

spell your last name.

THE WITNESS: My name is Diane Walsh, W-A-L-S-H.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. THURSCHELL:

Q. Mrs. Walsh, where do you live?

A. I live in -- near Ubly, Michigan.

Q. And where is Ubly, Michigan, in relation to Detroit?

A. About 90 miles north.

Q. Okay. Is it in the Michigan Thumb?

A. It's in the middle of the Thumb.

Q. Okay. About how far from Lapeer, Michigan, is it?

A. About an hour's drive.

Q. Okay. Now, what do you do for work?

A. I'm a social worker.

Q. And what was your relationship to Terry Nichols?

A. Terry was married to my husband's sister.

Q. Okay. And was that Lana -- now Lana Padilla?

A. Correct.

Q. So you were -- you were married to Lana Padilla's brother?

A. Right.

Q. When did you first meet Terry Nichols?

A. I met Terry kind of at a sister-in-law's graduation party.

Diane Walsh - Direct

Q. And when -- when was that?

A. That was shortly after our marriage, which was 1980.

Q. Okay. And did you subsequently get to know him?

A. Yes, I did.

Q. And how did that come about?

A. I actually started baby-sitting for Joshua, their son.
Lana and Terry's son.

Q. And about what time period were you doing that?

A. I would say between 1983 and 1988.

Q. All right. And were you doing that on a -- on a regular basis?

A. Yes.

Q. Okay. Now, when -- do you know that Josh was living with Terry and Lana -- when Josh was living with Terry and Lana, Lana's two sons from an earlier marriage were also living there?

A. Yes, they were.

Q. And did you get a chance to observe Terry's relationship with Troy and Barry, also?

A. Yes, I did.

Q. Okay. Did -- could you characterize Terry's relationship with them.

A. Terry was a very involved -- he tried to be a good father, I thought. He tried to -- he actually took care of the household quite a bit because Lana worked out.

Diane Walsh - Direct

Q. Okay. He did the cooking?

A. Uh-huh.

Q. Now, I want to take you to 1987 and ask you, did there come a time when you had a conversation with Lana Padilla about -- then Lana Nichols -- about Terry going into the Army?

A. Yes. Lana had told me that Terry had talked to a recruiter and was thinking about enlisting in the Army.

Q. And did she tell you why he was going to do that?

A. Well, subsequently, she told me that he did actually enlist and that they -- they had together decided that it might help to improve their relationship.

Q. Okay. Now, did -- and do you know that Terry did then enter the Army?

A. Yes.

Q. After Terry entered the Army, did you begin to see more of -- of Josh Nichols?

A. I was baby-sitting for Josh. He would get off the school bus at my house daily, and yes, I saw more of him.

Q. Did -- did he begin to spend some nights there with you?

A. Yes, he did.

Q. Okay. And was that because Lana Nichols was -- was not able to be -- or was not at the house with Josh and Barry and Troy?

A. Yes. She was working in Bay City, which is a half-hour, 45-minute drive away.

Diane Walsh - Direct

Q. Okay. And if you know, is it your understanding that there was another relationship involved at that point?

A. Yes. That's correct.

Q. Okay. Now, did there come a time when you called Terry to explain the situation to him?

A. Yes -- well, I didn't -- yes, I called Terry because Lana was calling and saying, you know, "Either Josh would stay at your house, or you can take him home and let Barry and Troy get him on the bus tomorrow or" -- and that happened more often and more often. And there came a point when it was like the fourth day in a row, and Josh -- I had to tell Josh that his mother wasn't coming one more day.

And Josh looked at me and said, "I hate my mom," and that's when I decided I needed to call Terry.

Q. Now, you -- can you tell me about that conversation.

A. With Terry?

Q. Yes.

A. I -- I tried to be delicate. I called Terry and asked him if there was any way possible that he could take Josh. And of course, he asked me why. And I said that -- that Lana wasn't coming home a lot and that I thought she was involved with somebody else.

Q. And --

A. And Terry said, "No, I don't think so."

And we kind of discussed it a little bit, and I

Diane Walsh - Direct

finally said, "No, Terry, I'm sure she is, and his name is Allen."

Q. Were you surprised that Terry was -- was unaware of this situation?

A. Yes and no.

Q. Okay. There -- why -- on the yes side, why were you -- why were you surprised?

A. Well, from my perspective, it seemed obvious that Lana was being unfaithful; but then again, he was out of state and I -- my sister-in-law is a wonderful person, but she's a really wonderful salesperson and -- and I knew that what she was getting -- what Terry was getting from her was different than what I was seeing.

Q. Okay. Now, what did Terry do, if you know, after your -- he got your phone call?

A. He managed to arrange to go and get Josh and take him back with him to the air base -- or to the -- to the Army base.

Q. And was that in Kansas?

A. Yes.

Q. And was it your understanding that Josh was then living there with Terry --

A. Yes.

Q. -- as his custodial parent?

Okay. Now, were you aware when Terry returned to Michigan with Josh from the Army?

Diane Walsh - Direct

A. Yes.

Q. Do you know the terms that he left the Army on?

A. I understood it to be like a hardship -- I can't think of the word, but it was because of the situation with Josh.

Q. Okay. And where -- where did he live when he returned?

A. He went back to the Argyle Road farm.

Q. Was it where he and Lana had been living with Troy --

A. Yes.

Q. -- and Barry and Josh?

Okay. And who was living there with him at that time?

A. I believe Barry went to live first with his dad and then with Lana, but Troy stayed. He wanted to finish school in the Cass City school district, so he lived with Terry and Josh.

Q. Okay. And was this in 1989?

A. Yes.

Q. And was -- was Terry working at that time?

A. Yes. Terry was working with Dan Roofing as a carpenter.

Q. And was he -- was he supporting Troy as well as Josh at that point, to your knowledge?

A. To my knowledge.

Q. Was he otherwise acting as his parent?

A. Yes. He would pick Troy up from sporting events that Troy was involved in with school and things like that.

Q. Okay. Now, did you get a chance to observe his

relationship with Troy at that time?

Diane Walsh - Direct

A. Yes, I did. Yes.

Q. And was there any change from before when he had been -- they had been living together with Lana as a family?

A. Not that I observed, no. He continued to be a father figure to him.

Q. Okay. Now, after Mr. Nichols' separation from Mrs. Nichols, do you know that they were -- they were divorced thereafter?

A. I understood that they were divorced thereafter, yes.

Q. And did Mr. Nichols continue a relationship with the Walsh family after that?

A. Yes. Because I continued to baby-sit for Josh. He'd still get off the school bus there. Terry also worked with my father-in-law and -- and occasionally helped him on the farm when they needed help, and I know they had business dealings with him as far as selling houses and land contracts and things like that. And -- and I know that Terry also helped my brother-in-law, which would be Brian Walsh, finish the inside of a house.

Q. Okay. Did he do any work on your house during that period?

A. Yes, he did.

Q. What did he do?

A. He put new countertops in my kitchen. He built a light fixture for me. He built a porch roof for our entry.

MR. THURSCHWELL: No further questions.

MR. MEARNS: We have no questions, your Honor. This witness may be excused.

THE COURT: All right. You may step down.

MR. THURSCHWELL: Call Donna Carino.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Would you raise your right hand, please.

(Donna Carino affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name.

THE WITNESS: Donna Beverly Carino, C-A-R-I-N-O.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. THURSCHWELL:

Q. Mrs. Carino, where do you live?

A. I reside in South -- in Clarkson, Michigan.

Q. Okay. And where is Clarkson in relationship to Detroit?

A. It's about maybe 35 minutes north of Detroit.

Q. Okay. Is it -- is it in the Michigan Thumb area?

A. No.

Q. Okay. South of the Thumb?

A. Yes.

Q. And what do you do?

A. I'm a midwife and also a mother and a wife.

Donna Carino - Direct

Q. Okay. That was a broad question. How long have you been a midwife?

A. I began my practice in January of '93.

Q. Now, did you -- did there come a time when you got to know Terry Nichols?

A. Yes, there was.

Q. Okay. And when was that?

A. I met Terry in the spring of '93. I'd say maybe about April or May.

Q. All right. And how did that come about?

A. Actually, I believe his son got one of my business cards from a health expo in Farmington Hills when I was working there managing a catering company.

Q. Okay. And he -- and he called you?

A. No. Actually, Marife found it when she was cleaning his room, and she found this card and she gave me a call, I'd say, about April, or May.

Q. All right. And what was the purpose of the call?

A. She was looking for a midwife to deliver her baby.

Q. She was pregnant?

A. Yes, she was.

Q. About how many months pregnant was she at the time?

A. I'd say maybe about five.

Q. Five months?

A. Uh-huh.

Donna Carino - Direct

Q. Okay. Now, did you thereafter have occasion to meet with Mr. and Mrs. Nichols?

A. Yes. They came out to my home -- at that time we were living in Southfield, which is still Michigan -- for a consultation. And we sat together for quite some time going over questions and answers on home birthing and that nature.

Q. Okay. About how many times did you meet with them, would you estimate, between your first meeting and your -- the birth?

A. I would say between eight and ten. Maybe a little more.

Q. Okay. Now, how many -- about how many deliveries have you

been involved in?

A. About 100.

Q. And have you had a chance to observe the fathers' involvement in the prenatal and birth process during that time?

A. Very much so.

Q. All right. Now, on a scale of 1 to 10 -- where 1 is the least involved and 10 the most -- where would you put Mr. Nichols in terms of his involvement prior to and during the birth of Nicole Nichols?

A. I would put him at a 10-plus.

Q. Okay. Why do you say that?

A. Terry was very involved with her care and her well-being. He was always at all the prenatals. He was just a very involved and concerned husband and father

involved and concerned husband and father.

Q. Okay. Did he ask you questions about the kinds of advice

Donna Carino - Direct

you were giving her?

A. Yes. Yeah. He would -- he would ask me questions.

Q. About nutrition?

A. Nutrition, some of the homeopathy, vitamins, her weight, blood pressure. Anything that we were doing, he was very involved in.

Q. Okay. And was it your observation that this was all out of concern for Marife?

A. Oh, yeah. He enjoyed it. He enjoyed being involved. They had a nice relationship.

Q. Okay. Now, at some point, were you called and told that -- that Marife had begun -- the delivery process had begun?

A. Yes. I got a phone call late -- or I'd say early August 1, I believe the date was. My husband called me. I was -- I was working, and I returned the phone call to Terry about 1:00 that morning.

Q. So this was 1 in the morning?

A. About 1 in the morning.

Q. Okay. What did you -- was it Terry who called?

A. I -- I spoke to Terry when I returned my phone call, yes.

Q. Okay. And did you tell him what to do?

A. I'm -- pretty much so. I just told him to keep notes of what's going on, that I'm on my way, to keep her -- to keep her calm and, you know, stay with her. And that was no problem. He was -- he was more than willing to do all that.

Donna Carino - Direct

Q. Okay. Let me -- let me show you what's been marked as Defense Exhibit M8. Ask you if you recognize this --

A. Yes, I do.

Q. -- copy. What -- what is it --

MR. THURSCHWELL: Well, we move the admission of M8.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHWELL:

Q. What is M8?

A. It's Terry's notes on contractions, when he started jotting down what started happening from 12:38 a.m. when her water broke, and then he progressed to write down the contractions, 1 minute, 2 minutes, sometimes 2 minutes apart, pretty much until I got there.

Q. Now, I want to turn -- turn this page over. Do you recognize this handwriting?

A. Yes, I do.

Q. Whose handwriting is it?

A. Marife's.

Q. Okay. And do you see that this is a letter that was written -- his notes were written on the back of a letter that she had not completed?

A. Correct. Yes.

Q. Did you -- did you immediately go to the Nichols' house for the delivery?

Donna Carino - Direct

A. Yes. As soon as I got the phone call and got my supplies and my bag together.

Q. Okay. And when you arrived there, tell us what happened.

A. When I arrived there, I went upstairs. Marife was in -- in complete efface. She was pretty much crowning. Terry was with her on the bed. And he was coaxing her through contractions. Within a matter of 10 minutes, you know, the baby was born. And pretty much Terry was the main force in this whole -- in the whole birth before I got there.

Q. Now, about what time was she born?

A. I would say about 3 a.m.

Q. All right. And did you spend the remainder of the night and morning there?

A. Oh, yes.

Q. Did Terry do something in the morning that morning -- later that morning to celebrate?

A. Well, Terry made us a huge, wonderful breakfast that morning. I'd say between a quarter after 6 and 6:30, we all went down into the kitchen after Marife and the baby got cleaned up and had their bath and vitals were checked. Blood pressure, pulse, heart rates were all fine. And Terry had been cooking up a storm. Pancakes, sausage, juice, toast, fruit. We all sat around the table and enjoyed this elaborate, wonderful breakfast together.

Q. Okay. I want to show you what's been marked as -- I want

Donna Carino - Direct

to show you what's been marked as Defense Exhibit M7. Do you recognize this photograph?

A. Yes, I do.

MR. THURSCHELL: We move the admission of M7.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. What is the jury looking at here?

A. Oh. They are looking at us and the -- in their home in their kitchen, sitting down for breakfast. Myself, Terry, Marife, baby Nicole and his older son, Josh.

Q. Show you what's been marked as Defense M223. Ask you if you recognize this picture.

A. Yes, I do.

MR. THURSCHELL: We move M223.

MS. WILKINSON: I'm sorry, your Honor.

THE COURT: M223.

MS. WILKINSON: We have no objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. And what's this?

A. Marife sent me this picture a few weeks after the birth. It's a picture of Terry and the baby in their living room on one of the mornings, him with the baby. He was always with the baby. He loved the baby.

Donna Carino - Direct

Q. Now, after Mr. Nichols' arrest, did you receive a letter from him?

A. I did.

Q. I want to show you what's been marked as Defense Exhibit M9A, which is a redacted version of -- it was previously marked as M9. And ask you if you recognize that document.

A. Yes, I do.

Q. Do you recognize the handwriting?

A. Yes, I do.

MR. THURSCHWELL: We move M9A.

MS. WILKINSON: No objection.

THE COURT: Received. M9A.

MR. THURSCHWELL: Leave that with the witness.

BY MR. THURSCHWELL:

Q. Without reading the entire letter or -- or without reading it verbatim, can you just tell the jury what the substance of that letter from -- well, let me back up and ask: Who is that letter from?

A. It's a letter from Terry.

Q. And is it to you?

A. It's to me.

Q. And what's the date on it?

A. July 12 of '95.

Q. Okay. And can you just tell us the substance of what he says in the letter to you.

Donna Carino - Direct

A. Well, he responded to my letter. I had written him a letter. And he was thanking me for my friendship, for all the support and kindness that I had given to his family during the time of their daughter's birth. And basically, he was saying in the letter how I could -- if I could be of help, and I volunteered my help to Marife because she was just pregnant with their other child; that it would be appreciated and if -- anything that I could do to support her would be appreciated, because I offered it in the beginning. And it's just a letter stating how concerned he was about Marife and the well-being of his family.

MR. THURSCHWELL: We have no further questions.

THE COURT: Any questions?

MS. WILKINSON: Yes, just a few, your Honor.

CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon, Mrs. Carino.

A. Hello.

Q. Could you just tell us a little bit about your training as

Q. Could you just tell us a little bit about your training as a midwife? Do you have any formal training as a nurse?

A. No. I'm not a nurse.

Q. What kind of training did you have as a midwife?

A. I was in an apprenticeship program for many years. I personally myself have been involved in midwifery and homeopathy and herbs for most of my life. I myself had five

Donna Carino - Cross

children at home. But I practiced under -- under a midwife and in some home schooling and various other things to get my -- my certificate.

Q. You told us, I believe, that you have participated in almost 100 births or approximately 100 births; is that right?

A. Correct.

Q. And how many of those had you done by the time you delivered Mr. Nichols' child in January of 1993?

A. I'd say about maybe between 20 and 30.

Q. And of those 20 and 30, were they all at-home deliveries, or were any in the hospital?

A. They were home births.

Q. You've never delivered as a midwife for a hospital delivery?

A. No. I'm a lay midwife.

Q. I want to show you Defense Exhibit M11, if I could. Do you recognize that?

A. Yes, I do.

Q. What is that?

A. It's a worksheet for -- to get your house -- to get your birth certificate. You fill this out. You take it down to your county or city, depending on where you live, and then they process a birth certificate.

Q. Is that a form that you filled out for the delivery of Nicole Nichols?

Donna Carino - Cross

A. It's my writing, yes.

Q. And the second page, is that also your writing?

A. Yep. That's my checkmarks.

MS. WILKINSON: We offer M11, your Honor.

THE COURT: M11?

MS. WILKINSON: Yes. It's a defense exhibit.

MR. THURSCHWELL: No -- no objection.

THE COURT: All right. It's received.

MS. WILKINSON: Thank you.

BY MS. WILKINSON:

Q. Mrs. Carino, in this form, on the second page is a list of medical risk factors for the pregnancy; isn't that right?

A. I would have to look it over again, but I believe so.

Q. Let me show you on here on the left-hand corner is "medical risk factors"; correct?

A. Correct.

O. And down here at the bottom, little tough to read, but it

2. -----
says -- do you see this right here? "Anomalies of child"?

A. Uh-huh. Yes.

Q. And this includes some diagnoses, doesn't it, like down here at the bottom, "Other chromosome anomalies"?

A. Correct.

Q. And you checked "none"; correct?

A. Correct.

Q. Now, you are not a doctor or nurse; correct?

Donna Carino - Cross

A. Correct.

Q. And you have no way of determining chromosomal anomalies other than looking at the child; is that right?

MR. THURSCHELL: Your Honor, I object at this point.

THE COURT: Well, I don't know where you're going

with
it.

MS. WILKINSON: That's my only question in this area, your Honor. Just whether she was able to do any other diagnosis other than just looking at the child to make these -- these representations.

THE COURT: All right. Overruled.

THE WITNESS: Ask the question again, please.

BY MS. WILKINSON:

Q. I'm sorry. Did you make these diagnoses or these --

A. Yes, I did.

Q. -- representations just based on your observations of the child?

A. Through intensive baby exams, yes. No, I did not draw blood to determine chromosomes. The baby was fine and healthy.

Q. Now, after January of 1993, did you ever hear from Terry Nichols again other than the letter you received after you wrote to him in prison?

A. You have to repeat the question.

Q. I'm sorry. In 1993, you delivered or assisted with the delivery of their child; correct?

Donna Carino - Cross

A. Correct.

Q. And I believe you've told the FBI in the past that you did not hear from Mr. Nichols again after that; is that right?

A. I'm -- not personally from Terry. Not after my services were rendered.

MS. WILKINSON: We have no further questions.

MR. THURSCHELL: Nothing further, your Honor.

THE COURT: You may step down. You're excused.

MR. THURSCHELL: We rest.

THE COURT: All right. The defense rests.

Is there any rebuttal?

MR. MACKEY: No, your Honor. Thank you.

THE COURT: Members of the jury, that means you've heard from the witnesses with respect to this phase of the

matter and the information provided; so as I told you before the noon recess, we will now recess until Monday and again do so because there would not be enough time available yet this afternoon to complete this matter with arguments, instructions, and provide any reasonable amount of time to deliberate. So that's why we're going to recess and come back to it on Monday.

During the time of this recess, of course, an extended time, the weekend and a little more, it is your obligation under your oath to keep open minds, avoid discussion with anybody, other jurors, family members, friends, anybody at all about anything connected with this case. Also, now, to be very careful about anything that you might encounter in watching television, listening to the radio, reading newspapers, books, magazines, whatever. Make sure that nothing that has not been presented to you in the courtroom could influence or affect your deliberations and decision to be made.

And I want you, once again, to consider that very broadly because, obviously, as you know, the questions to be decided here are matters that involve your judgment, your moral response. And you know, this, of course, is a time when I don't know what's going to be out there and that you might encounter, but matters concerning punishment in criminal cases, generally speaking, or stories or articles or comment about other cases that have been tried or that may be on trial, all of these things could conceivably influence or affect you. And of course, your obligation here under your oath is to avoid that.

So I'm asking you to be extremely careful, knowing what your responsibility is in this case. And I will, on -- after the completion of the arguments, which, of course, will be an important part of this matter, as well, instruct you in some detail with respect to how you approach the analysis and the decisions that you have to make with respect to what is a just and appropriate sentence. So be careful. Be open-minded.

The best thing that you can do, of course, is to turn your attention to other matters and to let this rest until you're back with us again on Monday morning and we resume. And I want you to really let the matter rest in your own minds individually because you've heard a lot during this week and we want you to recognize that in addition to all of the things that I said to you in the course of the presentation of this information, I have more to say to you about how you should approach the questions before you.

So we will resume at 8:45 on Monday morning. And until then, you're excused, and we hope that you have a pleasant weekend.

(Jury out at 1:53 p.m.)

THE COURT: Mr. Tigar.

MR. TIGAR: We renew the motion that we made this morning at the close of the Government's evidence now that all of the evidence of this phase is closed.

THE COURT: All right. Motion is -- renewed motion is denied.

I do want to meet with counsel to discuss the

instructions and the remaining matters before we submit this.
What time do you suggest? 20 minutes? Something like that,
you'll be ready?

MR. MACKEY: That will be fine.

THE COURT: All right. So meet with counsel in
chambers and the defendant in 20 minutes. Recess.

(Recess at 1:54 p.m.)

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DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
M7	15832	15832			
M8	15830	15830			
M9A	15833	15833			
M11	15836	15836			
M223	15832	15832			

* * * * *

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter. Dated
at Denver, Colorado, this 2d day of January, 1998.

Bonnie Carpenter

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