Witness: Richard Atkinson

Date: 2004-09-15

Proceedings held September 15, 2004

Called by: People (prosecution)

Phase: Guilt

Examinations: Direct – David Harris; Cross – Mark Geragos; Redirect – Dave 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/Atkinson.htm

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

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Direct Examination by David Harris

HARRIS: Mr. Atkinson, who are you employed by?

ATKINSON: TARGET Products Limited.

HARRIS: Now, being in California where there's a lot of Target stores, is that the same company?

ATKINSON:. We are a manufacturer of cementitious products used in the construction industry.

HARRIS: I got to go back and ask you, what's that word that you used?

ATKINSON: It's basically any material containing cement or cement byproducts and mixed with sand. So anything that contains cement we refer to as a cementitious material.

HARRIS: Now, this particular company, where is it headquartered out of?

ATKINSON: We're headquartered out of Burnaby, British Columbia.

HARRIS: And you're talking about, I can't even pronounce that word, this cement product kind of base. Can you tell us a little bit about your company?

ATKINSON: Yes. Basically we buy cement from larger cement manufacturers. We mine our own aggregates, and then we combine the cement and the aggregates and various other ingredients to produce products that will do specialty things in the construction industry, such as structural grouts or shotcrete or, which is pneumatically applied concrete, or other repair products.

HARRIS: Since your company is based on, based out of Canada, do you have any distributorships or any kind of local connections to California?

ATKINSON: We have several distributors of our product in California, and, in fact, all up and down the West Coast of, of the U.S.

HARRIS: Now, when we're talking about these particular products, I think some of us, anybody that has any experience with, like, Home Depot or something would have some idea of what this is. Can you describe for us, you told us what the product is. How is it shipped or how is it packaged?

ATKINSON: The product will be packaged into the industrial market in either a 55 pound bag and stacked 56 bags on a pallet, or, in some cases, in the industrial end of things, it will be packaged in a large bulk bin bag, which is a bin bag that we fill from the top and have lugs on the top that will allow the material to be picked up and discharged from the bottoms. Those bags

are normally either one cubic yard in volume or half a cubic meter.

HARRIS: And in terms of size, really what does that mean?

ATKINSON: That means a bag that's capable of holding a volume of approximately 42 inches by 42 inches by four feet high.

HARRIS: So you were saying that this product is for kind of industrial uses. Do you actually sell it to a retail market, say to Home Depot or Lowe's or someplace like that?

ATKINSON: In the U.S., no.

HARRIS: So any of the products in California that's a TARGET products item, that has to go, if it ends up in that retail market, has to go through one of the local distributorships first?

ATKINSON: Yes.

HARRIS: And when you ship your products from Canada to the United States, how do you do that?

ATKINSON: We ship them via trucks. Usually into California in vans.

HARRIS: And when you, you were talking about putting them in, on pallets, besides that other big container that you were talking about, do you cover them or package them, mark them in some distinctive way?

ATKINSON: Yes. There are various products that we make and they are contained in the small 55 pound bags, and each bag is marked. But, in general, when the pallets come across the border into the U.S., they all have at least one pallet cover bag over the top of the, of the entire bag, for waterproofing, or actually weatherproofing purposes.

HARRIS: Does your company have a logo?

ATKINSON: Yes.

HARRIS: Can you describe your logo for us a little bit?

ATKINSON: It is a bull's-eye logo with the word TARGET at a, right across the logo, at an angle. The logo is blue and yellow and in most instances the words are blue. Sometimes they're yellow.

HARRIS: Let me show you some photographs. Previously marked. Let me present you 257 A (sic), look at that, see if you recognize what's depicted in that.

ATKINSON: Yes, that is one of our pallet cover bags that goes over the top of the pallet.

HARRIS: And let me go through and put this up.

JUDGE: Did you say 257 A?

HARRIS: I'm sorry, it's 251.

JUDGE: All right.

HARRIS: Now, we're looking at the picture of that particular bag. When you're talking about a pallet cover, can you give us a little bit more of a description, what actually this bag is or how it's made?

ATKINSON: That bag is a six mil poly bag that is shaped in the form, it's usually four feet by four feet by four feet. So it fits right over the top of all of our pallets. And then we, in the case of the smaller bags, we run a stretch wrap around the, that Poly Cap is what we call it. And then ship the product that way. In the case of the bulk bin bags, the, we put the bag underneath the bag, the bulk bin bag, and one over the top of the bulk bin bag, and then wrap it.

HARRIS: Now, when you're talking, you keep saying that it has all these dimensions. Is this is flat piece of plastic? Or is this a formed piece of plastic?

ATKINSON: It's formed. Basically the top is folded in like, like an envelope would be, on either side. So that you have, as I say, the four feet by four feet by four feet, with the bottom open.

HARRIS: And then this is just placed over the pallets, and your product is then shipped in that condition?

ATKINSON: Yes.

HARRIS: Now, you were telling us about having distributorships in California. Are there times when you actually have or receive contracts to direct ship products?

ATKINSON: Not into the U.S. No, anything shipped into the U.S. Is usually billed through a distributor, although it will be directly shipped from our manufacturing plant to the job site.

HARRIS: Let me ask you about that then. Do you have times where you have this product that's direct, direct shipped to a, a job site, say, here in Northern California?

ATKINSON: Yes.

HARRIS: And can you give us an example in this particular area where some of these products have been shipped to?

ATKINSON: We had a very large job on, for supplying grout, a specialty grout to the seismic retrofit of the Richmond/San Rafael bridge.

HARRIS: Now, when you say a large project, what are you talking about?

ATKINSON: In total it was probably four thousand yards. Maybe five thousand.

HARRIS: And that would mean about how many of these pallets?

ATKINSON: It would mean four to 5000 pallets. In the case of the bulk bin bags, if, I believe about 3000 of those were the bulk bin bags in total on the job, which means 6000 Poly Caps, and 2000 Poly Caps on 2000 pallets with the small bags.

HARRIS: Now, when you ship your product to the site, say here talking about the retrofit at the bridge, and you put these Poly Caps on them, the one that we're looking at in the photograph, do you require the job sites to send them back to you?

ATKINSON: The Poly Caps, no.

HARRIS: What happens at a job site with these things?

ATKINSON: They are considered to be garbage on the job site, but frankly because they are such,

GERAGOS: Objection. Calls for speculation.

JUDGE: Overruled.

GERAGOS: No foundation.

JUDGE: Overruled. He can answer. You can answer. Go ahead.

ATKINSON: Okay. Generally on job sites they are disposed of, and sometimes they're used as the disposal method for the other bulk bin bags.

JUDGE: They don't, don't stack them up neatly and send them back to you?

ATKINSON: Not the bulk bin bags. Pardon me, not, not the Poly Caps. The bulk bin bags come back.

JUDGE: Okay.

HARRIS: Now, with regards to this Poly Cap, I want to go through in particular the bridge retrofit. You're talking about a lot of product going there. Does this all get shipped at one time?

ATKINSON: On a project like that, usually there is coordination, as there was in this instance, where there was between the contractor and the distributor, the contractor would have some idea of how much material was going to be required in the next two or three weeks. The distributor would tell us. We would either manufacture that much material and ship it, or arrange the shipping spread over several weeks. Normally we would manufacture, he would tell us on a Tuesday, for instance a Tuesday afternoon, we would set up the production run for later in the week or early the next week and book trucks all during the next week and the week after.

HARRIS: Now, when you're talking about delivering these products, do you deliver them actually to go park on the bridge someplace?

ATKINSON: On that particular job there was, the contractor had a large holding yard or lay-down yard where he would order the material, sometimes five truck loads a week. Have the material stockpiled there so that he could put it on his barges and take it out to the middle of the bridge spans, or wherever it was required.

HARRIS: And this product was then delivered out to the job site by barges?

ATKINSON: The barges haul it back and forth, yes.

HARRIS: Now, the, when the product is uncovered as you're talking about, this is just, it's not required to be returned to your company?

ATKINSON: The Poly Cap is not, no. The bulk bin bag is, but not the Poly Cap.

HARRIS: Now, in this particular photograph, if you look at it there appears to be some duct tape towards one end of the product, underneath the logo. So, apparently the bottom of the bag. Do you normally ship it with duct tape around it?

ATKINSON: No.

HARRIS: Does duct tape get on the bags at job sites?

GERAGOS: Objection. Calls for

JUDGE: Sustained.

GERAGOS: speculation.

JUDGE: Sustained.

HARRIS: Have you ever been to job sites before where you've seen your product at job sites?

ATKINSON: Yes.

HARRIS: Have you ever seen duct tape on these type of bags at some these job sites?

ATKINSON: Yes.

HARRIS: How does it get there?

ATKINSON: If the, particularly in the case of bulk bin bags, if the contractor has, for instance, moved the material from a site, for instance, in the case, a barge, with a forklift, loaded it on the forklift, with a forklift onto the barge, but on the barge they don't have a forklift, they actually have a small crane, which is a cherry picker, called a cherry picker-type of thing, they will have to take the stretch wrap off of the bag, take the Poly Cap off of the bag, pick the bag up with the lugs on the bulk, top of the bulk bin bags, move the bag, put the Poly Cap back over the bag. And since they don't have the stretch wrap capability, then they have, on occasion I have seen it where contractors have wrapped duct tape around the bottom of the bag just to reseal the bag up, instead of using stretch wrap.

HARRIS: Now, with the design of this particular bag, if it's loose on something, or if it's just laying on the ground and there's wind occurring, can wind make this bag blow or kind of inflate?

ATKINSON: Yes, definitely.

HARRIS: The People have no other questions.

Cross Examination by Mark Geragos

JUDGE: Mr. Geragos.

GERAGOS: Good morning. When were you first contacted in regards to this case?

ATKINSON: I believe our company was first contacted

GERAGOS: Not the company. You specifically.

ATKINSON: Probably six months ago.

GERAGOS: And who did you talk to?

ATKINSON: I honestly do not remember the gentleman's name.

GERAGOS: Okay. You didn't, it wasn't Dallas Mowat, who was the person from your company who was contacted by the Modesto PD?

ATKINSON: He was the original contact.

GERAGOS: Okay. When was the first time you talked to somebody? You say six months ago, and you don't remember who it was?

ATKINSON: I believe that that was, the call originally came into Mr. Dallas Mowat, and then Dallas Mowat got me on the speaker phone with whoever it was on the other end of the phone. Frankly, it was after he had identified himself to Dallas, so I don't remember who it was.

GERAGOS: Anybody ever show you the, this particular bag? Have you ever seen it?

ATKINSON: This

GERAGOS: This bag that there's a picture of that's up on the wall?

ATKINSON: That particular bag? Or a bag like that?

GERAGOS: No. Did anybody ever say Here, this was the bag that was recovered near the body of Laci Peterson

ATKINSON: No.

GERAGOS: we want you to take a look at it? Nobody ever showed you? Anybody ever show you what's been marked as D 5 D, any of these set of pictures, D 5 C? It's a whole set of pictures. D 5 C. Did anybody ever show you any of these?

ATKINSON: I do not recall ever seeing these pictures.

GERAGOS: Okay. These pictures are apparently taken, or actually, there's been testimony that these pictures were taken at the Coroner's Office on the date that the remains were found. Would you generally find, when people want to wrap up, wrap up one of these pallet covers with duct tape, that they wrap it in that fashion so that it's only got that kind of a width? Like this?

ATKINSON: No.

GERAGOS: Okay. That wouldn't work because the bags of which the pallet goes over are large 55 pound bags; isn't that correct?

ATKINSON: They are pallets with fifty-six 55-pound bags, or one 360 pound bulk bin bag on it.

GERAGOS: Right. Now, the contractor that you're talking about at the Richmond area, is the Tudor-Saliba contractor; is that correct?

ATKINSON: It's Tudor-Saliba Tidewater Cox.

GERAGOS: And that's the person ultimately who is doing that job at the Richmond bridge?

ATKINSON: Yes.

GERAGOS: And have you ever been to that site?

ATKINSON: I've been to the site, yes.

GERAGOS: Okay. And at that site have you ever seen duct tape being used on those Poly Cap bags?

ATKINSON: No, I have not.

GERAGOS: Okay. Now, you have a distributor that's in Sacramento; isn't that correct?

ATKINSON: Yes, we do.

GERAGOS: And that person is, or that company's name is Spec-West?

ATKINSON: That is correct.

GERAGOS: Okay. Are you aware that Spec-West ships, or that you ship quantities to Spec-West?

ATKINSON: Yes. We shipped Spec-West, we've been shipping to Spec-West for over eight years now, I believe.

GERAGOS: Okay. And have you examined Spec-West's records to see where they're shipping this product with these same Poly Cap bags?

ATKINSON: In the case of Spec-West, all of the material usually goes into their inventory, and they distribute the inventory piecemeal out of their, their warehouse. Our truckloads go directly into their warehouse.

GERAGOS: Okay. Your truckloads go to them and then they would then send it somewhere else; is that correct?

ATKINSON: That is correct.

GERAGOS: Okay. You see this numerous shipments of Spec-West that I'm showing you that are being shipped to Tracy, California for a job in Tracy?

ATKINSON: That's what that invoice says, yes.

GERAGOS: Okay. It looks to you like there's at least five separate invoices of this same TARGET product PE grout 55 pound bag that's going into Tracy, California?

ATKINSON: Yes.

GERAGOS: Okay. Now, Spec-West is one of your distributors. Judge, I'd like to mark that as defense next in order.

JUDGE: D 6 N.

GERAGOS: Now, Spec-West has approximately, well, you said you've been dealing with them for approximately eight years?

ATKINSON: I believe, yes.

GERAGOS: Okay. Are you aware that Spec-West has a, the capability of, Spec-West has the capability of running all the customers who get this TARGET PE grout 55 pound bags that would be surrounded by the Poly Caps?

ATKINSON: I have never seen one of the reports, but it doesn't surprise me that they can.

GERAGOS: Okay. And so that one could take that, run that, and see where all these bags get shipped to and what dates they've been shipped to? That would make sense, wouldn't it? From a business standpoint?

ATKINSON: Yeah. That tells you where all the small bags of Portland cement grout went, yeah.

GERAGOS: Okay. And if they are shipping quantities of 56, that would mean that they would use one of these Poly Cap bags; isn't that correct?

ATKINSON: Yes. Unless they took it off and replaced it with one of their own Poly Cap bags, which I don't think they do.

GERAGOS: Right. And what's the name of the gentleman that you deal with at Spec-West?

ATKINSON: There are a number of people there, but the owner's name is Bob Stanford, Sanford. Bob Stanford. Sanford.

GERAGOS: Now, these polybags, as they're described, they normally are placed over, if I understand it correct, you have a pallet that then is stacked with these 55 pound bags; is that correct?

ATKINSON: Correct.

GERAGOS: Okay. And then the 55 pound bags, I would assume, have their own wrapping around whatever the product is, generally, correct?

ATKINSON: The 55 pound bags, usually paper bags. In the case of industrial products, they are usually three or four ply paper bags with a vapor barrier in them.

GERAGOS: And then this particular bag is a bag that goes over the pallet itself?

ATKINSON: Yes.

GERAGOS: Okay. Now, you showed me yesterday, when you came here, a printed list where you had some different manufacturers; is that correct?

ATKINSON: That is correct.

GERAGOS: Okay. One of those manufacturers was Bulldog; is that correct?

ATKINSON: That's correct.

REPORTER: I'm sorry, what?

GERAGOS: Bulldog, B-U-L-L-D-O-G; is that right?

ATKINSON: (Nods)

GERAGOS: Now, have you gone back to check your records to see if Bulldog, if that particular manufacturer puts their name on the particular Poly Cap bag?

ATKINSON: I believe they do.

GERAGOS: Okay. And have you checked your records to see when you shipped the particular Bulldog Poly Cap bag, and whether it went to Spec-West or whether it went to the Richmond job, do you know the dates upon which that particular product was shipped?

ATKINSON: That would be very difficult to trace because those Poly Cap bags are bought in large quantities, and we don't necessarily know where they all go. We don't really keep track of which Poly Cap bag goes where.

GERAGOS: Are you are you aware of whether Spec-West, who is one of your distributors, keeps track of when they ship and what they ship, in terms of whether it's a Bulldog manufacturer or somebody else?

ATKINSON: I am not aware that they keep track of that, no.

GERAGOS: Are you aware if there are any date imprints on the bag?

ATKINSON: On?

GERAGOS: The Poly Cap bag?

ATKINSON: I am not aware that there are.

GERAGOS: Okay. Have you talked to the manufacturer, if I understand correct, you are, your company manufactures the product that goes inside the bags, correct?

ATKINSON: Correct.

GERAGOS: Okay. Somebody else manufactures the bag itself; is that right?

ATKINSON: Yes.

GERAGOS: So when we're talking about a TARGET products bag, you're not the one, your company is not the one who is making that bag?

ATKINSON: No. That is correct.

GERAGOS: You go to different vendors and purchase the bag and tell them This is what I want it to look like and we want our logo on it, it's got to be this particular size; right?

ATKINSON: That is correct.

GERAGOS: Okay. Bulldog is one of the people who does that for you?

ATKINSON: Yes.

GERAGOS: And the, nobody, as far as you know, has traced when you get particular shipments of these Bulldog manufactured bags and when you stored them or when you shipped them out? Nobody's done that task, correct?

ATKINSON: No. All we know is when we bought X number of Bulldog bags. We don't know which pallets they went on and where they went.

GERAGOS: Okay. And the product that you, that you manufacture, this 55 pound grout, it's a, what was the type of substance that you said it was?

ATKINSON: That's cementitious material.

GERAGOS: Okay. Now, does that have, generally does that have an odor to it?

ATKINSON: No.

GERAGOS: And specifically in April, do you have any of your records here for March and April of 2003?

ATKINSON: Records regarding?

GERAGOS: The shipping of, from your company to either Spec-West

ATKINSON: Yes.

GERAGOS: or to the, do, you have another distributor, I guess, in Southern California; is that correct?

ATKINSON: We have a distributor in Southern California, yes.

GERAGOS: Okay. Did you bring those records with you?

ATKINSON: Yes.

GERAGOS: Where are those? This is the item you showed me yesterday; is that correct?

ATKINSON: Yes, that is correct.

GERAGOS: You don't have, if I could mark this as next in order.

JUDGE: D 6 O. And what is it, Mr. Geragos?

GERAGOS: It's a one page sheet which she's got on the top of it Poly, new word, Caps purchased

GERAGOS: Is this the only item that you have in terms of records?

ATKINSON: That is the only item that I brought with me, yes.

GERAGOS: Okay. I would assume somebody typed this up based upon some other purchase orders that they have?

ATKINSON: Yes.

GERAGOS: Thank you. I have no further questions.

Redirect Examination by Dave Harris

JUDGE: Any redirect of Mr. Atkinson?

HARRIS: Yes. Just briefly Mr. Atkinson, just to go back through this, are you selling the product, this cement product? Or are you selling the bag?

ATKINSON: No, we are selling the cement products. The bag is just packaging.

HARRIS: It's kind of like when you go to the grocery store, you buy your groceries and they give you the bag as you're leaving?

GERAGOS: Objection. Leading.

JUDGE: Well, that's overruled. Overruled. Is that like when you go to the grocery store and you buy some groceries and they throw it in the bag? That's what he's asking you.

ATKINSON: More or less, yes. When you get, when you buy something from us as a distributor, then the bag comes included at no charge, yes.

HARRIS: Now, you were asked about Dallas Mowat and when people were contacted by the Modesto Police Department. I want to go back through that. Who is Dallas Mowat?

ATKINSON: Dallas Mowat is the Chief Executive Officer of TARGET.

HARRIS: And is he kind of like your boss?

ATKINSON: He's my boss's boss.

HARRIS: So when he got you on that conference call, at that point in time was it decided that he didn't want to come to California and you were the person nominated?

ATKINSON: Yes, because I had much more experience and knowledge about which products went where inside California than Dallas does.

HARRIS: And do you know when it was that Mr. Mowat was contacted by the Modesto Police Department?

ATKINSON: I believe that Dallas was contacted prior to my contact with anybody from the Modesto Police Department. I believe, I believe there was a subpoena that was issued.

HARRIS: Let me show you a, part of a police report and see if this refreshes your recollection.

GERAGOS: Is that Bates stamp 1585?

HARRIS: Yes. Read the first sentence to yourself.

ATKINSON: On Tuesday

HARRIS: To yourself. Looking at that, does that give you, refresh your recollection as to when Mr. Mowat was contacted?

ATKINSON: Yes.

HARRIS: When was it that Mr. Mowat was contacted?

ATKINSON: In April, no, March, April of 2003.

HARRIS: The People have no other questions.

Recross Examination by Mark Geragos

GERAGOS: You were on that conversation in March or April of 2003?

ATKINSON: I'm sorry?

GERAGOS: Were you on that conversation in April of 2003?

ATKINSON: I do not, no. I do not remember, but I do not believe I was.

GERAGOS: Did you, was the officer Al Brocchini who called?

ATKINSON: I do not recall.

GERAGOS: Did, did Al Brocchini, or the officer who called, I know you said you couldn't remember, but was all he was concerned about is whether or not any businesses in Modesto would use this product? And wanted you guys to check the shipping department to see if any pallets of the product covered by these bags would have been shipped to the Modesto area? Is that one of the things that you were requested to do? See if you could find shipments of that product to Modesto?

ATKINSON: I do not recall, because there were conversations that Dallas had where I was not involved because I was out of town.

GERAGOS: Do you know if you did a search to see if there were products or your bags were shipped to Modesto?

ATKINSON: We attempted to see if we could ship, if we had shipped anything directly to Modesto.

GERAGOS: And that was requested by whoever the officer was who made this phone call?

ATKINSON: That I assume. I was not involved in that phone call, but I assume that that must have been the case.

GERAGOS: I mean that wasn't something that germinated at the TARGET products company, correct? I mean you guys didn't on your own just say Hey, let's see if this thing

ATKINSON: No.

GERAGOS: was shipped to Modesto?

ATKINSON: No.

GERAGOS: Somebody obviously called up, looks like on April 14th, which would have been the day the remains were, were found; is that correct? Is that when Mr. Harris just showed you, a report showing that somebody

JUDGE: That's about three questions.

GERAGOS: I'll break it down. Somebody called up on April 14?

ATKINSON: Apparently, yes.

GERAGOS: Okay. And apparently when you couldn't, the company couldn't find any records showing it had been shipped directly to Modesto, they lost interest in it?

HARRIS: Objection. Argumentative. Calls for speculation.

JUDGE: Sustained. Sustained.

GERAGOS: Thank you. I have no further questions.

JUDGE: May Mr. Atkinson be excused?

HARRIS: No objections.

JUDGE: Thank you, Mr. Atkinson. Thank you for you time.