

STATE OF MINNESOTA
COUNTY OF SCOTT

SUBPOENA

(ORDER TO APPEAR)

IN DISTRICT COURT
FIRST JUDICIAL DISTRICT

COURT FILE NO. 96-05000

PLAINTIFF

DEFENDANT

State of Minnesota

VS

BRIAN PATRICK MERKT

WITNESS

Ruth J



DEPOSITION

NOTE: Rule 45.05 of Rules of Civil Procedure requires proof of service of notice to take a deposition prior to issuing a subpoena for a deposition.



DUCES TECUM

You are commanded to produce the following items, records or documents:

You are hereby commanded to appear as a witness to give testimony on the date, time and place indicated below, and from time to time thereafter as may be required.

DATE: April 7, 8, 9, and/or 10, 1997

TIME: 9:00 A.M.

ADDRESS: **SCOTT COUNTY COURTHOUSE
428 SOUTH HOLMES STREET
SHAKOPEE MN 55379**

WITNESS FOR: PLAINTIFF

TYPE OF CASE: CRIMINAL

PERSON REQUESTING SUBPOENA: NEIL NELSON

WITNESS, Gregory M. Ess, Administrator of the above named Court, and the seal thereof this 31st day of March, 1997.

(SEAL)

Gregory M. Ess, Court Administrator

Kathryn A. Ess

Deputy

Dr. Plunkett.

Tom

Q Based on all her injuries. If she could have received all her injuries

Could not have received all her injuries

Multiple inj. in add

forehead

Cheek

back abd. + chest all those

Could

shoulders - slammed into a wall.

If Head flexed forward then body would absorb

Dr. Plunkett

Exh 33.

Shows Bruise

16 shoulder area

Bruise or contusion on deltoid

In case of blunt abd. trauma where nothing
blood in abdomen.

Head slams where you don't see secondary bruises
of arms + legs.

Overwhelming maj we don't see secondary bruises
#her Body at - How long to get cold outside?

pag 640.

If she gone outside could temp drop so severely
in such a short time. yes it would

Given body at. 1 hr. 15 min. Ambient temp
and wind chill

Hypothermia caused her heart to stop + stop breathing

(2)

Is it your opinion that once she had cessation
of heart beat

Hypothermia immediate cause of death. but for
head inj she would have died.

Have not published in

Dr. Crowe Forensic ophthalmology

Not based. Certified.

Bruise on shoulder - front

Bruise on head on back, left of head.

How many Autopsies of children have you done? over 100.

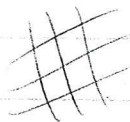
In 1 hr 15 min a nude 34 pound person
shooting & lying in snow.

Are some inj consistent with wandering around outside
being hit by an automobile

Pattern

Type of injury wasn't found in house

would injuries



who called by when Test.

would injuries in back - lumbar area hit by
a car. Thrown up against the wall.

When children hit by a car don't they have fx
to her legs and arm.

Hymenal tears from car accidents - never
seen by

(3)

don't + read living children.

As of Dec. 96 he never attended a meeting exclusively devoted to child abuse.

26 There are auto accident

Are you aware that one of the towels found in the house had blood from a person who was not in the house.

Did police find debris from auto accident.

Did anybody look for debris.

Jury dismissed.

2 Issues

Audrey

Rebuttal testimony

Dr. Plunkett gave the opinion that hypothermia had stopped. We think it is proper rebuttal test to call Dr. Daxel.

Possible frost bite

It's defense opinion

Frostbite = No context with struggle.

abrasion type injury

Call Dr. Daxel, keep test brief.

I'm not going to argue that hypothermia caused death.

Could be frost bite.

Neil.

Judge.

Dr P testified that certain kinds of thing
in the case is consistent with a fall down the
stairs.

That his feeling Read injury

Families that they didn't declare people dead

only new ~~injury~~ issue is scarring on body
that could come from hypothermia.

Diesel will be allowed.

Plunkett was only being truthful.

Stipulation of what Audrey would say if she
were here. Read statement into the record.

Rebuttal witness,

Police officer as to whether Brian wearing his pants.

Judge - won't be too much longer.

Audrey Herdahl - step mother

Def resided with

Observations regarding def relations

March 20

1:30 PM. Statement

Intended to be a witness.

options wait

agree that if called she would testify to things

If Audrey would appear

5 statements

Read into the record has same effect as if she were present.

1) all the time have you seen bruises

Not at all

McKenzie

Run until

I should have slowed down

2) How did Brian discipline?

talked to them

3) Grab them - twist them around - grab chin

No

Brian shoveled his driveway

Lights hit a hole in the snow bank

Snow fort for the kids. Brian got their snow pants

4) do you think they will ^{ever} call me Daddy?

5) During ^{the} 5 yrs - No Verbal arguments

No fights.

(6)

2 Rebuttal Witnesses

Dr. Schmalz not available

State Call Daniel Langlois to the stand.

Knoxville since 4-1-91

Pres. of Emergency Medicine,

Hypothermia guidelines for Wilderness Medical Soc.

Frostbite.

At. Case. dealing with helping frostbitten pt.

Frostbite freezing surface

1ST, 2ND, 3RD degree. ice in water of cells

Reasonable degree of medical c.

F.B. distinctly diff from burn inf. or abrasion.

Epidermis doesn't come off. Blisters form

Show Exh. 30; shows R arm in a circumscribed

EG ~~obj~~ objects as improper rebuttal.

Circumscribed area

Contusion, bruise, laceration

None look remotely like F.B.

Exh. 42: face:

EG objects

do you see anything to indicate frostbite? No

EG,

Officer
Craig Robson -

07 Shure entered B4 I did.

Right behind

What was wearing
Pants + a shirt.

on the phone - was he wearing some when brought

rely on
Memory - Nothing in notes or report.

He was wearing pants. jeans type pants.

Kaley was wearing coveralls.

Don't remember if wearing a hat.

Complete evidence.

Come early.

8:30 start.

Unanimous verdict

Sequestered Male + female Bailiff

Protocol - No TV - No phone service.

Take as long as you need to take.

45 people Tex

218 exp. marked

Atty's Arguments will be made.

4/30/97

Judge - general comments.

If there's anything I've said + done - disregard -

Rules of Law

Elements of charges

Ruling -

Not to speculate.

Argue fully. Attys are officers of the Court

Their remarks should be

Direct ~~Evident~~ Evidence

Circumstantial (but not solely)

Both are equally considered

Weighing testimony.

Evidence.

Ability to know + remember

Manner, appearance, age, frankness, sincerity

Exp. good judgement + common sense.

Impeachment - ~~Prior~~ inconsistency based on prior evidence

Consistency.

Special Finding - can express opinion.

Consider all the factors, they present

Sources of information

Presumption of Innocence

Def presumed innocent until proven guilty.

Beyond a reasonable doubt.

Burden of Proof

(9)



Count

1) Murder 1st degree / Criminal Sexual Conduct in 1st degree
 Crim. Sex. Con. Engaged ~~in~~ in penetration
 Including sexual genital or anal opening
 by obj.

5 Elements state

- 1) death of mc
- 2) def caused the death
- 3) def. was comm. or attempt sex
- 4) Force or violence (of attempts to inflict bodily harm)

4

- 5) That defendants act took place on March 9

While committing ^{Criminal} Sexual Cond all one
 Continuous action. A

Sexual + Killing of victim.

Penetration: before after or during death

Force: intention of infliction of bodily harm

Intentional - causing result.

Guilt or Not guilty.

sign + date Count 1

Count 2

M in 1st deg Child Abuse

who ever commits murder

+ child's death

extreme indig. to human life.

State must prove:

- 6 1) death of mc.
- 2) Mc was a minor
- 3) Death occurred while
- 4) Engaged in past child abuse.
- 5) Death of mc Under Circumstances to harm
- 6 Acts took

def of
Child abs

- 1) Assault in 1st d

whoever assaults another + inflicts great
bodily harm - causes perm. loss of a
member or organ

- 2) Assault in 3rd degree

or assaults to head, eyes or neck or
mult. bruises to ch body

bodily harm = temp but substantial loss
or fracture.

- 3)

5th degree - to cause fear in another Bodily Harm =
impairment of physical harm

Malicious punishment of a child - Unreasonable
force or cruel discipline. Reasonable is
to restrain or correct a child

Past acts of child abuse
and

Time acts were committed

Count 3 M in 2ND degree

Whomsoever Causes death without trying to
guilty of M. in 2ND deg

1) d of mc

2) def caused

time effective was Comm. or att to comm.

intentionally inflicting bodily harm to body,
eyes head

3) det took place 3-9-96 in Scott

Count Cr. S. C.

S. penetration to underage

Whoever eng. sex penet under age 13
if more than 36 mo. older is guilty.

Intrusion into genital or anal openings

4 Elements proven

- 1) Def intent. penetrated mc
- 2) (Intentional²) sexual intrusion = sex. penetration

Any intrusion into genital or anal = sexual P.
emission of semen is not necessary.

- 3) Had not reached her B'day

- 4) Act took place 3/9

Purpose to do or caused result

Knowledge of facts to make conduct criminal

- 5) Cr Sex Con. in 1st degree with force

If personal injury to another

Sexual, anal intercourse

part of body or obj.

- Intenti Sexually penetration of mc
- Penetration was without consent of mc.
- Caused personal inf. / Severe mental ang
- Def act took place on 3/9

Coercion - words or circumstances that cause fear.

Your decision based on the

Ability of laws to relate to those facts.

Break.

Ann came in late - so did Sam.

I

4/30/97

As I sat in the hallway writing in my journal
Never looking up for several minutes at a time -
Concentrating on my writing - without thinking
I became aware that ^{someone} ~~Robin~~ was ~~was~~ standing
over me. I looked to see who stood so near
and I saw Robin. Hi,

"Hi," I said.

"Do you want to move to the hall?" I ~~got~~ started to get
up but didn't move fast enough.

I

Pom-

Thank you for the time you've spent on the case.
you will recall this case is about a 3-yr-old.
It's about a secret Mc + Nicole had. The secret
is the Mc + N had a secret of Child abuse

B was confronted w a great dilemma
He was Mc's caretaker
He knew Mc was not responsive
He beaten or to death
He didn't want to have a corpse on his hands

Problem is not true

Admission / fabrication is contradicted by all
the evidence

Statements made to Bush

Doesn't explain Vag. ing
bruises

83° body temp.

while in a house where T was 70°

Beaten to Death during a rape

Accidental

or Car accident

or fell out a window

Doesn't explain massive brain injury

You know from treating physicians that Mc
injuries couldn't be caused by a fall

Dr. Case -

Dr. Thomas - struggle

Interaction of a human being so declared
Homicide.

Blood splatter, clothing, witnesses.

Past pattern of injuries - testimony of others.

Dr. Dr. are wrong.

Not a Case where you can say

It's too foggy a situation
you have direct contradiction between Def story and
medical & other evidence

Hymen torn in 2 places - Vaginal wall
bruised and bleeding.

Not til Children.

Ped. surgeon test. That hymenal tears were
actively bleeding from tears. at 5:00.

labia majora blood came from Vagina

Brian didn't talk about her bleeding

Think of all the blood found

on Computer

on Exh. 83 - Crotch of long underwear

on Exh 91 - ~~the~~^B shirt

on towel

Until topic brought up by Besik 1st time.

she didn't have any clothes on when I found her

She had underwear on - ~~2nd~~^{NO} statement

realizes at that time there's fecal matter.

Changes story when Besik Confronts him

Merkt from her mouth + her nose.

where was she bleeding from?"

B. ignored Besik. Well, the only ~~2~~² times
I touched them there is when I wiped their
^{Poop}
Poots off.

She starts talking about Nicki.

I took them off, cleaned them up and wrapped her up
in a blanket.

If he had to reach into her vaginal, why isn't
there more smeared on front

He's asking you to believe Mc's Vaginal inf are
from cleaning her up. Bruce to Labia Minora
as he grabbed her there. Anybody who has changed a
young child you don't poke up their vaginal.

Force involved to tear hymen is blunt force.
Outer lips protect the vaginal.

Dr. testified tearing hymen would be painful
so def. would be aware of it. She would cry louder.
Bruised to left side. of vagina.

Tina gave baths. Brian was a work.

Earl Gray may say

Maybe he accidentally scratched the hymen.
Elastic tissue simply won't be torn by a
fingernail.

B P does drop. She gets cold so bleeding would stop.
Not telling us she's awake but

Cross X-am. When asked about long underwear does
Brian admit that he had blood on his hand.

Positive reaction to swab on hemostick at jail
Blood on Penis. = compelling evidence.

Nicki heard Mc crying.

you'll see area near living room where things
are knocked over. When she was found - she was naked,
when police arrived

Hair is wet, what an odd thing
Don't sweat when hypothermic

Too much blood of from nose, ear - mouth.
some is from hymen.

Later when warmed she started bleeding.

B lied about reason he touched her genital area.
wont admit

Sexually penetrated her Vagina

EG will say Calhete did it.

Both Dr + nurse say they got a return of
Urine - not blood.

Mc had Coagulopathy - problems with clotting
Coagulopathy, doesn't cause injury.

I have to argue first so I have to anticipate. EG
will argue in the heat of the argument that in the
heat of the moment he accidentally penetrate the
Vaginal. You'd be aware of it.

Mc Vomiting 4 times. Has cleaning her rectal area
and instead of calling 911 he's busy wiping her eyes. He
showed care for her serious injuries - Not calling 911.

Brian's behavior on 3/9 makes it clear it's
a murder.

When Mc becomes aware her Mother is gone she's
uncontrollable.