Witness: Timothy Brian Gard

Date: 2004-07-06

Proceedings held July 6, 2004

Called by: People (prosecution)

Phase: Guilt

Examinations: Direct – David Harris; Cross – Mark Geragos; Redirect – David Harris; Recross – Mark Geragos

Day 1 of 1 for this witness

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

Source: https://pwc-sii.com/CourtDocs/Transcripts/Gard.htm

Page/line: not available (source HTML has no page or line markers)

Text below is verbatim from the source page for this date only.

Direct Examination by David Harris

HARRIS: Officer Gard, do you also sometimes go by Brian?

GARD: Yes, I do. It's my middle name. B-R-I-A-N.

HARRIS: I just called you officer, but for the record can you tell us what's your occupation?

GARD: I'm a police officer with Richmond Police Department, Contra Costa County, California.

HARRIS: How long have you been employed by the City of Richmond Police Department?

GARD: Five and a half years.

HARRIS: Directing your attention back to April 13th of 2003, on that particular date were you working in your capacity as a police officer?

GARD: Yes, I was.

HARRIS: What was your assignment or duties on that particular day?

GARD: I was a patrol evidence technician.

HARRIS: What is a patrol evidence technician?

GARD: Basically it's a crime scene investigator at the patrol level, respond to crime scenes that are felony in nature to collect, process and document evidence.

HARRIS: Now, you say at the patrol level. Is there another kind of category? I don't want to say that's above you, but a different category?

GARD: Yes, we also have one homicide evidence investigator, and he's assigned to the detective bureau.

HARRIS: Back during that time who was that?

GARD: Detective Jeff Soler, S-O-L-E-R.

HARRIS: So in this particular case, date, April 13th, did you respond to a call about a body that was in the general area of, in the general area of Bayside Court in the City of Richmond?

GARD: Yes, I did.

HARRIS: Did you go down to the beach area?

GARD: Yes, I did.

HARRIS: And just take a walk through this process a little bit. Speed it up. Now, the general area that we're referring to, this is showing 96A. The area that you went to would be this kind of marsh, tide, mud flat in this general location?

GARD: That's correct.

HARRIS: And if you would look behind you to what's been marked as 98A, do you see the same kind of tidal mud flat in that area?

GARD: Yes.

HARRIS: And that's in the photograph that's labeled Connor recovery site?

GARD: Yes, it is.

HARRIS: I'm putting up 96D. Looking at this particular photograph, can you make out from where you're sitting the individuals that are standing in the photograph, and also the individuals sitting over on the rock wall?

GARD: Yes.

HARRIS: Does that depict the general scene when you got out there that particular day to, to deal with this particular incident?

GARD: Yes, it does.

HARRIS: This photograph, was it shot from a CHP helicopter that came out to the scene?

GARD: That's correct.

HARRIS: As part of your, your duties or your job assignment as this technician, did you go out there with the specific function to try and document this scene, either by measurements, photographs or combination of all of the above?

GARD: Combination of both.

HARRIS: When you get there, do you get a general overview from any of the people that are there about what's going on?

GARD: Yes. Initially I like to talk with the first responding officer, as well as, in this case, fire was on scene, and get a brief synopsis of what they did or what they observed before I begin my own investigation.

HARRIS: Kind of wanting to see what they might have touched or where they might have gone?

GARD: Correct.

HARRIS: Did you talk to a Captain Newman that was out at the scene?

GARD: Yes, I did.

HARRIS: Was one of the first officers that was out at the scene Officer Opdyke?

GARD: Yes, it was.

HARRIS: Did you talk to him as well?

GARD: Yes, I did.

HARRIS: After you gathered this information, did you ever talk to the civilian witnesses that were on the scene?

GARD: I did not personally, no.

HARRIS: Were you briefed on something of the information that they had already provided?

GARD: Yes, by Officer Opdyke.

HARRIS: So you get all that information. Do you then start to document the scene?

GARD: That's correct.

HARRIS: Tell us how you do that and what you do.

GARD: Kind of start from a general overall view. I like to kind of take things slow and get a broad picture of things. I'll walk the area, determine where evidence is that I can see immediately. Mark that if I have to. If I can't, if it's complicated, meaning if there's a lot of evidence, then I take time to mark each piece. Try to get a broad view. And then what I'll do is, after that, then I'll start walking the scene, trying to find smaller things that I may have missed. And then once that process is complete, I'll write down a list in order how I want to photograph and measure the scene. And I'll take pictures with either my digital camera or a 35 mm film camera. I'll use a measuring tape and a Rola-Tape for measurements. And then I will photograph more general view pictures and each item of evidence as it's related to the case. And then at the end of all that, then I collect items of evidence that would not be going with the Coroner or remaining for another detective to collect and take so that he can use it at the scene.

HARRIS: So that's the generalized process. Did you, in fact, make measurements on this particular day?

GARD: Yes, I did.

HARRIS: And did you write a report and document this information?

GARD: Yes, I did.

HARRIS: Tell us what it was that you were measuring and how you went about doing that to get the measurements?

GARD: Is it okay if I stand up?

JUDGE: Sure.

HARRIS: There was a pointer up there.

GARD: There still is. Can everybody hear me all right? The, the area was accessed from the road here. This was the area where Conner was recovered. My measurements were based off of this breaker line, being a permanent and, something that's not going to change. And then this breaker line here. So I measured from the edge of the breaker line here out to a point parallel with where Conner was located. And then did the same thing from this edge of the breaker line in to where Conner was located, and then from this breaker line up.

HARRIS: Did you document those actual measurements

GARD: Yes.

HARRIS: in your report? Could you tell us what the distances were for kind of a triangulation?

GARD: Yes. I need to refer to my report for the exact measurements.

JUDGE: Go ahead. You prepared a report, right?

GARD: Yes, your Honor.

JUDGE: All right.

GARD: The measurements were 73 feet east of the west edge of the breaker line.

JUDGE: Show us up there.

GARD: Okay.

GERAGOS: Thanks.

HARRIS: For counsel, that would be page 19963.

JUDGE: Officer, when you describe the measurements, show the jury so they can figure it out.

GARD: Yes, your Honor. This, this is the west edge breaker line. This is the south edge breaker line. Conner was located 73 feet east, which is this direction, of this breaker line. And then 326 feet this direction here, and 24 feet. So 326 feet this way, 73 feet this way, and 24 feet in this way. And that's where Conner's body was located.

HARRIS: You can go ahead and resume your seat. If I can have marked next in order.

JUDGE: 101.

HARRIS: A chart that counsel has seen. Officer Gard, I'm going to leave this up here with you and ask you a few other questions. At some point in time during the time that you were there, did Detective Soler come out to the scene?

GARD: Yes, he did.

HARRIS: And did he also kind of process it in somewhat of the same way that you're referring to?

GARD: Yes, he did.

HARRIS: Now, if you could look at what you have before you, People's No. 101, did he take some of the information that you were just describing with the measurements of the 74 feet and, excuse me, the 73 feet and the 24 feet and incorporate, incorporate that into a diagram?

GARD: Yes, he did.

GERAGOS: Objection. That calls for speculation as to what Soler did.

JUDGE: If he knows. Did you see him do it?

GARD: I didn't see him do it, your Honor, but he showed me the diagram, said it was based on my measurements.

JUDGE: All right. Objection's overruled. Go ahead.

HARRIS: Do you have in front of you a copy of Detective Soler's diagram?

GARD: Yes, I do.

HARRIS: Does it show the approximate, I won't say he's the best artist in the world, but does it show the location of the breakers that you were referring to?

GARD: Yes, it does.

HARRIS: And from where those breakers kind of intersect, does he have the measurements of 73 feet and 24 feet that you're talking about?

GARD: Yes.

HARRIS: And is that, using his diagram and your measurements, does that somewhat accurately depict where this body was that you saw that day?

GARD: Yes, it accurately depicts the location of his body.

HARRIS: Let me put this up to make it a little easier to describe what you're referring to. Officer, can you see 101 at this point in time?

GARD: Yes, I do.

HARRIS: This particular diagram there's a caption at the top says Shoreline Off of Bayside Court?

GARD: Yes.

HARRIS: To the left of the diagram it indicates that there's the beach. Is that also depicted up there in 98A, that strip from the houses out to the tidal flats area?

GARD: Yes, it is.

HARRIS: Now, there's these circular areas that go from the beach area down and then across this particular item. And it's marked where with it says "breaker boulders"?

GARD: Yes.

HARRIS: Does that represent the boulders or the breaker wall that's out there?

GARD: Yes, it does.

HARRIS: And then from the corner of that, from the left to the right, there's a measurement of 73 feet, and one going up from the south which says 24 feet?

GARD: That's correct.

HARRIS: Those are the measurements that you took?

GARD: Yes, they are.

HARRIS: And then there's an indication there that says Conner, and then an arrow on that convergence of where those two lines come together?

GARD: Yes.

HARRIS: Does that depict where this particular body was found?

GARD: Yes, it does.

HARRIS: Now, at the far end there's a label for picnic table?

GARD: Yes.

HARRIS: And was there a picnic table out there in this particular area?

GARD: Yes, there is.

HARRIS: Was it near where Conner was at? Or is it, like it says up there, about 590, 550, 70-something feet away?

GARD: That's, that's a accurate depiction of where the picnic table was. And relevance to Conner's body.

HARRIS: Now, at the bottom of this particular diagram there's a representation for north. And so the north would be facing to the top of this particular diagram?

GARD: That's correct.

HARRIS: So if you're looking at 98A, again just to orient ourselves, if you were standing, I guess look, easiest way to do it, if you were standing in the water in the Bay looking towards that flat straight ahead, you would be looking north?

GARD: That's correct.

HARRIS: As to this particular photograph, 98A, north is going somewhat to the top right corner of the photograph?

GARD: That's correct.

HARRIS: Now, when you, to go through the, the process. You went through and you made these measurements, so you obviously went over and looked to see where this body was at?

GARD: Yes.

HARRIS: Did you also photograph the body?

GARD: Yes, I did.

HARRIS: I have some photographs of yours already marked, but I would like to have some more.

JUDGE: These next in order.

HARRIS: While counsel is looking at that, we'll go to some of the other ones that have already been marked. I'd like to show you what was marked as 96 E, F and G.

GERAGOS: Are these going to be marked as 102 A through,

JUDGE: I don't know. He hasn't asked me yet. Are these going to be marked next in order?

HARRIS: I would ask those be marked next in order.

JUDGE: How many have you got?

HARRIS: I believe there should be eight there. They were in a packet, but we've had some pulled out and marked earlier.

JUDGE: Eight,

CLERK: A through I.

JUDGE: A through I. Okay.

HARRIS: So those would be 102 A through I.

JUDGE: A through I.

HARRIS: Officer, getting back to the photographs that you have in your hand, 96, I've lost track of the letters. Is it E, F and G?

GARD: Yes. E, F and G.

HARRIS: Do you recognize those?

GARD: Yes, I do.

HARRIS: And are those photographs that you took?

GARD: Yes, they are.

HARRIS: Do they depict the scene on this date that you, when you were there?

GARD: Yes, they do.

HARRIS: Starting with 96 E, can you describe for us what we're looking at?

GARD: That, the photograph is taken from the orientation of a view from the west side of the area towards the east. In the center of the photograph is a small dirt foot path. To the right of the foot path, which would be south, there's leaves and trash, which is a debris line. And between the path and the debris line in the grass is where Conner's body was located.

HARRIS: Tell you what I'm going to do. I'm going to give you the laser pointer to make it easier for you. You can point these things out. At some point in time was a flag placed to represent the area where this body was at?

GARD: Yes.

HARRIS: Is it visible in this photograph?

GARD: No.

HARRIS: Can you describe, you were describing for us that, the debris line and where the body is at. If you can use the pointer again.

GARD: Here's the path. Here's the debris line. Approximately there.

HARRIS: Now, on the bottom, very bottom, somewhat left of the middle there's a blue item. Blue kind of square. Yes, that you're pointing at. What is that?

GARD: It was a piece of cardboard that was textured, and appeared to be also a piece of debris that was left by the tide.

HARRIS: To the left center of the photograph there's something blue, something else that's blue up there that you're pointing at now. What was that?

GARD: It appeared to be a large piece of colored foam, something that might be used to support a dock or something that needed to be buoyant.

HARRIS: Now, in this particular orientation, would north be to our, to the left of this photograph somewhat?

GARD: That's correct.

HARRIS: And so we're almost standing, with the orientation of this photograph, almost standing at part of the, the water mark where some of this debris is at?

GARD: That's, that's correct.

HARRIS: But there's also debris that's further north of that; for example, those two blue items that you just described?

GARD: Correct.

HARRIS: Looking at the next photograph, so that we can get a slightly different orientation, 96F. Can you describe for us what's there?

GARD: It's, it's a general view of the area again. This time I'm standing in the south position with the camera facing northbound. Just south of the debris line. The debris line being here. The path being, the dirt part is not visible, but the separation between the green grass and the dead grass there, you can tell that's the path. And then the blue spongy material and the blue cardboard material are there.

HARRIS: So the one, blue spongy material that you're describing, that's quite a distance away from where Conner's body was at?

GARD: Yes, it is.

HARRIS: Now, looking at 96 G, can you describe that for us?

GARD: Yes. Another, another general view of the same, same area. This would be the foot path. The debris line here. This is me standing on the east end looking westbound.

HARRIS: Now, the, the blue cardboard spot that you described for us previously, to the left of that there's something that's either shiny or white. What is that?

GARD: That area right there is standing water.

HARRIS: At the time that you were there on this particular date was at low tide?

GARD: Yes.

HARRIS: And even at low tide there was still standing water in the area?

GARD: Yes, there was.

HARRIS: I don't know if the court wants to take a break now.

<recess>

HARRIS: Mr. Gard, what I want to do right now just to kind of, before we move into your photographs, have you look behind you at, and you can use the pointer that's up there. Look at, looking at 97-A. Is that an aerial overview of the Bay looking from Berkeley Marina towards

Brooks Island?

GARD: Yes, it is.

HARRIS: Now, there are labels up there, just for the record, towards the lower left corner of 97-A that indicates Berkeley Marina. Does that generally represent the area of the Berkeley Marina?

GARD: Correct.

HARRIS: And the upper left corner of 97A, there is,

JUDGE: Why don't you have him point it out. Show us where the Berkeley Marina,

GARD: Here is the Berkeley Marina here.

JUDGE: Go ahead.

HARRIS: Upper left of that particular photograph, that land mass without a label, does that represent Brooks Island?

GARD: That is Brooks Island there.

HARRIS: And to the right, somewhat top of the photograph, there is a label that indicates "Connor Recovery Site". Does that represent the tide flat that we have been talking about?

GARD: Yes, it is.

HARRIS: Look at 97B on the same board. So is that just, the photograph down below. Is this the opposite direction of Brooks Island, looking towards the Berkeley Marina?

GARD: Yes, it is.

HARRIS: So that in the center lower portion of that photograph is Brooks Island, and has a label "Brooks Island"?

GARD: Yes, that's correct.

HARRIS: Going around clockwise to the left, do we see the same tide flat that we have been referring to? It's labeled on there as the Conner Recovery Site"?

GARD: Yes.

HARRIS: To the upper center portion of that particular photograph, 97B, does it indicate a label "Laci Recovery Site"?

GARD: Yes.

HARRIS: Going over to the far right of that particular photograph, 97B, is, again, the Berkeley Marina?

GARD: Yes.

HARRIS: Now, looking at 98A, that's what you have been describing before as 96B, showing that up on the screen?

GARD: Yes.

HARRIS: Now, 98-B. Do you recognize that as a postal facility?

GARD: Yes. It's the Bulk Mail Center.

HARRIS: Is that in Richmond's jurisdiction?

GARD: Yes, it is.

HARRIS: And have you been out to that location before?

GARD: Yes, I have.

HARRIS: Does that accurately represent an aerial photograph of that generalized location?

GARD: Yes, it does.

HARRIS: You can pick up, just have you do it, speed this along. 99. You can hold that up real quick. Is this just another aerial view looking toward the location where it's labeled on there "Connor Recovery Site" and "Laci Recovery Site"?

GARD: Yes.

HARRIS: To the left of that one, 99, does it show that tidal flat that we have been talking about where you went out there on April 13th and found the body?

GARD: Yes, sir.

HARRIS: To the right of that photograph, where it's labeled "Laci Recovery Site" is that that bulk mailing facility?

GARD: Yes, here.

HARRIS: That's also depicted in the photograph?

GARD: Yes.

HARRIS: These photographs in 97, 98, and 99, are they accurate representations of the areas that they depict?

GARD: Yes, they are.

HARRIS: You can go ahead and resume your seat. Before the break we had a series of photographs marked, have you take a look at. These have been marked 100-A through I, I believe it was.

GERAGOS: 102.

JUDGE: 102-A through I. [sealed by the Court]

HARRIS: Have you had a chance to look at those now?

GARD: Yes.

HARRIS: Do you recognize those?

GARD: Yes. This is the photographs I took on April 13th.

JUDGE: There truly and accurately represent the scene as it appeared to you on that date and time?

GARD: Yes, they do, your Honor.

JUDGE: Go ahead.

HARRIS: When you went out there, how many total photographs did you take?

GARD: 11.

HARRIS: Now, the photographs that you have there, 102-A through I, that's some of the photographs we were showing you right before the break. The 96-G, F and E, are those the other three photographs?

GARD: Yes.

HARRIS: And those three photographs were 96-G, F and E, are these also accurate representations of the scene as you observed it that day?

GARD: Yes, they are.

HARRIS: Now, the photographs that you have in front of you right there, 102-A through I, what's depicted in those photographs?

GARD: It's the body of Conner in the grass just north of the debris field.

HARRIS: And are these photographs, when you are taking them to kind of document the scene, are they somewhat graphic?

GARD: Yes, they are very graphic.

HARRIS: All right. What I'd like to do is now, let's show these particular photographs, go through and describe what it is that we are looking at.

JUDGE: Identify each one as they are put on.

HARRIS: Starting with 102-A. Can you describe for us what that is?

GARD: Yes. That's photo of me standing over the body of Conner in the grass and the marsh flat area, just north of the debris field.

JUDGE: That's 102-A.

HARRIS: 102-B.

GARD: That's a closer picture, same, Conner's body.

HARRIS: Now, there is a white object in the lower middle, somewhat to the right of this particular photograph 102-B. What is that?

GARD: It's a piece of debris. Appears to be a piece of a plastic coffee cup lid, something you might get in the gas station.

HARRIS: And that's in close proximity to the body?

GARD: Yes.

HARRIS: 102-C?

GARD: It's the same photograph with me standing in the west, looking towards the east.

HARRIS: 102-D?

GARD: Another shot of the same, just zoomed in a little more, with a scale for size relation in the lower left corner. I mean lower right corner. Sorry.

HARRIS: The scale, is that piece of paper?

GARD: Yes. We carry a paper scale so they can be discarded.

HARRIS: And to the left of that particular photograph, is there the partial coffee cup that you are describing before?

GARD: Yes.

HARRIS: 102-E.

GARD: The same photograph from the opposite side.

HARRIS: Again, to the right in this photograph is the scale that you are describing?

GARD: Yes.

HARRIS: 102-F.

GARD: Same, with a more to focus on the head and the arm of the body.

HARRIS: 102-G?

GARD: And the same picture, just pulled away a little bit to show more of the body.

HARRIS: 102-H.

GARD: Same picture focusing on the lower open abdomen area.

HARRIS: Last, 102-I.

GARD: That's an, after I photograph a crime scene, I do what's called a photo data shoot, or photo log sheet. It's to document the end of the crime scene that I process, as well as document how many photographs of the crime scene I took.

HARRIS: Did you stay out at the scene until the Coroner's Office came?

GARD: No, I did not.

HARRIS: Did you stay out at the scene until Detective Soler came?

GARD: Yes, I did.

HARRIS: So the sequence of events is just, back up. In the photographs that we were just looking at, 102-A through I, there is obvious shadows there. I don't want to mean to ask a dumb question, so just to make it clear on the record. Was it still sunlight out when you were taking those photographs?

GARD: Yes, it was.

HARRIS: Based on the shadows, was the sun starting to go down?

GARD: Yes, it was.

HARRIS: And did you get reassigned back out to patrol function, evidence patrol function when Detective Soler came?

GARD: Yes, I did.

HARRIS: Did he take over processing the scene?

GARD: Yes, he did.

HARRIS: Now, that particular area that we have been talking about, this tidal flat that's up in 98-A, that's been shown as 96-B, and the close-ups that we just looked at, is this an area that is subject to high and low tides of the Bay?

GARD: Yes.

HARRIS: Showing you a photograph that's previously been marked as 100. Do you recognize that?

GARD: Yes.

HARRIS: Go ahead and project that one up on the screen. Is this a photograph depicting the area where Conner's body was found, while it's underwater?

GARD: Yes. That would be an accurate depiction of high tide in the same location.

HARRIS: Looking towards the center, pretty much the center of the photograph. Do you see the blue roof of that Bulk Mail Facility?

GARD: Yes.

HARRIS: This is looking across from that tide flat down along the breaker wall, across that little inlet to that postal facility?

GARD: Yes.

HARRIS: People have no other questions.

Cross Examination by Mark Geragos

GERAGOS: Good afternoon.

GARD: Good afternoon.

GERAGOS: You said you have been with the City of Richmond for five and a half years?

GARD: Yes.

GERAGOS: And I assume you are familiar with this, the bay area, this?

GARD: Yes, sir.

GERAGOS: Can you tell me on this picture right here, 97-B, this is the Berkeley Marina where it's labeled, correct?

GARD: That's correct.

GERAGOS: Okay. What is this right here where I'm pointing to? That area right there.

GARD: I don't know the name of the point.

GERAGOS: Do you know where that's the Albany Bowl right there?

GARD: That could be.

GERAGOS: What is the, have you ever, is that in your jurisdiction right there?

GARD: No, it's not.

GERAGOS: Okay. Do you know what that, I mean that appears to be some kind of land that juts out into to the, juts out into the Bay; is that correct?

GARD: That's what it appears to be.

GERAGOS: Now, the area right there that you are patrolling, so that I can see it, which we have got up here, the Conner Recovery Site, that's in 98-A, that's right here. It's a close-up of it, correct?

GARD: This flat here, sir?

GERAGOS: Right there. Corresponds to this, correct?

GARD: Correct.

GERAGOS: Okay.

JUDGE: For the record you are indicating 97?

GERAGOS: I'm pointing to 97-B and the area where it says the recovery site.

GERAGOS: Could you just circle that so that we know that it's one and the same as this area here?

JUDGE: Officer Gard, circle it, and draw a line out to the white margin and put a "G" on the end of it so we know it's Officer Gard.

GARD: Yes, your Honor.

JUDGE: Just draw a line out to your left, mark it G-1.

GERAGOS: Now, this is the Berkeley Marina in 97-A. This is that same area that's jutting out right here, 97-B; is that correct?

GARD: That appears to be accurate.

GERAGOS: And then you have got the Laci Recovery Site and the, you have got the "Connor Recovery Site," is that correct?

GARD: That's correct.

GERAGOS: This area here with the marina, you do not patrol that area, correct?

GARD: Correct.

GERAGOS: Okay. Now, the area that's marked here as "Laci Recovery Site", you don't patrol that area either, do you?

GARD: Yes, sir.

GERAGOS: That East Bay Regional?

GARD: The dog park here is responsible, East Bay Regional is responsible this is Costco, the Bulk Mail Center. So this road here, and this road here, and these buildings are City of Richmond.

GERAGOS: And then the other area where it says "Laci Recovery Site", is not, that's East Bay Regional?

GARD: That's correct.

GERAGOS: Now, the area you have got there you got there at approximately five minutes of five; is that correct?

GARD: I was dispatched at five minutes to five. I got there three minutes after five.

GERAGOS: Okay. And when you got there, where was the first, can you point to 98A, where was the first place you went? And use the pointer.

GARD: I parked my car at the end of this block here.

GERAGOS: That's Bayside Court?

GARD: Yes.

GERAGOS: Okay.

GARD: And then walked out in the path here, and then across here, and up along the breakers.

GERAGOS: Okay.

GARD: Where Conner was located.

GERAGOS: You are the one where, who established this crime scene perimeter, I guess, as you describe it, right?

GARD: Yes.

GERAGOS: And that would be somewhere in this area here that's marked on 96E?

GARD: Correct.

GERAGOS: Okay. Now, you indicated that this area right over here is a footpath?

GARD: Yes.

GERAGOS: Okay. And where does that, can you point or show the jury where that footpath is on 98A?

GARD: This path here.

GERAGOS: Okay. This picture and 98A, it looks like either a white or kind of a gray area; is that correct?

GARD: Correct.

GERAGOS: When you got there, was there, you said can only be accessed by foot; is that correct?

GARD: That's correct.

GERAGOS: Okay. And the, you referred to an asphalt path. Can you show the jury where the asphalt path is?

GARD: There are several asphalt paths that run through the neighborhoods and along the marsh. Some are maintained by our city, some are maintained by East Bay Regional. There is path here, here, here, and this continues up to here, goes into another community. And this here goes all the way, continues all the way around the shoreline to another park.

GERAGOS: Okay. Now, at the time of this, when you responded at five after five, in your report you have indicated that there was numerous pedestrians and bicyclists along the path. Where would that have been?

GARD: I was referring to the asphalt path. This path is utilized every day by families that live in the area, as well as other areas. And they use it for bike riding, jogging, walking.

GERAGOS: You said were two to three pedestrians walking along the dirt path that ran along the shoreline. Is that what we just talked about?

GARD: Yes. There were people over by the picnic table that were walking around.

GERAGOS: Can you circle where the picnic table is? I know that we saw that diagram that Soler drew. Do you see the picnic table there?

JUDGE: Mr. Geragos, why don't you give him that pen. Got a finer point. If you will draw a line out, just draw a circle or an "X" where you saw those folks. Draw a line out, mark a G-2, and put under there, what are, the pedestrians, or,

HARRIS: I believe Mr. Geragos was asking about a picnic table.

JUDGE: Just want the picnic table?

GARD: I can't discern the picnic table in the photo.

GERAGOS: Tell me the, roughly the area, there was a, we showed a diagram, you were shown a diagram, looked like somewhere in this neighborhood?

GARD: Right around there.

JUDGE: Draw a line out from that, G-2, picnic table.

GERAGOS: Now, you can return to your seat if you want.

GERAGOS: When you examined, I'm not going to show the photos again of the baby. But when you were taking pictures of the baby, is it a fair statement that you were just documenting or taking photos without turning it over or doing any examination?

GARD: That's correct no manipulation of the body.

GERAGOS: Okay. Now, these two items right here. First, let's talk about this one. Did you collect this item?

GARD: No.

GERAGOS: That's on 96E, which you described as a piece of styrofoam of some kind?

GARD: It appeared to be a large piece of styrofoam.

GERAGOS: Did you collect that?

GARD: No.

GERAGOS: This item here, which is also blue, and it's in the foreground of 96E. Did you collect that item?

GARD: No.

GERAGOS: Do you know if anybody else did?

GARD: No, they did not.

GERAGOS: Okay. Did you, appeared on some of the photos of the baby that there was, at least on those photos I have shown you, some of the, you have seen the autopsy photos as well?

GARD: Just briefly when you approached me while I was sitting here.

GERAGOS: On the break?

GARD: Yes.

GERAGOS: And I showed you those photos. You had not seen those prior to you testifying?

GARD: Correct.

GERAGOS: Okay. Now, there was some plastic that was around the neck of the baby. Did you see that?

GARD: There was something around the neck of the body. I did not see what it was.

GERAGOS: Did you, in any way, move or touch that?

GARD: No, I did not.

GERAGOS: Okay. Did you, in any way, collect or do anything with the debris that was around the baby?

GARD: I searched the entire debris field for any evidence related to the infant's body. I did not find any.

GERAGOS: Okay. How did you make a determination that these two items here that are in this picture did not relate in any way?

GARD: Well, the area of tidal flood zone, basically there was a large storm the night before. You can see all the debris in line with the leaves. You can see debris, white objects, blue objects, all,

GERAGOS: You are talking about in here?

GARD: Yes.

GERAGOS: Okay. Now, if I understand correctly, you are saying this is the water line, correct?

GARD: That is one of the debris lines from the tide.

GERAGOS: And if I can detect, looks like the water, call it water line, you are assuming that the water comes somewhere like that along with the debris; is that correct?

GARD: Well, a water line can extend past the debris line. A debris line is just where the debris was able to get trapped by something as the water pulled out.

GERAGOS: Gets trapped on whatever, this grassy marsh area, correct?

GARD: Yes.

GERAGOS: And, in fact, you are assuming that the water line went past this debris line, because the baby wasn't found inside the debris line. The baby was found past the debris line, north of the debris line, correct?

GARD: Correct.

GERAGOS: Okay. And this item here was found north of the debris line, correct?

GARD: Yes.

GERAGOS: And this item here was found north of the debris line.

GARD: That's correct.

GERAGOS: Now, at some point did you, you said Soler showed up. Was he there before or after you?

GARD: After.

GERAGOS: Okay. When you got there, you were able to distinguish that it was a baby, correct?

GARD: Correct.

GERAGOS: And you were able to see the head was intact, correct?

GARD: Decomposition was apparent, but was for the most part intact.

GERAGOS: The head itself had not macerated. It wasn't deflated in any way, shape or form?

GARD: Correct.

GERAGOS: And it was, in fact, you used the term, I think, that the head in fact was lying on the left side; is that correct?

GARD: Yes.

GERAGOS: And was facing in a southwesterly direction, right?

GARD: That's correct.

GERAGOS: Okay. You also indicated that the stomach and the torso were open, and internal organs were protruding?

GARD: Correct.

GERAGOS: Now, you said that south of the debris line there were leaves, dirt, and trash; is that correct?

GARD: Yes.

GERAGOS: And at the time of this incident the tide was low; is that correct?

GARD: Correct.

GERAGOS: When was the high tide?

GARD: I have a printout from the tidal flows. I would have to refer to that.

GERAGOS: Do you have that with you?

GARD: Yes.

GERAGOS: Could you pull that out and see if that refreshes your recollection. Okay. Now, on this, you printed this off of a website; is that correct?

GARD: I did not. Detective Soler did.

GERAGOS: Okay. And it shows, do you know how to read it?

GARD: Yes.

GERAGOS: And what, does it show the high tide was for this day was, April 13th?

GARD: Yes.

GERAGOS: Okay. High tide, what time?

GARD: April 13th, 2003, high tide, 9:48 a.m.

GERAGOS: Low tide?

GARD: Well, there is two of each tides. They are in cycles. First low tide on that date was about 4:04. And the first high tide was at 9:48 a.m. The second low tide would be at 4:23 p.m. And the second high tide, 11:08 p.m.

GERAGOS: What time is the second low tide?

GARD: 4:23 p.m.

GERAGOS: What time did you arrive there?

GARD: 5:03 p.m.

GERAGOS: Now, at that point, when you went out there and did your collection, did you see, I guess probably easier to look on 98A. How far did you go each direction to search for evidence?

GARD: I walked the entire breaker line along the water edge, on the rocks, as well as along the area not covered in water. And I walked out as far as I could without having to walk in the water. Walking through the grass area also.

GERAGOS: Anywhere along that entire breaker line, or entire shore, did you see any plastic twine, or anything that looked consistent with the item that you saw tied around the neck of the baby?

GARD: No.

GERAGOS: And were you looking for something like that?

GARD: I was looking for anything that would strike my attention as relevant to the infant's body.

GERAGOS: Okay. You saw that there was something around the baby's neck, correct?

GARD: Yes.

GERAGOS: You then went and searched along this entire breaker point to see if you could find anything that would have been consistent with that, or any other type of evidence, correct?

GARD: Correct.

GERAGOS: You found absolutely nothing?

GARD: That's correct.

GERAGOS: How long would you say that you were out there searching?

GARD: Well, from the time I got there, three minutes after five, until I was relieved by Detective Soler. Because once Detective Soler got, when he gets there, what I do, I show him around, tell him what I have done, and then we talk about things. And then I'll search again while he's getting his synopsis of the scene.

GERAGOS: I'm going to show you a photo that I had shown you at the break. Take a look at that. I'll tell you that it appears to be the same baby at the autopsy. I'm going to ask you specifically, did you ever see the left side of the baby?

GARD: No. If you are referring to the face or the head?

GERAGOS: Yes.

GARD: No. Because it was resting on that at the scene.

GERAGOS: Okay. And so is it a fair statement that if there was an item on the left side of the head, you would not have been able to see it, because of the way the baby was lying in the grass, in the marsh?

GARD: Correct.

GERAGOS: You see the item that is around the neck and through the, underneath the under arm of the baby, as well and tied in a knot?

GARD: Yes.

GERAGOS: I want to mark that as next in order. I'll tie it up when we get to the corner.

JUDGE: I will find your exhibits.

GERAGOS: XX.

JUDGE: This is the autopsy photo?

GERAGOS: Yes. Photograph. Now, that twine, slash, tape, whatever you want to call it, that is wrapped and tied around the baby, that, so that we're clear, you noticed that when you were taking your pictures, correct?

HARRIS: Objection assuming a fact not in evidence.

JUDGE: He's asking.

HARRIS: Well, judge, as to part of that, yes. But it was the kind of testimony part about the wrapped and tied.

JUDGE: Well, there is no evidence it was, there is evidence, the jury can determine whether it was wrapped or tied. There was some something around the baby's neck. That part that was tied, jury can disregard.

GERAGOS: See 102G, which was shown to the jury just a minute ago?

GARD: Yes.

GERAGOS: You see the item that appears tied around the neck?

GARD: It is around the neck. I do not know if it's tied.

GERAGOS: Now, because you didn't examine it, correct?

GARD: Correct.

GERAGOS: Now, you saw that, you saw the picture I just marked as double X, correct?

GARD: Yes.

GERAGOS: Now, when you, and I want to just be clear, that you, these are two photos of the same baby, one at the scene, one at the autopsy, correct?

GARD: Correct.

GERAGOS: Now, you went and looked for this item, or anything that would have matched the item that you saw around the baby's neck at the time you got out there, correct?

GARD: I wasn't looking specifically for that item. I was looking for anything that would appear that it matched from my observations of the infant.

GERAGOS: You didn't see anything that specifically matched that item, correct?

GARD: Correct.

GERAGOS: Okay. Now, the, when you arrived there, and you said there were two other people that were walking, where, that's on the dirt path?

GARD: Yes. There were some pedestrians on the far end.

JUDGE: Officer Gard, there is a pointer,

GERAGOS: Either, the pointer is fine, if you do that.

GARD: It would be the far end of the path over here.

GERAGOS: May I have just one moment? The area that, of this dirt path, see if there is a photo. I can't quite tell. When you come to this side over here, where does this dirt path go?

GARD: There is trails all throughout the marshland here that the fishermen and people walking their dogs and their children use. It doesn't really go anywhere. To the end of the shoreline here.

GERAGOS: What is on, is there a better photo here that gives us a picture of what's going on right here? For instance, this one? It's a much smaller, but does the path end, so to speak, if we make a full circle from this path?

GARD: Depend on the water line. There are lots of times where the area is underwater, so you can't, you can go to the edge of the water, turn around, and walk all the way back.

GERAGOS: What is this area right in here?

GARD: That's all the canal and the marsh.

GERAGOS: Okay. So this area in here, are there any other foot paths in that area? Is the footpath limited to, what, this kind of ashen or beige area?

GARD: It's limited to that.

GERAGOS: The footpath comes from the beach, it comes along right along where I have got my pen right here, and then peters out right about there?

GARD: Yes.

GERAGOS: Thank you. I have no further questions.

Redirect Examination by David Harris

HARRIS: Officer Gard, you were asked about this search that you conducted for anything related. And you indicated that you found nothing of an evidentiary nature. Did you find any trash down there?

GARD: There was trash everywhere.

HARRIS: This particular area when it floods, or when the water comes in, does everything that's kind of floating out in the bay come in?

GARD: Yes, it does.

HARRIS: We saw in the photographs, one that's up there now, 96E, the blue cardboard, the blue foam, the coffee cup. That's just some of the stuff that was floating up out there?

GARD: Correct.

HARRIS: Now, you were asked about whether this, whether the body was at, was north or south of the leaf, kind of the debris line. When we're looking at this other photograph, People's 100, does it show that the water goes way past where that debris line was at?

GARD: Yes, it does.

HARRIS: So anything that floats can float in and out until it gets caught on something as you are describing it?

GARD: Correct.

HARRIS: And that's kind of a just a product of the terrain that's out there?

GARD: Yes.

HARRIS: Now, the times that you were telling us about, is that the actual tides? Or is that kind of a prediction of what the tides are going to be based on normal charting?

GARD: It's a prediction based on normal charting done by the USGS.

HARRIS: And you a mentioned there was a storm out there the day before?

GARD: Yes.

HARRIS: The night before, I think is what you testified to?

GARD: Yes, there was.

HARRIS: In your experience out there on patrol, when there is a storm, or the tides or the waves, tidal action, a little by higher?

GARD: Yes, a lot higher.

HARRIS: And then you have with, from what you are describing for us, there is kind of a low-tide, high-tide, low-tide high-tide process throughout the day?

GARD: Yes.

HARRIS: And from looking at that particular chart, is that consistent with what you have experienced patrolling an area that is out there connected to the Bay?

GARD: Yes.

HARRIS: Now, please, I'm not going to show you the photographs again. But those photographs that we were talking about of 102-A through I, and also the last photograph that Mr. Geragos showed you of the baby, do those accurately represent the baby as you saw them on that date?

GARD: Yes, they do.

HARRIS: The one photograph that he was showing you with the baby on a towel, you didn't take that photograph, did you?

GARD: No, I did not.

HARRIS: He asked you if that was at the autopsy. Do you know when that was taken?

GARD: I don't know the date of the autopsy Detective Soler was present. He took the photograph. He would know the date.

HARRIS: All right. People have no other questions.

Recross Examination by Mark Geragos

GERAGOS: Did you go back and make a determination as to what the tides were for that date?

GARD: I don't understand your question.

GERAGOS: You went, and you have said, if I understood Mr. Harris's last question, he said those were the predictions. Isn't that what you understood them to be asking?

GARD: Tidal tables are predictions. They are never truth tables.

GERAGOS: Right. So did you make any kind of a determination as to when the tide was the low tide and high tide for that day?

GARD: No.

GERAGOS: Would that have been your job?

GARD: No.

GERAGOS: Whose job would that have been?

GARD: If a detective needed that information, I would probably call the Coast Guard to get the time information.

GERAGOS: And was the detective in this case Villalobos?

GARD: Yes.

GERAGOS: And he's a detective in your department?

GARD: Yes.

GERAGOS: And if he wanted that information, he would have had you go get it, correct?

GARD: He could have asked anybody to go get it, not necessarily me. Being a patrol evidence level technician, I generally handle the scene and continue back on my patrol duties. Occasionally Detective Soler will ask me to go back to a scene, or do something for them. Generally speaking they will go to Detective Soler. He's assigned to them.

GERAGOS: Nobody has asked you to do that for that day, right?

GARD: Correct.

GERAGOS: Nobody asked you to do it for the day before?

GARD: Correct.

GERAGOS: Thank you. I have no further questions.

JUDGE: Any other questions?

HARRIS: No other questions.

JUDGE: Officer Gard, thank you very much.