

Tom Apologized to jury because statement taking so long.

Ex. 110 Mc underwear and T shirt and pants underneath Br's pants. Br didn't say anything about fecal matter on white pants. No dirt from car collision. Not wet from being outside. Blood on them. When beating started, these pants were on her. Pants found downstairs. Contradicts Br's version. Police didn't stage this scene. Appropriate for them to pick up black pants. Br admits putting Mc's shirt and underwear on garbage, but denies knowledge of pants there. Mc couldn't have gone outside, come in and taken clothes off, put under Br jeans, go to stairs and collapse. Paradoxical undressing = should have been found outside. No evidence indicates she was outside!

Ex. 79 underwear. No blood on this.

No vomit either. None on jeans either. ~~the~~

Br said he only spanked Mc once that caused bruising. Pats after Jan. 24. Lied to Det. Beesik. Gray will say appropriate to spank a child. Agrees - law allows people to spank in reasonable manner. Not with paddlestick, causing bruising etc. Child abuse. Wrong!

Ann R saw bruises on buttocks. Said Br spanks, hard. Mc didn't distinguish between buttocks and lower back.

~~Gray will say~~ Nicole interview w/ Dr. Levitt
Videotaped. Permanently documented. You can
judge for yourself. Testimony was 1 yr. later
so memory fades. N said "don't draw him"
and struck the paper forcefully. Mc bruises
and death are not a child's fantasy.

Asked N did you see Brian or what
happened the day the ambulance came. Says
Mc fell down the stairs, mother was at the store.
N. thinks Mac fell down the stairs.

Hasn't been easy for N! difficult to testify.
When asked if got spankings, said No and
immediately looked at the def. Brief.
Said no one else came into the house, mother
was gone. Consistent!

N told dr Levitt Br pinched her clitoris
and put his finger up her vagina.

Tina's credibility. Never physically harmed
her kids. N said she liked her mother.

Mc also. Former boyfriends, co-workers, etc
say she was not abusive. Clear that past
injuries were not caused by Tina. Bruises
Dec 16 and on weren't caused by Tina.

Robin Jettters no reason to lie. Said Tina
worried about expired tabs. Injuries happened
after Tina left.

Tina tried to cover up for Br. N said Br was spanking Mc. Tina said - No, Br. pats Mc. Admitted lying to Ann about bruises, Court in Wisc. Afraid of looking like a bad mother (losing surviving child). Have a right to be angry ^{with} ~~about~~ her about this. Tina invited many men into their lives. Saw Mc bruises of 12-16 and 1-24. Minimized these injuries. Br sole means of financial support. Failed to protect Mc. Don't hold this against State of MN. Tina not the only person it failed to protect Mc. Her father saw bruises. Megan, etc. etc. didn't take any action. Ann made appt, but never followed through. All aware of injuries but didn't want to rock the boat. Little girls did all they could do to protect themselves -- gave straight answers when asked (Br. spans hard).

Tragic consequences for Mc. Gray will saw police/gov. wrong doing. Final decision belongs to jury. Today you are the criminal justice system. No investigation perfect.

Coroner's camera malfunction

2 shirts placed in one bag

Alot of evidence was gathered. All examined. Case started as a medical emergency. First officers focused on getting her to breathe. Police

couldn't remember every detail. When something brought to their attention, they looked at it. Nothing was staged. A lot of photographs. Sh. Police asked for assistance from Sheriff's Depts etc. Didn't see glue gun. ~~He~~ Should have unplugged it, but... As thoroughly presented/investigated as possible.

95 witnesses

270 exhibits

Doctors experience and opinions.

Gray will ask why Br would kill Mc with a living witness upstairs, planning to adopt, Tina's child, etc. Presumes a pre-meditated murder. Br lost self-control while abusing her sexually. Situation escalated and he lost control. After he killed her, he had to clean up. Told N to stay upstairs.

N told police "when my sister's downstairs, I can't come downstairs."

Br panicked and cleaned up. Then called 911.

Facts make us uncomfortable. Seems unreal. Murder does happen! First murder is Genesis. Cain killed his own brother, then feigned ignorance.

Gray will say Br not a raving lunatic that would rape and murder a 3 yr. old.

Also that a family member wouldn't kill.

Fit of rage and anger. Fatal head slam!

All of us have lost our tempers. Children test our patience. Potty accidents, etc. People exercise self-control. Ch's size make them vulnerable. Injuries personal (not a stranger) and inflicted. Only reasonable conclusion = rape and beat to death. The fact that Br. denies it ~~that~~ cannot be overcome by all the physical and ^{witness} evidence. Didn't fall out of window. Not hit by a car. She was clean because placed in cold water.

A step father can kill a step-daughter. Rage can result in harm. Def. doesn't look like a raving lunatic or murderer.

Br built snow-forts, sledding, treated them well. When people around. But Mc saw a different side of him. Br wasn't credible with police, etc. Gray will speculate a stranger did this. Makes no sense. No evidence a stranger was in house. Absurd to think Br wouldn't hear it. Neither. Absurd to think he took her outside and then inside.

Ralph L. towel - blood not from anyone in house. Found in hospital. No need to check towel for known sex offenders' blood. Br said Mc complained of being cold - not a bad man got me or a car hit me.

Br's pants - dirt, cow excrement on them.
Keep on to take a nap?? Has to say he had
them on because blood and vomit on them.

Then Br says he was in his underwear.
Supposed to believe blood on underwear is from
CPR. Stain (purplish). Spatter. Did you
hold crotch / ankle over her mouth when giving
her CPR? No.

Officer Robson testified Br had different
pants on ~~after~~^{when} police arrived. Absurd if had
put them on while giving CPR to child in
respiratory arrest.

Blood in teeth of zipper - Mc sexually
assaulted.

Tina and Br no sex for 2-3 weeks. Spot of
semen on underwear. Significant? Not a
wet dream. Consistent with putting penis back
after ejaculating.

Clear, disorganized cleanup. Br only
marginally successful. Had time to wash
himself and his hands.

Murder not planned. Impulsive act by a
young immature man who plays with farm toys.
Motive is not an element. Evidence shows

beyond a reasonable doubt that def. did kill
Mc.

(140)

PEI

I am an advocate, as is Mr. Gray.
He'll use impassioned speech and gestures.
Remember the evidence.

Anticipate Judge's instructions. [Counts]
Continuous ^{chain of} events in 1 hr. 27 min.

Past pattern injuries - linear bruises and
no pattern. Don't have to prove Br. caused each bruise.

Indifference to human life - repeated blows to
the head. Cluster of injuries on face. Failed
to get medical attention. (Gray objects)

CPR 5-10 min. (Gray objects) Slamming head against
wall. definitions of Child Abuse - includes

Malicious punishment of a child.

3rd Count - Didn't have to attempt to kill her.

4th Count - Intentional sexual penetration -

Look at behavior before, during and after.

5th Count

Direct and Circumstantial Evidence
(reasonably inferred by other facts in the case)

Clear the def. is guilty. Not solely a
circumstantial case. N was an ear witness.

Gray will say circum. evidence is no good, but isn't
biased or prejudiced like a witness can be.

Drain trap, towel, tub (not rust water). Like strands
in a rope - but accumulation is compelling.

Like pouring milk onto cereal. If trout came out,
would know it doesn't belong there. Contaminated.

Br was alone w/ Mc + N. Injuries were not circumstantial.

Someone isn't being truthful. (Who?)

Beyond a reasonable doubt.

Def. is guilty!

~~Presumption of innocence.~~

[Lunch]

1:30 pm

Judge

Disregard any misstatements made. Isn't going to get hung up on objections made this morning.

Earl Gray - Privilege. Takes some people to say so little. State came to a ^{conclusion} ~~case~~ immediately and ignored everything else. Built their case. Mc was wrapped in comforter.

Vaginal wall was not bruised, a little one from swabbing. Br didn't say Mc was uncontrollable. could be! But worst sin of this morning was when N said Br spanked Mc on 3-9. N never said he spanked Mc. Just heard her crying.

Br didn't try to convince everyone Mc fell down the steps. Would have said he saw/heard you.

Beesik put it in Br's mind that Mac went outside.

State is supposed to be interested in justice.

(Tom objects) Built a case which simply isn't there.

Will be brief - not ~~not~~ over 1 1/2 hrs.

Will find out where the truth lies.

When the gov. decides who did it, spends money to prove it. Proof beyond reasonable doubt. As soon as they arrested Brein, got 4 police depts involved. One goal = find evidence against B. Four lawyers. Experts from all over US. Pictures, videos, computers, power to convict Br.

How do you defend yourself? Presumption of innocence and Reasonable doubt. Jury swore to follow this. Constitutional rights that mean nothing unless jury enforces it. Examine evidence with fairness.

N not direct evidence. Didn't see anything. Total circum. evidence case. Beyond reasonable doubt - ^{act upon} in most important affairs of your life.

Blood spatter on B underwear. Theories
1) ^{could be} from impact 2) Mc vomiting along with nose and mouth blood so spattered 3) Coughing

Going outside → cold. Head injuries alone couldn't cause. Outside or cold water.

Less than 25 min. when combined with head injury.

No need to prove motive. Murder requires reasons. Reason for it must be there.

Motive - look at B. He knew he was the only caretaker in the house. Would he try to have sex with Mc and beat her up.

Believe B would want sex impulses that arose from the devil? Did N have any damage between her legs? Worked all morning and then decide to have sex. Would tell her mom!!

Described by farmer as a gentleman, and Tina as being non-sexual. Not too many people desire to have sex with a 3 yr. old.

Opportunity - Vomited, pooped, and then he raped her? Turned on by this? Not reasonable. Rely on common sense.

Everyone knew he was there with her.

N was there. Decide to have a sexual encounter? What if N come downstairs. ^{*Would}

Look at B? Would he decide to do this with N upstairs.

Tina says he's a good guy. Also Audrey.

State says thrown against the wall. No evidence of this. Would also injure shoulder. Only way it could happen is if fell down stairs. Not the type of bruise as if raped and murdered. State tried and tried. No proof.

Alot of evidence but no proof. Five pictures of every one thing.

Medical experts look at pedigree and what they did in this case. Have an agenda.

They assume B is the right guy. Assume guilty.

* have to murder both of them.

Experts on head injuries - agree that history needed to make diagnosis. All come to same conclusion about acceleration/deceleration injury.

B pick her up during rape and throw against wall is

Message from God/Bible - ~~to~~ a month before this they took her to Mayo - best clinic in the world. Joe finger. No fracture. They made a mistake. Caring parents! Put splint on, went back. These parents are just human beings. These drs. don't have any history, but all have opinions.

Don't know what head injuries ^{do} from falling down steps. Can't drop kids. Can drop dogs. Spent 40 hrs. on this case.

Dr. Case asked if sibling could do this. Has 2 yr old twins ^{always at each other.} Sibling could shove down steps.

Dr. Alsenko said ~~not~~ ^{could be} from a fall ^{except hymen.} He died. When Ann R asked, she remembered it too.

Hymen area. Two tears. Not ripped open. Faint bruise - could have happened later. Dr. didn't see with the scope.

Consistent, w/ a struggle, etc. Not proof just because consistent. So many other things could be " with a rape. Doesn't prove there was a struggle.

Handling me could have made the bruises more prominent. B handled her and several grown men when trying to revive her.

Eyelid - ptekiea from straining
Injuries - on right ~~arm~~ arm like got her arm stuck in something. Or rug burns (but no evidence). None there. Was outside.

Injury on back. Somersault. Broom. Paddlestick. Did B eat the paddlestick? Doesn't exist. Even N said she was lying about it.

State Wants to prosecute. Picked him at 4 pm 3-9.

Police investigation. Make a report and then throw their notes away so then they could say anything. Despicable investigation.

John Woolf said plywood moved by himself on 3-10. Messed w/crime scene? No. Not in

his report. Remembers that a year later. Bathtub dry. Of course, because no one ever in it.

Drain may have been wet. Couldn't remember.

Caley said N said she always has to stay upstairs. B doesn't say she has to stay upstairs.

Insult to jury's intelligence.

B said "I'm in trouble." We always have to do this. Book - grape juice. B just said blood. No notes - just silly reports.

Blue ~~gun~~ gun found by Herdahl's on 20th. Didn't fit their theory so ignored it.

Never looked for a car accident. Wouldn't you canvas the neighborhood before the 12th?

Didn't care - because they had their man.

Looked for a water line w/ blood on it.

None there. Mac never in the tub. Outside!

Many pictures! None of steep steps. Didn't take fair pictures. None of door to outside. Don't care about B. Want to convict.

They don't have a case so interview the relatives. A murderer wouldn't admit to spanking. Tina said / spanking. Would a mother lie?

Ann R - N + Mc said B spans hard.

Was this made up? They don't like B! Didn't notice until took clothes off. What about chin bruise. Mac sleeping - so couldn't have said this.

Just a story. No paddle. ~~Ignore~~

~~##~~ Ignore the good testimony from Audrey + Tina.

2:40 [Gray asked for a break]

147

841

2:50pm

Apologized if offended anyone. Gets excited.

Clients statements. Would a person who raped/murdered a little girl try to revive her?

Would have to reject Tina's testimony (a caring mother). B tried to save her.

Seemed forever! B says he was on the steps ~~playing w/ toys~~ his hobby! Robin says she heard no crying. Corroborates B's story. Mc sweated and took clothes off in her sleep.

B layed down. Worked all the time! When would he get the energy to do all this?

Wakes up and hears crying. Mc lying at bottom of stairs holding stomach. TV on loud. Shouldn't have. Guilty of this!!

Not on trial for this. Told police Mc pooped her pants and he cleaned her up. Kleenex. Put it on top of the trash. Didn't hide this. How did they know if it was hard poop? Smearred all over. Penetrating injury to hymen - didn't know he injured her. First time he did this.

Would he leave her naked? No. Would put clothes on her. Mc threw up on him. Held her in variety of ways (could have). Pants were buckled. Unzipped - so what! Vomit could have fallen off his shirt.

Can't judge by hindsight. B had no experience cleaning up girls.

Vomited again. Spatters on ankles etc.
Consistent. Cleans her up. All corroborated.
Stupid for not calling 911 then. Not on trial
for this.

Sleeps. Not sexual! Tired! Knows CPR
5 minutes. Can't revive her. Calls 911. Still
tries to revive her. Part of his plan? Would
toss her body outside. Wouldn't want her to talk!

Police come. Says she fell down steps.
Cooperates. Treated like a criminal. Robson
helps Shear with CPR. B different pants on(???)
B could have buried his bloody clothes in 20 mins.
What B said is borne out in the evidence!!!
B said Mc fully conscious, out of it... couldn't
function normally because just woke up. He
was never asked about white jeans.

Blue, teeth clenched. Got her mouth open.
Got bruises then. No Blood on rug. Comforter!

Most important piece of evidence = 911 tape.
Doesn't care? Mouth full of blood and vomit.
Wanted her to be OK. Said more concerned
about her. Didn't want to go to jail for rest of her life.

Not a genius. Fully cooperative. Didn't
do anything wrong/illegal. Innocent.

Dr. Plunkett the only witness not biased
Fell down steps. Where did hymen get injured.
Laying spread eagle. Bled when probed vagina in

hospital. Swabs - no blood, no semen -
anywhere. Always semen present in a rape.

Wore that underwear before. Socks also
dirty. No rape here!

Totally destroys state's case = Mc went
outside. Road next to house. Dangerous.

B fell asleep. Mc got dressed and went outside.

Not in tub. Had to go out. Door not locked so
went out. Looking for mother. Callahan said

jeans were somewhat dirty ^{at the cuff}. Put boots on?

Had to go outside.

Went up steps, fell down. Took her
clothes off to get poop off. Brian helped her.

If outside, their whole case dies. Hurt
her stomach, arms, etc. No paddlestick or

yardstick. Police were looking for where
pattern injuries come from. Had to be outside.

Police looked outside they say. Try hard??

Hit by a car. Consistent w/ injuries. No proof
she was in a bathtub.

Don't want to alienate jury. This is true.

Kids fight. ~~A~~ Tina said siblings don't
get along. Mc acted up. N hated her sister
at times. Punched Mc's picture. Jealous.

Kicked her grandmother for the last year.

Violent. ^{Amurk =} No more than any other 5 yr old.

Come on!

N could have shoved me down steps.
said rolled down the steps. Only N said this.
Blamed B! Pushed her. State never asked
N if she did anything to do with this.

N knew how to lie. Hate to say this.
Also sibling rivalry. Cain and Able brothers.

N obviously there. Had opportunity.
B sleeping. Could easily shove me. Jealous.

Where did that towel come from?
Footprint on a white shirt didn't match any
shoe in the house.

The only direct evidence in this case is
B's testimony. No memorized script. No speech.
Not lying. Didn't do this. Didn't have to
testify. Tom yelled to try to make him mad.
B put up with it. Answered questions.

Pressure! B said he didn't do it.
No burden to solve this case. State's
burden. Rape/murder? Not reasonable.
Much more reasonable went outside, got
hurt,

Counts pertaining to penetration. When
cleaning her? Maybe, but not intentional.
Have to have a guilty mind and know what
you're doing. Not guilty.

Hasn't been an easy case. Work over.
Now jury's turn to work.

Reasonable doubt. Circumstantial evidence. Be fair! Not guilty.

3:35pm

Judge Have had don't talk about the case so won't be influenced outside the Courtroom.

Talk only in Jury Room! Sequestered.

No phones. TV OK. If on news, don't

pay attention. Very decent people. Have taken role seriously. Pick a foreman.

Have to be unanimous. On each ~~of~~ count.

3:45

Your verdict will speak the Truth.

[deputies sworn in.]

Discussed TV shows. Mistrials in part.

don't watch crime/mystery shows. Use good judgment. don't let things influence you.

(152)

(121)