

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 Cassidy, 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.

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 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

1 her to come to, check for a pulse.

2 Q You said you checked in her mouth. What did you do
3 to check in her mouth? Why did you check in her
4 mouth, first?

5 A I didn't know if she was choking on something. She
6 had cereal there with her, a baggie. I've never
7 been in that situation before. I don't know how to
8 describe it to you. It's ---

9 Q How did you -- what did you use to check her mouth?

10 A A napkin.

11 Q What kind of napkin?

12 A From Wendy's.

13 Q And did she have anything in her mouth?

14 A Not that I saw.

15 Q What did you do next?

16 A I don't know if I was on the phone with 9-1-1 at
17 that point, or if I wasn't. I know I took water, I
18 had splashed a little bit of water on her face
19 trying to wake her up, trying to get any response I
20 could. I kept asking the operator, is there
21 anything I can do. And she says, oh, no, they're
22 on their way. It happened just like that. I mean,
23 within -- it seems within seconds. You know, it
24 seemed like it took forever though for the police

Cross-Examination 12/16/01

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.

12/6/01

1 A Yes, sir.

2 Q Now, what you told the detective was that you went
3 in, and this would have been after getting the
4 mail?

5 A Yes.

6 Q And you get the mail at about noon?

7 A It comes all different times, sir.

8 Q All different times. So it could have been 10:00?

9 A No.

10 Q Well, you said all different times.

11 A Because when I found her like that, right after
12 that's when 9-1-1 got called.

13 Q Well, we'll get to that, too. What time does the
14 mail come?

15 A All depends.

16 Q What time did it come that day?

17 A Between twelve, twelve-thirty, something like that.

18 Q Between twelve and twelve-thirty ---

19 A Yes, sir.

20 Q -- the mail came, right?

21 A What's that?

22 Q That's what you're saying, between twelve and
23 twelve-thirty the mail came?

24 A Around there, yes.

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

1 Q Okay. So after you went through these things, at
2 least according to Detective Hamel, who wrote them
3 down, you called your girlfriend at work. And
4 where does she work?

5 A She works at Perfume Mania.

6 Q Perfume Mania?

7 A Yes, sir.

8 Q And you asked her for advice?

9 A I asked her what I should do.

10 Q Well, didn't you just testify to the jury in direct
11 that it was your belief that responsible people who
12 would have seen Kassidy in that condition, even
13 before you checked for the slight pulse, would have
14 brought her to the hospital?

15 A Absolutely.

16 Q So when she's injured and looking terrible, one
17 should have contacted medical personnel, right?

18 A Should have, yes.

19 Q Right. Especially if they're innocently caretaking
20 for somebody and had nothing to do with the
21 injuries at all, right?

22 A I did have nothing to do with the injuries.

23 Q Yeah. And people in that position shouldn't be
24 afraid, whatsoever, to save the life of another

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.

1 niece?

2 A No.

3 Q And just to get this straight, I just want to set
4 this a little bit. You weren't interviewed with
5 her or together initially by the police, were you?

6 A No, sir.

7 Q No. You were separated from her during your
8 interview, and she independently gave the police
9 her recollection of, let's say, phone calls and
10 the times that you called and what you said, things
11 like that, right?

12 A I wasn't there, so I don't know what they asked
13 her.

14 Q Okay. But again, you were in two separate rooms,
15 two separate times, no chance of taking each
16 other's statements, right?

17 A No, sir.

18 Q Good. Anyhow, she works at Perfume Mania, and you
19 called that number once, right, and asked for
20 advice?

21 A I don't know how many times.

22 Q You don't know how many times. How many times did
23 you call there before you called 9-1-1?

24 A I don't know.

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

1 Q You don't know?

2 A I don't know.

3 Q Well, would it have been a lie if you told your
4 girlfriend that she was alert, awake, and okay?

5 A It would have been a lie if I told my girlfriend
6 that? Yes.

7 Q Would it have been a lie if your girlfriend
8 understood that the baby was alert, talking, and
9 watching TV at the time that you called her on the
10 second phone call?

11 A I guess it would, yes, definitely.

12 Q And, again, does Jennifer have any reason to come
13 in here and lie before this jury?

14 A I hope not.

15 Q And she wasn't with you when they took her
16 statement from her, right, at the police
17 department?

18 A She was in the police department, but we were in
19 separate rooms, I believe. I don't know where she
20 was. I was in my own room.

21 Q Well, what happens is finally you get around to
22 calling 9-1-1?

23 A Yes, sir.

24 Q Now, how long had it been that you've been making

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.

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.

- 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.

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.

1 Q Some kind of congenital situation?

2 A I don't know. I'm not a doctor, sir.

3 Q Right. You didn't know what would have caused this
4 condition at all, right?

5 A Right.

6 Q Right. Because you're not a doctor, right?

7 A That's right.

8 Q You don't know if the reason that she was lethargic
9 was because of a flu or because she got hit in the
10 head with something?

11 A Like I said before, I got a phone call the night
12 before, so ---

13 Q We'll talk about the phone call.

14 A Okay.

15 Q But you don't know, one way or the other, right?

16 A I'm not a doctor, no.

17 Q Right. You don't know if she had some kind of --
18 like I said, some kind of a disease, or congenital
19 defect, or anything like that?

20 A She came to our house with bruises, sir.

21 Q Yes.

22 A I don't think that's a common occurrence with a flu
23 or something, but, once again, I'm not a doctor.

24 Q No, you're not. But on November 9th, when you were

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.

1 THE COURT: Good morning, again, ladies and
2 gentlemen.

3 JURY PANEL: Good morning.

4 THE COURT: Nice to see you here today. I'm going
5 to ask you again the same question that I've asked every
6 morning, and will continue to ask: Has anything come up
7 for any of the jurors overnight, including anything you
8 might have read or inadvertently heard about this case
9 that has caused you to believe you cannot sit on this case
10 and hear the evidence fairly and impartially? Okay.
11 Seeing no concerns, is anyone else freezing? Okay, we'll
12 try to -- we'll try to take care of that. Thank you. Mr.
13 Sisti, whenever you're ready.

14 MR. SISTI: Thank you, your Honor.

15 ^ CONTINUED CROSS-EXAMINATION [By Mr. Sisti]:

16 Q Mr. Marshall, you're still under oath. I hope I
17 don't have to remind you of that.

18 A No, sir.

19 Q I just want to revisit a couple of things with you.
20 When you called 9-1-1, you told those folks that
21 the baby was breathing.

22 A I don't recall what my whole conversation was with
23 9-1-1, sir.

24 Q Well, that's okay if you don't recall it. Are you

1 saying you didn't say that?

2 A If they have it recorded, then I guess I did.

3 Q But if this baby just moments later was cold to the
4 touch, non-reactive, not breathing, no blood
5 pressure, no pulse, no nothing, you're on the phone
6 with 9-1-1, and you were telling 9-1-1 that the
7 baby was breathing.

8 A First of all, I didn't say if I felt a pulse. I
9 said I didn't know if I felt a pulse. Second of
10 all, I don't recall my conversation with 9-1-1. I
11 remember calling 9-1-1. You're in a panic
12 situation, sir.

13 Q Right. Okay. Well, we'll deal with 9-1-1. We'll
14 deal with those folks, okay, and we'll listen to
15 Jeffe Marshall on the phone.

16 A That's fine.

17 Q Now, one other thing you were saying to the jury on
18 direct examination was the night before, that would
19 have been November 8th, November 8th, you were
20 saying that on what I believe what would have been
21 the third phone call, total, that you would have
22 had with Chad in the evening, it would have been
23 the last one that you had?

24 A I'm not quite sure if there was three or four phone