

This head injury was unlikely that it was from striking an object.

Earl
May

No shoulder injury. Says she could have walked around after her injury. She could have been conscious for awhile. Could have lapsed into a coma later.

Kids vomit from head injuries. How long till she would quit breathing - Doesn't know.

Type of injury - once she had been injured & had brain swelling, she could die. Her head injury did not cause her death.

Her hypothermia was ~~caused~~ caused by being cold. He went out to the house 10 days later. She could of gone outside awhile & caused hypothermia. It was 26°.

Snow is a sufficient conductor of cold.

Looked at walls, didn't see any evidence of blood. Paneling on wall. Injury on her arm & underarm may have been frost-bite. Her vomiting shows she had head injury. Mackenzie stopped breathing because of hypothermia. He has done more than 2000 autopsies. Your opinion was homicide.

at Grand Jury. Means it is caused by another individual without intent. Her bowel movement may have been caused by brain injury. How many hours on this case about 40 hours.

(116)

Do you know what caused her death?
No - She had to have been outside or placed
in cold water. Bleeding from colon was
caused by hypothermia.

Tom
now
questioning { In review of this case he read reports
from Hen. County. He noted that her
head was about 19 inches around.

Ex 13 Bruises are on cheek, chin, being struck
on these by hand. Not from a stairway
Direct force injury on face & eye
were not from the fall downstairs.

She was either struck or slammed against
something - Bruise $1\frac{1}{2}$ to $\frac{5}{8}$ inch across.
Not from a fall.

Her head injury was the main cause of death.
Injuries could be caused by someone
slamming her into a ~~severe~~ surface.

Pg 65 She couldn't have received These injuries
without help. Could not have torn her
hymen without someone doing it.

Her injuries could have all happened
within 5 minutes. Plywood wouldn't
indent from slamming, because plaster behind.

Ex 218 - Chapter from book on neuropathology.

Wouldn't ~~matter~~ ^{matter} if floor was carpeted or not.

Child abuse has multiple injuries, not only
one.

Look for injuries occurring over a period
of time to define child abuse.

Recessed - for arguments of attorneys.

Dr Pleckhett -

on Brain swelling - it can occur very
quickly - within 20 min. They wrote articles
on these kind of things. Retal hemorrhaging
can be caused by brain swelling.

Bowell injury -

Recessed - 4 PM -

Continued -

(118)

11

11

April 29 Tuesday 9AM-

Coroner

Kenzie has multiple injuries, that
couldn't have resulted from a fall down a
tom H. stairs. Bruises on her shoulders, chest, arms
stomach, head-brain. Picture shows

Ex 16 bruise on side of shoulder. Abdominal
Ex 33 photo trauma - blood in abdomen - Head slams

usually don't have secondary bruises
also. How long does it take for her Temp
to get to 83° as to her height & weight?
Coroner answers - His ^{1 hr 15 min} opinion: Hypothermia
cause have caused her breathing to stop &
heart to stop. If she had not had the brain
injury besides she could have recovered.
→ If she had only hypothermia she could
Earl Gray have survived, right. Yes.

How many autopsies of children have you
done - Over 100, Coroner says.

Some of these could have been from the fall,
or being outside & hit by a car & then
walking back into the house. ones on
the stomach or small of the back would
not be from the fall down stairs, maybe
she tried to walk up the stairs & fell back
down, Earl Gray says.

119
Tom
again

Do you think she could have fallen down

She had no fractures anywhere.
✓ Hymen tears do not occur from falls.

Earl
Gray

everybody hit by a car doesn't receive fractures, right. ~~Q Q Q Q~~

Tom

When the police drove to the scene, did they see any sign of an automobile accident?

Earl

→ Brought up about the Ralph Lorenz towel.
Did any of them ever look for debris?!!
from an accident -!! Earl Gray mad!!!

9:20

Recessed jury ~~no~~ attorneys could hash things over.

9:40 Break -

Resumed - 10:30

Audrey - they lived with her for a period of time - 1:30 March 20 - Counsel agreed to accept her statement with Det. Lawrence
Mr Gray reads:

1. All the time have you seen any bruises

Brian talked to them - Had there, No.

Brian shoveled my driveway all the time.
Made a tunnel & iced it - He pulled the toboggan with kids on.

No arguments, no fights - Brian says - Will

(20)

P11

the kids ever call me Daddy, do you think.

* Defense rests their Case

Tom Dr. Schmeling not able to return again to finish, so has been excused.

* Witness Dr. Daniel Dangle Cincinnati grad. In Emergency medicine at Louisville now.

Wilderness medical center on hypothermia now. Written articles on hypothermia & frost bite.

Treated patients on frost bite, which is a freezing of skin - the water tissues in your skin freeze - It is a different kind of burn. Epidermis doesn't come off with frost-bite. He consulted in Mackenzie's death.

4:30 Looking at Photo - right forearm - doesn't look like frost-bite - abrasions - contusions - Her face doesn't ~~like~~ look like it either. He can't see anything on her that looks like frost-bite. \$200 an hour ^{hourly} fee goes to charity \$400. Total and expenses are paid.

* Craig Robson - here previously - Officer Police Dept. First ones on scene along with Scherer - Police Scherer walked in first.

Brian was wearing pants & shirt. wore same to ER.

(121) Earl Gray - Says - is this only your memory - No Notes?

Earl

Officers were in uniform except Kaley.
Kaley was in a coverall. Can't remember
if he had a cap on.

Neil
new

Earl objects - approaching lunch.

Neil - Did you notice any blood on Brian?
Would you have noted this if he had - Yes.

Earl & Neil go out in the hall & talk to officer Kaley.

Evidence Completed - ^{here at} 8:15 - start at 8:30, prompt.

Rebuttal
8:30

Final arguments -

Hopefully jury will get it early afternoon
woman & man bailiff here. May have to
stay at motel - no TV and phone disconnected.

218 exhibits offered during trial -

Wednesday, April 30, 1997

Judge: Rules of law - decide upon ^{view} questions of facts.
8:45-9:15 Instructions Rely solely on collective memory
not statements by lawyers, etc. Fact is proven by
direct evidence (witnesses, exhibits). Cir. evidence
Evaluate the testimony of various witnesses and the
evidence. Expert witnesses.

Presumed innocent of charges until proven guilty
beyond reasonable doubt. Arrest doesn't suggest
guilt.

Specific charges:

Count 1 murder in 1st degree, criminal sexual conduct
in 1st degree w/force and violence. Sexual penetration
under age of 13, more than 36 mo. older.

Intercourse, anal, or any intrusion however slight.

5 elements state must prove: (all five)

- 1) death of mc
- 2) defendant caused the death
- 3) " was committing sexual conduct
- 4) force and violence → bodily harm
- 5) took place 3-9-96

Definitions: while committing crim. sex conduct =
one continuous transaction = chain of events
Force = infliction by the actor of bodily harm

2. Count 2 Murder in 1st degree while committing child abuse after pattern of abuse

- 1) death of Mc.
- 2) Mc was a minor
- 3) death occurred during child abuse
- 4) past pattern of abuse
- 5) extreme indifference to human life
- 6) death on 3-9-96

(all 6)

Assault in 1st degree = great bodily harm.

Injuries create high probability of death
Child abuse 3rd degree under age of 4 and causes harm to head, eyes, neck or bruises

5th degree - intent to cause fear of bodily harm (physical pain/injury)

Malicious punishment - unreasonable force or cruel force

Past pattern of abuse - observable acts that prove pattern of behavior. Specific dates not necessary

3. Count 3 - murder in 2nd degree w/out committing a felony

(all 4)

- 1) death of Mc
- 2) defendant caused death
- 3) " attempting to commit assault in 3rd degree (inflicting harm to head, eyes, neck)
- 4) On 3-9-96

(124)

4. (Count 4) Crim sexual conduct in 1st degree
sexual penetration under age of 13 when 36 mo.
older.

- 1) def. intentionally penetrated Mc. Any
intrusion, however slight. Vaginal or anal.
Semen presence not necessary.
- 2) Mc under age 13
- 3) def. older than 36 mo. older than Mc
- 4) On 3-9-96

Intentional - actor has a purpose. Realizes the
outcome

5. (Count 5) Crim. sexual conduct in 1st degree w/force
Committed without consent

- 1) def. Intentionally sexually penetrated Mc.
- 2) sex. penetration occurred w/out consent of Mc.
- 3) def. caused personal injury to Mc.
- 4) def. used force or coercion
- 5) On 3-9-96

(all 5)

Coercion = words or circumstances causing the
person to believe/fear the act or threat will occur.

- Break -

Thursday, March 14, 1996

NR High School grad charged in child's death

Brian Merkt, a 1992 New Richmond High School graduate, is charged with murder for the death of his girlfriend's 3-year-old daughter.

Mackenzie Bussiere, daughter of Justina Herdahl Bussiere of Shakopee, Minn., and Sean Bussiere of Roberts, died at Children's Health Center in Minneapolis on Monday, March 11 as a result of trauma to the head, according to doctors at the hospital.

The evaluation of 3-year-old Bussiere at Children's Hospital revealed multiple injuries, including bruises around the face, buttocks, chest and forehead, with abrasions on the abdomen, according to the criminal complaint filed against Merkt in Scott County, Minn.

"There was also a burn-like injury on the right arm and chest," the complaint states. "The examining physician noted that M.B. was a child with obvious physical abuse leading to severe cranial trauma and severe brain swelling."

Merkt was the only adult at home at 2111 East Valleyview Road in Shakopee on Saturday, March 9 when Bussiere was injured. Bussiere's mother was out shopping at the time.

Merkt phoned 9-1-1 at 2:11 p.m. to report that the child fell down the stairs and was not breathing.

The first officer on the scene began CPR after he found the 3-year-old girl on the floor, naked, not breathing and without a pulse, according to the complaint.

Although Merkt told the officer that the child fell down the stairs and had vomited, the officer at the scene did not notice any odor of vomit. Bussiere was taken to St. Francis Hospital in Shakopee and airlifted to Children's Hospital.

Officers at the residence spoke to Bussiere's 5-year-old sister who told them that Merkt was "beating up" her sister.

Merkt told officers he did discipline the two children by spanking them. He said on one occasion when they lived in Rochester, Minn., he had spanked Bussiere hard enough to leave a mark on her buttocks, but since that time he had not spanked her.

An Omnibus Hearing in the case is scheduled for April 11 at 9 a.m. at the Scott County Courthouse. The court will determine at that time whether there is enough evidence to bring the case against Merkt to trial.

Merkt is charged with second degree murder for which the penalty is imprisonment for not more than 40 years.

Bussiere's funeral is on Thursday, March 14 at 2 p.m. at St. Luke's Lutheran Church in New Richmond.

Defendant questioned about how he cleaned blood off hands on day girl died

By Jim Adams
Star Tribune Staff Writer

Brian Merkt testified Monday in Shakopee that he did not rape or murder his girlfriend's 3-year-old daughter last year. But a prosecutor in the Scott County courtroom highlighted contradictions about how Merkt cleaned blood off his hands.

Mackenzie Bussiere was found nude and severely bruised March 9, 1996, in the Shakopee farmhouse where she lived with Merkt, her 5-year-old sister and her mother, Tina Bussiere. Merkt, 22, was watching the girls while their mother was shopping. He has said that he awoke from a nap to find Mackenzie at the bottom of the stairs.

Mackenzie's blood and traces of vomit were found on Merkt's jeans and long underwear; Scott County Attorney Tom Harbinson suggested that Merkt forced her to perform oral sex. Harbinson noted that under questioning by the defense, Merkt said he washed his hands after cleaning Mackenzie of blood and taking off her soiled underpants. Lab tests found no trace of her blood or fecal matter under his fingernails.

But the prosecutor had Merkt review his statement to police that the girl's blood got on the crotch of his long underwear because he wiped his hand there. When the prosecutor asked Merkt whether he hadn't just testified that he washed his hands, Merkt replied: "I don't believe I did. No, I didn't wash my hands."

Merkt said his jeans were unzipped and the vomit could have gotten on his long underwear as he held the girl after she fell.

The prosecutor also got Merkt to admit that he spanked Mackenzie after January 1996, despite telling police that he quit spanking her after leaving welts on her that time. After that, "I patted her. I didn't take her over my knee and spank her," he said.

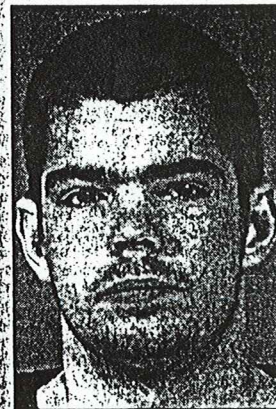
He said he couldn't explain how Mackenzie's body temperature dropped 15 degrees below normal the day of the incident.

"When I come home for breakfast . . . she was fine," he told police that day.

He said her mother, with whom he had lived for about three months, put Mackenzie down for a nap



Mackenzie Bussiere



Brian Merkt

about 12:30 p.m., left her sister in an upstairs playroom and went shopping. After checking on Mackenzie, Merkt said, he fell asleep for about an hour. He said he awoke to her screams and found her at the foot of the stairs.

In opening arguments, defense attorney Earl Gray speculated that the girl had gone outside in the frigid weather while Merkt was sleeping. Police, who found her blood stains in the bathtub, surmised that Merkt washed her off in cold water. He told them that he used a cold washcloth to wipe her face and never saw the profuse rectal and vaginal bleeding that doctors found.

Merkt said he placed her on the floor by a living room sofa to watch her, but dozed off. When he awoke this time, her face was blue and he tried to resuscitate her before calling police.

Harbinson pressed him:

"You beat up Mackenzie and raped her, and then you concocted this whole story about the stairway fall. Isn't that right?" he demanded.

"No, that is not right," Merkt replied evenly.

Gray followed with several questions, implying that Merkt's inconsistent statements may have been due to the pressure of the day he was interrogated twice and then arrested.

Said Merkt, "I was tired and it was hectic."

"Were you lying and did you beat this child that day?" Gray asked.

"I was not lying and I never touched her."

9:30 Tom - Prosecutors Final Argument

Thanked jury. About a 3 yr. old girl and a secret she and Nicole had - secret of child abuse. Mc died a raped and battered child.

Br. great dilemma - didn't call 911 bec. of concern for her. ~~but~~ knew he had to do something quickly bec. didn't want to have a corpse on his hands when Tina returned. Concocted a story of stairway fall. Contradicted by all the evidence and his own statements. doesn't explain vaginal injuries, bruises, 83° temp.

Boils down to one issue: either death caused by being beaten while being rape, or by an accident (fell, hit by car, etc.). Massive brain injuries.

Treating physicians agree ^{injuries} couldn't result from accidental fall. Inflicted injuries.

Mc was in a struggle. Interaction of another human being.

Evidence = clothing, witnesses, blood, DNA. Either Br. is lying or all this evidence is wrong! Can't say "we can't know what happened - too foggy" etc.

Br alone w/ Mc. Hymen torn 2 places. Vaginal area so bloody Mrs. couldn't do a thorough exam. Br didn't mention bleeding when call 911, HealthSpan, talking to Detective Plesnik.

Think of all the blood found on items: Comforter, Crotch of long underwear, towel, etc. Said fell down stairs. Br. said she was naked. Then said underwear on because fecal matter there. When asked about blood, said he only touched her in them 2 places was when ~~he~~ wiped her poop off. No fecal matter in front of panties. Didn't have diarrhea - had a solid stool. Not smeared all over. Vaginal injuries caused from cleaning her off? Grabbed her there! Not realistic!! When you change a child, you don't poke your finger up their vagina. Force, blunt trauma enough to tear hymen in 2 places. (Showed diagram). Br. said Mc was crying. Sensitive hymen, Mc. would have cried very hard. Bruise on left side of vagina but couldn't have been caused by casual accident (fingernail). Would have bled immediately. Hypotension / low blood pressure from alot of bleeding - Br. would have seen the bleeding.

How do we know he raped her? Abrasions on face and arms. Swabbed penis at jail and found blood. Nicole heard Mc. crying. Laundry on floor was disheveled. Mc found naked. The Comforter wasn't on her, she was cold, and her hair was wet. Not sweat.

Too much blood to reasonably believe these were

minor injuries - not eyes, ears, head.
Bled heavily from hymen - a mucous membrane.
Br. lied to cover up and didn't

Satisfaction of aggressive and sexual impulses. Lied. Don't going to admit it.

Catheters soft/pliable. Got clear urine return, not blood.

Problem w/ blood clotting but this doesn't cause tissue to tear.

Tom has to argue first w/ no rebuttal. Thinks they will say Br. didn't know anatomy/sensitivity of a vagina. You'd feel resistance/tearing of the hymen. Vomiting 4 times within

1/2 hr. Didn't call 911 or take her to hospital.

Kept busy wiping up fecal matter. Denies knowledge of vaginal tears/bleeding.

Br's behavior on 3-9 and overwhelming evidence show guilt. Br said Mc uncontrollable acknowledges Mc was awake after Tina left. Uncontrollable because being raped. Br couldn't stand this. Should there be injuries on Brian?

Mc only 3, 37 lbs. Br. 23, tall, heavy.

Could Mc fight back successfully? Injure him?

When told Mc wasn't going to make it, Br lights a cigarette. Not emotional.

Doesn't grieve.

Will review evidence bec. they're claiming it was an accident. These injuries tell what happened.

① Hymen tears caused by an injury - penetration of the vaginal canal. Blunt force trauma. Not an accident. ② Brain injuries caused by forces. Bridging veins were torn in her skull. Bleeding in the brain. Massive force like in auto collisions, not a fall. Picked up by an adult and slammed into a wall. Unconscious immediately. Stairway fall couldn't generate this injury (carpeted).

③ [Slide of left side of face] ④ Pattern injury - I on right chest - ruler or sharp object or thrown against furniture ⑤ Abrasion on left chest stick a ruler against abdomen. From a struggle. ⑥ Slap-like bruises to left eyelid. Was beaten. ⑦ Abrasion on left cheek - shows she was in a struggle and was conscious. ⑧ Forehead ⑨ Cut on lip from being struck in the face with a hand. ⑩ Bruises on lower back. Not caused by a car. Same area as Ann Resler saw ~~in~~ on 2-24. Very interesting! Struck more than once there. Not from a fall. Injuries on both back and front - can't do that falling out a window.

⑪ Bruise (scraped off) on left chest. Ann R. saw in this area "Girls told her Br spans us, spans us hard."

⑫ Paddlestick mark on abdomen.

⑬ Abrasions on left arm

Not from an accident. These injuries tell a story!!! Struggled. Bruises on buttocks (Ex. 18) Nicole told Dr. Levitt Br. spanked Mc on 3-9. Stairways, cars, falling off ledges don't give spanking injuries.

Hypothermia - no picture. One of 2 ways: being outside ^(1 hour) or cold bath (20-30 minutes).

Timing: Not enough time to go outside / hr. Couldn't fall between the railings. Photo taken 3-22 (late). On 3-9 plywood was up against railing. Wasn't knocked down.

Mc. head $6\frac{1}{2}$ ". Railing $4\frac{1}{2}$ " apart.

No bruises on Mc ankles doesn't mean she wasn't picked up. Don't usually see secondary bruises after a child is picked up and thrown in a homicide. Ex. 33 bruise on arm isn't a fall bruise. Mc picked up and slammed.

Children do fall and have accidents. Doctors who treat living kids testified.

Credibility of the def. is critical! Br statements say Mc bruised easily - Both Br + Tina said. What ^{interesting} anything to say. I am checked No for bruising/bleeding problems. Det. Beesik heard she bruises easily. Not my actions (Briars) but she bruises easily.

Injuries from a wobbly chair on face = Br.
Couldn't find those on the picture.

Clepsy child - falling down while
changing her clothes, etc. Tina said so too.
Easy to ~~blame~~ ^{blame} inanimate objects.

Br. told det. Beesik "I was fully conscious
when picked up from stairs. Looked fine!"

Mom. say she wouldn't be conscious, would be
bleeding, bruised. "I'm talking, asking for her
mom. Couldn't!!" "I would be in a coma."
Br. not being truthful.

Br. delayed seeking medical treatment.

Had to clean up, cover his tracks, make up a
story. After 1/2 hr. of vomiting, etc. he doesn't
call 911 but decides to lie down. Had to delay.

Said "I'm in trouble." Not "I'm in trouble
because of this accident." Show consciousness of guilt.

Said she fell down the stairs over and over
again. Wanted everyone to believe it.

"I can't account for the ones that happened today"
[Excerpts from Brian's ^{2nd Interview} testimony]

No blood was found by the steps. Luminated
entire area. No blood. Yes in bathtub and on
towel.

Br. feigned ignorance about why she was so
cold. He raped her, his clothing was covered
with blood and vomit. Had to clean her up.

In cold water. She's dying. Put her/his pants in garbage. Had to work fast! Nicki was upstairs. Never spoke of comforting her. Said Mc looked scared. Said he didn't see Nicki when ran out of bedroom to pick her up. Why didn't he ask Nicki what happened if he had been sleeping. Didn't speak to Nicole. Odd!!

On Health Span tape Br says I've got a 5 yr old here and she's not aware of ~~what~~^{anything that} happened. If he'd been asleep, how would he know N. wasn't ~~asleep~~ aware.

Compelling evidence of guilt from Br. Naked because sweats excessively. Mc took clothes off in her sleep.

Grape juice on T-shirt. Then said yes, blood from wiping blood off. If shirt was taken off in her sleep, would be upstairs with no blood on it, not on the garbage with blood on it.

[Break]