Witness: Kim Fulbright

Date: 2004-07-07

Proceedings held July 7, 2004

Called by: People (prosecution)

Phase: Guilt

Examinations: Direct – Rick Distaso; Direct (resumed); 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: Ms. Fulbright, where do you work?

FULBRIGHT: At the Stanislaus County District Attorney's Office.

DISTASO: Okay. And during the month of, longer than that, but essentially during the month of December of 2003 and into the second week of January of 2004, were you pregnant?

FULBRIGHT: Yes, I was.

DISTASO: Okay. And how far along were you in your pregnancy on January 6th, 2004?

FULBRIGHT: Approximately 38 weeks.

DISTASO: And on that date, on January 6th, how tall were you?

FULBRIGHT: Five-two.

DISTASO: And five foot two inches?

FULBRIGHT: Yes.

DISTASO: And how much did you weigh?

FULBRIGHT: A 157 pounds.

DISTASO: All right. That's probably all I can get done, Judge, without doing the 402 hearing.

402 hearing

JUDGE: All right. Let the record show the jury has filed out for the afternoon now and we're going to go back to the testimony of Ms. Fulbright. And I have a suspicion where this is going, so let me hear what your offer is.

DISTASO: Judge, there's -- I just handed you the binders. I don't know the exact numbers, but if you flip through, open up that binder and flip through until you get to the pictures of Ms. Fulbright, on December -- on January 5th she was taken -- I mean she laid down in the boat, put some paper down, laid down in the various positions in the boat. Alls I intend to do is ask her is this you, did you get into the boat on that particular date, and that's it. Also in the truck, too. There's a couple pictures from that.

JUDGE: Yes?

GERAGOS: It's argumentative, 352, and it's clearly misleading. So it, you can't take somebody such as this.

JUDGE: Yeah, I, I'm inclined to agree with Mr. Geragos. I know why you're doing this. You want to show that somebody can be, be hidden in the boat. But this is this lady. We don't know, we know, we have some testimony that Ms. Peterson was a 175 pounds.

DISTASO: No. Actually, your Honor, wait. Let me stop the court. No, the testimony from her medical records was on January, on December 23rd she's a 153 pounds. Four pounds less than this. And she's five foot flat. Only two inches smaller, so there's no, this is almost identical to that.

JUDGE: Didn't we have some testimony she weighed a 175 pounds? Or am I mistaken?

DISTASO: No, sir. We have the medical records in evidence, and, you know, we can pull them out right now.

GERAGOS: The fact of the matter is it's not her. It's not the lady. It's clearly argumentative and could be reversible error to have somebody do a demonstration that's argumentative on its face.

DISTASO: No, it's not, Judge. It's the almost identical size and weight of the victim in this particular case. It's not argumentative at all.

JUDGE: What, she's going to testify to what she -- she said on -- she said on January the 6th, 2004, she weighed a 157 pounds.

DISTASO: That's right. And the record showed

JUDGE: And, and she's five-foot two inches tall.

DISTASO: Uh-huh.

JUDGE: How tall was Laci Peterson?

DISTASO: Five-foot zero. Or five-foot one.

GERAGOS: Five-foot one.

DISTASO: I think the testimony was five-foot one.

JUDGE: And what was the weight?

DISTASO: 153 pounds.

GERAGOS: The problem is that you have different people with different body types. You have a live person versus what the prosecution's theory is, a dead person with rigor mortis set in. There's no way that you can allow in, that I can see that the court could allow in somebody who works for the DA's office who's going to go and try and fit herself into various spots on a boat. It's argumentative. If they want to make the argument later on in closing, that's the appropriate time to do it. It's certainly not demonstrative evidence. It's fabricated evidence in the sense that they have an employee go and do it.

DISTASO: No, Judge, it's not fabricated evidence at all. It's not argumentative at all.

JUDGE: No, I don't think it's fabricated evidence. Okay. Here's what I'm going to do. I think that here that I'm going to, I'm going to admit it and the jury can put whatever weight they want on it. You can cross-examine as to, you know, whatever motive she has, and so forth, but I think she's close enough to the size and weight of Laci Peterson. I was of the impression that Laci Peterson weighed more at the time she disappeared. Apparently she didn't. And so that she's close enough, and then it will go to the weight rather than admissibility. So you can put it on. All right. So the objection's overruled. All right. We'll take a recess until five after 3:00.

Direct Examination resumed

DISTASO: Miss Fulbright, when we left off I asked you about January 6th. Do you remember that?

FULBRIGHT: Yes.

DISTASO: And that was 2004, right?

FULBRIGHT: Yes.

DISTASO: And you said you were 38 weeks pregnant on that day?

FULBRIGHT: Yes.

DISTASO: And then you weighed a 157 pounds?

FULBRIGHT: Yes.

DISTASO: And when was your baby actually born?

FULBRIGHT: January 10th, 2004.

DISTASO: Okay. So the baby came a couple weeks early?

FULBRIGHT: Yes.

DISTASO: Let me show you some pictures. These are marked 106-F through 106-P. And take a look at those, and let me ask you if you recognize the person who is in all those 0 photographs.

FULBRIGHT: Yes, I do.

DISTASO: And is that you?

FULBRIGHT: Yes, it is.

DISTASO: All right.

JUDGE: Could I interrupt just for a second? We had binder A, B, C, D and E. Now these are,

DISTASO: That's right. These are,

JUDGE: F?

DISTASO: From 106. They are F through whatever. She was got this in front of her.

JUDGE: Did you mark those, Marilyn?

CLERK: No.

JUDGE: She hasn't marked them. Let's have her mark them.

GERAGOS: They are marked.

CLERK: I marked them.

JUDGE: Did you mark them?

GERAGOS: Looks like F through J. No, I'm sorry. F through P.

JUDGE: Yeah.

DISTASO: This is you in all the pictures?

FULBRIGHT: Yes, it is.

DISTASO: On January 4th, were you asked by one of the DA investigators to see if you could get in, or I mean if you could be placed inside the defendant's boat?

FULBRIGHT: Yes.

DISTASO: And then on December 15th of 2003, three weeks earlier, had you been asked to see if you could fit into the defendant's truck?

FULBRIGHT: Yes, I was.

DISTASO: All right. Let's start with January 6th and the pictures of the boat. Here is people's F and G first. Is that a picture of you laying in the back portion of the defendant's boat?

FULBRIGHT: Yet.

DISTASO: And the procedure that this happened was, the investigator just laid down some butcher paper, right?

FULBRIGHT: Yes.

DISTASO: Just had you lay down there in the position that we see you?

FULBRIGHT: Yes.

DISTASO: And this is in the back, the back portion, correct?

FULBRIGHT: Yes.

DISTASO: All right. Let me show you the next picture. This is just from another angle this is 106-G. Is that you laying in that same position?

FULBRIGHT: Yes, it is.

DISTASO: Let me show you 106-H and 106-I. Start with 106-H first. And this is an overhead of you laying in the middle portion of the defendant's boat?

FULBRIGHT: Yes.

DISTASO: And, again, the same procedure. You were just asked to just lay down in the position that you are in?

FULBRIGHT: Yes.

DISTASO: And 106-I is a picture taken, same, you are in the middle portion of the boat just, but just a different angle?

FULBRIGHT: Yes.

DISTASO: Finally, let me show you 106-L and 106-J. Start with 106-J first. This is a picture of you, same thing, laying in the front portion of the defendant's boat?

FULBRIGHT: Yes.

DISTASO: And, again, 106-L, is just you laying from another angle; is that right?

FULBRIGHT: Yes.

DISTASO: You are in the front portion of the boat?

FULBRIGHT: Yes.

DISTASO: On December 15th of 2003, were you asked to stand in the back of the defendant's pickup truck?

FULBRIGHT: Yes, I was.

DISTASO: And see if you could lay down in the toolbox of the defendant's truck, correct?

FULBRIGHT: Yes.

DISTASO: Was it the same procedure, that someone laid paper down and just asked to see if you could lay in there?

FULBRIGHT: Yes.

DISTASO: Let me show you 106-N. Is that a picture of you standing in the back of the defendant's truck?

FULBRIGHT: Yes, it is.

DISTASO: And 106-M, as in Mike. That's basically the same picture, just with the tailgate up?

FULBRIGHT: Yes.

DISTASO: Is that right, all right.

JUDGE: Got to answer. Did you say yes?

FULBRIGHT: Yes.

DISTASO: 106-O is just you standing in the toolbox?

FULBRIGHT: Yes.

DISTASO: And when you were standing in the toolbox, the toolbox had already been emptied of items; is that right?

FULBRIGHT: Yes.

DISTASO: Finally, 106-P. Is that you laying in the back of the toolbox?

FULBRIGHT: Yes, it is.

DISTASO: And same kind of procedure, there is just paper laid down in there, and asked to see if you would fit, laying down in the toolbox?

FULBRIGHT: Yes.

DISTASO: Nothing further, your Honor.

Cross Examination by Mark Geragos

GERAGOS: You work for the DA's office?

FULBRIGHT: Yes, I do.

GERAGOS: And you were, let's see. On the first picture, which is the first one that you took, was the truck, was it in December?

FULBRIGHT: The truck, yes.

GERAGOS: So P, O, M, and N?

FULBRIGHT: Yes.

GERAGOS: And that was December 15th?

FULBRIGHT: Why.

GERAGOS: And how pregnant were you then?

FULBRIGHT: Approximately 35 weeks.

GERAGOS: Okay. You could walk when you were 35 weeks pregnant? Could you actually walk?

FULBRIGHT: Yes.

GERAGOS: Did you move around? Did you actually get inside the truck?

FULBRIGHT: Yes.

GERAGOS: Did you tire easily?

DISTASO: Objection, your Honor. Relevance.

GERAGOS: We're going to do a comparison with,

JUDGE: No, we're going to go, we're just talking about this. I'm going to sustain the objection.

GERAGOS: How you did get into the truck?

FULBRIGHT: I was helped.

GERAGOS: You were helped. When you were helped, was that by who?

FULBRIGHT: Investigator Kevin Bertalotto.

GERAGOS: Bertalotto. Is he in here? He's about how tall?

FULBRIGHT: Six foot.

GERAGOS: About 200 pounds? The same size Scott was, isn't he?

DISTASO: Objection, your Honor.

GERAGOS: I'm asking, it's a demonstration. I want to ask.

GERAGOS: He helped you, right?

JUDGE: Overruled. Go ahead.

FULBRIGHT: Yes.

GERAGOS: Did you ask him to try to pick you up and place you into the toolbox?

FULBRIGHT: No.

GERAGOS: He didn't try to do that, did he?

FULBRIGHT: No.

GERAGOS: Did you ask him to pick you up and put you into the bed?

FULBRIGHT: No.

GERAGOS: Now, the picture where you are in the toolbox itself, looks like a pretty tight fit in there, doesn't it?

FULBRIGHT: Yes. But I did have a little room.

GERAGOS: Okay. But, well, that's after they emptied it out, correct?

FULBRIGHT: Right.

GERAGOS: You couldn't have gotten there when it wasn't emptied out, could you? That's why they did it this way, right?

FULBRIGHT: Yes.

GERAGOS: Okay. Now, when you went in like that, obviously, I don't mean to be facetious. You were alive, right? You are alive as you sit here?

FULBRIGHT: Yes.

GERAGOS: Didn't have rigor mortis, right?

FULBRIGHT: No.

GERAGOS: Do you have any familiarity with what it would have been like to have been eight months pregnant and to be dead and have rigor mortis set in, trying to get into that tool box? How about when you did the boat pictures? How pregnant were you when you did those?

FULBRIGHT: About 38 weeks.

GERAGOS: Okay. And did I understand correctly that when you did those pictures, you gave birth four days later?

FULBRIGHT: Yes, I did.

GERAGOS: Okay. And were you able to walk four days before your birth?

FULBRIGHT: Yes, I was.

GERAGOS: Were you able to, did you go to yoga classes, or anything?

DISTASO: Objection, your Honor. Argumentative.

GERAGOS: Did you need help getting into the car?

JUDGE: We are just talking about the demonstration. Sustained.

GERAGOS: In this demonstration here, you were four days away from giving birth. Did, Bertalotto, was he there at the same time?

FULBRIGHT: Yes.

GERAGOS: Did he lift you into the boat?

FULBRIGHT: No.

GERAGOS: You didn't have any weights on you, did you?

FULBRIGHT: No.

GERAGOS: Did anybody try to lift you into the boat?

FULBRIGHT: No.

GERAGOS: Okay. When the boat was open, G, like this, apparently we can see you right there, right?

FULBRIGHT: Yes.

GERAGOS: Okay. And once you, once again, that is a top view. You were standing on the dock looking at a boat, you would be able to see you, correct?

DISTASO: Objection. It's argumentative.

JUDGE: Sustained.

GERAGOS: If you are in the middle section right here, by the way, do you know if rigor mortis had set in, would you be able to just curl yourself up like that?

DISTASO: Objection. Lack of foundation.

JUDGE: Overruled. First of all, it's assuming facts not in evidence. We don't know if there was rigor mortis. There has been no evidence of that.

GERAGOS: Been no evidence whatsoever.

JUDGE: But, in other words, you had to scrunch yourself up, or put your legs up in order to fit the in there?

FULBRIGHT: Yes.

GERAGOS: You had to scrunch yourself up quite a bit to get inside that boat, didn't you?

DISTASO: Objection. It's argumentative.

GERAGOS: I'm asking.

JUDGE: No, overruled. Because it's a demonstration. He can go into the details. Overruled.

FULBRIGHT: I just had to bend my legs.

GERAGOS: Right. And in the other picture in the front, which is 106, 106-J you really had to scrunch yourself, didn't you?

FULBRIGHT: I had to bend my legs.

GERAGOS: Did you, did they put you out on a lake anywhere, in the Bay anywhere?

FULBRIGHT: No.

GERAGOS: Did they try to demonstrate how far it was, that if you were in the boat, and they threw you in the boat with any kind of cement weights, how that would not have capsized the boat?

DISTASO: Objection, your Honor. That's argumentative.

JUDGE: Sustained.

GERAGOS: Did you do any pictures actually trying recreate what the prosecution's theory is here?

DISTASO: Objection, your Honor. It's argumentative.

JUDGE: Sustained.

GERAGOS: The whole picture, series of pictures is argumentative.

JUDGE: Well, that's a comment. The jury can disregard it.

GERAGOS: The time that you got into the boat, right here, which is 106-F, that was what date?

FULBRIGHT: January 6, 2004.

GERAGOS: Okay. And did you compare, or did you have anybody do any kind of a comparison of your measurements on that date, and Laci's measurements the day that she went missing? Do you know?

FULBRIGHT: I don't know.

GERAGOS: Did you do any, does anybody examine you, to measure you, to compare you to Laci?

FULBRIGHT: I was weighed.

GERAGOS: Right. Did anybody measure you?

FULBRIGHT: No.

GERAGOS: Okay. Anybody find out how many weeks you were, I mean, did you go to the OB-GYN that she went to?

FULBRIGHT: No, I didn't.

GERAGOS: Okay. Did you go, in any way shape or form, out to the Bay when this demonstration was going on?

FULBRIGHT: No, I didn't.

GERAGOS: Okay. When you, how did you get to the location where this is, where these pictures were taken?

FULBRIGHT: Investigator Kevin Bertalotto drove me there.

GERAGOS: And was he, were you able to walk into the facility?

DISTASO: Objection. Been asked and answered.

JUDGE: Overruled.

GERAGOS: Did you ever walk into the facility?

FULBRIGHT: Yes, I was.

GERAGOS: Were you able to step into the boat?

FULBRIGHT: With help.

GERAGOS: When you say with help, somebody held your hand?

FULBRIGHT: Yes.

GERAGOS: Okay. Nobody, once again, nobody lifted you in there?

FULBRIGHT: No.

DISTASO: Objection. Been asked and answered.

JUDGE: Overruled.

GERAGOS: When you stepped in, you were able to then lay down, correct?

FULBRIGHT: Yes.

GERAGOS: Okay. Did you still exercise into your 38th week of pregnancy?

DISTASO: Objection, your Honor. Relevance.

JUDGE: I don't think so. It could be relevant. Overruled.

GERAGOS: Did you still exercise?

FULBRIGHT: I didn't exercise.

GERAGOS: Were you working?

FULBRIGHT: Yes.

GERAGOS: So when these pictures were taken four days before your birth, were you actually working at the DA's office?

FULBRIGHT: Actually the day before was my first day of leave.

GERAGOS: So you actually worked as a pregnant woman all the way to the day before you gave birth?

DISTASO: Objection. It's argumentative.

JUDGE: Sustained.

GERAGOS: Thank you. I have no further questions.

JUDGE: Any other questions?

DISTASO: No, your Honor.

JUDGE: Okay. Thank you. You can be excused.