

IN THE CIRCUIT COURT IN AND FOR PASCO COUNTY, FLORIDA
CASE NO. CRC89-11425CFANO-B

STATE OF FLORIDA,

Plaintiff,

vs.

KEVIN RICHARD HERRICK,

Defendant.

DEC 21 1990
KARLEEN FLEBLAKE
CLERK OF COURT

BEFORE: THE HONORABLE BRANDT C. DOWNEY III
Circuit Judge

REPORTED BY: CARLA JESSAL, NOTARY PUBLIC
State of Florida at Large
Deputy Official Court Reporter
Sixth Judicial Circuit

PLACE: Courtroom B
Criminal Courts Complex
Clearwater, FL 34620

DATE: October 2, 1990
October 3, 1990

TIME: Commencing at 9:00 A.M.

JURY TRIAL
(Volume One)

Volume 1 Pages (1 - 158)
Volume 2 Pages (159 - 243)

ROBERT A. DEMPSTER & ASSOCIATES
Pinellas County Courthouse
Room 3, 315 Court Street
Clearwater, Florida 34616
(813) 462-4858

COPY

A P P E A R A N C E S

FOR THE PLAINTIFF: JOSEPH BULONE, ESQUIRE
 ASSISTANT STATE ATTORNEY
 Criminal Courts complex
 5100 - 144th Avenue North
 Suite B-200
 Clearwater, FL 34620




FOR THE DEFENDANT: ED LEINSTER, ESQUIRE
 219 North Brown Street
 Orlando, FL 32801

* * * * *

I N D E X

DAY ONE OF TRIAL (October 2, 1990)	Page 5
DAY TWO OF TRIAL (October 3, 1990)	Page 139
BEGINNING OF TRIAL PROCEEDINGS	Page 5
PLAINTIFF'S OPENING STATEMENTS	Page 5
DEFENSE'S OPENING STATEMENTS	Page 11
STATE RESTS	Page 141
DEFENSE'S CASE IN CHIEF	Page 141
DEFENSE RESTS	Page 143
STATE'S REBUTTAL CASE	Page 144
STATE RESTS ITS REBUTTAL CASE	Page 157
DEFENSE'S MOTION FOR JUDGMENT OF ACQUITTAL	Page 140
DENIAL OF DEFENSE'S MOTION FOR JUDGMENT OF ACQUITTAL	Page 140

INDEX TO PROCEEDINGS, Cont'd

JURY INSTRUCTION CONFERENCE	Page 159
STATE'S CLOSING ARGUMENTS	Page 177
DEFENSE'S CLOSING ARUGMENTS	Page 189
STATE'S FURTHER CLOSING ARGUMENTS	Page 207
COURT'S INSTRUCTIONS TO THE JURY	Page 218
JURY EXCUSED TO BEGIN DELIBERATIONS	Page 235
VERDICT	Page 237
POLLING OF THE JURY	Page 238
SENTENCING DATE RESET	Page 242
CERTIFICATE OF REPORTER	Page 243
 Direct Examination By Mr. Bulone	Page 18
Cross-Examination By Mr. Leinster	Page 30
Redirect Examination By Mr. Bulone	Page 59
  Direct Examination By Mr. Bulone	Page 62
Cross-Examination By Mr. Leinster	Page 77
Redirect Examination By Mr. Bulone	Page 109
Cross-Examination By Mr. Leinster	Page 112
HOWARD CROSY Direct Examination By Mr. Bulone	Page 113
Cross-Examination By Mr. Leinster	Page 117
STEPHEN JOINER Direct Examination By Mr. Bulone	Page 120
Cross-Examination By Mr. Leinster	Page 131
Redirect Examination By Mr. Bulone	Page 136

INDEX TO PROCEEDINGS, Cont'd



Direct Examination	
By Mr. Bulone	Page 144
Cross-Examination	
By Mr. Leinster	Page 146
Redirect Examination	
By Mr. Bulone	Page 150



Direct Examination	
By Mr. Bulone	Page 151
Cross-Examination	
By Mr. Leinster	Page 153

E X H I B I T S

NUMBER	DESCRIPTION	PAGE NUMBER	
		IDENT.	EVID.
State's Composite 1	Photographs	122	126
State's Composite 2	Latent Prints	129	130
State's Composite 3	Diagrams	130	130
Defendant's 1	Video Depo	-	142
Defendant's 2	Defendant's Signature	-	142

* * * * *

P R O C E E D I N G S

(THEREUPON, VOIR DIRE NOT TRANSCRIBED PER DESIGNATION.)

THE COURT: Mr. Bulone, your opening comments to the jury.

MR. LEINSTER: May we approach, please? This doesn't need to be on the record.

(THEREUPON, A SIDEBAR CONFERENCE WAS HELD OUTSIDE THE HEARING OF THE JURY OFF THE RECORD.)

(IN OPEN COURT)

THE COURT: Mr. Bulone, your opening statement.

MR. BULONE: Thank you, Your Honor. Ladies and gentlemen, this is a case of brutality and violence. The evidence in the case will show that back in July of 1989 [REDACTED] lived at [REDACTED]. What this was was a U-shaped triplex. She lived on the east side of the triplex. Right across from her lived David Stewart and his wife Barbara, and on the south side, adjacent to both of them, lived the landlady who was Theresa Porrey, her son who was Patrick Porrey and another person was living there at the time on a temporary basis. That person was the Defendant Kevin Herrick.

Now, [REDACTED] lived with her four-month-old baby [REDACTED] and with her fiancé [REDACTED] he goes by the name of [REDACTED]. The Defendant was staying

1 at that apartment only for a couple of weeks before
2 the incident that we're talking about here. The
3 Defendant became acquainted with [REDACTED] and with [REDACTED]
4 over that period. As a matter of fact, the Defendant
5 came over a couple times for a barbecue, and that sort
6 of thing.

7 On the day in question, which is July the 14th,
8 1989, [REDACTED] was home alone with the baby and the
9 Defendant came over. It was a little before six and
10 the Defendant stated that he wanted to play chess with
11 [REDACTED]. Well, [REDACTED] wasn't home yet so [REDACTED] agreed
12 to play chess with him for a while, and that's what
13 they did. And then [REDACTED] came home from work at about
14 six, and the three of them had plans to go to a
15 drive-in movie because that's about the best place to
16 take a newborn when you're breast feeding, and that
17 sort of thing.

18 So the Defendant left, and [REDACTED] and [REDACTED] and
19 the baby went to the drive-in movie and then they came
20 back. At that point [REDACTED] put the baby to bed in his
21 crib in his room and she took a bath. At that point
22 [REDACTED] went over to David's house, which is right
23 across from his apartment, and just went over there to
24 say hi to David. David asked for [REDACTED] help because
25 he has a saltwater fish tank and the fish were dying.

1 He needed help to take the fish tank over to David's
2 mother's house to help save the fish because her water
3 was okay and his saltwater was all messed up.

4 So this was about midnight, and [REDACTED] came over
5 and told [REDACTED] that he was going over there. She
6 said fine, and [REDACTED] and David went over to David's
7 mother's house. [REDACTED] checked on the baby, and she
8 turned on the hall light and she went into her bedroom
9 and she fell asleep on her bed. She did not know it
10 at the time, but she was about to become a victim.

11 She was sleeping and something woke her up, and
12 that something was the Defendant Mr. Herrick.
13 Mr. Herrick broke into the house; the Defendant shut
14 off the hall light; the Defendant took off his
15 clothes. The Defendant got on top of [REDACTED], he had
16 one knee on each side of her body. At this point
17 [REDACTED] woke up and observed this. The Defendant held
18 a knife or a scalpel to her throat. He said, "Suck it
19 or I'll kill the baby."

20 [REDACTED] became hysterical; she struggled. The
21 Defendant had his clothes off. He managed to stick
22 his penis into [REDACTED]'s mouth. The Defendant
23 continued to state that he would kill her baby. The
24 Defendant moved his knife down to her underwear.

25 At this point [REDACTED] came home from David's

1 mother's house. He was in the courtyard area outside
2 of his residence and he was smoking a cigarette. He
3 does that because he doesn't like to smoke in the
4 house. He heard [REDACTED] crying and it became louder
5 and louder. He then rushed into the house when he
6 heard his fiancée crying, and he saw the Defendant on
7 top of [REDACTED]. The Defendant then got off of [REDACTED]
8 and stated that he would kill [REDACTED] and that he would
9 kill the baby. They struggled in the doorway. The
10 Defendant then stabbed [REDACTED] twice with the knife or
11 the scalpel that he had, once in the upper part of the
12 stomach and once in the chest. [REDACTED] backed off and
13 he got a good look at the attacker, the Defendant, the
14 next-door neighbor Kevin Herrick.

15 The Defendant put his pants on. [REDACTED] moved
16 toward the Defendant -- [REDACTED] moved toward the
17 Defendant, but the Defendant was waving the knife or
18 the scalpel, so [REDACTED] backed off. The Defendant ran
19 out of the bedroom door at that point. [REDACTED] and
20 [REDACTED] ran to the door and the Defendant stated, "Get
21 away from the door or I'll kill your baby." The
22 Defendant let go of the door. [REDACTED] then ran to the
23 baby's room to see if the baby was okay, and she was
24 hysterical at the time. The baby was okay.

25 The Defendant then tried to get out of the house

1 through the sliding glass doors in the living room.
2 Those doors were locked and he was unable to get out
3 of there, and [REDACTED] did follow him there. Now at this
4 point the light from the moon and the light from
5 David's apartment was shining through the venetian
6 blinds and it was bright enough for [REDACTED] to see who
7 this person was for sure, and it was the Defendant.

8 The sliding glass door was locked. The Defendant
9 then went out the front door and he went eastbound on
10 [REDACTED]. [REDACTED] chased after him. The Defendant
11 stopped for a moment and he got another look at the
12 attacker, and it was the Defendant. It was Kevin
13 Herrick. The Defendant went eastbound and then he
14 went southbound toward the back of his bedroom where
15 he does have sliding glass doors and where there are
16 sliding glass doors into the living room of his
17 apartment where he was staying.

18 [REDACTED] couldn't chase him anymore, being stabbed
19 and all, and he went back to the apartment. [REDACTED],
20 of course, was hysterical. She was screaming and
21 crying, and all of the neighbors came out. An
22 ambulance came. The police came. The police
23 interviewed [REDACTED], and [REDACTED] told them what
24 happened. And she will tell you that she told the
25 police that night she thought that her attacker was

1 the Defendant Mr. Herrick. It was dark and she wasn't
2 a hundred percent sure and she just couldn't believe
3 that it would be him, but she was pretty darn sure
4 that was him and that's what she told the police.

5 The police arrived, and the last person out of
6 the apartment was the Defendant. He was the last
7 person out in the courtyard. The police observed he
8 was very nervous, and that made Officer Crosby rather
9 suspicious right from the get go.

10 I'll tell you what was going on through [REDACTED]'s
11 mind and he'll tell you what was going on through his
12 mind. He had just been the victim of a stabbing, a
13 rather brutal stabbing. His wife or his fiancée, the
14 mother of his small child, the baby child, had just
15 been raped and the Defendant's penis went into her
16 mouth against her will. He was extremely angry at
17 that point. His fiancée [REDACTED] was extremely
18 hysterical at that point. What was going on through
19 his mind -- and he will tell you what was going on
20 through his mind -- he didn't want to go through the
21 criminal justice system at that point and wait a year
22 and a half for everything to happen. He wanted to get
23 his friends and he wanted to get this guy, that's what
24 was going on through his mind. Whether that was right
25 or whether that was rational, that's really not that

1 important. The fact is that is what was going on
2 through his mind. He and his friends were going to
3 get Kevin Herrick for doing those things.

4 The police asked him if he knew who it was who
5 did this and initially he told the police, "No, I
6 don't." He was then taken to the hospital and
7 treated. And at that point, after [REDACTED] and [REDACTED]
8 went to [REDACTED]'s mother's house, he decided that the
9 right thing to do would be to call the police, and
10 that's what he did. He told the police that it was,
11 in fact, the Defendant and that he had no doubt and
12 never did have any doubt that it was the Defendant.

13 After you've heard all the evidence, I am
14 convinced you will conclude that this Defendant is
15 guilty of burglary because he broke into the house.
16 He is guilty of a sexual battery on [REDACTED]
17 because he forced his penis into the mouth of [REDACTED]
18 [REDACTED] against her will, and he is guilty of an
19 aggravated battery because he stabbed [REDACTED]
20 against his will. Thank you very much.

21 THE COURT: Counsel for the defense?

22 MR. LEINSTER: As the judge admonished, what we
23 say is not evidence. Neither Mr. Bulone nor I was
24 present when all of this happened, so all we do is
25 present to you the facts as we see them, respectively.

1 I see this case a little bit differently, that's
2 probably not hard to believe.

3 This is a very, very small triplex. It's a U, a
4 squared-off U, as you look at. Mr. Herrick lived in
5 the middle, as you look straight into the triplex.
6 There are the neighbors on the right side and then
7 there is [REDACTED] and [REDACTED]. Now I'm going to get [REDACTED]
8 confused with the name of [REDACTED] a dozen times because
9 in my preparation he's referred to as [REDACTED] and they
10 refer to him as [REDACTED]. Remember [REDACTED] and [REDACTED] are
11 the same guy, even if I don't.

12 What happens here is that, at least
13 theoretically, Kevin Herrick knows that [REDACTED] and
14 [REDACTED] live together and have a child together and
15 sleep together. And yet sometime after midnight when,
16 for a unique reason, [REDACTED] is not home as he
17 ordinarily would be, someone comes into a pitch black
18 -- not my words, hers -- room and removes either all
19 of their clothing or all of the clothing but a shirt,
20 depending on which witness you listen to. She has
21 gone to sleep at this point and is completely unaware
22 of anything going on until someone is straddling her,
23 as she puts it, with a knife to her throat.

24 She cannot make out who this is. It is pitch
25 black in the house. The only thing that she says,

1 ultimately, as a clue to the identity of her assailant
2 is that his hair was curly and long, which in those
3 days would have been consistent with Mr. Herrick. His
4 hair was longer and it is curly. That's it, that was
5 her sole clue to what was going on. She became
6 hysterical, rightly so.

7 About that time [REDACTED] comes home. [REDACTED] and
8 the assailant get into a brief fight. Somehow during
9 this fight the assailant manages to completely
10 reclothe himself again and at that point is chased by
11 [REDACTED] out of the premises. Even at this point
12 [REDACTED] is a little hysterical. She grabs the child.
13 She doesn't see the assailant as he leaves the
14 premises at all. She simply sees her boyfriend chase
15 after him.

16 The assailant has placed his hands on the sliding
17 glass doors. According to [REDACTED], he left bloody
18 prints on the sliding glass doors in his haste to get
19 out of there. Those doors were closed. He then went
20 to the front door because [REDACTED] said the front door is
21 open, which would have probably been clear to whoever
22 came in anyway because that's how the person would
23 have gotten in the place. Blood was again left by the
24 assailant's hands on the doorknob of that house as he
25 left. Prints were taken. They did not match Kevin

1 Herrick. According to [REDACTED], however, at this point
2 he is now chasing Mr. Herrick who he has determined to
3 be Mr. Herrick because in their chase Mr. Herrick
4 turns around to look at him, which is pretty common
5 for people who are racing away from the scene of the
6 crime to stop and look back at the person chasing him.

7 For reasons I have not figured out and probably
8 won't during this trial --

9 MR. BULONE: I object to how he feels about
10 things and his own conclusions.

11 THE COURT: I'll let him continue.

12 MR. LEINSTER: [REDACTED] is chasing this fellow who is,
13 I suppose, at least in theory, still armed with a
14 knife. He says he knows at this point that it's
15 Mr. Herrick, but continues to chase him for no
16 apparent reason. We're not exactly sure, depending on
17 which story was given, to which direction he chased
18 him whether he first chased him east and then south.
19 But in any event, the testimony will be, according to
20 [REDACTED] or [REDACTED], that in this process a couple of
21 fences were leaped. At one point he saw a vehicle,
22 which he actually hopped over a fence to look at,
23 although he was sure that the occupant of the vehicle
24 was not the assailant.

25 By the time he comes back to the scene of the

1 crime everyone is milling in the middle of this small
2 cove because [REDACTED] is hysterical with the child.
3 Theresa Poorly, who you will see on video and who is
4 an invalid, is hysterical. Everybody there is
5 basically hysterical and/or nervous. And when [REDACTED]
6 comes back it's not just that he doesn't tell the
7 police, yes, it was Kevin Herrick. He leads them on a
8 wild goose chase.

9 He comes back and tells his good friend Dave, who
10 he was helping fix a fish tank, I got the license
11 number of the car. Call the police with this license
12 number. Well, the police respond quickly. They're at
13 the scene. Prior to their arrival my client is out
14 the door, the front door of his end of the building
15 and in the company of [REDACTED] and Dave. That's prior to
16 the police being there. According to [REDACTED], he's told
17 the police this fabrication about the car and the
18 license tag to throw them off. He doesn't want them
19 to exercise justice. He wants the opportunity to
20 murder Kevin Herrick with his friends. So, he tells
21 them a lie as to this car and the license. But he
22 doesn't just tell them a lie. He tells his good
23 friend Dave a lie and gets him involved.

24 Four hours later, after he goes to the hospital,
25 he decides that he will now tell the police it was

1 Kevin Herrick. He told them the reason that he lied
2 was because he wanted to take justice into his own
3 hands. So, the following -- it's the same day
4 calendar-wise -- afternoon when he goes to make
5 his written statement under oath, he doesn't say that
6 the reason he lied to the police was because he wanted
7 to take justice into his own hands. He now changes
8 the version and he said I was traumatized. He cleans
9 it up for the record. He whitewashes it because he
10 doesn't want to put in print that he actually wanted
11 to murder Kevin Herrick; it doesn't look as good. So
12 you change the story all together as to why he lied.

13 The police, in the meantime, have taken with
14 Kevin Herrick's consent hair samples which is standard
15 in these kind of cases. They have taken the sheets,
16 they've gone through Mr. Herrick's room looking for
17 evidence of this crime, they've done all of the lab
18 work necessary to try to link Mr. Herrick to any of
19 this. The fingerprints, all the forensics, nothing.
20 Absolutely nothing points to Mr. Herrick as being the
21 assailant.

22 [REDACTED] doesn't have a clue and would not have a
23 clue to this day that it was Mr. Herrick or anyone
24 else, except for the fact that she was told so by
25 [REDACTED]. He told her. In addition to that, she

1 believes, although it is not true because somebody
2 told her -- I don't know who -- that the weapon with
3 [REDACTED]'s blood and Mr. Herrick's clothes with [REDACTED]'s
4 blood were found. I don't know who told her that, but
5 it isn't true. So she never saw her assailant. The
6 only man responsible for Mr. Herrick's having to live
7 under the anxiety of these criminal charges for over a
8 year, the only living, breathing organism on this
9 planet that will be able to say it is him is an
10 acknowledged liar.

11 Now, there will be a lot of inconsistencies that
12 I won't go into now because they will emerge as the
13 case goes on. I want you to recognize no matter how
14 zealous the prosecutor and I become, we weren't
15 witnesses. Everything that you have to know you're
16 going to hear. And when one side or another says
17 there's only one verdict, that's not true. You're
18 going to find out what the verdict is and you're going
19 to hear it right from there. And you're not going to
20 hear anything from [REDACTED] that's not one inconsistency
21 after another. It just didn't happen this way.

22 THE COURT: Mr. Bulone, call your first witness.

23 MR. BULONE: State would call [REDACTED].

24 THE COURT: Call [REDACTED] to the stand to
25 testify.

