

Apr 21, 1997

E.R. Dr. (here before)

Placed catheter - child extremely clean.
all over body. No injuries from catheter
being placed - warming lights used immediately
& warm blanket hugger. He placed his
finger in rectum & blood came out.
E.G. questioning him on what time he put the
catheter in - Dr. doesn't remember the exact
moment - E.G. Nasty.

X witness

Dr. Prakash St Francis E.R. person Vito shift
1:30 - did sexual assault upon on
Brian Merkt. Uses a kit for this with
check list of things to do etc. Shows the
kit with samples in envelope, swabs of
penis etc like pubic hairs, fingernail scrapes,
swabs of mouth, blood stains, head hairs
pulled from Brian, saliva samples, rectal swabs.
He was speaking to Brian who was very quiet,
normal tone of voice, calm - He had one injury
that was older on thumb. Denied any sexual
contact with the children, he only spanked them.
Said he had no sexual contact with anyone
lately.

(63)

Earl Gray - questioning him about E.R. - room
Brian told him Mc had fallen downstairs &
said he had no sexual contact with her. Said he

called 911.

* Witness Wendy Sorenson - St Francis Lab tech. She draws blood etc. was on night shift. was called to ER for a sexual assault case, 1:30 AM. Drew blood from Brian.

* Witness - John O'Loeghin - farmer - farms 5 farms employs 5 men, plus 2 sons & himself.

He placed ads in mag & Mpls. Star.

Had personal interview with Brian.

Hired him. Brian milked. Start 4:30 AM.

7 days but Sunday real slack - off 2 days. Furnish heat, electricity, utilities, house.

Had aluminum windows.

Tom asked about condition of stairs - He says stairs were excellent. Got no complaints from Brian about condition of house. Toilet leaked, he knew that. 2 weeks later after accident he had the door fixed by some man. They milk 313 cows, 200 cows, Brian was good worker, no foul mouth, never talked about sex. Brian was a gentleman. There was a screen on the upstairs window in question. Screens could not slide up, they are screwed on. E.H. Looking for pictures of window - Heat was hard to regulate, so got hot upstairs as furnace was too big for house. Brian got caught in elevator shaft, so was 1 1/2 days.

Scott City Police

* Witness - Carl Bock 3rd Time back

He was in the house after Mc left.
Shows Brian's jeans that he picked up with vomit on the front. He shows on diagram that were found by the trash bags. He put in brown bag & sealed it. He flew to 11-8-96 Elmira, New York with this article - got it back ⁱⁿ December when he flew back to N.Y.

Shows Mc ^{soiled} underwear from the kitchen
In kitchen on trash bag. Placed in bag & sealed there at house.

Shows Comforter (floral). found in L. Room
by TV. Placed in brown bag & sealed.

Took this to Elmira, N.Y. also - to Ray
McDonald. Got it back Dec. 6. Shows a
lt. blue towel. Found in L.R. in front of couch.
Says Brian on towel. Put in bag, sealed. Took
to N.Y. - also - Shows another blue towel. found
in front of couch. Took to N.Y. Shows her shirt,
found in kitchen on trash bag. Put in bag.
Took this to Elmira also. Shows B. long Johns,
got from jail. Taken to N.Y. - Shows towel with
female character on it. found in Shakopee evidence

Room later. Shows Mc jeans - Took to N.Y.

Shows B. ^{green} briefs. took to N.Y. also socks to N.Y.
Shows B shirt. took to N.Y. - Shows sexual assault kit
sealed ~~at home~~ Shows two small towels - washcloth

Shows beige towel - from Evidence Room.
Taken to N.Y. also was Clipping from blood
stain on towels. Break -

Showing Pictures - now - of residence, 8x10's -
8x10 Picture of L.R. - 27 pictures of house & inside,
8x10 Ex 101 - L.R. couch - L.R. again Ex 103 - LR
mar. 9 - #104 - of TV center - 105 - LR - #106 L.R.
NW corner, #107 - couch, towels etc - #108 -
~~South~~^{North} side of kitchen - 109 - South side of kitchen
#110 trash bags, jeans on them etc.
#111 N.E. Corner of Kite, DR area. #112
shows stairs - #113 - more of stairs from
foot of stairs - #119 top of steps from 2
steps down. #120 - of railing. #116 - of corner
of east side of landing, toy tractors etc.
taken 3-20-96 - 3-20-96 took stairs looking
down - #118 - hall by playroom - more farm
animals, toys etc - #119 - railings with crime
scene tape on it. spindles were 4 1/2 in. apart
#121 Landing on second level. 3-9-96 boards
#120 leaning against railing. 3-9-96 - #122
picture of child's bedroom. #123 - playroom
#124 - child's bedroom another angle. #125
picture of NE corner of Child's bedroom. 3-9
officer Back yet - Laundry Room - found
piece of wood; bath tub room drain tested
for blood with stick - Found positive blood,

on stick - tested sink drain - results
were positive... notes written up on report
& then destroyed, saved field sketches.

X E's objects to saying Crime Scene.
Sgt Wolf with him - Arrange for
someone to watch house with reserve
officers. Found phone book on bottom
of stairs. Brian didn't remember.

Brian told him Mc fell downstairs
dirty pants - vomit. Carried her to
— . He laid down & later called 911.

Officer found her panties partially stuffed
in garbage. Brian said Mc threw up
on him so he changed jeans. Brian told
him her T shirt had grape juice on it.
Officer said it looked like blood! Brian
said now that he wiped blood from her mouth
with it.

* Earl Gray questioning about 3-12-96 - typist did report.

"He's going over all the items - asking about the
photographs he took off stairs - E's says he
didn't take one looking directly down the stairs,
right? Looking at plywood picture at top
of stairs to keep children from falling down
steps. Ex. # 98 - E's questioning about distance
house from road. Picture of couch, 2 towels
seized. # 102 - sheet seized. Sofa taken & maroon
chair taken on Mar. 22 + pillow - saw comforter.

lying there.

Noon

E.G. continues -

Mc Underpants with stool was fresh? Yes -

Picture # 106 - looking ^{into} ~~in~~ Kitchen -

Brian came back to residence & left again.

Photo of kitchen looking out door. Trash bags - shows jeans of Brian & picture of Brian's head there. Shows Mc jeans (white) ~~pg~~ # 78

Picture # 112 - phone Book -

" # 116 - Taken Mar 20 - Boch & Honza took -
Carpet had been ripped up by them.

Picture Mar. 9 - white plywood leaning
against railing -

Brian seated in L.R. then in Kitchen.

Then Tina came & Brian still there.

Urinated once on permission to do so.

Bathroom door was open & not allowed to
wash hands. Officers went upstairs then &

saw no stains on sheets. TV was on

loud up there. Wolf & Bock got on knees

to examine bottom on steps. They then

went outside to examine tracks etc. Unable

to tell because of ambulance, officers & other

vehicle tracks. Didn't see any of Mackenzie's

Temp outside were 26-28°. House was locked

afterwards & Det Farberg had the key.

E & H continuing -

off. Bock took garbage etc later.

3-22-96 - went to house again. Herdahl family there moving out. ~~Back~~ officers took more articles at that time. E & H done.

Neil talking now to Bock.

Ex # 120 - Plywood - mar. 9

Still
officer
Bock
(very
sharp)

Ex # 120 - another direction of plywood - ending on corner of railing.

a Board partially under child's bed.

Seized items only that showed physical evidences. E & H made about plywood distance from wall not measured.

E & H

Ex. # 116 picture of upstairs. E & H made about plywood distance from wall not measured.

* Witness. John Wolf - Officer of Scott County (Deputy) assigned to Crime unit - present on scene.

Tom
Harrison
talking
now.

Ex. # 91 - clothes from Buca -

Ex # 79 - clothes rec'd from Hennepin Cty -

The pants (sailed) Showing Comforter, # 93 cuttings of blood from it.

Ex # 83 - The white jeans.

Ex # 21 - towel - big female picture on it.
+ all other items again that were seized.

and had been turned over to Tane when she testified that day, April 17.

Showing sexual assault kits to Wolf -

Ex # 89 -

Trap from Bathroom tub - Carpets from bottom of stairs - taken Mar 13

April 21 - cont'd

Ex 14 - ~~25~~ 10 - small towel, pink washcloth
large towel # 38 -

Ex # 26 - the book - obtained from Apr. 14, 1997

'Book held window open upstairs - $8\frac{3}{8} \times 6\frac{3}{4}$.

Ex # 126 - paper with glue spots & burn spots.

Break

Officer Wolf Talking yet.

Called to scene - tall 3 yr. girl was
in serious condition & taken to Children's Hosp.

Sgt Bock & Wolf checked out residence. In
kitchen was clothing on top of garbage bags.

Found adult jeans, child's jeans, soiled pants,
child's t shirt etc. He went to stairs, checked
carpet with flashlight on hands & knees. Carpet
was very dry & no blood on carpet.

Heard TV upstairs very loud. Checked stairs,
each step, found no blood on them - no tissue,

steps were dry - Top of stairs found Toys -

checked out children's bedroom. Window open

with book - Very warm upstairs. Fan was
not on. Went down hall to Play room. Adult
bed on floor. Sgt Bock photographed at this

time. Checked out food supplies - plenty of
food suitable for adults & children. Milk,
cereal, meat. Then checked out bathtub.

checked thermometer - went outside to check.

" behind garage - found no tracks in new light
snowfall. No footprints at all on East side, also

none on north; no tracks on west either,
undisturbed. Nothing in shrubs. Found no
blood out there, no vomit. Went to the
garage. Car was used & dirty. Attached to
house, but no door to house. Went back to
house - to stairway area. Measured steps
with Carl Back, deputy. On stairs was small
toy & another one had one small toy - Red tractor,
yellow fuel tank, small plastic.
No blood or vomit on toys.

Photo E, # 14 - Standing on top of stairs looking
down. Rabbit holding door open to stairs.

Picked up evidence & checked thermometer
again - still on ^{set} 90° but only 70° in room.

Got search warrant next day - Went to jail
and talked to Brian along with another officer.
Tech. Scheibel took tests of Brian. Then went
back to house again by 9:30 AM. Two officers
had watched the house. Went to front door,
door opened hard. Checked thermometer again
had climbed to 74°.

Put on filter on light to pick up blood.
No blood on stairs. Picked up evidence
& marked it. Took numerous towels, wet ones,
taken to evidence room & dried before sealing.

Show photos of bathroom - # 128 photo
Master bedroom next - # 129 photo - TV on loud.

● Sgt. Wolf continuing.

Show me jeans again.

photo - Ex # 130 - front door & clothes on garbage bags.

Jeans had stains on inside of back of them.

They then talked to John O'Laughlin, farmer.

Got information on access to basement. It had a cellar trap door in back of ~~ice~~ house, covered with ice & snow. Could not open.

Checked front porch - found no blood.

Left house at 11 AM. Checked thermostat again, before, was on 90° but temp was 73 or 74°.

Went back later on ³⁻¹³ - got key & search warrant.

● Officer ~~Sgt~~ ^{Sgt} ~~Torberg~~ ^{Torberg} let them in. Video taped - house now. Thermostat turned down now to 70°.

checked lock on front door.

March - went back to house & got bathroom trap.

Took plumber with him to take trap.

also took trap from laundry tub.

X Found small board under Nikki's mattress. Showing video ex # 131 - first thing tomorrow.

April 22, 1997 - Tuesday -

Witness Deputy Wolf - again continuing from yesterday
He saw no clothing outside the house at all
or on the roadway. He went to Laundry
Room - dryer was full of clothes, dry but
cooled off.

Showing video of the house. Coming
on porch, kitchen, etc. Carpet with battens
stairs removed by officers -

L.R. - Storage Room, Stairway Brian's
farm set, girl's room - all rooms upstairs
& the TV - that was on.

Back to Deputy Wolf -

E's arguing about the Glue Gun not seen on
March 9 - found later on by Tina.

Telephone Bank on steps. E's wondering if
telephone bank was tested for blood. Wolf
doesn't remember Says ^{Wolf} no - after looking it
up. E's says it could have been rust
in the water instead of blood - E's saying
about the bathtub drain that Wolf says
may have had some water around the drain.
asking about dampness in areas of house. Says ^{Wolf}
there was lots of people in there with wet
hoats. E's says that rust was apparent,
right - Wolf says yes. Rabbit holding stairway
door not seized for evidence. Wolf saying they

used a blue light filter on their light to pick up blood stains easier. E's showing picture of stairway & wondering what date taken. E's arguing about moving the plywood and the yellow tape. E's questioning about Wolf walking around the house. Seen still shining, officer Rosen took pictures on March 10.

Back took them on March 9.

On March 10 - Sgt Forberg, Wolf & — plus Hennepin County people were there with the Search warrant from 9:30 - 11:00. Took more items from house & inventoried them, sealed in brown bags. Forberg also did one.

Pair of child's underwear found on top of stairs taken for evidence also. Pair of white underwear also taken to lab.

E's still questioning - Mackenzie's white jeans were seized on March 10 - He says the jeans were touching the garbage bag on March 9, but not on 10th. Wolf says

E's picking the pictures apart in every detail and arguing with Wolf about little details.

Sees Schabel's shoes - asks about them.

Pictures #110 & #130 - Some items were moved piece by piece & only items thought to be evidence were seized.

Picture #109 - showing jeans again - Shows jury the pictures

Thomas Howe, Judge:

Tom Harrison now - Still Wolf

Asking about notes taken at scene.

Back to E's - arguing about just when they went outside to look around. E's asking about met tunnels around toilet - Wolf says he doesn't know why they were there. He took as evidence.

Tom now -

Wolf says they took pictures of car - then drew diagram of house, checked the thermostat again & left the scene.
Wolf done

* Witness Deb Peterson - Bach of arts degree.

Psychologist - interviews young children.

Corner House - disciplinary place - looks like a regular home from outside. Inside are police officers with closed circuit TV. Play area downstairs, reception area - Interviews Room with couch - telephone - Pad of paper - Technical Room - one ~~room~~ way mirror so ~~TV~~ camera can watch - Doctors Room etc.

Interviews Kids in 5 stages - Has int. 660 Kids in her 4 years there. Saw Nicole March 20. Videotaped it. Will show it here in Court Room.

Ex. 140 & 140A - Tapes Tom asking her about Nicole.

Break

Deb Peterson yet.

Mike said Don't draw Brian

Playing tape of Nicole at Corner House now questioning Deb P. Free Recall question means

(75)

asking child what happened.

Focused Recall -

* Witness * Don Bisek - Detective on case. Employed
by Shakopee for 29 years. Retired now
on call March 9.

Mackenzie had been taken - he met ambulance
He spoke to everyone there. Asked Brian
to go for interview at Shakopee. Sgt Kaley
Brian in back seat, Bisek driving.

Interviewed Brian, Videotaped it. 3 PM to ^{3:35} 3:35 PM.

Bisek returned to residence ~~by Bisek~~ with
Brian again. Went inside house. Bisek
went to hospital, spoke with Dr. Malen.
Called the house, told them to bring
Brian back to Shakopee. Went to interview
room again. 4:55 PM to 5:40 - interviewed him.

¹⁴¹⁺ Ex. 141 Showing Video of Brian's interview at Jail.

^{Ex 142} ^{142A} 3:10 PM - Brian called 911

Break
for lunch -

Discharged from Army with a torn ligament.
Described Mackenzie crying, vomiting, pooping,
cleaning her up. He laid down on couch
& went to sleep with Kenzie on floor naked.

3:35 Brian released & asked if he was going
back to work - He said I have to let him know
anyway if I don't come.

Bisek took him back to house. Tina had
not returned. another video - 2nd interview of Brian

Thomas House, Judge

March 9 - 4:55 PM - Brian Tapes -

• Read his rights -

Says Mackenzie is in serious condition. Bisek had talked to Doctor - Says Mac is bruised badly - Child bruised head to toe. This child is abused!! You're only adult there. Doctor is astounded at this! Child probably will not live! Child has not been abused in my presence.

Says they went to visit and came home at noon. Tina left 12:30 - or 12:45 he says. He was sleeping. Bisek says child has been abused!! You were the only adult there! Bruise marks on her. Child bruised head to toe & side to side.

Brian says he didn't touch her. Polaroid pictures show really bad bruises. Dr was shaken & had never ~~seen~~ ^{seen} a child so badly bruised. I'm not lying, Brian says. Bisek says she was badly, badly, badly, badly bruised & beaten. Nicole didn't do it, she's too small, Bisek says. Brian says he didn't do anything to Mackenzie. Kenzie's body temp is extremely low Bisek says Doctor told him. Body temp can drop from trauma, but not like this. Bisek says I did

you put her outside - Brian No - I wouldn't
do that to punish them. ~~the~~ something
happened to this child. Brian seems Calm!
Bisck calls to see what time 911 came in.
~~Call paper~~

Bisck says we can't explain this?
Brian says he only touched her private
parts when he cleaned her poop off.
Brian says he never sexual abused Mac.
I never have sexual abused her!!
Asked about Tina coming home. Brian says
she was crying -

Brian says I told you what I know.
Brian says he slept 1 1/2 hours.

Mackenzie was in her bed sleeping,
when he went upstairs to sleep. In
1 1/2 hours she was at the bottom of
stairs crying.

When he wake up, Mackenzie was
shivering, vomiting, red in the face,
bruised on her belly and arm. Mackenzie
was scared. When he picked her up
she was talking - sniffling cry - She
wanted to lay down.

Bisck says the info he got from Doctor
says you were the only one there. Brian says
I didn't do anything to her. when I picked

her up she didn't act like she was hurt. Bisek says he's wondering if she has broken bones. She could sit up by herself but he laid her back down. She was normal 3 year old before this.

Arrests Brian now - Bisek says he talked to Dr. since being at the house so now I'm going to arrest you. This child has been victimized. I don't understand why, but why am I a suspect? - By Monday we will know more, Bisek says. Bisek says when Mackenzie is in serious condition & sent by Helicopter to Children's Hospital. For a Doctor to be shaken so badly is a rare case & Doctor never seen one so badly injured. Why is ^{her} ~~so~~ temperature so bad - It's very hot upstairs but her temp is so low. Doctor very concerned about it, all Mackenzie said she wanted her Mom - & shivering. He only assumed she fell down the stairs, he was sleeping. He awake from her crying & found her there. Bisek said to police get Tina to that hospital right away, she needs to be there. Bisek upset over his answers - Brian says I only told you what

gets House & 1500 a month

I know. Bisek says the condition is very grave, I have to hold you as a suspect.

Brian still talking about his life. Says he wanted to farm & loved it. Hated factory work.
Neil talking now -

Bisek said he then met with officers and decided they needed a search warrant. Bisek then went to Children's Hosp. - met with a social worker there. about 8 by then.

Interviewed Tina at Hospital about 8:30 PM to 9:45 PM. Taped her interview. Bisek picked up swabs from Children's Hosp. & took to Shakopee Police & sexual assault Kit which was sealed. Gave to Carl Boch there. Returned about 11:00 or 11:30. He dictated report on what had happened on Mar 9. on March 10 - Bisek went out to the house. Talked to Children's Hosp. checking on condition of Mackenzie. Said she had died.

March 11 - Went to Kathy's to talk to Tina. at N.R. Mather; Ted, sisters there. Recorded interview with Tina. He has ^{more} talked to Tina 4 or 5 times - all taped. He wanted to keep good relation with her so was friendly interview, to keep in touch. Tina said she would release medical info from N.R. etc. to Bisek. Interviewed other & audio Taped & transcribed later.