THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

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THE STATE OF NEW HAMPSHIRE \*

SUPERIOR COURT

2001

V. \* 00-S-888-896-F: 934-935!

CHAD EVANS \*

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

OF DECEMBER 6 1 2001

The above-entitled matter came on for hearing

before the Honorable Tina L. Nadeau, Presiding Justice, on

December 6, 2001, at Dover, New Hampshire.

APPEARANCES:

For the State of New Hampshire:

N. William Delker, Esquire

Simon Brown, Esquire

Attorney General's Office

For the Defendant:

Mark L. Sisti, Esquire

Alan Cronheim, Esquire

**COPY**

Carol A. Perry, Transcriber

I N D E X S H E E T

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Amanda B o r t n er 3 21 31

James W h i te 35 57

F. J e f f e r e y M a r s h a ll 92 193

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THE COURT: Mr. Brown, a n y t h i n g f u r t h e r?

MR. No q u e s t i o n s , y o u r Honor. Thank y o u .

THE Okay. Thank you, s i r , y o u may s t ep

down .

THE WITNESS: Thank y o u , j u d g e .

MR. The S t a t e c a l l s J e f f e M a r s h a l l.

THE COURT: Can I s e e c o u n s e l a t t h e b e n c h . Mr.

Chagnon, i f y o u w o u l d j u s t k e e p t h e w i t n e s s b a c k t h e r e.

T h a n k y o u .

[ T h e f o l l o w i n g i s a d i s c u s s i o n a t t h e b e n c h ] .

THE COURT: T h e r e was a m o t i o n f i l e d by t h e S t a t e

t o p r e c l u d e a n y t e s t i m o n y a b o u t w h e t h e r o r n o t Mr.

M a r s h a l l was o f f e r e d a p o l y g r a p h e x a m i n a t i o n . Do we have

a p o s i t i o n on f r o m t h e d e f e n s e ?

MR. S I S T I : Yeah, we o b j e c t t o i t .

THE COURT: Okay.

MR. S I S T I : T h e r e ' s a l o t o f r e a s o n s why. We

p r o b a b l y may n e e d a r e c o r d on i t , b ut

THE COURT: Okay. W e l l , why d o n ' t we do h i s

d i r e c t , and t h e n we c a n h a v e a h e a r i n g b e f o r e we do t h a t .

MR. S I S T I : Okay.

MR. DELKER: I mean, s u p p o s e w e ' r e n o t g o i n g t o

g e t -- maybe we c a n d o t h i s a t t h e l u n c h b r e a k , b e c a u s e ,

d e p e n d i n g on t h e C o u r t ' s r u l i n g , I may a s k h im a b o u t i n

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1 direct.

2 THE COURT: Oh.

3 MR. DELKER: But I'm not going to get to it until

4

5 THE COURT: Okay.

6 MR. DELKER: - - his direct is a couple hours long,

7 at least.

8 THE COURT: Okay. All right.

9 MR. DELKER: Okay.

10 [End bench conf ere nee J •

11 THE COURT: Good morning. Would you remain

12 standing and face Mr. Delker.

13 MR. DELKER: Please raise your right hand.

14 A F. JEFFEREY MARSHALL

15 was called as a witness, and having been first duly sworn

16 on oath, was examined and testified as follows:

17 DIRECT EXAMINATION [By Mr. Delker):

18 Q Please be seated. Please introduce yourself to the

19 jury, and if you could give your full name, and

20 spell your name for the record.

21 A Yeah. My name's F. Jefferey Marshall, F. I

22 J-e-f-f-e-r-e~y, M-a-r-s-h-a-1-1.

23 Q Mr. Marshal~, what do you do for work?

24 A I landscape.

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1 Q And what's the name of -- or who do you work for?

2 A I own a landscaping company, Marshall Brothers

3 Landscaping.

4 Q Can you describe your business a little bit?

5 A we do residentials, commercial landscaping; we take

6 care of McDonald's stores, other company stores.

7 We put in grass, mow lawns, whatever they need.

8 All kinds of stuff.

9 Q How long have you had that business?

10 A About six years.

11 Q And do you work out of your house? I mean,

12 obviously, you do landscaping, but do you have a

13 separate business somewhere, or is that out of your

14 home?

15 A It's out of my home.

16 Q Do you have people that work for you?

17 A Yes.

18 Q How many people work for you?

19 A Two full-timers during the summer, one that comes

20 in, partially. It all depends how much help we

21 need. During the winter, we normally don't usually

22 have too many. We might have one that helps out

23 every now and then.

24 Q Where do you currently live?

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1 A I live at 85 Rogers Road.

2 Q And how long have you been at that address?

3 A Since the 1st of October.

4 Q Of this year?

5 A Yes, sir.

6 Q Where did you live before that?

7 A Fifty-one Rogers Road.

8 Q The jury has been to 51 Rogers Road, but can you

9 describe the layout of the home while you lived

10 there?

11 A Okay. We have a dirt driveway that goes out back.

12 The house is right on the road. When you first go

13 up the steps to the porch, you walk into like a

14 breezeway where we take our coats off, where you

15 put your shoes. You open that door up, you got the

16 kitchen right there. There's a bathroom on your

17 left-hand side. The living room is straight on if

18 you're going in through the door, and there's a

19 bedroom on the other side of the kitchen.

20 Q Now, when you lived at 51 Rogers Road, did you live

21 there alone?

22 A No.

23 Q Who lived with you?

24 A My girlfriend, Jennifer Bortner.

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Q And y o u s a i d J e n n i f e r B o r t n e r . Does s h e a l s o go by

a n o t h e r l a s t name?

A Yes, C o n l e y .

Q How l o n g h a v e y o u a n d J e n n i f e r b e e n t o g e t h e r?

A About two y e a r s , g u e s s.

Q Can y o u d e s c r i b e how y o u met?

A I a c t u a l l y met h e r a t t h e v i d e o s t o r e f r om down t h e

s t r e e t f r o m w h e r e I l i v e . She w o r k e d a t M o v ie

G a l l e r y , and I u s e d t o g o i n t h e r e , and I j u s t

a s k e d h e r o u t on a d a t e , a n d we s t a r t e d s e e i n g e a ch

o t h e r , a n d t h e r e y o u g o .

Q How l o n g h a s s h e b e e n l i v i n g w i t h y o u?

A Well, p r e t t y much s i n c e we met. She'd s t a y o v er

a n d h a n g o u t , y o u know, p r e t t y much r i g h t s i n c e we

met. I d o n ' t know a n e x a c t d a t e.

Q Does J e n n i f e r h a v e a s i s t e r ?

A Yes.

Q And w h a t ' s J e n n i f e r ' s s i s t e r ' s name?

A Amanda B o r t n e r.

Q And a r e t h e y b i o l o g i c a l s i s t e r s , do y o u know?

A Yes.

Q How l o n g h a v e y o u know Amanda B o r t n e r?

A Pretty much r i g h t a f t e r I met J e n I met Amanda o v er

w h e r e s h e w a s l i v i n g . I t h i n k i t w a s l i k e a

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1 friend's house in Sanford. We went over there so

2 Jen could introduce me to her sister and stuff.

3 Q And do you know the defendant, Chad Evans?

4 A Yes, I do.

5 Q And how do you know Chad Evans?

6 A He was a store manager then, an area rep. for

7 McDonald's. He took care of stores that I took

8 care of for him, landscaping, painting, stuff like

9 that.

10 Q Business acquaintance at first ---

11 A Yes.

12 Q -- you and the defendant? Can you just describe a

13 little bit about the business relationship between

14 you and he and how it came about, what your contact

15 was while you worked together?

16 A i In the beginning, you know, he'd call me up, say we

17 need this done at the store. I believe he took

18 ; care of the Rochester store when I first started

19 working for McDonald's. And then he got brought up

20 to area rep. And then he, obviously, took on more

stores, so he gave me some more of those stores to

22 take care of. We became friends. He used to, you

23 know, talk to me and stuff.

24 Q Now, are you aware that the defendant and Amanda

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1 started dating at some point?

2 A Yes.

3 Q Okay. Can you describe how that came about?

4 A Well, Chad was going through a divorce, and he knew

5 Jen, because Jen would help me out landscaping

6 sometimes; we'd be in the stores and stuff. And he

7 asked me if she had a sister and stuff, and I said

8 yeah. So we kind of talked to Amanda and we set it

9 up, and that's how they met.

10 Q How old was Amanda at the time she started dating

11 the defendant?

12 A I believe it was around eighteen.

13 Q Do you know how old the defendant was?

14 A I believe around twenty-eight. I'm not -- I don't

15 know, exactly.

16 Q When did they begin dating?

17 A Beginning of -- I don't know the exact date. I

18 believe it was the beginning of the summer,

19 something like that.

20 Q Last summer?

21 A Yes.

22 Q Beginning of last summer?

23 A Yeah.

24 Q Now, can you describe for the jury how Amanda and

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1 the defendant's relationship developed over time?

2 A Well, I think it pretty much -- they hit it off

3 right in the beginning. She was over there all the

4 time, you know

5 Q Let me ask you this: Where was Amanda -- what was

6 Amanda's living situation before she met the

7 defendant?

8 A She was living in Auburn with her parents.

9 Q That's Auburn, Maine?

10 A Yes, sir.

11 Q Okay. And what happened after she met the

12 defendant, if anything?

13 A She ended up moving down to his house, I believe.

14 What I mean by that is her stuff came down there.

15 I don't know, you know, she was staying there all

16 the time that kind of -- you know.

17 Q Did that happen all at once, or had it developed

18 during the summer?

19 A It seems like it happened all at once. I mean,

20 just right off the bat, you know, kind of like how

21 me and Jen moved in together. I mean, it was

22 pretty quick, you know.

23 Q Now, you said the defendant lived in Rochester?

24 A Yes.

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Q Did you know K a ssid y -- Amanda B o r t n e r ' s d a u g h t e r,

K a s s i d y ?

A Yes.

Q Can y o u d e s c r i b e -- do y o u remember when y o u f i r s t

met K a s s i d y?

A Yeah. When f i r s t went up t o J e n ' s h o u s e , s h e was

i n t h e h o u s e w i t h t h e g r a n d p a r e n t s . She l i v ed

t h e r e . Amanda d i d n ' t h a v e K a s s i d y a t t h a t t i m e.

She b e l i e v e J a c k i e t o o k c a r e o f K a s s i d y , so

s h e was a r o u n d t h e h o u s e a l l t h e t i m e .

Q Where was -- w h e r e was K a s s i d y l i v i n g w i t h h e r

g r a n d m o t h e r a t t h a t t i m e when y o u f i r s t met h e r?

A In S a n f o r d , Maine.

Q And how o f t e n w o u l d y o u s e e K a s s i d y i n t h e

b e g i n n i n g ?

A Every t i m e I w e n t up t h e r e w i t h J e n t o v i s i t h e r

m o t h e r , o r i f I w a n t e d t o go p i c k h e r up. You

know, e v e r y -- I mean, b a s i c a l l y e v e r y t i m e I was

up i n S a n f o r d a t t h e i r h o u s e.

Q How o f t e n w o u l d you g o up t o S a n f o r d?

A Quite a b i t . I w o u l d n ' t -- w o u l d n ' t s a y e v e ry

d a y , b u t j u s t a b o u t e v e r y d a y.

Q How o l d -- do y o u remember how o l d K a s s i d y was when

y o u and J e n f i r s t s t a r t e d d a t i n g?

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1 A Just a baby crawling around, you know. I don't now

2 exact age.

3 Q Now, when you would see Kassidy during this time,

4 or you went up to visit the grandparents, Kassidy's

5 grandparents, would you ever watch Kassidy during

6 that time, baby-sit?

7 A Yeah. Her parents went out to the store, had to go

8 do something, me and Jen would usually sit and

9 watch Kassidy so they wouldn't have to get her

10 together and bring her out to the store. You know,

11 that kind of stuff.

12 Q What was Kassidy like as a child then?

13 A Crawling around, getting into stuff, doing what

14 little babies do, you know.

15 Q How active was she?

16 A She was pretty active at that time.

17 Q Did you -- during that time, did you ever notice

18 any bruising on her?

19 A Not that I recall. Not that stands out in my head.

20 Q Now, when Amanda and the defendant started dating,

21 what was Kassidy's living arrangement when they

22 first started dating?

23 A The grandmother had Kassidy. She took care of

24 Kassidy. I don't know the whole circumstances

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behind that, but, basically, the grandmother was

watching Kassidy.

And where were they -- excuse me -- where were they

living at that time, Kassidy and her grandmother?

I believe in Auburn.

Now, did Kassidy's living situation change

throughout the summer that Amanda and the defendant

were dating, last year?

Yes.

Can you describe how it is that Kassidy's living

situation changed over time?

Well, she ended up moving down to Rochester with

Amanda. Amanda's mother had to go into the

hospital and she -- I forget exactly what for, but,

you know, she basically had to tell Mandy to take

Kassidy, she could no longer watch her.

So did Kassidy move in with Amanda and the

defendant right away when they first started

dating, or when did that take place?

It was a little bit after they started dating that

they had Kassidy move down there.

Towards the beginning of the summer? Towards the

end of the summer? Can you put a timeframe on it?

To be accurate, I really couldn't put a timeframe

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1 on i t . I mean, i t w a s a l i t t l e w h i l e a f t e r t h ey

2 s t a r t e d l i v i n g t o g e t h e r t h e m s e l v e s .

3 Q But i t s o u n d s l i k e , a s y o u r e c a l l , i t w a s a r o u nd

4 t h e t i m e t h a t J a c k i e , Amanda's -- I mean, K a s s i d y 's

5 g r a n d m o t h e r went i n t o t h e h o s p i t a l , a r o u n d t h at

6 t i m e?

7 A Y e s .

8 Q Now, d i d y o u r c o n t a c t w i t h K a s s i d y c h a n g e when s h e

9 moved down t o R o c h e s t e r ?

10 A Y e s .

11 Q Okay. Can y o u e x p l a i n why?

12 A W e l l , h e r a n d Chad w a n t e d t o go o u t a n d s t u f f . Me

13 a n d h e r s i s t e r , J e n n i f e r , w o u l d w a t c h K a s s i d y f o r

14 them. You know, i f t h e y h a d s o m e t h i n g t o do, we

15 w e r e t h e o n l y o n e s r e a l l y a r o u n d a t t h a t p o i n t i n

16 t i m e , s o we'd e n d up w a t c h i n g h e r .

17 Q What k i n d o f s t u f f w o u l d t h e y do t h a t t h e y ' d a s k

18 y o u t o w a t c h K a s s i d y?

19 A T h e y were -- f o r i n s t a n c e , i f t h e y w e r e g o i n g t o a

20 p a r t y . I f t h e y were g o i n g s o m e t i m e s t o h i s

21 p a r e n t ' s h o u s e , s t u f f l i k e t h a t . You know, i f t h e y

22 w a n t e d t o g e t some t i m e t o g o o u t , y o u know, we'd

23 u s u a l l y w a t c h h e r .

24 Q D i d t h e y go on a n y t r i p s d u r i n g t h e summer t h at

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they were dating?

I think they went to New York to a baseball game.

I don't remember the whole situation, but ---

Do you remember whether you watched Kassidy then,

or do you remember what the situation was?

We might have.

Would Kassidy stay overnight at your house while

when she stayed with the defendant and Amanda in

Rochester?

Yes.

What was the situation? Why would she -- why would

she stay at your house overnight?

If they were out late, instead of them coming all

the way down to where we lived to pick up Kassidy,

we'd watch her, and they'd just pick her up in the

morning. You know, sometimes, I know they had a

couple of times they went out, it was going to be

pretty much overnight, we'd usually watch her then

for them, that kind of stuff.

Did you notice any bruises or injuries on Kassidy

when you baby-sat?

Yes.

Can you describe what you saw?

Bruising along her face area, her arms, top of her

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1 head, around here. You know, just different

2 bruises all the time.

3 Q What did those bruises look like?

4 A Some of them, in my opinion, looked like someone

5 had grabbed her.

6 Q How do draw that? What makes you have that

7 opinion? What did they look like that makes you

8 say that?

9 A I don't know, they were like dime-shaped. They

10 were pretty, you know, just where they were. It

11 just, you know.

12 Q How often would you see the bruises?

13 A Every time we had her.

14 Q Were they always in the same place?

15 A Sometimes. Sometimes they'd start to fade away,

16 they'd start turning like a yellowish color and

17 then they'd like -- kind of look like they're

18 almost disappearing and then, all of a sudden, the

19 next day she'd have the same bruising in the same

20 place as she did the day before.

21 Q And would it be darker?

22 A Oh, yeah. I mean, you know, it was like turning

23 yellow, then all of a sudden it's black again.

24 Q Had you ever noticed that type of bruising, before

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1 Amanda and the defendant were dating, on Kassidy?

2 A I can't say that I did, no, I do not.

3 Q Do you remember when the first time you noticed

4 that bruising was?

5 A I believe the first time, basically, was right

6 after she started moving in. I kind of questioned

7 it, I believe, the first time.

8 Q Okay. Did you ever talk with the defendant about

9 those bruises?

10 A Oh, yeah.

11 Q Okay. Can you tell the jury what the defendant

12 told you?

13 A I heard all kinds of things. I heard that she fell

14 off a trampoline. He reached out and caught her,

15 and the only way he could catch her was grabbing

16 her by the face. I heard that they were over a

17 friend's house and she tripped into a coffee table.

18 All kinds of, you know, there was always an

19 explanation for bruising.

20 Q How many times would you say you spoke with the

21 defendant about the bruising?

22 A Probably a handful of times.

23 Q How would the conversation start? Can you describe

24 what the nature of the conversations were?

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I ' d j u s t be l i k e , h e y , w h a t ' s -- y o u know, w h a t 's

g o i n g on, y o u know, b e c a u s e i t j u s t was s o

r e p e a t e d l y o v e r a n d o v e r , y o u know, s e e i n g b r u i s es

on h e r . I t a l k e d t o my g i r l f r i e n d about i t , y o u

know, a n d we t a l k e d t o h i m . We t a l k e d t o Amanda,

y o u know. J u s t k e p t -- I mean, t h a t k i n d of t h i n g .

We j u s t a s k e d.

! You m e n t i o n e d t h e t r a m p o l i n e s t o r y . I s t h a t

s o m e t h i n g t h e d e f e n d a n t t o l d y o u a b o u t?

A I b e l i e v e I h e a r d i t f r o m h im a n d Amanda.

Q Okay. What was t h e s t o r y a s y o u remember i t a b o u t

t h e t r a m p o l i n e?

T h e y w e r e o u t i n t h e y a r d . He h a s a - - h e h a d a

t r a m p o l i n e , o r h a s a t r a m p o l i n e o u t i n h i s y a r d ,

a n d I b e l i e v e I a c t u a l l y h e l p e d h im p u t i t t o g e t h e r

o u t t h e r e , and, s u p p o s e d l y , s h e w a s p l a y i n g on t h e

t r a m p o l i n e and s h e b o u n c e d o f f t h e t r a m p o l i n e a nd

he c a u g h t h e r i n m i d a i r , y o u know. But t h a t ' s t he

o n l y way he c o u l d c a t c h h e r , c a u g h t h e r b y t h e

f a c e .

) What w e r e t h e b r u i s e s t h a t y o u s aw t h a t prompted

t h a t d i s c u s s i o n?

Right on h e r f a c e . You c o u l d t e l l , you know, t h at

s o m e t h i n g h a p p e n e d . They w e r e p r e t t y

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After he told you the trampoline story did you

see -- did you see different bruises on her face

after that?

Oh, yeah. Up around here on her forehead.

know, little ones. Just different bruises.

Do you remember when he told you that, the

trampoline story?

I don't know exactly when.

You

Did you ever have a discussion about -- with the

defendant about his concerns about the bruises?

Yes.

What did he tell you?

Well, he was concerned that people would see the

bruises, certainly people would see the bruises and

jump to conclusions that he was hitting her or

doing stuff to her. Like if he was going to his

parent's house, you know, he'd ask would you guys

watch her, we don't want them thinking that

something•s going on. If they were going to the

store: Can you watch her? They basically didn't

want to bring her out in public.

You mentioned that he told you they didn't want to

bring her to his parent's house with the bruises?

Yes, sir.

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Okay. That he didn't want to take her to a store.

Were there any other places that he told you they

didn't want to take her?

I believe one time they were going to her mother's

house, and they didn't want Jackie to see Kassidy

because of the bruising.

Did the defendant ever talk to you about how he

would discipline Kassidy?

Yes.

What did he tell you?

He'd put her in the corner, put her in her room by

herself, make her sit; stuff like that.

Now, you mentioned that Kassidy stayed over your

house once in a while. Do you know how often she

stayed over your house all together?

Probably a handful of times. I don't know exactly.

To be honest, I can't give you a number.

know.

I don't

Did you notice any unusual behavior from Kassidy

when she stayed overnight at your house?

Yes.

What did you notice?

I remember exactly one night we heard some noise in

the living room after we had put her to bed. She

would sleep on the couch. And we went into the

living room, and she was standing there in the

dark. And we said you have to get back to bed.

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You know, we put her back in the bed. And the next

morning, we woke up, and she was standing there

again. Just unbelievable as far as ---

What was she doing?

Just staring at the wall.

staring at the wall.

Standing up straight,

Do you remember when that was?

It happened so many -- practically every time she

came over.

Did that happen more than once, that standing?

Yes. Yeah, and it got worse and worse.

Did you ever talk to the defendant about that

behavior?

Yes.

What did he tell you?

I kind of brought it up to him, because I said

she's kind of acting weird. I don't like to admit

to it, but I said she's kind of acting a little

retarded. She's standing there just lost. And he

says, well, that's because I put her in the corner

when she's bad. And she'll come in our bedroom at

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night and, you know, if she's trying to come into

bed with us, I'll put her in the corner and make

her stand up against the wall, and make her stand

there. And I told him -- I said you've got to stop

that, because she's doing it at our house.

get right out of bed and stand up.

She'd

How was Kassidy's behavior like generally when she

was living with the defendant? Can you describe?

Did her behavior change over time?

Oh, yeah.

Can you describe that?

She got to be real slow. Not very active. Just

kind of lost. Like if she was going to run around

and stuff, she -- she was going to trip or

something, she would never put out her arms, you

know, like a normal person would do as far as to

try to catch themselves. She just basically was

coming slowly -- not very -- not with it all the

time.

Was she -- what was her behavior like that you just

described compared to what she was like when she

lived with her grandmother?

Day and night. You know, from someone sleeping to

a road race. I don't know. You know, just totally

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1 o p p o s i t e .

2 Q D i d i t h a p p e n a l l a t o n c e , o r c a n y o u d e s c r i b e what

3 y o u n o t i c e d o v e r t i m e?

4 A I t h a p p e n e d s l o w . I t d i d n ' t j u s t one n i g h t a l l o f

5 a s u d d e n i t h a p p e n e d . I t k i n d o f -- g r a d u a l l y

6 d i f f e r e n t t h i n g s , s t a r t e d , y o u know, s h e j u s t --

7 s h e ' d p l a y some d a y s , and t h e n , a l l o f a s u d d e n.

8 t h e n e x t day s h e w o u l d n ' t . She'd be up a n d a r o u nd

9 one day a n d t h e n t h e n e x t d a y s h e w o u l d n ' t . And

10 t h e n i t s t a r t e d b e c o m i n g t h a t s h e w a s n ' t p l a y i ng

11 a n y more, s h e w a s n ' t , you know, d o i n g a n y t h i n g.

12 Q You had m e n t i o n e d a f ew m i n u t e s ago a b o ut

13 c o n v e r s a t i o n s -- o r o n e o r more c o n v e r s a t i o n s y ou

14 h a d w i t h t h e d e f e n d a n t a b o u t n o t w a n t i n g t o t a ke

1

15 h e r p l a c e s . D i d y o u e v e r t a l k t o h im a b o u t a

It 16 d o c t o r o r t h e h o s p i t a l ?

5 17 A Y e s .

18 Q What d i d he s a y?

19 A He s a i d he c o u l d n ' t b r i n g h e r t h e r e b e c a u s e s h e h a d

20 b r u i s e s and t h a t t h e y w o u l d s u s p e c t s t u f f.

21 Q You s a i d t h a t s h e s t a y e d o v e r y o u r h o u s e a number

22 o f t i m e s . D i d y o u e v e r d i s c i p l i n e h e r?

23 A One t i m e , y e s .

24 Q Can y o u d e s c r i b e t h a t?

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A I b e l i e v e I was i n t h e l i v i n g room a n d we h e a rd

some n o i s e o u t i n t h e k i t c h e n . And we w a l k e d o u t

t h e r e , and s h e h a d g o t t e n i n t o a b o t t l e o f Windex

t h a t was on t h e k i t c h e n t a b l e . I t o o k t h e b o t t l e

away f r om h e r . I p a t t e d h e r o n t h e b u t t , and, y ou

know, t o l d h e r t o g e t o v e r t h e r e , and i t w a s -- I

mean, j u s t l i k e t h a t .

Q What was s h e w e a r i n g when y o u -- d i d y o u s p a n k h e r?

A Yeah. Y e s . I mean, more o r l e s s , y e s .

Q And what was s h e w e a r i n g when y o u s p a n k e d h e r?

A I b e l i e v e a d i a p e r .

Q And who was -- b e s i d e s K a s s i d y , who e l s e was t h e re

when y o u d i d t h a t ?

A My g i r l f r i e n d , J e n n i f e r.

Q Was t h e r e a n y o n e e l s e t h e r e?

A No, s i r .

Q Did s h e h a v e a n y i n j u r i e s a s a r e s u l t of t h a t

s p a n k i n g ?

A No. No.

Q Did y o u e v e r s e e a n y i n j u r i e s on K a s s i d y ' s b e h i nd

o r b a c k s i d e?

A Yes.

Q Okay. Can y o u d e s c r i b e what y o u saw?

A E x t e n s i v e b r u i s i n g . w o u l d n ' t s a y i t w a s one

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bruise, it was all over the bottom on both sides of

her butt. It just was all black and blue.

How did you notice that?

Changing her diaper, you know, you can't miss it.

Some of it came out of the diaper area a little

bit.

And how long before Kassidy's death did you notice

those bruises on her butt?

I couldn't give you an exact time.

then.

Pretty close to

Days or weeks? I mean, can you put a range on it?

Maybe a week or so, couple of weeks.

Did you see the bruises on her behind more than

once?

Yeah. I mean, they'd come and go.

How do you know that?

Because they'd start turning yellow. You know,

they'd start to fade away, and then, all of a

sudden, they'd be dark again.

Was Kassidy -- was there an incident at your house

where Kassidy fell out of the truck?

Yeah, started to fall out of my truck.

Okay. Can you describe that incident?

I was outside. I had taken Kassidy out of her car

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1 seat. I had a Chevy pickup truck at the time, and

2 I had stood her up on the floor of the truck, and I

3 was outside talking to my next-door neighbor, and

4 she started falling out of the truck, and I caught

5 her.

6 Q Do you know whether she was injured as a result of

7 that?

8 A No, she wasn't. She didn't hit anything that I

9 saw.

10 Q Did she cry?

11 A No. No.

12 Q Was -- did you mention it to anyone at the time it

13 happened?

14 A Oh, I told Amanda.

15 Q Why did you tell Amanda?

16 A Because it's her child. If anything happened to

17 Kassidy at our house, we always told them. They're

18 her parents.

e 19 Q Did -- did you mention the spanking incident a few

1 ' 20 minutes ago? Did you tell Amanda about that, as

21 well?

22 A Yes.

23 Q And you mentioned that the truck -- or Kassidy fell

24 from the truck. Who was there when that happened?

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1 A W i l l i a m P i e r c e.

2 Q Okay. And who's W i l l i a m P i e r c e?

3 A My n e x t - d o o r n e i g h b o r . And he a c t u a l l y became my

4 l a n d l o r d .

5 Q And where d o e s -- w h e r e d o e s W i l l i a m P i e r c e l i v e?

6 A I f you go out b a c k on t h e d r i v e w a y , t h e d i r t r o a d.

7 h e ' s on t h e h o u s e on t h e r i g h t - h a n d s i d e , t h e one

8 t h a t ' s u n d e r c o n s t r u c t i o n out t h e r e.

9 Q I s t h a t 6 J o h n s o n C o u r t?

10 A Y e s , s i r .

11 Q So i f y o u ' r e f a c i n g y o u r h o u s e , i t ' s t h e one to the

12 r i g h t of y o u r h o u s e , c o r r e c t?

13 A Y e s .

14 Q F r om t h e r o a d , t h e r o a d t h a t y o u ' r e on?

15 A Y e s , s i r .

16 Q Now, at some p o i n t , d i d you s t a r t b a b y - s i t t i ng

17 K a s s i d y more r e g u l a r l y ?

18 A Y e a h . Amanda g o t a j o b f o r O l d Navy down a t the

19 K i t t e r y O u t l e t s.

20 Q About when was -- d i d t h a t t a k e p l a c e , do you

21 remember when t h a t s t a r t e d?

22 A P r e t t y c l o s e t o t h e t i m e o f K a s s i d y p a s s i n g away.

23 Q Any b a l l p a r k on t h e amount o f t i m e?

24 A W i t h i n a c o u p l e of weeks of t i m e.

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Q Now, you s a i d -- what was the arrangement, what

p r o m p t e d you t o s t a r t b a b y - s i t t i n g more r e g u l a r l y ?

They c o u l d n ' t t a k e h e r t o d a y c a r e b e c a u s e of h er

b r u i s e s . They d i d n ' t want a n y o n e t o s e e h e r,

e s p e c i a l l y a t d a y c a r e , b e c a u s e , o b v i o u s l y , t h e y ' re

g o i n g t o s e e t h e b r u i s e s , and t h e y ' r e g o i n g to

q u e s t i o n i t more t h a n a n y o n e e l s e w o u l d , I g u e s s.

You know, t h a t ' s t h e u n d e r s t a n d i n g I had.

Q And i t was b e c a u s e Amanda was g e t t i n g a j o b t h a t

s h e n e e d e d you t o do i t more f r e q u e n t l y .

MR. S I S T I : I'm g o i n g t o o b j e c t t o t h e l e a d i ng

n a t u r e .

MR. DELKER: I'm s o r r y , I ' l l r e p h r a s e t h e q u e s t i o n.

THE COURT: S u s t a i n e d.

MR. S I S T I : Thank you.

[ B y Mr. D e l k e r ] :

Q Where d i d Amanda g e t a j o b?

A Old Navy.

Q And t h a t ' s i n t h e K i t t e r y O u t l e t s?

A Yeah, K i t t e r y M a l l s.

Q How was i t t h a t you were a b l e t o b a b y - s i t , i f you

own y o u r own company?

A During t h e f a l l , we d o n ' t do a l o t o f f a l l

c l e a n u p s . And we g e t i n t o snow p l o w i n g , but in

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t h a t f r a m e o f t i m e w e ' r e p r e t t y s l o w . We d o n 't

h a v e a l o t t o d o . So I b a s i c a l l y have t i m e on my

h a n d s a s f a r a s b e i n g a b l e t o do s t u f f , you know,

u s u a l l y s i t a r o u n d , c l e a n e q u i p m e n t , g e t t h e t r u c k s

r e a d y f o r w i n t e r .

Q And was t h e a r r a n g e m e n t s , t h e b a b y - s i t t i n g

a r r a n g e m e n t p e r m a n e n t , o r was i t g o i n g t o c h a n ge

o v e r t i m e?

A It w a s s u p p o s e d t o c h a n g e .

Q Why? How?

A They k e p t t e l l i n g me t h a t t h e y w e r e g o i n g t o p u t

h e r i n t o d a y c a r e , t h e y j u s t have t o w a i t u n t i l t he

b r u i s e s go away. T h a t ' s what t h e y k e p t t e l l i n g me

a n d J e n n i f e r . I t j u s t -- t h e b r u i s e s n e v e r went

away. They a l w a y s came b a c k.

Did y o u b a b y s i t K a s s i d y on Wednesday, November 8 t h

o f l a s t y e a r?

A Yes, s i r .

Q Who d r o p p e d K a s s i d y o f f t h a t d a y?

A Amanda.

Q Why were you b a b y s i t t i n g?

A b e l i e v e Amanda g o t c a l l e d i n t o work o r f o u n d o u t

a t t h e l a s t m i n u t e . I d o n ' t know e x a c t l y , b u t s h e

h a d t o work, anyway.

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1 Q Do you remember what time of day she dropped

2 Kassidy off at your house?

3 A I believe it was around 4:30, or something like

4 that. It was later on in the afternoon.

5 Q And how long did you watch Kassidy that afternoon?

6 A Not -- not that long.

7 Q Any approximation about how long you watched her?

8 A Maybe 'til 5:30, something like that. I don't know

9 exactly.

10 Q And what was the arrangement for -- when Amanda

11 dropped her off, what was the plan for that day

12 with Kassidy?

13 A Chad was going to come get her as soon as he got

14 out of work.

15 Q Now, did you get a call from the defendant before

16 he picked her up from your house?

17 A Yes.

18 Q What did -- what did he ask you to do?

19 A He wanted me to bring Kassidy to a store in

20 Portsmouth. ..

21 Q And why did he ask you to bring her down to ,

22 Portsmouth?

23 A He was running late to pick his son up. His son

24 was in school in Dover.

And he had an errand to run?

Yes, sir.

And how did you respond to his request to bring

Kassidy from your house down to Portsmouth?

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I told him no, I didn't want my trucks down that

way.

Now, did you -- did the defendant -- had the

defendant ever been to your house before that? Did

he know how to get there?

Yeah.

And did -- do you remember what telephone the

defendant called you on?

I believe it was cell phone first. But my

Reception, I think -- I know I talked to him on my

home phone that day.

so it sounds like he might have called you first on

the cell phone and then on your home phone?

Yeah, it seems to me he did, because the reception

doesn't come in very good with Sprint PCS in my

house.

And do you remember about what time he called you

that afternoon, that first call?

I believe around 5:30.

exactly.

Around there. I don't know

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Could it have been earlier than that?

Could have been earlier.

you know, I don't know.

Could have been five,

What did you do after you hung up with the

defendant and after you told him, you know, that he

had to come up to Kittery to get Kassidy? What did

you do after that?

Got Kassidy ready, put her winter jacket on her,

got her stuff together.

And then what happened? What did you do?

Went outside, because my next-door neighbor, Will

Pierce, had borrowed my truck, because he was

working on his house, so he had to get supplies,

and he had parked it going into my driveway on the

right-hand side, which is -- there's an elderly

lady that lives next door, and she really doesn't

like people parking on that -- on her lawn. So I

went out to move my truck, and I put Kassidy in the

truck, and I parked down by -- by the carport

behind the house and I pulled in the truck there,

and we kind of sat and waited for him. And he

didn't come right away, so we went back inside and

waited for him.

So you took Kassidy outside, at first, to move your

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1 truck. What did you do with Kassidy when you moved

2 the truck?

3 A She sat inside the truck with me.

4 Q On the -- what is it, a bench seat?

5 A Yes.

6 Q And after you moved the truck, what did you and

7 Kassidy do?

8 A Just sat inside the truck for a minute. Waited for

9 him. He didn't show up, so I went around, got her

10 out of the truck, went back inside the house.

11 Q Was Kassidy walking that day? I mean, what was her

12 situation?

13 A Not -- if she was, it wasn't very good. She had a

14 problem with her leg.

15 Q Can you describe that problem?

16 A She'd kind of limped. I forget exactly what leg it

17 was, but she would limp. And, definitely, you

18 know, didn't put a lot of pressure on that -- that

19 one leg.

20 Q 1 How long did you notice that going on?

21 A A little while. I had brought it up to -- I

22 actually believe Amanda had told me about that

23 incident.

24 Q What did Amanda tell you about that?

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1 MR. BROWN: I'm going to object.

2 MR. DELKER: May we approach?

3 THE COURT: Yes.

4 [The following is a discussion at the bench].

5 MR. DELKER: Amanda was specifically asked whether

6 she told Jeffe Marshall that the defendant, I think,

7 pulled Kassidy's leg or hurt Kassidy's leg. She denied

8 that the conversation every took place.

9 impeaching Amanda.

This is

MR. SISTI: I don't what was it, redirect?

MR. DELKER: It was on redirect.

THE COURT: Yeah, I'm going to overrule the

13 objection.

14 MR. SISTI: All right. Well, then, I think the

15 question has to be asked differently, I mean, if you're

16 utilizing the statement, but he can ask it any way he

17 wants.

18 THE COURT: I think he can ask him: What did she

19 say on the phone. Objection's overruled.

20 MR. SISTI: I'll withdraw it. Thank you.

21 [End bench conference].

22 [By Mr. Delker]:

23 Q

24 You said that you had a conversation with Amanda;

in person, or over the telephone?

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b e l i e v e i t w a s o v e r t h e t e l e p h o n e.

Q What d i d Amanda t e l l y o u a b o u t K a s s i d y ' s w a l k i n g?

A She c a l l e d up and s h e was p r e t t y u p s e t a b o u t what

h a d h a p p e n e d . She s a i d t h a t Chad h a d h u r t

K a s s i d y ' s l e g . She d e s c r i b e d i t a s he was p l a y i ng

r o u g h w i t h h e r , a n d t h a t s h e was w a l k i n g not t oo

good. T h a t ' s b a s i c a l l y how s h e d e s c r i b e d i t .

Q You s a i d t h a t -- what was Amanda's e m o t i o n a l s t a te

when s h e c a l l e d y o u and s p o k e a b o u t t h a t?

A She was p i s s e d o f f a t C h a d . She was q u i t e a n g r y a t

h i m a t t h a t t i m e.

Q And a f t e r t h a t c o n v e r s a t i o n , what d i d y o u n o t i ce

a b o u t K a s s i d y ' s w a l k?

A E x a c t l y how s h e d e s c r i b e d i t o n t h e p h o n e . When

s h e b r o u g h t K a s s i d y o v e r , l i m p i n g a g a i n,

Q Was t h e r e a n i n c i d e n t w h e r e s o m e t h i n g h a p p e n e d and

K a s s i d y g o t k n o c k e d down a t y o u r h o u s e?

A Yes.

Q Can y o u d e s c r i b e what h a p p e n e d t h e r e?

I was i n t h e l i v i n g room w a t c h i n g TV, and I t h o u g ht

K a s s i d y was i n t h e b e d r o om w a t c h i n g c a r t o o n s and

s t u f f , and s h e h a d g o t t e n up, and d i d t h e same

t h i n g s t a n d i n g t h e r e l i k e s h e ' d become u s e d t o , I

g u e s s . And t h e phone r a n g , and I r a n o u t t o t he

A

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kitchen, because our phone was in the kitchen by

the sink, and when I came around the corner, I

tripped over Kassidy, and I fell on the floor

myself.

And did -- what happened to Kassidy?

She, I believe, went down on her butt.

On her butt?

Yeah.

Was this when was this incident in relationship

to when you first started noticing Kassidy's

problems walking?

After the fact. Maybe a week after.

Just so I'm clear. So when you first noticed

Kassidy was -- having difficulty walking and then

you went into the kitchen and knocked her over when

you were getting the telephone, is that the order?

Exactly.

Now, was Kassidy injured as a result of your

knocking her over?

Other than her still having difficulty walking, no.

She wasn't injured from me that day that I could

tell.

Did you tell Amanda about that, what happened?

Yes, I did. I told Amanda everything that ever

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1 took place.

2 Q I want to get back to Wednesday, November 8th,

3 again. You said that Kassidy -- you had brought

4 her out to the car and then the defendant didn't

5 show up right away, so you brought her back into

6 the house. What happened next?

7 A I believe we stood up in the kitchen, you know. I

8 held her -- we were in the kitchen area and he

9 pulled down the driveway, he pulled into the

10 parking spaces that our house has.

11 Q And do you know how long after he called you he

12 showed up at your house?

13 A It seemed like a while. I don't know exactly what

14 time, or a timeframe. I wouldn't want to guess.

15 Q All right. And what happened when you when he

16 showed up and parked in your driveway?

17 A I brought Kassidy out to him.

18 Q How did you bring her out? Can you describe how

19 you brought her out?

20 A I carried her outside.

21 Q What kind of vehicle does the defendant drive?

22 A Ford Taurus.

23 Q And what color is it?

24 A Maroon, I believe.

16 Honor?

17 Can you describe what happened when you brought

Kassidy outside after the defendant pulled in?

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He was looking for a car seat for her. I believe

he looked inside my truck, and I looked in the back

of my truck. Amanda forgot to leave a car seat for

Kassidy. After he looked for the car seat, I

handed Kassidy to him.

Where were you standing?

I was standing on the driver's side of the car.

And when you handed Kassidy to the defendant, where

did he go?

I put her in the passenger side of her car.

Okay. Front or back?

Back seat.

MR. DELKER:

THE COURT:

Could I have just one moment, your

Sure.

18 [Pause in proceedings].

19 MR. DELKER:

20 exhibits.

THE COURT:

MR. SISTI:

THE COURT:

24 exhibits.

I'm just going to show these two

Sure

That's without objection.

Okay. And they may be marked as full

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1 MR. DELKER: Thank y o u .

2 [ S t a t e ' s E x h i b i t No. 24, p h o t o g r a p h - d e f e n d a n t ' s c a r .

3 r e c e i v e d i n e v i d e n c e ] .

4 [ S t a t e ' s E x h i b i t No. 2 5 , p h o t o g r a p h - d e f e n d a n t ' s c a r .

5 r e c e i v e d i n e v i d e n c e ] .

6 [ B y Mr . D e l k e r ] :

7 Q I 'm s h o w i n g y o u w h a t ' s b e e n m a r k e d a s S t a t e 's

8 E x h i b i t s 24 a n d 2 5 . Do y o u r e c o g n i z e t h o se

9 p h o t o g r a p h s ?

10 A Y e s , s i r .

11 Q And what i s t h a t ?

12 A T h a t ' s C h a d ' s company c a r .

13 Q Okay. And i s t h a t t h e v e h i c l e he showed up i n t h a t

14 d a y ?

15 A Y e s , s i r .

16 Q Okay.

17 MR. DELKER: I f I c o u l d a s k t h e w i t n e s s t o s t ep

18 down o f f t h e s t a n d , I ' d l i k e t o h a v e h im d e s c r i b e where

19 t h e y w e r e s t a n d i n g i n r e l a t i o n t o t h e v e h i c l e .

20 THE COURT: S u r e . J u s t k e e p y o u r v o i c e up when

21 y o u ' r e t e s t i f y i n g , s i r .

22 THE WITNESS: Okay.

23 MR. S I S T I : I f we c o u l d s h i f t , y o u r Honor?

24 THE COURT: Sure.

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1 MR. SISTI: Thank you.

2 [By Mr. Delker]:

3 Q If you could describe for the jury what happened

4 when you brought Kassidy out to the defendant's

5 car, just where you were standing, and what the two

6 of you did.

7 A His car was parked like this facing in, just like

8 if you see the back of my house, he was holding her

9 just like that. I was standing on this side of the

10 car with Kassidy. He was ---

11 THE COURT: Can you keep your voice up just a bit

12 more, sir.

13 THE WITNESS: Okay.

14 THE COURT: Thank you.

15 THE WITNESS: He was looking inside my truck, which

16 was parked on this side of his car by my carport, looking

17 for a car seat.

18 (By Mr. Delker]

19 Q And then what happened? Did he find a car seat?

20 A No, he didn't.

21 Q And what - - what did he do then?

22 A He then put her in the back seat on the passenger

23 side.

24 Q That would be on - - -

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1 A Right in that door.

2 Q Okay. Just make sure that these jurors down

3 here -- this is the same thing. can you just point

4 that out, again?

5 A As far as the whole

6 Q Yeah, the whole thing.

7 A I was standing on this side. My truck was parked

8 on this side. Went to my truck, looked for a car

9 seat for Kassidy. I believe he went in the front

10 of the truck first, and then he looked in the back

11 and Amanda didn't leave the car seat. Then he came

12 back over, I handed Kassidy to him. We were

13 standing on this side. He put her in the back of

14 the car on the passenger.

15 Q Thank you, Mr. Marshall, you can take the stand.

16 And what did the defendant do with Kassidy when he

17 put her in the back seat of the car?

18 A Put a seat belt on her.

19 Q Regular adult seat belt?

20 A Yes, I believe it's the kind that has a strap over

21 your shoulder and the bottom.

22 Q And how did Kassidy fit with the seat belt?

23 A Not like an adult would have. The strap --

24 obviously, the strap was quite high on her.

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Was there another kind of seat or like child seat

in the car at the time?

Yes.

All right. What was that one?

It was like a booster seat like you would see a

little older child be put in.

Where was that in the car?

That was on the driver's side in the back.

Now, did you talk to the defendant at all before

you he left your house?

Yeah. As he started pulling out of the driveway, I

believe at that time I went around to the passenger

side and he put down the window and we talked.

Did he tell you he was getting something -- some

problem with his credit card fixed at the store

before he picked Kassidy up?

Yeah. He said something that he got and bought

some stuff and they had overcharged his credit

card, and he was going back down there, because he

had to get that credited back to him.

And how long did you and he talk?

I don't believe it was very long. I think we

talked a little bit about the election that was

going on, too.

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1 Q And what was Kassidy's physical condition when she

2 left your house that afternoon on Wednesday,

3 November 8th?

4 A Normal. Pretty normal.

5 Q What was her -- did she have bruises?

6 A Oh, yes.

7 Q And what did they look like?

8 A She had one that was fading away on her face. And

9 she might have had a couple of scratches, because

10 they had a kitten that ---

11 Q Do you know -- do you remember where the bruise

12 that was fading was?

13 A I believe it was around here, you know, on her face

14 like -- I couldn't tell you exactly what side.

15 Q And how was her behavior that afternoon while you

16 watched her?

17 A Nothing that was, you know, abnormal, as far as,

18 you know, how she was behaving days before and

19 e stuff. She -- like I said, she became slower and

20 slower as time went on. But, you know, it was --

21 it wasn't, I don't know, that bad.

22 Q So was there anything -- were you -- was there

23 anything about concern -- that concerned you about

24 her when she left your house on November 8th?

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No, not at that time, no.

Do you remember what you and Kassidy did while you

watched her that afternoon?

I didn't watch her that long. I don't know, I was

watching the elections. I almost think she was

watching cartoons. That's basically what she did

when she was over at our house. We didn't have a

whole lot of toys, or anything like that.

Did you do anything to Kassidy to hurt her that

afternoon?

Absolutely not.

Now, what happened after the defendant left your

house?

I got a phone call.

And can you describe that phone call?

I got a phone call, I believe it was on my cell

phone, the first call saying same kind of thing,

the cell phone doesn't come in inside the house.

So then he called the home phone. I talked to him.

He says something's wrong with Kassidy, she's

acting weird. I said, what's the matter? And he

said, I don't know, you know, she's kind of, you

know, bobbin' around and stuff.

Did he -- do you remember what the first thing he

Page 133

1 said was when he called you?

2 A The little bitch is acting weird again. That kind

3 of stuff. I mean, that's basically the way he

4 referred to her most of the time, anyway.

5 Q Can you explain that in more detail? What do you

6 mean by that?

7 A He'd call her a little bitch, little jerk, stuff

8 like that.

9 Q Okay. Any other names?

10 A It didn't really matter who he was around when he

11 said that stuff.

12 Q Any other names you remember him calling her?

13 A Little bastard. Stuff like that. I mean, I don't

14 want to -- I just remember those ones.

15 Q Did he ever talk to you or say anything about her

16 mental condition? Not during that time but before

17 that, what would he say about her?

18 A She's a little retard, you know, she acts just like

19 her mother, stuff like that.

20 Q All right. So calls you up and says something like

21 the - - what did he say, again?

22 A The little retard's - - -

23 MR. SISTI: I'm going to object, judge.

24 THE WITNESS: You know, the little bitch is

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1 MR. SISTI: I'm going to object. I'd like to

2 approach.

3 THE COURT: Yes.

4 [The following is a discussion at the bench].

MR. SISTI: You know what he said?

THE COURT: What's the objection?

MR. SISTI: The objection is that it's to the form

5

6

7

8

9

of the question.

been asked again,

It's been asked and answered. And it's

and, frankly, if he wants to go -- you

10 know, we know that the claim is that he called her a

11 bitch.

We don't need to hear it four times.

THE COURT: It's overruled.

MR. SISTI: Thank you.

MR. DELKER: Thank you.

15 [End bench conference]

16 [By Mr. Delker]:

Can you describe how that call you got from the

defendant began?

Same way I told you.

weird again.

Then what did he say?

The little bitch is acting

He said she was acting weird in the back of the

car. She's kind of bobbin' around. Then kind of

changed the subject to politics, just like that.

Page 135

1 Q Did he say where he was when he called you?

2 A Well, he said he was at the Hampton toll booths.

3 He was in traffic.

4 Q Was it do you remember if it was the Hampton

5 tolls that he was at?

6 A Oh, Dover tolls. Sorry.

7 Q And he said he was in traffic. Did he ask you

B about anything that may have happened to Kassidy

9 that afternoon?

10 A He said: Do you know what's wrong with Kassidy?

11 And I said: No. It was pretty quick. He didn't

12 seem like he was that concerned, you know what I

13 mean, never came across as being that concerned

14 about it. He just, you know, all of a sudden

15 change into politics.

16 Q What did you talk about for the rest of the

17 conversation?

18 A Just politics. Just the election that was going

19 on.

20 Q Now, did you get another call from the defendant

21 that afternoon or that evening?

22 A Yes.

23 Q Okay. And do you remember when that call was?

24 A I believe about an hour or so after this one.

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He called up and said: You won't believe this.

And I kind of said what? And he says: I was -- I

took Kassidy out of the car, and I went around to

get my son, and I went around to get her out of the

car, and she was on her face on the ground. I then

said:

says:

What the hell are you talking about? And he

Yeah, I can't believe it. I went around the

car to get her, and she was flat on her face. He

said that he brought her in the house and had to

wipe rocks and stuff out of her hair.

So he said -- who did he say got out of the car

first?

I believe he got -- the way he described it to me

was he got Kassidy out, stood her up by the car,

went around and got his son out of the car, and

then went back around and was going to get Kassidy,

but she was on the ground.

And he said she was face down?

Yes. That's how he described it to me, she was

face down laying on the ground.

And did he describe what her condition was at that

point?

She was upset, crying, stuff like that.

Did -- and what did he say he did with her?

Page 137

1 A He said he brought her in, cleaned her up, that

2 kind of

3 Q Did he say after he brought her in and cleaned her

4 up, did he say how she was acting or what her

5 condition was at that point?

6 A I think she was fine, because after that, I believe

7 I got another phone call from him.

8 Q I'll ask you about that second call. Do you

9 remember how that call, that second call, now,

10 ended?

11 A I believe we were talking about the elections

12 again.

13 Q And what -- you mentioned another call, third call.

14 what happened then?

15 A I got another phone call, and, this time, same kind

16 of thing: You won't believe this. We were playing

17 baseball in my son's room, and I had Kassidy next

18 to me, and I threw the ball to -- I believe it was

19 Kyle, I can't be exactly sure -- but he threw the

20 ball to him and he hit the ball and it hit Kassidy.

21 And she's all upset and stuff.

22 Q Let me ask you about that in a little more detail.

23 What did he say? What kind of ball was he playing?

24 A I believe he said baseball.

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1 Q And what did he say he did with the ball?

2 A He had thrown it to his son, and his son had hit

3 the ball and hit Kassidy in the face.

4 Q Did he say what he had hit the ball with?

5 A A baseball bat.

6 Q And where were they playing baseball?

7 A In his son's room.

8 Q Inside the house?

9 A Yes.

10 Q And what happened to Kassidy? Did he describe what

11 happened to Kassidy when she got hit with the

12 baseball?

13 A Yeah, he said she was crying and stuff. I can't

14 remember if it was that conversation, or if he had

15 called me again, but, at one point, he was talking

16 to me pretty frantically that she was kind of out

17 of it. Her eyes were in the back of her head, and

18 she was kind of -- he kept yelling out her name,

19 Kassidy, Kassidy, Kassidy, wake up. Wake up. And

20 I kind of said what's wrong? You know, you need to

21 bring her to the hospital. He then said: Oh,

22 she's come out of it. She's fine, now.

23 Q So do you remember whether there was -- you

24 mentioned that the call, the third call you got

Page 139

about the baseball, do you remember whether there

was a fourth call that night or what the

conversation you had with the defendant was?

I can't be quite sure. I don't know if it was that

same call when he was playing baseball with his

son, or if it was after that he had called me

again. I almost think there was a fourth, you

know, another time he called. But, I mean, it was

just weird, because things -- he never called me

like that, you know, and one thing after another.

That further conversation when he was talking about

Kassidy's condition, can you describe in any more

detail what he said about Kassidy's condition?

Just like she's out cold. She's not there. He was

pretty scared. Her eyes were in the back of her

head. That whole kind of -- just

How did that call end?

I think I told him he needed to take her to the

hospital.

ended.

I believe that's how that conversation

You said a minute ago you said something about

Kassidy was getting better.

more detail about that?

Yeah. He just -- he said:

Do you remember any

Oh, she's getting out

Page 140

of it. She's fine now. And that was ...

You said I think a second ago that these calls were

out of the ordinary.

ordinary?

Why were they out of the

I didn't hear from Chad too much at night. And I

don't believe I ever really heard from him when he

had Kassidy in the past at night, or any time he

kind of watched Kassidy. Mostly the contact me and

him had was work-related, or if we were going over

to his house, if he was having a party, or

something like that.

ordinary.

Just kind of out of the

Had he ever called you before when Kassidy was

injured?

No, not that I remember.

time he called me.

I don't ever remember a

Were you scheduled to baby-sit the next -- oh, let

me ask you this:

the evening?

What did you do for the rest of

I believe I talked to Jennifer, my girlfriend, on

the phone about

Okay, don't get into the subject --Okay.

-- of what you talked about. Go ahead, what else

Page 141

did you do that evening?

Jennifer came home. We went out for dinner. She

got out, I think, around nine, or so. we went to

Wendy's to get a quick dinner, and we came home and

ate.

Were you scheduled to baby-sit Kassidy again the

next morning?

Yes\_

What was the arrangement?

Amanda was supposed to drop Kassidy off.

Did she do that?

Yes.

Do you remember what time she dropped Kassidy off?

I can't remember, exactly. It was around eight,

eighty-thirty, something like that.

What were you doing when Amanda and Kassidy arrived

at your house?

I was still in bed.

And what was -- was Jennifer home?

Yes.

And what was she doing?

She was getting ready for work.

nine that morning.

She had to work at

Describe what happened when Amanda and Kassidy

Page 142

arrived.

She came in. She usually never knocked when she

dropped Kassidy off. She'd usually walk in, you

know, brought her into our bedroom and said: She

looks like shit, doesn't she? And look what Chad

did. That kind of -- and I looked, and, I mean, it

was definitely different than the day before.

You said that Kassidy and Amanda walked into your

bedroom. Did they knock? Were they announced in

any way when they came in?

I don't recall.

Do they generally just walk in?

It's Jen's sister, yeah.

Okay. What was the first thing that Amanda said

when she walked into your bedroom?

Looks like shit, doesn't she? And she pointed out

Kassidy's face.

What did Kassidy's face look like?

It was bruised all over. Just everywhere. From

what I recall, just all over her face.

What was Amanda's demeanor or emotional state when

she brought Kassidy in?

She was -- she was mad at Chad.

Did Kassidy have any of those bruises on her face

Page 143

1 when she left your house the day before?

2 A No, she didn't.

3 Q Did -- what was Kassidy wearing when she got to

4 your house?

5 A She was wearing a winter coat and her pajamas.

6 Q What did her winter coat look like?

7 A It was pink, with ruffles on it.

8 Q And what were her pajamas? What did those look

9 like?

10 A They were red.

11 Q What did Amanda do ---

12 A Can I get ---

13 THE COURT: There's no tissue up there. We're out

14 of tissue.

15 [By Mr. Delker]

16 Q What did Amanda do with Kassidy when she brought

17 her to your house?

18 A She brought her into the bedroom. I don't know if

19 she handed her to us, or put her right on the bed.

20 Q And so where did Kassidy ultimately end up after

21 Amanda dropped her off?

22 A On our bed.

23 Q Was how long did Amanda stay?

24 A Not that long. She was late for work, I believe.

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And where was Jen when Amanda and Kassidy came in?

Jen was inside the bedroom getting dressed for

work.

So what happened with Kassidy after Amanda dropped

her off? You said she was put in bed. What did

you guys do?

I was concerned at that point because of the

bruises. And I said to Jennifer, I said, you know,

this isn't right, because she's walking weird.

I attempted to try to get Kassidy up, and she

wouldn't -- she wouldn't move.

And

Why did you try to take Kassidy out of the bed?

I wanted to show Jennifer how she was walking and

stuff.

What did Kassidy do when you tried to take her out

of the bed?

She just wouldn't -- wouldn't move.

didn't want to be held or nothing.

You know,

What was her -- did she make any noise?

Not that I remember.

What was Kassidy's behavior that morning when

Amanda dropped her off?

She was -- she was tired.

was kind of out of it.

She looked tired. She

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Can you describe that for me in more detail?

She just kind of laid there. I turned the TV on to

Nickelodeon, I believe.

How long did Kassidy -- how was her behavior at

that point compared with when she left your house

the day before?

Absolutely totally different.

In what way?

She was moving. You know, she wasn't there.

mean ---

Was she conscious?

I don't know.

tired.

I mean, she looked like she was

Did you see Kassidy eat anything that morning?

She had cereal with her.

What do you mean by that?

A bag of cereal that Amanda had brought.

What happened; what was the situation with the

cereal?

I believe we put it in bed with her.

I

Did you -- did you see her eat any of that cereal

at all?

No, I didn't.

Now, how long was Jen home after Amanda dropped

Kassidy off?

Not very long.

at nine.

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She had to go to work. She worked

4 THE COURT: Why don't we take the lunch break at

5 this time.

6 MR. DELKER: Thank you.

7 THE COURT: Ladies and gentlemen, please, again, do

8 not discuss this case, yet, amongst yourselves. Do not

9 decide the case until you've heard all of the evidence.

10 And we'll see you back here at 1:30, and I'll see the

11 lawyers at 1:15 to take up the remaining issue.

12 you.

13 THE BAILIFF: All rise, please.

14 [Lunch recess at 12:26:34 P.M.J.

15 [Resume motion hearing at 1:20:22 P.M.].

Thank

16 [The following is in open court without the jury present]

17 THE COURT: Okay. I've had a chance to read the

18 State's motion to preclude the introduction of an offer by

19 the state police to Jeffe Marshall to take a polygraph

20 test and his refusal, as I understand that particular

21 piece of evidence. And so why don't I give you a couple

22 of minutes to make any additional argument.

23 MR. DELKER: Thank you, your Honor. That's

24 correct, the State would request that the Court prohibit

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1 the defense from allowing cross-examination of Jeffe

2 Marshall about his refusal to take the polygraph. I think

3 Attorney Sisti referred to in his opening something about

4 Jeffe not being entirely cooperative, and that's what

5 triggered the motion. State v. Ober which is cited in our

6 bench memorandum is, I think, controlling on this issue.

7 That case, if the Court would recall, about the

8 inadmissibility of polygraph exam or anything about the

9 polygraph, including the witnesses -- including requests

10 for witness to take or not take a polygraph. And, in

11 particular, what the case recognizes is that the -- that

12 taking the polygraph can't lead to admissible evidence.

13 And so what they say is that questions about whether the

14 witness took a polygraph or didn't take a polygraph, or

15 refuses to take a polygraph are not -- are not relevant,

16 because it requires the jury to speculate about the

17 reasons why a witness did that. I think the case is

18 fairly clear on this, and it's unequivocal that it goes

19 both to the truth or falsity of the witness's testimony.

20 THE COURT: Okay. Mr. Sisti?

21 MR. SISTI: Thank you, your Honor. Generally, I'm

22 on the other end of these things, but that's because my

23 clients had already taken a polygraph. The situation

24 here, your Honor, is that, in essence, they have vouched

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1 for Mr. Marshall's credibility. They've done it a couple

2 of different ways. They've pictured him before this jury

3 as being cooperative. They've pictured him before this

4 jury as giving full, complete statements to police

5 officers so that they could investigate this case in a

6 thorough fashion. They've painted a picture before this

7 jury, your Honor, that he consented to a search of his

8 home, that he basically was falling over backwards to show

9 the State, show law enforcement that, in fact, he was just

10 an innocent bystander in this whole tragedy.

11 Your Honor, on November 9th, 2000, on the last

12 three pages of an interview with Jefferey Marshall,

13 Jefferey accepted the State's invitation to take a

14 polygraph test, shortly after the death of Kassidy

15 Bortner. The fact of the matter is that it was offered to

16 him, it was offered to him in the presence of law

17 enforcement, both Maine State Police and New Hampshire

18 State Police; that, in fact, he was told that well, if

19 you're going to eliminate him, that being Mr. Marshall,

20 and this Chad guy's pointing a finger at him, is he

21 willing to come in and take a polygraph test? And

22 Marshall's response is: I'd probably be willing to do

23 that. Like, you know, I have -- like I said, I have

24 nothing to worry about. And the answer is: And if you

Page 149

1 really -- if you didn't do anything, you really do, you've

2 got to believe me on that. Mr. Marshall: Yeah. Oh,

3 yeah. It goes on. And, you know, it basically concludes

4 no problem, I'm going to take the polygraph test.

s Well, after November 9th, 2000, that formal

6 invitation was given to Mr. Marshall and he refused to

7 take the polygraph test. And it's in that particular

8 context, your Honor, that we ask that we offer it. I am

9 not stating in any way, shape, or form that the polygraph

10 is a reliable tool, that it tells whether or not

11 somebody's lying or not lying. But Mr. Marshall is left

12 with the impression by law enforcement, on November 9th,

13 2000, that the lie-detector test -- and that's what they

14 called it -- would clear him if he took it, and if he was

15 telling the truth. And he accepted that, and he, in fact,

16 accepted that statement by saying, yeah, I know, I have

17 nothing to hide. No problem, I'll take the test. Well,

18 your Honor, he hasn't taken the test. He hasn't been

19 fully cooperative. And this is fair area for the jury to

20 consider; not whether or not a polygraph is an accurate

21 indication of truth telling or not truth telling. If they

22 would have said: Mr. Marshall, if you'll walk across the

23 street three times backwards, that will clear you of this

24 particular accusation. And if he said, sure, I'll do that

Page 150

1 three times, and then failed to do it three times, well

2 that would be admissible. His refusal to take the test,

3 after he accepted that initial invitation, we believe, is

4 not only relevant, but is certainly admissible in any way,

s shape or form.

6 Now, the cases that the State refers to are cases

7 that go to the scientific reliability of the polygraph and

8 that sort of thing. We have no problem with that, and

9 we're not asking that a polygraph result be put in. But

10 his -- the mere fact that he failed to do something law

11 enforcement asked him to do to further the investigation

12 is relevant, and it impacts on his credibility,

13 especially -- especially, your Honor, in the context of

14 this. After -- before he had engaged in this first

15 interview with law enforcement, he did not have contact

16 with other witnesses in this particular case. In fact,

17 what's particularly interesting, this may be a Maine State

18 Police way of doing things, your Honor has worked with our

19 police agencies long enough to know this isn't typical. ®

20 Mr. Marshall says - - after he says no problem in getting

21 back in touch with law enforcement on the polygraph he

22 says: You know, because I'm sure I'm going to come up

23 with something, you know, I'm going to sit down and I'm

24 going to either sit there with Jen -- his girl friend --

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1 and I don't know if it's right or not, but she -- but she

2 might be able to bring something up that may catch my

3 attention about this. Law enforcement: Like she might

4 have heard something, remembered something differently

5 than you did? Absolutly. And they offer him an 800

6 number to get in touch after that conversation.

7 Your Honor, I would suggest that he did have a

8 conversation with Jennifer Conley after his initial

9 statement to the police. Jennifer Conley's statement,

10 your Honor, I can offer, shed some light on those

11 telephone conversations during the late morning, early

12 afternoon of 11/9/2000, and they aren't what Mr. Marshall

13 said they are. So, your Honor, in that context I'm asking

14 this Court to allow me to examine Mr. Marshall on the fact

15 that he was offered a polygraph, that he initially had

16 accepted that offer,. and that only after speaking with

17 other witnesses in this case he refused to go forward with

18 that polygraph. He can come up with any reason he wants,

19 but those are the facts on the record.

20 THE COURT: Okay. Based on the arguments

21 presented, and based on my review of the case law, I'm

22 going to grant the State's motion to preclude the defense

23 from asking any questions about whether or not Mr.

24 Marshall was offered a polygraph test, and whether or not

Page 152

1 he first agreed and then refused to take a polygraph test

2 for the following reasons: First of all, under State v.

3 Ober, not only did the supreme court recognize that the

4 admissibility of polygraph test results are inadmissible,

5 they also concluded that a question referring to whether

6 or not a witness would agree to take a polygraph test is,

7 likewise, inadmissible. And the reason for that is

8 because of the unreliability of the test, and the risk

9 that the jury may presume from the fact that someone

10 refused or didn't refuse to take a test that that is an

11 inference of guilt, or that the test would have produced a

12 reliable result. There are a lot of reasons why people

13 may refuse a polygraph test. It's a subjective test. The

14 results are not always reliable. There may be other

15 things that the witness is concerned about unrelated to

16 the incident at issue. So based on State v. Ober, and the

17 complete inadmissibility and unreliability of polygraph

18 tests, a reference to those tests is, likewise,

19 inadmissible under State v. Ober. So I'm going to grant

20 the State's request.

21 MR. SISTI: May I ask, your Honor, if he is asked

22 on cross-examination, and he was under oath, and we're in

23 a courtroom, whether or not he fully cooperated with law

24 enforcement in this case and states that he did, one would

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t h i n k t h a t f u r t h e r q u e s t i o n i n g i s i n o r d e r . I j u s t want

THE COURT: No, I'm n o t g o i n g t o a l l o w you t o a s k

him about t h e p o l y g r a p h t e s t.

MR. S I S T I : Well, I g u e s s I'm p e r p l e x e d a s t o

how -- how i n t h e w o r l d he w o u l d be a l l o w e d t o a n s w e r t h at

q u e s t i o n i n a n y o t h e r way b u t n o .

THE COURT: Well, w e ' l l s e e what h i s a n s w e r i s

g o i n g t o be, and y o u c a n make an argument. But I t h i n k

under S t a t e v . Ober. i t ' s v e r y c l e a r t h a t t h e r e a r e --

t h e r e i s a r i s k t h a t t h e j u r y w i l l i n f e r s o m e t h i n g from an

i n d i v i d u a l ' s r e f u s a l t o t a k e a t e s t t h a t i s s i m p l y not

a d m i s s i b l e i n c o u r t . And w h e t h e r o r n o t he r e f u s e d t o

t a k e a t e s t c a n be a r g u e d t h a t he c o o p e r a t e d , n o n e t h e l e s s,

o r t h a t he d i d n ' t c o o p e r a t e . So I d o n ' t t h i n k i t ' s

p a r t i c u l a r l y r e l e v a n t t o a s k h im a b o u t t h a t t e s t.

MR. S I S T I : I t h i n k t h a t ' s why i t i s r e l e v a n t , your

Honor. And, f r a n k l y , I t h i n k we're b e i n g b a r r e d under

P a r t 1, A r t i c l e 15, i n o f f e r i n g p r o o f s f a v o r a b l e t o t h e

d e f e n s e . And t h e r e a s o n i s t h a t , a g a i n , I w o u l d n ' t be

m e n t i o n i n g a n y t h i n g t o do w i t h a p o l y g r a p h e x a m i n a t i o n.

My s i m p l e q u e s t i o n i s w h e t h e r o r n o t he f u l l y c o o p e r a t ed

w i t h l aw e n f o r c e m e n t d u r i n g t h e c o u r s e of t h i s

i n v e s t i g a t i o n . I f he i s g i v e n -- somehow, i f he i s

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1 given -- and that question, by the way, is a fair

2 question.

3 coughing]

If he is given leeway to lie on .. [inaudible -

I believe that that's the affront that should

4 be protected during the course of this case. That is a

5 valid question. It's a question that would be ---

6 THE COURT: Is there any -- is there any other way

7 that he did not cooperate with the police, in your view?

MR. SISTI:

THE COURT:

MR. SISTI:

In my view?

Yeah.

Yeah. He went over to his house

11 after -- after the thing had crime tape all over it, and

12 went inside of it. It's obvious to me - - -

13 THE COURT: Okay. Contrary to the police request?

14 MR. SISTI: The house - - -

15 THE COURT: Did the police

16 MR. SISTI: My understanding my understanding

17 that that house was surrounded with yellow crime tape.

18 THE COURT: Okay. My concern is that if your

19 evidence of his failure to cooperate is his refusal to

20 take a polygraph test, it is simply another way of

21 attempting to open the door to that evidence. So I made

is

22 my ruling, and I'm not going to allow the State to inquire

23 about whether or not he refused to take a polygraph test.

24 I'm sorry, the defense.

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MR. S I S T I : I won't be a s k i n g about a p o l y g r a ph

t e s t , j u d g e , but I w i l l be a s k i n g about w h e t h e r he

c o o p e r a t e d .

THE COURT: Sure, you c a n do t h a t . And i f he s a ys

y e s , y o u may n o t a s k a b o u t t h e p o l y g r a p h t e s t.

MR. S I S T I : I f he s a y s y e s , we would a s k f o r a

r e c o r d , b e c a u s e t h a t would be a l i e i n y o u r courtroom, and

I ' d a s k t h a t we c o r r e c t t h a t .

THE COURT: Mr. D e l k e r?

MR. DELKER: I t h i n k i f he s a y s y e s , t h e o n l y t h i ng

he r e f u s e d t o do was t a k e t h e p o l y g r a p h t e s t.

THE COURT: R i g h t . And t h a t ' s

MR. DELKER: He s u b m i t t e d t o e v e r y s i n g le

i n t e r v i e w . He came back t i m e and t i m e a g a i n . They asked

Mr. M a r s h a l l t o show them on v i d e o t a p e how he d i d t h e CPR

t o K a s s i d y , and he s u b m i t t e d t o t h a t . He, you know,

c o n s e n t e d t o t h e s e a r c h o f h i s h o u s e . I mean, a n y t h i ng

t h a t t h e y a s k e d f o r him, y e a h , he a g r e e d t o do. The o n ly

t h i n g t h a t he d i d n ' t a g r e e t o do was t h e p o l y g r a p h . And

g i v e n t h e u n r e l i a b i l i t y of them, I f r a n k l y d o n ' t blame

him, and I d o n ' t t h i n k t h a t ' s n o t b e i n g c o o p e r a t i v e w i th

l aw e n f o r c e m e n t.

THE COURT: Okay.

MR. S I S T I : Your Honor

THE COURT:

MR. SISTI:

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I've made my ruling, Mr. Sisti.

I know. But, I, unfortunately, have to

3 make a record.

4

5

THE COURT:

MR. SISTI:

I think you've made a record.

I don't think I've made a full record,

6 because, frankly, the -- the issue is his state of mind.

7 It's his state of mind. It's his state of mind, whether

or not he has a guilty state of mind or not\_ All right?

It's not -- it's not the test. It's not what we call the

test. It could be anything.

12 Ober.

THE COURT: That was directly at issue in State v.

And the supreme court said that is simply not

13 admissible.

MR. SISTI:

THE COURT:

MR. SISTI:

Ober had to do with a victim --Right.

-- from what I understand. Now, that's

17 a completely different question. We are dealing with an

18 individual that defense claims killed a child. That's

19 what we're dealing with. And there's no doubt about that.

20 This is not a victim. This is not some collateral

21 witness. This is the defendant's theory that he's the

22 real killer, and, as the real killer, he has refused,

23 after accepting, to take a lie-detector test after the

24 first interview, and after he begins talking with other

1 witnesses. Now, I believe that goes to state of mind.

2 And, your Honor, I don't want to just keep droning on

3 this, but I believe to fail to allow us to ask that

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4 question would deny Mr. Evans his ability to adequately

5 cross-examine this particular witness.

THE COURT: I'm going to grant the State's request.

MR. DELKER: Thank you. And just for the record, I

8 want to just make the argument that I think that in

9 addition to State v. Ober and the unreliability of the

10 test, that the evidence, and the Court has discretion in

11 its -- has discretion to preclude evidence that's unfairly

12 prejudicial or where the probative value is minimal and

13 the unfair prejudice is great. So even to the extent it

14 may have some minimal probative value, the unfair

15 prejudice from what the jury's requested to speculate

16 based on that would mean -- would make that evidence

17 inadmissible for that reason, as well.

18 THE COURT: I agree. And, therefore, I'm going to

19 grant the State's motion. I need to take a few minutes to

20 talk with juror number two, who indicates that they

21 recognize Mr. Marshall as a neighbor, and I'm not sure of

22 the circumstances. I think the juror has recently moved

23 to New Hampshire. So I'm going to explore that on the

24 record with the jury, and then I'll come back out and tell

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1 you what the juror said, and we can decide whether you

2 want me to ask more questions. Okay?

3 MR. DELKER: Thank you.

4 THE BAILIFF: All rise.

5 [The following is in chambers with juror number two).

6 THE COURT: We're taking a record, because I'm

7 required to keep a record when I talk to jurors in the

8 middle of a trial.

9 MR. HYSON: Mark Hyson.

10 THE COURT: And spell your last name for the court

11 reporter.

12 MR. HYSON: H-y-s-o-n.

13 THE COURT: Okay. And you recognize Mr. Marshall

14 when he came in to testify?

15 MR. HYSON: Not really recognized him.

16 THE COURT: Okay.

17 MR. HYSON: What I wanted to tell you is a couple

18 of things.

19 THE COURT: Okay.

20 MR. HYSON: And I told you when -- when I first

21 came to the bench

22 THE COURT: Yeah.

23 MR. HYSON: -- that I grew up in Kittery.

24 THE COURT: Right.

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MR. HYSON: And one o f my f r i e n d s t h a t I went t o

h i g h s c h o o l w i t h , h i s p a r e n t s l i v e a c o u p l e o f d o o r s down

on t h e o t h e r s i d e o f t h e s t r e e t .

THE COURT: From where we were?

MR. HYSON: From 51 R o g e r s Road.

THE COURT: Okay.

MR. HYSON: The f r i e n d o f mine, he d o e s n ' t l i ve

t h e r e any more, t h a t I know o f . I mean, I ' v e t a l k e d t o

h im maybe t w i c e i n two y e a r s , o r s o m e t h i n g l i k e t h a t . We

were j u s t h i g h s c h o o l f r i e n d s.

THE COURT: Okay.

MR. HYSON: I d i d n ' t r e a l l y s a y a n y t h i n g t o y o u

about i t , b e c a u s e

THE COURT: R i g h t.

MR. HYSON: -- when I was up a t t h e b e n c h , you s a i d

to me t h a t j u s t b e c a u s e you l i v e d i n K i t t e r y , you know

THE COURT: R i g h t.

MR. HYSON: -- and I d i d n ' t r e a l l y r e c o g n i z e any o f

t h e names o f t h e j u r o r s , o r a n y t h i n g .

THE COURT: Okay.

MR. HYSON: And I d o n ' t know how t o e x p l a i n i t ,

b u t , you know, when you go t o y o u r home town, you walk

about your home town, you s e e p e o p l e t h a t k i n d o f j u s t

l o o k f a m i l i a r

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THE COURT: Yeah.

MR. HYSON: - - but you don't know them?

THE COURT: Yeah.

MR. HYSON: That's with Jeffery Marshall.

THE COURT: Okay.

MR. HYSON: He just looks familiar. I don't know

him.

THE COURT: Okay.

MR. HYSON: I actually went back into my yearbooks

like four years - - -

THE COURT: Okay. So the reason you think you

might recognize him is because you had a friend that lived

across the street?

MR. HYSON: Yeah.

THE COURT: Or their family lived across the

street?

MR. HYSON: His family lived across the street.

THE COURT: Okay.

MR. HYSON: And - - I mean, this was in - - I mean, I

graduated in 1984, so - - -

THE COURT: Okay.

MR. HYSON: it was a long time.

THE COURT: So when do you think, if this is

24 someone you recognize, that you would have last seen him?

MR. HYSON: If I ever saw him.

THE COURT: If you ever saw him.

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MR. HYSON: I don't know. I mean, it's not like

yesterday or - - -

around

you.

THE COURT:

MR. HYSON:

THE COURT:

MR. HYSON:

Right.

-- the day before.

Okay.

It's just, you know, like when you go

THE COURT: Okay.

MR. HYSON: -- your home town --THE

COURT: Yup.

MR. HYSON: -- you see people that you -- you know

THE COURT: Might recognize.

MR. HYSON: Might recognize or look familiar to

THE COURT: Okay.

19 MR. HYSON: But, I mean, if he was walking down the

20 street, I wouldn't even know.

21 THE COURT: Okay. I got it. So do you have any

22 impressions outside the courtroom of his credibility, or

23 anything like that?

24 MR. HYSON: No. No.

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THE COURT: Okay. I d o n ' t t h i n k i t w i l l be a

problem. I'm g l a d you t o l d me, though. Great t o make

s u r e

MR. HYSON: I wanted t o l e t y o u know b e c a u s e I

d i d n ' t want

THE COURT: No, t h a t ' s f i n e . Why d o n ' t you j u s t

have a s e a t . I ' l l l e t t h e l a w y e r s know, and t h e n w e ' l l

p r o b a b l y g e t s t a r t e d

MR. HYSON: Okay.

THE COURT: Okay. Thanks.

MR. HYSON: Out h e r e o r b a c k i n t h e d e l i b e r a t i o n

THE COURT: Back out i n t h e d e l i b e r a t i o n room.

MR. HYSON: Okay.

THE COURT: Yeah, j u s t go a l l t h e way b a c k t h e r e,

and we'11 j u s t ...

[ J u r o r e x c u s e d ].

THE COURT: Come on i n .

MR. S I S T I : What a r e we g o i n g t o be d o i n g i n t h e r e?

THE COURT: Nothing. I t ' s n o t h i n g . I j u s t want to

t e l l you about t h e j u r o r . Okay. We're i n chambers. I t

was j u r o r number two, Mr. Hyson. And i t ' s n i c e t o s e e how

c o n s c i e n t i o u s they a r e . He s a i d t h a t he grew up i n

K i t t e r y , w h i c h he t o l d u s , I t h i n k , a t t h e b e n c h t h e f i r s t

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1 day, and he had a friend whose family used to live across

2 the street from 51 Rogers Road in Kittery. So he thinks

3 he might recognize Jeffe Marshall. And the way he

4 described it is, you know, when you go back to your home

5 town after having been in high school, you may see

6 somebody that you saw once when you were living in that

7 town. He said I'm not even sure if I recognize him, but I

8 realized that my friend lived across the street, so maybe

9 I might recognize him. You know, I've never talked to

10 him. It's really innocuous. And I said, do you have any

11 impressions outside this courtroom of his credibility, or

12 anything like that, and he said no, if I even recognize

13 him.

14 part.

15

16

17 So I think it was an overabundance of caution on his

MR. SISTI:

THE COURT:

That's good to hear.

Yeah.

MR. CRONHEIM: It might not be helpful, because he

18 may not have lived there for very long ---

19

20

THE COURT: Right.

MR. CRONHEIM: -- to just get that information and

21 report that back to the juror just so that there's no

22 THE COURT: Report what back to the -- oh, to the

23 juror?

24 MR. CRONHEIM: Just so that to the extent juror's

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1 off balance by .. [inaudaible - judge speaking].

2 THE COURT: It could be someone else. Yeah. O~ay.

3 MR. CRONHEIM: You know, because I don't know that

4 he really was there.

5 MR. DELKER: That's all we have for now.

6 MR. CRONHEIM: Right. No, I'm just thinking I

7 think we might be able to get that information directly

8 from Marshall.

9 MR. DELKER: Oh, ask him.

10 MR. CRONHEIM: And to the extent we know that it's

11 not, it couldn't be him ---

12 THE COURT: Right.

13 MR. CRONHEIM: -- then the juror's just

14 [inaudible - judge speaking].

15 THE COURT: He might feel better.

16 MR. DELKER: I can start with that question.

17 That's fine.

18 MR. CRONHEIM: I don't care how it's done. It can

19 even be done, you know, with you just asking Marshall in

20 case you don't want to put that in your case.

21 MR. DELKER: Oh, either way. I don't know what's

22

23 THE COURT: Okay.

24 MR. DELKER: -- does anybody have any preference?

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1 THE COURT: Why don't we just -- I'm going to have

2 Norman tell him there's no problem? I think I think

3 he'll will be okay. Then if you ask him out on the stand,

4 you know, it should be all right. Okay.

MR. CRONHEIM: Great.

THE COURT: Okay.

MR. CRONHEIM: Thank you.

THE COURT: Here we go.

9 [End conference in chambers].

10 (Resume proceedings at 1:47:50 P.M.].

THE BAILIFF: You may be seated.

THE COURT: Mr. Delker, you may continue.

MR. DELKER: Thank you, your Honor.

14 [By Mr. Delker]:

I think where we left of is we were talking about

the morning of Thursday, November 9th. But

actually before I got back to that, I have a couple

of just background questions I forgot to ask you

earlier. You said you lived before where you're

living now you lived at 51 Rogers Road.

did you live there?

Four years, I think, something like that.

know

How long

I don't

And who was your landlord at first, what was the

arrangement?

Sheila Wentworth

Okay.

-- was my ---

And at some point, did that change?

Yes.

And how did it change?

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Mr. Pierce, William Pierce, ended up buying the

house from her and became my landlord.

How long before Kassidy's death was that?

Probably a couple of months.

couple of months.

I think around a

And before Kassidy's death, do you remember a time

when you tried to give her a bath or a shower?

Yes.

Okay. Can you tell the jury about that?

She came over. She got sick at the house. She had

actually, I think, kind of puked on her clothes, so

I kind of her cleaned her up and I went to go put

her into the bathtub and she freaked right out as

soon as I turned the water on. I mean, just

instant freak, you know. It was, you know, I know

kids don't like water and stuff, some kids, but

this was terror.

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1 Q And you s a i d t h a t she g o t s i c k . Do y o u know why

2 s h e was s i c k?

3 A She might have had t h e f l u , I d o n ' t know. I t h i nk

4 she was s i c k a t h e r h o u s e , t o o , when s h e g o t

5 b r o u g h t o v e r . So, y o u know, I mean, we w a t c h e d h e r

6 i n a l l c o n d i t i o n s . I mean, sometimes when s h e came

7 o v e r , she was s i c k . You know, o b v i o u s l y , she was

8 s i c k a t o u r h o u s e.

9 Q And so y o u s a i d she was s i c k , and y o u t o o k h e r t o

10 c l e a n h e r up. What happened when y o u t o o k h e r t o

11 c l e a n h e r u p ?

12 A L i k e 1 s a i d , she j u s t f r e a k e d r i g h t o u t . As soon

13 a s she saw t h e w a t e r , i t was l i k e t e r r o r . I mean.

14 t h a t ' s t h e b e s t way t o d e s c r i b e i t , she was

15 a b s o l u t e l y t e r r i f i e d of t h e w a t e r . And t h e r e was

16 no r e a s o n , you know, I t h o u g h t a t t h a t t i m e.

17 Q Was t h a t t h e o n l y time y o u g a v e h e r -- t r i e d to

18 g i v e h e r a b a t h?

19 A I b e l i e v e s o . J e n might have.

20 Q I now want t o go b a c k t o t h e m o r n i n g of November

§

21 9 t h . You s a i d t h a t Amanda brought K a s s i d y i n to

22 y o u r house, and i f y ou c a n j u s t remind us what

23 Amanda d i d w i t h K a s s i d y when s h e was -- when s h e

24 was brought i n t o t h e bedroom.

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1 A Brought h e r r i g h t i n t o t h e bedroom, s a i d : Look a t

2 h e r , she l o o k s l i k e s h i t , d o e s n ' t she? You know.

3 s a i d : Look what Chad d i d . She was mad.

4 Q And you -- where was K a s s i d y p l a c e d?

5 A On t h e b e d .

6 Q And what d i d y o u do?

7 A T r i e d t o p i c k h e r up, b e c a u s e me and h e r Aunt J e n

8 were j u s t k i n d o f l i k e -- I mean, i f y ou had s e en

9 t h e b r u i s e s , you'd u n d e r s t a n d . I p i c k e d h e r up.

10 t r i e d t o -- t r i e d t o p i c k h e r up and p u t h e r on t h e

11 f l o o r , but s h e h a d n o t h i n g -- d i d n ' t want t o be

12 p i c k e d up. She was j u s t

13 So what d i d y o u d o?

14 A J u s t l e t h e r s l e e p .

15 Q You s a i d you t u r n e d on t h e TV?

16 A Yeah, I p u t on N i c k e l o d e o n , I b e l i e v e .

17 Q A l l r i g h t . So a f t e r Amanda l e f t -- y o u may have

18 s a i d t h i s b e f o r e , but how l o n g was J e n -- d i d J e n

19 s t a y f o r?

20 A She worked a t n i n e o ' c l o c k , so i t was p r e t t y much

21 a f t e r Amanda l e f t , J e n t o o k o f f f o r work.

22 Q Okay. And what d i d y o u do?

23 A W e l l , t h e e l e c t i o n was g o i n g on t h a t time, and I

24 g e t i n t o p o l i t i c s s t u f f , so I was up w a t c h i n g t he

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e l e c t i o n . So I went out i n t h e l i v i n g room, and I

t h i n k I was w a t c h i n g MSNBC and Fox News, j u s t

l o o k i n g a t t h e t a l l i e s and s t u f f , s e e i n g i f t h ey

had f i g u r e d out e v e r y t h i n g .

D i d you have an o p p o r t u n i t y t o c h e c k on K a s s i dy

t h a t morning?

Yeah. I d i d go i n t h e room.

Can you d e s c r i b e t h a t ?

Yeah. The c a t was out i n t h e l i v i n g room. We had

a l i t t l e c a t a t t h a t time, Toby, and he jumps

e v e r y w h e r e and s t e a l s s t u f f and r u n s around. He

had got on my desk. I had a d e s k i n t h e c o r n e r of

t h e l i v i n g room. And he had t a k e n s o m e t h i n g o f f of

t h a t . So t h e n he r a n a r o u n d and went i n t o the

bedroom. So I went down t o s e e what he had t a k e n.

And I w a l k e d i n t h e bedroom, and he had gone

u n d e r n e a t h the bed. So, I mean, I had g l a n c e d over

a t h e r . At t h a t t i m e , i t l o o k e d l i k e she was

s l e e p i n g .

How long was t h a t ? I mean, were you s p e c i f i c a l ly

c h e c k i n g on K a s s i d y a t t h a t p o i n t?

No, I w a s n ' t . I was

And how long do you t h i n k you were i n t h e bedroom

f o r ?

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Maybe seconds, you know, it wasn't long, at all.

mean, I wasn't I didn't indirectly go up and

check on her, you know. It was like I glanced

over. The bedroom's not that big, but still, you

know, she's laying on the bed, the bed's -- the

head of the bed is towards the windows of the

bedroom, so I didn't walk on that side. Came in

the front where we had some -- some things that we

put clothes in. I had actually walked over there

and looked at her.

Did you get a phone call that morning after you

checked on Kassidy, or after you went into the

bedroom with the cat?

Yes.

Okay. Who was that call from?

From Chad.

Can you do you remember what time it was?

I don't know, exactly.

Any idea?

Maybe 9: 3 o. You know, I don't know exactly what

time it was.

Around 9:30, or earlier in the morning?

Yes. Yeah.

And can you describe that telephone call?

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1 A He c a l l e d up. He was -- he f i r s t s a i d : How's

2 K a s s i d y ? I s a i d - - a t t h a t t i m e , I s a i d f i n e . And

3 t h e n he s t a r t e d g o i n g o f f , he g o e s : You won't

4 b e l i e v e t h i s , t h e town c a l l e d me. He s a id

5 s o m e t h i n g about -- I d o n ' t know i f i t ' s e x a c t l y t h e

6 town c a l l e d me o r DHS had c a l l e d him, b e c a u se

7 someone had s e e n K a s s i d y a t h i s h o u s e a c t i n g w e i r d.

8 And he was l i k e , I t h i n k i t ' s E m i l y C o n l e y , you

9 know, who i s J e n ' s s i s t e r ' s f r i e n d , and s a i d I know

10 s h e c a l l e d them. And I t r i e d t o -- a t t h e t i m e , I

11 s a i d , w e l l , you d o n ' t know i f i t h a s t o do w i th

12 y o u r d i v o r c e , you know, i f t h e y ' r e c h e c k i n g up on

13 t h e boy. And he s a y s : No, t h e y a s k e d about

14 K a s s i d y . That k i n d of s t u f f .

15 Q So what was t h e f i r s t t h i n g he s a i d t o you when you

16 a n s w e r e d t h e phone?

17 A He a s k e d r i g h t o f f : How's K a s s i d y?

18 Q And how d i d y ou r e s p o n d?

19 A At t h e t i m e , I s a i d f i n e.

20 Q D i d you s a y a n y t h i n g about K a s s i d y ' s c o n d i t i o n to

21 him a t t h a t p o i n t?

22 A No, I d i d n ' t .

23 Q How d i d t h e c o n v e r s a t i o n go from t h e r e a f t e r he

24 s a i d how's K a s s i d y ? What's t h e n e x t -- what d i d he

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say next?

He just said if this shit's going to -- like that,

he said if this shit's going to keep up, Mandy and

the little bitch is going to have to get out of my

house. I can't put up with this. I got two boys I

have to watch out for. He was very angry about

having the, you know, DHS or the Town of Rochester

call him. You know, definitely he was quite angry

about the situation.

Just so we're clear, what did you understand DHS -who

was it that was calling, that you understood?

Department of Human Services.

And you said that he was upset. Did he say what he

was going to do as a result of that call?

Yeah, he said they can both get the hell out

well, the f'n out of my house, her and the little

bitch. You know. Just like that. I mean

And you said something about what did he tell

you about why he thought it was had to do with

Kassidy?

Because they had -- from what I understand, they

had said something to him. He said someone had

seen her at his house acting strange, you know, and

they wanted to set up a meeting and stuff.

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Did he say who it was that he thought had called

the Department of Human Services?

Yes, Emily Conley.

And who is Emily Conley?

Amanda's friend.

From where?

Sanford.

Do you remember how that call ended?

I don't know if we -- I'm sure we kind of talked

about politics, maybe, a little bit.

him, I said I don't know, you know.

I just told

I tried to

reassure him that it probably wasn't, because of

that, it was probably because he was going through

his divorce and stuff. That's it, basically.

What did you do after that phone call?

I then went back in and watched TV.

What did you do, what happened next at that point?

I went out to check on the mail.

Do you remember what time you checked on the

mail?

Around twelve, twelve-thirty.

How do you know it was around that time?

Well, the mail comes at different times. They're

never there accurate. I remember hearing

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1 because, when you're sitting in the living room,

2 the mailbox is right on the edge of the porch, so

3 you can hear them drop the lid on the mailbox, so

4 you know when it comes. And I usually go out there

5 to get the mail as soon as I hear it drop.

6 Q Do you remember how you knew it was around twelve

7 or twelve-thirty that it came?

8 A That's roughly the time that they always come, you

9 know.

10 Q Now, what did you do when you got the mail?

11 A I went out, got the mail, came back in. I walked

12 into the bedroom. I looked over at Kassidy, and

13 there was something wrong with her.

14 Q What was wrong with her?

15 A She was laying there, her eyes were in the back of

16 her head, and she just looked like she was in

17 shock. I went over. I looked at her. You know, I

18 didn't know what the what the hell was going on.

19 I called people. I called Chad. I called Amanda.

20 I called Jen. Nobody -- I think the only one I got

21 a hold of was Jen. She didn't know what to do. I

22 went back in, tried to see if anything was in her

23 mouth, she was chocking anything was wrong. I

24 tipped her upside down, started patting her back.

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1 Tried CPR. I didn't know how to do CPR. I just

2 kept pumping on her. You know, it seemed, at that

3 point, that, you know, she was kind of gargling or

4

5 Q Was she responsive? Was she conscious?

6 A No.

7 Q You said that you called a number of people, Jen, I

8 think you said, the defendant, Amanda. Why didn't

9 you all 9-1-1?

10 A I've never been in that kind of situation. I don't

11 know how to explain it to you. It's -- when you've

12 got somebody right there and something's going on,

13 you don't know what the hell to do. So much goes

14 through you. It all happened so quick. I just

15 needed help. I did call 9-1-1. They didn't even

16 know what to do. I kept asking the lady, you know,

17 is there something I can do. And she said, oh,

18 they're on their way.

19 Q What did you do with Kassidy when you checked on

20 her?

21 A I Just kept trying to see if something was in her

22 mouth. You know, she was -- I didn't know what was

23 wrong. I just tried to pump on her, you know, as

24 far as trying to get her to breathe, trying to get

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her to come to, check for a pulse.

You said you checked in her mouth. What did you do

to check in her mouth? Why did you check in her

mouth, first?

I didn't know if she was choking on something. She

had cereal there with her, a baggie. I've never

been in that situation before. I don't know how to

describe it to you. It's ---

How did you

A napkin.

what did you use to check her mouth?

What kind of napkin?

From Wendy's.

And did she have anything in her mouth?

Not that I saw.

What did you do next?

I don't know if I was on the phone with 9-1-1 at

that point, or if I wasn't. I know I took water, I

had splashed a little bit of water on her face

trying to wake her up, trying to get any response I

could. I kept asking the operator, is there

anything I can do. And she says, oh, no, they're

on their way. It happened just like that. I mean,

within -- it seems within seconds. You know, it

seemed like it took forever though for the police

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and help to come.

What did you do with Kassidy before the police or

ambulance arrived? Where did you bring her?

Well, they said that they're on their way. I ran

outside, and I wanted to meet the ambulance as soon

as I could, because where we lived, it's on Rogers

Road, and there's a main drag there. So as I

started to bring her outside in my arms, a cop car

went, and he got out, and he met me halfway on the

porch.

What did you do with Kassidy?

We laid her down on there was a piece of sheet

rock on the porch. We laid her down and I started

giving her CPR, or what I thought was CPR. And he

told me, oh, that's not how you do it, you know.

And he started working on her. I was -- I don't

know if I was still on the phone with 9-1-1 at that

time.

I'm going to show you a couple of items.

MR. DELKER: One moment, your Honor.

21 [Pause in proceedings].

22 MR. SISTI: State's 26 and 27, without objection,

23 your Honor.

24 THE COURT: Okay. They may be marked as full

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1 exhibits.

2 A [State's Exhibit No. 26, photograph, received in

3 evidence].

4 A [State's Exhibit No. 27, photograph, received in

5 evidence].

6 [By Mr. Delker]

7 Q I'm showing you State's Exhibit well, let me

8 start with State's Exhibit 26. Do you recognize

9 that photograph?

10 A Yes.

11 Q What is that a photograph of?

12 A That's our bed.

13 Q Okay. And what - - when - - does that look like your

14 bed on the day that Kassidy arrived on November

15 9th, I mean, during that day?

16 A Yes.

17 Q Okay.

18 MR. DELKER: Your Honor, I'd like the witness to

19 step down from the stand, with the Court's permission.

20 THE COURT: Sure. You need to make sure you keep

21 your voice up real high.

22 THE WITNESS: Okay.

23 MR. SISTI: If we could shift over, your Honor?

24 THE COURT: Sure.

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1 MR. SISTI: Thank you.

2 [By Mr. Delker]:

I think we'll do this in two sessions, again, so

all the jurors can see. Can you point out on the

bed, is there any of Kassidy's clothing in this

picture?

Right there, and right there.

Keep your voice up, please.

Right there, and right there.

So over in the corner here is what?

That's her jacket, her winter coat.

THE COURT: A little louder, please.

13 [By Mr. Delker]:

Keep your voice up.

That was her winter coat right there.

Okay. What's the yellow thing towards the pillow

up at the top of the bed?

That's a wrapper from Wendy's.

Okay. And what was the significance of that?

That's what I used to look into her mouth.

And what is -- there's a pair of jeans here.

What's underneath the jeans?

That's the mail. When I came inside the house, I

had just got from the mailbox.

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1 Q If you could come down to this end, and if you

2 could just point out, the same thing out to these

3 jurors, as well.

4 A This is her pajamas, her footwear, winter jacket

5 right there. Jeans. And this is the mail that I

6 went out to get.

7 Q Keep your voice up.

8 A This is the mail that I went out to get.

9 Q And this is the Wendy's napkin?

10 A [No audible response].

11 Q Actually, if you could just stand there for one

12 actually, I'd ask you to just stay down for a

13 minute. Let me show you State's Exhibit 27. Do

14 you recognize that photograph?

15 A [No audible response].

16 Q And what's depicted in that photograph?

17 A Her footwear and the cereal she had that day.

18 Q Thank you. Resume the stand. I'm going to show

19 you, now, a couple of items starting with what's

20 been marked as State's Exhibit 1 for identification

21

22 THE COURT: Want him to retake the seat?

23 MR. DELKER: I'm sorry?

24 THE COURT: Do you want him to retake a seat?

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1 MR. DELKER: Yeah, I think he can do this from the

2 stand.

THE COURT: Okay.

MR. DELKER: Thank you.

5 [By Mr. Delker] :

6 Q I'm going to open this up and ask you if you

7 recognize it.

Yes.

Do you recognize what's in the bag?

And what is it?

It's her winter coat.

The coat she was wearing that day?

Yes.

And that's what's shown in the bed?

Yes.

MR. DELKER: Can I publish this?

THE COURT: Sure.

17 MR. DELKER: I'm showing defense counsel State's

18 Exhibit 2.

19 MR. SISTI: Your Honor, these are without

20 objection.

21 THE COURT: Okay.

22 MR. DELKER: Thank you.

23 THE COURT: Are they full exhibits, yet? Have they

24 been marked by the monitor?

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1 MR. DELKER: Oh, I don't believe so. Sorry.

2 THE COURT: Why don't we just have them marked.

3 Thanks.

4 A [State's Exhibit No. 2, Kassidy's red pajama bottoms,

5 received in evidence]

6 [By Mr. Delker] :

7 Q Okay. I'm going to show you what's been marked as

8 State's Exhibit 2, for identification. Do you

9 recognize that?

10 A Yes.

11 Q Okay. And what is that?

12 A Pajamas.

13 Q Whose pajamas?

14 A Kassidy's.

15 Q Was she wearing those on the day she was dropped

16 off?

17 A Yes.

18 MR. DELKER: I'm going to show you State's Exhibit

19 5.

20 MR. SISTI: That's without objection, your Honor.

21 THE COURT: Okay. It may be marked as a full

22 exhibit.

23

24 [State's Exhibit No. 5, Kassidy's pajamas, received in

Page 183

1 evidence].

2 {By Mr. Delker]

3 Q I'm showing you State's Exhibit 5. Do you

4 recognize that?

5 A Yes.

6 Q Okay. And what is that?

7 A Pajamas.

8 Q Whose pajamas?

9 A Kassidy's.

10 Q Was she wearing those on the day she came to your

11 house?

12 A Yes.

13 Q These appeared to be ripped. Were they ripped like

14 this when she came to your house?

15 A No.

16 Q Okay. Were the EMTs working on her this morning?

17 A Yes, sir.

18 Q And this was the top to her pajamas? . - 19 A Yes, sir.

20 MR. DELKER: And I'm going to show you State's

21 Exhibit 3.

22 MR. SISTI: And that's without objection.

23 THE COURT: Okay. It may be marked as a full

24 exhibit.

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1 A (State's Exhibit No. 3, slippers, received in evidence].

2 [By Mr. Delker]:

3 Q Do you recognize those?

4 A Yes.

5 Q What are they?

6 A Her flip-flops or slippers.

7 Q And was she wearing those when Amanda dropped her

8 off?

9 A Yes, sir.

10 MR. DELKER: Lastly, I'm going to show you State's

11 Exhibit 4. I'm going to show defense counsel, first.

12 MR. SISTI: Without objection.

13 THE COURT: Okay, it may be marked as a full

14 Exhibit.

15 A [State's Exhibit No. 4, plastic bag with cereal,

16 received in evidence].

17 [By Mr. Delker]:

18 Q Do you recognize State's Exhibit 4?

19 A Yes.

20 Q And what is that?

21 A Cereal.

22 Q Is that the cereal Kassidy had when she came to

23 your house that morning?

24 A That's it.

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What did you do after the ambulance arrived?

Stayed with Kassidy, tried to help the cop as far

as trying to work on her. I mean, you know, trying

to do CPR, holding her head.

Did you go to the Kittery Police Station that

night?

Yes.

And did you see the defendant at the Kittery Police

Station that night?

Yes, I did.

Can you -- did the defendant talk to you?

Yes, he did.

Okay. What did he say? What happened?

He came up to me and he said: I can't believe you

did this to me. I can't believe you're doing this

to me. You know, basically really angry.

Where were you? When was this?

I was outside. The Kittery Police Department

has -- the police department in the back and the

town hall's in the front, and there's a bench

outside the town hall, and I was out there. And I

could look into the police department's door,

because it had a little window, and he came walking

out. And as he started approaching me, he was

Page 186

1 saying this stuff. And his buddy came up and

2 pulled him away, you know, to the side.

3 Q Was this -- when was this in the evening that he

4 approached you?

5 A I don't know an exact time.

6 Q Was it before or after everyone spoke to the

7 police?

8 A I believe it's after everyone spoke to the police.

9 Q And who was with the defendant when you saw him?

10 A All kinds of people. Jeremy Hinton.

11 Q I'm sorry, who's Jeremy?

12 A Jeremy's a store manager for one of the McDonald's

13 stores. His friend, Bruce, was there. His ex-wife

14 was there. I believe Travis, the guy that lives

15 downstairs from inside the same house as Chad, he

16 was there. He brought all kinds of people.

17 Q Okay. And you say that the defendant approached

18 you outside the police station. What did he say to

19 you, again?

20 A He just said: I don't know how you can do this to

21 me. How can you tell them everything. You know,

22 just went off, I mean

23 Q What was his demeanor?

24 A Angry.

Did you see Amanda that night?

Yes.

Did Amanda and the defendant see each other?

Yes.

Can you describe that?

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We were outside of the police department. At this

point, I think everybody was done talking to the

police. We were standing there, but we were

talking to Amanda next to my truck. There was a

cop out there. And Chad was a little ways away in

the parking lot area. He was basically yelling

over to Amanda trying to get her attention. And I

believe at that time Amanda did go over and talk to

him.

Did you hear anything said between them?

He was just telling her, you know, I didn't do

this. I couldn't do this to Kassidy, and stuff

like that.

And what did you do that night?

Well, we went back, not to my house, but to Will's

house with Amanda and Jen, and I think there was

some other people, too; Amanda's parents might have

been there. Sat there. And then we decided that

we weren't going to stay at the house. We went to

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the Anchorage Inn, in Portsmouth, New Hampshire.

What was the situation with your house when you

were finished with your interviews that night?

We got back to my house, and there was a Maine

state trooper there that was, you know, going to

check out the residence and stuff. And he came

out, and he gave me my keys and he said he had left

a list of stuff that he had taken, and that was on

the kitchen table, and that we could go back in if

we wanted to. I didn't -- we didn't feel like

being around ---

Did you go into the house?

I believe we did.

What did you get?

Some clothes, stuff like that.

probably, you know.

Just deodorant,

And you said that you went somewhere that night.

Where did you go?

The Achorage Inn, in Portsmouth, New Hampshire.

Who was with you at the Anchorage Inn that night?

My girlfriend, Jennifer, and Mandy.

What did Amanda do that night?

Well, Amanda called Chad.

How do you know she called Chad?

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She used my cell phone.

And how long did she speak with the defendant on

the phone?

I don't know, exactly; it was pretty long. I think

she actually -- my battery died on my phone.

What was Amanda's emotional state while she was on

the phone?

She was upset with him.

Can you describe her emotions?

Oh, yeah, she -- she said: You killed my baby.

You said you were going to do this.

MR. SISTI: Your Honor, I'm going to object.

MR. DELKER: I'm sorry.

MR. SISTI: I'm going to object.

15 [By Mr. Delker]:

16 Q

Without getting into it.

MR. SISTI: Can I ask that it be stricken?

THE COURT: I'm going to sustain it, at this point.

19 Let me hear some more foundation.

MR. SISTI:

THE COURT:

MR. SISTI:

I ask that the answer be stricken.

The answer is stricken, at this time.

Thank you.

23 [By Mr. Delker]:

24 Q Can you -- without saying what Amanda said on the

Page 190

1 phone, can you describe Amanda's emotions while she

2 was on the phone?

3 A She was mad.

4 Q Was she crying?

5 A She seemed upset, yes.

6 Q Can you elaborate at all? What was the tone of her

7 voice?

8 A She sounded like she was confronting him.

9 Q What did Amanda say?

10 MR. SISTI: I'm going to object again, your Honor.

11 THE COURT: Can I see counsel, please?

12 [The following is a discussion at the bench].

13 MR. DELKER: I think -- I think it's admissible for

14 two reasons. One is an excited utterance, and, two, I

15 think it's inconsistent with what Amanda said. I think

16 Amanda described the telephone call as her describing to

17 the police that the nature of the call, and she said

18 something to the effect of that she told Chad that they

19 said you killed my baby. So I think for impeachment

20 purposes, it's relevant. I think it's also relevant

21 well, I don't even know that it's substantive evidence,

22 but I think it's admissible under the hearsay exception

23 for excited utterance.

24 MR. SISTI; Let me take it one step at a time. On

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1 impeachment, she wasn't given that specific question, so

2 it can't be impeachment. She wasn't given the opportunity

3 to deny that. I mean, the question should have been

4 phrased, you were in a room -- you were in a room with

5 Jefferey Marshall and you said, X, Y and Z. And that

6 never happened, okay? So it can't be used for

7 impeachment. She basically gave the general tenor of what

8 was going on. With regard to excited utterances, this

9 doesn't fit within excited utterance. I mean, this was

10 and Marshall saw, in Marshall's own words, confronting

somebody. This is not some spontaneous exclamation, or

anything else. This is a pre-thought confrontation.

THE COURT: Okay. I will -- I will allow the

statement in under [inaudible], excited utterance. The

15 law requires that a statement with regard to a startling

16 event or condition, which is Kassidy's death. The above

17 declarant was under the stress of the excitement. The

18 description and the foundation provided by this witness

19 indicates that she was still acting under the stress of

20 the excitement caused by the event, but she doesn't

21 necessarily have to be crying. So I think [inaudible]

22 MR. DELKER: Okay. Thank you.

23 [End bench conference].

24 [By Mr. Delker]:

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1 Q What did Amanda say on the telephone?

2 A She said you killed my baby; I know you did this;

3 you wanted her dead. All kinds of stuff. I mean,

4 she was upset.

5 Q What did Amanda do the next morning?

6 A I had woken up, and she was on the phone with Chad.

7 And she said to me and her sister that she was

B leaving with Chad, he was coming to get her.

9 Q And did you see that happen?

10 A Yes. I was looking out at the Anchorage. I was in

11 the back of the Anchorage, and I could look out the

12 window in the parking lot, and he had pulled in. I

13 believe it was his sister's car. It was a Saturn,

14 I believe, at the time, and he was driving, and she

15 left with him.

16 Q You described for the jury many times when Kassidy

17 would come to your house with bruises. Why didn't

18 you do anything?

19 A There's no -- looking back, there's no excuse, but

20 it was Jen's sister, number one. Number two, this

21 is a guy that we did business with. He was a

22 friend of mine. But I can -- there's no excuse. I

23 should have. I didn't. I've got to live with it.

24 It's the worst thing I've ever done. And it's not

Page 193

1 something that's good carrying around with you.

2 Q You saw Kassidy's condition on Thursday morning,

3 and you described it as significantly different

4 than Wednesday afternoon when she left. Why didn't

5 you do anything then?

6 A Once again, it's Jen's sister. You think that the

7 parents will do the right thing. There's no

8 explanation for it. I mean, I'm not going to make

9 an excuse for it. I definitely messed up. I

10 should have said something. I didn't.

11 MR. DELKER: I have no further questions.

12 THE COURT: Mr. Sisti?

13 MR. SISTI: Your Honor, I have quite a few

14 questions, if you'd like me to begin now?

15 THE COURT: Yes.

16 MR. SISTI: Thank you.

17 A CROSS-EXAMINATION [By Mr. Sisti]

18 Q You definitely did mess up, Jeffe. You messed up

19 very seriously on Novemeber 8th, and you messed up

20 significantly more on November 9th of 2000, do you

21 agree with me?

22 A Absolutely not.

23 Q Absolutely not? Okay, we'll start there. Oh, by

24 the way, you messed up by telling people different

Page 194

1 things, too, during the course of this

2 investigation, didn't you?

3 A I don't believe so.

4 Q You don't believe so?

5 A I told the truth, and sometimes the truth hurts,

6 but it has to be told.

7 Q Okay. Let's start, I guess -- why don't we start

8 with the prosecutor's last series of questions,

9 okay?

10 A Uh-huh.

11 Q If somebody came to your house with a dog in that

12 condition on November 9th, 2000, would you just sit

13 there and watch the dog die?

14 A Like I said, there's no excuse. I have no excuses

15 for not -- it was Jen's sister, though.

16 Q Okay. Are you saying you were covering up for

17 Jen's sister, is that what you're saying?

18 A And Chad.

19 Q And Chad?

20 A And Chad.

21 Q All right. So you were covering up for Jen's

22 sister and Chad. You're that close with Jen's

23 sister, are you?

24 A Yes.

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1 Q You are?

2 A And Chad, yes.

3 Q And Chad?

4 A Yeah.

5 Q You're that close?

6 A Absolutely.

7 Q You would take care of them before you would think

8 of yourself in any way, shape, or form, right?

9 A I looked up to Chad.

10 Q You looked up to Chad?

11 A Absolutely.

12 Q So what you're telling this jury is that when a

13 baby, 21-month-old, came to your home on the

14 morning of November 9th ---

15 A Uh-huh.

16 Q -- lifeless, bruised all over her body, right, all

17 over her body, that it was important for you to

18 flick onto Nickelodeon and go see how Gore and Bush

19 were doing in the other room?

20 A I guess so. Yup.

21 Q You guess so?

22 A Yup. Obviously, I didn't do the right thing. I

23 should have told somebody.

24 Q Let me ask you something else. You're saying that

you would cover for Chad, right?

If he had asked us, yes.

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Just because Chad would ask you, basically, say can

I beat the hell out of an infant and would you

cover for me?

Excuse me? Can you repeat that?

If he said if I beat the hell out of an infant,

would you cover for me?

It was never like that.

It was never like that?

No.

Didn't you just describe that for this jury for the

last three hours?

As far as he said to us, would you watch Kassidy,

because we don't want to bring her around because

she has bruises, that's exactly. We had -- I'm not

going to lie to you and say we didn't have an idea

of what was going on. Obviously, we knew what was

going on.

anything.

We did the wrong thing by not saying

But you have to put yourself in that

position as far as it's her sister, and he was my

friend. I messed up, you know.

Yup, I know.

about that.

We know you did. We're going to talk

I just want to establish something

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right from the beginning, okay? I want to make

sure you understand this dynamic. You're saying

that you would cover up for Chad, you would cover

up for Chad to a point that a baby would be brought

to your home that you thought for sure he had

beaten, beaten to the doorstep of death --Something

had happened that night before, yes.

Yup. We're going to get to that, too.

I hope we do.

We will. All right. But you're saying that you

would cover up for him, right?

I did, yes.

Yeah. Now, what you just said -- let's make sure

we're set here, okay, because it's 2:29, okay,

right now, this afternoon.

than Chad?

Excuse me?

Are you more important

Are you more important in your eyes than Chad?

Everybody's equal.

Everybody's equal?

Uh-huh.

You're not more important than Chad?

To me, I am, yes.

Yes, you are.

Yeah.

You would cover for Chad, you would certainly

cover for you, wouldn't you?

I told the truth.

Did you answer my question?

Would I cover for me?

Yeah.

I would have told the truth.

You would have told the truth.

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Whatever the truth may be, I would have told the

truth.

You would have told the truth?

Yes, sir.

All right. So when people are asking you questions

on November 9th, 2000, you would tell the truth,

right?

Yes, sir.

Let me ask you something else: Would Jennifer

Conley, would she tell the truth, too, your

girlfriend, if she was asked about you, or would

she cover up?

Absolutely, she would tell the truth.

She would tell the truth?

I would hope she would.

Page 199

Well, we hope so, too, okay, because we're going to

get to that, as well. On November 8th, 2000, you

describe Kassidy Bortner as being normal and no

bruising, right?

There was a slight bruise, yes.

A slight bruise?

Yes.

You told the jury there was no bruising, but --It

was turning yellow, sir.

A little, tiny, yellow bruise.

It was fading away, yes, sir.

That's it?

Okay.

okay?

So doctors -- let me just ask you this,

If doctors came into the courtroom, let's

say a doctor comes in from a hospital in Maine who

saw the baby an hour after the baby was brought to

the hospital

Uh-huh.

-- and said there was bruises on that baby's face

that would have been obvious to anyone the day

before, would you disagree with that?

I would disagree with that, absolutely.

Let me ask you something, else, okay? And I'm just

going to ask you some general things, and then

we're going to start getting specific, okay? If

Page 200

Chad called you for the first time and you thought

it was strange on the evening of November 8th,

2000, you would have been caretaking for Kassidy

how long, about a month?

I couldn't tell you, exactly.

Couldn't tell me, exactly?

I wouldn't tell you, exactly.

Well, we're trying to determine here a few things.

I'm going to be fair with you, okay, because I'm

sure you've already heard. You see, we're blaming

you for the death of that child.

If that's what you must do to try to get somebody

off that did it, yes.

We're trying to do that so that we can finally get

the truth, do you understand that?

I think he knows the truth.

We think you do, too.

I think he does.

Okay. What we need from you then is honest

answers, all right?

I have given honest answers, thank you.

And we need you not to exaggerate things, okay?

Sometimes the truth hurts, but I told the truth.

Well, we'll keep working on it.

Page 201

Good or bad, I told the truth.

Prior to October 1st, 2000, are you telling this

jury that Kassidy exhibited bruising about her

body?

Can you

Yes. Prior to October 1st, 2000, are you telling

this jury that Kassidy exhibited bruising or abuse

on her body?

From October 1st?

Prior to October 1st, 2000.

question?

Do you understand the

Yeah.

All right.

Like I said, she started getting bruises when she

started moving in with Chad. That's when I started

noticing bruises. I can't say an exact date. I

don't have a date of when.

Let me ask you this, okay? If I told you that she

moved in with Chad in July of 2000 --Yes.

-- does that kind of fit up with your memory?

Once again, I'm not going to say yes or no, because

I'm not quite sure.

You're not quite sure?

Let's get it all out on the table --All

right.

-- you know.

Page 203

Right. October l, 2000, are you saying that child

was battered or bruised on that day?

I don't know exactly that day. I can't

You can't say it, can you?

Not on that day I can't, exactly.

No. Can you give us any day prior to October 1st,

2000, when that child appeared battered or bruised?

I can't give you a date, but I know she was,

because I saw it with my own eyes.

Saw it with your own eyes?

Yes, sir.

Now, about October, beginning of October, that's

when you came into the picture on child care,

right?

Maybe so. I don't know, exactly. I don't know

what the date was that, you know, when we started

watching Kassidy. It wasn't ---

Well, it was about four or five weeks before her

death, wasn't it?

Maybe so, yeah.

You don't want to remember that, or you just can't?

Page 202

I'm not quite sure. You know, I can't put an exact

date of when she moved in with him.

Well, we're trying ---

It was in the beginning of the relationship, yes,

sir.

We're trying to get an understanding of what you're

testifying to when you're saying that this child

showed a steady decline and showed bruising about

her body. When was that?

Right along.

Right along?

Ever since -- ever since she was moved in with

Chad. Absolutely.

Ever since?

Absolutely.

Without any question, right?

Without any question.

She always had bruises on her face then, did she?

No. Every now and then. I mean, we're not

talking -- the day she passed away was the worst

she ever was.

All right. Let me ask the questions, okay? You've

had your opportunity to say all the things you

wanted.

14 Honor?

I can't put a date on it.

Did the police ask you that kind of a question?

Yes.

All right. Did you give them an answer?

I'm sure I did.

Page 204

Now, if you gave them an answer, is there a problem

with giving the jury an answer?

I don't recall if I ever gave them an exact answer.

I don't -- I don't think I ever gave a date.

might have, but ---

I'm going to try to help you out here.

Okay.

MR. SISTI: If I could have just a second, your

THE COURT: Sure. Go ahead.

16 [Pause in proceedings].

17 [By Mr. Sisti]:

18 Q

19

I'm going to show you State's Exhibit 19.

MR. SISTI: It doesn't appear as though the ID's

20 been stricken. I'm going to ask that the ID be stricken

21 at this time, your Honor.

THE COURT:

MR. DELKER:

THE COURT:

Okay. No objection, I take it?

No. No objection.

Okay.

Page 205

1 A [State's Exhibit No. 19, photograph of Kassidy before

2 incident, received in evidence].

3 [By Mr. Sisti]:

4 Q Let me show you State's Exhibit 19. And who is

5 that?

6 A That's Kassidy.

7 Q All right. That's Kassidy, right?

8 A Yes, sir.

9 Q Okay. That's Kassidy Bortner. And if I told you

10 that was a picture of Kassidy Bortner before, just

11 before you became the baby-sitter, would you agree?

12 A I wouldn't agree. I don't know when that picture

13 was taken.

14 Q If I told you it was taken on or about October 1st,

15 would that help you out?

16 A I don't know that to be the case\_ I don't know

17 when that was taken.

18 Q You don't know. Do you recall Kassidy looking like

19 this?

20 A Yes, sir.

21 Q Okay\_ And you recall her looking like this in the

22 fall of 2000, don't you?

23 A In the fall of 2000?

24 Q Yeah.

No, she had bruising

She had bruising?

-- when she was with Chad, yes.

She did?

Yeah.

Page 206

What if I told you that she was with Chad in July

and in August and in September, all of those

months, and she looked like that.

you that?

What if I told

No, she had bruising when she was living at Chad's

house.

Can you come on down here and point it out to us?

I don't see any bruising, no.

Okay.

Some bruising was on the side.

bruising right along there.

There might be

Are you saying there's -- come on up.

There might be.

moving] .

I'm not .. [inaudible - chair

You show this jury where there's bruising.

That kind of -- that's where some of the incidents

of bruising happened along Kassidy, was along the

side there, which is in this picture.

hard to see.

It's kind of

Speak up so that -- speak up.

There might be some bruising along there.

where a lot of the bruising ---

Page 207

That's

So you're indicting the left side of the child's

face?

Looks to me. I mean, you look at it.

No, no. You're the guy on the stand.

That may be some bruising.

Let's show the jury.

I don't know.

Like I said, you can't really tell.

You're saying that's bruising?

Who knows?

taken.

I don't know when the picture was

Show the jury where you think there was bruising.

I don't know; might be along here. I don't know.

I mean, you can't really tell. And, like I said

before, a lot of the time in that kind of picture,

you could not tell the side bruising.

Do you know who took that picture?

I do not.

Do you know if she's got a grandmother?

Yes, sir.

Where's that grandmother live?

She lives in Auburn, Maine.

Page 208

Do you know if she loved that baby?

She did, yes. I believe she did. I can't speak

for her, though.

And you know that she would be very fond of that

child, right?

Yes, sir.

And we know -- we know that if were was bruising on

that child at or about October 1, if she was at her

home, that meaning the grandmother's home, that

grandmother would say so, right?

Yes.

But you see bruising there, right?

I don't know if I see bruising. I didn't say. I

said if there is bruising there, it could be on the

side

Now, we do know

-- of the face. That's what I said.

Okay. We do know that that time period, October 1,

was a time period that the baby, Kassidy, is living

with Chad, right?

If you say so, yes.

No. Do you know?

Yeah. I mean, she was living with Chad right from

the beginning of when Amanda and Chad started

living together and going out.

Months, right?

I mean ---

It seems to be. She went down there ---

It was months, right?

I don't -- you know better than I do.

Page 209

No, you know what the problem is? You know, don't

you?

About what?

You know when you introduced Chad, right, to

Amanda?

I don't know the exact date, no, I don't.

You know it was in the summertime.

I don't know the exact date.

I don't

It was at Applebee's.

You know it was June.

I don't think there was snow on the ground. There

might have been. I don't know.

One thing that is clear, though, that photograph

shows you, okay, that's definitely, definitely

Kassidy, right?

That's definitely Kassidy.

Okay. And she's smiling and cheerful, right?

Absolutely.

Looks pretty good in that photo, right?

Page 210

Yes, she does.

She does. Now, I know this may be difficult for

you, but I'm going to ask you to search your

recollection for when you believe you began to

regularly -- regularly care for Kassidy Bortner.

Probably right up pretty close to the time she

passed away.

When did you start?

I don't know an exact date.

When?

When my season stops.

Usually the end of September, October, something

like that.

The end of September into the beginning of October,

right?

Might have been later than that.

Might have been. But it might have been as early

as the beginning of October?

I don't -- I don't know about that.

Well, you would be the only one that would know, do

you know that?

There is other people that would know, too.

Okay, why don't you tell us, so we know for sure.

Would know if -- when I baby-sat?

Yeah.

I would believe Chad would know.

Would Amanda know, too?

Amanda should know, yeah, that's her mother.

Page 211

Okay. Good. So if she said it was the beginning

of October, that would be pretty accurate?

Like I said, I'd have to -- I don't know dates as

far as when.

be honest.

I couldn't give you an exact time, to

When Kassidy was first presented to you for child

care, she was a perfect baby, she looked like that

picture, didn't she?

No, she didn't.

She didn't?

No.

Let me ask you something, okay?

Uh-huh.

Do you have any photograph of Kassidy in your

house?

I believe her sister does.

Her sister, Jen?

My girlfriend Jennifer, yes.

And when are those photographs taken?

When she was a baby, stuff like that.

Did you take any photographs of her in October, or

Page 212

beginning of November, anything like that?

I -- I couldn't tell you. I don't know.

You don't know. Well, would you look into that and

see if you got any?

I will.

Let me just get a few of the people down that we're

going to be discussing, okay?

Yeah.

William Pierce.

Yup.

Just who is this guy? He's a neighbor?

My next-door neighbor, yes.

Did he ever work for you?

Did some work for me when he first moved in.

And when would that have been?

Once again, I can't say exactly. I'm not going to

put a date on it. Maybe three or four years ago.

All right. How long did he work for you?

He just worked for me for extra money.

And how long did he work for you, from when to

when?

Well, he still does a little bit of work here and

there. I mean

So you have an employer/employee relationship with

Mr. Pierce?

I guess you could say that, yeah.

And you had one back in 2000, right?

Yes.

You had one back in November of 2000?

Yes, sir.

So he would have been an employee and your

landlord, right?

Yeah.

And your neighbor, right?

And a friend, yes.

And your friend?

Yup.

Page 213

Let's start with him, then, because you seem pretty

close to Mr. Pierce, right?

I know him well, yeah.

He's a friend, right?

Yes, sir.

I mean, we're friends.

Okay. Remember earlier, I think it was on the

direct here, you were asked about spanking the

baby?

Yes.

And you were asked about whether or not you caused

any injury to the baby?

Page 214

1 A Yes, sir.

2 Q When was it that you -- and -- let me ask you this:

3 Are you also telling the jury that the baby always

4 had bruises on her butt?

5 A They would come and go. I'm not going to say she

6 had them the whole time that she was with Chad.

7 But they definitely came up, and then they'd start

8 disappearing and come back again, yes.

9 Q Let me ask you about October. Were there bruises

10 on her buttock in October?

11 A I believe so.

12 Q I mean, you did testify to the jury about seeing

13 them?

14 A Oh, yes, she definitely had -- you couldn't miss

15 them. They were -- it was like one big bruise.

16 Q so if Mr. Pierce, your friend, your landlord, your

17 employee, your neighbor comes into court, says that

18 you and he literally pulled down Kassidy's diaper

19 to see that she had bruises and found none, would

20 that be incorrect?

21 A I don't know when he would have looked. I don't

22 know. If he -- if he didn't see any, I know that

23 they were there.

24 Q We know they were there, too, at one point, right?

Yeah.

But you're saying they were there all the time?

They would come and go, yes, sir.

Page 215

Well, when you were there, when you had the care

and custody of Kassidy Bortner -- and how many

weeks was it that you had her?

It wasn't that long.

No, it wasn't.

Nope.

No, it wasn't.

And the only time William Pierce would have been

able to look at Kassidy Bortner's buttocks would

have been when you were caring for the child,

right?

If Amanda came over to the house, because Amanda

did come over the house because of her sister. And

Will's always around. So he could have looked at

her then, too. Who knows?

Did you and him pull down Kassidy's diaper to

observe her buttocks?

I believe we did, yup.

Tell the jury what you saw.

I believe I pointed out the bruising to him. I

might be wrong, but I believe I did, because I told

him the same excuse I heard that what happened

Page 216

1 about the bruising. Just like other bruises on

2 her, William looked at those, and we discussed

3 those, too.

4 Q All right. So there you are, you're with -- you're

5 the childcare provider to a 20 to 21-month-old

6 baby. You're not related to her in any way, shape,

7 or form, right?

8 A I'm going out with her aunt, yes.

9 Q William Pierce isn't related to her in any way,

10 shape, or form, right?

11 A No, sir.

12 Q And you take the baby and you pull her diaper down

13 to take a look at her buttocks, right?

14 A I think you have to understand as far as the

15 bruising goes. You know, we were quite suspicious

16 at the time.

17 Q All right. But being particularly suspicious, you

18 would pull down her diaper -- wait a minute.

19 A Okay.

20 Q :) And you would show William Pierce, you claim the

21 area where she was bruised on her buttocks, right?

22 A When you say pull down her diaper, I don't recall

23 ever having her diaper right off. I mean, you

24 could start to see the bruises just come up a

little bit on her.

Well, halfway down. You take a diaper ---

I don't even think it was halfway down.

-- halfway -- not even halfway?

I don't believe so.

Well, let's say a quarter of the way down.

217

Quarter

of the way down those bruises would have been out

there?

Yes.

Yeah. And because you were suspicious, and because

William Pierce was suspicious, you would see those

bruises, right?

I would point them out, yes.

And William Pierce is your neighbor, your friend,

your landlord and your employee, right?

Yes.

Would he have any reason, if he is called to the

stand by either prosecution or us, would he have

any reason to lie about you?

I don't believe so. William's a pretty honest guy.

Good. On November 8th of 2000, you took the baby

over to Chad and Chad placed her in the car, right?

Yes, sir.

And your claim to this jury is that she essentially

Page 218

had no bruises on her face, except for some little

fading one, right?

Yes, sir.

And that she appeared fine, normal?

When I say normal, I mean normal for Kassidy. You

have to understand that her behavior had diminished

for a period of time. So when I say normal, it

wasn't normal like a usual toddler. It was a

situation where she was still kind of acting tired,

and stuff like that, so I wouldn't want you to put

words in my mouth as far as ---

I don't want to put any words in your mouth, and

hope you don't put any in your mouth, as well.

But do you remember talking to a fellow by the name

of Hamel, a detective on November 9th, 2000?

Yes, sir.

All right. He's a descent enough guy, right?

As far as I know, yes, sir.

And he wouldn't have any reason to lie about you

either, would he?

I would guess not, no.

Now, he writes a report, all right, and he already

testified. Do you know that?

I don't know, but if you say he did, I guess he

Page 219

1 did.

2 Q And he says that he had a conversation with you on

3 the 9th of November. Remember speaking with him?

4 A I did talk to him, I believe, for -- in the

5 beginning.

6 Q Right. I mean, you wanted to be truthful and

7 honest, right?

8 A Absolutely.

9 Q You didn't have anything to hide, right?

10 A Absolutely not.

11 Q You weren't going to lie to this fellow, were you?

12 A Absolutely not.

13 Q You told -- you told the detective that you did

14 watch the baby the day before, remember?

15 A I can't remember my whole conversation with him. I

16 don't -- I'm sure I did tell him I watched the <

17 baby.

18 Q

Forget about the conversation for a minute, okay,

19 I'm just asking for the truth now, okay? Did you

20 watch the baby the day before?

21 A Yes, sir.

22 Q Okay. So if you said that to Detective Hamel, that

23 would be true?

24 A It would be correct, yes, sir.

14 hand.

Page 220

Right. And you would have watched the baby all by

yourself, right?

Yes, sir.

Nobody else was around to witness the caretaking

that you would have provided this child on November

8th, 2000?

I guess not, no.

No. It's you and Kassidy, right?

Yes, sir.

Okay. You state to the detective that the baby

seemed normal ---

MR. DELKER: Page?

MR. SISTI: I'm sorry, it would be 11, upper right

15 [ By Mr . Sisti ] :

16 Q And you indicated that the baby seemed normal and

17 did not have the bruising on her face at that time,

18 correct?

19 A Like I said before, she had a small bruise that was

20 fading away.

21 Q You told the police officer that needed this

22 information - - I think you knew this was serious

23 business at the time?

24 A Absolutely.

Page 221

You told the police officer that the baby seemed

normal and did not have the bruising on her face at

that time?

Once again, when I mean normal, I mean for Kassidy,

not as a toddler. You'd have to go back and see

the decline. And as far as bruising goes, no, she

didn't have bruises all over her face. It wasn't

consistent with a full-out bruise, but it was, you

know, disappearing on her.

Did you tell the police officer that?

I don't know. I'd have to see my statement. I --

my first thing was worrying about Kassidy at that

time.

Well, we'll get into that, too. But let me just

ask you, okay, I mean, was there any reason why

this detective would write some kind of false thing

that you said on thig report?

I would hope not, no.

I hope not, too. Did you tell that the baby seemed

normal and did not have bruising on her face at

that time?

Like I said, I don't know.

You don't know?

He asked me, you know. I told him different

Page 222

things. I mean, I'd have to see the report.

Let me ask you something: Do you think that it

would -- it would concern the detective that there

was a baby that was dead on your porch at about

quarter to one when he arrived, cool to the touch,

no pulse, no blood pressure, not breathing, do you

think he would want to know accurate information

from you?

I believe the instance when I talked to him, it was

outside when she was actually going in the

ambulance. So as far as getting accurate

information, I don't believe my conversation was

that long. I know I sat in his car

Did you speak with him in the car?

I believe I did. I can't remember, exactly. I was

more concerned about Kassidy being alone in the

ambulance.

Well, they were concerned, as well. Did he tell

you just to say whatever you wanted, or did he say

he needed some accurate information?

Like I said, I don't remember my whole conversation

with him.

Let me help, okay? Did you discuss with him that

Kassidy had a leg problem or anything like that?

Page 223

1 A I don't recall. I don't know. Once again, I

2 don't -- I'm not going to say I mentioned something

3 I didn't. I want to tell the truth, so I'm not

4 going to -- you know, don't put words in my mouth.

5 I don't know.

6 Q You're worried about me putting words in your

7 mouth?

8 A No, I just want to be accurate about what I said,

9 that's all.

10 Q I want to make sure we know the rules here, okay?

11 If you think I'm putting words in your mouth, you

12 tell me, okay? I want to be fair with you. You

13 stop me. You say, Mr. Sisti, you're putting words

14 in my mouth, okay?

15 A That's fine.

16 Q All right?

17 A Absolutely.

18 Q Let me ask you again: Did you tell the detective

19 what you said you did that morning when you found

20 the baby unresponsive?

21 A Detective Hamel, is that who you're talking about?

22 Q Detective Hamel.

23 A Once again, I don't remember my whole conversation

24 with him, so I'm not ---

Page 224

1 Q I'm going -- I'm going to ask you something, okay?

2 A Yes.

3 Q Why don't you tell this jury what you did when you

4 found this baby unresponsive, and then we'll --

5 we'll discuss Detective Hamel. Let's get a base

6 line here.

7 A Okay.

8 Q What do you say is true right now?

9 A I walked in from getting the mail, walked into the

10 bedroom. She was there laying back with her eyes

11 in the back of her head. I knew something was

12 wrong. It happened pretty quick. I called

13 different people. I believe I called Chad, Mandy,

14 Jen. I didn't get a hold of Chad or Mandy. I got

15 a hold of Jen. She didn't know what to do. I took

16 a napkin and tried to look in her mouth seeing if

17 she was choking on anything. I tried turning her

18 over, patting her on the back. I tried CPR as far

19 as -- I didn't know how to do CPR, but pumping on

20 her stomach. Just trying everything. Came out,

21 called 9-1-1. I mean, it happened pretty quick as

22 far as the whole instance.

23 Q But you don't know CPR, right?

24 A No, I do not.

No. Do you know that the child on autopsy was

found to have a significant abdominal injury?

I'm not aware of that, no.

Page 225

You're not aware of that? Did you know that the

child, upon inspection, had external bruising on

her abdomen?

I don't know.

You don't know that?

No, I don't.

But you were trying CPR, but you don't know CPR,

right?

No, sir.

And the place you were pushing was her stomach,

right?

Yes.

Now, you just described something that maybe you

didn't describe to the police on the 9th. Let me

go through this a little bit. When -- when Amanda

came in with the baby and you were still in bed,

you say that she placed the baby on the bed?

She came in, from what I recall, you know, I was

still in bed. I got up. We were in the bedroom.

I believe she put her on the bed.

Do you even remember that?

Page 226

1 A Like I said, I believe she put her on the bed.

2 Q Did you take her jacket off, the pink coat that was

3 shown to the jury?

4 A I believe Amanda did.

5 Q Did you set her up and have her watch TV?

6 A I believe she was laying in bed at that point.

7 Q And how was she laying in bed?

8 A The bed faces the windows. She was on the outer

9 side of the bed. We had a washer and dryer in the

10 room, too, at the same time, so she was facing, you

11 know, more towards them. Her head was towards the

12 windows, I mean, laying down like that.

13 Q Now, you said you put the TV on?

14 A Yes, sir.

15 Q How was she watching the TV?

16 A The TV -- okay -- if the bed faces like this in the

17 room, the washer and dryer are over here, and then

18 at the corner, as you start walking through the

19 bedroom door, right there, there was a little cart

20 with a TV on it that would face the bed so you

21 could watch TV in bed. I mean, you could see it

22 clearly from the bed.

23 Q All right. Was she on her back or on her stomach?

24 A On her stomach, sir.

Page 227

1 Q She was on her stomach?

2 A I mean, on her back. Sorry.

3 Q She was on her back?

4 A Yup.

5 Q And that's where you placed her, and you placed her

6 cereal next to her, and you went out and you

7 watched the election, as well, right?

8 A I don't remember who placed her there. There was

9 cereal next to her, yes. We put cereal next to

10 her. And, yes, I did go out and start watching the

11 election. I'd been up watching them straight

12 through.

13 Q And you describe the baby as basically lifeless and

14 unresponsive at that point, right?

15 A I would describe her as sleepy, tired, maybe

16 sleeping, that kind of behavior.

17 Q She wasn't moving around?

18 A No, sir.

19 Q Not at all?

20 A No, sir.

21 Q Now, having seen the child -- and let's get this

22 out right now, okay, you were shown a photograph.

23 This is State's Exhibit 44. It's a full exhibit.

24 You've seen that before, right?

Yes.

Okay. Now, the jury's seen it too, okay?

Uh-huh.

All right. This is the child that you say was

presented to your home at or about, what, 8:30, quarter to nine?

Say so.

Page 228

All right. And this is the child that you would

have laid down on your bed, right, with the cereal,

right?

We did put her on the bed, yes.

And this is the child, okay, that you were supposed

to be taking care of?

Yes, sir.

Now, having that responsibility and seeing her in

that condition, after you turned on Nickelodeon,

what was your primary concern on November 9th of

2000?

Like I said, I went into the living room and

watched TV.

You're really kind of a news addict, right?

I get into politics.

Yeah. I mean, you wouldn't let the condition of a

21-month old baby, who's laying lifeless on your

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1 bed, give you any kind of interference with the

2 election results, would you?

3 A She came down from Rocherter with her mother. Her

4 mother and Chad brought her -- you know, she came

5 to my house the same way. You know, yes, I messed

6 up.

7 Q No, no.

8 A Yes, I messed up. You know

9 Q I'm just asking -- I'm just asking a simple

10 question here, Jeffe, okay? Given that you're

11 saying she looked like that in the photograph I

12 just showed you, given that you said you laid her

13 down on the bed when she's essentially lifeless and

14 not moving around at all, right ---

15 A Uh-huh.

16 Q -- given those two things, you decided to go out

17 and watch the election?

18 A Unfortunately, yes.

19 Q Right.

20 A That's

21 Q That's what your story is to the jury?

22 A Absolutely.

23 Q You wouldn't let her condition get in the way of

24 you watching the elections?

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A I t h o u g h t i f h e r c o n d i t i o n w a s t h a t b a d , h e r

p a r e n t s w o u l d h a v e done s o m e t h i n g.

Q A l l r i g h t . Now, l e t ' s t a l k a b o u t t h a t f o r a

s e c o n d , o k a y?

THE COURT: B e f o r e we do t h a t , Mr. S i s t i , why d o n 't

we t a k e t h e a f t e r n o o n b r e a k.

MR. S I S T I : V e r y g o o d . Thank y o u .

THE COURT: L a d i e s a n d g e n t l e m e n , w e ' r e g o i n g t o

t a k e a 1 5 - m i n u t e b r e a k . A g a i n , p l e a s e do n o t d i s c u s s t h e

c a s e , y e t . Do n o t d e c i d e t h e c a s e u n t i l y o u ' v e h e a r d a l l

t h e e v i d e n c e.

MR. S I S T I : Your Honor

THE COURT: -- a n d w e ' l l s e e y o u i n 1 5 m i n u t e s.

MR. S I S T I : I'm s o r r y . Your Honor, I w o u l d a s k

t h a t t h e w i t n e s s be s e q u e s t e r e d d u r i n g t h e c o u r s e o f

c r o s s - e x a m i n a t i o n , and n o t c o n f e r w i t h a n y a t t o r n e y s o r

w i t n e s s e s .

THE COURT: S u r e.

MR. S I S T I : Thank y o u .

THE COURT: No, e v e r y w i t n e s s i s u n d e r t h e same

r u l e . And I e x p e c t t h a t t h e l a w y e r s h a v e a l r e a d y t o l d t h e

w i t n e s s e s t h a t .

MR. S I S T I : Thank y o u .

THE B A I L I F F : A l l r i s e , p l e a s e .

6 [By Mr.

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[Court recessed at 3:05:22 p. M. J •

[Court resumed at 3:28:27 P.M.].

THE BAILIFF: You may be seated.

THE COURT: Mr. Sisti.

MR. SISTI: Thank you, your Honor.

Sisti]:

All right. The morning of November 9th, 2000, you

lay the baby down on her back to watch Nickelodeon,

and you go out in the other room, right?

Like I said, I don't know who laid her down.

mean, I think I did.

Yeah.

Yeah.

I

And that's the position she was in, and you went

out to watch TV?

And watched TV, yeah.

You didn't come in to check on her in any kind of

regular fashion, whatsoever?

I did go in there, yes.

Let me tell you something. You didn't go in there

to check on her, you went in there to get a cat,

right?

Yes.

All right. Let's ask the question one more time,

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okay? You didn't go in to check on that baby in

any regular fashion, right?

Not to check on her, no.

No. Even though she presented herself that morning

in the condition that you described to this jury?

Yes.

Now, that's unthinkable, wasn't it?

Absolutely.

Absolutely. That's neglect at its highest level,

is it not?

I was wrong, yeah.

Okay. And the only time you go in to see Kassidy

is when you're concerned about a cat taking

something into the bedroom from your desk, right?

Yes.

Right. Look around for the cat to see if it took

something of value from your desk?

It had taken something, yes.

What was it that that cat took that you had to go

in that room?

I don't recall.

desk.

It had taken something off the

And that's what stopped you from watching the

election result and going in?

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1 A L i k e I s a i d

2 Q I 'm j u s t a s k i n g.

3 A The t r u t h i s t h e t r u t h , y e s .

4 Q Y e a h . So a c a t i n t e r r u p t e d y o u r t e l e v i s i o n t i m e.

5 b u t c e r t a i n l y K a s s i d y B o r t n e r d i d n o t , r i g h t ?

6 A I g u e s s s o , y e a h .

7 Q W e l l , we know s o , r i g h t ?

8 A A b s o l u t e l y .

9 Q Okay. And when y o u e n t e r e d t h e room t o l o o k f o r

10 t h e c a t t h a t t o o k s o m e t h i n g f r o m t h e d e s k t h a t y ou

11 d o n ' t remember, y o u d i d n ' t r e a l l y c h e c k on K a s s i d y ,

12 d i d you?

13 A As f a r a s what do y o u mean?

14 Q D i d y o u g o o v e r t h e r e a n d s a y h i t o h e r , o r a s k h e r

15 how N i c k e l o d e o n was?

16 A No, I d i d n o t .

17 Q D i d y o u n o t i c e w h e t h e r s h e was e v e n b r e a t h i n g ?

18 A No .

19 Q No. Did y o u n o t i c e i f s h e e v e n h a d a p u l s e ?

20 A No .

21 Q R i g h t . You d i d n ' t e v e n c h e c k -- y o u d i d n ' t c h e ck

22 one b i t o n h e r , d i d y o u?

23 A I l o o k e d o v e r a t h e r .

24 Q You l o o k e d o v e r . You g l a n c e d o v e r a t h e r . T h a t 's

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1 t h e b e s t we c a n s a y , r i g h t ?

2 A Y e s .

3 Q T h a t ' s what y o u ' r e t e l l i n g t h e j u r y ?

4 A Y e s .

5 Q A l l r i g h t . So K a s s i d y c o u l d h a v e b e e n d e a d a t t h a t

6 p o i n t i n t i m e , r i g h t?

7 A I d o n ' t now.

8 Q You d o n ' t know. W e l l , t h e r e ' s n o t h i n g t o i n d i c a t e

9 t h a t s h e was a l i v e a f t e r t h a t p o i n t i n t i m e , i s

10 t h e r e ?

11 A L i k e I s a i d , t h e l a s t t i m e I w e n t i n , h e r e y e s were

12 i n t h e b a c k o f h e r h e a d . I d o n ' t r e c a l l i f t h a t

13 was t h e s i t u a t i o n when I went i n t h e t i m e b e f o re

14 t h a t , b u t I c a n ' t be q u i t e s u r e . She l o o k e d l i k e

15 s h e was s l e e p i n g.

16 Q B u t y o u c o u l d n ' t t e l l t h i s j u r y w h e t h e r o r n o t h e r

17 c h e s t was g o i n g up a n d down, r i g h t?

18 A I d o n ' t know.

19 Q R i g h t ? But y o u c o u l d n ' t t a k e t h e t i m e t o make t h at

20 o b s e r v a t i o n , r i g h t?

2 1 A [No a u d i b l e r e s p o n s e ].

22 Q Am I r i g h t ?

23 A Y e s .

24 Q And y o u s a y t h a t w o u l d h a v e b e e n somewhere b e t w e en

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9:30 and 10:00, and that baby would have been with

you alone from approximately 9:00 on, right?

Yes, sir.

You were her sole care taker, right?

Yes, sir.

If she was going to be disciplined, it would be by

you, because nobody else was around, right?

I normally -- I wouldn't discipline her.

Well, you did.

Yes.

-- you had.

One time, yes.

You told the jury that ---

I mean, we'll discuss that.

Yup.

You don't want to say you wouldn't discipline her,

because you certainly did, didn't you?

When was that?

You don't remember?

Yes, I do, the day she got into Windex out in the

kitchen. Jennifer was there still.

So that was okay to hit her then?

No, it wasn't.

But Jennifer was there, and you still hit the kid, right?

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Patted her on the ---

We'll get to that, too. But no question about it,

you struck the child. Was it with your right hand?

This hand.

All right. You struck the child and you said she

had a diaper on?

Yes, sir.

Were you ever straight with the police about the

extent of that injury?

Yes.

You were?

Yup.

Well, we're going to get to that, too. Anyhow,

you're the only one there to care for her, to feed

her, to discipline her, to take care of her health

and her needs, right?

Yes, sir.

And frankly, you don't do any of those things,

right?

I guess I didn't that day, no.

No. I mean, you didn't want to be bothered with

this kid, right?

I was tired. I was watching the election the night

before. There's no excuse. No, I didn't check on her.

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2 Q You didn't check on her.

3 A As far as

4 Q As far as you were concerned, that kid could have

5 been in that bed all day long and you wouldn't have

6 checked on her unless a cat came in or unless the

7 mail had to be placed in your bedroom, right?

8 A I don't know.

9 Q That kid could have been in that bed until five

10 o'clock when Amanda came back, right?

11 A I don't know.

12 Q You don't know, because you didn't care for that

13 child that day in the true sense of caring for the

14 child, right?

15 A I did care about that child.

16 Q Now, you told the detective, okay, that when you

17 went back into the room, you saw the baby. This is

18 after the cat, after you got the mail. Did you go

19 in and check the baby?

20 A When I had the mail with me?

21 Q Yeah.

22 A I went in, yes, to the bedroom.

23 Q And what did you -- you tucked the mail under your

24 pants, is that what you did?

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1 A I d o n ' t r e c a l l t h a t w i t h t h a t p i c t u r e .

2 Q W e l l , I know, t h a t ' s why I'm a s k i n g y o u t h a t .

3 T h a t ' s a n i n t e r e s t i n g p h o t o g r a p h , i s n ' t i t ?

4 A Y e s .

5 Q And what I'm t a l k i n g a b o u t , S t a t e ' s 2 6 . And l e t me

6 show i t t o y o u , b e c a u s e y o u t o l d t h e j u r y t h a t 's

7 what t h a t l o o k e d l i k e .

8 A Y e a h .

9 Q R i g h t ?

10 A B u t t h o s e p a n t s c o u l d h a v e b e e n worn t h e d a y

11 b e f o r e .

12 Q T h e s e p a n t s c o u l d h a v e b e e n worn t h e d a y b e f o r e?

13 A T h o s e w e r e n ' t t h e p a n t s I was w e a r i n g t h a t d a y.

14 Q W e l l , we do know t h a t t h o s e p a n t s a r e o v e r t h e

15 m a i l , r i g h t?

16 A Y e s .

17 Q And t h e y g o t o v e r t h e m a i l a f t e r y o u d r o p p e d t h e

18 m a i l i n , r i g h t ?

19 A T h e y c o u l d h a v e b e e n p u t t h e r e b y a n y b o d y , by t h e

20 c o p s t h a t came i n , w h a t e v e r .

21 Q So t h e p o l i c e w o u l d h a v e t a k e n a p h o t o g r a p h o f t h e

22 b e d a f t e r i t h a d b e e n d i s t u r b e d by t h em o r somebody

23 e l s e , i s t h a t what y o u ' r e t e l l i n g t h i s j u r y?

24 A I d o n ' t know. I d o n ' t know.

Did you ever tell the police that there was

something wrong with this photograph?

I don't believe I've ever -- I hadn;t seen that

photograph when I talked to the police, no.

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Have you seen it between the time you've talked to

the police and today?

Yes, sir.

All right. Let me ask you a fair question then.

Have you told either one of these gentlemen that

there's something wrong with that photograph?

Yes.

You did?

Yes, I did.

When did you tell them that?

In my meeting with them.

In your meeting, you told them that there was

something wrong with the placement of these pants

over the mail?

I believe so, yes.

When was that meeting?

Just within the past week.

MR. SISTI: Your Honor, may we approach for one

23 moment, please?

24 THE COURT: Sure.

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1 MR. SISTI: Thank you.

2 [The following is a discussion at the bench].

3 MR. SISTI: I would move for any notes or memoranda

4 with regard to that meeting, I mean, that are inconsistent

5 with the crime scene, or to some claim that there's a

6 change in the scene from what the original photographs

7 are. Obviously, we don't have that.

8 THE COURT: Do you have anything?

9 MR. DELKER: I don't, no.

10 THE COURT: Who met with him?

11 MR. DELKER: What's that?

12 THE COURT: Who met with him?

13 MR. DELKER: I think we both did.

14 THE COURT: You didn't take any notes?

15 MR. DELKER: [Inaudible - coughing]

16 THE COURT: Okay. Thank you.

17 MR. DELKER: All right.

18 MR. SISTI: Actually, if there are any other little

19 problems, then I guess this is the time to ask.

20 THE COURT: Is there anything else that you can

21 think of that he said that [inaudible].

22 MR. DELKER: Frankly, I don't recall him saying

23 that. He may or may not have. I honestly don't recall

24 him saying it, do you?

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MR. BROWN: I t h i n k t h e r e ' s a n o t h e r p h o t o g r a p h.

MR. DELKER: Yeah. He f i g u r e d o u t s t u f f t h a t w a s

moved o n t h e b e d .

MR. BROWN: R i g h t.

MR. DELKER: He s a i d i t w a s n o t c o n s i s t e n t w i t h t h e

p h o t o g r a p h y o u h a v e .

MR. S I S T I : R i g h t.

THE COURT: So y o u s h o w e d h i m a d i f f e r e n t one?

MR. DELKER: R i g h t . I t h i n k we s h o w e d h im - - w e

s h o w e d h i m s e v e r a l p h o t o g r a p h s , t h a t b e i n g one o f t h e m .

B u t t h e r e was a n o t h e r one w h e r e t h e b e d s h e e t was f l i p p e d

b a c k t o s h ow t h a t t h e r e was c e r e a l o n t h e s l i p p e r s a n d

s t u f f l i k e t h a t . And we t a l k e d a b o u t t h a t o n e a n d h e

s a i d , w e l l , t h a t i s n ' t t h e w a y i t l o o k e d when -- when

we -- y o u know

THE COURT: Okay. So y o u d o n ' t r e c a l l h im s a y i n g

a n y t h i n g a b o u t t h i s o n e ? I d o n ' t know, n o .

MR. S I S T I : W e l l , I t h i n k we w a n t t o t a k e a b r e a k

t h e n , b e c a u s e I t h i n k t h a t t h e r e i s a r e q u e s t w e ' r e g o i ng

t o make o f t h e C o u r t . But i t w i l l o n l y t a k e f i ve

m i n u t e s . I h a v e t o t a l k A l a n a b o u t i t . B u t t h e r e i s an

i n s t r u c t i o n t h a t we w o u l d r e q u e s t a t t h i s p o i n t i n t i m e .

I d o n ' t want t o make t h e s e g u y s w i t n e s s e s . T h a t ' s what

I'm s a y i n g.

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1 THE COURT: Can we do a little a more and let them

2 go a little early and deal with that at the end of the

3 day?

MR. SISTI:

THE COURT:

Yes.

Okay.

6 [End bench conference].

7 MR. SISTI: Thank you.

8 [By Mr. Sisti] :

And when was that meeting, Jeffe?

Within the past week.

And it was with these two guys?

Yes, sir.

And you told them that State's 26 was not a fair

and accurate depiction of the room?

Yes.

You're sure of that?

Positive, yeah.

I'm going to put that photograph right over here.

You swear it's true, too ---

Some of the things in the picture look the same.

You swear it's true you had that meeting with the

assistant attorneys general and told them that?

Yes.

Okay, twenty minutes to four, right?

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Yes, sir.

Now, what you told the detective was that you went

in, and this would have been after getting the

mail?

Yes.

And you get the mail at about noon?

It comes all different times, sir.

All different times.

No.

So it could have been 10:00?

Well, you said all different times.

Because when I found her like that, right after

that's when 9-1-1 got called.

Well, we'll get to that, too.

mail come?

All depends.

What time did it come that day?

What time does the

Between twelve, twelve-thirty, something like that.

Between twelve and twelve-thirty ---

Yes, sir.

-- the mail came, right?

What's that?

That's what you're saying, between twelve and

twelve-thirty the mail came?

Around there, yes.

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1 Q Okay. And your pants end up on the mail, right?

2 A A pair of pants end up on the mail, yes.

3 Q Are those your pants?

4 A Those are my pants, yes.

5 Q Okay. Now, you don't have any medical training,

6 right?

7 A No, I don't.

8 Q Did you check the baby out for blood pressure or

9 anything like that?

10 A I attempted to.

11 Q Well, I mean, what did you do? Tell the jury how

12 you would have checked the baby out for blood

13 pressure and breathing.

14 A I felt right here on her.

15 Q Yeah.

16 A When I was trying to get her to wake up or try to

17 get her to come to ---

18 Q You didn't feel any pulse, did you?

19 A I couldn't be accurate. I don't think I did. I

20 don't know.

21 Q You don't know. That's your best recollection

22 today, right?

23 A I was trying everything.

24 Q I know you were trying everything. But let me ask

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1 t h i s s t r a i g h t q u e s t i o n , b e c a u s e w e ' r e t a l k i n g a b o ut

2 t h e d e a t h o f a 2 1 - m o n t h o l d . D i d y o u f i n d a p u l s e

3 on t h a t c h i l d?

4 A I d o n ' t -- I d o n ' t know.

5 Q You d o n ' t know.

6 A I d o n ' t t h i n k I d i d .

7 Q You d i d n ' t f i n d a p u l s e on t h a t c h i l d , d i d y o u ?

8 A I d o n ' t know.

9 Q The f a c t o f t h e m a t t e r i s , i s n ' t t h a t s o m e t h i n g y ou

10 w o u l d r e m e m b e r ? W o u l d n ' t y o u remember t h a t ? I f

11 y o u f e l t a p u l s e b e a t i n g i n t h e b o d y o f a

12 2 1 - m o n t h o l d , w o u l d n ' t t h a t be a n i m p o r t a n t t h i n g

13 t o r e m e m b e r?

14 A A l o t h a p p e n e d .

15 Q Y e s .

16 A A t t h a t same t i m e I f e l t f o r a p u l s e , I w a s t r y i n g

I 17 t o g e t h e r t o wake up, t r y i n g t o g e t -- l o o k i n h e r

18 mouth. I mean, y o u h a v e t o u n d e r s t a n d t h e moment.

19 Q Oh, I know y o u w e r e p a n i c k e d . But I'm a s k i n g y ou

20 y o u r b e s t r e c o l l e c t i o n . Are y o u t e l l i n g t h i s j u ry

21 t h a t y o u f e l t a p u l s e i n t h a t b a b y?

22 A I d o n ' t know.

23 Q You d o n ' t know?

24 A I d o n ' t know.

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1 Q And you're under oath and you're saying that,

2 right?

3 A Yeah, honestly. Yeah.

4 Q But on November 9th, at around 12:45 to 12:50 when

5 you spoke to Detective Hamel, you told him that you

6 found a slight pulse in the baby, right?

7 A Like I said, I might have. I don't -- I don't

8 recall.

9 Q You don't recall, is that it?

10 A I don't once again, my concern was she was by

11 herself in the ambulance. Everything happened so

12 quick.

13 Q Well, the concern -- you have to understand now,

14 and I'm sure the detective told you, all right,

15 that he wanted to get information from you, that he

16 needed accurate information, right?

17 A [No audible response].

18 Q Am I right?

19 A I guess he would have. I don't recall even hearing

20 that from him, you know.

21 Q But you told him -- now, he's testified already,

22 all right?

23 A Yup.

24 Q He wrote a report about what you said. Do you

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1 u n d e r s t a n d t h a t?

2 A Yup.

3 Q He s a i d t h a t y o u t o l d h i m t h a t when y o u w e n t i n ,

4 a f t e r r e c e i v i n g t h e m a i l , y o u c h e c k e d h e r , a n d y ou

5 t o l d h i m t h a t y o u f o u n d a s l i g h t p u l s e . But y ou

6 c a n ' t t e l l t h e j u r y t h a t , c a n y o u?

7 A I c a n ' t be t h a t a c c u r a t e , no.

8 Q No. And y o u b r o u g h t t h e b a b y t o t h e k i t c h e n s i nk

9 t h e n a f t e r y o u f o u n d h e r i n t h a t c o n d i t i o n?

10 A I t r i e d c h e c k i n g i n h e r mouth, t r i e d CPR, t r i e d to

11 wake h e r up, t i p p e d h e r o v e r , y o u know, p a t t e d h er

12 I b r o u g h t h e r o u t t o t h e k i t c h e n , t r y i n g t o s p l a sh

13 w a t e r on h e r f a c e . I t r i e d e v e r y t h i n g.

14 Q L e t me go t h r o u g h t h i s w i t h y o u , o k a y?

15 A Yup .

16 Q W e ' l l go t h r o u g h t h e t h i n g s y o u d i d , a t l e a s t t he

17 t h i n g s y o u t o l d D e t e c t i v e Hamel; t h a t upon f i n d i ng

18 t h e baby, y o u c h e c k e d f o r a p u l s e , r i g h t?

19 A I f I i f I s a i d t h a t t o h i m , y e a h , I d o n ' t

20 Q And t h i s i s s h o r t l y r i g h t a f t e r t h i s e v e n t , o k a y?

2 1 A Yup .

22 Q T h i s i s r i g h t a f t e r t h e e v e n t . T h i s i s c l o s e i n

23 t i m e t o t h e e v e n t , o k a y?

24 A [No a u d i b l e r e s p o n s e ].

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1 Q Okay?

2 A Okay.

3 Q All right. This is before you could make anything

4 up, okay?

5 A Nobody made anything up, thank you.

6 Q Okay. We're going to work on it. Checked for a

7 pulse, that's what you told him ---

8 A Yes, sir.

9 Q -- the first thing you did?

10 A I guess I did. I mean, if he says I did, I can't

11 remember.

12 Q Do you want to read his report? Do you want to see

13 it?

14 A Yeah.

15 Q Okay. It's a four-page report. It was done on

16 November 9th, 2000. And why don't you take a look

17 at it, pages nine through twelve, signed by Steven

18 Hamel. He's a detective at Kittery Police

19 Department. Take your time to take a look at that.

20 Then I'll ask you some questions.

21 A [Witness reading police report].

22 Q All set?

23 A Yeah.

24 Q Okay. You comfortable with this now?

If he wrote it down, yeah.

He did write it down, didn't he?

It's right there, yes.

Is he being intentionally inaccurate or what?

I just don't recall that conversation with him.

You don't recall it?

If he says I said it, I must have said it.

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Well, let's go through the things that you would

have said to him, okay, and then I'll ask if

they're true.

slight pulse.

You said to him that you found a

Is that true or is that false? Is

that a lie that you told him, or is it true?

I don't know. I might have said I did.

happened so quick.

All right.

It

Once again, I think that's the part you really need

to understand is we're in the situation, this whole

thing just happens to Kassidy, and then he's

talking to me. I mean

Listen closely, Jeffe.

Yes.

Did she have a slight pulse?

I don't know.

So you do not recall her having a slight pulse,

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1 correct?

2 A I don't.

3 Q No. But if she did have a slight pulse, that would

4 mean that she was alive shortly before the police

5 got there, right?

6 A I don't know. I'm not a doctor.

7 Q If she -- if she had a pulse, what does that mean?

8 Why did you check for a pulse?

9 A There was something wrong with her, sir.

10 Q Did you check for a pulse to see if she was alive?

11 A I did -- I don't know. I mean, I was trying to get

12 her ---

13 Q Were you just ---

14 A -- trying to do everything I could.

15 Q Right. I'm trying to be fair and I'm trying to do

16 this thing one at a time, Jeffe. okay? Did you

17 check for a pulse to see if she was alive?

18 A I don't think so, no. I don't think it was to see

19 if she was alive.

20 Q Well, you reported to the police officer that you

21 found a slight pulse, and then you said that after

22 finding a slight pulse that you took the baby to

23 the kitchen sink in an attempt to wake the baby by

24 splashing cold water on her face. Did you tell the

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p o l i c e o f f i c e r t h a t?

I g u e s s I d i d i f h e h a s i t w r i t t e n down, y e s .

O k a y . I s t h e r e a n y t h i n g t h e j u r y s h o u l d know a b o ut

w h e t h e r t h i s i s a n a c c u r a t e o r i n a c c u r a t e s t a t e m e nt

by t h e d e t e c t i v e ?

He w r o t e i t down. T h a t ' s h i s memory.

R i g h t .

Y e a h .

I 'm a s k i n g y o u : D i d y o u t a k e t h e b a b y t o t h e

k i t c h e n a n d s p l a s h w a t e r on h e r f a c e ?

I g u e s s I w o u l d remember b e t t e r b a c k t h e n . So

o b v i o u s l y t h e a c t u a l o c c u r r e n c e o f t h e t h i n g s I d i d

e x a c t l y a s f a r a s

A l l r i g h t , s o t h a t

t r y i n g t o g e t h e r t o come b a c k.

we've g o t a s l i g h t p u l s e . You c l a i m t h e r e ' s a

s l i g h t p u l s e , anyway.

We d o n ' t know t h a t .

You s p l a s h c o l d w a t e r o n h e r f a c e , r i g h t?

[No a u d i b l e r e s p o n s e ].

And y o u ' r e u n a b l e t o r e v i v e h e r a t t h a t p o i n t,

r i g h t ?

O b v i o u s l y , y e s .

Y e a h . I mean, s h e n e v e r came t o , r i g h t ?

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Obviously.

Q Yeah. So t h e n y o u b e g a n t o do what y o u c a l l CPR,

r i g h t ?

A Like I s a i d , I d i d n ' t know know how do t o CPR,

b u t t o t h e b e s t of my k n o w l e d g e.

Q You t o l d t h e p o l i c e o f f i c e r t h a t y o u b e g a n t o do

CPR, r i g h t?

A I m i g h t h a v e.

Q Let me a s k t h i s i n t w o d i f f e r e n t w a y s : Are you

s a y i n g t h e p o l i c e o f f i c e r ' s i n a c c u r a t e , o r l y i n g or

a n y t h i n g l i k e t h a t?

A No.

Q Can y o u t e l l t h i s j u r y i f y o u r e a l l y d i d p e r f o rm

CPR?

A I pumped on h e r s t o m a c h.

Q And when y o u s t a r t e d t o do t h a t , w h e r e w e r e y o u?

A In t h e bedroom.

Q So y o u w e r e i n t h e bedroom, s o y o u must h a ve

b r o u g h t t h e b a b y b a c k f r o m t h e k i t c h e n a f t e r

s p l a s h i n g w a t e r o n h e r f a c e?

A I d o n ' t b e l i e v e t h a t ' s how i t h a p p e n e d.

Q You d o n ' t ? W e l l , s e e I a s k e d t h e d e t e c t i v e w h e t h er

t h i s was t h e s e r i e s , t h e c h r o n o l o g y t h a t you g a ve

h i m .

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1 A Uh-huh.

2 Q And he said that's the way it happened.

3 A Once again, I don't know what other people

4 remember. Some people remember things differently.

5 I remember what happened the way I remember them.

6 Q Well, you know, he wrote the report, you said it

7 was close in time to the report, and that must be

8 accurate, right?

9 A He would -- he would know what he's testifying,

10 yes.

11 Q But do you know what you said to him?

12 A He would know better than I would at that time.

13 Q Okay. So you would have picked up the baby,

14 checked for a pulse, gone to the kitchen, splashed

15 cold water on her face, brought her back to the

16 bedroom. Did you put her on the bed to do CPR?

17 A I don't remember it happening like you just said.

18 Q You don't?

19 A I remember going in there. I remember trying to

20 get her back, pumping on her stomach. I remember

21 as I went out to the kitchen I splashed water on

22 her. And then ---

23 Q Well, you indicated that you then called Jennifer

24 at work to get advice from her on what to do. Is

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1 that what you did?

2 A When?

3 Q After you checked for the slight pulse, you

4 splashed cold water on her face, you were unable to

5 revive her and began CPR.

6 A Once again, I believe I went in there, saw her that

7 way, looked at her, tried to see what I could do,

8 called everybody I could, then started CPR, came

9 back out with her, splashed water on her. I was

10 talking on the phone with 9-1-1.

11 Q Well, you didn't call 9-1-1 right away, but we're

12 going to get to that, too, okay? 9-1-1 was about

13 the last phone you made, wasn't it?

14 A I guess so.

15 Q Yeah, I mean, that should have been the first phone

16 call you would make when you find somebody in that

17 position, but it was like the last phone call you

18 made.

19 A I've never been in that position before, sir.

20 Q I'm sure this was a unique situation for you having

21 a deceased 21-month old on your bed when you were

22 the caretaker.

23 A Like I said, I don't know if she was still alive or

24 not. I'm not a doctor.

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1 Q Okay. So a f t e r you went t h r o u g h t h e s e t h i n g s , a t

2 l e a s t a c c o r d i n g t o D e t e c t i v e Hamel, who w r o t e them

3 down, y o u c a l l e d y o u r g i r l f r i e n d a t w o r k . And

4 w h e r e d o e s s h e w o r k?

5 A S h e w o r k s a t P e r f u m e M a n i a.

6 Q P e r f u m e M a n i a?

7 A Y e s , s i r .

8 Q And you a s k e d h e r f o r a d v i c e ?

9 A I a s k e d h e r what I s h o u l d do.

10 Q W e l l , d i d n ' t y o u j u s t t e s t i f y t o t h e j u r y i n d i r e c t

11 t h a t i t was y o u r b e l i e f t h a t r e s p o n s i b l e p e o p l e who

12 w o u l d h a v e s e e n K a s s i d y i n t h a t c o n d i t i o n , e v en

13 b e f o r e y o u c h e c k e d f o r t h e s l i g h t p u l s e , w o u l d h a ve

14 b r o u g h t h e r t o t h e h o s p i t a l?

15 A A b s o l u t e l y .

16 Q So when s h e ' s i n j u r e d and l o o k i n g t e r r i b l e , one

17 s h o u l d h a v e c o n t a c t e d m e d i c a l p e r s o n n e l , r i g h t?

18 A S h o u l d h a v e , y e s.

19 Q R i g h t . E s p e c i a l l y i f t h e y ' r e i n n o c e n t l y c a r e t a k i n g

20 f o r somebody a n d had n o t h i n g t o do w i t h t he

21 i n j u r i e s a t a l l , r i g h t?

22 A I d i d h a v e n o t h i n g t o do w i t h t h e i n j u r i e s .

23 Q Y e a h . And p e o p l e i n t h a t p o s i t i o n s h o u l d n ' t be

24 a f r a i d , w h a t s o e v e r , to s a v e t h e l i f e of a n o t h er

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1 human being?

2 A Absolutely.

3 Q They shouldn't have to call a girlfriend, a mother

4 or anybody else, right?

5 A I think you have to be in that situation to

6 understand. It happened quick. Your first thought

7 is trying to help her.

8 Q Well, let me ask you something. You couldn't help

9 her at all?

10 A I obviously didn't, no.

11 Q Well, you knew you couldn't help her at all.

12 A I did not know that.

13 Q No. You didn't know that?

14 A I tried.

15 Q You knew you couldn't help her, and your first

16 thought wasn't to help her, it was to call your

17 girlfriend.

18 A I did call, yes.

19 Q Yeah. Now, this is the girlfriend that you said

20 will tell us the truth if she's called to testify

21 in this case, right?

22 A I believe she will, yes.

23 Q Well, is there any reason for her not to tell the

24 truth in such an important case about her deceased

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n i e c e ?

No .

And j u s t t o g e t t h i s s t r a i g h t , I j u s t want t o s e t

t h i s a l i t t l e b i t . You w e r e n ' t i n t e r v i e w e d w i th

h e r o r t o g e t h e r i n i t i a l l y by t h e p o l i c e , w e r e y o u?

No, s i r .

No. You w e r e s e p a r a t e d f r o m h e r d u r i n g y o ur

i n t e r v i e w , a n d s h e i n d e p e n d e n t l y g a v e t h e p o l i c e

h e r r e c o l l e c t i o n o f , l e t ' s s a y , p h o n e c a l l s a nd

t h e t i m e s t h a t y o u c a l l e d a n d w h a t y o u s a i d , t h i n gs

l i k e t h a t , r i g h t?

I w a s n ' t t h e r e , s o I d o n ' t know what t h e y a s k ed

h e r .

Okay. But a g a i n , y o u w e r e i n t w o s e p a r a t e rooms,

two s e p a r a t e t i m e s , no c h a n c e o f t a k i n g e a ch

o t h e r ' s s t a t e m e n t s , r i g h t?

No, s i r .

Good. Anyhow, s h e w o r k s a t P e r f u m e M a n i a , a n d y o u

c a l l e d t h a t number o n c e , r i g h t , a n d a s k e d f o r

a d v i c e ?

I d o n ' t know how many t i m e s.

Y o u d o n ' t know how many t i m e s . How many t i m e s d i d

y o u c a l l t h e r e b e f o r e y o u c a l l e d 9 - 1 - 1?

I d o n ' t know.

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1 Q Could it have been as many as three, four times

2 that you called her?

3 A I don't know. I don't want to -- I'm not going to

4 give you a number, because I don't know. I want to

5 be accurate.

6 Q I mean, is there any reason why you would have

7 called her more than once before you called 9-1-1?

8 A I believe I called Chad and Mandy, too, and they're

9 the guardians of Kassidy.

10 Q Okay. Is there any reason why you would call any

11 of those people before you called 9-1-1?

12 A I didn't know what to do. I've never been in that

13 situation before.

14 Q You eventually did speak with your girlfriend,

15 right?

16 A Yes, sir.

17 Q And what do you say you said to your girlfriend?

18 A

I don't know. We were upset. I don't know.

19 Everybody was upset.

20 Q Did you tell your girlfriend the baby didn't have a

21 pulse and her eyes were rolled up in back of her

22 head and you tried CPR and she was lifeless? Did

23 you tell her that?

24 A I don't know.

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1 Q You d o n ' t know?

2 A I d o n ' t know.

3 Q W e l l , w o u l d i t h a v e b e e n a l i e i f y o u t o l d y o ur

4 g i r l f r i e n d t h a t s h e was a l e r t , awake, and o k a y?

5 A I t w o u l d h a v e b e e n a l i e i f I t o l d my g i r l f r i e n d

6 t h a t ? Y e s.

7 Q Would i t h a v e b e e n a l i e i f y o u r g i r l f r i e n d

8 u n d e r s t o o d t h a t t h e b a b y was a l e r t , t a l k i n g , and

9 w a t c h i n g TV a t t h e t i m e t h a t you c a l l e d h e r on t he

10 s e c o n d p h o n e c a l l ?

11 A I g u e s s i t w o u l d , y e s , d e f i n i t e l y .

12 Q And, a g a i n , d o e s J e n n i f e r h a v e a n y r e a s o n t o come

13 i n h e r e a n d l i e b e f o r e t h i s j u r y?

14 A I hope n o t .

15 Q And s h e w a s n ' t w i t h y o u when t h e y t o o k h e r

16 s t a t e m e n t f r o m h e r , r i g h t , a t t h e p o l i c e

17 d e p a r t m e n t ?

18 A S h e was i n t h e p o l i c e d e p a r t m e n t , b u t we w e r e i n

19 s e p a r a t e rooms, I b e l i e v e . I d o n ' t know w h e r e s he

20 w a s . I was i n my own room.

2 1 Q W e l l , what h a p p e n s i s f i n a l l y you g e t a r o u n d to

22 c a l l i n g 9-1-1?

23 A Y e s , s i r -

24 Q Now, how l o n g h a d i t b e e n t h a t y o u ' v e b e e n making

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1 all these phone calls with a baby that doesn't have

2 a pulse, is not breathing, is not reacting to

3 anything, with her rolled back eyes in her head?

4 A It happened real quick, these phone calls.

5 Q They were real quick?

6 A Yes.

7 Q Seconds, is that what you're saying?

8 A Seems like that.

9 Q Couldn't have taken any more than a couple of

10 minutes, maybe?

11 A I don't think it was minutes, sir.

12 Q Do you think it was just a matter of seconds?

13 A Yes, sir.

14 Q Would have been a matter of seconds you're trying

15 to call Chad, right, is that what you're saying?

16 A Call all those people, yes, sir.

17 Q Let's go through it. How many people did you call?

18 A I called Chad, called Mandy, call Jennifer.

19 Q How many times did you try to call Chad?

20 A ; I don't know.

21 Q Was it multiple attempts on some people?

22 A I don't know.

23 Q You don't know?

24 A I can't recall. I know I called them.

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1 Q You finally get around to calling 9-1-1, right?

2 A .Yes, sir.

3 Q Now, you know, some people in cases like this blame

4 other people after they've done something stupid,

5 do you know what I mean? Do you understand what I

6 said?

7 A Yeah.

8 Q They panic. They certainly don't want to get in

9 trouble, so they blame other people without even

10 knowing what's going on, do you understand?

11 A Yes, sir.

12 Q At the time Kassidy died, the time she was going

13 through her problems with you at the house, you

14 didn't know what was causing those problems, did

15 you?

16 A No.

17 Q For all you know, she could have had some kind of a

18 disease, right?

19 A I know what got told to me the night before.

20 Q Will you allow me to ask the question?

21 A Yes.

22 Q Okay. She could have had some kind of disease,

23 right?

24 A Possibly, yes.

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Some kind of congenital situation?

I don't know. I'm not a doctor, sir.

Right. You didn't know what would have caused this

condition at all, right?

Right.

Right. Because you're not a doctor, right?

That's right.

You don't know if the reason that she was lethargic

was because of a flu or because she got hit in the

head with something?

Like I said before, I got a phone call the night

before, so

We'll talk about the phone call.

Okay.

But you don't know, one way or the other, right?

I'm not a doctor, no.

Right. You don't know if she had some kind of --

like I said, some kind of a disease, or congenital

defect, or anything like that?

She came to our house with bruises, sir.

Yes.

I don't think that's a common occurrence with a flu

or something, but, once again, I'm not a doctor.

No, you're not. But on November 9th, when you were

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1 talking to Detective Hamel, without being asked

2 whether you caused the injuries, without being

3 asked how the baby was in this condition, without

4 being asked anything about it, you blamed Chad

5 Evans?

6 A I don't believe I came out and blamed him. I

7 think you have to understand the circumstances of

8 what happened, what took place the night before.

9 Q Let me make sure that I'm clear here, okay,

10 Because whatever you did at about 12:50 P.M. on the

11 9th of November 2000, before you were even asked if

12 you had anything to do with the injuries on little

13 Kassidy, was you said this isn't me. I didn't do

14 anything like this. Chad Evans did. Right?

15 A I don't recall ever saying that. I don't ever

16 recall saying that.

17 Q You blamed somebody you blamed somebody before

18 you even know what was going on?

19 A I don't think I did.

20 Q Well, the day before, you did receive a phone call

21 from Chad, right?

22 A The day before, yes.

23 Q Yeah. Shortly after he picked up Kassidy?

24 A Yes, sir.

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1 Q It was the first time ever that he would have

2 called you in the evening about Kassidy?

3 A About Kassidy, yes.

4 Q Right. It would have been the first time ever --

5 ever that he would have called you about Kassidy's

6 physical condition, am I correct?

7 A Call me about Kassidy's physical condition?

8 Q Physical condition.

9 A I'm not quite sure about that.

10 Q Well, I'm not either, that's why I'm asking the

11 question.

12 A Yeah, I don't believe that is the case.

13 Q Well, did you tell these folks on direct that that

14 was strange, unusual, and the first time he ever

15 called you?

16 A Yes.

17 Q Did something change in the last hour and a half?

18 A As far as directly about Kassidy, yes. In our

19 conversations about work and stuff, he might say

20 something about Kassidy. I mean, you can try to

21 turn around all you want, but the truth's the

22 truth.

23 Q We know that.

24 A Yup. I do, too.

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1 Q B u t he c a l l s y o u f o r t h e f i r s t t i m e e v e r , and he

2 s a y s t o y o u w o r d s o f t h e a f f e c t : What t h e h e l l d i d

3 y o u do t o t h a t k i d?

4 A I d o n ' t b e l i e v e i t w a s l i k e t h a t.

5 Q You d o n ' t b e l i e v e i t w a s l i k e t h a t?

6 A He was n o t i n t h a t -- i n t h a t way.

7 Q Oh?

8 A The way y o u ' r e t a l k i n g i s s a y i n g t h at I d i d

9 s o m e t h i n g . He s a y s , w h a t ' s wrong w i th K a s s i d y ?

10 T h a t ' s what he s a i d .

11 Q He s a i d : What t h e h e l l d i d y o u do t o t h a t k i d?

12 A I d o n ' t b e l i e v e he s a i d t h a t , s i r .

13 Q He t o l d y o u t h a t t h a t b a b y was i n t h e b a c k o f h i s

14 c a r s l u m p e d o v e r a n d d r o o l i n g , d i d n 't h e ?

15 A I d o n ' t r e c a l l h i m s a y i n g d r o o l i n g . I remember

16 b o b b i n g .

17 Q B o b b i n g ?

18 A Y e a h .

19 Q S l u m p e d o v e r a n d b o b b i n g?

20 A Y e s , s i r .

21 Q He c a l l e d y o u 12 m i n u t e s a f t e r he l e f t y o u r h o u s e?

22 A A b o u t t h e t i m e i t t a k e s t o g e t t o t h e D o v e r t o l l s .

23 y e a h .

24 Q T w e l v e m i n u t e s a f t e r y o u h a n d e d h im t h e c h i l d , he

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strapped the child in, you have a conversation with

him, right?

[No audible response].

Right?

Yes.

He wasn't angry, right?

No.

He hung around with you, Jeffe, he didn't speed

off, right?

He said the bitch is acting weird. That's what.

The little bitch is acting weird. That's how he

said it. He never accused me of anything. He

never ---

Wait a minute.

Yes.

Hold on, okay?

We're at your house now, okay?

Okay.

We're in your driveway area now, okay?

Uh-huh.

The gravel, dirt driveway that we saw on a view.

The jury saw it.

Yup.

Okay? You place -- you place the baby in the

passenger side rear of his Ford Taurus that the

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1 j u r y saw, o k a y?

2 A Y e s , s i r .

3 Q You s t o o d up h e r e a n d y o u p o i n t e d r i g h t t o i t .

4 o k a y ?

5 A A b s o l u t e l y .

6 Q A l l r i g h t . While y o u a n d h e a n d K a s s i d y were

7 t h e r e , he w a s n ' t a n g r y , was h e ?

8 A W h i l e me a n d K a s s i d y w e r e t h e r e , no. He d i d n ' t

9 s e em t o b e .

10 Q P l e a s a n t c o n v e r s a t i o n , r i g h t?

11 A Seemed t o b e . He t o l d me a b o u t w h e r e h e was a nd

12 s t u f f a n d e v e r y t h i n g .

13 Q Y e a h . S m a l l t a l k , r i g h t?

14 A I s u p p o s e.

15 Q Not f r u s t r a t e d , o r mad, o r a n g r y o r a n y t h i n g l i ke

16 t h a t ?

17 A I g u e s s n o t , n o , n o t a t t h a t p o i n t .

18 Q No. B u s i n e s s a s u s u a l f o r C h a d E v a n s , r i g h t?

19 A [No a u d i b l e r e s p o n s e ].

20 Q Am I r i g h t ?

21 A I d o n ' t know what y o u mean b y b u s i n e s s a s u s u a l .

22 Q He w a s n ' t e x h i b i t i n g a n y v i o l e n t t e n d e n c i e s?

23 N o t h i n g ? N o t h i n g?

24 A D i d n ' t seem t o b e .

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Right. I mean, you would have said it, right? You

would have told the jury that?

Yup.

Places the baby in the car. You have a few minutes

of conversation and off he goes, right?

I looked for the baby seat in my truck.

Okay.

Then placed the baby in the back.

Right. But he wasn't stomping around or anything

like that when you couldn't find the baby seat,

right?

He was mad.

He was mad?

Yeah.

Okay. Where did you write that? Did you put that

down in a report someplace?

I don't know.

You don't know?

No.

Well

Well, he was mad because Amanda didn't leave one.

He's not mad at the baby, right?

I would guess not.

No. He's not having a problem with the baby at

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1 all. Not having any problems with you, right?

2 A No.

3 Q Places the baby in the car and off he goes, right?

4 A Just like that, yes.

5 Q And about 12 minutes later, you get a surprise

6 phone call, right?

7 A About the time it takes to get to the Dover tolls.

8 Q For the first time in your life you get a cell

9 phone call from Chad Evans, and he ---

10 A It wasn't the first time in my life I got a cell

11 phone call from Chad Evans.

12 Q Chad Evans while he's asking what's wrong with the

13 baby, right?

14 A Once again ---

15 Q Am I right?

16 A Yes. I know he brought up about her before in

17 conversations, but ...

18 Q He told you this baby was exhibiting some very,

19 very distressing signs?

20 A No, not like that.

21 Q He told you the baby was slumped over and bobbing

22 her head.

23 A Didn't say -- I don't believe he said slumped over.

24 Bobbing.

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1 Q D i d y o u i n t e r p r e t t h a t a s C h a d b e i n g c o n c e r n ed

2 a b o u t t h e c o n d i t i o n o f t h e c h i l d ?

3 A I n a way, maybe.

4 Q Y e a h .

5 A B u t n o t i n t h e way he s a i d t h e l i t t l e b i t c h i s

6 a c t i n g w e i r d.

7 Q Oh, y o u know

8 Q

A I mean, how w o u l d y o u t a k e t h a t , s i r ? Does t h at

10 Q We're l i s t e n i n g t o y o u r i g h t now.

11 A D o e s t h a t s o u n d l i k e

12 Q We're l i s t e n i n g t o y o u .

13 A -- somebody who's c o n c e r n e d?

14 Q J e f f e , y o u c a n s a y w h a t e v e r y o u w a n t , i t ' s o k a y .

15 A T h a t ' s f i n e . I j u s t want t h e t r u t h t o come o u t .

16 Q Y e s .

t 17 A L e t i t a l l o u t . Good o r b a d . L e t e v e r y b o d y know

18 w h a t ' s g o i n g on a n d t e l l t h e t r u t h .

19 Q R i g h t . But h e c a l l e d y o u a n d h e was c o n c e r n ed

20 a b o u t t h e b a b y ' s c o n d i t i o n . He d e s c r i b e d t h e

21 c o n d i t i o n , r i g h t?

22 A He d e s c r i b e d t h e c o n d i t i o n , y e s .

23 Q And he c a l l s y o u when he g o t home, r i g h t?

24 A Y e s , s i r .

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And he c a l l e d y o u a n d h e s a i d t h a t t h e b a b y f e l l

when he l e f t t h e b a b y o u t o f t h e c a r . He s t o o d h e r

up a n d t h e b a b y f e l l , r i g h t?

He s a i d t h a t he h a d g o t home, he t o o k h e r o u t o f

t h e c a r , p u t h e r n e x t t o t h e c a r . He s a i d t h e n he

w e n t a r o u n d t o g e t h i s s o n o u t o f t h e d r i v e r ' s

p a s s e n g e r -- t h e b a c k o f t h e c a r , w e n t a r o u n d b a ck

t o g e t K a s s i d y a n d s h e was o n h e r f a c e on t h e

g r o u n d . T h a t ' s what he s a i d .

T h a t ' s what he s a i d . And he a l s o s a i d , w e l l , he

h a d t o b r i n g h e r i n s i d e and t h e r e was s t o n e s a nd

d i r t i n h e r h a i r a n d e v e r y t h i n g , r i g h t?

Y e s .

I f b a b y K a s s i d y w o u l d h a v e b e e n d r o p p e d o u t o f a

p i c k u p t r u c k on y o u r g r a v e l a n d d i r t d r i v e w a y , s h e

w o u l d h a v e g o t t e n s t o n e s a n d d i r t i n h e r h a i r ,

w o u l d n ' t s h e?

I d o n ' t know, b e c a u s e i t d i d n ' t h a p p e n.

W e l l , w o u l d a n y i n d i v i d u a l who was d r o p p e d on y o ur

h e a d o r f a l l s on y o u r d r i v e w a y w o u l d h a v e d i r t , or

s t o n e s o r d i r t y m a t e r i a l i n y o u r h a i r , s k i n or

c l o t h i n g ?

I d o n ' t know. I mean

You d o n ' t know?

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1 A P r o b a b l y , y e a h.

2 Q B e c a u s e -- b e c a u s e t h e c o m p o s i t i o n o f t h e r o a d w a y.

3 t h e d r i v e w a y i s d i r t a n d g r a v e l a n d s t o n e , r i g h t ?

4 A Where my t r u c k was p a r k e d o v e r b y t h e c a r p o r t , I

5 t h i n k t h a t ' s a c t u a l l y g r a s s o v e r t h e r e , s i r . So

6 s h e w o u l d n ' t h a v e -- t h a t ' s t h e o n l y p l a c e s he

7 w o u l d h a v e b e e n.

8 Q W e l l , i f s o m e b o d y h a d f a l l e n on a g r a v e l o r d i r t

9 d r i v e w a y , t h e y ' d g e t d i r t o r r o c k s i n t h e h a i r .

10 r i g h t ?

11 A A l l d e p e n d s how t h e y f e l l , y e s .

12 Q A l l d e p e n d s . J u r y ' s b e e n t o y o u r p l a c e , you know.

13 You know t h a t?

14 A Yup .

15 Q J u r y ' s b e e n t o C h a d ' s , t o o .

16 A Y e s .

17 Q Yo u g o t a d i r t d r i v e w a y , y o u know t h a t?

18 A Y e s , I d o .

19 Q Where t h e r e ' s s t o n e , a n d d i r t , a n d s a n d a n d s t u f f

20 l i k e t h a t?

21 A Y e s , s i r .

22 Q C h a d ' s g o t a p a v e d d r i v e w a y , do y o u know t h a t?

23 A Y e s . And d i r t on t h e s i d e , t o o .

24 Q D i d he t e l l y o u t h a t t h e b a b y f e l l on d i r t on t h e

side?

No, he didn't.

I just want to be sure we're talking about the

right driveway.

That's what he said. I'm just quoting what he

said, sir.

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THE COURT: Okay. Why don't we break for the day.

8 We're going to break a bit early, ladies and gentlemen,

9 because I need to take up some matters with the lawyers.

10 Sir, why don't you step down, now. Mr. Marshall, if you

11 could step down, please. And you'll be required to come

12 back tomorrow morning. Before you put your notebooks

13 away, I have a final instruction for you, as I do every

14 night. Please, again, do not discuss this case at home

15 with anybody. Do not talk about it amongst yourselves.

16 Do not decide the case until you've heard all of the

17 evidence. And, counsel, can I have the jury come back at

18 nine again tomorrow?

19 MR. SISTI: That's fine.

20 MR. DELKER: Yes, your Honor.

21 THE COURT: Okay. All right, we'll have you come

22 at quarter of nine, and we'll get started at nine o'clock.

23 And if you could put your notebooks back in the envelopes

24 and hand them in to the bailiff. And I'm going to remain

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1 here in the courtroom with the lawyers.

2 [Jury dismissed for the evening at 4:17:10 P.M.].

3 THE BAILIFF: You may be seated.

4 THE COURT: Mr. Sisti, I believe you had a motion.

5 MR. SISTI: I do. Thank you, your Honor. First of

6 all, just as a preliminary matter, can we have the

7 State -- or actually have the Court order no contact

8 between Jennifer Conley and the witness at this particular

9 point in time? We anticipate if the State does not call

10 Jennifer Conley, we anticipate to call Jennifer Conley,

11 and we would like her in a sequestered, non-tainted

12 position to testify.

13 THE COURT: Okay.

14 MR. DELKER: Well, they live together. We

15 certainly wouldn't have any objection to them, and order

16 that they not talk at all about anything to do with the

17 case. They do live in the same house.

18 MR. SISTI: Mr. Evans and Ms. Bortner have lived in

19 the same place, too, and they had a no-contact order for

20 several months. I'm only asking for 24 or 48 hours, your

21 Honor.

22 THE COURT: Okay. Well, I guess what I'll ask the

23 State to do to see -- to check first to see if there is a

24 convenient way for one of them to stay somewhere else

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t o n i g h t , a n d i f t h e y c a n d o t h a t , t h e n t h e y s h o u l d . I f

t h e r e i s n ' t a c o n v e n i e n t way t o d o t h a t , t h e n I ' l l o r d er

t h em n o t t o t a l k a b o u t t h e c a s e , a n d t h e d e f e n s e w i l l be

p e r m i t t e d t o c r o s s - e x a m i n e them i f t h e y d o n ' t f i n d o t h er

a c c o m m o d a t i o n s t o n i g h t .

MR. S I S T I : Thank y o u .

THE COURT: Okay.

MR. S I S T I : For t h e r e c o r d , y o u r Honor, w h i l e Mr.

M a r s h a l l was o n t h e s t a n d , I s h o w e d h im S t a t e ' s 26, w h i ch

i s a f u l l e x h i b i t . I t d e p i c t s t h e b e d / b e d r o om a r e a w h e re

he c l a i m s K a s s i d y h a d b e e n . I t a l s o shows a p a i r o f j e a n s

l y i n g on t o p o f m a i l on t h e b e d . D u r i n g h i s

c r o s s - e x a m i n a t i o n , he i n d i c a t e d t h a t t h a t was n o t a t r u e

a n d a c c u r a t e d e p i c t i o n o f t h e s c e n e , and s t a t e s t h a t he

made t h a t c l e a r t o t h e a s s i s t a n t a t t o r n e y g e n e r a l s s e a t ed

h e r e t o d a y . I t ' s my u n d e r s t a n d i n g from o u r b e n ch

c o n f e r e n c e , t h a t t h e a t t o r n e y g e n e r a l ' s o f f i c e d o e s n o t

h a v e t h a t same r e c o l l e c t i o n , t h a t Mr. M a r s h a l l d i d n o t

t e l l t h e a s s i s t a n t a t t o r n e y s g e n e r a l t h a t S t a t e ' s 26 was

i n a c c u r a t e i n a n y way, s h a p e o r f o r m . I m i g h t a l s o a dd

t h a t w h i l e he was shown S t a t e ' s 2 6 , a n d p r i o r t o t h e I D

b e i n g s t r i c k e n , he i d e n t i f i e d i t a s b e i n g a n a c c u r a t e

d e p i c t i o n o f t h e p a r t i c u l a r room.

B u t I b e l i e v e t h e r e i s c a s e l a w , a n d A l a n and I

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1 were trying to delve up the case. It is out of Strafford

2 county, by the way, your Honor. When the attorney

3 general's office or the prosecutors are aware that a

4 witness is testifying inaccurately, there's a duty on the

5 part of the prosecutors to make that known to the State --

6 or, I'm sorry, to the defense and to the Court. We don't

7 want to place the attorney general's office in conflict

8 with the witness. We will be seeking an instruction,

9 however, that the attorney general's office has no such

10 recollection, and that that statement was not made at that

11 meeting. I understand there were no memorandum or notes

12 taken with regard to that, but two attorneys general

13 stated on the record that that wasn't their recollection

14 in any way, shape or form, that there was an -- he had

15 alluded to a different photo, not that one. I have given

16 him several chances to correct that particular testimony.

17 He has not. In fact, he was emphatic that he told the

18 attorneys general that there was something wrong with the

19 photo.

20 THE COURT: Okay. Mr. Delker?

21 MR. DELKER: Thank you, your Honor. My

22 recollection of that meeting was that we had shown him

23 several photos of the residence, and there is one that is

24 similar to it -- it's actually back in the room that I

o u l d g e t -- t h a t i s , b u t s l i g h t l y d i f f e r e n t . The c o v e r ' s

u t b a c k t o e x p o s e t h e s l i p p e r s and t h e c e r e a l t h a t was

h e r e . And I t h i n k t h e c o a t i& l a i d o u t s o y o u c a n s e e i t

. We -- my r e c o l l e c t i o n i s we d i s c u s s e d w h i c h o f t h e

wo p h o t o g r a p h s t h e b e d r o om l o o k e d l i k e . He s a i d i t w a s

h i s o n e . I t h i n k t h e w i t n e s s i s s i m p l y m i s t a k e n about

' h i c h p h o t o g r a p h w e ' r e t a l k i n g a b o u t.

THE COURT: W e l l , I'm g o i n g t o make a r u l i n g a f t er

h e a r t h e r e d i r e c t .

MR. DELKER: Okay.

THE COURT: B e c a u s e y o u c a n c e r t a i n l y q u e s t i o n h im

i b o u t t h a t on r e d i r e c t , and t h e n we c a n f a s h i o n an

n s t r u c t i o n a t t h a t t i m e , i f we n e e d t o . O k a y ? I 'm

f o i n g t o h e a r t h e r e d i r e c t , a n d i f t h e t e s t i m o n y s t i l l

s t a n d s , t h e n we c a n p r e s e n t s o m e t h i n g t o t h e j u r y , o k a y?

MR. DELKER: Thank y o u .

THE COURT: A l l r i g h t .

MR. S I S T I : Thank y o u , y o u r Honor.

THE COURT: G r e a t . W e ' l l s e e y o u t o m o r r o w a t n i n e

3 ' c l o c k . And i f s o m e t h i n g comes up, j u s t come i n a l i t t l e

s a r l y .

MR. DELKER: Thank y o u .

THE B A I L I F F : A l l r i s e , p l e a s e .

[ E n d p r o c e e d i n g s o f 1 2 / 6 / 0 1 ] .