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STATE OF FLORIDA

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

CASE NO: CRC89-11425CFANO

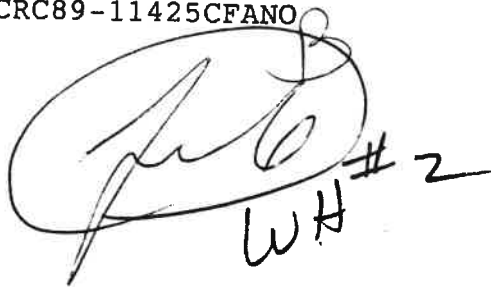
STATE OF FLORIDA,

Plaintiff,

vs

KEVIN HERRICK,

Defendant.



MOTION FOR NEW TRIAL

The Defendant in the above-styled cause hereby moves this Court for a new trial and more specifically would show:

1. That pursuant to Florida Rules of Criminal Procedure 3.580 and 3.600, the Defendant would urge this Court that the verdict is contrary to the law or the weight of the evidence.
2. That this Court sits as a "seventh juror" and has the inherent authority to override a jury verdict where the Court feels that the evidence against the Defendant was insufficient as a matter of law.
3. That the evidence against the Defendant was conflicting to the point that a reasonable juror would necessarily have had a reasonable doubt. The only witness to identify the Defendant as the assailant was the boyfriend of the victim whose identification of the Defendant was completely contrary to that of the victim herself. For instance, the victim described the Defendant as having bushy hair consistent with the real appearance of the Defendant.

The boyfriend witness testified that at the time his hair was slicked back flat against his head. Because of the time involved from the assault until the Defendant's appearance on the scene, it would have been impossible for him to have changed his looks.

WHEREFORE the Defendant, KEVIN HERRICK, respectfully requests this Honorable Court grant unto him a new trial in this cause.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery to the Office of the State Attorney, 5100 144th Avenue, Clearwater, Florida 34620 this the 8th day of January, 1991.



ED LEINSTER, Esquire
1302 E. Robinson Street
Orlando, Florida 32801
(407) 422-3937

Ed Leinster, P.A.
Attorney and Counselor at Law

cm
Cue to Gacey

1302 East Robinson Street
Orlando, Florida 32801
(407) 422-3937
(407) 898-8762 Fax No.

July 13, 1995

State Attorney's Office
Attn: Public Records
P.O. Box 5028
Clearwater, Florida 34618

RE: Case No.: CRC 89-11425 CFANO — *B*
Defendant: Kevin Richard Herrick

To Whom it May Concern:

Please consider this an official request for a copy of a Motion for New Trial dated January 8, 1991 in the above-referenced case. I would very much appreciate it if the person who checks the file could call me collect at (407) 422-3937 to let me know if this Motion is in your file. There is a possibility that it was filed in the State Attorney's file and not with the Clerk of the Circuit Court.

Thank you in advance for your cooperation.

Sincerely,

Ellen P. Samuels

Ellen P. Samuels
Paralegal



BERNIE McCABE
State Attorney

OFFICE OF THE STATE ATTORNEY
SIXTH JUDICIAL CIRCUIT OF FLORIDA
PASCO AND PINELLAS COUNTIES

July 21, 1995

Ellen P. Samuels, Paralegal
Ed Leinster, P. A.
1302 East Robinson Street
Orlando, Florida 32801

Re: Case No.: CRC 89-11425CFANO
Defendant: Kevin Richard Herrick

Dear Ms. Samuels:

Mr. Bernie McCabe, State Attorney, as custodian of the records, has asked me to respond to your public record request dated July 13, 1995, and received by our office on July 17, 1995, "for a copy of a Motion for New Trial dated January 8, 1991 in the above-referenced case".

The Motion for New Trial in our file is dated January 8, 1991, but that date is not a correct certification of mailing because the envelope was not postmarked until January 28, 1991. It does appear to have an original signature and does not appear to be a copy. Also enclosed is an invoice reflecting copying at fifteen cents per page for single-sided copies, plus postage. Please make your check payable to the State of Florida for the amount of the invoice.

Sincerely yours,

BERNIE McCABE, State Attorney

A handwritten signature in cursive script that reads "C. Marie King".

C. Marie King,
Assistant State Attorney

:sjt
/enc.



BERNIE McCABE
State Attorney

OFFICE OF THE STATE ATTORNEY
SIXTH JUDICIAL CIRCUIT OF FLORIDA
PASCO AND PINELLAS COUNTIES

INVOICE

TO: Ellen P. Samuels, Paralegal
Ed Leinster, P. A.
1302 East Robinson Street
Orlando, Florida 32801

Re: PUBLIC RECORDS REQUEST
Case No.: CRC 89-11425CFANO
Defendant: Kevin Richard Herrick

DATE: July 21, 1995

INVOICE: #95-24

Invoice for 3 public record copies

3 pages @ .15 cents per page (single-sided).....\$.45
Postage\$.32

TOTAL AMOUNT DUE.....\$.77

Please make your check payable to the STATE OF FLORIDA
and mail to the:

Office of the State Attorney
Post Office Box 5028
Clearwater, Florida 34618

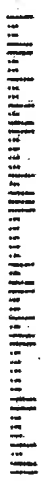
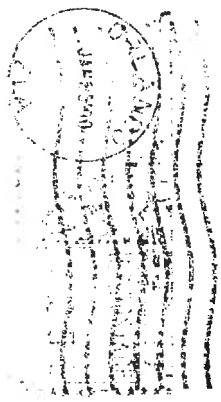
Attention: Fiscal Administration

Please return a copy of this invoice with your remittance.
Thank you.

Ed Leinster, J.D.
Attorney and Counselor at Law
1302 East Robinson Street
Orlando, Florida 32801

JAN 30 1991

Office of the State Attorney
5100 144th Ave.
Clearwater, FL 34620



DAITN

IN THE CIRCUIT COURT FOR THE
SIXTH JUDICIAL CIRCUIT, IN AND
FOR PINELLAS COUNTY, FLORIDA.

CASE NO: CRC89-11425, 26, 27 CFANO-B

STATE OF FLORIDA,

Plaintiff,

VS

KEVIN HERRICK

Defendant. 362912

FILED
CRIMINAL COURT RECORDS
90 OCT 25 PM 1:14
KARLEEN C. DEBLAKER
CLERK OF CIRCUIT COURT

MOTION FOR NEW TRIAL

COMES NOW, the Defendant KEVIN HERRICK, by and through
below signed counsel hereby moves this Court for a new trial
and as grounds therefore would show:

1. That the verdict is contrary to the weight of the
evidence in this case.
2. That the conduct of law enforcement in this case
renders the prosecution fatally defective as a denial of due
process.

WHEREFORE the Defendant, KEVIN HERRICK, respectfully
requests that this Honorable Court grant unto him a new trial
in this matter for the reasons set forth above.

Ed Leinster

ED LEINSTER, Esquire
1302 E. Robinson Street
Orlando, Florida 32801
(407) 422-3937
Attorney for Defendant

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, IN AND
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Orlando, Florida 32801
(407) 422-3937

This is a non-official transcript of the videotaped deposition taken of Theresa Porrey in the case of State of Florida v. Kevin Richard Herrick, case number CRC 89-11425 CFANO

Questioning by Mr. Leinster

Q: We'er recording now

Q: We will ask your full name and adress please?

A: Theresa Porrey I live in Largo 4015 Audobon.

Q: Okay now the reason for this deposition is because of your ill health. You told us you have emphzema and are attached to a resperator which would make it very very difficult for you to attend court proceedings, and your doctor has advised you that it would not be in your best intrests to do so. You are still under oath, you understand that. Now on the night that all this happened I understand that Kevin Herrick was living with you?

A: Yes.

Q: How long had he been living here?

A: Oh god I don't remember. Maybe two weeks, three I don't recall.

Q: And you've known him for years, and his family for years?

A: Yes.

Q: At the time he occupied one of your back bedrooms, correct?

A: Yes.

Mr. Balone: I want to object to the leading questions.

Questions by Mr. Leinster:

Q: Okay — which bedroom did he occupiy?

A: The back bedroom.

Q: As I look at you across this table am I looking toward the back of your apartment?

A: Yeah.

Q: And are those sliding-glass doors?

A: Yes.

Q: During this time period last July 1989 were you sleeping?

A: No.

Q: Okay, where were you?

A: I was laying right there on the couch where your facing.

Q: Alright, and that couch for the record is between us and the sliding-glass doors.

A: Yes.

Q: You've indicated having a problem sleeping — what's that?

A: I can not sleep. I have not been able to sleep.

Q: Is that the condition you found yourself in in July of 89?

A: Yes. Before that.

Q: Were those sliding-glass doors—

A: They'er always locked. I lock them usually before dark because I'm scared.

Q: Alright, so then no one would come in or out those doors after dark?

A: Unless I seen them.

Q: Right. So those lock with a pin from the inside or a key, or how do they lock?

A: They lock with a pin and they lock - push up the latch.

Q: In July of 89 did you also have what appears to be bird cages, chairs and the plant hanging in front of the door?

A: Yes.

Q: When did you first notice that something was going on outside?

A: I heard a commotion, a girl was hollering.

Q: What was she hollering?

A: All I know is I just heard her hollering and screaming. I thought something was wrong, I got up and went out there and she was saying somebody tried to rape her.

Q: Did you go outside immediately when you heard her screaming?

A: I walked out to where she was standing and then I came back in and got Kevin, cause I was scared. I can't do nothing. I didn't know if the man or whoever it was was in the house or what.

Q: At that time were you on a resperator?

A: Yes.

Q: Were you able to get around without the resperator?

A: See I can go far with this, I've got hose. I can go clear out front and go in the back.

Q: Do you recall that at the time you had the resperator on?

A: Yes, yes.

Q: So you came through you front door, correct?

A: Yes, yes.

Q: From your front door, then the apartment where this took place would be on your right?

A: Yes.

Q: Are they units similar to this one?

A: No.

Q: Are they smaller or larger?

A: They'er smaller.

Q: The sliding-glass door to this unit over here do you know where—

A: It's on the back—it's on that side over there.

Q: And from that sliding-glass door— I can go outside and look, I can go outside and look, of course you just come around this way—

A: All the way around this way.

Q: Are there any fences that need to be jumped over?

A: No.

Q: Just a straight shot around back?

A: Yes.

Q: Now during that time period July 1989 were there obstacles in front of the sliding-glass door?

A: Yes. The police seen it. It was all blocked. There was no way he could have got in. It was all blocked.

Q: With what?

A: Stuff, junk. Oh I don't even remember, see I can't, won't (solve) them, but if you ask my son he can tell you everything was piled up there — was everything—

Q: Building materials?

A: Yes there was,— pretty sure — I don't know if that was there or not. You can ask my son but I know they were there, there was all kinds of stuff. The kids cleaned it out when we fixed the — were trying to fix the house.

Q: Okay. After the incident happened do you recall looking in that bedroom to see whether or not that stuff was still — (there)

A: Yes that's the first thing I did when the police came, cause the police were looking and I was looking — there was no way he could have got in.

Q: So both entrances other than your door, one sliding glass door were locked, the other was—

A: That one was locked. They were both locked. When I lay down to watch TV. I drink my coffee — I lock my doors.

Q: When did you last see Kevin that evening?

A: Oh I don't recall, maybe about 9 – 9:30 around then. I don't recall the time. Around then.

Q: Would that have been the time he went to bed then?

A: Yes.

Q: You didn't go anywhere?

A: No.

Q: Stayed on the couch?

A: Stayed right on that couch.

Q: How long would you say that it took from the time that you walked out, saw the lady screaming with a child in her arms and then came back to wake Kevin up?

A: I don't know — All I know is I ran.

Q: So a minute?

Mr. Balone: I'm going to object to all these leading questions.

A: I don't know then I could move better. I think I got there fast enough cause I was petrified.

Q: You didn't see or did you see Kevin at any other place (from) the time you left the

couch.

A: No. He was in bed under the covers. When I opened that door he wasn't even moving. I had to nudge him, but I'm scared. I jumped back cause I've got a son, if you touch him when he's sleeping he'll hit you. He wakes up and he swings and I didn't want to take a chance so I shook Kevin and then I got away.

Q: When did you hear, I believe you mentioned a neighbor —

A: Yeah. She came out too. What happened was her boyfriend went with her husband to look at fish or something. She was by herself (can't understand) they had told me she was by herself with the baby.

Q: Her husband went with her boyfriend?

A: Yeah.

Q: David and Darryl?

A: Yeah.

Q: But what if anything do you recall being said outside?

A: He had told her he had ran up the street looking for somebody.

Q: Who.

A: Her boyfriend.

Q: Darryl?

A: Darryl.

Mr. Balone: Object to hearsy.

Q: How do you know that?

A: Because when he came up, I guess he was gone cause, now I remember, she was just there he had gone after somebody, came back and told the boy nextdoor—

Mr. Balone: I'll object to hearsy.

A: Huh?

Mr. Balone: I'll object for the record as hearsy.

Mr. Leinster: Well it is and it isn't. Take it off the record, obviously if he denies saying it it's not going to be hearsy.

A: He — He (Theresa has a hard time breathing) It's hot in here.

Mr. Leinster: I don't think he's going to deny saying that. It's in the reports.

Mr. Balone: Alright. Well — just ask the question

Patrick Porrey: Mom, don't get upset. They're just going to ask questions.

(Theresa bad shape for a few minutes)

(Unidentified) Are you okay?

Patrick Porrey: Okay mom?

Mr. Leinster: Can you bear with us for a couple minutes here?

A: Wait a minute. Go ahead — I'm (can't tell)

Q: Did you see where Darryl ran?

A: No I did not. I seen him when he came in and was he kept holloring get the license number, get this license number.

Q: Was he _____ at that point?

A: Yes he was excited too.

Q: Who was he telling this to?

A: He was telling it to the boy next door.

Q: Did you see a car pull away?

A: I didn't see none of that. I didn't pay attention. All I was worried about was her. I'm scared.

Q: How much later was it when the police arived here?

A: I don't recall when they came.

Q: Do you rember if you were sleeping?

A: No i was not sleeping. No way. They came in and out of here. They went over there right away. They accused, like he did it.

Q: Did they go through his room?

A: Yes they went through his room.

Q: Is there any question in your mind Mrs. Porrey that Kevin Herrick was..

A: No way. If he did it I would tell. Do you know what that is against a woman.

Q: I don't have anything further.

Questioning by Mr. Balone.

Q: I just have a few more questions for you Mrs. Porrey. At the time that this happened you've stated that you were on the couch.

A: Yes.

Q: And you have told us previously you are hard of hearing.

A: Yes, but not that bad, honey — anybody comes in my patio door I know.

Q: And you had the TV. on at this time?

A: Yes.

Q: And I guess since you are a little hard of hearing it was on the loud side?

A: Don't you accuse me that I didn't see if anybody could have come in my patio door because I watch my patio door. I usually alone in this house so don't try to contradict me.

Q: And Kevin was in bed which was over there, the south east bedroom.?

A: He was asleep. When I went in there that boy was asleep.

Q: And that bedroom has a sliding glass door, correct?

A: Yes.

Q: And I believe that is on the west side...

A: There was no time for that boy to come in there, to hope in bed by the time I got from here to that bedroom. I would have seen him get in the bed. There was no time

cause that's how fast I ran back to get him.

Q: And when this happened your son who was living with you also, was not at home So just you and Kevin were home?

A: Yes.

Q: Now you were on that couch when you heard the girl scream?

A: Yes.

Q: Then you —

A: I jumped up and I ran to the door. I ran.

Q: And you had the resporstor on?

A: Yes, the hose, I always grab it, I'm so used to it it's like my arm.

Q: What do you suffer from?

A: Emphazema.

Q: Anything else?

A: Chronic Bronchitis, but I wasn't slow then.

Q: When you got out there, Cheryl was already out there, is that correct?

A: By the door, I think. I don't recall she was standing inside the door or out, that I don't recall. She could be standing inside the door at the time there was no screen door. there is now.

Q: Okay, but she was either outside or...

A: Right by the doorway is were she was.

Q: She lives over here to the right. East side of the tri-plex?

A: Yes.

Q: Across from them on the west side are the other couple?

A: Another couple.

Q: And their names are David and the wife, you can't remember at the time that you went to the door, David and his wife were already out there, is that right?

A: No. David was not. I didn't see David. I just seen his wife. David came out after when that guy — Darryl came back in calling get this license number.

Q: But David's wife was already out there?

A: Yes they were both out there.

Q: And when you went out there did you see Darryl out there?

A: No I did not.

Q: Okay so he had...

A: He had ran after whoever it was.

Q: Now isn't it true that when you went back into Kevin's room you saw that his shoes, his sock were wet?

A: No I did not see no socks. He did not wear socks. He had flip-flops and he didn't have nothing on his feet.

Q: Were they wet?

A: Not that. How do I know? I didn't touch them.

Q: Well did you observe at a later time, that night that his shoes...

A: He came out, he was outside earlier. I guess he was outside earlier. We all were.

Q: Did you observe that his shoes or socks were wet?

A: No, I did not. Don't know nothing about it. He didn't have no socks. He had flip-flops. No such thing as socks.

Q: Did you notice that the sliding glass door was open when you went back there?

A: There was no sliding door open. There was no sliding glass door open.

Q: Did you have a cordless phone at the time?

A: Yes I did have a cordless phone.

Q: Isn't it true that you were talking to someone on the phone...

A: No that is false because they were never home in the evening.

Q: How about if I ask the question first, then you can deny?

A: Okay go ahead.

Q: Isn't it true that you were talking to somebody on the phone a day or two later and you stated that you observed that...

A: I have never talked.

Q: Hold on a second.

A: I have never talked about this case to anybody before you even ask.

Q: Okay, okay.

A: So don't even bother asking.

Q: Well just listen to the question, okay?

A: Okay.

Q: The first question and then if you want to deny go ahead.

A: Okay.

Q: Did you ever tell someone on the phone a day or two after this happened that you noticed that Kevin's shoes or socks were wet and you also noticed that the back door was open?

A: No. I never told nobody that. Never in a million years. I never talked about it that is a lie.

Q: Let me ask you this. Were you ever afraid perhaps they might sue you cause Kevin was living...

A: No i'm not scared. I've got insurance. I'm covered in insurance.

Q: Did you ever discuss that with anyone?

A: Afterwards, cause I told her, I told the wife.

Q: What did you tell her, meaning Cheryl? Do you mean Cheryl?

A: I don't recall what I said.

Q: Do you mean Cheryl?

A: I don't remember her name, I always refered to her as his wife and she said no I'm not his wife I'm his girlfriend. I says well whatever you want to be called. See I didn't take care of that, my sons did, rented them out.

Q: Did you speak to her about the possibility of you being sued?

A: No-no-no-anything - no I didn't say nothing about being sued. Whata bringing up this suing, I'm worried about it now - you've got me scared.

Q: Have you ever talked about this brfore?

A: Yeah I did talk to my sister about being sued.

Q: What about Pat, did you talk to him about it?

A: Did I Pat?

Q: Do you remember?

A: I don't recall if I did.

Q: What about Cheryl and Darren, do you remember if you spoke to them about it?

A: I may have I don;t recall.

Q: Okay I don't have any further questions.

Questions by MR. Leinster:

Q: Have they ever threatened to so sue you?

A: No. But I'm covered I imagin I am. I've got insurence tennent.

Q: One last thing, did you see Darryl when he came back from wherever he had been, to chase this individual?

A:: He came into the courtyard, he kept telling them copy this license number down.

Q: I know that, but I'm just asking you did you see which direction he came from?

A: No. I did not. He could have come this way or that way, but I know he chased a car. Afterwards I found out he was chasing a car , went that way. He went up that way after them, and then he came down, car took off and that's when he took the license number.

I don't know - telling David to copy it down whether David copied it down I don't know.

Q: That's all I have.

Questions by Mr. Balone:

Q: You didn't see a car there did you?

A: No honey, I wasn't paying attention if a car was coming down....

Q: Okay.

(That's all)