

Block out

This case is ~~one~~ of the  
Most Important affairs of your life.

Proof beyond a reasonable doubt.

Blood spatter on my Clients LW.

1) theory from impact. Donahue said "Could"

Not like Kisch - hired gun from out East -  
He is sitting Mc up. When blood comes from  
nose + mouth. Are you going to reasonably  
confer that B was sexually battering her?

- All she say head in alone wouldn't cause Mc to  
get cold. But

- If head in water 20 min

If outside - an hour

- No evidence she was in a bathtub.

or she went outside

Which one Presumes innocence.

- No need to prove intent - Tom is right -

= When anybody does something like this. There must be  
motives.

1) People do things for reasons

2) means - how was it done

State failed in this case

Brian knew he was the only ~~one~~ there would he

have sex with a 3 yr. old girl -

Knowing she was Intellogat - would a tired farm  
hand decide to have

Going to have to kill her as she will have to tell her mom.  
for what reason would this man get up from bed  
unreasonable.

Described as a  
Gentleman - by O'Daughlin.

by Tina - as not thinking of sex all the time.

How could that be reasonable? would he do this?  
Look at opportunity? Look what would motivate him?

It's unreasonable to think a man would be turned on by  
a girl who vomited + pooped.

What about opportunity? He wasn't alone

He walked right by her BP - wouldn't he do it there?

What would happen if D walked down. He'd have to  
kill both.

Look at Common sense.

Come down steps, beat her, throw her against the  
wall; then put her in a Bath tub.

Lo Tina going to lui about someone accused of  
her daughter

Mellow - a good guy.

Memo - how was M committed.

Thrown against the wall.

As Penett said - if you swing her against the wall it wouldn't happen.

The only way is by falling down steps - maybe getting hit outside - it is certainly not a Bruise you get while being raped + murdered.

they tried + tried + tried - but there's no proof.

Table full of evidence

when you look at it + decide what its going to prove it doesn't really.

Look at experts - sources of information.

All have an agenda. They assumed, because they state's got the right guy, for example Lindsey Thomas.

I tried to get her to say Mc would feel pain of unconscious.

All Mrs who testified.

Schmalling

Benn

Cole - called if state doesn't have a case they call her.

Deenko

Hx is most important in making a Diagnosis.

80-90% of all.

to Mr H  
Read magazines / so she could read them back to him

My client, during a rape, decides to pick her up + throw her  
is preposterous.

even Message from God about these Doctors,

1 mo before this incident B + Tina took Mc to best hosp  
in the world, they find no fracture. They made a mistake  
the caring parents took her back - "Hey, what's going on.  
The finger is fractured - Splint falls off.

Message from up above in that - rely on Dr  
see these Doctor who don't even have hx. Did  
you look at Steps.

Dr. D. didn't look at Steps

Get Coroner say, you really don't know what severity  
caused by falling. 40 hours he spent.

He testified there would be a lucid interval.

That's what happened. <sup>Brain</sup> Swelled so much she started  
vomiting.

Re: Dr. Case is asked if a sibling could have done this  
she says No.

I have twin 2 year olds. They constantly hit each other.  
Get Dr. Case said sibling could do it.

Dr. Senko - all injuries are not consistent with Head Injuries  
with a fall down the stairs - Except for hymen injuries  
why would he tell family that yet come into this court room  
and say that.

Hymen injury - Dr. Classen

Hymen bleeding at 5 PM. Dr. Claxco. Colposcope  
all I saw were the 2 tears. Anything else,  
would they heal? yes, they would.  
He was very certain about that.

R. Thomas saw faint bruise

she tells Grand Jury ~~fall could cause head injury~~  
could be caused by fall from 1 1/2 story

If Thomas says consistent with a struggle  
wouldn't she have hair loss.

Broken finger nails - torn clothes.

wouldn't take clothes off gently.

Important thing

because of ~~bad~~ Coagulation ~~to~~ injuries

could be fingertip. Bruise more apparent because  
of

CPR injuries -

try + revive this girl - she bruised easily  
blood in mouth.

Consistent with blood from nose, vomit

Dr. Brunette. you described injuries on eye with  
straining vetical (Vet-e-i.)

Abs. R arm - up + down - Thomas put arm in something  
and pulled it.

Could it find a thing that did that -

Nothing in the house caused.

If rug caused - Luminol testing no evidence of this.  
Where's the skin on the rug? the blood?

Small of back - somersault - hit by a car -

Torn said paddle stick or broom.

No paddle stick found.

Even N says she was lying about.

They got a case & they want to solve it. Blinders on  
find evidence to convict B. Ignored head injury, I to side of head.  
Almost unbelievable place for an injury of during rape.

Police

Make out report; then throw the notes away.  
didn't know when they were done.

Police Inv. stunk from beginning

As soon as I told you the plywood was moved.

Why would Cop mess with crime scene

Not one word in reports about that but he remembers one yr later.

Checked outside - Bathtub was dry. of course. Tub was dry  
but bathtub dry but drain was wet.

Think about it,

Put yourselves over there

Kaley - she was always told to stay up there.

Bach remembers Brian saying "Daddy's in trouble"

No - I was between LR + Kitchen.

Robson walking up the steps when he heard that.

We always have to do this - it's a matter of policy.

Grape juice vs blood

No Notes - just silly reports.

Inv. by wolf + Bach.

Glue gun on since the 9th. Herdahl family found it.  
on the 9th.

They missed the glue gun - they walked around the house.

Didn't walk around road

Canvas neighborhood, before it was in the paper.

They had their man.

Bathtub. why were you looking for a water line,

didn't find one.

Rely on hemastick to determine if blood.

Never bathtub - she was outside.

Do they have a picture looking down the steps.

why not fair pictures. why none of door going outside.

They don't care about Brian

picture of pile.

Everything in the same condition except they posed the pants. Put another pants over them.

Rice Cereal box moved.

Is that evidence that she went outside?

they wanted  
to find dirt on this guy.

led Admitted he spanked on time too hard.

where the  
Spanking stick? remembers them as red last year

now she says they were black + blue.

Tina, the  
Mother, said <sup>only</sup> none spanking. would she lie?

Family of X-husband testified - Didn't like the guy.

Brian spanks us + spanks us hard.

Connie Andersons House. the say girl said  
spanks us + spanks us hard.

After we got them home she took clothes off.

Bruise off chin. Didn't see that?

Hancocks. as soon as the girls got there then said Brian Spanks

Sean B say "No, only I got out of the car. He was

sleeping."

Tina saying from falling down.

Assume Spanking paddle? N said none.

Ignore

Audrey said he was caring - never saw anything

Pattern to try to get in

They want  
you to  
ignore  
that

Robin didn't hear Mc crying

He was intending to go to sleep.

She sleeps with underwear on. Tina says the same thing. She probably took them off.

Client watches T.V.

<sup>he could</sup> Pattern of abuse happen as he was gone all the time.

He fell asleep. Wakes up - there's crying.

Lying at bottom - holding her stomach.

Officer said TV was louder than normal.

He shouldn't have fallen asleep with 2 children in the house. I slept for an hour - 1 1/2

He gave statement twice that day.

Bibek - telling lies after lies.

Brian didn't notice old bruises.

Toed Poop in her pants - Underwear.

Wiped with Kleenex - wet towel. He didn't have a

ready wipe. These girls are potty trained. He

didn't hide this. It was on top of garbage.

Toed officer. She had poop all over. In front + back. Harbison says it was hard

No blood. It's a penetrating injury

He was sleeping - just got up.

Didn't know how.

Naked now. If you had raped a girl would you tie and leave her naked?

1<sup>st</sup> thing you'd do is put clothes on her.

your holding her + she throws up. He sits down. There's ~~dark~~ black paste,

1/2 unzipped. Look at buckle - you'll see. It could easily have fallen from his shirt.

Wraps her in warm Comforter. Doesn't know she's almost dead.

Doesn't require more of hindsight. - you've got to be fair. B. had no experience cleaning up young girls.

Cleaning up blood + vomit. Spatters from coughing and throwing up.

Bloody nose -

Stupid - dumbing - why didn't he call 911 then. He's not sexual - he's tired. He may have shut his eyes.

He opens them - she's blue.

He tries CPR. He then calls 911. Is that behavior

of a rapist?

Might toss her body outside but

Police come. He is right there - trying to revive.

I think she fell - cause I was upstairs sleeping?

Robson comes in - helps Shear with CPR.

Brian is going to take care of Nichole. Do you think he'll remember if he has jeans on.

Tom says Brian wanted to take his <sup>underwear</sup> clothes off.  
Had time to bury his clothes.

Duty to presume innocent.

Exclude other theory

Everything B said is borne out in the evidence.

Yes, full conscious

Appeared to be out of it

Gurgling -

He couldn't describe her accurately.

Poop in jeans but they are lying near door. But there's blood ~~is~~ diluted - wet.

He didn't deny anything about jeans.

He tries to get mouth open. That explains bruises on cheek.

No skin - no abrasions? ~~no~~ no blood on rug.

Nothing - Nothing.

Important piece of evidence 911 tape

you have to believe he's play acting on that tape.

Murders + Rapists don't do CPR. He asked "is she going to be all right." I'm more concerned about

If she makes it - you can ask her questions. If not,  
I go to jail for life.

He's fully cooperating. He didn't do anything illegal.  
He wanted to go to hosp.

Cooperation is evidence of innocence.  
Munket told the truth.

Symen - TP in Panties had no blood on it.

Kaly said spread eagle.

As soon as they probed blood poured out, Dr. Mollum  
said they're putting catheter in.

Why isn't there blood at scene in toilet paper?

All Swabs negative

Hemosticks - not reliable.

Mr Liberty - no semen anywhere.

Nocturnal Ejaculations

Underwear worn before

He picks it up - won't put clean clothes on  
to go farming.

His only injury

3-4 day old cut on thumb.

No Semen - No rape here.

Curie shows little girl's goes outside.  
Why?

You can get hurt in an area like that  
B fell asleep.

She went outside.

No blood in bathtub.

He wanted to go with Tina - went outside looking  
for her jeans, lying  
boots on when she went outside looking for her  
mother.

Cuffs somewhat dirty, when Tina put em on they  
were clean.

Tried to get up steps.

Took shirt off. B. grabbed it to wipe blood off.

We know she was outside because The Dhs  
fell down - stayed outside - Came in - Climbed stairs.

Dispicable Cops looked outside

Did they really look? Did they care?

She could very easily have been hit by a car.  
Bathtub? No - no proof.

Another theory - hold this against me - not B

Injuries happen - Kids fight

Let's look at N.

6 mo before this kids didn't get along

Mc acted up so N didn't get to go.

N. punched picture of her + said she hated her.

Jealous.

Kicked + hit at her grandmother

this girl is violent when she doesn't get her way.

No more

Why does N always say Mc falling or rolling down steps - Could it be she shoved her.

Rollled down the steps

word of description

If pushed, B pushed her down.

It's a theory they didn't consider. There's one thing we know.

✓ She knows how to lie.

Cane + Abel were brothers.

She had motive

Mad at sister - B. sleeping, Best opportunity.

Shoved her down the stairs;

After she shoved her she went outside - Mc went + hid.

Towel - foot print didn't match. Pattern print that didn't <sup>match</sup> any shoes in the house.

B. didn't have memorized script, He didn't turn and give a speech. He took the stand to tell you + the world

"I didn't do this."

He put up with Tom yelling at him - although he's not violent.

Think of gravity. He only had one trial.  
He wanted to tell you -

It's their burden to prove

They didn't prove it

I didn't solve it. I didn't have to.

Reasonable theory is that Mc had an accident,

#4 + #5 - deals with penetration.

After you find B not guilty on 1<sup>st</sup> 3.

Must have penetrated her when he closed her  
he didn't do it intentionally. He was trying to clean her up.

It has to be intentional

He didn't have that

He was trying to clean her up.

He was trying to help her out.

This hasn't been an easy case.

Now it's your duty - your job - to apply the law

I ask that you be fair

If you are fair you will find B not guilty.

7 minutes

Only deliberate in Jury Room.

by demeanor.

Sequestered.

No one can be in contact with you.

Write down messages

What if - a member of jury figures out it's  
someone other than defendant, someone she  
knows

Unanimous.

Your Verdict will be the truth.

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Actual Time 12:15 on Saturday, May 3, 1997

Tina came in at the last minute (with Kathy)

Thank You, Jury -

Exhausted jury - worked hard

He can tell by the questions asked

Feelings been deep

family Showed remarkable restraint - Continue to do so

Mr. Foreman, you have reached a V.  
dead end.

large brown crow. with green triangles.

Judge reviews

Count 1 - Not guilty of M in 1<sup>st</sup> degree.  
With force or violence

Count 2 Not g. of m. <sup>while committing</sup> child abuse with  
past pattern of ch. abuse.

Count 3 - guilty. 2<sup>nd</sup> degree  
without

Count 4 not guilty  
of Crim Sex. <sup>assault with</sup> penetration

Count 5. Not guilty of  
sexual penetration.

Surprised?

Grand jury thought 1<sup>st</sup> degree - rape

2<sup>nd</sup> degree child abuse w past child abuse

150 including good → Serves 100 mos)

12 1/2 yr sentence - If he behaves + gets let out early he will be in  
8 yrs 4 mo

Compromise verdict, he thinks because of body language he saw +  
questions he asked.

Assume F-6 will appeal

Police despicable

Tom was only out for conv.

will  
File Briefs → won't be on list of sexual offenders.

2-3 weeks.

Victim Impact Statement

Immediate have right to give impact statement.

Can't introduce his past acts unless judge allows.

Want "open the door" so

Sentencing in 2-3 ~~mo~~ weeks.

Child he has - will lose his rights now.

Pre sentence Investigation.

# Shakopee man gets twice usual sentence for killing toddler

By Jim Adams  
Star Tribune Staff Writer

Bryan Merkt destroyed the lives of not one, but three children, his ex-girlfriend testified Friday before he was sentenced to 25 years in prison for killing her 3-year-old daughter.

Mackenzie Bussiere died at the couple's Shakopee farmhouse last year with head injuries, bruises, carpet burns and tears in her genitalia. Her 5-year-old sister, Nicole, who was home at the time, is still in foster care; Merkt is required to pay for her therapy.

And Merkt's own baby, whom Tina Herdahl was pregnant with, has been given up for adoption.

"He should sit in that prison and suffer many years for every year that 'Kenzie' didn't get to live," said Herdahl, who had been engaged to Merkt and left her two girls in his care that day. "I hope he thinks of what he did to my sweet little 'Kenzie' and that his guilt eats him alive."

Merkt, a 23-year-old farmhand, had nothing to say before hearing his sentence pronounced in Scott County District Court in Shakopee. It is twice that recommended for second-degree unintentional murder. With time off for good behavior, he could be released in about 16 years. A jury acquitted Merkt of rape and first-degree murder charges.

Mackenzie was found nude and covered with bruises at the foot of a flight of stairs March 9, 1996. Her blood and vomit were found on Merkt's jeans and long underwear after he called police, saying that

the child must have fallen while he was asleep.

Merkt maintains that he is innocent and will appeal his conviction and sentence, said his attorney, Earl Gray.

Gray said he thinks Judge Thomas Howe erred during the 3½-week trial, for example, by allowing testimony that Merkt had sexually molested Nicole. The

prosecutor said Nicole's statement to a doctor supported his assertion that Mackenzie's injuries, including a torn hymen, weren't accidental.

The judge also granted Scott County Attorney Tom Harbinson's request that Merkt submit a DNA sample for the state's sexual offender data bank. Gray objected, but the prosecutor said the law permits it even for a person acquitted of rape if he is convicted of another serious crime linked to it.

The data bank allows officials to link new sex crimes to past offenders.

Merkt's ex-girlfriend, who now lives in Wisconsin, said in her victim-impact

statement that she's worried about Nicole and the girl born in September whom she has given up for adoption.

"It would have been selfish for me to keep her. She deserves a fair chance at life, and I am worried about Brian coming to find Nicole and even the baby. . . . You can't trust what he will do when he gets out of prison."

Herdahl said she is also tired of defending her reputation as a mother.



Mackenzie Bussiere



Bryan Merkt

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Star Tribune Online

Metro

## Guilty verdict in death of 3-year-old girl

Anne O'Connor / Star Tribune

After deliberating 2 1/2 days, a Scott County jury found Brian Merkt guilty of killing his fiancée's 3-year-old girl last year in the Shakopee farmhouse he shared with them.

Merkt, 23, showed no reaction as the judge read the verdicts Saturday afternoon. The jury found him not guilty of two counts of raping MacKenzie Bussiere and not guilty of two counts of first-degree intentional murder.

The families involved filled the courtroom, but their sobs were stifled. The judge and the attorneys had told them to show restraint in reaction to the verdict. The courtroom atmosphere had been acrimonious during portions of the trial, which lasted 3 1/2 weeks.

"The jury made its decision, and it still doesn't bring MacKenzie back," said Tina Herdahl, MacKenzie's mother and Merkt's former fiancée.

Still, Herdahl's family said it was happy that Merkt will serve some time.

"We're kind of mixed up, we have mixed feelings," said Ron Jurisch, a great-uncle to MacKenzie. "We're glad that he was convicted; we're not sure that that was the correct count. There are no winners. If it didn't happen, that would have been the only way we could have won."

Merkt's attorney, Earl Gray, said he thought the jury settled on the second-degree murder charge as something that everyone could agree on. He was disappointed by the verdict and slammed his fist on the table when it was read.



Brian Merkt is accused of raping and killing Mackenzie Bussiere, 3, of Shakopee.

"I was not happy. I hate compromises," he said.

Still, he said, he can't question that the jury worked hard and that ultimately, he accepts the verdict.



Mackenzie Brussiere

Scott County Attorney Tom Harbinson had painted a gruesome picture for jurors in his 3 1/2-hour closing arguments Wednesday. He noted that MacKenzie was found covered with rug burns and that her vagina was bruised and swollen. He said that when she stopped breathing, Merkt called police to avoid suspicion in her death. Her blood and vomit stains were found in the crotch area of his jeans and long underwear. A trace of his semen was found on his briefs.

"Brian Merkt's guilt is etched in the flesh of MacKenzie Bussiere," Harbinson told the jury. He said that Merkt sexually assaulted her while her mother was shopping and that when she resisted he became angry and smashed her head against the wall or floor.

Gray suggested that MacKenzie fell down the one-story staircase, or was pushed by her 5-year-old sister, and awakened Merkt, who found her crying at the foot of the stairs, with soiled underwear. He said Merkt may have accidentally injured her vagina while cleaning her.

Gray said doctors found the girl with a very low body temperature, 83 degrees, because she wandered outside, where she may have received some injuries by being hit by a car. He noted that a defense medical expert testified that her injuries could have been caused by a fall or being hit by a car.

Harbinson argued that the low body temperature was caused when Merkt washed blood and vomit off the girl in a tub of cold water before police came. He noted that lab tests indicated blood traces in the bathtub trap.

Merkt was taken into custody from the courtroom and will await sentencing in jail. He had not been in custody until the guilty verdict.

Ted Seeger, who is MacKenzie's grandmother's companion, said that it's been a very difficult year for the family and that although they're glad the trial was over, they are still grieving.

"It's not like we were looking for a victory here," he said. "Even if he had been convicted on all five counts, it wouldn't bring MacKenzie back."