

1 THE BAILIFF: Stand here. Face the clerk, raise
2 your right hand and take the oath.

3 THEREUPON,

4 CHERYL HAGAN

5 Was called as a witness and after having been first duly
6 sworn on oath, was examined and testified as follows:

7 THE BAILIFF: Have a seat in the witness stand.
8 Speak in a loud and clear voice.

9 DIRECT EXAMINATION

10 BY MR. BULONE:

11 Q. Okay. Cheryl, go ahead and take a deep breath.
12 Please state your name for the jury.

13 A. Cheryl Hagan.

14 Q. And are you employed?

15 A. Yes.

16 Q. What do you do?

17 A. I'm a cashier.

18 Q. Do you go to school?

19 A. Uh-huh.

20 Q. What are you taking?

21 A. Just basics.

22 Q. Where do you live now?

23 A. In Clearwater.

24 Q. And how old are you?

25 A. Twenty-one.

ROBERT A. DEMPSTER & ASSOCIATES

1 Q. Let's go back to July the 14th, July 15th of
2 1989. Where were you living at that time?

3 A. 4017 Audobon Road.

4 Q. Is that a house or apartment?

5 A. Triplex.

6 Q. And who did you live there with?

7 A. Darren Scott, my fiance, and my son.

8 Q. And how old was your son then; do you remember?

9 A. About three-and-a-half months old.

10 Q. How old is he now?

11 A. Seventeen months.

12 Q. And is Darren Scott your fiance now?

13 A. Yeah.

14 Q. And is he the father of Darren?

15 A. Yes.

16 Q. Now, in this triplex did you guys live in the
17 east apartment?

18 A. Yes.

19 Q. And did somebody else live in the west apartment?

20 A. Dave and Barb.

21 Q. Okay. David Stewart?

22 A. Yeah, I guess, that's his last name.

23 Q. And then is there an apartment on the south side
24 as well?

25 A. The landlord Theresa's apartment.

1 Q. So it's kind of U-shaped?

2 A. Uh-huh.

3 Q. Did you know the Defendant in this case Kevin
4 Herrick?

5 A. He had been staying there for a couple weeks, so
6 I had seen him and we had talked to him a few times, but I
7 didn't know him really.

8 Q. He had been staying where?

9 A. With the landlord.

10 Q. Do you see him in the courtroom today?

11 A. Yeah.

12 Q. Could you please point him out and describe what
13 he's wearing for the record?

14 A. He's wearing a black coat and gray shirt and
15 black tie.

16 MR. BULONE: Your Honor, may the record reflect
17 the witness has identified the Defendant Mr. Herrick?

18 THE COURT: Let the record reflect that this
19 witness has identified the Defendant.

20 Q. (By Mr. Bulone) During the couple of weeks that
21 he was living with the landlady about how many times did
22 you see him?

23 A. Just a few times.

24 Q. What were the circumstances when you saw him?

25 A. Well, we were having a barbecue and he was

1 walking around the triplex, I guess, smoking a cigarette
2 and he was talking to Scott, Darren Scott. We watched
3 videos with him one time and played a game of chess with
4 him one time.

5 Q. How many times do you think he was in your
6 apartment?

7 A. Four or five, probably, total.

8 Q. Were you ever in his apartment at all?

9 A. In Theresa's?

10 Q. Yeah.

11 A. I've been in the kitchen and stuff.

12 Q. With him?

13 A. No, with her.

14 Q. Now, when he normally left your apartment how
15 would he leave?

16 A. Most of the time he left through the back sliding
17 glass doors.

18 Q. All right. Let's go specifically to July 14th,
19 1989.

20 Did you see the Defendant on that day?

21 A. During the day, yeah, that's when we played a
22 game of chess.

23 Q. Okay. Please describe how you first saw him on
24 that day?

25 A. He came over and he wanted to play a game of

1 chess with Scott. It was time for Scott to get off work,
2 so he said he would play a game of chess with me. I told
3 him he'll be home in a minute and I'll play chess, so we
4 did.

5 Q. Was the baby there?

6 A. I think I just put him down for a nap. Either
7 that or he was in his swing, I'm not really sure.

8 Q. Okay. What happened after that?

9 A. Scott came home about five minutes after he
10 showed up and he was with his friend Tammy and Darrel. We
11 decided to go to a drive-in. Kevin left and Tammy and
12 Darrel left, so me and Scott went to the drive-in.

13 Q. With the baby?

14 A. Yeah.

15 Q. Then you came home from the drive-in?

16 A. We only saw the first movie because the baby was
17 grumpy.

18 Q. Do you know what time you got home?

19 A. Around 11:30.

20 Q. What did you do after you got home?

21 A. I took a bath, put the baby down first for
22 nighttime. Scott came to the door, to the bathroom door,
23 and told me he was going to go with Dave to drop off
24 tropical fish to his mother's house because the tank was
25 not ready for the fish or something.

1 Q. And you said okay?

2 A. Yeah, I said okay.

3 Q. What did you do after that?

4 A. Went to sleep. I had cracked the baby's door
5 open, and I leave the bathroom light on because I have to
6 get up and feed him, and I just went to sleep.

7 Q. Did you leave the bathroom light on?

8 A. I'm not sure if it was the bathroom or hall light.

9 Q. But you left one of them on?

10 A. Uh-huh.

11 Q. You went to sleep?

12 A. Yes.

13 Q. Where did you go to sleep?

14 A. In my bedroom.

15 Q. On your bed in your bedroom?

16 A. Uh-huh.

17 Q. What happened after that?

18 A. Well, I woke up. I don't know how long I had
19 been sleeping, and there's there guy over me and it was
20 dark. I couldn't see anything except for like an image
21 over me. He had his knees on either side of me and a
22 knife to my neck.

23 Q. Did you feel the knife?

24 A. I thought it was a scalpel because it was so
25 sharp.

1 Q. It was either a scalpel or a knife?

2 A. Uh-huh.

3 Q. Did this man have any clothes on?

4 A. A shirt, I think, because it seemed like a dark
5 shirt. I could just see the outline. I couldn't really
6 see any details.

7 Q. Did he have any pants or underwear on?

8 A. No, it was in my face.

9 Q. What was in your face?

10 A. His penis.

11 Q. What did he do then?

12 A. He told me if I didn't suck on it he was going
13 to kill the baby.

14 Q. What happened after that, Cheryl?

15 A. He just kept trying and he kept threatening the
16 baby. I was getting scared. I told him not to touch the
17 baby and he said just do it. I just couldn't do it
18 because I was scared, you know. The knife was right on my
19 neck and he kept trying to shove it in. And one time when
20 I was screaming, he started to put his hand over my mouth
21 and then he just started moving the knife down. I don't
22 know whether he was going to cut me or stab me or cut my
23 underwear or what.

24 Then he turned around and Scott was there. He
25 jumped up and they started going back and forth. I didn't

1 know if he was going to kill him or not.

2 Q. Was this man ever able to get his penis inside of
3 your mouth?

4 A. Once.

5 Q. It actually went inside your mouth?

6 A. Yes.

7 Q. Was that against your will?

8 A. Yes.

9 Q. Did you notice if the hall light or the bathroom
10 light was still on?

11 A. I couldn't see anything, so I believe it was off
12 because I couldn't see really anything.

13 Q. What happened next then?

14 A. Well, him and Scott were just fighting back and
15 forth and, you know, I wasn't sure if a gun was going to
16 go off or if he was going to get stabbed or anything.

17 They were just fighting back and forth and he had a knife
18 in Scott's face. He told him to back up and let him get
19 his pants.

20 Q. Now where did this take place, in the bedroom
21 still?

22 A. It was still in the bedroom.

23 Q. What happened after he was waving the knife or
24 scalpel around?

25 A. Scott let him get his pants off the ground and,

1 you know, when I looked down it looked like jeans with a
2 big belt buckle, so that's another reason why I thought it
3 was the guy next door. Then he closed us in the room and
4 we were trying to get the door open and Scott told him --
5 he said he was going to go kill the baby if we didn't let
6 go of the door. So we let go of the door and Scott said
7 to stay away from the baby. So after he opened the door I
8 ran into the room and checked on him.

9 Q. Was he okay?

10 A. Yeah, he was still sleeping.

11 Q. Sleeping like a baby, huh?

12 A. Yeah.

13 Q. Okay. What happened after that?

14 A. I guess Scott, like, chased him out to the
15 hallway. He went to the glass sliding door, apparently,
16 because I heard Scott say it's locked and I guess -- I
17 didn't really see. I just heard the door's locked and
18 then Scott chased him out down the street. And I started
19 screaming out the front door that somebody tried to rape
20 me and that somebody stabbed Scott because he had blood
21 all over him.

22 Q. Who were the first people that came out of their
23 doors besides yourself and Scott?

24 A. I'm not sure if it was Theresa or Barb. It was
25 Theresa because Theresa was like, "Oh, my God. What's

1 wrong?" And I told her. I was just screaming and holding
2 onto the baby because I was really scared. I told her
3 that you know somebody tried to rape me and threatened to
4 kill the baby and that Scott ran after him. She was just
5 ranting and raving, "Oh, my God. Oh, my God," and then
6 Barb and Dave -- well, Barb came out and I guess Scott
7 came back and told them to call the police.

8 Q. Was Theresa still out there?

9 A. Yeah, she stayed out there.

10 Q. Were the police called and the ambulance?

11 A. I guess Barb called them and they showed up and
12 everything, yeah.

13 Q. What happened after that?

14 A. Well, the policemen was asking what was -- they
15 came and just investigated. And they had to take Scott to
16 the hospital because he had two stab wounds in his chest
17 and they just pretty much were looking at all the
18 fingerprints and everything.

19 Q. Did you see the Defendant after that?

20 A. Yeah. He came right through the front door, and
21 I didn't know it was him, but I kept thinking it was him
22 because I couldn't see him. All I saw was an outline, but
23 when he walked out I felt sick to my stomach because I
24 knew it was him. But he just came out the front door.

25 Q. Was he the last person out of all the neighbors

1 and everything?

2 A. Yes.

3 Q. And then did you go to the hospital with Scott
4 then?

5 A. No I went home with my mother.

6 Q. Then did Scott go there?

7 A. Yeah, they had to take him to the hospital.

8 Q. And then did Scott go to your mom's house after
9 that?

10 A. Yes, he did.

11 Q. Did he call the police from there?

12 A. He called and made a positive identification
13 then.

14 Q. Let me ask you this: Before you even spoke to
15 Scott about who this was, did you have an idea about who
16 the attacker was?

17 A. Yes.

18 Q. And who was that?

19 A. Kevin Richard Herrick.

20 Q. And why did you feel that way, what observations?

21 A. Just everything. It was just -- like the dark
22 shirt, he always wore the same shirts when he was walking
23 around the apartments. It was like the dark shirt and his
24 build, the outline of his hair, just everything. Not only
25 that, but it was just everything led up to it. I just

1 thought it was him. It just looked like him in the dark.
2 I couldn't see him, but I just had a feeling.

3 Q. Okay. Was there anything about his belt or his
4 pants?

5 A. His belt buckle, he always wore that on his
6 jeans. Like I said, he wore pretty much the same clothes.
7 And the belt buckle was like a big belt buckle. When he
8 bent down to pick up his pants I glanced down and I could
9 see a big belt buckle.

10 Q. This is in your bedroom, you mean?

11 A. In the bedroom.

12 Q. Where the attacker was when he put his pants on?

13 A. When he had the knife to Scott's neck and he bent
14 down to pick it up. I was on the bed screaming, and when
15 he bent down I could see the pants and belt buckle.

16 Q. When the Defendant finally emerged from his
17 apartment did you see the same belt buckle?

18 A. On his pants? Yeah, but he had a red shirt on
19 when he came out and his hair was kind of standing up like
20 either he had sleepen or he had changed shirts.

21 Q. Did it appear as -- I realize it was pretty dark
22 in there. Did it appear as if he had the same belt buckle
23 and same pants?

24 A. It seemed like the same jeans and belt he always
25 wears.

1 Q. Big belt buckle?

2 A. Yes.

3 Q. Now was there anything that you observed or heard
4 or anything like that that would indicate to you that it
5 was not Kevin Herrick that did this to you?

6 A. No.

7 Q. Now, when he went into the house at that point in
8 time was it against your will; he wasn't invited in, was
9 he?

10 A. Of course not, and I was sleeping.

11 Q. And when he put his penis inside of your mouth
12 that was against your will, too, wasn't it?

13 A. Yes.

14 MR. BULONE: I don't have anything else, Judge.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. LEINSTER:

18 Q. Cheryl, have you had an opportunity to go over
19 your deposition and your written statement prior to coming
20 in here today?

21 A. Yes, sir.

22 Q. How recently?

23 A. Today.

24 Q. Okay. And has that helped to refresh your
25 memory?

1 A. Yeah, a little bit.

2 Q. Theresa, the lady that came out of the house,
3 that's Theresa Porrey?

4 A. Uh-huh.

5 Q. She's been rather ill for some time?

6 A. I guess, she's been on oxygen since we moved in
7 there.

8 Q. How long would you say it was from the time
9 that Scott left running after the assailant until he got
10 back?

11 A. Oh, I don't know. I mean, I was pretty scared
12 and I was just yelling for help. It didn't seem like that
13 long, really. Five minutes.

14 Q. Do you think it was that long?

15 A. Five, ten minutes. I don't know.

16 Q. He got back before the police got back, didn't
17 he?

18 A. Yes.

19 Q. And the first investigator that you talked to,
20 you told that individual that your assailant had on a tank
21 top --

22 A. Muscle shirt.

23 Q. -- isn't that right?

24 A. Muscle shirt, yes.

25 Q. Are you sure that's what it was?

1 A. Now, no. All I remember is that it was dark. It
2 was either a dark -- it was in the bedroom. All I could
3 see was dark. Like the shirt ended here (indicating).
4 You could see the skin where the shirt ended, so it seemed
5 to be a muscle shirt.

6 Q. As a matter of fact, you described it as being a
7 dark shirt either navy blue or black, didn't you?

8 A. Because it was dark, yes.

9 Q. Wouldn't everything had been dark under those
10 conditions, dark green, dark red, everything would have
11 appeared black, wouldn't it?

12 A. Yeah, I guess.

13 Q. As a matter of fact, everything did appear black,
14 didn't it?

15 A. His clothing?

16 Q. Everything in the room.

17 A. It was dark, but his skin was lighter then his
18 shirt, his face was lighter then his hair. I could see
19 the difference between dark and light.

20 Q. As a matter of fact, was it not, in your words,
21 "pitch dark"?

22 A. I don't know. I guess.

23 Q. Okay. I'm referring to your deposition which was
24 taken December 5th, 1989, here at the State Attorney's
25 office. Do you remember that deposition?

1 A. Uh-huh.

2 Q. I'm referring to page 14 line 18. "I woke up and
3 it was pitch dark." Going to line 25, "it was pitch
4 dark." And the next page 15, line 8. "It was totally
5 dark."

6 MR. BULONE: Judge, I object. I think this is
7 improper impeachment because I don't think this is
8 inconsistent at all, so it would be hearsay.

9 THE COURT: I think we'll rely upon the jury to
10 determine if it was a consistency or inconsistency.
11 I'll allow him to continue.

12 Q. (By Mr. Leinster) Do you recall stating under
13 oath it was pitch dark?

14 A. I don't recall. But if it says it then, I guess,
15 I did say that.

16 Q. All right. But there is no question in your mind
17 that your assailant had a shirt on?

18 A. No. When he was over me he did not have a shirt
19 on -- I mean he did have a shirt on.

20 Q. All right. So when Darren came into the room he
21 would still have the shirt on?

22 A. As far as I know, yes.

23 Q. Okay. Now, prior to the police coming out to the
24 scene, did Darren not take you back inside to console you?

25 A. When he came in he asked me did I see who it was

1 and I said it looked like the guy next door, and he told
2 me it was.

3 Q. That's what I'm getting at. He told you at that
4 point that it was Kevin Herrick, right?

5 A. Right.

6 Q. And yet you didn't tell the police it was Kevin
7 Herrick?

8 A. No.

9 Q. Did you disbelieve Darren?

10 A. No, it wasn't that I didn't believe him. I was
11 just really freaked out at that time. I was in shock and
12 I really -- it was not like he'd ever been mean or acted
13 strange. He was kind of quiet. I just couldn't believe
14 that somebody that was being nice to you would do that to
15 you, you know, would hold a knife to your neck. When
16 Scott told me at the time, I was in shock. Me and Scott
17 didn't talk any further. It was just those two
18 statements.

19 Q. The fact is, you didn't tell the police it was
20 Herrick?

21 A. I told them it looked like the guy next door.

22 Q. As a matter of fact, the only description you
23 gave to the investigator, is it not true, that he seemed
24 tall, heavyset, with dark, curly hair, right?

25 A. Right.

1 Q. In those days Mr. Herrick's hair was considerably
2 longer than it is now; would you agree?

3 A. Longer as on his neck? I mean, it was --

4 Q. Longer down his sholders?

5 A. It was pretty bushy everywhere.

6 Q. And that was the nature of the haircut of your
7 assailant bushy, curly?

8 A. I can't say if it was curly. It was rough
9 around. I didn't see curls, I just saw -- it looked like
10 rough hair around.

11 Q. So you don't recall telling the investigator that
12 it was the dark, curly hair that looked like Kevin?

13 A. Yeah, I do recall that.

14 Q. Okay. Do you recall also that you told the
15 investigator that you couldn't be sure, but you thought it
16 was the neighbor because he'd been there before and always
17 left through the sliding glass door?

18 A. Well, the thing is --

19 Q. Do you remember saying that?

20 A. Yes, I do.

21 Q. So in your mind, isn't it true that you're
22 thinking this guy always leaves by the sliding glass door
23 and the assailant tried to leave by the sliding glass
24 door, therefore, it must be Kevin Herrick; is that right?

25 A. Not really. In fact, he knew where the glass

1 sliding door was and it was locked. So, he, obviously,
2 didn't come in the glass sliding door. He knew where it
3 was. After it happened I did think about it. Yeah, he
4 did leave through the sliding door a lot and he walked
5 around the apartments a lot.

6 Q. My question is do you remember telling the
7 investigator --

8 A. Yes, I do.

9 Q. -- you couldn't be sure, but you thought it was
10 the neighbor because he left through the sliding glass
11 door?

12 A. That's right.

13 Q. But it isn't true he left through the sliding
14 glass door, is it?

15 A. Most of the time.

16 Q. He was only at your place about three times?

17 A. I don't know the exact time but, yeah.

18 Q. Referring once again to your deposition, page
19 four, line five. "I had been around him a couple of times
20 because Scott invited him over a couple of times when we
21 were barbecuing and stuff and I played chess with him one
22 day and he got the mail for me one day."

23 Okay. Do you remember that?

24 A. Yes, but he was around the apartments and talked
25 to us quite a few times.

1 Q. But not inside the apartments?

2 A. Not inside, no.

3 Q. In fact, on another occasion he came over to
4 watch the VCR, correct?

5 A. With Pat, yes.

6 Q. And he used the door, not the sliding glass door?

7 A. No. He knocked on the door and it was dark. He
8 asked for a VCR cleaner.

9 Q. It's your statement that it might be the neighbor
10 because he always leaves by the sliding glass door means
11 on three occasions; he may have come through once or
12 twice?

13 A. Excuse me?

14 Q. What did you mean by always leaves through the
15 sliding glass doors if he only came over three times?

16 A. He didn't come over a total three times. Him and
17 Scott, when they came in the house during the barbecue, he
18 walked around and he came in the back door. He always
19 walked around and smoked cigarettes. He was always
20 walking around the apartments and we were building like a
21 little pond by the glass sliding doors. He was always
22 walking around there and talking to us. And there's a
23 couple times he came and talked to Scott, whether I was
24 there or not.

25 Q. Well, you indicated on your testimony today that

1 you thought he had been in there four or five times?

2 A. He's been in there a few times. I don't know
3 exactly. I didn't count how many times he came in.

4 Q. Well, it might be important. You said a couple
5 times on your deposition. Do you know?

6 A. Whether it was a few or a couple?

7 Q. What is a few?

8 A. More than two.

9 Q. Okay. I never knew what a few was. And let me
10 ask you this: You said that it was pitch dark, we've
11 acknowledged that. Were the venetian blinds closed?

12 A. I don't know. I really don't know.

13 Q. When you go to sleep do you customarily close the
14 blinds?

15 A. They were probably closed, yes.

16 Q. And where are they in relation to your bed?

17 A. There are two different windows. There's a real
18 big window right by the bed. The bed was against the wall
19 and there was a big window right there (indicating).

20 Q. Is the head of the bed against the wall or the
21 side of the bed?

22 A. Against the wall where the window is.

23 Q. No, first question first. Is the head of the bed
24 against the wall?

25 A. Yes.

1 Q. At the head of the bed is there a window?

2 A. No.

3 Q. No window there?

4 A. No.

5 Q. So if you were lying on the bed on your back
6 where would the window be, right or left?

7 A. To the left.

8 Q. And would that be facing the little alcove that's
9 created by those three units?

10 A. Would what?

11 Q. If you looked out that window what would you see?

12 A. Just the street.

13 Q. The street?

14 A. Uh-huh.

15 Q. So it faces to the north, that window; would that
16 be right?

17 A. Yes.

18 Q. In any event, your best understanding would be
19 the venetian blinds would be closed?

20 A. But I wasn't laying the way the bed goes.

21 Q. I'm assuming that would contribute to the fact it
22 was pitch dark inside.

23 Now, you also gave a written statement which was
24 a sworn statement and you made this statement on July the
25 18th and you said in that statement, "I left the kitchen

1 light on so that Scott could see when he got home and I
2 always leave the bathroom light on for the baby."

3 Do you remember saying that?

4 A. Yes.

5 Q. Turning to your deposition on page 35, however,
6 you're talking about Scott chasing your assailant?

7 A. Uh-huh.

8 Q. "He still couldn't see him at that point because
9 it was dark, pitch dark in the house. See, that's right,
10 there were no lights."

11 A. This is what he told me.

12 Q. There were no lights on, your words?

13 A. When he was chasing him?

14 Q. Yes.

15 A. Probably not. He probably turned them off.

16 Q. I'll get to that. Quote, "It was pitch dark in
17 the house," and you said you went to the baby's room that
18 got around through the kitchen.

19 MR. BULONE: Judge, all this is hearsay unless he
20 can show that it's a prior inconsistent statement.

21 That's the only way you can get in prior out of court
22 statements is if you show it's inconsistent, and he
23 has failed to show that foundation. All he's doing is
24 just going through the depositions, which is improper.

25 MR. LEINSTER: She said the light was left on and

1 I'm going to that point where she says the light in
2 the kitchen is not on. If she can explain that,
3 that's fine, but I have the right to ask.

4 THE COURT: Ask the question.

5 Q. (By Mr. Leinster) "He didn't want to go by Scott,
6 but Scott saw his face when he ran through the kitchen
7 because the light from Dave's porch light was shining in
8 our kitchen."

9 That's not the same thing as leaving the kitchen
10 light on. Do you understand what I'm saying?

11 A. Yeah.

12 Q. Okay. You're saying that when they ran through
13 the kitchen the kitchen light was off. The light that was
14 coming through was coming from Dave's porch light?

15 A. Uh-huh.

16 Q. So your assumption would be that he turned the
17 kitchen light off, too?

18 A. I suppose, yes. He probably turned off the
19 lights that were on. I don't know what he did. All I
20 know is when I woke up there was a guy over me with a
21 knife to my neck and his privates in my face.

22 Q. But we've established all the lights were off?

23 A. (Witness nods head affirmatively).

24 Q. However they got off, they're all off?

25 A. At that time I turned the baby's lights on when I

1 came into the room and Scott was chasing him.

2 Q. You never saw your assailant at all once Scott
3 chased him; you went straight to the baby's room, correct?

4 A. Correct.

5 Q. And you heard Scott yell, "Hey, man, the sliding
6 glass doors are locked"?

7 A. Yeah, uh-huh.

8 Q. And they were locked, correct?

9 A. (Witness nods head affirmatively).

10 Q. So the assailant would have come through the
11 front door?

12 A. Right.

13 Q. No signs of breakage, no sign of a break in or --

14 A. Why would he need to? He lived with the
15 landlord.

16 Q. When Scott chased the individual and the
17 individual was trying to get out the sliding glass doors,
18 he left blood on the sliding glass doors, didn't he?

19 A. Uh-huh, yes.

20 Q. That wasn't -- was that Scott that left that
21 blood or was it the assailant?

22 A. I didn't see, but as far as I know Scott didn't
23 go near the sliding glass doors. He was the only one that
24 touched the glass doors.

25 Q. Then Scott directed the assailant to the front

1 door?

2 A. Well, he told him to get him out.

3 Q. Once again, there was blood left on that
4 doorknob, wasn't there?

5 A. There was blood left in a lot of places, yes.

6 Q. Now, I guess it's obvious that in the couple of
7 weeks that Mr. Herrick had been living around there he got
8 to know that you and Scott lived together, had a child
9 together, slept together.

10 Was it a usual occurrence for Scott to leave at
11 midnight and go somewhere?

12 A. I guess not.

13 Q. So, usually, if someone were to come into your
14 place around that time they would expect to encounter you
15 and Scott, not just a defenseless lady like yourself?

16 A. If they knew us, I guess. If they knew that we
17 lived there.

18 Q. You didn't call Mr. Herrick to say Scott left;
19 he's gone?

20 A. No.

21 Q. Scott probably didn't call him and say, Hey, I'm
22 leaving for a while?

23 A. But he could look out the landlord's window and
24 watch Scott walk away. I'm just assuming, though.

25 Q. When Scott got home and he found you playing

1 chess with Kevin, how did he react to that?

2 A. He didn't react. He just sat down and started
3 talking to us.

4 Q. He wasn't angry at all?

5 A. I've been with Scott three years now. Why would
6 he be angry?

7 Q. He's been your fiance for three years?

8 A. Not my fiance, we've been together for three
9 years.

10 Q. And who was the other girl that was there?

11 A. Tammy.

12 Q. And who is Tammy?

13 A. Darrel's girlfriend.

14 Q. Okay. Darrel being another friend?

15 A. Uh-huh.

16 Q. Darrel, Darren is not the same person?

17 A. No.

18 Q. So it was just business as usual. He got home,
19 the chess match concluded, Mr. Herrick left, your other
20 friends left, no harsh words?

21 A. No.

22 Q. You never saw any unusual behavior from
23 Mr. Herrick; you had always friendly, right?

24 A. Yeah.

25 Q. Because that's one of the reasons you told the

1 police you didn't think it could be him; isn't that right?

2 A. Yeah.

3 Q. Are Dave and Scott pretty good friends?

4 A. Well, they just met when we moved into the
5 triplex and, you know, they talked a lot. Yeah, they were
6 pretty good friends, I guess.

7 Q. Pal around together?

8 A. Not really, just around the apartments and talked
9 to each other.

10 Q. Good enough friends that Dave would leave at
11 midnight to help him fix a fish tank?

12 A. It was Dave's fish.

13 Q. Okay, but they're going to fix a fish tank?

14 A. Their going to take a fish to Dave's mother's
15 house because the fish was dying.

16 Q. Okay. When you first saw your assailant on top
17 of you, you claimed he had his pants off; is that right?

18 A. Yes. I don't know if they were all the way off.
19 All I saw was he was on his knees. So I saw from his
20 knees up.

21 Q. Uh-huh. And the only thing that you could see at
22 that time was the outline of the hair, the curly hair,
23 correct?

24 A. And his privates in my face.

25 Q. I understand. The curly hair, though?

1 A. I don't know. It's been a year now.

2 Q. Well, not since your deposition.

3 A. Almost.

4 Q. Would it help me to show the deposition to you?

5 A. No. I've read my deposition.

6 Q. I'm not trying to mislead you here. "I could
7 just see the outline of the curly hair," is what you said?

8 A. It just was lumpy. It was like -- it looked like
9 curly hair. It was dark, but it looked like the outline
10 that curly hair would have.

11 Q. Otherwise, no facial features, just the build,
12 the shape of the body; that's about it, right?

13 A. Uh-huh.

14 Q. Now, you didn't wake up at all until you were
15 being straddled, right?

16 A. (Witness nods head affirmatively). I just woke up
17 and he was over me.

18 Q. Okay.

19 A. I think --

20 Q. You didn't hear anybody come in, take their pants
21 off, belt buckle hit the floor, things like that?

22 A. No.

23 Q. I am curious, how did you determine these were
24 blue jeans with a large belt buckle, in as much as it was
25 pitch black?

1 A. Because when I was screaming and on the bed and
2 Scott and him were fighting, I looked down and they looked
3 like blue jeans and a belt buckle, and I could see the big
4 belt buckle.

5 Q. How do blue jeans look in pitch black light; can
6 you distinguish the color blue in the absence of light?

7 A. I could see more at that time. My eyes had
8 focused. I could see a little bit more, but I don't know
9 for sure if they were jeans. They did look like jeans and
10 I did see a belt buckle.

11 Q. But you don't know if they were jeans, right?

12 A. I'm not sure.

13 Q. You told the police they were jeans?

14 A. They looked like jeans.

15 Q. You didn't say they looked like jeans, you told
16 the police they were jeans, right?

17 A. I guess so.

18 Q. And you had this knife to your throat. You
19 thought it was a scalpel, right?

20 A. Because it felt very sharp. It was so sharp I
21 was afraid to move.

22 Q. You found out, according to your deposition, that
23 it was not a scalpel because somebody told you they found
24 the knife and it was a regular knife?

25 MR. BULONE: Judge, this is pure hearsay. I

1 object to it.

2 MR. LEINSTER: It has nothing to do with the truth
3 of the statement.

4 THE WITNESS: I don't know if --

5 THE COURT: Just a second.

6 MR. BULONE: What somebody told her is hearsay.

7 MR. LEINSTER: I'll approach the bench.

8 THE COURT: Rephrase the question, counsel.

9 Q. (By Mr. Leinster) Isn't one of the reasons that
10 you believe that it's Mr. Herrick that did this is because
11 you think that they found the weapon that was used on you?

12 A. One of the reasons?

13 Q. Yeah.

14 A. One of the many reasons, yes.

15 Q. Whether it is true or not true, you were told
16 that they found the knife and it was a regular knife,
17 correct?

18 A. Yes.

19 Q. All right. And if, in fact, that statement were
20 not true, how would it affect your judgment now?

21 A. I'd still think it was him.

22 Q. You'd still think it was him?

23 A. Whether the knife felt sharp to my neck or not,
24 it was still there and Scott doesn't lie to me.

25 Q. Who told you they found the knife and it was a

1 regular knife?

2 A. A police officer.

3 Q. Do you remember which one?

4 A. Huh-huh. He was at my mother's house, but I
5 don't know his name.

6 Q. Did that reconfirm for you your suspicions when a
7 police officer told you that?

8 A. Yes. The police officer told me that they found
9 the knife and that it had blood on it, it looked like
10 blood on it, and they found a gun under his mattress and
11 all that.

12 Q. Okay. So whatever you started with, as far as a
13 belief, was now enhanced by the police, correct?

14 A. Before the police got there Scott had told me
15 that he saw him and it was him, so it was not just a
16 belief anymore. I knew it was him.

17 Q. If that's the case, when Scott told you and you
18 knew it was him, as I asked you earlier, why didn't you
19 tell the police? Instead of saying I don't think it was
20 him; he's too nice.

21 A. Because I was in shock. If you've had somebody
22 hold a knife to your neck and try to rape you --

23 Q. I haven't.

24 A. Then you don't know how much shock it could bear
25 on you.

1 Q. Would you say it is a disorienting experience?

2 A. I don't understand.

3 Q. Would you say by sheer terror you do not observe
4 things as accurately as you might under normal
5 circumstances?

6 A. I think I can observe everything I saw. I can
7 tell you things that are very important, not the little
8 minor details.

9 Q. Wouldn't it have been important to tell the
10 police, since you were certain at that time that it was
11 your neighbor who had done this, isn't that important?
12 That's not a minor detail.

13 A. I wasn't certain. Scott said it to me once, but
14 we didn't go into a discussion. He didn't say he knew for
15 sure or whether he was assuming. He said it was him, but
16 that was it. The police came and then when he went to my
17 mother's he told me. And he told me that he was scared
18 for us and that's why he didn't say anything else to the
19 police.

20 Q. The knife was being held to the right side of
21 your neck; was it not?

22 A. Yes.

23 Q. And at the same time a hand was over your mouth?

24 A. Sometimes, not the whole time.

25 Q. But at least during part of that time one hand

1 would have been over your mouth and the other hand would
2 have -- you had the knife to the right side of your neck?

3 A. Yes.

4 Q. Would you agree that that would suggest that your
5 assailant would be left-handed?

6 A. No. I don't know.

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

9 THE COURT: Sustained.

10 Q. (By Mr. Leinster) Were you able to see any shoes?

11 A. I really wasn't paying attention to shoes, no.

12 Q. Where was it that Scott backed up when the
13 assailant was putting his pants back on?

14 A. In the bedroom.

15 Q. Backed up where there?

16 A. Backed up towards the wall that the headboard was
17 on. The head of the bed.

18 Q. Not next to the window where the venetian blinds
19 are?

20 A. Not the big window, no.

21 Q. He would be in the same general area where you
22 were at this point?

23 A. I was on the bed and he was more toward -- I was
24 on the bed and he was here and Scott was on this side
25 (indicating).

1 Q. Where did the assailant put his pants on, near
2 the door to the bedroom to get out of the bedroom?

3 A. I guess more close to the bedroom door.

4 Q. Well, my point, I guess, is you still couldn't
5 determine the features of your assailant while he's
6 putting his pants on?

7 A. Just dark hair, what I said before.

8 Q. Where at this point is Scott? Is he closer to
9 the assailant or right near?

10 A. Well, Scott went for him again because, maybe, he
11 figured that he could, you know, keep him from going
12 towards the baby's room.

13 Q. He went for him while he was trying to put his
14 pants on?

15 A. I'm not sure if it was before or after he put
16 them on, but it was around that time. I don't know.

17 Q. It seems like a pretty good time to go for him.
18 You don't recall if that's how it happened?

19 A. Not positive, no.

20 Q. Where did Scott run when he ran out of the unit?

21 A. Down the sidewalk.

22 Q. Down the sidewalk?

23 A. (Witness nods head affirmatively).

24 Q. Down the street?

25 A. I didn't see him run down the street. I saw him

1 run up the sidewalk and I saw him run to the right once he
2 came out of there.

3 Q. Well, did Scott or did he not chase the assailant
4 down the street?

5 A. According to what I saw or according to what
6 Scott says?

7 Q. According to your own testimony.

8 A. As far as I know Scott chased him down the
9 street.

10 Q. Which would be heading east?

11 A. I have no idea.

12 Q. Well, if your looking out the front of that
13 building.

14 A. I believe it was to the east, yes, but I don't
15 know. I did not see him chase him. I just saw him -- I
16 saw Scott run out the front door and I barely saw, you
17 know, I barely saw that. I saw him run out, and that was
18 it, and run up the sidewalk.

19 Q. So when you stated on your deposition page 24
20 line two, "Right, and Scott chased him down the street."
21 That was not something that you observed?

22 A. Not something I observed, no.

23 Q. But you said it as though it were gospel.

24 MR. BULONE: Judge, I object. This is totally
25 irrelevant what she may have said in the depo. I

1 mean, there is absolutely nothing that indicated it
2 was gospel. It was a discovery deposition when they
3 asked her what she knew, and that's what she said.
4 That is nothing inconsistent with what she's testified
5 to, so it's not proper.

6 THE COURT: I'll sustain the objection. It
7 doesn't appear inconsistent. Move along, please,
8 counsel.

9 Q. (By Mr. Leinster) When he came back, when Scott
10 came back, he was yelling, wasn't he?

11 A. I don't know.

12 Q. Do you remember something about a license tag?

13 A. I heard him say something to Dave to write down a
14 license tag, yes.

15 Q. He said it to you, too, didn't he?

16 A. I just heard him say write down the license
17 number. I don't remember. It was over a year ago.

18 Q. So you don't recall whether or not he told you
19 and Dave?

20 A. I know he told Dave and I was there, so I heard
21 it.

22 Q. Isn't what he said is that he chased the
23 assailant down the road and he saw the lights of a car
24 turn on; isn't that what he said?

25 A. Yes.

1 Q. Right?

2 A. I believe so.

3 Q. Okay. And you did hear him say something about
4 the assailant leaving in a car and writing down a tag
5 number?

6 A. I said I he thought he saw him leaving in the
7 car, but I guess he realized that it wasn't him.

8 Q. Later on you found that out, but right there on
9 the scene what he was saying to Dave was the assailant
10 left in the car and he got the tag number, correct?

11 A. No, not in those words. Even after he saw the
12 car leave he was looking around for him because he thought
13 he might have run behind a bush or house, but he couldn't
14 find him. So he assumed he drove away in the car.

15 Q. Your deposition, page 30. Question: "Did you
16 hear anybody say anything about the assailant leave in a
17 car or anybody writing down a tag number?" Answer: "Yes,
18 yes, I did hear that." Question: "Okay. Could you tell
19 me that?" Answer: "Scott chased him down the road and he
20 saw lights of a car turn on." Question: "This is
21 something Scott told you after the fact?" Answer: "And
22 Dave." Question: "Okay."

23 And did you not hear him also say, as he went
24 through some bushes, that he saw a car pulling out and he
25 thought that he had got in a car and, you know, drove

1 away?

2 A. That's what he thought.

3 Q. That's what he said, isn't it?

4 A. Yeah.

5 Q. And he told Dave to get that tag number down and
6 call the police; isn't that right?

7 A. Right.

8 Q. Did you find out later that that was a lie?

9 A. That it was a lie?

10 Q. Yeah, that it wasn't true.

11 A. When Scott saw him come out the front door he
12 knew that he didn't drive away in the car and that's -- I
13 mean as soon as he saw Kevin's face he knew he didn't
14 drive away in the car.

15 Q. Yet he came back and told not only Dave that but
16 you as well, right?

17 A. Before he saw Kevin, yes.

18 Q. Okay. And when did he see Kevin?

19 A. When Kevin came out of the apartment when the
20 police were there.

21 Q. Kevin came out before the police were there,
22 didn't he?

23 A. No.

24 Q. Are you sure of that?

25 A. When I saw him it was when the police were

1 already there.

2 Q. Okay. You had gone back inside, though, if I'm
3 not wrong because Scott came in to console you. You had
4 come out screaming then you went back inside?

5 A. I was out for quite a while, you know, when
6 Theresa and Barb were out there and I don't know how long
7 it was before the police got there, but I went in for a
8 little bit. It wasn't long at all when Scott went in and
9 I was inside, too.

10 Q. Was it the police there that told you they didn't
11 find blood on the knife but his fingerprints were on the
12 doors and that those were his prints?

13 A. No.

14 Q. Who told you that?

15 A. I saw the fingerprints and Scott didn't touch the
16 glass sliding door.

17 Q. Well, I know. But it was your belief, isn't it
18 or it was at the time of your deposition, that it was
19 Kevin Herrick because they found the blood on his knife
20 and the fingerprints of him on your doors?

21 A. And I also --

22 Q. Yes or no?

23 A. Yes.

24 Q. And who told you that they found his fingerprints
25 on your doors?

1 A. Nobody told me that.

2 Q. Well, how did you come to that conclusion then?

3 A. I figured that's the only person it could be. I
4 mean it was either his or Scott's.

5 Q. You said Scott didn't touch the door?

6 A. Not the glass sliding door, no.

7 Q. Was Mrs. Porrey somewhat hysterical when she came
8 out?

9 A. Yes.

10 Q. You were hysterical?

11 A. Yes.

12 Q. Would it be fair to say everybody was a bit on
13 edge?

14 A. Shocked.

15 Q. Nervous?

16 A. Yes.

17 Q. Not something that happens every day, obviously.
18 How long before the police arrived?

19 A. I don't really know. It wasn't that long.

20 Q. Can you do a little better? From the time that
21 Scott ran back, how long before the police arrived?

22 A. It wasn't that long. I can't say how many
23 minutes because I really don't know. I mean everything
24 was pretty -- everybody was in shock. I was in shock. I
25 didn't count the minutes until the police officers got

1 there. We just waited. It wasn't very long.

2 Q. How many times have you talked with the police
3 about this incident since you gave them your written
4 report on July 18th of 1989? Let me put it another way.

5 Have you been involved in any further
6 investigation or has all of your conversation been with
7 respect to we've got a trial date coming up or something
8 like that?

9 A. A couple times because we had to give
10 fingerprints and hair pluckings and stuff.

11 Q. You provided some hair samples, I believe, for
12 lab analysis and so forth?

13 A. Uh-huh.

14 Q. Do you recall anything that Scott said as he was
15 being taken from your residence to the ambulance? Did he
16 say anything to the police concerning the assailant?

17 A. I don't think so.

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

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MR. BULONE:

22 Q. I just want to get something straightened out.
23 When the police first arrived in the very beginning and
24 the police were taking your statement, did you or did you
25 not tell them at that time that you believed that it was

1 the neighbor, the Defendant, but that you weren't a
2 hundred percent sure?

3 A. I did tell them that.

4 Q. Okay. And was it you who first stated to Scott
5 that you thought it was the neighbor?

6 A. Uh-huh.

7 Q. And then he said it was him?

8 A. Yes.

9 Q. When you finally were able to get out of your
10 bedroom and you went into the baby's room, did you turn
11 the light on there?

12 A. Yes, I did.

13 Q. Did Kevin know that you had a baby?

14 A. Yes.

15 Q. He had seen the baby before?

16 A. Uh-huh.

17 Q. Now after you woke up and it was pitch black, as
18 time went on were you able to focus better and see more of
19 the things?

20 A. I could see a little bit better. It was still
21 dark, but I could see a little bit better.

22 Q. Okay. Did anyone ever tell you that the the
23 Defendant's fingerprints were on the door? Did anyone
24 ever tell you that the Defendant's fingerprints were on
25 the door? Did anyone ever say that?

1 A. I don't think so.

2 MR. BULONE: That's all Your Honor.

3 THE COURT: Any recross?

4 MR. LEINSTER: No, sir.

5 THE COURT: Fine. Thank you very much, ma'am.

6 Is she excused or do you wish her to stay?

7 MR. LEINSTER: I'd like her to stay, at least on
8 call.

9 THE COURT: Before your call your next witness,
10 let's take a five minute break.

11 (THEREUPON, A BRIEF RECESS WAS HAD AT 3:05 P.M. AND
12 PROCEEDINGS RESUMED AT 3:20 P.M. AS FOLLOWS:)

13 THE COURT: Bring the jury in please.

14 THE BAILIFF: The jury is seated in the jury box,
15 Your Honor.

16 THE COURT: Thank you. Mr. Bulone, call your
17 next witness, please.

18 MR. BULONE: Darren Scott Barfield.

19 THE COURT: Call Darren Barfield to the stand,
20 please.

21 THE BAILIFF: Darren Barfield fails to respond.
22 I sent someone to the lunch room, he might be down
23 there.

24 THE COURT: When did you last see him,
25 Mr. Bulone?

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

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

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

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

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

11 THEREUPON,

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

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

17 THE COURT: Proceed, Mr. Bulone.

18 DIRECT EXAMINATION

19 BY MR. BULONE:

20 Q. Sir, please state your name.

21 A. Darren Scott Barfield.

22 Q. And are you employed?

23 A. Yes, sir.

24 Q. What do you do?

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

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

1 Q. And your son's name?

2 A. Darren Andrew Barfield.

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

6 A. Yes, sir, it does.

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

9 A. That is correct.

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

11 A. That's right.

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

14 A. Right.

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

17 A. Yes, he was an acquaintance.

18 Q. And how did you know him?

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

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

22 A. Yes, sir, I do.

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

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

1 and black striped shirt and a tie.

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

4 THE COURT: So reflect.

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

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

10 Q. What for?

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

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

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

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

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

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

22 A. Shortly after that, yeah.

23 Q. Was it a drive-in?

24 A. Yes, sir, it was.

25 Q. Did you take the baby?

1 A. Yes.

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

4 A. Yes.

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

6 A. Yes, sir, we did.

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

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

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

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

18 Q. So what did you do after that?

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

21 Q. Did you go over there with him?

22 A. Huh?

23 Q. Did you go over with him then?

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

1 Q. Where did she live?

2 A. In Largo.

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

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

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

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

14 Q. What happened when you went in there?

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

19 Q. What did he say?

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

22 Q. What did you do then?

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

25 Q. What happened after that?

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

4 Q. What happened then?

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

14 Q. What happened after that?

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

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

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

9 Q. What porch light?

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

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

14 A. Right there where that panel is.

15 Q. About here?

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

21 Q. This way?

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

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

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

6 A. It's fairly accurate, yes.

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

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

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

17 A. Yes.

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

19 A. Yes.

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

22 A. Right here.

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

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

25 Q. And you went here?

1 A. Yes.

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

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

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

6 A. Right in the doorway of the bedroom.

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

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

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

15 A. Yes.

16 Q. Did she turn the light on?

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

18 Q. Did you go in there, too?

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

20 Q. And you then followed him?

21 A. Yes.

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

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

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

1 him the best inside of the apartment?

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

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

6 A. They were open.

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

8 A. Right here shining into the window.

9 Q. And it was pretty bright?

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

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

13 A. No, I was here.

14 Q. And he was where?

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

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

19 A. None whatsoever.

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

21 A. That is correct.

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

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

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

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

4 A. Yes.

5 Q. And was it him?

6 A. Definitely, beyond a doubt.

7 Q. It was Kevin Herrick?

8 A. It was Kevin Herrick.

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

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

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

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

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

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

8 Q. What about Kevin; was he there?

9 A. Not at that time.

10 Q. Anybody else there?

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

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

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

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

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

20 Q. That would be up here?

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

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

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

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

4 A. Yes, sir, I did.

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

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

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

12 A. At that time I did not.

13 Q. Why not?

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

19 Q. What did you think might happen?

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

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

2 A. Yes, I was.

3 Q. And what was wrong with you?

4 A. Two knife wounds in my chest.

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

7 A. Yes, I was.

8 Q. Where did you go after that?

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

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

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

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

21 A. That is correct.

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

23 A. That's right.

24 Q. And you saw him in the bedroom?

25 A. Right.

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

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

4 Q. Where was he?

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

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

11 A. No doubt whatsoever.

12 Q. Is there any doubt now --

13 A. None.

14 Q. -- that it was him?

15 A. Not beyond a shadow of a doubt.

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

18 A. Yes.

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

20 THE COURT: Cross-examination.

21 MR. LEINSTER: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. LEINSTER:

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

25 A. Scott.

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

2 A. No, sir, I have not.

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

4 A. Yes, sir, I did.

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

7 A. No, sir, we were not.

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

13 A. That is correct.

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

16 A. That is correct.

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

24 Do you see an inconsistency there?

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

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

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

10 A. Sir --

11 Q. Is it yes or no?

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

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

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

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

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

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

8 A. I'm not sure.

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

11 A. Yes, sir, I do.

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

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

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

17 A. Yes, sir.

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

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

25 Q. You were hysterical?

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

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

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

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

12 A. Have I read the reports?

13 Q. Yes.

14 A. I did glance through them.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 A. I don't believe I was.

7 Q. You don't believe you were?

8 A. No, sir.

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

16 A. I noticed that today, in fact.

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

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

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

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

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

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

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

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

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

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

18 A. Yes, sir, I do.

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

1 A. That is correct.

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

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

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

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

13 Q. South, is that right?

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

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

18 A. Uh-huh.

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

21 A. If you could flip the page.

22 Q. Okay. This one is yours?

23 A. That is correct.

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

25 A. Yes.

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

3 A. Right.

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

5 A. That is correct.

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

8 A. Right.

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

11 A. It was two or three houses.

12 Q. How far is that?

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

14 Q. Feet, yards, whatever.

15 A. About thirty, forty yards, maybe.

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

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

19 Q. Okay. Running pretty fast?

20 A. Fairly quickly.

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

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

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

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

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

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

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

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

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

25 A. Yes.

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

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

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

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

13 A. Yes, sir, I did.

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

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

19 Q. Okay.

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

21 Q. Is David one of your friends?

22 A. He is an acquaintance.

23 Q. Is he a trusted acquaintance?

24 A. As far as what aspect?

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

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

3 A. No, sir, I would not.

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

8 A. No, sir, I am not.

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

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

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

20 THE COURT: I'll overrule the objection.

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

22 Q. (By Mr. Leinster) Which?

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

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

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

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

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

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

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

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

15 THE COURT: Sustained.

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

19 A. Yes.

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

22 A. That is correct.

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

1 this delusion about a car and a tag number?

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

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

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

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

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

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

16 A. Correct.

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

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

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

7 Q. And did the car ever move?

8 A. No, sir, it did not.

9 Q. Did it have its lights on?

10 A. Yes, sir, it did.

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

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

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

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

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

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

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

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

8 A. Yes, sir, it was.

9 Q. And was that given to the police?

10 A. Yes, sir, it was.

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

15 A. Yes, sir, I did.

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

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

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

1 A. Yes, sir, I was.

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

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

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

18 A. From my complex?

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

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

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

25 A. Yes, sir.

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

3 A. No, sir.

4 Q. Wrong?

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

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

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

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

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

23 Q. Okay.

24 A. It was dark in the room.

25 Q. He was completely naked except for possibly

1 socks, correct?

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

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

5 A. Yes, sir, it is.

6 Q. So then it's true?

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

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

10 A. Is that a question?

11 Q. Yes.

12 A. Yes.

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

16 A. A dark shirt.

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

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

23 THE COURT: Clarify to where this took place.

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

1 was toward the door and you saw a silhouette?

2 THE WITNESS: That is correct.

3 THE COURT: Okay. Proceed.

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

6 A. Correct.

7 Q. Were the venetian blinds closed?

8 A. Yes, sir, they were.

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

11 A. From the venetian blinds.

12 Q. From the closed venetian blinds?

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

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

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

21 Q. How did he get his pants on?

22 A. I assume with one hand.

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

1 A. Yes, sir, I did.

2 Q. And is that when he hit you?

3 A. Yes, sir, it was.

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

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

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

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

13 Q. Is it also correct meaning true?

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

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

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

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

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

1 THE COURT: Sustained.

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

4 A. Yes, sir.

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

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

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

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

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

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

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

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

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

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

1 shirt on or it was a dark shirt on.

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

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

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

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

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

15 A. At what point?

16 Q. What was the closest?

17 A. Fifteen, twenty feet.

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

21 A. In his hands.

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

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

25 Q. Okay.

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

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

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

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

8 A. That was speculation.

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

14 Did you misunderstand that?

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

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

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

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

1 A. That is correct.

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

4 A. The door that he left through?

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

6 A. The front door?

7 Q. Yeah.

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

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

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

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

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

22 Q. How about his hair?

23 A. What was different about him?

24 Q. Uh-huh.

25 A. He had his hair slicked down.

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

4 A. Correct.

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

8 A. Just above the shoulders.

9 Q. Bushy, curly hair, right?

10 A. Correct.

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

13 A. Closer than normal, yes.

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

16 A. Yes, sir.

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

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

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

25 A. That was speculation.

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

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

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

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

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

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

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

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

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

5 Q. Was his hair wet?

6 A. It appeared wet, yes.

7 Q. You thought his hair was wet?

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

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

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

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

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

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

18 A. Correct.

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

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

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

24 A. Yes, sir.

25 Q. And you wanted to kill this guy?

1 A. Yes, sir, that was correct.

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

5 A. Why didn't I say it?

6 Q. Yeah.

7 A. I told you why.

8 Q. Why didn't you say something?

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

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

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

17 Q. I would be mad, too.

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

19 Q. Okay.

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

23 A. Right.

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

1 A. Yes.

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

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

10 Q. Page 25, line 2. "Okay. Was it more than a few
11 minutes before the police or the paramedics arrived?"
12 Answer: "No, it wasn't. They were extremely sufficient
13 and quick."

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

16 Q. Well --

17 A. A few means --

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

21 A. Right before.

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

23 A. Uh-huh.

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

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

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

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

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

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

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

22 A. Yes, sir, I did.

23 Q. Why?

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

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

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

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

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

9 A. Did I tell her that?

10 Q. Yeah.

11 A. We both knew that.

12 Q. You both knew that to be true?

13 A. Yes, sir.

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

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

16 Q. Yes.

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

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

22 THE COURT: Redirect.

23 MR. BULONE: Yes, briefly, Judge.

24 REDIRECT EXAMINATION

25 BY MR. BULONE:

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

4 A. Yes.

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

8 A. Yes, sir, I did.

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

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

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

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

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

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

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

1 MR. LEINSTER: Counsel is leading the witness.

2 THE WITNESS: Yes.

3 THE COURT: Sustained.

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

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

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

9 A. South.

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

12 A. That is correct.

13 Q. And his apartment was over here?

14 A. Yes.

15 Q. So he's running this way?

16 A. Uh-huh.

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

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

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

25 A. Chess.

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

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

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

4 A. No, sir, I had not.

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

7 A. Yes, sir, I was.

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

11 A. After.

12 MR. BULONE: Nothing further, Judge.

13 THE COURT: Recross.

14 MR. LEINSTER: I have one item.

15 RECROSS-EXAMINATION

16 BY MR. LEINSTER:

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

21 A. Body shape.

22 Q. Body shape. Okay.

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

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

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

1 call?

2 MR. LEINSTER: On call, please.

3 THE COURT: Counsel, approach.

4 (THEREUPON, A SIDEBAR CONFERENCE WAS HELD OUTSIDE THE
5 HEARING OF THE JURY AS FOLLOWS:)

6 THE COURT: Joe, how many witnesses are you
7 calling today?

8 MR. BULONE: Probably just one or two.

9 THE COURT: Okay. I take it that they are not as
10 long as these two have been.

11 MR. BULONE: They should be real quick.

12 THE COURT: Why don't we try a couple more.

13 (IN OPEN COURT)

14 THE COURT: Mr. Bulone, call your next witness
15 please.

16 MR. BULONE: State would call Officer Crosby.

17 THE COURT: Call Officer Crosby to the stand.

18 THE BAILIFF: Stand here, face the clerk, raise
19 your right hand and receive the oath.

20 THEREUPON,

21 HAROLD CROSBY

22 Was called as a witness and after having been first duly
23 sworn on oath, was examined and testified as follows:

24 THE BAILIFF: Have a seat in the witness box.

25 Speak in a loud and clear voice for the Court.

DIRECT EXAMINATION

BY MR. BULONE:

Q. Sir, please state your name.

A. Howard Crosby.

Q. What is your occupation?

A. Police Officer, Largo Police Department.

Q. And how long have you been so employed?

A. Nine years.

Q. And your duties with the Largo Police Department are what, sir?

A. Patrol and sniper for the tack team, traffic, homicide, radar.

Q. Let me call your attention back to the very early morning hours of July 15th, 1989. Did you have occasion to go to the area of Audubon Drive in Largo?

A. Yes, sir.

Q. What county is that?

A. Pinellas County, Largo.

Q. Why did you go there at that time?

A. I was a backup officer to a call at the scene.

Q. And once you got there what did you do?

A. I went inside the residence and talked to the victim.

Q. Would that be Cheryl Hagan?

A. Yes, sir.

1 Q. Was there a time when you were there that you saw
2 Kevin Herrick?

3 A. Yes, sir.

4 Q. And where was that?

5 A. As you walk up the sidewalk to the apartments, it
6 was right on the corner of the victim's apartment.

7 Q. Well, we can get the diagram out.

8 Q. Does this fairly and accurately depict the
9 triplex if this is one apartment, this is another
10 apartment and that is the third apartment and this the
11 courtyard?

12 A. Yes, sir.

13 Q. Where did you first see the Defendant?

14 A. The lower left corner. No down. Right there.

15 Q. Do you see Mr. Herrick in the courtroom today?

16 A. Yes, sir.

17 Q. Please point him out and describe what he's
18 wearing for the record.

19 A. Sitting at the table. Black jacket, gray and
20 black stripe shirt and black tie, sneakers on.

21 Q. Did you notice anything unusual about him?

22 A. Yes, he looked very nervous. He was sweating. I
23 even noticed that his heart was pounding so much to where
24 I could see it, his chest rising and falling.

25 Q. Did he have a shirt on at that time?

1 A. He had a red shirt. It was sleeveless like a
2 tank top type shirt he had on.

3 Q. And you actually saw his heart beating?

4 A. Yes, sir. I walked righted up to him and started
5 talking to him. He looked very nervous and very scared,
6 that's why I started talking to him.

7 Q. Did his face look sort of sweaty?

8 A. Yeah, he was sweaty and breathing heavy.

9 Q. What did you do as a result of that?

10 A. I FIR'd him which is a Field Interrogation
11 Report. We get the information with his name, date of
12 birth and what he's wearing. I wrote all that information
13 down.

14 Q. Why did you do that for?

15 A. I told him we were just getting everyone's name
16 in the area and to me he just looked very suspicious,
17 that's why I wanted his name for sure.

18 Q. Did you also see one of the victims in the case,
19 Darren Scott Barfield?

20 A. Inside the apartment.

21 Q. Did you observe any injuries to him?

22 A. Yes, he had his shirt -- he had one to the chest
23 or abdomen area. I saw a lot of blood on his shirt and
24 the paramedics were taking care of him in the living room
25 of the apartment, and that's where they were taking care

1 of him.

2 Q. Was Mr. Herrick arrested later that evening?

3 A. Yes, sir.

4 MR. BULONE: I have nothing further, Judge.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. LEINSTER:

8 Q. You advised Mr. Herrick that he did not have to
9 consent to your taking hair and pubic samples, correct

10 MR. BULONE: I object. It's beyond the scope.

11 THE COURT: It has to do with his arrest, doesn't
12 it?

13 MR. LEINSTER: I believe so.

14 THE COURT: Overruled. I'll allow it.

15 Q. (By Mr. Leinster) You informed him he did not
16 have to consent to the taking of hair and pubic samples
17 for possible comparison?

18 A. At the station after his arrest, right.

19 Q. You advised him he didn't have to do that?

20 A. Post-Miranda, right.

21 Q. Nonetheless, he consented?

22 A. That's right.

23 Q. Okay. And did anybody else out there look
24 nervous that night?

25 A. No one that caught my eyes, no.

1 Q. How about Theresa Porrey; she was down right
2 hysterical, wasn't she?

3 A. I don't recall Theresa Porrey.

4 Q. You don't. How about Cheryl, was she a bit upset
5 herself?

6 A. The victim?

7 Q. Yeah.

8 A. She was inside the house.

9 Q. How long after all this did you arrive on the
10 scene?

11 A. After the canine officer broke the track down,
12 broke the area, we went in. Probably -- I'm not sure.
13 Three, four, five minutes. I'm not positive.

14 Q. Were you with the canine officer?

15 A. No. I was a canine officer back then, but I
16 wasn't with him.

17 Q. Do you know where the canine went?

18 A. No.

19 Q. You do not?

20 A. No.

21 Q. Okay. Was the canine set on the route that it
22 was on based on conversations with Darren Barfield?

23 A. I don't know.

24 Q. Don't know that either. The whole scenario out
25 there was one which might create nervousness, agitation;

1 would it not, in your experience?

2 A. With who?

3 Q. With anyone that perhaps was called from their
4 bed asleep and told that someone had just been raped.

5 A. I don't know why that would cause a man to be
6 nervous, no.

7 Q. You don't thing that would do it? Okay. Did you
8 by any chance assist Mr. Barfield with his written
9 statement?

10 A. No, sir.

11 Q. Your not the police officer that told him he
12 didn't need to add in certain things?

13 A. No, sir.

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

15 THE COURT: Redirect.

16 MR. BULONE: Nothing further, Judge.

17 THE COURT: Fine. Thank you, officer. You may
18 step down. Call your next witness, please.

19 MR. BULONE: Officer Joiner.

20 THE COURT: Call Officer Joiner to the stand to
21 testify.

22 THE BAILIFF: Stand here, face the clerk, raise
23 your right hand and take the oath.

24 THEREUPON,

25 STEPHEN JOINER

1 Was called as a witness and after having been first duly
2 sworn on oath, was examined and testified as follows:

3 THE BAILIFF: Have a seat in the witness stand.
4 Speak in a loud and clear voice.

5 DIRECT EXAMINATION

6 BY MR. BULONE:

7 THE COURT: Proceed, Mr. Bulone.

8 Q. Please state your name.

9 A. Stephen Joiner.

10 Q. What is your occupation?

11 A. Police officer.

12 Q. Where at?

13 A. Largo Police Department.

14 Q. How long have you been so employed?

15 A. Four years.

16 Q. What are your duties with Largo?

17 A. Patrol and I also perform duties as an evidence
18 technician.

19 Q. What is an evidence tech?

20 A. An evidence tech is required on occasion to
21 respond to crime scenes and do basic crime scene
22 processing.

23 Q. Let me call your attention to July 15th, 1989 at
24 approximately 1:10 a.m. Did you have occasion to go to the
25 area of Audubon Drive in Largo?

1 A. Yes.

2 Q. Why did you go there?

3 A. I was summoned by the supervisor to respond and
4 process the scene for processing.

5 Q. Where specifically did you go?

6 A. To the triplex located there on the left on the
7 map.

8 Q. Okay. Would this be the residence of the
9 victims?

10 A. Right, 4017.

11 Q. Did you in fact draw this particular diagram?

12 A. Yes.

13 Q. Does it fairly and accurately represent the
14 triplex and the three apartments that are in this
15 particular triplex?

16 A. Yes, it does.

17 Q. Okay. Now, the victim's apartment was here; is
18 that correct?

19 A. Right.

20 Q. On the east end?

21 A. Right.

22 Q. What did you do when you first got there?

23 A. When I responded there I spoke with the officers
24 on the scene as to what had occurred, what was needed of
25 me as far as processing and then I went ahead and did the

1 processing as far as photographs and prints and collecting
2 evidence.

3 Q. Okay. Did you take photographs?

4 A. Yes.

5 Q. I'm going to show you what's been previously
6 marked here as State's Composite Exhibit Number One and
7 ask you if you recognize what these photographs depict?

8 A. These are the photographs of the victim's
9 apartment on Audubon.

10 MR. LEINSTER: May we approach?

11 (THEREUPON, A SIDEBAR CONFERENCE WAS HELD OUTSIDE THE
12 HEARING OF THE JURY AS FOLLOWS:)

13 MR. BULONE: Would you like to take a look at
14 them?

15 MR. LEINSTER: I thought that I had been provided
16 all discovery. I did not specifically ask for
17 photographs other than any kind of discovery request,
18 but I have, as counsel, asked to have a copy of all
19 reports and matters of evidence. I don't know that
20 there's anything in here of materiality, but I would
21 like to know if there is anything else I haven't
22 gotten.

23 MR. BULONE: We are going to introduce the latent
24 fingerprints taken from the door and the known
25 fingerprints of the victim. As it turned out the

1 known fingerprints of the victim were matched with the
2 fingerprints taken from the door and they all matched.

3 THE COURT: Did you receive a copy of the
4 fingerprints?

5 MR. LEINSTER: I've been assured by counsel these
6 were not a match from Mr. Herrick.

7 MR. BULONE: Uh-huh. What was sent to him was a
8 report about it was a match for the victim. It wasn't
9 a match for the Defendant but the victim.

10 THE COURT: For the victim and not the Defendant.

11 MR. LEINSTER: I have no problem with that. I
12 have no problem with these pictures. I just haven't
13 seen them before. Are there any reports that you or
14 the witnesses have that I never saw?

15 MR. BULONE: No.

16 (IN OPEN COURT)

17 THE COURT: You may continue, Mr. Bulone.

18 Q. (By Mr. Bulone) I'm going to go ahead and show
19 you the photographs which are marked as State's Exhibit
20 Number One for identification and ask you if you recognize
21 what those depict?

22 A. Do you want me to go through each one of the
23 photos?

24 Q. Go ahead.

25 A. This first photograph is a picture of the

1 victims' dining and living room area standing in the
2 hallway at the end of the hallway just inside the front
3 door.

4 Q. Okay. Tell me what -- if you want you can move
5 down and show the jury.

6 A. This first photograph is the picture of the
7 dining area, living room, sliding glass doors. This is
8 standing -- can we correspond with the --

9 Q. Fine, whatever you want.

10 A. This is standing here, facing this way taking
11 this photograph, this first one. This is standing inside
12 the bedroom of the victims' apartment. The victims'
13 bedroom, standing inside the bedroom shooting towards the
14 bedroom doors. You can see the bedroom door here. Here's
15 the hallway. He's standing here and shooting this way and
16 what you're seeing is the door and the part of the hallway
17 here of the victims'.

18 This photograph, once again, standing in the
19 hallway and shooting into where the baby's room is at.
20 This is the baby's room with the door which connects to
21 the victims' bedroom. Again, corresponding with the
22 diagrams, this is standing here in this area. This is the
23 baby's room.

24 This is standing outside the courtyard area of
25 the triplex shooting in towards the front door. Here's

1 the front door area. This is the hallway, and at the end
2 of the hallway is the closet with wood bi-fold doors and
3 that's right here standing out here and shooting in. This
4 one is standing again in the hallway. This is standing on
5 the outside of the victims' bedroom with the door open
6 shooting straight in. Here is the dresser. The victims'
7 bedroom door.

8 This is the photo of the kitchen as you come into
9 the apartment of the victims. The kitchen entrance way is
10 right off to the right and the kitchen comes around taking
11 you out to the living room. This photo is taken standing
12 right here and photographing in. Here's the front door
13 and standing right there.

14 Q. Let me ask you this, the diagram you're referring
15 to, does that fairly and accurately represent the victims'
16 residence?

17 A. Right. This is a photograph of the doorjamb of
18 the baby's room. And what I was trying to capture there
19 were some smudge prints which were believed to be the
20 blood at the time.

21 Q. This is the sliding glass door that I showed you
22 earlier in this photograph. And in the living room this
23 is only one sliding glass door capturing, here again,
24 smudge prints in the door handle area of the sliding glass
25 door. This is the door of the victims' bedroom. I was

1 trying to capture here also smudgy blood impressions or
2 prints just adjacent to the doorknob.

3 This is in the victims' bedroom. This is the bed
4 and the bedroom itself. This is standing in the room
5 shooting this ways. The bed was up against this west wall
6 coming out east. I'm standing here taking a picture of it
7 from there angle. The same bed, just a different angle
8 shot, a little bit closer. This is standing in the
9 doorway taking an angle shot trying to capture a wider
10 angle of the victims' bed and the bedroom. And this is a
11 photo taken in the kitchen of one of the victim's shirt
12 that was worn.

13 Q. Darren Barfield's shirt, the male victim?

14 A. Right.

15 Q. And do these all fairly and accurately depict
16 what you said they did?

17 A. Yes

18 MR. BULONE: At this time I would move these in
19 evidence as State's Composite Exhibit Number One.

20 MR. LEINSTER: No objection.

21 THE COURT: Received as State's Composite Number
22 One.

23 Q. (By Mr. Bulone) Now, officer, while you were
24 there did you try to lift latent fingerprints?

25 A. Yes, I did.

1 Q. What is a latent fingerprint?

2 A. A latent fingerprint is a print which can be used
3 to compare with other fingerprints.

4 Q. Is that something that you would lift off an
5 object?

6 A. Yes, a door, doorknob.

7 Q. What sort of training do you have as far as
8 lifting latent fingerprints?

9 A. I went through an 88-hour course sponsored by the
10 department which is taught by the identification person
11 there John Barone.

12 Q. And what process do you go about doing this
13 lifting the latent fingerprints?

14 A. As far as lifting the prints, it's lifted with a
15 black graphite powder and a brush. You put a little bit
16 of the powder on there, and using the brush, going over
17 the area of the print and then taking a marking type tape,
18 putting it over the print and then smoothing it to get the
19 air bubbles out, capturing that print. You lift the tape
20 in the same manner it was applied and taking that piece of
21 tape, put it on a three by five index card and the print
22 comes up very nicely.

23 Q. Now, from your experience of the person that
24 handles or touches a door or paper or anything, will that
25 always leave a fingerprint?

1 A. Yes.

2 Q. Is it possible that when a person handles or
3 touches an object that it could be smudged so you could
4 not get a print of value?

5 A. Right.

6 Q. Going back to these pictures, did you attempt to
7 get fingerprints of value from what appears to be blood
8 smudges?

9 A. No.

10 Q. Why not?

11 A. I did not because there was nothing there that
12 you could lift from. It was just a smudge. It was
13 basically a pattern of such that someone had grabbed hold
14 or leaned up against something, and at the same time it
15 was just like in a sweeping motion.

16 Q. And that's not the type of thing that you can get
17 a latent fingerprint of value from?

18 A. Correct.

19 Q. Where did you try to get latent fingerprints
20 from?

21 A. Okay. I lifted two prints from the exterior side
22 of the plaster bedroom doorknob. I lifted one print from
23 the exterior side of the second bedroom doorknob which
24 would be the baby's room. I lifted six prints to include
25 a partial palm print from the interior side of the sliding

1 glass door in the living room. There were nine prints
2 that I lifted all together and out of those I believe six
3 were of value.

4 Q. Okay. Now, you're not the person that does the
5 comparisons of the latent fingerprints with known
6 fingerprints?

7 A. That's correct.

8 Q. That would be John Barone?

9 A. John Barone, right.

10 Q. Do you know if all those fingerprints that you
11 lifted were fingerprints of value?

12 A. The nine prints that I lifted I submitted and of
13 those only six were of value. The other three were not.
14 I guess the technician or the comparison person, there
15 wasn't enough for him to compare with anything.

16 Q. Okay. That would be up to Mr. Barone?

17 A. Yes, he makes that determination.

18 Q. I'm going to show you now State's Exhibit Number
19 Two and ask you if you recognize that?

20 A. Okay. These are the fingerprints that I lifted
21 from the interior side of the sliding glass door and these
22 are prints determined by Mr. Barone to be of value.

23 Q. Do you have any idea what might have happened to
24 any of the other latent prints?

25 A. No, sir, I do not. They were turned in and I

1 don't know.

2 Q. Okay.

3 MR. BULONE: Your Honor, at this time I would
4 move this in evidence as State's Exhibit Number Two.

5 MR. LEINSTER: No objection.

6 THE COURT: Received as State's Exhibit Number
7 Two.

8 Q. Okay. On these diagrams that we have been
9 talking about, I believe that there is two of them. The
10 first one I guess we'll call State's Exhibit 3A for
11 identification. As a matter of fact, I'll write a little
12 3A down here in the lower right hand corner.

13 Does this fairly and accurately depict the
14 triplex of the three apartments?

15 A. Yes.

16 Q. And the other drawing, which we'll go ahead and
17 mark as 3B in the lower right hand column, does this
18 fairly and accurately depict the apartment of the victims?

19 A. Yes.

20 MR. BULONE: Your Honor, at this time I'd move
21 these in evidence as State's Exhibit 3A and B.

22 MR. LEINSTER: No problem.

23 THE COURT: Received as State's Exhibit 3A and B.

24 MR. BULONE: I don't have any further questions.

25 THE COURT: Cross-examination.

CROSS-EXAMINATION

1
2 BY MR. LEINSTER:

3 Q. Did I understand that you didn't actually do the
4 comparisons, it was Mr. Barone?

5 A. Right.

6 Q. So you're basically testifying as to what you've
7 been told, obviously?

8 A. What I've been told? I don't understand.

9 Q. By Mr. Barone, I guess?

10 A. No. I actually lifted the prints at the scene
11 and submitted those fingerprints. As far as them being of
12 value, after Mr. Barone makes a comparison with any prints
13 that are ever submitted, he sends us a reply as to what
14 the analysis resulted in.

15 Q. The prints taken off the sliding glass door, were
16 they imbedded in blood stains?

17 A. No, sir.

18 Q. Did you not find some blood on the sliding glass
19 door?

20 A. There was blood on the side of the sliding glass
21 door where the frame is of the door itself.

22 Q. Would that have been in the vicinity of where the
23 prints were lifted?

24 A. Yes.

25 Q. And did you also test the doorknob going outside

1 the apartment as if someone from inside was going outside;
2 do you recall?

3 A. Which door?

4 Q. The door leading to the alcove out the front.

5 A. No, sir.

6 Q. You did not test that?

7 A. No, sir.

8 Q. The other door that I'm interested in, I guess
9 you said was the exterior door handle of the bedroom in
10 which the victim was assaulted?

11 A. Correct. I did lift a print from there.

12 Q. Was there also blood on that door handle?

13 A. Not on the handle itself. As I recall, it was
14 just above the door handle on the door itself, as depicted
15 on the photograph.

16 Q. Now, I'm a little confused about your answers.
17 You indicated that you would expect prints to be left on
18 certain surfaces?

19 A. Right.

20 Q. Doorknobs, glass, glass is a pretty good service
21 for fingerprints isn't it?

22 A. Yes, sir.

23 Q. The prints that were taken from the glass, were
24 they prints that were found to be of value?

25 A. Yes, sir.

1 Q. All right. So they weren't smudged, unreadable
2 prints; these were of value?

3 A. Correct.

4 Q. And you will agree with me that Mr. Barone's
5 findings were that the latent prints were not similar to
6 the known prints of Kevin Herrick?

7 A. Yes, sir.

8 Q. Okay. So he was eliminated as far as his
9 fingerprints were concerned?

10 A. As results to the examination that Mr. Barone
11 conducted, that's what's indicated as far as the
12 fingerprints.

13 Q. Also, as part of your job, other items of
14 evidence were both received and, I assume, examined which
15 would include hair from Darren Barfield (sic), both
16 plucked and combed, the voluntary fingerprints of Darren
17 Barfield and then of course the prints that you mentioned?

18 A. Yes, sir.

19 Q. What is the purpose of taking pubic samples and
20 hair samples in a case like this?

21 A. May I back up a little bit?

22 Q. How far?

23 A. You mentioned that the latents and things of that
24 nature, there are other items collected also, the sheets,
25 the linens.

1 Q. I understand that.

2 A. In conjunction with what your getting to as far
3 as the hair is going --

4 Q. I know sheets were taken, but what is the purpose
5 of all that?

6 A. The purpose of that, as far as the alleged
7 assault goes, taking the sheets and having them submitted
8 to find if, by analysis, there are any hair fibers. Once
9 they've determined if there is any hair fibers, the people
10 that make the analysis would like to have a sample from
11 the victim and a sample from the suspect to make a
12 comparison to the hair fibers found.

13 Q. Because it is not uncommon, is it, in a rape case
14 where peoples bodies are in friction with one another that
15 the assailant will leave hair samples behind?

16 A. Correct, yes.

17 Q. Is this the only room that you went into --
18 excuse me, the only apartment that you went into?

19 A. Yes, sir, it is.

20 Q. The date on the examination results in this case
21 shows June the 5th, 1990. Dated examined June 5th, 1990.
22 Date received June 5th, 1990. These items were collected
23 when?

24 A. July the 15th, 1989.

25 Q. And almost a year later they are submitted for

1 analysis?

2 A. The items that I collected at the scene on that
3 particular night. I personally typed the forms to FDLE
4 and submitted the items into our property bin at Largo
5 Police Station. It is the responsibility of the property
6 clerk to have those items submitted. I believe -- I don't
7 know for sure, but there was some correspondance between
8 FDLE and our investigative bureau as far as items also
9 required for analysis that were not submitted.

10 Q. I'm not trying to put you in the cross area
11 because you probably weren't responsible for any of this,
12 but as far as law enforcement is concerned, wouldn't it be
13 important to someone charged with a crime as serious as
14 this to have the results back better then almost a year
15 later?

16 A. I can't answer that. I have no idea as far as --

17 Q. It doesn't take a year to get those results?

18 A. To be perfectly honest with you, I don't know.

19 As far as FDLE, like I said, there was correspondance
20 between --

21 Q. How long does it take you to figure out whether
22 or not you have workable fingerprints?

23 A. Well, as soon as I have it transposed on the card
24 I can tell from looking at it that it's a good print.

25 Q. You could do it in less then an hour?

1 A. I could, sure.

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

3 THE COURT: Redirect

4 MR. BULONE: Just one question.

5 THE COURT: All right

6 REDIRECT EXAMINATION

7 BY MR. BULONE:

8 Q. Is there anyway to tell when you lift a latent
9 fingerprint how old that fingerprint is?

10 A. There is a way to tell as far as how well the
11 powder sticks to the print. If it comes up real good then
12 it's pretty much a fresh print. You can tell if it's an
13 old print if the powder is not affixing itself too well to
14 the surface because the fingerprint is basically picking
15 up the oils left behind by the skin. You can tell by
16 looking at it. It's hard to explain, but you can tell if
17 it's a fresh or old print.

18 Q. Could you make that determination here?

19 A. I don't recall as far as -- I know they weren't
20 old prints. I could say they weren't old prints.

21 Q. What do you mean by old?

22 A. More than a day, two days, exposed to other
23 traffic, et cetera.

24 Q. Okay.

25 MR. BULONE: Nothing further, Judge.

1 THE COURT: Recross?

2 MR. LEINSTER: No.

3 THE COURT: Fine. Thank you, officer. You can
4 step down. Counsel, approach momentarily.

5 (THEREUPON, A SIDEBAR CONFERENCE WAS HELD OUTSIDE THE
6 HEARING OF THE JURY AS FOLLOWS:)

7 THE COURT: How many more do you have ready to go
8 today?

9 MR. BULONE: One more today.

10 THE COURT: Who is that?

11 MR. BULONE: Officer Barone.

12 THE COURT: Is that the fingerprint guy?

13 MR. BULONE: Yes.

14 THE COURT: Okay. We'll do one more and call it
15 a day.

16 MR. LEINSTER: What is he going to say that
17 hasn't been said that we'd stipulate to?

18 MR. BULONE: Stipulate that the fingerprints are
19 taken off the door belonging to the victim Darren
20 Barfield.

21 THE COURT: Anything more?

22 MR. LEINSTER: That's been established.

23 MR. BULONE: I don't believe so.

24 THE COURT: Not without one person removed, so if
25 you would stipulate that the fingerprints taken off

1 the door sliding glass belonged to the victim --

2 MR. LEINSTER: That's what he's saying? Sure.

3 THE COURT: I announce it for the record and then
4 we can --

5 MR. BULONE: Then we'll rest for tonight.

6 (IN OPEN COURT)

7 THE COURT: Ladies and gentlemen, for the record,
8 although, all of you can see it's now twenty after
9 five, we're going to call it a day. We'd request that
10 you be back in the jury room initially that the
11 bailiffs have shown you to. Although, during the day,
12 depending on how other trials go in the complex, we
13 might be rotating jury rooms. For ease of getting
14 back here go back to the one out front you were shown
15 to earlier. We'd request you be back in the jury room
16 at about 9:15 tomorrow morning.

17 MR. BULONE: Are we going to get that stipulation
18 in now in front of the jury because I was going to get
19 that in through the next witness, but since we agreed
20 to it --

21 THE COURT: In lieu of calling a witness, the
22 state and defense have stipulated that one of the
23 fingerprints --

24 MR. BULONE: All of them, Judge.

25 THE COURT: All of the fingerprints lifted and

1 identified by the prior witness were those of the
2 victim Darren Scott Barfield and that stipulation
3 saves us from having an additional witness tonight.

4 Please be back here at 9:15 tomorrow morning. I
5 would request that you not talk to each other about
6 the case, don't talk to anybody else about the case.
7 I haven't seen any reporters in here, so I don't think
8 there's going to be anything in the paper.

9 And with that, we'll see everybody in the
10 morning.

11 (THEREUPON, COURT WAS ADJOURNED AT 5:25 P.M. AND
12 PROCEEDINGS RESUMED OUTSIDE THE PRESENCE OF THE JURY
13 OCTOBER 3, 1991 AT 9:15 A.M. AS FOLLOWS:)

14 THE COURT: Anything to talk about before I bring
15 the jury in?

16 MR. BULONE: No. I'm going to go ahead and rest.

17 THE COURT: At this point?

18 MR. BULONE: Yes, when the jury gets back. We
19 did take a videotape testimony of Theresa Porrey, and
20 it's up to the defense if they want that played or
21 not.

22 MR. LEINSTER: I want that played. I don't know
23 how to do that, but I'm sure somebody does.

24 THE COURT: How to physically operate the
25 machine?

1 MR. LEINSTER: Right. I'm sure the bailiffs and
2 state know how to operate the machine.

3 I guess I'll go through the obligatory motion for
4 Judgment of Acquittal, but I don't want to waste a lot
5 of time because I recognize this is a jury question.
6 That's the end of that.

7 THE COURT: Motion denied. Since the video is
8 going into evidence there is no reason for the court
9 reporter to take down what's being said since the
10 video is better evidence than what's going on in the
11 video. Counsel, do you disagree with that?

12 MR. LEINSTER: I have no problem with that. I
13 have not seen this video. We took the video. It
14 might be a good idea if we could at least take a look
15 at the first part of it to make sure it came out.

16 THE COURT: All right. Bring the jury in.

17 MR. LEINSTER: Can we approach the bench?

18 THE COURT: Yes.

19 (THEREUPON, A SIDEBAR CONFERENCE WAS HELD OUTSIDE THE
20 PRESENCE OF THE JURY AS FOLLOWS:)

21 MR. LEINSTER: It might be helpful if the Court would
22 explain why Mrs. Porrey is on videotape as opposed to
23 a live witness.

24 THE COURT: All right. I'll do that. Any
25 problems, Joe?

1 MR. BULONE: I think it's on the tape. It might
2 be self-explanatory.

3 THE BAILIFF: Jury is in the jury box and seated,
4 Your Honor.

5 (IN OPEN COURT)

6 THE COURT: Mr. Bulone, further testimony for the
7 state?

8 MR. BULONE: No, Your Honor. At this point the
9 state would rest.

10 THE COURT: Counsel for the defense, what say
11 you?

12 MR. LEINSTER: Your Honor, we would be presenting
13 a videotape of Theresa Porrey.

14 THE COURT: Okay.

15 THE COURT: Ladies and gentlemen of the jury, the
16 defense witness Theresa Porrey is in ill health. She
17 apparently has emphysema and is connected to some sort
18 of a life-supporting device, oxygen and some other
19 things. Her doctor said she shouldn't come in to
20 testify, although, he did say it was all right if they
21 had a deposition of her and put it on videotape.
22 That's what we have done and that's why she's on tape
23 and not here, in case you were wondering.

24 I think there is a statement at the very
25 beginning with regard to her disease. Her videotape

1 is and will be presented at this time. Move the t.v.
2 forward.

3 (THEREUPON, THE VIDEOTAPE DEPOSITION OF THERESA PORREY WAS
4 PRESENTED TO THE JURY AND AT ITS COMPLETION PROCEEDINGS
5 RESUMED AS FOLLOWS:)

6 THE COURT: We will have to mark the tape as
7 evidence in lieu of testimony and give it to the clerk
8 at this point.

9 Further testimony for the defense?

10 MR. LEINSTER: No, sir. I would simply ask one
11 thing. I would like my client to sign his name on a
12 piece of paper.

13 THE COURT: All right.

14 MR. LEINSTER: I would like this marked. I
15 guess, that would be Defendant's One and I would ask
16 this be marked as Exhibit B.

17 THE CLERK: Or two?

18 MR. LEINSTER: Mark it as B.

19 THE COURT: State?

20 MR. BULONE: No objection.

21 THE COURT: You're moving it as evidence?

22 MR. LEINSTER: Yes.

23 THE COURT: Defense Exhibit Two and mark the tape
24 as Defense Exhibit One. Anything further,
25 Mr. Leinster?

1 MR. LEINSTER: No, sir.

2 THE COURT: Rebuttal from the state?

3 MR. BULONE: Yes, Your Honor. I would call
4 Cheryl Hagan.

5 THE COURT: Call Cheryl Hagan to the stand,
6 please.

7 MR. LEINSTER: May we approach?

8 THE COURT: Yes.

9 (THEREUPON, A SIDEBAR CONFERENCE WAS HELD OUTSIDE THE
10 HEARING OF THE JURY AS FOLLOWS:)

11 THE COURT: Yes, sir.

12 MR. LEINSTER: I'm anticipating what this is. If
13 I'm wrong, I'm wrong. There has been discussions
14 concerning what was overheard on the child's intercom.
15 The State questioned someone about that during the
16 trial and this relates to something that Cheryl
17 allegedly overheard on an intercom. It would be
18 hearsay unless it were being brought in as impeachment
19 of Mrs. Porrey.

20 Mrs. Porrey on her tape never said that she did
21 or did not say anything in the presence of her own
22 home. She testified she did not tell anyone this,
23 that or the other. So, what they're going to do is
24 try to say that Cheryl overheard her say something
25 over a baby's intercom in the privacy of her home, but

1 she never was asked that question, never disputed
2 when she may have said that at random. So it's not
3 impeachment.

4 MR. BULONE: It is impeachment because I asked
5 her first if she ever saw the defendant's shoes or
6 socks wet and she said no. Then asked if the sliding
7 glass door was open and she said no. Then I asked if
8 she had a cordless phone and she said yeah. Then I
9 asked if she ever on the phone mentioned that to
10 anyone else and she said no. So that's clearly
11 impeachment when she says that she did not see the wet
12 shows or the sliding glass door open. And then if I
13 have evidence that she said something different to
14 someone else, that's clearly impeachment.

15 THE COURT: Let's see how the question comes out.
16 I think it's impeachment here. I'll allow state to
17 proceed at this point.

18 (IN OPEN COURT)

19 THEREUPON,

20 CHERYL HAGAN

21 Was recalled as a witness and after having been previously
22 duly sworn on oath, was examined and testified as follows:

23 THE BAILIFF: Have a seat. Speak in a loud and
24 clear voice.

25 THE COURT: Ms. Hagan, I would remind you you

1 are still under oath. Proceed, Mr. Bulone.

2 DIRECT EXAMINATION

3 BY MR. BULONE:

4 Q. Cheryl, a day or two after July the 15th, 1989
5 did you overhear a conversation?

6 A. Yes, it was the day after.

7 Q. And how was it that you overheard that
8 conversation? Where were you first of all?

9 A. In the living room.

10 Q. And you overheard that conversation on what?

11 A. The baby intercom.

12 Q. What is a baby intercom?

13 A. We can listen in on the baby. There's an
14 intercom in his room and where we are so if he wakes up or
15 makes a noise we can hear him.

16 Q. And did you overhear some conversation on the
17 baby intercom?

18 A. Yes.

19 Q. Who did you hear on there?

20 A. Theresa Porrey.

21 Q. As far as you know was she in her apartment or
22 her residence?

23 A. Well, it only picks up cordless phones and I knew
24 it was her voice, so I suppose it would have had to be in
25 her apartment.

1 Q. Did you recognize her voice?

2 A. Yes.

3 Q. And has there been another occasion where you
4 have picked up conversations on the baby intercom with the
5 cordless phone?

6 A. A few times, yeah.

7 Q. What did you hear Theresa Porrey say?

8 A. Well, she was like -- she was going on and on
9 real hyper and she said, I can't believe he would do that,
10 my son grew up with him. And she said, but his shoes and
11 socks were wet, or something like that. And she said the
12 door was open and then she just said you better get a good
13 attorney. She just kept going on and on, and stuff like
14 that.

15 Q. Did she say the sliding glass door was open?

16 A. Yes.

17 Q. Was Scott there too, did he overhear this as
18 well?

19 A. Yes. He shut it off because I was getting upset.

20 Q. Who heard more of the conversation, he or you?

21 A. We both heard the same amount because we were
22 both sitting there.

23 MR. BULONE: Nothing further, Judge.

24 THE COURT: Cross-examination.

25 CROSS-EXAMINATION

1 BY MR. LEINSTER:

2 Q. I am familiar with baby intercoms because I have
3 a child, and you're telling me that you overheard
4 Mrs. Porrey talking in her apartment?

5 A. Uh-huh.

6 Q. Although the baby intercom was in your apartment?

7 A. Yes. It starts to fuzz and then a voice comes on
8 from a phone. I don't know what happens, it just starts
9 to fuzz real loud and her voice came on.

10 Q. But she didn't have a baby intercom in her
11 apartment?

12 A. No. It just picks up cordless phones.

13 Q. Well, what she was revealing at this point, to
14 whom was she revealing it?

15 A. I don't know. It doesn't pick up the other
16 voice.

17 Q. Do you have any idea why?

18 A. No, I have no idea why it even picks up the phone
19 conversations.

20 Q. Was this just a soliloquy that she stood
21 somewhere in her apartment and announced randomly that the
22 shoes and the socks were wet and the door was ajar?

23 A. No, she was on the phone.

24 Q. How do you know that?

25 A. Because it's picked up her phone conversations

1 before.

2 Q. How do you know she was on the telephone?

3 MR. BULONE: I think that's asked and answered.

4 THE WITNESS: Because there would be a pause.

5 THE COURT: Overruled. I'll allow her to answer.

6 Q. (By Mr. Leinster) Do you know if she was on the
7 telephone? Here's the deal, what you say here is
8 important. You're under oath.

9 Do you know if she was on the telephone or is
10 that a guess?

11 A. I know she was conversing with somebody and my
12 intercom only picks up phone conversations and cordless
13 phone conversations.

14 Q. Your intercom only picks up phone conversations.
15 How is that?

16 A. I have no idea. It just does.

17 Q. Is it not like any other baby intercom; it's like
18 a walkie talkie-type device?

19 A. No. Every now and then it just clicks over onto
20 phones.

21 Q. Well, then I would assume you would have heard
22 the other party on the other end?

23 A. No, I didn't.

24 Q. Okay.

25 A. Just the one that's close by.

1 Q. Well, this was a pretty important piece of news,
2 was it not --

3 A. Yes, it was.

4 Q. -- from Theresa Porrey?

5 A. Yes.

6 Q. And, obviously, as you sat there listening to
7 this you must have become excited. Listen to this, listen
8 to what she's saying.

9 A. I was very upset, yes, especially since she
10 wanted to stick up for him after she knew he was wrong.

11 Q. Then Scott turned it off, huh?

12 A. Because I was crying.

13 Q. He turned off the information that you were
14 listening to that said she knew he was guilty? You turned
15 it off, you didn't want to hear it, huh?

16 MR. BULONE: I'll object. I think he's badgering
17 the witness.

18 THE COURT: Sustained. Rephrase your question.

19 Q. (By Mr. Leinster) Do you have an answer?

20 MR. BULONE: He's supposed to rephrase it.

21 THE COURT: Rephrase your question.

22 Q. (By Mr. Leinster) Were you aware, did you make it
23 a point to alert the police to this revelation?

24 A. We told the state attorney.

25 Q. You never told the police, did you, that you

1 heard --

2 A. The police weren't even at the scene that day.

3 Q. Did you call him up and say, hey, we heard --

4 A. We were listening to someone else's conversation.

5 Q. So what. Did you call the police and say I heard
6 Mrs. Porrey say this? You didn't, did you?

7 A. No.

8 Q. And you are aware, are you not, that the police
9 went through Mr. Herrick's room with a fine tooth comb,
10 aren't you?

11 A. I was told they searched his room, yes.

12 Q. And they didn't find the wet shoes and the wet
13 socks?

14 A. Well, I don't know about where the wet socks or
15 shoes were.

16 Q. But you think they found the blood and the --

17 A. That is what they told me.

18 THE COURT: Just a second.

19 MR. BULONE: It's beyond the scope.

20 THE COURT: Sustained. Beyond the scope of this
21 rebuttal.

22 MR. LEINSTER: No further cross.

23 THE COURT: Questions, Mr. Bulone?

24 REDIRECT EXAMINATION

25 BY MR. BULONE:

1 Q. Cheryl did you mention all this in your
2 deposition to the defense attorney?

3 A. Yes, I did.

4 MR. BULONE: Nothing further.

5 THE COURT: Recross?

6 MR. LEINSTER: No, sir.

7 THE COURT: Fine. Thank you, ma'am. You may
8 step down. Further rebuttal testimony, Mr. Bulone.

9 MR. BULONE: Darren Scott Barfield.

10 THE COURT: Call Darren Scott Barfield to the
11 stand.

12
13
14 THEREUPON,

15 DARREN SCOTT BARFIELD

16 Was recalled as a witness and after having been previously
17 duly sworn on oath, was examined and testified as follows:

18 THE BAILIFF: Have a seat in the witness box.

19 Please speak in a loud and clear voice.

20 THE COURT: Mr. Barfield, I would remind you that
21 you are also still under oath.

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Proceed, Mr. Bulone.

24 DIRECT EXAMINATION

25 BY MR. BULONE:

1 Q. Scott, a day or so after July 15th, 1989, did you
2 overhear a conversation?

3 A. Yes, sir, we did.

4 Q. And where were you at the time?

5 A. We were in the living room of the triplex we were
6 staying in. In the daytime we were doing some cleaning up
7 and we had the baby down in the room. He was taking a nap
8 and we had the intercom on.

9 Q. How did you hear this conversation?

10 A. Oh, we had the intercom in the living room and
11 one of them in the baby's room. We were listening for the
12 baby and then we heard Mrs. Porrey get on the phone on her
13 portable phone next door, and it came over through our
14 speaker.

15 Q. Did you recognize her voice?

16 A. Yes, sir, I did.

17 Q. Did you hear any of the conversation at all?

18 A. Yes, sir, I did.

19 Q. What do you remember hearing?

20 A. She was talking to someone and saying how she
21 couldn't really believe that he did it, but that I had
22 seen him and she went in there later and found wet socks
23 in his room. His socks were wet and that the glass door
24 was open, and then she was saying that they should get a
25 good lawyer and she kept going back and forth.

1 Q. Nothing further, Judge.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. LEINSTER:

5 Q. What was Cheryl's response to hearing this
6 conversation?

7 A. What was her response?

8 Q. Uh-huh.

9 A. To the -- in the beginning or in the end?

10 Q. I don't care.

11 A. Well, she was upset towards the end because she
12 had mentioned something about Cheryl that upset her, and
13 that's when I told her to turn it off.

14 Q. What was that?

15 A. I don't really recall. It was something like her
16 getting -- her and Kevin were getting close or something
17 like that.

18 Q. That Cheryl and Kevin were getting close?

19 A. Yeah, she mentioned something like that. Like I
20 said, I don't recall exactly what she said at that
21 particular instance.

22 Q. Meaning that Cheryl and Kevin had something
23 going?

24 A. That would be pure speculation. I don't think
25 that's what she meant.

1 Q. But she didn't turn it off, you turned it off?

2 A. Right because she was getting upset about it.

3 Q. You made that determination, right? Did she ask
4 you to turn it off or you turned it off?

5 A. No, I turned it off.

6 Q. Was it because you were getting upset?

7 A. No, sir, I was not.

8 Q. You did it out of charity for Cheryl, then?

9 A. Yes, sir, I did.

10 Q. But according to what you're saying, this is a
11 revelation for Mrs. Porrey. She's talking about this
12 incident, why in the world would you turn it off?

13 A. Like I said, it was getting Cheryl upset.

14 Q. Well, so what. Wouldn't you want to hear
15 everything she had to say about all of this?

16 A. No, I had no reason to.

17 Q. Okay. You never ever told this particular story
18 to the police, ever, have you, not in deposition, not in
19 your written report, not anywhere?

20 A. I didn't think there was any need for it.

21 Q. This is the first time you said anything about
22 it, isn't it?

23 A. No, sir, it is not.

24 Q. When is the first time?

25 A. I mentioned it to the public defender in

1 deposition.

2 Q. Oh, in your deposition?

3 A. Yes, sir.

4 Q. You think you said something in your deposition?

5 A. Yes, sir.

6 Q. And did you and Cheryl discuss this intercom
7 routine? Have you talked to Cheryl about this intercom
8 intercept?

9 A. What do you mean?

10 Q. Have you discussed it? You live together and you
11 talk about things. Have you discussed it?

12 A. We might have mentioned it a couple times but,
13 no, we never really discussed it.

14 Q. Can you explain to me how a baby intercom in your
15 apartment picks up Theresa Porrey's phone conversation; do
16 you know.

17 MR. BULONE: I object, it calls for speculation.
18 How could he know that?

19 THE COURT: I don't know, maybe he does know.
20 Overruled.

21 A. Okay. These intercoms have a transmitter on one
22 end and the receiver on the other end.

23 Q. I know what they are.

24 A. The receiver has a certain frequency and the
25 portable phone in the Porrey's, as an assumption, must

1 have the same frequency so if the intercom is on the
2 receiver and is near where the portable phone is, then it
3 picks up the conversation.

4 Q. Uh-huh.

5 A. Just in the same aspect, on the portable phone, I
6 don't know if you own one or not, but if a CB goes by when
7 you're talking on the portable phone, you can pick up a
8 person on the CB on your portable phone.

9 Q. A baby intercom, if it's like the one we use, you
10 have one in one room and one in the other?

11 A. That's correct.

12 Q. And the noise the baby makes is transmitted
13 through the wire and you hear it in the living room.

14 A. No, it was not transmitted through wire. It's
15 transmitted through waves.

16 Q. So?

17 A. So I'm saying the waves transmitted from the
18 cordless phone also went into the intercom. I can't prove
19 the fact.

20 Q. Okay. You know, I've never picked up anybody's
21 phone conversation on my baby's phone.

22 MR. BULONE: I object. If he wants to testify,
23 fine. He can be a witness and I'll be the defense
24 attorney.

25 THE COURT: Sustained.

1 Q. (By Mr. Leinster) You know, in none of your
2 reports or in your testimony have you ever mentioned
3 anything about the sliding glass doors in the back of
4 Mr. Herrick's apartment. Is that because you didn't go
5 check that night?

6 A. Yes, I guess I just didn't mention it. What was
7 the question as far as --

8 Q. You didn't check that night?

9 A. Did I go around back that night?

10 A. No, sir, I did not.

11 Q. You did not?

12 A. No, sir. I was bleeding profusely. My concern
13 was getting to the hospital.

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

15 THE COURT: Redirect?

16 MR. BULONE: Nothing further, Judge.

17 THE COURT: Thank you. You may step down.

18 Further rebuttal from the state?

19 MR. BULONE: No, Your Honor. The state would
20 rest again.

21 THE COURT: Further rebuttal for the defense?

22 MR. LEINSTER: No, sir.

23 THE COURT: Fine. Counsel, approach for a
24 moment, please.

25 (THEREUPON, A SIDEBAR CONFERENCE WAS HELD OUTSIDE THE

1 HEARING OF THE JURY AS FOLLOWS:)

2 THE COURT: So as not to disrupt closing
3 argument, what I would like to do would be to send the
4 jury to lunch since they've been here for a while.
5 We'll do a charge conference and start the closing at
6 that time.

7 MR. LEINSTER: What time?

8 THE COURT: 12:15 or 12:30-ish start closing,
9 then we won't have to take a break between closing
10 arguments.

11 (IN OPEN COURT)

12 THE COURT: Please have the jury go to lunch
13 and be back in the jury room at 12:30.

14 THE BAILIFF: Jury is out of the hearing of the
15 Court, Your Honor.

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