Witness: Michael Looby

Date: 2004-07-06

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Called by: People (prosecution)

Phase: Guilt

Examinations: Direct – David Harris; 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 David Harris

HARRIS: Mr. Looby, I want to direct your attention back to April 13 of the year 2003 and ask you if you happened to be in the shoreline area around Bayside Court over in Richmond.

LOOBY: Yes.

HARRIS: What were you doing down there that day?

LOOBY: We were looking for a place for our dog to go swimming.

HARRIS: Let me back up. You say "We". Got to identify that. Were you with someone else?

LOOBY: My wife.

HARRIS: So you and your wife are down there, and you are something about a dog going swimming?

LOOBY: Yes.

HARRIS: Can you explain that to us?

LOOBY: Why we went down there?

HARRIS: Well,

JUDGE: He testified they were looking for a place to take his dog swimming. I assume you are going to take him to The Bay?

LOOBY: I knew there was a beach down there.

HARRIS: Let's go through that. Had you ever been to that area before?

LOOBY: I had been by the beach area riding my bicycle. Ridden bicycles down the bay trail that goes by that beach.

HARRIS: And so this particular day you are with your wife and with your dog. You are going to take your dog someplace for it to go swimming?

LOOBY: Un-hun.

HARRIS: Was this kind of a new experience for your dog?

LOOBY: Yes. Actually, she was 10 at the time, but just learned how to swim, actually. We were kind of excited about that, because she's had some problems with arthritis. And we were looking for a place to her to.

HARRIS: What kind of dog is this?

LOOBY: A Weimaraner.

HARRIS: The three of you are down there. Is this the first place you went to that day?

LOOBY: I don't remember. I do remember that we were, yeah, I don't remember. I remember we were, we were looking for a place.

HARRIS: The area that you get down to, is it actually a beach area?

LOOBY: There is a small sandy beach there, yeah.

HARRIS: You mentioned that you have been on some bike paths. Are there also bike paths in this area?

LOOBY: Yes.

HARRIS: Are the bike paths right next to the water?

LOOBY: At points after that beach they are. Before this they are not.

HARRIS: The general area that we're talking about, about how far away is the bike paths that you are talking about from the water that you were going down to?

LOOBY: At one point it's maybe fifty to a hundred feet, where it sort of passes the beach.

HARRIS: Okay. Did you actually go down to the beach with the, with your dog?

LOOBY: Yes.

HARRIS: Did your dog start to swim?

LOOBY: No. It was low tide, and that part is sort of a mud flat, so it was quite a few, there was few hundred yards out of just mud, so there was no way she could go out there.

HARRIS: When you couldn't take the dog for the dog's swim, did you guys start doing something?

LOOBY: We just decided to then take a walk down to the beach. And, yeah, just take a walk.

HARRIS: Did you take the walk?

LOOBY: Yes, we did.

HARRIS: Did you end up someplace going off of the beach and going to some other path?

LOOBY: Yes. The beach sort of ends, and then goes up on this sort of marshy, marshy section.

HARRIS: What I'd like to do is have marked a series of photographs.

JUDGE: People's next in order.

HARRIS: Speed up the process.

JUDGE: That will be 96. How many have you got?

HARRIS: Like to have marked four at this point in time.

JUDGE: 96-A, B, C and D.

HARRIS: While the clerk is doing that, ask you a few more questions. So you walked down past the beach. In the area that you are at, is there kind of a, I don't want to say swampland, some kind of a marshy area?

LOOBY: It's a marshy area, yes.

HARRIS: And that particular marshy area, did you go down into that?

LOOBY: Yeah, un-huh. The beach sort of ends, then you kind of go up over some sort of a rocky area, and then it's into the marsh.

HARRIS: You start walking along in that marshy area?

LOOBY: Yeah, un-hun.

HARRIS: You indicated it was low tide at the time you were there. Was there water still in that marshy area?

LOOBY: I remember some sort of puddles, and it was wet, kind of muddy.

HARRIS: Now that these are marked, let me show you some photographs. I'd like you to go ahead and look at those, and tell me if you recognize what's depicted in those photographs.

LOOBY: Yes, I recognize it.

HARRIS: So 96-A, do you recognize it as kind of an overall aerial view of the area that we're talking about over there by Bayside?

LOOBY: Yes.

HARRIS: 96-B, it's a closer up aerial view?

LOOBY: Yes, exactly.

HARRIS: Looking down at that marshland that we're talking about?

LOOBY: Yes.

HARRIS: 96-C is a different view, somewhat dark and grainy, some people standing out in that particular area.

LOOBY: Yes.

HARRIS: And 96-D being more of a close-up view of those same people standing in the same general location?

LOOBY: Yes.

HARRIS: Do you recognize those areas that you are depicted in the photographs?

LOOBY: Yes.

HARRIS: In that last photograph, D, are you one of the people standing out there, if you can tell?

LOOBY: Yes.

HARRIS: Does that, all of those photographs depict the bay area and the location that we're about to talk about?

LOOBY: Yes.

HARRIS: Depicts them accurately?

LOOBY: Yes, very.

HARRIS: All right. Let me go ahead and put these up on the screen.

JUDGE: You got your laser pointer, Mr. Harris?

HARRIS: I do, judge.

JUDGE: Good.

HARRIS: Mr. Looby, what, I'm showing what's up there right now as 96-A. And just to point out the area that kind of mud flat that we're talking about; is that this area right here?

LOOBY: Yes.

HARRIS: The point that comes off of this beach area that you were describing?

LOOBY: Yes.

HARRIS: Now, across, somewhat across the bay from there, there is a building over here that has blue sides. Did you see that from the location when were you out there that day?

LOOBY: Yes.

HARRIS: Are you familiar with that being a U.S. Post Office processing facility on this other side of the bay?

LOOBY: Yes.

HARRIS: Looking at the next photograph. Looking at 96-B, the area that you have been describing, we talked about how the bike path comes down and goes around by the beach. In this area here, in the photograph, one to the left down going to the left, down to the bottom right, is that the beach that you are referring to?

LOOBY: Yes.

HARRIS: You said that you went over some rock wall kind of thing. Is that this rock wall right here, that is a breaker from the water to this marshland?

LOOBY: Yes.

HARRIS: You indicated that you had started to walk over into this marshland, and there was some water in it. Is that the area over here that you are talking about?

LOOBY: Yes.

HARRIS: And when you were there it was low tide. High tide, do you know if those, if it fills up with water, if you know?

LOOBY: It, yeah, it fills up.

HARRIS: Show the next photograph. This is a little bit more difficult to see. 96-C. And it's, again, at the top center of the aerial photograph coming down. That's the beach area that you were describing?

LOOBY: Yes.

HARRIS: The rock wall area that you were talking about, you kind of had to walk over?

LOOBY: Yes.

HARRIS: And this would be the really the front of the ocean, or the bay side, this lower rock wall that's from the left to the center bottom of the photograph?

LOOBY: Yes.

HARRIS: Now, in the photograph its somewhat difficult to see. Do you recognize these marks right there as being people that are out there?

LOOBY: Yes.

HARRIS: Moving to the next photograph, 96-D, somewhat of the reverse kind of angle. Looks like the helicopter has moved off a little bit. And you would have to answer out loud.

LOOBY: No, yes, yes, I remember this quite well.

HARRIS: And what we're looking at up here is again, in that rock wall from the left to the right in the photograph, towards the top third at the top, that would be where the ocean is at?

LOOBY: Yes, that's correct.

HARRIS: Now, there are some individuals towards the end of that. Standing there is one person with something red. And then also there is one or two people over here up by the rock wall. Who are those people that's over there by the rock wall in this photograph?

LOOBY: That's my wife and I and our dog.

HARRIS: These individuals that are over here in the photograph, do you recall who they were, or what their occupations were?

LOOBY: Yes. At that point when we went to the rock wall, that was right after the officers responded. And I think that the other figures are from the fire department, the responding fire department.

HARRIS: Let me go through this now so that we all understand where we're at, what we're talking about. You, your wife, and your dog have been, gone along the beach. You come over that rock wall. Do you continue to walk down with your wife?

LOOBY: Yes.

HARRIS: And your dog?

LOOBY: Yes.

HARRIS: And you are walking along. Does something attract your attention, or your dog's attention?

LOOBY: Yes.

HARRIS: Did you look at what this was that had attracted somebody's attention?

LOOBY: Yes.

HARRIS: What was it?

LOOBY: It was, it was a body of a small baby.

HARRIS: When you saw this body, could you tell that it was a baby at that point in time?

LOOBY: I knew what it was right away. My wife didn't, I guess.

GERAGOS: Objection. Motion to strike.

JUDGE: Be stricken. What his wife knew or didn't know. You recognized it as a child, small baby, right away?

LOOBY: Right away.

JUDGE: Go ahead.

HARRIS: Were you looking at it, so were you looking at the face?

LOOBY: Yes.

HARRIS: Is your wife looking at it from a different angle?

LOOBY: Yes.

HARRIS: When you looked at this body, could you recognize the face? I mean not as who the individual was, but that it was a face.

LOOBY: Yes.

HARRIS: Was it obvious that the baby was dead at that point in time?

LOOBY: Very, yes.

HARRIS: What did you do?

LOOBY: We,

GERAGOS: Objection. Non-responsive.

JUDGE: What you did.

LOOBY: I started thinking about, well, okay, I didn't my cell phone with me, and we needed to basically call the police. And so I remembered walking in along the bike trail, that we walked in onto the beach, there were some people out doing some work on a house, and so I walked back there to, because I knew I could make contact with them.

HARRIS: The people that were working in that house, front yard or backyard?

LOOBY: It's their backyard.

HARRIS: Did you walk there by yourself, or did you your wife accompany you?

LOOBY: My wife came with me.

HARRIS: So the two of you, assuming you take your dog?

LOOBY: Dog came with us, yes.

HARRIS: So you, your wife, and the dog, you go back to that house, backyard where those people were at. Did you ask them to do something?

LOOBY: Yes. We asked them to call 9-1-1.

HARRIS: Do you know what they did?

LOOBY: They went in and called and said, came back out after a little while, said they had,

HARRIS: Objection. Hearsay.

JUDGE: Sustained.

HARRIS: Without what they might have said to you, after they went in the house, at some other point in time, a little bit later, did somebody from an emergency service show up?

LOOBY: Yes.

HARRIS: Who was that?

LOOBY: The fire department came.

HARRIS: When the fire department came, did they come to that house where you asked the person to make the call?

LOOBY: Yes. They came to that house. You could see the engine, the vehicles pull up on the street. We could see between the houses them pull up. They came in through that yard and out through the backyard.

HARRIS: The fire department personnel came to the house and came out the backyard?

LOOBY: Yes.

HARRIS: Is that where they met you?

LOOBY: Yes.

HARRIS: Did you tell them what you had observed?

LOOBY: Yes.

HARRIS: Did you take them back down to the scene?

LOOBY: Yes.

HARRIS: When you take them back down to where this baby is at, is the baby still in the same location?

LOOBY: Yes.

HARRIS: Appears to be in the same condition as when you first saw it?

LOOBY: Yes.

HARRIS: Do the fire department personnel do something, or attempt to do anything at that point in time?

LOOBY: No.

HARRIS: After they arrived, did some police officers come out?

LOOBY: Yes.

HARRIS: Did you wait until the police officers came out?

LOOBY: Yes, we did.

HARRIS: When the police officers came out, did they talk to you and take a statement from you?

LOOBY: Yes.

HARRIS: And did you notice if they, besides the photographs that you are looking at here, do you know if they took some photographs?

LOOBY: I'm not sure.

HARRIS: Now, I want to talk to you about this particular area. You are down there on April 13th. The day before, had there been any weather-related kind of activity that you remember?

LOOBY: Yes. I remember there was a storm that went through there. It was pretty strong storm, yes.

HARRIS: Pretty strong storm?

LOOBY: Yes.

HARRIS: So when you are out there on the 13th, you come to the location where you see this body. Do you notice if the body is near anything at that point in time?

LOOBY: There was, yeah, there was a lot of debris on the beach, and so forth. And I made a comment that, boy, that storm was obviously really big, because of the amount of debris that was just all in that area.

HARRIS: You just gestured with your hands kind of all in that area. Where the water would come in in this particular area, did it, can you describe for us if it left kind of, say, a ring around the bathtub, an area of debris?

LOOBY: Yes.

HARRIS: Could you describe for us what you saw out there?

LOOBY: Sort of the reason I noted that it was a strong storm, and so forth is because the distance that the debris sort of went, I was just surprised. We have gone to the beach quite a bit. And I was just making the comment of how far it went in, and how much there was, sort of, that it had left behind, I guess, going in then coming back out.

HARRIS: In terms of moving away from that rock wall there in the, where the body is, the debris field and stuff you are describing, was that pushed further inland towards the path where the body was?

LOOBY: Yes.

HARRIS: Than where the body was?

LOOBY: Yes.

HARRIS: Where the body was at, did you notice if there was any debris around it?

LOOBY: There was debris there too.

HARRIS: So in the area where the body was at, there was debris. There was debris that was pushed up further past the body as well?

LOOBY: Yes.

HARRIS: In the time that you found the body out there at that particular location, do you recall that as being low tide?

LOOBY: Yes.

HARRIS: People have no other questions.

Cross Examination by Mark Geragos

LOOBY: Good morning.

GERAGOS: You have seen this picture before?

LOOBY: I'm not sure.

GERAGOS: You recognize,

LOOBY: I recognize the area.

GERAGOS: How about F?

LOOBY: Yes.

GERAGOS: Recognize the area?

LOOBY: Recognize the area.

GERAGOS: G?

LOOBY: Yes.

GERAGOS: And then this is VV. Is this pretty much, it's like it's darker, at night. But does this look like the area that you came upon the baby?

LOOBY: Yes.

GERAGOS: Okay. And is this, in VV, is this trash that's here what you were referring to on direct?

LOOBY: Yes.

GERAGOS: Okay. Fair to say that on these, that that trash line is the same?

LOOBY: That's one of them, yes.

GERAGOS: Okay. If I can put up here 96. If I've got it right. Can you show me, do you have, going to use the laser. And show me where you think that area is.

LOOBY: Which area?

GERAGOS: Where you were.

JUDGE: The debris,

GERAGOS: Where,

LOOBY: Where I was?

GERAGOS: Yeah.

LOOBY: I was up on the rocks? You can almost make out,

GERAGOS: Right there?

LOOBY: That's, yeah, that's where we were sitting.

GERAGOS: Would that also be roughly where, which picture here, E?

LOOBY: Where I was sitting?

GERAGOS: When you are looking?

LOOBY: Uh-huh.

GERAGOS: Can you now look at 96-E and tell me where it is on E here?

LOOBY: It would be along this wall here.

GERAGOS: Okay. So if we've got, you are saying somewhere in this neighborhood here, right?

LOOBY: Yup.

GERAGOS: And then if we're looking at 96-E, that's close up, or close up in the sense that somebody is standing there taking a picture. This is the debris line right here?

LOOBY: That's one of them, yes.

GERAGOS: 96-F, another view. But this is looking from the, I guess, your back to the water looking in?

LOOBY: Yes.

GERAGOS: Approximately how far away would you say this area is from right here. And looks like, is this asphalt right in here?

LOOBY: No. That's mud.

GERAGOS: Okay. And then the rocks are here?

LOOBY: Yes.

GERAGOS: When I say rocks, those are breakers that are, that are along the edge of the shore there?

LOOBY: Yes.

GERAGOS: Then G is also another picture that gives you kind of a look at what's, the area that you are talking about?

LOOBY: Yes.

GERAGOS: Okay. And then VV, which I'm not going to put up on the screen. This area is, is this about as close as you got to the baby?

LOOBY: No. I was closer.

GERAGOS: Okay. Now, when you got up there, is it fair to say that the, you said you recognized it instantly. Was it because your dog was over there?

LOOBY: I don't understand.

GERAGOS: When you first, when you first got to the location, actually, I found three better pictures. If I could, your Honor, I'll mark these next in order.

JUDGE: WW-1, 2, and 3.

DISTASO: Mr. Geragos, are those from our stack?

GERAGOS: Yours.

DISTASO: Then mark them 96, judge, please.

GERAGOS: No. They are from my stuff.

JUDGE: Oh. It would be WW-1, 2, and 3.

GERAGOS: Your dog came to the baby first. That's what you told the police?

LOOBY: Not really. It was about the same time.

GERAGOS: Did you tell the police that the dog had come to the baby first?

LOOBY: I don't remember.

GERAGOS: Okay. As you sit here today, your memory is that you and the dog came upon the baby at the same time?

LOOBY: Yes.

GERAGOS: I have got, I'm going to make the 1 through 4. We found a fourth photo.

JUDGE: W-1, 2, 3, and 4.

GERAGOS: I think these are a little bit better in terms of being able to see what it is you were describing.

GERAGOS: First of all, they are taken during the day. That look a little bit better picture?

LOOBY: Yeah. It's the same area, yeah.

GERAGOS: Same area?

LOOBY: Same area.

GERAGOS: Yes.

LOOBY: Yes.

GERAGOS: Okay. Show them up this way. This is WW-1. If I tell you this is where the baby was, does that ring a bell? Where the flag is. And that this would be this mud area. And these are the rocks over here?

LOOBY: Yes.

GERAGOS: And then is another view that appeared to be, which is marked as WW-2. Same thing. Just looking out towards the Bay?

LOOBY: That's towards the, actually that's towards the Post Office building.

GERAGOS: Right there. That's the Post Office building Mr. Harris was referring to?

LOOBY: Uh-huh.

GERAGOS: Then this is looking at, in the other direction. And this is another one of the same looking at, right towards the Post Office, right?

LOOBY: Un-hun, yes.

GERAGOS: WW-4, same thing. And this is, is that fairly, does that fairly represent about, if the flag is right there, roughly where the baby was and the distance from the breakers?

LOOBY: Yes.

GERAGOS: Who is the first person who responded, that you remember, after you went up to the house, you asked somebody to call 9-1-1?

LOOBY: Who shows up?

GERAGOS: Correct.

LOOBY: Yes.

GERAGOS: Who was the first person that showed up?

LOOBY: The first individual?

GERAGOS: Yes.

LOOBY: It was a team of firefighters.

GERAGOS: And when, and then after the team of firefighters, who showed up?

LOOBY: The police.

GERAGOS: The police came at that point? And did you talk to the firefighters?

LOOBY: At which point?

GERAGOS: When they first arrived.

LOOBY: Yes.

GERAGOS: You were the one who initially made the report?

LOOBY: Yes.

GERAGOS: Okay. When the police came, I assume they talked to the firefighters, some time after that they talked to you?

LOOBY: Yes.

GERAGOS: And how long did you stay at the scene?

LOOBY: I'm not sure. It was,

GERAGOS: For more than an hour?

LOOBY: Yes.

GERAGOS: Thank you. I have no further questions.