got just a couple of
13 follow-ups.

14 REDIRECT EXAMINATION

15 BY MR. GILLICK:

16 Q Mr. Porrey, we talked about your mom being
17 ill. What was the nature of her illness?

18 A She had a bad heart and she had emphysema.

19 Q Okay. And after the incident occurred and
20 after Kevin got arrested, at that point did you ever
21 talk to Cheryl Hagen or Darren Barfield about the
22 incident?

23 A Not that I -- I can recollect. I really --
24 you know, like I said, it's been so long. It --

25 Q Okay.

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1 A I wish I could just remember everything.

2 Q I understand. And I believe when Mr. Fishkin
3 was questioning -- questioning you, you said something
4 about Cheryl approaching you prior to the incident in
5 some kind of flirtatious manner. Can you tell us what
6 happened there?

7 A Yeah. I blew her off.

8 Q What did she do to approach you?

9 A She -- let me think. I think she just
10 basically asked me if I wanted to have sex.

11 Q Do you recall when that was? How long before
12 the incident of July 14 or 15, '89?

13 A It was right around a couple of days before
14 that or something like that. It might have been the
15 same day we went in to watch the movie. I think that
16 might have been even why I left from watching the
17 movie.

18 Q Okay. The night of the incident you
19 indicated that you did talk to the police. Did the
20 police ask you questions?

21 A I believe they did.

22 Q Did you answer their questions?

23 A Yes, I did.

24 Q Did you volunteer any more information than
25 what they asked you?

1 A I don't remember, Mike.

2 Q Okay. I've got no further questions,
3 Mr. Porrey. At this point, is there anything else
4 that you recall about this incident that you think
5 might be important?

6 MR. FISHKIN: Mike?

7 A What was that again?

8 BY MR. GILLICK:

9 Q Okay. At this point, is there anything else
10 that you think might be important about this incident?

11 A No, just my opinion.

12 Q What is your opinion?

13 MR. FISHKIN: Object to his opinion.

14 A I think it's -- I think it's -- I don't think
15 Kevin did it. That's my opinion. I think the cops
16 were looking for somebody to get right away, and
17 that's what they went after.

18 BY MR. GILLICK:

19 Q Okay. I've got no further questions right
20 now.

21 MS. McCARTHY: Mike, can I just ask just
22 maybe two questions?

23 MR. GILLICK: Sure.

24 RECROSS-EXAMINATION

25 BY MS. McCARTHY:

1 Q Following up on that last request -- or last
2 question, did you -- did you see anything
3 inappropriate about any of the officers' questioning
4 that night?

5 A If I recall, it's Largo Police Department
6 that did this. Am I right?

7 MR. GILLICK: Yes.

8 A Largo Police Department -- I'm going to state
9 this for the record. Largo Police Department and my
10 family did not get along. So anything that went on
11 there, they were always looking to arrest me or one of
12 my brothers, so --

13 BY MS. MCCARTHY:

14 Q You didn't have a good relationship with the
15 police department?

16 A No, we did not, not at all.

17 Q Okay.

18 A I was charged with some stuff that, you
19 know, at one time -- I have had them come up and try
20 and pin me for 50 burglaries and stuff like that,
21 which I had nothing to do with. They were always
22 trying to hunt one of us down for something. In fact,
23 that's why I got out of Largo, you know. I never got
24 in no more trouble after I left Largo except for
25 driving, and that's it.

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1 Q One other question. On the -- the day you
2 watched the movie when you indicated that Cheryl was
3 being flirtatious, did Kevin see that? Do you know if
4 Kevin saw that?

5 A He was sitting right next to me.

6 Q Okay. All right. I don't have anything
7 further.

8 MS. MCCARTHY: All right, Mike.

9 MR. GILLICK: Okay. Nothing further then.
10 Mr. Porrey, I appreciate the opportunity to get
11 this information from you, and we will be in
12 touch if we need anything further.

13 THE WITNESS: Okay, Mike. Just call the
14 office and they will get ahold of me.

15 THEREUPON, the deposition of PATRICK PORREY,
16 taken at the instance of the Plaintiff, was
17 concluded at 11:26 a.m.

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STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Deborah A. Sabella, Registered Professional Reporter and notary public in and for the State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings, pages 1 through 73; and that a review of the transcript was not requested; and that the transcript is a true and complete record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 10th day of August, 2001.

Deborah A. Sabella
DEBORAH A. SABELLA, RPR

CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, the undersigned authority, certify that PATRICK PORREY personally appeared before me and was duly sworn.

WITNESS my hand and official seal the 10th day of August, 2001.



Deborah A. Sabella
My Commission CC909532
Expires March 30, 2004

Deborah A. Sabella
DEBORAH A. SABELLA, RPR
Notary Public
State of Florida
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Expires: March 30, 2004

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