

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF JACKSON
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4 NOREEN RENIER,)
5 Plaintiff,)
6 vs.)
7 JOHN DOUGLAS MERRELL,)
8 Defendant.)

Case No. 85-3781-J-1

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12 DEPOSITION OF MARK BABYAK
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14 BE IT REMEMBERED that the deposition of MARK BABYAK
15 was taken on behalf of the Plaintiff by means of a telephone
16 recording on the 4th day of September, 1986.
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APPEARANCES

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2 For the Plaintiff:

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5 For the Defendant:

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8 . . .

9 At said time and place the following stipulation was
10 entered into between the attorneys present in behalf of the
11 respective parties:

12 IT IS HEREBY STIPULATED That all irregularities as
13 to notice of time and place and manner of taking said depositions
14 are hereby waived, each party reserving the right to object at
15 the time of trial as to the competency, relevancy or materiality
16 of any question or answer, but that objections as to the form of
17 the questions are waived unless made at the time of taking said
18 deposition.

19 IT IS FURTHER STIPULATED That the reading and signing
20 of said deposition by the party and the filing thereof, are here-
21 by expressly waived.

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STIPULATION

DIRECT EXAMINATION

BY MR. WERDELL:

This is Lee Werdell speaking this is a conference call, September 4, 1986, between myself, Roxie Cuellar, attorney for John Merrell and Mark Babyak of Washington D.C. Mark as you know this is a conversation that is being recorded for the purpose of taking your deposition. Roxie and I have agreed to take your deposition on the telephone in lieu of calling you as a witness in the case of Noreen Renier against John Merrell. Could I get you to raise your right hand?

A Yes.

Q Your hand is raised?

A Yes.

Q Do you solemnly swear or affirm that the testimony you are about to give in the cause now pending will be the truth and nothing but the truth?

A I do.

Q For the record could you tell us your name and your occupation?

A My name is Mark Babyak, it is spelled Babyak and I am a special agent for the Federal Bureau of Investigation.

Q Could you tell us also what your education is and what kind of work you do for the F.B.I.?

A I have a Bachelor of Science degree in Biology at the University in New Jersey and I'm presently assigned to the

1 Serology Unit of the F.B.I. laboratory in Washington D.C.
2 where I examine evidence sent in for the presence of blood,
3 semen and other body fluids.

4 Q How long have you been employed by the F.B.I.?

5 A Just under 13 years.

6 Q Were you formally married to a lady named Jessica Babyak
7 who is now known as Jessica Herbert?

8 A Yes.

9 Q Some time back, 2 or 3 years ago, do you recall whether or
10 not Jessica Herbert's brother was involved in an airplane
11 accident?

12 A Yes I do.

13 Q At that time were you and she married?

14 A I'm sorry I couldn't hear that?

15 Q At that time were you and she married?

16 A No.

17 Q All right. Did you have occasion to try to assist her in
18 any way regarding finding her brother?

19 A Yes, I did.

20 Q How did that start off...what was your first awareness?

21 A Well, she had ...when we found out that he was missing, in
22 a plane crash, she had conducted numerous phone calls with
23 the authorities who were at that time searching for the plane
24 and were coming to the conclusion that they were going to
25 cease the search because they were unable to find it. I
26 believe this, I'm not sure but I believe this entailed the

1 State Police and I guess the National Guard up in that area
2 because (inaudible) sort of search. In any event they had
3 been unable to find any evidence of a plane and were going
4 to call off the search so Jessica was quite frantic at that
5 point wondering whether her brother might still be alive.

6 Q Perhaps I should interupt and ask what her brother's name
7 was?

8 A Arthur.

9 Q Arthur Herbert?

10 A Right.

11 Q Did she call you then?

12 A And a ...yes...we talked about it and I had heard from a
13 friend of mine at work here of someone that I could contact
14 af Quantico, specifically Noreen Renier who possibly might
15 be able to assist and of course at this point Jessica was
16 ready to try anything and I contacted

17 Q Let me interupt you here a moment. Was Jessica interested in
18 trying to use a psychic?

19 A At first, of course she was going just normally trying to
20 convince everybody to continue the search, however when they
21 told her that ...no they didn't find any evidence of anything,
22 they wouldn't continue unless they did find evidence of some-
23 thing ~~that~~.then yes, she was interested in a psychic.

24 Q Did you help her find one?

25 A Yes. That's when I contacted Bob Ressler at Quantico.

26 Q Who is Bob Ressler?

1 A He's an agent assigned to our training division at Quantico.

2 Q All right. When you called him what took place?

3 A I contacted him and explained the story and he gave me the
4 name and number of an individual to contact for that pur-

5 pose for a psychic.

6 Q Was that Noreen Renier?

7 A Yes it was.

8 Q All right, did you pass that name and information along
9 to Jessica Herbert?

10 A I did.

11 Q Subsequent to giving her Noreen Renier's name did you
12 participate any further in any efforts to locate the downed
13 plane?

14 A Yes, yes I did.

15 Q What did you do?

16 A Well....first thing that happened of course was that Jessica
17 went to see her, and to get any information that she could.
18 I was not present at that meeting, however she did come
19 away with a description of an area and events that transpired,
20 leading up to the crash which was substantial enough that I
21 obtained the assistance of a friend of mine who is a pilot
22 with the Bureau and we rented a small plane and flew up to
23 the area.

24 Q Who was the pilot if you remember?

25 A Jim Crouse.

26 Q Is he also agent?

Directions

1 A Yes he is.

2 Q Okay, I take it this was an off duty, non-F.B.I. ...

3 A Yes, this was an off duty....totally unrelated to Bureau
4 activities and unofficial...

5 Q Okay, I take it it just happened that you and he were agents?

6 A Yes. That had nothing to do with any F.B.I. investigation
7 of ...just coincidental that we both are agents.

8 Q Yes. I believe I interrupted you when you say that you rented
9 a plane? Perhaps you could pick up at that point and tell
10 us what happened?

11 A Okay, we rented a private plane and flew up from Virginia
12 to Masachuttes to the general area that it was believed that
13 the plane had crashed. Once there we landed and at that
14 point there were some, a few pilots in that area looking,
15 some State Police I believe they were related with the State
16 Police, I'm not certain about that though. In any event we
17 explained to them that we were going to be looking also and
18 we got whatever clearance pilots needed to get in different
19 areas then began following the directions that Noreen had
20 provided us from the standpoint of landmarks, speed, turns,
21 things of this nature and

22 Q Do you have any present recollection of some of those things?

23 A Specifically no. I just remember that we had...the one thing
24 I do remember she had mentioned flying low over the airport
25 by passing the airport, now this is a small airport not a
26 major one.

1 Q Yes.

2 A By passing it, turning right sharply, sort of losing control
3 up draft type situation and seeing a cliff. Well we followed
4 this same pattern and we did see a rise, a cliff right at the
5 point that was described you know following that pattern and
6 so we concentrated our efforts and our search in that area.
7 Now, we were up in the air and of course it was heavily wo-
8 oded as she said it would be and she said that we would...
9 as I recall she said that we would not be able to see it from
10 the air. But we did see the landmarkings she had described
11 so...we went back to the airport, landed and I had another
12 person and myself go by car but Jessica and Jim went back
13 up into the air and circle the area that we had identified
14 as being basically the area that should be...being unfamiliar
15 with the area however we were not able to get the vehicle in
16 directly underneath where the plane was circling and we tried
17 this for several hours. So the plane was circling over this
18 one spot for several hours. After all this, landed, realized
19 that we wern't going to be able to get in there and we co-
20 ordinated again and realized we had to be getting back.

21 Q Let me ask you this question. Do you recall whether or not
22 you got into an area where there were several dogs?

23 A Yes. Matter of fact we got into an area where we were chased
24 by several dogs. The girl who was with me...needless to say
25 we didn't get out of the car, we drove back, it was a dirt
26 type road, a few houses set back. There was an old abandon

gas station

1 gas station near there too, according to the people we
2 spoke with.. the police, and I believe had...been used
3 this for like a little trading post type selling...things.

4 Q Had you received any information about that kind of a
5 building being near the area?

6 A Yes, as a matter of fact that was one specific point that
7 Noreen had mentioned to Jessica. She had stated that there
8 would be somewhere near the area an old, she wasn't sure,
9 she thought it was a gas station, she said it may have been
10 an old Texaco where an old lady sold supplies to campers
11 was how she described it and as a matter of fact when we
12 were at the airport we asked the people there if they knew
13 of any place that took that description and one of them said
14 he certainly did, that there was a place like that. A lady
15 had sold things to campers but she had died about a year be-
16 fore. So it had been...the place was still there, but the
17 lady wasn't anymore.

18 Q Did that tie in with the place where the dogs were roaming
19 around?

20 A Same general area.

21 Q Okay.

22 A I don't remember if it was on exactly the same street or
23 exactly the same path but it was in the same general area,
24 we do remember passing...you know passing that in our search
25 to try and get directly under where the plane was circling?

26 Q Let me ask you this question Agent Babyak. I believe you

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neighbors

1 indicated when you arrived at this airport that there was
2 some, perhaps State Police Officers involved in this search?

3 A Right.

4 Q That leads me to ask whether or not they were still searching
5 or had it actually been abandoned by the authorities?

6 A At that point there were two pilots also searching while we
7 were there. They were searching areas slightly different
8 areas but there were two pilots searching.

9 Q All right.

10 A The gentleman who was running or coordinating the search
11 said after speaking with us and after Jessica talked with
12 him and given him the information she had gotten from Noreen
13 and that we had been able to see by our flight so that they
14 would indeed put a ground search in that area within the next
15 day or so. At that point there had not been one in that im-
16 mediate area.

17 Q All right. Did they do that?

18 A Well my understanding of what happened after we left is that
19 the following day a resident of that area and his daughter
20 due to our circling over that area constantly, went out in
21 that area themselves and they found it prior to a search party
22 finding it. That they actually found the plane and called it
23 in.

24 Q All right.

25 A But it was in basically the area that we had been circling
26 over and that's what, again, drew them to look in that area.

neighbors

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1 Q I believe you say that it...If I recall, you said it had
2 become late and was getting dark and you had to end the
3 search?

4 A Yes, we realized that we had to be getting back and we
5 also realized that not knowing the area it would take quite
6 a bit for us to find a way to get into the wooded area ex-
7 actly where the plane was circling and as I say, it was late
8 enough that we knew we had to get back and once we got a
9 firm conviction from the man who was running the search
10 that they would indeed put a foot party in, then our presence
11 you know...to look where we were trying to get then our
12 presence basically became unnecessary and both Mr. Crause
13 and myself did have to be back the next day.

14 Q I believe you indicated that it was the next day that the
15 plane was found in that area?

16 A Yes.

17 Q Mr. Babyak have you ever received any contact or phone calls
18 or anything of that nature from the defendant in this case,
19 John Merrell or any person associated with Northwest Skeptics?

20 A No, I have not. Outside from speaking with you about ar-
21 ranging this.

22 Q All right. I think that's all the questions I have. It's
23 now Roxie Cuellar's turn to ask questions.

24 A Okay.

25 CROSS-EXAMINATION

26 BY ROXIE CUELLAR:

Acquisition

1 Q And I promise I'll try to remember to speak slowly. Okay.
2 Mr. Babyak...first of all am I pronouncing your name cor-
3 rectly?

4 A Yes you are. Thank you.

5 Q Could you describe to me how large an area we're talking
6 about when you talk about the plane circling...a wooded
7 area, can you give me any ball park figure about how big
8 an area we're talking about?

9 A The area that we focused on in the circling probably now
10 my estimation of distance may not be that great because
11 I'm not used to doing much flying in small planes. It
12 probably was somewhere in the vicinity of half a mile in
13 diameter.

14 Q Okay.

15 A Somewhere between a quarter and a half.

16 Q Your exwife indicated in her deposition that there had been
17 a report of a crash....right off that airport and that crash
18 was supposed to have happened on the night that her brother's
19 plane was missing...were you aware of that report?

20 A I was aware of that through her, yes.

21 Q Okay.

22 A Now, I'mI must have been aware of it when she became
23 aware of it...I don't recall exactly when that was but she
24 would have told me.

25 Q She indicated that there...do you have any more information
26 about that report...do you have any more details that you can

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1 provide as far as what that report was?

2 A No, I don't. As a matter of fact I think if I recall cor-
3 rectly, and now I may be mistaken, I'm just trying to go
4 from memory...but, I'm not certain whether or not we got
5 that information on that crash after we got up there and
6 spoke with the State Police or not...that may have been,
7 I don't recall for sure.

8 Q Okay. When did you speak to the State Police, before or
9 after she talked to Noreen?

10 A Oh that was after...it was after we got up there and landed.

11 Q Okay, so your wife has already indicated that she gave that
12 information to Noreen when she...

13 A Oh, okay.

14 Q But you don't know anything more about the details of the
15 somebody calling in about the crash?

16 A No, I don't.

17 Q Okay. Your wife indicated that there was a Sergeant of the
18 State Police that was either conducting the search on the
19 part of the State Police or was deeply involved in it, do
20 you have any idea what his name is?

21 A No I don't. I remember him sitting in the hangar, but I
22 don't recall his name.

23 Q Okay. Does Trooper Murphy sound familiar to you?

24 A Honestly, no. I don't recall that name.

25 Q Okay. Lee I don't think I have any further questions.

26 MR. WERDELL: I think that will do it then. Thank you.