

State of Minnesota County of

SCOTT

DISTRICT

Court

CCT	SECTION/Subdivision	U.O.C.	GOC
I	609.185 (2)	H1105	N
II	609.185 (5)	H1A05	N
III	609.19 (2)	H2805	N
IV	609.342, Subd. 1(a)	L1151	N
V	609.342, Subd. 1(e)(i)	L1551	N

CTY.ATTY. FILE #	CONTROL AGENCY	CONTROL #
40551-96-F	MN0700400	96001408
COURT FILE #	DATE RECEIVED	
1996-03200	5-7-96	

## Indictment

☐ if more than 6 counts (see attached)

## State of Minnesota

PLAINTIFF,

☒ FELONY

☐ GROSS MISDEMEANOR

VS.

NAME: first, middle, last

Brian Patrick Merkt

Date of Birth

11/29/73

SJIS COMPLAINT NUMBER

DEFENDANTS.

## INDICTMENT

The above named Defendant(s) is/are hereby accused and charged by the Grand Jury of the above-named County, in the State of Minnesota, by this indictment of the offense(s) of:

### COUNT I

CHARGE: Murder in the First Degree

Brian Patrick Merkt caused the death of a human being, M.B., DOB: 08/6/92 while committing or attempting to commit criminal sexual conduct in the first degree with force or violence upon M.B.

in violation of: SECTION: Minnesota Statute 609.185 (2), a felony, contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota.

PENALTY: Imprisonment for life.

Committed on the 9th day of March, 1996, at

LOCATION: at the City of Shakopee

in the above-named County, Minnesota.

C8-97-1664

(1)

COUNT II

CHARGE: Murder in the First Degree

IN VIOLATION OF: Minnesota Statute 609.185, (5)

On or about March 9, 1996, in the City of Shakopee, Scott County, Minnesota, Brian Patrick Merkt caused the death of a minor, M.B., DOB: 08/06/92, while committing child abuse, and Defendant has engaged in a past pattern of child abuse upon M.B., and M.B.'s death occurred under circumstances manifesting an extreme indifference to human life, in violation of Minnesota Statute 609.185, (5), a felony, contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota.

PENALTY: Imprisonment for life.

COUNT III

CHARGE: Murder in the Second Degree

IN VIOLATION OF: Minnesota Statute 609.19, (2)

On or about March 9, 1996, in the City of Shakopee, Scott County, Minnesota, Brian Patrick Merkt caused the death of a human being, M.B., DOB: 08/06/92, without intent to effect the death of any person, while committing or attempting to commit the felony offense of assault in the third degree, in violation of Minnesota 609.19, (2), a felony, contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota.

PENALTY: Imprisonment not to exceed forty years.

COUNT IV

CHARGE: Criminal Sexual Conduct - First Degree

IN VIOLATION OF: Minnesota Statute 609.342, Subd. 1(a); Subd. 2

On or about March 9, 1996, in the City of Shakopee, Scott County, Minnesota, Brian Patrick Merkt, DOB: 11/29/73, engaged in sexual penetration with M.B., DOB: 08/06/92, a person under 13 years of age and Defendant was more than 36 months older than M.B., in violation of Minnesota Statute 609.342, Subd. 1(a); Subd. 2, a felony, contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota.

PENALTY: Imprisonment not to exceed thirty years, a fine not to exceed \$40,000.00, or both. If convicted within fifteen years of a previous sex offense conviction, imprisonment shall be for not less than three years, nor more than thirty years, pursuant to Minnesota Statute 609.346.

COUNT V

CHARGE: Criminal Sexual Conduct - First Degree

IN VIOLATION OF: Minnesota Statute 609.342, Subd. 1(e)(i); Subd.  
2

On or about March 9, 1996, in the City of Shakopee, Scott County, Minnesota, Brian Patrick Merkt engaged in sexual penetration with another person, M.B., DOB: 08/06/92, and Defendant used force or coercion to accomplish the sexual penetration, and caused personal injury to M.B., in violation of Minnesota Statute 609.342, Subd. 1(e)(i); Subd. 2, a felony, contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota.

PENALTY: Imprisonment not to exceed thirty years, a fine not to exceed \$40,000.00, or both. If convicted within fifteen years of a previous sex offense conviction, imprisonment shall be for not less than three years, nor more than thirty years, pursuant to Minnesota Statute 609.346.

On March 9, 1996, at about 2:11 p.m., the Scott County Sheriff's Department Dispatcher received a 9-1-1 call about a 3-year-old child who was reported to them to have fallen down the stairs and was not breathing. The call came from 2111 Valleyview Road East in the City of Shakopee, Scott County, Minnesota. The caller was later identified as BRIAN PATRICK MERKT, DOB: 11/29/73, hereinafter referred to as the Defendant. Investigators later learned that Defendant had been living at the residence with J.H., the mother of 3-year-old M.B., and five-year-old N.B., who is M.B.'s sister. The first officer on the scene found a 3-year-old female on the floor, naked, with no pulse or respiration. She was later identified as M.B., DOB: 08/06/92. The officer began doing cardiopulmonary resuscitation (CPR). The officer observed blood on M.B.'s mouth area. Defendant was asked what happened. Defendant said, "I don't know." The Defendant then said M.B. fell down the stairs and that she had vomited. The officer doing the CPR did not notice any odor of vomit. M.B. was taken to St. Francis Hospital in Shakopee.

When M.B. arrived at St. Francis Hospital in Shakopee, her axial body temperature was measured at 83 degrees Fahrenheit. Dr. Mowlem, who examined M.B., testified that M.B. had multiple bruises and abrasions. Dr. Mowlem observed multiple bruises on M.B.'s face and bruising on her abdomen, legs and back, and buttocks. Dr. Mowlem also observed several abrasions on M.B.'s abdomen. Injuries included two burn-like areas on her right forearm, a burn-like spot on her left chest area, and a burn-like spot on her right wrist. Dr. Mowlem said when he attempted to do a rectal exam, dark cold blood came out of M.B.'s rectum. Upon further examination, he saw bright red blood coming from M.B.'s vagina. Dr. Mowlem observed M.B. had suffered severe head injuries and gave the opinion, that at the time he examined M.B. at St. Francis, she was brain dead. Due to the severity of her injuries, M.B. was transferred to Minneapolis Children's Hospital.

M.B. was airlifted to Minneapolis Children's Hospital under the care of Dr. Dassenko. Dr. Dassenko testified that M.B. was unconscious and unresponsive to verbal, noxious or tactile stimuli. He stated she had multiple bruises about the face and head and on her abdomen. He said she also had a punctate bruise on her back and there was blood coming from M.B.'s vagina and rectum. M.B. was not breathing on her own, and the doctor noted only an occasional agonal breath. Dr. Dassenko stated the initial exam indicated M.B. had a severe head injury and was brain dead.

Dr. Dassenko testified that when he did an examination of M.B.'s genitalia at 5:00 or 6:00 p.m., he noticed two hymenal tears that were actively bleeding. He said by the time M.B. reached Children's Hospital her temperature had risen to 89 degrees Fahrenheit and within a couple of hours had reached 98.6 degrees Fahrenheit.

On March 10, 1996, Dr. Dassenko testified, although all of M.B.'s injuries were aggressively treated, she met the hospital's brain death criteria. Dr. Dassenko testified M.B. was disconnected

from life support at 3:00 p.m. and her heart stopped beating at 3:10 p.m. on March 10, 1996. Dr. Dassenko testified that the injuries to M.B. were not consistent with an accidental fall down stairs but were consistent with her being battered.

The Defendant was interviewed on March 9, 1996. He said that on March 9, 1996, he came home from work in the morning and at about 12:30 noon or 12:45 p.m., the child's mother, J.H., went shopping with friends. Defendant stated he was the only person alone with M.B. and N.B. Defendant said M.B. was taking a nap upstairs and he looked in on her. He said he also checked on her 5-year-old sister, N.B., who was playing in another room. Defendant said he then lay down and went to sleep. Defendant said he woke up when he heard M.B. crying. He said he found her lying at the bottom of the stairs naked. Defendant said he picked M.B. up and carried her to the living room and sat her down on the floor to watch TV. He said M.B. threw up four times and that she "pooped." Defendant said he cleaned M.B. up. Defendant said he laid her down on the floor and he lay down on the couch and closed his eyes. Later, he opened his eyes, looked at her, and saw that she was turning blue. Defendant said he started breathing for her and that he breathed for her for a long time, he didn't know if it was five or ten minutes. Then he called 9-1-1.

The Defendant was reinterviewed on March 9, 1996, after the investigating officer had talked with Dr. Mowlem at the hospital about M.B.'s low body temperature and bleeding from the rectum and the vagina. After the officer asked the Defendant to explain the low body temperature, Defendant then said when he found M.B. at the bottom of the stairs, she was shivering and saying that she was cold. Defendant reiterated that when he found her at the bottom of the stairs, she was wearing only panties. He repeated that she had "pooped" in her panties, and he had cleaned her up and laid her on the living room floor. He said that she then vomited a number of times, and he laid her back down.

Officers searching the scene found a child's panties with fecal matter in them on top of a garbage bag by the front door. They also found a Guess t-shirt with blood on it on the garbage bag by the front door. Hennepin County Crime Lab analysis later showed the blood on the t-shirt was consistent with coming from M.B. and inconsistent with coming from the Defendant, M.B.'s sister, or M.B.'s mother. M.B.'s mother testified that when she put M.B. down for a nap right before she went shopping, M.B. was wearing the Guess t-shirt.

Officers also found a pair of adult black jeans by the garbage bags by the front door. The crotch area of the black jeans was covered with vomit. The jeans were found with the zipper down and some of the vomit was in the teeth of the zipper. Some of the vomit was also found inside the flap of the zipper. The vomit had what appeared to be small bits of blueberries in it. A neighbor and J.H. testified that M.B. had eaten blueberry pancakes on the morning of March 9, 1996. Hennepin County Crime Lab analysis later showed that human blood was present on the adult black jeans.

Officers also found a child's pair of bleached, off-white Guess jeans on the floor by the garbage bags near the front door. The jeans had two small spots of blood on the back pockets and contained a small amount of fecal matter inside of them. The jeans had been placed underneath the black vomit stained jeans belonging to Defendant. J.H. testified that she had put the off-white Guess jeans on M.B. before J.H. left to go to the Mall of America at about 12:45 p.m.

After M.B. had been rushed to the hospital, an officer had asked Defendant about the white Guess t-shirt on the garbage bags. The officer said he thought the t-shirt had what appeared to be blood stains on it. The Defendant stated the stains were grape juice. The officer also asked Defendant about the black jeans and clothing under them on the floor, and the Defendant said those items were dirty and had been there for some time.

Officers later obtained from the Defendant, the jeans he was wearing when they first arrived. Hennepin Crime Lab analysis showed there was no blood or vomit on those jeans.

While officers were at the residence, they briefly spoke with the sister of M.B., 5-year-old N.B. N.B. said that "he was beating up M.B."

On March 9, 1996, Officers examined the carpet at the bottom of the stairs and the carpeted stairs. Officers did not observe any blood in those areas. The Hennepin County Crime Lab later used a presumptive test for blood on the carpeted stairs and carpeted area at the stairway landing and the testing indicated no blood was present.

J.H. testified that she left for the Mall of America at about 12:45 p.m. on March 9, 1996, to go shopping with two other women. She said before she left, she had placed M.B. in her bed for a nap wearing the white Guess t-shirt and light bleached Guess jeans. She said that earlier that morning, before she went shopping, she, the Defendant, N.B. and M.B. had gone to a neighbor's house. She said at the neighbor's house, M.B. had eaten about six blueberry pancakes. The neighbor testified that she saw M.B. on that morning and observed that M.B. had no bruises on her. The neighbor said she had assisted M.B. in the bathroom and noticed no bruises on M.B.'s buttocks, no blood on the tissue that M.B. wiped with, and no blood in the toilet bowl after M.B. had gone to the bathroom. Defendant, J.H., N.B. and M.B. left the neighbor's house at about 11:30 a.m. and returned to 2111 Valleyview Road East.

Lab analysts from the Hennepin County Crime Lab testified that the long underwear bottoms that Defendant was wearing on March 9, 1996, had blood on them that was consistent with coming from M.B. and inconsistent as coming from the Defendant, J.H., or N.B. The long underwear bottoms had a swipe of blood to the left of the crotch area, small spatters of blood on the crotch area, and small areas or spots of blood on the left underwear leg. Additionally, Hennepin County Crime Lab personnel found blood consistent with coming from M.B. on a comforter that was found in

the living room and on a towel, with the name of "Brian" on it, found in the living room. The blood on the "Brian" towel and the comforter was not consistent with coming from either the Defendant, J.H., or N.B. On the inside of the pair of men's briefs that Defendant was wearing underneath the long underwear bottoms on March 9, 1996, analysts found a spot of semen. When speaking to a medical doctor on the morning of March 10, 1996, Defendant said he had had no sexual intercourse in the previous 72 hours.

When Hennepin County Crime Lab personnel were at the house at 2111 Valleyview Road East, on April 12, 1996, they ran the water in the bathtub and found that the cold water reached a temperature of 41 degrees Fahrenheit in 30 seconds. Dr. Brunette, an expert in hypothermia, testified that a naked unconscious child with severe head trauma placed in water at 41 degrees Fahrenheit could become severely hypothermic within 15-20 minutes. Dr. Brunette defined severe hypothermia as having a body temperature of below 86 degrees Fahrenheit.

Officers seized the drain traps from the house, including the drain trap from the bathtub on March 25, 1996. No one lived in the house from March 9, 1996, until the last week in April 1996. When Hennepin Crime Lab Analysts tested the drain traps, they had two presumptive tests that were positive for the presence of blood in the drain trap from the bathtub.

In his statements to police on March 9, 1996, Defendant admitted that in January of 1996, he had spanked M.B. too hard, causing bruises. J.H. testified that Defendant had spanked M.B. in January and had caused bruises. Additionally, Defendant's mother testified that in January she saw bruises on M.B. and that the Defendant admitted he had spanked M.B. causing those bruises.

In his statement on March 9, 1996, Defendant stated M.B. received a broken finger in January of 1996, when he was pushing her on a toy car. Medical records from Mayo Clinic showed that M.B. received a cast for the broken finger on January 11, 1996. J.H. testified she was not in the room when that injury occurred, but that Defendant told her M.B. had received the broken finger when he pushed her in a toy car. J.H. did not know if N.B. was present in the room at the time.

Rene Hexum and her daughter, who were babysitting for M.B., testified that on December 16, 1995, while bathing M.B., they noticed reddish/purple bruises on M.B.'s buttocks. The bruises were on both buttocks and appeared to be linear, well-defined bruises. When questioned, M.B. said Brian spanked her. J.H. testified she did not cause those bruises.

On February 24, 1996, M.B.'s paternal grandmother, Anne Raehsler, picked up M.B. and N.B. for a visit. While changing their clothes, Anne Raehsler observed two scrapes on M.B.'s lower spine and a bluish/purple oblong bruise by the spine along with a bluish/purple bruise under M.B.'s chin along the jawline. She also noticed bruising on M.B.'s back higher up and on M.B.'s chest. She also noticed bruising on the inside of M.B.'s knees.

Anne Raehsler showed the bruises to Eldo Hancock and Rosemary Hancock. They both testified and described three scrapes on the vertebrae on M.B.'s back and an oblong purplish bruise along the left side of her spine of 2 1/2 - 3 inches long, and a bruise under her chin and along her chin measuring about 2 - 2 1/2 inches along.

On February 24, 1996, M.B. and N.B. also stayed with Connie Anderson and she testified that she saw bruises on M.B. Anne Raehsler testified that when she asked J.H. about them, J.H. got defensive and said that she and the Defendant did not spank the girls. When Anne Raehsler asked M.B. about the bruises, she said Brian spanked her. J.H. testified she did not know how M.B. had gotten some small bruises on her face, but thought the bruises on her back were from when M.B. had fallen against her bed. J.H. testified she was not in the bedroom when she thought M.B. hit the bed and she did not cause the bruising on M.B.

J.H.'s sister, Andrea Mendez testified she was present in Defendant's apartment in New Richmond, Wisconsin, in December of 1995, when M.B. "had a fit." Ms. Mendez said Defendant spanked M.B. and that M.B. cried. J.H. testified that Defendant spanked M.B. on a regular basis and that he did it when he was angry. J.H. said M.B. got spanked more than N.B. because she got into more things.

Dr. Lindsey Thomas of the Hennepin County Medical Examiner's Office performed an autopsy on M.B. on March 11, 1996. Dr. Thomas testified the injuries on M.B.'s left eyelid and area around it were consistent with M.B. being struck with a hand in that area and the bruises around the right eye were consistent with being grabbed forcibly by a hand. She testified that "rug-burn" like marks about M.B.'s face were consistent with M.B.'s face coming into contact with rough fabric of some kind. Dr. Thomas stated an oblong-type mark on M.B.'s abdomen was consistent with M.B. being struck by some object.

Dr. Thomas also observed M.B. had blood in the entire large bowel. She observed a bruise on the right buttocks consistent with being spanked and an abrasion or bruise on the left buttocks. Dr. Thomas testified M.B. suffered severe head trauma which included a left subgaleal hemorrhage and extensive bilateral subdural hemorrhage. Dr. Thomas testified M.B.'s head trauma was consistent with M.B. having her head slammed against a hard object such as a wall and the injury was a sudden acceleration-deceleration injury.

Dr. Thomas testified that as part of the autopsy, M.B.'s eyes were examined. The injury to the right eye was a focal posterior retinal hemorrhage and focal subarachnoid hemorrhage. The injury to the left eye was a focal intraretinal and subdural hemorrhage.

Dr. Thomas also testified that during the autopsy, she found two hymenal tears, one at the 3-4 o'clock position and one at the 8-9 o'clock position. Blood was present in both M.B.'s vagina and anus. A bruise was also found on the left labia minora and the area around the entrance of the vagina and the hymen was



congested. Dr. Thomas testified the vaginal injuries were penetration injuries and were consistent with attempted penile penetration with an erect penis or penetration with some kind of object.

Dr. Thomas stated the cause of M.B.'s death was severe head trauma. She testified M.B. could not have received her injuries from an accidental fall down stairs. Dr. Thomas ruled M.B.'s death a homicide.

Dr. Carolyn Leavitt testified she reviewed the autopsy photos and report, had consulted with Dr. Thomas and Dr. Schmelling, a surgeon who, along with Dr. Dassenko, had noted the active hymenal bleeding on M.B. Dr. Leavitt testified that M.B.'s vaginal injuries were not consistent with an accidental fall down stairs. She testified, to a reasonable degree of medical certainty, M.B. had been sexually abused.

DATE:

MAY 6, 1996

Stewart Schind  
Signature of Foreperson of the  
Grand Jury

STATE OF MINNESOTA

COUNTY OF SCOTT

Clerk's Signature

**STATE OF MINNESOTA**

Plaintiff,

vs.

BRIAN PATRICK MERKT

Defendant.

RETURN OF SERVICE  
I hereby Certify & Return  
that I have served copy of  
this upon the Defendant  
herein named.

Signature of Authorized  
Service Agent

Terry D. Johnson #122  
TERRY D. JOHNSON  
DEPUTY SHERIFF SCOTCO.

**FILED**

MAY 7 - 1996

SCOTT COUNTY COURTS

The following are names of witnesses duly sworn and examined  
before the Grand Jury upon the findings of the above indictment:

Connie Anderson  
Don Bisek  
Carl Bock  
Fred Bock  
Tammy Boucher  
Doug Brunette  
Megan Campeau  
Jason Crotty  
David Dassenko  
Gerard Donahue  
Ann Feters  
Robin Feters  
Eldo Hancock  
Rosemary Hancock  
Sheryl Herberg  
Justina Herdahl  
Rene Hexum  
Darrell Honza  
Dick Kaley  
Brian Kasbohm  
Suzanne Westin-Kirkegaard  
Martin Klatzko  
Robin Lambrecht  
Carolyn Leavitt  
Andrea Mendez  
June Merkt  
Randall Merkt  
John Mowlem  
Brian Nelson  
John Plunkett  
Anne Raehsler  
Craig Robson  
Ron Scherer  
Lindsey Thomas  
John Wolf