

# The Actual Handwritten Trial Notes

Day one of the trial, instructions, etc.

Motion brought forward by Gray to dismiss evidence by Nicole about Dr Levitt exam to Nicole.

Statements made during physical that Brian had touched her.

Neal: the physical was justified because it was 3 days after her sister was abused and murdered. Talked about Nicole during competency hearing. Because of the severe injuries to Mackenzie the authorities requested the physical.

Gray: Introduced 911 tape. Brian is on the phone with dispatcher. Nicole comes down and asks "What's going on"

Agree

Agree to exclude any ordinance by Justina

No polygraph information accepted.

Exclude any Onn Rashba opinions.

Agree To Receive hearsay on what June Markst was told by Mackenzie.

DNA evidence and statistical <sup>probabilities</sup> will be admitted.

Admit whole back side photograph of back injury. Pelvic size. Another photo showing brain swelling.

Discussed photos - they will ~~not~~ be able to go back for jury deliberation.

Videotaped interview with Brian being taken to jail and also searching Brian's clothing that night.



No testimony about Defense comment of girls using crayons in vagina.

Pictures of Mackenzie while alive and also after autopsy admissible after opening statement.

Gray: If Brion's psychological profile is admissible then Nicola's testimony should be thrown out.

Judge: Profiles don't mean squat.

Gray: Alleged abuse ~~by~~ Nicola should have no bearing on this case.

Today will be opening only. Normal instructions to jury.

1:00 pm

to the jury about the  
Judge's Indictment -

- 1) murder 1<sup>st</sup> degree, death of child, sex. conduct w/ force
- 2) murder 1<sup>st</sup> degree while committing child abuse w/ past history <sup>resulting in</sup> → death
- 3) murder 2<sup>nd</sup> degree w/out attempting death
- 4) criminal sex conduct in 2<sup>nd</sup> degree
- 5) " " " 1<sup>st</sup> degree - used force

Presumptions

1. presumed innocent of charges
2. proof beyond reasonable doubt by prudent men/women (Use Common sense).

Evidence is from witnesses and exhibits only. Jury must decide the facts → guilty or not on 5 charges. Determine believability + weight of all evidence:

### Witnesses

- 1) witness's interest in the case outcome
- 2) " relationship to the victim
- 3) opportunity to witness + relate facts
- 4) appearance
- 5) age/experience
- 6) frankness + sincerity
- 7) reasonableness
- 8) impeachment of testimony { statements/conduct from prior statements
- 9) other factors

### expert witnesses

- 10) education, training, knowledge
- 11) reasons given
- 12) sources of information

### Evidence

- 1) direct = saw, heard, experienced. Physical evidence
- 2) circumstantial = reasonably inferred from other facts

What attorneys/judge say is not evidence.

Objections based on rules of law from Supreme Court, state and federal.

Time - expedite but time for accuracy. 9am-4pm daily



Opening Statement over all view Trial  
3-5 weeks

Case about  
(Tom:) Mc's secret of child abuse!

March 9

12:45pm Tina leaves w/ 2 women

Mc nap N downstairs playing

B said he checked on Mc - asleep 15 min later

2:12pm 911 call Mc fallen, not breathing

Policeman Ronald Shear saw 3yr. Mc

naked, on back B on phone, no CPR.

Mc unconscious Bruises head, chest, stomach

No pulse. Shear began CPR w/ 2 fingers.

Mc skin cold. Wet hairline. Blood on gums.

Other police arrived. Back - Mc burn mark on arm

Check bruises, eyes. Blood on front lip.

N. came downstairs. "Why police?"

Heart monitor. Bag for breathing w/ tubes.

Got heart beat. B: "She's going to be OK, then?"

To hosp. Ambulance: Round burn by nipple. Bruise on wrist. Buttocks. Abrasion on chest. Pupils fixed, dilated.

Asked B why Mc naked: "always sleeps like th  
Too hot." Call for detective! B = "I'm in trouble

Mc blood pressure -  $\frac{1}{2}$  of normal. Glasgow score

deep coma. Puncture wound in ear. Abdomen extended (internal bleeding) Many bruises!!! Hemoglobin count  $\rightarrow$  lost 20% of her blood. Blood poured out of Mr's anus. Also vagina. Temperature taken under left armpit.  $83.5^{\circ}$  Dr. ordered blood plasma etc. Hypotensive = blood vessels collapsing. Placed line in major vein in chest. Bear hugger to warm body. Boggy on left temple (blood collecting under skin). Brain dying. Called Children's Hosp. for air ambulance helicopter.

Det. Besicki talked to B. again.

Dr. David Desenko Ch. Hosp. Pediatrician

3:45 pm Sharply delineated bruise on back + legs. Bleeding in back of retina (eye). Body totally placid (eyes didn't blink, no gagging). Brain not functioning. Only agonal breathing (irregular, before death).

In helicopter = drugs (blood to clot, etc.)  
Hosp. = CAT Scan 4:43 pm Bleeding front, sides, back, top of brain  $\rightarrow$  swelling. Blood supply choked off. Because of swelling, brain stem crushed. Dying, but still tried to resuscitate. Protocol followed. 5pm Ped. surgeon called in. Dr. Schmaling. Also saw finger tip pressure bruise on head. L shaped bruise by nipple. Etc.



Vagina = 2 tears <sup>in hymen.</sup> still bleeding at 5pm.  
Tears at 3 o'clock and 9 o'clock. Fresh.  
From penetration. Biological samples at  
both hospitals. Dr. Levitt. No semen present  
(Often washed away by bleeding.) due to  
blunt force trauma. Stretched to tear in 2  
places. Not from falling downstairs!

Separate Dr. 12 hrs. later. Agreed on  
brain death. Medication + equip. kept  
breathing.

March 10 Dr. Desenko  
met w/ family. Breathing  
tube removed in afternoon ~~From~~ 3:10pm  
heart stopped.

Battered child, death from head trauma  
March 11 body to Med. Examiner for autopsy <sup>Dr. Thom</sup>  
Weighed 37 lb, 38" tall. Multiple abrasions  
Above right eye, along cheek, jaw line.  
Sidel incisions in buttocks → <sup>found</sup> abrasions.

Vagina bruises at 2 <sup>o'clock</sup> ~~pm~~, 2 tears 3 + 9.  
Swelling.

Internal organs scalp/scull bleeding  
dura = several ounces of blood  
Spinal cord bleeding  
Lg. bowel filled w/ blood. Anus bleed

Dr. Cameron examined eyes. Very specialized (50 in world). Both retinas bleeding. Top of brain bleeding, inside, brain stem. Buttuks = bruises from spanking. In Curve of back also = was thrown against wall or something rammed into back. Eye lid bruises → slopping in face. Right cheek fingertip bruises → struck/grabbed. Rugburn of arm + face → rough fabric. Pattern shows a struggle. Under belly button → stick. L shaped → hit w/ end of stick. Outside of vagina + hymen penetration. Retinas bleeding → great force of head against object. Total injury to the head, left side → brain injury/bleeding. Mc <sup>immediately</sup> lost consciousness, breathing problems. Shearing injuries. Brain injuries massive - would have become "different". Like swung against a wall.

B met Tina in Jr. Hi. Sean ~~is~~ biological father of both. Late Nov. <sup>started going</sup> w/ Brian. Dec. overnight at times in New Richmond. Dec. 16 2 people = babysitters = Megan Campeau + Renee Hexum. Bowling overnight. Bath. Mc dark bruises <sup>+ lines</sup> on both buttucks. N said "B spanked Mc."

June Merkt babysat Mc. after Christmas. Bruises on both cheeks. Faint purple + yellow. Mc said "B spanked me bec. I was naughty."



June confronted B. He admitted it. June = "Isn't appropriate. Need to be patient."

B. = "Spanked, left bruises out of <sup>both</sup> finger + discipl. Jan living tog. in Rochester. Mc to hosp at Mayo Clinic. Dr. Aline Lehman. Finger Jan 9 swollen but no fracture. Jan. 11 again. Finger jammed into wall. Splint bec fractured. Later a cast on Jan. 17. Told to come again, but didn't. B removed cast. (Hurt finger on toy car).

Feb. 23 Tina to Wisc Connie's  
Saw Sean + Anne R. Feb. 24. Bruising shown to Sean, 3 Hancocks (Aldo, Rosemary + Tom) and Liz Parrott. Chin <sup>bruise</sup> bigger than silver dollar; on back 2-3" long; black on spine, 2 scabs on back, grayish-blue 2 1/2" long under arm.

Anne asked what should I do? Tell somebody.  
Mc told Sean "B spanks hard."

N. said "B spanked Mc hard."

2 scabs on back = Mc said "B spanks hard."

Anne called NR Clinic Joe Beuney. Set up appt on Sunday aft. but Tina called and said to take girls back to Connie's so she did. didn't go to Dr.

Moved frequently. Jason Carretti June '94 -  
Tina lax in discipline but no bruising. Broke up bec Tina wanted permanent relationship and he didn't  
Brian Nelson 8 mo. Lived tog 4 mo. Tina



never spanked. Sent girls to their room. Found Tina + B tog. in a bar so broke up with her.

Co workers = 2 mo. Bear Buddies. Sept-Oct.

June M = B said Tina was not strict enough w/ girls.  
Sean - theft, drank alot. Sean gave custody to Tina. Saw girls Feb. 24 Upset about Mc's "broken finger" "I'll make B pay for it if B is hurting girls".

Anne asked for custody. Objection

Child Protection Worker - Tina letting kids run unsupervised and dressed inappropriately. Unfounded

Sue Limburg nurse - Sept 14, 95 exam. Normal Lots of energy. Falling/stumbling? = NO! Behind in imm <sup>3<sup>rd</sup></sup>

**BREAK**

Mr. Olson - family dr. no unusual bleeding or problems. Last visit in July.

March 9 B. Provided a house. B. farming set played with at middle/end of day. Worked 7 days/week. 2 days off/month. Nap in afternoon.

Got up 3:30 am 4:30 am to work 9:00 breakfast

To Ron Jeddens house. Tina w/ Robin. Robin in bath

Mc urinated - no blood, bruises. <sup>ate</sup> 6-10 Blueberry pancakes

Decided to go shopping. Mc running around, not obedient. N + Mc wanted to go along. Cried.

Noon went home. Tina + Mc nap, B playing w/ farm

12:30 pm Robin called. Picked up. Decided not to

bring girls. 12:45 pm w/ Anne + Robin Jeddens

B interviewed by Police 3 pm + 4:45 pm

B paid Mc sleeping in T-shirt. Slept 15 min. Saw Mc lying on LR floor. She pooped and he cleaned her up. Vomited. Cleaned up. Dozed off on couch Mc blue, on floor. Did CPR 5-10 min. Called 911. Mc crying, bruised, conscious. Fell down stairs Bruises on face from wobbly chair.

Police found Mc very clean. No blood.

March 25 seized drain trap. Presence of blood

April 12 spray luminall in bathroom + tub.

Minute amounts of blood will glow, even if cleaned Tub glowed! 70° in LR in house.

Hypothermia expert Cold water = <sup>Cools</sup> faster than air. When ran cold water in tub = 41°. Mc 83.5° showed severe hypothermia.

Luminall sprayed on stairs and walls. Removed Carpet bottom of stairs. No blood!

Items seized white Guess jeans w/ fecal matter downstairs. Mc blood. B black jeans on top of child's jeans on top of Mc jeans. Crotch - blueberry in vomit. Also <sup>Mc</sup> blood on zipper area.

Analysis: [Blood cast-off, splatter, dropped blood, stains. B's Underwear shirts (brown) Inside was sleeveless shirt. Mc blood on neckline and left sleeve and cent Vomit w/ blueberries on front.

B's socks = blood

B's Longjohns = blood, lower left leg. Crotch also →



Close to a blood source being subjected to force.  
B's green briefs - spot of semen. No sex w/ Tina for  
3 weeks before bec. morning sickness.

Swabbed B's genital area - dr. Crocask  
3-4 day old cut on thumb. No evidence of blood  
until used Hemistick (swab w/ chemical) on penis.  
Got a weak positive for presence of blood.

March 22 called back by Tina. Stairs seemed  
loose. Only  $\frac{1}{4}$ " loose. Carpeting not loose. Toy  
tractors had been knocked down.

Towel from emergency room floor. Found blood  
but didn't match anyone's. "Ralph Loren" towel (not Tina's)

Bach & Wolf inspected house on March 9. In back  
snow. No footprints. Front door broken latch.  
Got Search Warrant for next morning. Police officers  
placed there at 10pm March 9.

Tina saw police cars - (afraid license tabs expired  
Robin noticed B wearing different jeans. Robin drove  
Tina to Ch Hosp. Relatives at hosp. June Merkt also.  
N to playroom. Intend to call N bec present in  
the house. Don't know what she'll say. Has said  
B spanked Mc. In playroom when Mc hurt.  
Told Dr. B pushed Mc downstairs. "B used  
paddlestick to spank Mc." "Mom was gone." Said  
Mc didn't like B. Mc crying when Tina left.  
Later said Mc was napping. "Mommy at the store."

Heard B yelling and Mc crying.

Dr. Levitt examined N. on March 12.

Interview on videotape at Cornerhouse. Draws pictures. Mother. Brian = "don't draw him!" B. pushed Mc down the stairs but didn't see it. "Spanked on the butt." N. lied. Objection

N told Ann liked B. "I lied when I said B push Mc down stairs." N = my fault. (?) Uncle

Tina interviewed 5 times Objection

Tina initially said back injuries from falling on bunk bed. Didn't see bruises of Feb. 24. From changing her clothes (jaw). Allowed B to discipline Mc. B was going to adopt N + Mc. Engaged.

Blood on jeans B said jeans were dirty and had been there for some time.

Asked B why Mc naked - always sleeps like Jesus on jeans + panties. B said touched privates only when wiped poop off. (Mc wiped very well - many witnesses).

B "Mc smeared poop all over." Found only in back of white jeans, not front.

83° = unable to talk. Not conscious.

B blood on guess T-shirt = probably grape juice. Later said used to wipe Mc mouth with.

B said only spanked Mc once.

Evidence taken - chain of custody



No instant replay. Witnesses only once. Take notes  
Not in chronological order. Pictures.

Last hr. and 27 min. of Mo's life.

3:45 pm Adjourned.

(6 men + 10 women)

Wednesday  
APRIL 9, 1997

# Metro/State

B  
SECTION

Star Tribune

Brian Merkt is charged with first-degree murder and rape in the March 1996 death of the daughter of his fiancée. On Tuesday, the jury heard opening arguments – and harrowing details.

## Scott County jury is told that 3-year-old was raped, died of injuries to brain

By Jim Adams  
Star Tribune Staff Writer

Brian Merkt was in 3-year-old Mackenzie Bussiere's life for a little more than four months, but it's their last minutes together that are being reconstructed this week through the testimony of crime technicians, doctors and other witnesses.

Merkt is on trial in Shakopee, accused of raping and killing Mackenzie, who died of brain injuries that, a prosecutor said, could have been inflicted by an adult slamming the child's 37-pound body against a floor or wall. "This trial is about the last hour and 27 minutes in the life of Mackenzie Bussiere, and it is about the man who ended it," said Scott County Attorney Tom Harbinson.

Merkt, 23, is charged with first-degree murder and rape in the death of Mackenzie, the daughter of his fiancée, Tina Bussiere, last March. He is free on bail.

Harbinson told the jury that traces of vomit and the girl's blood were found on Merkt's un-



Mackenzie Bussiere

dergarments, including the crotch of his long johns. He was living with Bussiere and her two daughters in a house on a Shakopee dairy farm where he worked. The victim had rug burns on her chest, arms and face, as well as scrapes and bruises on her head, arms, thighs, buttocks and back.

Merkt has told police that the youngster had fallen down stairs while her mother was shopping. Then, he said, she vomited on him and soiled her underwear.

Turn to TRIAL on B2



TRIAL from B1

## Victim's sister said Merkt had spanked toddler before

When Merkt was asked why Mackenzie's underwear had her blood on it, he initially said it might be grape juice, but later told a detective he used her underwear to wipe blood off her lip after her fall, Harbinson said.

Harbinson didn't specify a motive, other than to say that Tina Bussiere would testify she hadn't had sex with Merkt for three weeks before her daughter's death because she was pregnant with his child and had morning sickness.

Mackenzie's 5-year-old sister told police that Merkt spanked Mackenzie, causing bruises, which were noticed by relatives after Merkt started dating Bussiere in November 1995, Harbinson said.

When doctors examined Mackenzie at St. Francis Hospital in Shakopee they found her temperature was 15 degrees below

normal, indicating hypothermia, Harbinson said. The first police officer on the scene said it appeared that Mackenzie's face had been washed when he gave her mouth to mouth resuscitation and police found blood traces in the drain trap of the bathtub, Harbinson said.

He implied that Merkt had used cold water to wash blood stains off the girl, which caused her body temperature to drop.

Defense attorney Earl Gray conceded that Merkt spanked Mackenzie once, causing bruises, but said Merkt agreed to stop spanking thereafter. Gray said Merkt had been sleeping for about an hour after the girl's mother put her down for a nap and left to go shopping.

During that time, she could have gone outside, injured herself

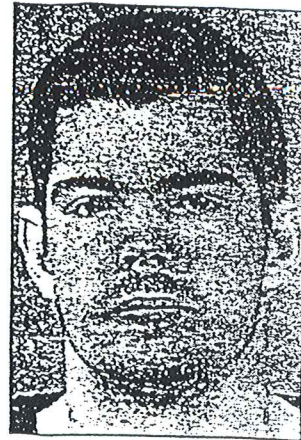
and become hypothermic, Gray said. He noted that the house was overheated and Mackenzie usually slept in her underwear, which Merkt removed because they were soiled.

As to the perforated hymen found in the 3-year-old's vagina, Gray said: "We don't know how that happened."

He said a doctor will testify that the injury could have happened if the girl hit a toy a certain way as she fell down the steps.

"We do know he didn't do it. At least we don't believe he did it," Gray said.

Gray also said police found no trace of the girl's blood or hair on the walls. "There is no evidence that he ever whapped this girl's head against any wall," Gray said.



Brian Merkt

Harbinson is expected to call dozens of police officers, medical experts, family members and other witnesses.