Witness: Kim Westphal

Date: 2004-09-09

Proceedings held September 9, 2004

Called by: People (prosecution)

Phase: Guilt

Examinations: Direct – Rick Distaso; Cross – Mark Geragos

Day 1 of 1 for this witness

Court: San Mateo County Superior Court, Redwood City (People v. Scott Peterson)

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Direct Examination by Rick Distaso

DISTASO: Miss Westphal, do you live in the La Loma neighborhood in southeast Modesto?

WESTPHAL: Yes, I do.

DISTASO: And what kind of dog do you have?

WESTPHAL: A Golden Retriever.

DISTASO: And do you walk your dog in the neighborhood, in the neighborhoods around there?

WESTPHAL: Yes, I do.

DISTASO: How long have you been doing that for?

WESTPHAL: For about 15 years.

DISTASO: And I take it probably not with the same dog?

WESTPHAL: No.

DISTASO: Okay. Back in December of 2002, were you walking your dog in the neighborhood?

WESTPHAL: Yes, I was.

DISTASO: And it's a Golden Retriever, you said?

WESTPHAL: Yes.

DISTASO: What's its name?

WESTPHAL: Jack.

DISTASO: And let me show you, let me just mark some papers, and I'll show them to you in a second.

JUDGE: It would be 227.

DISTASO: It will be A, B, and C, judge.

JUDGE: 227A, B and C.

DISTASO: How often during the week do you walk your dog?

JUDGE: Back in December, or now?

DISTASO: Back in December.

DISTASO: I'm sorry. December 2002, just so we're clear.

WESTPHAL: About four to five times a week.

DISTASO: When do you normally walk the dog?

WESTPHAL: During the week, after five, between seven and nine. On the weekends usually early, between eight and eleven.

DISTASO: And on December 24th of 2002, were you home from work that day?

WESTPHAL: Yes.

DISTASO: And did you take your dog for a walk some time that day?

WESTPHAL: Yes, I did.

DISTASO: What time did you take it for a walk?

WESTPHAL: Around 10:30.

DISTASO: Let me just show you some pictures so we have them for the record here. 227A and B, just ask you if you recognize that picture 227A and 227B.

WESTPHAL: Yes.

DISTASO: What's A?

WESTPHAL: A picture of me.

DISTASO: And your dog?

WESTPHAL: Yes.

DISTASO: It's hard to see it's a dark picture. And then,

JUDGE: Can I interrupt for just a second? You said you took the dog for a walk at 10:30. Was that in the morning or at night?

WESTPHAL: In the morning.

JUDGE: Okay. 10:30 a.m.

DISTASO: B is a picture of your dog?

WESTPHAL: Yes.

DISTASO: And then C, do you recognize what C is?

WESTPHAL: It's a map.

DISTASO: Okay. And does it depict some kind of route on there?

WESTPHAL: It depicts the route that I usually walk.

DISTASO: Okay. Is that the route that you walked on the 24th of December of 2002?

WESTPHAL: Yes.

DISTASO: Let me show pictures just so the jury can see what your dog looks like. Can you hit the lights for me, Mike? The picture is dark, so it might not show up so good. But we'll see. That's not going to help.

JUDGE: 227A?

DISTASO: This is 227B.

JUDGE: B.

DISTASO: Let me show the map. And if this area here is the park, does this route that's on the map there show the route that you walked on the 24th?

WESTPHAL: Yes.

DISTASO: The map behind you, can you use that map behind you and show the route, at least kind of give the jury an approximation of where you went. There is a pointer there hanging on the board. Do you see that?

DISTASO: Let me,

JUDGE: Orient her.

DISTASO: Let me orient you. Here is Covena Avenue. Here is like a trail down to the park. And Encina would be down here. Does that help us at all? Let, do you have the, let me do this.

WESTPHAL: Sorry.

DISTASO: Let me give you 227B.

JUDGE: What street do you live on?

WESTPHAL: Severin.

JUDGE: Could you show her where,

DISTASO: Roble is one street down. So then there would be Encina, and Severin, as you can see on the map, is right here. So Severin goes through. And then there is Pierre Park. You can see on this map. Did you come walking down here to Covena?

WESTPHAL: Actually from my house, Severin, to Roble, to Las Palmas, to Edgebrook, to Covena to Encina again, and then to Severin.

DISTASO: Okay. Can you just do that one more time, just a little slower, so we can,

WESTPHAL: Sure.

DISTASO: Go through again exactly where you walked that day.

WESTPHAL: From Severin, to Roble, to Las Palmas, which is further up here.

DISTASO: Okay.

WESTPHAL: To Edgebrook, to Covena, to Encina, to Severin.

DISTASO: And what, you can go ahead and have a seat. Thanks. Who were you walking with that morning?

WESTPHAL: A neighbor.

DISTASO: What is her name?

WESTPHAL: Dana.

DISTASO: Do you know what her last name is?

WESTPHAL: Evans.

DISTASO: And what time did you leave your house to go for your walk?

WESTPHAL: Around 10:30.

DISTASO: And how long does this route that you just took us through, how long does it take you to complete that the route?

WESTPHAL: 25 to about 30 minutes.

DISTASO: So by the time that up got over on to Covena Avenue, let me just ask you. What time do you think you got over to around Covena Avenue?

WESTPHAL: Around 10:50.

DISTASO: Ten what?

WESTPHAL: 10:50.

DISTASO: Did you walk all the way down from Edgebrook down Covena Avenue?

WESTPHAL: Yes.

DISTASO: So you would have walked past 523 Covena?

WESTPHAL: Yes.

DISTASO: And was there anything going on in the street that you saw at that time?

WESTPHAL: No.

DISTASO: Did you see any people at all when you walked past at 10:50?

WESTPHAL: No.

DISTASO: On your walk through the rest of the neighborhood, you know, as you kind of described it for us, did you observe anything out of the ordinary on that day?

WESTPHAL: We actually passed a man on Edgebrook that we acknowledged. And he was kind of rude.

DISTASO: Okay. What did he say?

WESTPHAL: Nothing.

DISTASO: So you said, "Hi" to him, he didn't respond back?

WESTPHAL: Yes.

DISTASO: Does he live there on Edgebrook?

WESTPHAL: He lives on Edgebrook.

DISTASO: Other than that, that you saw this person who didn't acknowledge you, did you do anything out, did you notice anything else out of the ordinary?

WESTPHAL: No.

DISTASO: Nothing further, your Honor.

JUDGE: I just have one question. You marked 227A, B and C. So far you have identified B and C. Are you going to identify A?

DISTASO: I thought I did A. But I can ask her.

JUDGE: Because I don't have it marked. Did you?

DISTASO: 227, just so we're clear,

JUDGE: B is the photograph of the dog.

DISTASO: C is the map.

JUDGE: C is the map. What's A?

DISTASO: A is, I'm just going to lead her through.

DISTASO: It's a picture of you and your dog?

WESTPHAL: Right.

JUDGE: Okay.

Cross Examination by Mark Geragos

GERAGOS: Good morning.

WESTPHAL: Good morning.

GERAGOS: Police, you were contacted originally on December26th of 2002? Somebody come to your house?

WESTPHAL: Yeah, I vaguely recall that.

GERAGOS: Okay. I don't want to mention your address, so I'm going to just show you a list that I have. Is that your address?

WESTPHAL: Yes.

GERAGOS: Okay. Does, is that you and your husband's location, that's your phone number?

WESTPHAL: Yes.

GERAGOS: Okay. You told, the officers did a house-to-house search on December 26th, or at least a house-to-house knocking on doors?

WESTPHAL: Right.

GERAGOS: Okay. At that time did you tell them you could not say if you walked that way in the morning or the evening?

WESTPHAL: I don't recall that.

GERAGOS: Let me show you that. Show you the whole interview. If you want to read the whole thing, it's two or three sentences. Does that refresh your recollection as to telling the officers two days after the 24th that you recall, you couldn't recall if you actually walked that day?

WESTPHAL: I don't recall that.

GERAGOS: Did you have a neighbor by the name of Brenna, B-r-e-n-n-a?

WESTPHAL: Yes.

GERAGOS: Okay. Brenna is somebody that you saw on Christmas Day?

WESTPHAL: Yes.

GERAGOS: Brenna was concerned on Christmas Day because some man had come to her house at about 11:30 at night with some lame story asking for money, correct?

WESTPHAL: Right.

GERAGOS: Okay. And you were over there on Christmas Day, correct?

WESTPHAL: Right.

GERAGOS: She told you about this, and the fact that her husband had to go chase this man off, correct?

WESTPHAL: Uh-huh.

GERAGOS: And that he had given some story that turned out to not be true about something or other in the neighborhood, correct?

DISTASO: I'm going to object, your Honor.

GERAGOS: Wait. I'm leading up to exactly why this is significant.

JUDGE: You are getting to something?

GERAGOS: Yes.

GERAGOS: She specifically then told you about Laci Peterson being missing on the 24th, correct?

WESTPHAL: She actually called me Christmas Eve, or Christmas Morning.

GERAGOS: Okay. And didn't you tell her that you didn't walk on Christmas Eve day? Isn't that what you told her?

WESTPHAL: I don't remember having that discussion with Brenna.

GERAGOS: Does Brenna, did you go over to the house later that same day?

WESTPHAL: Yes.

GERAGOS: And was Brenna's mother, brother, and her sister there also?

WESTPHAL: I don't remember her sister being there.

GERAGOS: How about her mom?

WESTPHAL: Yes.

GERAGOS: Do you remember telling her mom that you didn't walk on Christmas Eve day?

WESTPHAL: No.

GERAGOS: Now, the, specifically the second interview where this detail about this walk and this map that Mr. Distaso was just showing you,

WESTPHAL: Uh-huh.

GERAGOS: This happened on March 11th of this year, is that right?

WESTPHAL: Correct.

GERAGOS: Okay. And that's when they took the picture as well?

WESTPHAL: Right.

GERAGOS: Okay. And then March 11th of this year they had you also draw this map as well?

WESTPHAL: Yes.

GERAGOS: Okay. Now, as you sit here today, do you remember telling Brenna back on the 25th that you didn't walk? You don't remember that, right?

WESTPHAL: I don't.

GERAGOS: Did you tell Brenna, since you got subpoenaed that you did not walk on that day?

WESTPHAL: No.

GERAGOS: And specifically you weren't pregnant on the 24th of December, were you?

WESTPHAL: No.

GERAGOS: You said you were walking with another woman by the name of Dana Evans, is that correct?

WESTPHAL: Correct.

GERAGOS: And Dana Evans is, your description of her would be a white female with blonde hair?

WESTPHAL: Correct.

GERAGOS: Okay. And she's about 38 years old?

WESTPHAL: Uh-huh.

GERAGOS: About how tall is she?

WESTPHAL: About five-seven, five-eight.

GERAGOS: Approximately how much does she weigh, or did she weigh?

WESTPHAL: One sixty, one sixty-five.

GERAGOS: Okay. Was she pregnant in December?

WESTPHAL: No.

GERAGOS: And if you walked on the 24th, by the way, were you, you work, or did you work in December of 2002?

WESTPHAL: Yes.

GERAGOS: Where did you work?

WESTPHAL: I'm self-employed.

GERAGOS: Glass House?

WESTPHAL: Yes.

GERAGOS: Glass House. Didn't you work on the morning of December 24th at the Glass House?

WESTPHAL: No.

GERAGOS: Did you tell Brenna that you worked at the Glass House?

WESTPHAL: No.

GERAGOS: That morning?

WESTPHAL: No.

GERAGOS: And you didn't tell her mother that either, did you?

WESTPHAL: No.

GERAGOS: And, specifically, on the 26th of December, two days afterwards, you never told the officers that you walked by the house on Encina that morning, on Covena that morning, did you?

WESTPHAL: I don't recall.

GERAGOS: You don't recall ever telling them that?

WESTPHAL: No.

GERAGOS: Thank you. No further questions.

JUDGE: May Miss Westphal be excused?

DISTASO: Yes.

JUDGE: Miss Westphal, thank you very much.