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APPELLATE COURT NO. _____
IN THE COURT OF APPEALS
OF THE STATE OF TEXAS
AT HOUSTON

PRESTON HUGHES, III,
Appellant,
VS.
THE STATE OF TEXAS,
Appellee.

APPEAL FROM 174TH DISTRICT COURT OF HARRIS COUNTY,
TEXAS
Judge George H. Godwin, Presiding

STATEMENT OF FACTS
JURY TRIAL
MAY 1, 1989
VOLUME XVII OF XXII VOLUMES

Carrie Hargis
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

Handwritten signature

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1 THE COURT: Do you have any witnesses in
2 the courtroom, Mr. McCullough?

3 MR. McCULLOUGH: Are any of the people
4 in the courtroom subpoenaed by Preston Hughes to
5 be here today besides Ms. Stroman? I think my
6 witnesses are in the hall, the ones that are here.

7 Mr. Hughes informs me he wants Ms.
8 Stroman to notarize a motion for him he wants to
9 file before we start.

10 THE COURT: I'm sorry. We're not going
11 to do that right now. We'll get to it at the
12 appropriate time. We're going to move along.

13 MR. McCULLOUGH: I have no witnesses in
14 the courtroom, Your Honor.

15 THE COURT: Are there any in the hall
16 that need to be sworn?

17 MR. NOLL: You want us to bring in
18 everyone we can, Your Honor?

19 THE COURT: Please.

20 (Witnesses enter courtroom.)

21 THE COURT: Would everyone who intends
22 to testify in the State of Texas versus Preston
23 Hughes, please stand and raise your right hand.

24 (Witnesses sworn.)

25 THE COURT: Ladies and gentlemen, the

1 Rule will be invoked. What the Rule means is that
2 the witnesses may not remain inside the courtroom
3 while the other ones are testifying. Do not
4 discuss your testimony with any of the other
5 witnesses. Do not discuss your testimony before
6 or after testifying with any of the other
7 witnesses. You may discuss your testimony with
8 the lawyers in the case. If you are discussing it
9 with the lawyers in the case, make sure that when
10 you do so, it is not within the hearing of any
11 other witness.

12 Now, do you have any other problems with --
13 would the witnesses who have been subpoenaed by
14 Preston Hughes through Mr. McCullough or Mr. Al
15 Thomas, would you please remain in attendance this
16 morning until you have been talked to by either
17 Mr. Charles Mallone or Mr. Ellis McCullough. They
18 will make arrangements to place you on call and
19 let you leave and tell you when to be back down
20 here. All the other witnesses, unless you're
21 specifically excused by the Court, you will remain
22 in the hallway.

23 Mr. Noll, do you need an attachment on
24 some witnesses?

25 MR. NOLL: Yes, Your Honor. Two

1 witnesses have not responded to their subpoena.
2 Shawn Graham or Carol Graham.

3 THE COURT: I can't understand the last
4 name. Grant?

5 MR. NOLL: Graham, Your Honor,
6 G-r-a-h-a-m.

7 THE COURT: Shawn Graham or Carol Graham?

8 MR. NOLL: Shawn and Carol Graham.

9 THE COURT: Writs of attachment will be
10 issued for those witnesses. Mr. McCullough, Mr.
11 Thomas, do y'all have any problems?

12 MR. McCULLOUGH: We don't know yet.

13 THE COURT: Very well. I expect you to
14 let the Court know in the appropriate amount of
15 time so the appropriate writs of attachments may
16 be issued. Very well. You may be excused to wait
17 outside in the hallway.

18 (Witnesses exit the courtroom.)

19 THE COURT: Mr. Noll, are you going to
20 make an opening statement?

21 MR. NOLL: Yes, Your Honor, I am.

22 THE COURT: Mr. McCullough, will you be
23 following his or wait until your own case to make
24 one or at all?

25 MR. McCULLOUGH: I will wait until I

1 open my case, if at all.

2 THE COURT: Very well.

3 MR. McCULLOUGH: I have one matter to
4 take up as soon as the witnesses have excused
5 themselves from the courtroom. Brenda Johnson,
6 the defendant's mother's in the courtroom. Ms.
7 Johnson, do you intend to testify in this case
8 either in the first phase of the trial; or if
9 there is a punishment phase, in the second phase
10 of the trial?

11 MS. JOHNSON: What phase would you be
12 referring to?

13 MR. McCULLOUGH: Well, it's somewhat
14 your and Mr. Hughes' option whether you testify or
15 not. I know you don't know anything about the
16 case --

17 MS. JOHNSON: Somewhat about the facts.

18 MR. McCULLOUGH: The problem is, if
19 you're going to testify in the case, you have to
20 be sworn and put under the Rule. The State may or
21 may not waive the Rule in your case. If you're
22 going to testify, you may well be excluded from
23 the courtroom during the trial. So, we need to
24 make that decision.

25 MS. JOHNSON: I will testify.

1 MR. McCULLOUGH: Then I'll ask Ms.
2 Johnson to be sworn and put under the Rule.

3 (Witness sworn.)

4 MR. McCULLOUGH: We would ask the Rule
5 be waived with regard to Ms. Johnson.

6 MR. NOLL: Your Honor, we would object
7 to the waiving of the Rule. We don't have any
8 idea what her testimony might be, but I would
9 object to her being present during the other
10 witnesses' testimony.

11 THE COURT: I will tell you I can't rule
12 without knowing. If she intends to be a witness
13 at the punishment phase of the trial, if there is
14 a punishment phase of the trial, I would be
15 inclined to waive the Rule. If there is the
16 remotest possibility that she may be a witness
17 during any case that you choose to put on, I will
18 not waive the requirements of the Rule.

19 MR. McCULLOUGH: I feel like there is
20 more than a remote possibility she will testify as
21 to some facts indirectly related.

22 THE COURT: Ms. Johnson, will you have a
23 seat outside, please. Please remain on call.

24 (Ms. Johnson exits courtroom.)

25 THE COURT: Anything else, gentlemen?

1 MR. NOLL: I have one more witness, Mr.
2 Jamie Hunter, who I spoke with Friday, indicated
3 he would be here this morning. I haven't yet seen
4 him. He is my first witness, a very short witness.
5 If I could have a moment to check in the hallway
6 to see if he's here yet.

7 THE COURT: No. You can start with
8 another witness if you don't know if he's here.
9 That's why we went through these machinations, so
10 we would not be waiting for witnesses. Anything
11 else?

12 MR. NOLL: Your Honor, with all due
13 respect, this witness is very short, only take a
14 couple of minutes.

15 THE COURT: Why do we need to wait on
16 him if he's going to take a couple of minutes?

17 MR. NOLL: Taking him out of order will
18 substantially disrupt the presentation of the
19 State's case in this matter. It makes no sense to
20 appear all of a sudden, after the officers at the
21 scene. He is the one that found the deceased.
22 I'll see if I can find him. I may have to work
23 around him.

24 THE COURT: Very well. See if Mr.
25 Hunter is here.

1 (Mr. Noll exits courtroom.)

2 MR. McCULLOUGH: I don't see why Mr.
3 Noll has to be present to start this issue. It
4 just occurred to me that the relative of one of
5 the victims has apparently made threats against
6 Mr. Hughes to the District Attorney, which seem to
7 be, were they to be taken seriously, I was
8 wondering if we could take some steps to ensure
9 that if that person comes here, at least, that
10 they're not armed.

11 (Mr. Noll enters courtroom.)

12 MR. McCULLOUGH: Do you know who I'm
13 talking about?

14 MR. NOLL: I don't know. I wasn't
15 present --

16 MR. McCULLOUGH: The lady who said she
17 was going to get a gun and kill Preston. Is she
18 going to be here?

19 MR. NOLL: I doubt seriously if Ms.
20 Sharon Brown, the mother of the 3-year-old victim
21 in this case, is going to be here. Last week she
22 was committed against her will to the Rusk State
23 Hospital because of extreme depression over the
24 death of her child.

25 THE COURT: The Court is aware and will

1 take precautions to try this case consistent with
2 the rules of justice and fair play without any
3 outside distractions whatsoever. We will maintain
4 security in the courtroom for the parties and the
5 witnesses and the spectators. Anything else?

6 MR. McCULLOUGH: I have nothing further.

7 MR. NOLL: No, Your Honor.

8 THE COURT: Is Mr. Hunter present?

9 MR. NOLL: I can't find Mr. Hunter out
10 there. I'll have to proceed without him.

11 THE COURT: Very well. Let's bring in
12 the jury. I plan to admonish them. You may make
13 your opening statements and then we'll see if Mr.
14 Hunter is here.

15 (Jury in.)

16 THE COURT: Would the jurors please rise
17 and raise your right hands.

18 (Jury sworn.)

19 THE COURT: I've given each of you some
20 admonishments as you were selected during the voir
21 dire portion of the trial. I would like to give
22 you-all now, as a group, the following
23 admonishments, which will apply throughout the
24 hearing of testimony in your deliberations in this
25 case.

1 Do not discuss the case among yourselves
2 or with anyone else at any time. What I mean by
3 that is you will hear testimony. There will be
4 breaks in the trial. Do not begin to discuss the
5 testimony that you hear or anything about the case.
6 The only time for you to do that is after you have
7 heard all the testimony, after you've been given
8 the Court's charge, and after you've heard the
9 arguments of counsel.

10 Do not allow anyone to talk to you about
11 the case. If anyone does try to talk to you,
12 report it to me or the bailiff immediately. I
13 don't know if there's going to be anything
14 reported in the media about this case, but do not
15 read anything about it, turn off a radio, turn off
16 the TV. If you even think you're starting to read
17 something or hear something about it, do not pay
18 any attention to it whatsoever.

19 We will keep you in a group as much as
20 possible while you are down here. We will make
21 arrangements for your lunch to take you in a group.
22 Again, do not begin to discuss the case or
23 anything about it during the testimony as it comes
24 out.

25 There will be juror badges for you

1 presently. Please wear those on an outside
2 article of your clothing while you are in the
3 courthouse on your way to and from the courthouse,
4 please. The reason for that is so that the people
5 in the courthouse will know that you are a juror
6 and will hopefully watch their comments. We don't
7 want to take the chance that anything untoward
8 would be said in front of you at this time.

9 Please do not go into any of the other
10 courtrooms in the courthouse. I would normally
11 encourage you to do that but please don't do that.
12 There may be a case in trial or in some stage of
13 its trip through the criminal justice system. I
14 can't control that. I don't know what you may
15 hear or may not hear but I just don't want to take
16 the chance that anything you see or hear in
17 another courtroom would influence your verdict in
18 this case.

19 That is basically all I have to say.
20 Thank you again. We're getting a little late
21 start this morning. Hopefully, we'll try to take
22 care of that and start on time and move along on
23 schedule and get this case heard as quickly as we
24 can, consistent with the rules of justice and fair
25 play.

1 Mr. Noll, you may present the indictment.

2 MR. NOLL: If it please the Court. In
3 the name and by authority of the State of Texas,
4 the duly organized grand jury of Harris County,
5 Texas, presents in the district court of Harris
6 County, Texas, that in Harris County, Texas,
7 Preston Hughes, III, hereafter styled the
8 defendant, heretofore on or about September 26th,
9 1988, did then and there unlawfully, intentionally
10 and knowingly, cause the death of Shandra Charles,
11 hereafter styled the complainant, by stabbing and
12 cutting the complainant with a deadly weapon,
13 namely, a knife; and during the same criminal
14 transaction, the defendant did then and there
15 unlawfully, intentionally, and knowingly, cause
16 the death of Marcell Taylor, by stabbing and
17 cutting Marcell Taylor with a deadly weapon,
18 namely, a knife.

19 Against the peace and dignity of the
20 State and signed by the foreman of the grand jury.

21 THE COURT: To which the defendant has
22 pleaded not guilty.

23 You may be seated.

24 Mr. Noll, does the State have an opening
25 statement?

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MR. NOLL: We do, Your Honor.

THE COURT: You may proceed.

OPENING STATEMENT
BY THE STATE

MR. NOLL: Good morning, ladies and gentlemen. On September 26th, 1988, about 10:30 or 11:00 o'clock at night, in a field between the Fuddrucker's on Kirkwood on the west side of town at an apartment complex, a 15-year-old girl and her 3-year-old cousin were attacked and stabbed to death. I think the evidence will show you the little girl was sexually assaulted in addition to being stabbed. An employee found the little girl.

I think the evidence will show you the path the children were on is frequently used by tenants of the apartment complex as they go back and forth from their apartment complex to stores located on the other side of Kirkwood. The children were found; a police officer, as he cradled Shandra Charles in his arms, asked her what had happened --

MR. McCULLOUGH: Objection, Your Honor, going to be hearsay conversation. I intend to

1 have it excluded in the trial.

2 THE COURT: That will be overruled.

3 MR. NOLL: Testimony will show you that
4 Sergeant Hamilton of the west side station will
5 tell you that child told him, "He tried to rape me."

6 Sergeant Hamilton said, "Who?"

7 She said, "Preston tried to rape me."

8 I expect the evidence to show you that
9 Houston Police sergeants from the homicide
10 division investigated the case, came out to the
11 scene, talked to Sergeant Hamilton, and just using
12 plain old fashioned footwork, went to the
13 apartments that were right next door to the vacant
14 field, asked the people there, "Do you have
15 anybody named Preston that lives here?"

16 Evidence will show you they learned that
17 Preston Hughes, III, lived in the Lakehurst
18 apartments, not even 200 feet from the spot where
19 that dead baby was found.

20 The evidence is going to show you that
21 they asked Preston -- at this point they didn't *
22 have enough to think he did it or know he did it.
23 So, they asked him to come downtown and answer
24 some questions.

25 The evidence is going to show you that

1 Preston Hughes went with these officers downtown
2 and voluntarily gave a statement. He gave them
3 two. First statement, he admitted stabbing the
4 little girl. Didn't say anything about the sexual
5 assault, didn't say anything about the little boy.
6 Then the same morning, later that morning, the
7 evidence is going to show you again a second
8 statement, where he admits that he sexually
9 assaulted that little girl and then stabbed her to
10 death and then stabbed that 3-year-old child to
11 death, and then went back to his apartment to get
12 the scores on the Monday night football game. I
13 think the evidence and the facts in this case are
14 then going to show you that this confession does
15 match up with the known physical facts.

16 After you hear the evidence in this case,
17 there is going to be absolutely no doubt at all in
18 your mind as to the guilt of Preston Hughes, III,
19 for the murder of Shandra Charles and her
20 3-year-old cousin, Marcell Taylor.

21 Your Honor, the State would call as its
22 first witness Officer Cook.

23 THE COURT: Do you want to recheck the
24 hall for Mr. Hunter?

25 MR. NOLL: Yes, Your Honor, if I might.

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(Brief pause.)

THE COURT: Officer, please keep your voice up. There's an air conditioning vent out there, the microphone is incredibly fuzzy. So, we're going to rely on you to speak up so everybody can hear, okay.

MR. NOLL: May I proceed, Your Honor?

THE COURT: You may proceed.

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V. L. COOK,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Sir, would you please state your name
for the members of the jury.

A. My name is Vincent L. Cook.

Q. If you can, remember to keep your voice
up so this gentleman way back in the corner can
hear you.

A. All right, sir.

Q. How are you employed?

A. I'm with the City of Houston Police
Department.

Q. Are you assigned any particular division
within the police department?

A. Yes, I am, patrol division, west side
command station.

Q. And as a patrol officer, what are your
duties? What do you do everyday?

A. Basically answer calls to disturbances,
all kinds of police calls, write tickets and

1 observe different types of activities going on
2 within my beat.

3 Q. And could you tell the jury kind of
4 briefly where your beat is? What area of town is
5 included in the area you patrol on a regular basis?

6 A. Basically it's from the point of Dairy
7 Ashford and Westheimer eastbound to Gessner and up
8 to the dividing point with Buffalo Bayou, runs
9 east to west.

10 Q. Is that on the far west side of the City
11 of Houston?

12 A. Yes, sir, it is.

13 Q. Is that area considered to be in Harris
14 County, Texas?

15 A. Yes, it is, sir.

16 Q. How long have you been doing this kind
17 of work?

18 A. Nine and a half years.

19 Q. How long have you been with the Houston
20 Police Department?

21 A. Same amount of time.

22 Q. Have you been assigned to the west side,
23 in that same area you just described, for a long
24 time?

25 A. Approximately five years.

1 Q. Were you assigned to that area back in
2 September of 1988?

3 A. Yes, I was.

4 Q. Let me direct your attention, Officer
5 Cook, to the late evening hours of September 26th
6 of 1988. Were you working that day? That was a
7 Monday.

8 A. Yes, sir, I was.

9 Q. And you were on your regular patrol
10 duties?

11 A. Yes, sir.

12 Q. Did anything unusual occur that evening,
13 specifically, with respect to the Fuddrucker's,
14 which is located on South Kirkwood there in your
15 district?

16 A. Yes, sir.

17 Q. Could you tell the jury what first
18 happened that evening that was unusual?

19 A. We were flagged down by a gentleman who
20 had stated his wife had been missing; and we
21 combed the area, which is a field, just north of
22 that Fuddrucker's there. As we were looking, a
23 gentleman from the Fuddrucker's came running over
24 to us, stated --

25 MR. McCULLOUGH: Object to conversations

1 with third parties out of the courtroom, Your
2 Honor.

3 BY MR. NOLL:

4 Q. Don't say what someone else said to you,
5 if you will.

6 As a result of a conversation you had
7 with someone out there, did you go someplace in
8 particular in relationship to the Fuddrucker's?

9 A. Yes, sir, just in the northeast of that
10 location was a field. I went into that field and
-11 found a woman laying face down along a pathway
12 that leads to some apartments east of the
13 Fuddrucker's.

14 Q. Was this a dark night, moonlight night?
15 Can you describe what it was like out there, the
16 time of the evening?

17 A. I don't recall, sir, I'm sorry.

18 Q. Was it in the evening hours?

19 A. Towards the nighttime. It was dark,
20 yes, sir.

21 Q. Okay. What hours do you work? Do you
22 have a regular shift that you work out there?

23 A. Yes, sir, 10:00 p.m. to 6:00 a.m.

24 Q. Sometime after 10:00 p.m., when you came
25 on duty?

1 A. Yes, sir, that's right.

2 Q. Could you describe for the members of
3 the jury this field or lot that you've talked
4 about where you found the young lady?

5 A. Most of the area east of the
6 Fuddrucker's is covered by trees and high brush,
7 approximately knee height, maybe two to three feet
8 high.

9 Q. Have you patrolled that area for a long
10 time?

11 A. Yes, sir, I have.

12 Q. Are you familiar with that Fuddrucker's
13 and that lot between it and the Lakehurst
14 apartments behind it there?

15 A. Yes, sir, I am.

16 Q. Have you been out there for the last --
17 how many years, I think you said?

18 A. Approximately five years.

19 Q. Five years; and you've been doing patrol
20 work in that area?

21 A. Yes, sir.

22 MR. NOLL: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25

1 (State's Exhibit Nos. 3
2 through 6 were marked for identification.)

3 BY MR. NOLL:

4 Q. Officer Cook, let me show you what's
5 been marked for identification as State's No. 5
6 and 6. Without saying what they are, would you
7 look at them and see if you recognize what those
8 pictures depict?

9 A. State's Exhibit No. 6 --

10 Q. Don't say what they are first, okay?

11 A. Okay.

12 Q. Take your time. Look at 6 and look at 5.

13 A. All right, sir.

14 Q. Okay. Looking at these two pictures, do
15 they accurately depict what they purport to
16 represent; that is, the area of which they are a
17 photograph of?

18 A. Yes, sir.

19 Q. Looking at State's Exhibit No. 6 first,
20 what is this a picture of?

21 A. Appears it be a picture of a business.

22 Q. Okay. Is this the Fuddrucker's building
23 on Kirkwood Street in your district?

24 A. Yes, sir.

25 Q. Does the photograph also show the field

1 or the lot that you've described and the paths
2 that are behind it?

3 A. Yes, sir.

4 Q. Okay. Also, State's Exhibit No. 5, does
5 it also show the same Fuddrucker's building from a
6 different perspective?

7 A. Yes, sir.

8 Q. Does it also show the apartment complex
9 known as the Lakehurst apartments?

10 A. Yes, sir, it does.

11 Q. Have you patrolled through those
12 Lakehurst apartments before, made calls there?

13 A. Yes, sir.

14 Q. You're familiar with what it is and
15 where they're located?

16 A. Yes, sir, I am.

17 Q. Is this area specifically in Harris
18 County, Texas?

19 A. Yes, sir, it is.

20 MR. NOLL: Your Honor, I tender to
21 counsel for State's Exhibits 5 and 6, and move the
22 same into evidence at this time.

23 MR. McCULLOUGH: No objection, Your
24 Honor.

25 THE COURT: They'll be admitted.

1 BY MR. NOLL:

2 Q. Officer, if you could, using my pen,
3 would you point to the area on State's Exhibit
4 No. 6 where you found the body of the young woman
5 that you described. If you can, do it so that our
6 thirteenth juror down here could see.

7 MR. NOLL: Your Honor, could I ask him
8 to step down? I know it's difficult to see.

9 BY MR. NOLL:

10 Q. Officer, if you could step down here.

11 A. (Witness complies.)

12 Q. If you could for the members of the jury,
13 point to the area on the exhibit where you found
14 the little girl's body.

15 A. Approximately in this area right here.

16 Q. Okay. And that's on the wooded kind of
17 area between the Fuddrucker's building and the
18 apartment complex behind it?

19 A. Yes, sir.

20 Q. Could you describe to the members of the
21 jury the condition of the young woman as you found
22 her?

23 A. She was laying face down in a direction
24 which would be -- her head faced west and her feet
25 were pointed east. She was breathing, I could see

1 her chest rising up and down, and I noticed there
2 was blood around her neck and on the ground below
3 her.

4 Q. Do you recall how she was dressed?

5 A. No, sir, I don't. I believe it was some
6 light colored clothing but I don't know if it was
7 a dress or pantsuit.

8 Q. Did you have a lantern or flashlight
9 with you out there that night?

10 A. Yes, sir, I did.

11 Q. Were there any streetlights that
12 illuminated the area where you found the little
13 girl's body?

14 A. Yes, sir.

15 Q. So, it was pretty dark?

16 A. Yes, sir, it was.

17 Q. Was the lot grown up grass or was the
18 grass low or what was it like?

19 A. The pathway itself was beaten down. The
20 surrounding area is about two or three feet high,
21 of weeds.

22 Q. Are there any buildings in that little
23 area right there?

24 A. Yes, sir, on the south side of that
25 beaten path, there's a small little house.

1 Q. Is it a house that's owned or is it an
2 empty house?

3 A. Didn't appear to be, no, sir.

4 Q. Did you see anybody else out there on
5 that path, as you continued to look?

6 A. Yes, sir, I did.

7 Q. Who did you see?

8 A. A small boy, his race was black. He was
9 laying also face down and his head was pointing
10 toward a northeast direction, his feet towards a
11 southwest direction.

12 Q. Was he alive or dead?

13 A. In my opinion, he was dead.

14 Q. Did you attempt to revive the child or
15 shake him or do anything --

16 A. Yes, sir, I did.

17 Q. Could you tell if he was breathing or
18 not?

19 A. He was not breathing.

20 Q. Did you notice any wounds on him that
21 you saw?

22 A. Yes, sir, I did.

23 Q. Where were those wounds and could you
24 describe them for the members of the jury?

25 A. The best recollection I have is that

1 there was a stab wound to his shoulder and to the
2 back of his head.

3 Q. What did you do after you found those
4 children?

5 A. I immediately notified our dispatcher to
6 have an ambulance and possibly Life Flighting them
7 out.

8 Q. And then what happened?

9 A. I called for backup, additional officers
10 arrived. We cornered off the scene for protective
11 measures and my partner went out and looked for
12 any suspects that might be in the area.

13 Q. Were you able to find anybody in the
14 area, any person?

15 A. No, sir.

16 Q. Did you look real good? Did y'all check
17 that field and the area around it for any other
18 suspects that might be in the area?

19 A. Personally, I stayed with the children.

20 Q. Did other officers, though, conduct an
21 inspection or search the area?

22 A. Yes, they did.

23 Q. In fact, did they bring out a helicopter
24 and look around there?

25 A. Yes, sir, they did.

1 Q. Were any suspects immediately arrested
2 or apprehended?

3 A. Not to my knowledge.

4 Q. Was Sergeant D. Hamilton one of the
5 persons who responded to assist you in this case?

6 A. Yes, sir, he did.

7 Q. Is Sergeant Hamilton one of your
8 supervisors or how does that work out there?

9 A. One of the supervisors there at the
10 station, yes, sir.

11 Q. Did you see Sergeant Hamilton when he
12 arrived at the scene?

13 A. Not immediately, no.

14 Q. Did you talk to Sergeant Hamilton any
15 out there?

16 A. Yes, sir.

17 Q. Did you tell him what you had found?

18 A. Yes, sir.

19 Q. Did you direct him to the area where you
20 had located the young woman?

21 A. I didn't. I was staying with the little
22 boy.

23 Q. After you found the little boy, I
24 believe you testified he was lying face down; is
25 that correct?

1 A. Yes, sir.

2 Q. Did anybody turn him over?

3 A. I did.

4 Q. You turned him over. At that point is
5 when you checked for any life signs; is that
6 correct?

7 A. Yes, sir.

8 MR. NOLL: May I approach the witness,
9 Your Honor?

10 THE COURT: You may.

11 (State's Exhibit No. 7 was
12 marked for identification.)

13 BY MR. NOLL:

14 Q. Officer Cook, let me show you what's
15 been marked for identification as State's Exhibit
16 No. 7. I'm going to ask you if you recognize this
17 photograph.

18 A. Yes, sir, I do.

19 Q. Does this photograph accurately depict
20 the little boy when you found him on the field on
21 September 26th, 1988?

22 A. Other than being turned over, that's
23 exactly how I found him.

24 Q. Was his shirt pulled up when you found
25 him?

1 A. No, sir.

2 Q. Someone else pulled it up?

3 A. Yes, sir, I did.

4 Q. That was to reflect his wounds?

5 A. Yes, sir.

6 MR. NOLL: Your Honor, at this time I
7 tender State's Exhibit No. 7 to counsel for the
8 defendant and move the same into evidence at this
9 time.

-10 MR. McCULLOUGH: Would object to State's
-11 Exhibit 7 on the grounds that it is inflammatory.
12 It can only inflame the minds of the jury. It's
13 cumulative evidence and we would object to its
14 admission.

-15 THE COURT: Be overruled. State's
16 Exhibit 7 will be admitted.

17 BY MR. NOLL:

18 Q. Officer, did you notice on the little
19 boy whether or not he appeared to have been
20 involved in a struggle of any kind?

21 A. No, sir, I couldn't tell.

22 (State's Exhibit Nos. 8 and 9
23 were marked for identification.)

24 BY MR. NOLL:

25 Q. Did you also notice, in addition to the

1 injuries depicted in the previous exhibit to the
2 front of the child, any injuries on his back side?

3 A. Yes, sir.

4 Q. Let me show you what's been marked as
5 State's Exhibit No. 8. Does this photograph
6 depict the injuries to the back of the child as
7 you observed them that night?

8 A. Yes, sir.

9 Q. Also let me show you State's Exhibit No.
10 9. Does this depict the child's feet as you
11 observed them that night?

12 A. Yes, sir.

13 MR. NOLL: Your Honor, we would offer,
14 having tendered same to counsel for the defendant,
15 State's Exhibit 8 and 9.

- 16 MR. McCULLOUGH: We would object to
17 State's Exhibit 8 for the grounds previously
18 stated in that it can only serve to inflame the
19 minds of the jury and does not add anything to the
20 testimony the officer's already given.

21 THE COURT: State's Exhibit 8 and 9 will
22 be admitted.

23 BY MR. NOLL:

24 Q. Officer, does State's Exhibit No. 7
25 accurately depict the injuries to the front of the

1 child that you observed on him on September 26th,
2 when you found the child in that field?

3 A. Yes, sir, it does.

4 Q. After you examined the child's back,
5 could you describe to the jury the nature of the
6 wound depicted in State's Exhibit No. 8, which is
7 the shoulder wound?

8 A. It appeared to be an exit wound.

9 Q. In State's Exhibit No. 9, the child's
10 foot appears to be out of his sandal. Was it like
11 that when you found it?

12 A. Yes, sir, I believe it was.

13 Q. Certainly you didn't remove the child's
14 foot from his sandal, did you?

15 A. No, sir, I did not.

16 Q. Do you know what the items are which are
17 wrapped around the child's leg, apparently?

18 A. I'd have to see the picture again, sir.

19 Q. Do you recall them being there at the
20 scene when you were there?

21 A. Appears to be some sort of plastic bag
22 wrapped around his leg.

23 Q. Is that the same as it was when you
24 found the child that evening?

25 A. Yes, sir, it was.

1 Q. Following the arrival of Sergeant
2 Hamilton, were you involved any further in the
3 ongoing investigation as to who committed these
4 offenses, beyond just the finding of the children?

5 A. No, sir, I was not.

6 MR. NOLL: We pass the witness.

7 THE COURT: Mr. McCullough.

8
9 CROSS EXAMINATION

10
11 BY MR. McCULLOUGH:

12 Q. Did you find or observe anything at the
13 scene that would give you any indication at all of
14 the time that these attacks happened?

15 A. No, sir.

16 Q. And obviously you didn't see any
17 suspects in the area?

18 A. That's correct, sir.

19 MR. McCULLOUGH: Pass the witness.

20 MR. NOLL: Nothing further, Your Honor.

21 THE COURT: May this witness be excused?

22 MR. NOLL: Yes, Your Honor.

23 THE COURT: Thank you, Officer Cook, you
24 may go about your duties.

25 Call your next, counsel.

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MR. NOLL: Sergeant D. Hamilton, Your Honor.

THE COURT: You may proceed, Mr. Noll.

MR. NOLL: Thank you, Your Honor.

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D. HAMILTON,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Sir, would you please state your name
for the members of the jury.

A. Don Hamilton.

Q. How are you employed?

A. City of Houston Police Department.

Q. You are a sergeant with the police
department; is that correct?

A. Yes, sir.

Q. How long have you been with the Houston
Police Department, Sergeant Hamilton?

A. Approximately six and a half years.

Q. Are you assigned to a particular unit or
division within the police department?

A. Yes, sir, patrol division.

Q. And are you assigned to a particular
part of our town?

A. Yes, sir, West Houston.

Q. Does your beat or your area of

1 responsibility include the area of Kirkwood Street
2 and Westheimer Road, including the Lakehurst
3 apartments and the Fuddrucker's hamburger joint
4 right there on Kirkwood?

5 A. Yes, sir, it does.

6 Q. Back on September 26th of 1988, were you
7 working in the same area?

8 A. Yes, sir, I was.

9 Q. That evening, did you have occasion to
10 respond to the area behind the Fuddrucker's
11 hamburger store on South Kirkwood?

12 A. Yes, sir, I did.

13 Q. What caused you to go to that location?

14 A. Well, one of our units, I believe it was
15 20-George-40, called out on a person down; and
16 shortly after calling out, they requested an
17 ambulance, they advised our dispatcher that they
18 had a female that had been assaulted; and then
19 roughly 30 seconds after calling out, they said
20 they had found a second victim and they advised
21 over the radio that there was no pulse or
22 respiration and they requested Life Flight. So, I
23 checked by with them.

24 Q. When you went to that location, what
25 kind of area did you find, like, immediately

1 behind the Fuddrucker's?

2 A. There was an unlit -- I'd call it a
3 field. It's a large area. It's high with weeds
4 and grass, open field.

5 THE COURT: Officer Hamilton, keep your
6 voice up, please.

7 BY MR. NOLL:

8 Q. Our acoustics are not very good. If you
9 can, keep your voice up so the gentleman all the
10 way in the back chair can hear, okay?

11 A. Okay.

12 Q. After you entered the field, did you see
13 any lights? Were there any streetlights or any
14 other kind of artificial lighting out there?

15 A. No, sir, there was no artificial
16 lighting; but you could see from the moon how to
17 walk through there and get a general idea what was
18 out there.

19 Q. Did you have a flashlight with you?

20 A. Yes, sir, I did.

21 Q. After you entered the field, were there
22 other officers that you found in there already?

23 A. Yes, sir, there was.

24 Q. Did they direct you to a young lady that
25 was there in the field?

1 A. Yes, sir, as I was approaching Officer
2 Baker and Officer Cook, I walked past a female
3 that was laying in the field.

4 Q. After you -- when you got there, could
5 you describe to the jury the condition of the
6 young woman that you saw in that field? Was she
7 laying face down or was she turned over or what?

8 A. Yes, sir, as I was saying, as I was
9 approaching Officer Baker and Cook, the female
10 that was laying in the path was laying face down.
11 I noticed she was breathing, from just viewing her,
12 and I noticed that her face was directly on the
13 ground at an angle that put her nose and her mouth
14 directly in contact with the ground.

15 Q. Do you remember how she was dressed?

16 A. If I recall correctly, it was whitish or
17 creamish colored shorts and whitish or creamish
18 colored shirt.

19 Q. Did you notice if there was anything
20 unusual about her shorts where she was wearing
21 them and perhaps her panties where she was wearing
22 them?

23 A. Yes, sir. Well, after I spoke with her,
24 I could see she was having a difficult time
25 breathing and I asked her --

1 MR. McCULLOUGH: Object to any
2 conversations. It would be hearsay, Your Honor.

3 THE COURT: That will be overruled.

4 BY MR. NOLL:

5 Q. Let me go into another area. Did you
6 actually have a chance to observe the young lady's
7 injuries?

8 A. Yes, sir, I did.

9 Q. Did they appear serious to you?

10 A. Yes, sir, they was.

11 Q. Could you describe to the jury the
12 nature of her injuries?

13 A. She had what appeared to me to be a stab
14 wound on her neck and a bloodstain on the upper
15 part of her chest that appeared to be bleeding
16 pretty seriously.

17 Q. Was the wound in the neck bleeding?

18 A. Yes, sir, it was.

19 Q. Was there a puddle of blood on the
20 ground where she was lying?

21 A. Yes, sir, there was.

22 Q. Was she able to speak at all?

23 A. Yes, sir, she was.

24 Q. Was she speaking clearly or softly?

25 A. At first she was speaking as clearly as

1 I am to you now but with a little difficulty.

2 Q. Have you seen many cutting or stabbing
3 injuries in the past?

4 A. Yes, sir, I have.

5 Q. In observing the injuries to this young
6 lady's neck and chest, did you believe that she
7 was seriously injured?

8 A. Yes, sir, I did.

9 Q. And observing the blood that was on the
10 ground around her, did it appear to you that the
11 injury had been a relatively recent injury in the
12 sense that it had probably occurred within the
13 hour or so?

14 A. Yes, sir, it was, because the wound on
15 the neck was still bleeding rather profusely.

16 Q. Let's go back then. You said you turned
17 her over and spoke with the girl; is that right?

18 A. Yes, sir.

19 Q. At that point, did you notice anything
20 unusual about her clothing?

21 A. Yes, sir, I did.

22 Q. What was that?

23 A. Well, as I looked over to see what
24 exactly the wounds were and see if she had any
25 additional injuries, I noticed her shorts were on

1 her hips. They were pulled down from the normal
2 position which someone would have their shorts to
3 down on the hips. Her underclothes also had been
4 pulled down and this exposed roughly two-thirds of
5 her pubic area.

6 Q. When you turned the young lady over, did
7 she say anything immediately to you?

8 A. Not initially, no, sir.

9 Q. Did you say something to her?

10 A. Yes, sir.

11 Q. What did you say to her?

12 A. I asked her, after discovering the
13 condition of her clothes, "What happened?"

14 Q. What did she say?

15 MR. McCULLOUGH: Again, Your Honor, we
16 object to this conversation as being hearsay.

17 THE COURT: The Court's going to
18 overrule this but instruct the jury. Members of
19 the jury, as you hear this, do not consider what
20 was said for the truth of it therein but merely
21 that the comments were made to this officer and
22 led him to do whatever it was he did in the
23 context of the situation.

24 What I'm saying is this: Whatever was
25 said to him, do not consider that the truth but

1 merely listen to it and let it aid you, if it does,
2 in showing you what this officer heard and what he
3 did as a result of that conversation.

4 You may proceed, Mr. Noll.

5 MR. NOLL: Thank you, Your Honor.

6 BY MR. NOLL:

7 Q. Do you remember what she said to you in
8 response to your question?

9 A. Yes, sir, I asked her, "What happened?"

10 She replied, "He tried to rape me."

11 Q. What did you say to her then?

12 A. I asked her, "Who tried to rape you?"

13 She stated, "Preston."

14 Q. Did she say anything else to you?

15 A. Yes, sir.

16 Q. What was that?

17 A. I asked her other questions. I asked
18 her if she knew Preston. She stated to me, "Yes."
19 I asked her if she knew Preston's last name.

20 Q. Did she give you a last name?

21 A. She stated something but --

22 MR. McCULLOUGH: Excuse me. For the
23 record, I think it was understood that my
24 objection went to the whole conversation between
25 this officer and the girl.

1 THE COURT: Let the record reflect that
2 Mr. McCullough has objected to all the
3 conversation between the victim and Officer
4 Hamilton.

5 You may proceed, Mr. Noll.

6 BY MR. NOLL:

7 Q. I'm sorry. And she said something to
8 you about his last name?

9 A. Yes, sir, she stated something. I could
10 not understand it. It was more of a mumble.

11 Q. As you talked with her, did her voice
12 become weaker and weaker?

13 A. Yes, sir, as time passed, it did become
14 weaker, almost to a whisper towards then.

15 Q. Did you have to bend down to hear her
16 talk?

17 A. Yes, sir, I did.

18 Q. Was she able to identify the young boy
19 that you found on the path?

20 A. Yes, sir, she did. She told me it was
21 her cousin.

22 Q. Okay. Was she ever able to give you the
23 last name of the person who had assaulted her?

24 A. No, sir.

25 Q. Did she speak anymore after that?

1 these items of clothing.

2 A. Yes, sir, these are the shorts and shoes
3 the complainant was wearing the night I saw her.

4 Q. Were the pants in the same condition the
5 night that you found her out there?

6 A. Yes, sir, they were.

7 Q. And the shoes were the same?

8 A. Yes, sir.

9 Q. In the same condition they are today?

10 A. Yes, sir, they were.

11 MR. NOLL: Your Honor, for the record
12 I'm tendering to counsel for the defendant,
13 State's Exhibits No. 10, 11, and 12, and move the
14 same into evidence at this time.

15 MR. McCULLOUGH: May I take the officer
16 on voir dire, Your Honor?

17 THE COURT: You may.

18

19 VOIR DIRE EXAMINATION

20

21 BY MR. McCULLOUGH:

22 Q. Officer, with regard to this pair of
23 shorts that's been marked as State's Exhibit 10,
24 did you make any identifying marks on these --
25 this item of clothing out there that night in the

1 dark?

2 A. No, sir, I didn't.

3 Q. Whatever clothing the girl was wearing
4 when you found her were transported with her to
5 the hospital?

6 A. Yes, sir.

7 Q. She wasn't undressed in the field?

8 A. No, sir.

9 Q. Well, did you go down to the hospital
10 and take the clothing off the body or anything
11 like that?

12 A. One of our crime scene units later went
13 to the hospital.

14 Q. But you did not?

15 A. No, sir, I did not.

16 Q. So, the only thing you know about these
17 shorts is that they're white and maybe
18 approximately the same size as the ones you saw
19 out there in the field?

20 A. Yes, sir, they looked similar to the
21 ones the victim was wearing the night I met her.

22 Q. The same could be said of these shoes?

23 A. Yes, sir.

24 MR. McCULLOUGH: I would object to their
25 admission, Your Honor. That goes to State's

1 Exhibit 10 and 11 and 12.

2 THE COURT: That will be overruled.
3 They will be admitted.

4 MR. NOLL: May I proceed, Your Honor?

5 THE COURT: You may.

6

7 DIRECT EXAMINATION CONTINUED

8

9 BY MR. NOLL:

10 Q. Sergeant Hamilton, at some time during
11 the evening, did some homicide investigators
12 respond to the location where you were?

13 A. Yes, sir, they did.

14 Q. Do you recall who they were?

15 A. Detective Gafford and Bloyd.

16 Q. Okay. Did you relate your findings,
17 especially what the little girl had said to you,
18 concerning the person who had assaulted her?

19 A. Yes, sir, I did.

20 Q. Did you participate any further in the
21 investigation as to who might have done this
22 offense?

23 A. Yes, sir, I did.

24 Q. And what did you do in furtherance of
25 the investigation?

1 A. Well, after securing the scene, I
2 believe it was Detective Gafford obtained a list
3 of the apartment complex's residents that was
4 nearby the offense. He examined the list and I
5 believe he found the name of a Preston Hughes on
6 the apartment list itself, and I later went over
7 to that apartment -- I believe it was Apartment
8 138-A -- to see if anyone lived there and to talk
9 with anyone, if they were there.

10 Q. Is that the Lakehurst apartments?

11 A. Yes, sir, it is.

12 Q. In the field area out there, did you
13 find a path on which you found the young girl and
14 the young boy was a fairly well-worn path?

15 A. Yes, sir, it was.

16 Q. And if I can show you State's Exhibit
17 No. 5, an aerial view of that area, could you --

18 MR. NOLL: I'm going to ask, Your Honor,
19 that he be able to step down so the jury can see.
20 BY MR. NOLL:

21 Q. Step down here a little bit.

22 A. (Witness complies.)

23 Q. If you could take my pen, assume this
24 photograph -- do you recognize the photograph?

25 A. Yes, sir, I do.

1 Q. What is this a photograph of?

2 A. General area of the field that I spoke
3 of -- this is the field that I spoke of earlier.
4 It's going to be South Kirkwood. To the south
5 here is going to be Westheimer.

6 Q. Is this tin roof area the Fuddrucker's
7 store we talked about, the hamburger place?

8 A. Yes, sir, it is.

9 Q. Could you point to the area of where the
10 pathway is where you found the children?

11 A. The trees are going to cover it pretty
12 much, but going to be an area from the rear
13 parking lot of the Fuddrucker's that led in the
14 area, this field here to this wooden fence where
15 there was some planks missing and you could enter
16 either apartment complex from this field.

17 Q. Do you know whether or not people use
18 this pathway from the Lakehurst apartments here on
19 this side to walk through that pathway?

20 A. Yes, sir, from the condition of the
21 trail itself, you know, you could see the grass
22 over here. But the trails were just mud from
23 people that trampled it fairly heavy.

24 Q. Well worn. Was there any evidence this
25 fence had been recently repaired or had there been

1 boards knocked down?

2 A. Yes, sir, there were several planks
3 missing where people simply stoop down and walk
4 through the fences.

5 Q. Did you personally later that evening
6 accompany Sergeants Gafford and Bloyd to the
7 residence of the defendant, Preston Hughes, III?

8 A. Yes, sir, I did.

9 Q. On this particular picture can you see
10 the location of Preston Hughes' apartment or can
11 you tell?

12 A. I'm really not familiar with the layout
13 of the apartment complex out there to be for sure.

14 Q. The distance that would be from, say,
15 this corner where the entrance to the pathway is
16 to, say, this building where the red truck is
17 parked on the photograph in the front, how far is
18 that? Can you guesstimate?

19 A. I'm not too good at distances. I'd say
20 200, 300 feet.

21 Q. Could you throw a baseball that far?

22 A. Yes.

23 Q. Thank you. Have a seat.

24 A. (Witness complies.)

25 Q. Once you got to Mr. Hughes' apartment

1 that evening, did you actually go up to the
2 apartment or did you stay on the ground?

3 A. I accompanied Detective Gafford and
4 Bloyd up to the apartment.

5 Q. Remember to keep your voice up so
6 everybody can hear. The apartment that Preston
7 Hughes, III, lived in, do you recall if it was a
8 first floor unit or second floor unit?

9 A. It was a second floor unit.

10 Q. How does one get up to that second floor
11 unit? Is there a metal landing or concrete steps?

12 A. There was metal stairs, maybe 15, 20
13 stairs up to the second floor balcony where his
14 apartment was.

15 Q. Is there another apartment directly
16 across on the second floor from Mr. Hughes'
17 apartment?

18 A. Yes, sir, there was.

19 Q. Do you recall about what time it was
20 when you finally got to Mr. Hughes' apartment that
21 evening?

22 A. I would say it was after 12:00, maybe
23 12:30.

24 Q. In the early morning hours?

25 A. Very early morning, yes, sir.

1 Q. Who was, at this point, the primary
2 officer investigating the offense?

3 A. It was the homicide sergeants, Bloyd and
4 Gafford.

5 Q. And do you recall who it was who
6 actually knocked on the door?

7 A. Detective Gafford.

8 Q. Okay. What happened after detective
9 Gafford knocked on the door?

10 A. Well, he knocked, like I say, maybe five
11 minutes, and there was no answer at the door; and
12 he contacted one of the security guards for the
13 complex to see if they could go back to the office
14 and see if there's a phone to the apartments so
15 they could call, see if someone would answer.
16 That turned out -- I believe it turned out they
17 had no phone in the apartment and we knocked a
18 couple more times and he knocked a couple more
19 times. As we were about to walk down the stairs,
20 the door opened suddenly.

21 Q. You said "we." Are you referring to
22 yourself --

23 A. Myself, Sergeant Gafford and Bloyd.

24 Q. Sergeant Bloyd?

25 A. Bloyd, yes, sir.

1 Q. What happened after the door suddenly
2 opened?

3 A. Sergeant Gafford asked the person that
4 answered the door what his name was.

5 Q. Okay. Without -- remember you're not
6 supposed to say what other people say except the
7 defendant. We'll try to work around that, if you
8 can. After the door was opened, did the defendant
9 identify himself as Preston Hughes, III?

10 A. Yes, sir, he did.

11 Q. Do you see that person in the courtroom
12 today?

13 A. Yes, sir, I do.

14 Q. Would you point to him and describe how
15 he's dressed?

16 A. He's a black male sitting between the
17 two white males, has on a blue blazer, purple tie,
18 whitish colored shirt.

19 MR. NOLL: Your Honor, may the record
20 reflect the witness has pointed to and identified
21 the defendant, Preston Hughes, III?

22 THE COURT: Record will so reflect.

23 BY MR. NOLL:

24 Q. How was Mr. Hughes dressed that evening,
25 if you recall.

1 A. He had on a pair of red boxer-type
2 shorts.

3 Q. Did he say anything after he opened the
4 door besides his name?

5 A. No, sir.

6 Q. Okay. Did you actually enter his
7 apartment?

8 A. Yes, sir, he invited us in.

9 Q. Who all entered his apartment?

10 A. Myself, Gafford and Bloyd.

11 Q. Once inside the apartment, did you have
12 any conversations with the defendant, Preston
13 Hughes, III?

14 A. No, sir, I didn't.

15 Q. Did Sergeant Bloyd?

16 A. Yes, sir, he did.

17 Q. Okay. Did Sergeant Gafford?

18 A. He was standing next to Sergeant Bloyd.

19 Q. Okay. At some point, did Gafford or
20 Bloyd ask the defendant to accompany them downtown
21 to answer questions concerning this case?

22 A. Yes, sir, they did.

23 Q. Did the defendant agree to go downtown?

24 A. Yes, sir, he did.

25 Q. Did anyone place him under arrest at

1 that point?

2 A. No, sir, he was not under arrest.

3 Q. Did he indicate a voluntariness or
4 willingness to go downtown?

5 A. Yes, sir, he did.

6 Q. Prior to his going downtown, was he
7 given the opportunity to change his clothing?

8 A. Yes, sir, he was.

9 Q. Did he do that?

10 A. Yes, sir, he did.

11 Q. Where did he change his clothes?

12 A. In his bedroom.

13 Q. Did you accompany him into his bedroom?

14 A. Yes, sir, I did.

15 Q. Why do you do that?

16 A. Primarily for our safety. As our rule,
17 when we respond to any call, when a person starts
18 walking around, we normally will ask them to stay
19 in the room with us. If they proceed to another
20 room, we'll accompany them, primarily for our
21 safety.

22 Q. Okay. Did you search his apartment at
23 that point?

24 A. No, sir, I didn't.

25 Q. Did Sergeants Bloyd or Gaffora search

1 his apartment?

2 A. No, sir.

3 Q. Could you describe the apartment to the
4 members of the jury? Is it large or small?

5 A. It's an average, one bedroom apartment,
6 had a moderate size living room, small bathroom,
7 medium size bedroom, with a hallway between the
8 bedroom and kitchen and living room.

9 Q. Sergeant Hamilton, at some point did the
10 defendant change his clothes into other attire?

11 A. Yes, sir, he did.

12 Q. What happened after he changed his
13 clothes?

14 A. Well, we all left the apartment; and one
15 of our units transported the defendant downtown.

16 Q. Was the apartment locked as you left it?

17 A. Yes, sir. We were first to leave.
18 Defendant locked it, yes, sir.

19 Q. When you say "we," you mean Sergeants
20 Bloyd and Gafford?

21 A. Myself, Bloyd, and Gafford, yes, sir.

22 Q. Who had the key to the apartment?

23 A. The defendant.

24 Q. Did he lock the door himself?

25 A. Yes, sir, he did.

1 Q. While y'all were in the apartment, were
2 there other officers who remained downstairs in
3 the area of the apartment?

4 A. Yes, sir. They were on the ground in
5 the courtyard.

6 Q. And who were those officers?

7 A. It was a security officer. I'm not sure
8 what his name was. And Officer Vicente and, I
9 believe, an Officer Dobbins.

10 Q. What happened after y'all left the
11 defendant's apartment?

12 A. I proceeded downtown to prepare my
13 supplement to the report. Officer Vicente
14 transported, as I said earlier, the defendant
15 downtown. The other units returned to service to
16 additional calls.

17 Q. When you say "downtown," you're
18 referring to the police building at 61 Riesner?

19 A. Yes, sir.

20 Q. Do you know if Sergeants Gafford and
21 Bloyd remained at the scene, or did they go
22 downtown also?

23 A. I'm not sure what they did after they
24 left the scene.

25 Q. Did you become involved any further in

1 the investigation of this offense after you
2 completed a report on what you had done in
3 relationship to the defendant?

4 A. No, sir, I turned in my report at the
5 police station; and I returned to service, also.

6 MR. NOLL: Pass the witness, Your Honor.

7 THE COURT: Mr. McCullough.

8
9 CROSS EXAMINATION

10
11 BY MR. McCULLOUGH:

12 Q. The field behind that Fuddrucker's you
13 referred to does not have any guard lights or
14 anything like that that illuminate it?

15 A. No, sir, there's no lights out there
16 whatsoever.

17 Q. No artificial lighting out there at all?

18 A. No, sir.

19 Q. I'm trying to get a grip on how dark it
20 was out there. Did you have to use flashlights in
21 your having gone out there, or was there enough
22 light to see what you've described without them?

23 A. To see the wounds on the victim, I need
24 my flashlight. As I said, the moon was out that
25 night; and there was enough light for you to walk

1 through the path and to see general things out in
2 the field. You couldn't see anything in detail
3 without additional lighting.

4 Q. Could you make out colors of clothing
5 and stuff like that without the use of a
6 flashlight?

7 A. Not without a flashlight, no, sir.

8 Q. Well, were you dressed like you are now?

9 A. Yes, sir, I was.

10 Q. For the record, that's in a standard
11 Houston Police uniform, sergeant's chevrons, gold
12 badge?

13 A. Yes, sir.

14 Q. So, you obviously looked like a cop on
15 that occasion?

16 A. Yes, sir.

17 Q. Did you introduce yourself to the victim
18 as a police officer?

19 A. Yes, sir.

20 Q. I think you said you turned her over?

21 A. Yes, sir, I did.

22 Q. You touched her, at least to that degree.
23 Well, was there a great deal of blood?

24 A. Yes, sir, there was.

25 Q. Did you get any on you in turning her

1 over and talking to her?

2 A. Well, the majority of her blood was on
3 her head and to the side of her neck. When I
4 rolled her off, her hair was in her face and
5 matted and pretty soaked with blood. Yes, sir, I
6 got some on me in the process of removing the hair
7 out of her face.

8 Q. Did you also go to the place where the
9 little boy was laying?

10 A. Yes, sir, I did.

11 Q. Did you turn him over or make any
12 investigation with regard to that?

13 A. No, sir, I didn't do anything with the
14 little boy.

15 Q. When you went up to the apartment where
16 you say you encountered Mr. Hughes, how did he act?
17 Did he act very nervous or excited?

18 A. No, sir. He was relatively calm.

19 Q. Was he polite?

20 A. Yes, sir.

21 Q. How long -- once again, who all was out
22 there on the -- outside his door? How many of you?

23 A. Myself, Sergeant Gafford, and Bloyd.

24 Q. Was there the manager, security guard or
25 anybody else that trailed along with you?

1 A. Just us three that approached the door.

2 Q. Did y'all all go into the apartment?

3 A. Yes, sir, once he invited us in.

4 Q. Well, did you see any blood, knives or
5 spears or clothing or anything while you were in
6 the apartment?

7 A. I really didn't look around. I was
8 basically just listening to the conversation.

9 Q. Now, officer, how long have you been a
10 police officer?

11 A. Six and a half years.

12 Q. And you just come from a field where two
13 children had been killed with a knife or spear or
14 sword or something that -- been stabbed or cut in
15 some manner?

16 A. Yes, sir.

17 Q. You are now at the apartment of someone
18 who might turn out to be a suspect, right?

19 A. Yes, sir.

20 Q. And you go inside the apartment.

21 A. Yes, sir.

22 Q. And you don't look around for any
23 instrument that might have caused that death, even
24 casually?

25 A. No, sir.

1 Q. Well, that wouldn't seem like very good
2 police work.

3 A. Well, I had no right to search, look
4 around in his apartment.

5 Q. But your eyes can't help seeing what
6 they see if you're in the apartment, can they?

7 A. During the entire time that we were
8 there, Mr. Hughes and Sergeant Gafford and Bloyd
9 were in the living room, I stood right behind them
10 in the hallway. The apartment was dark; and if I
11 wanted to look around, I couldn't see anything
12 anyway.

13 Q. It was dark in the apartment? Anybody
14 turn on any lights?

15 A. When he went to get dressed, yes, sir,
16 he turned on a light.

17 Q. Y'all went through -- what would it be,
18 the living area, living room and into a bedroom?
19 Did you go through any other rooms to get in there?

20 A. It's just a hallway.

21 Q. And you're telling me that the living
22 room area where y'all were talking was in darkness
23 the whole time you were there?

24 A. There's a hallway outside the door, the
25 breezeway, whatever you would describe that as,

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1 has a light. The door was open the entire time.
2 We stepped right out of the breezeway to the
3 entrance of the living room. We were all standing
4 there pretty much together.

5 Q. Was the bedroom dark when you went in
6 there? Did he have to turn on the light to change
7 clothes?

8 A. Yes, sir, he turned on the light.

9 Q. Did all three of you go into the bedroom
10 with him or just you?

11 A. No, I followed him in there.

12 Q. The other two detectives stayed in the
13 front room?

14 A. Yes, sir.

15 Q. In the dark?

16 A. Yes, sir.

17 Q. Was the TV or stereo or radio or
18 anything on?

19 A. I don't recall.

20 Q. Was there anything else in the apartment?

21 A. No, sir.

22 Q. Did anybody go check all the rest of the
23 rooms to make sure nobody else was there?

24 A. No, sir.

25 Q. Well, you're telling us that you went

1 with Mr. Hughes to change clothes for your own
2 safety, that means you don't want to be having
3 someone go in another room and not knowing what
4 they're doing when you're investigating?

5 A. Yes, sir.

6 Q. Wouldn't it make sense you would want to
7 go in another room and make sure nobody else was
8 in there with a gun or bazooka or something?

9 A. I don't understand what you're saying.

10 Q. If you were protecting yourself by going
11 with Mr. Hughes to change clothes, wouldn't it
12 make sense to check the other rooms to make sure
13 nobody else was there just as dangerous?

14 A. Like I said, when the other sergeants
15 interviewed the defendant, they asked him if
16 anyone else was there. He indicated no one else
17 was there. It was quiet, and I had no reason to
18 believe anyone else was there at the time.

19 Q. Don't get me wrong, officer. Nobody
20 here believes you did anything outside of what a
21 good police officer would do. It seems like you
22 would have taken a look around the rest of the
23 house while you were there. But you say you
24 didn't.

25 A. No, sir, I didn't.

3 Q. So, Mr. Hughes was in there, and
4 whoever else might have been there would have been
5 quiet, y'all wouldn't have known it, that they
6 were there?

7 A. No, sir. As I said, when he went to
8 change -- this is a relatively small apartment.
9 As we walked down the hallway, you could look in
10 the bathroom, see there was no one there. As I
11 watched him get dressed, I could see around the
12 bedroom, and there was clearly no one there.

13 Q. But you didn't go into the kitchen area
14 or dining area?

15 A. No, sir. You would have to see the
16 configuration of the apartment to understand it.
17 When you walk right in, you could see straight to
18 the end of the kitchen. Directly off to your left,
19 you can see the living room. There's a hallway
20 and there's a bathroom right off the hallway and
21 at the end is a bedroom. It would be impossible.

22 Q. As a matter of fact, you did at least
23 have a look around the entire apartment in the
24 manner you just described?

25 A. Yes, sir.

1 Q. Were you present when Mr. Hughes was
2 placed in the patrol car?

3 A. Yes, sir, I was.

4 Q. That's a standard blue and white Houston
5 Police Department patrol car?

6 A. Yes, sir, standard patrol vehicle.

7 Q. Got the wire --

8 A. Plastic safety glass, headlights,
9 overhead lights, yes, sir.

10 Q. Separating the front seat from the back?

11 A. Yes, sir.

12 Q. Doesn't have any door handles on the
13 inside of the back doors?

14 A. No, sir.

15 Q. So, once you're put in there, you can
16 only get out if somebody on the outside opens the
17 door and lets you out?

18 A. Yes, sir, that's correct.

19 Q. How many officers were in that patrol
20 car?

21 A. Officer Vicente was the only officer.

22 Q. Well, did you take -- did you see
23 anything interesting in the apartment? Anything
24 catch your eye?

25 A. No, sir.

1 Q. Did you take anything from the apartment?

2 A. No, sir.

3 Q. Any pieces of paper, anything like that?

4 A. No, sir.

5 Q. Did any of the other officers?

6 A. No, sir.

7 MR. McCULLOUGH: Pass the witness.

8 THE COURT: Mr. Noll?

9 MR. NOLL: Nothing further, Your Honor.

10 THE COURT: May this officer be excused?

11 MR. NOLL: Ask he remain out in the hall,

12 Your Honor.

13 THE COURT: Call your next.

14 MR. NOLL: Sergeant Dennis Gafford, Your

15 Honor.

16 (Witness sworn.)

17 THE COURT: You may proceed, Mr. Noll.

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DENNIS GAFFORD,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Would you please state your name for
members of the jury.

A. Sergeant Dennis J. Gafford.

THE COURT: Sergeant Gafford, that's not
working. I want you to keep your voice up real
loud. We've got problems with the compressor and
air conditioning vents. So, make a conscious
effort to keep your voice up, please.

You may proceed.

BY MR. NOLL:

Q. Let me point out also, officer, there's
another vent up here. If you could, make sure
this gentleman all the way back in the back can
hear you.

A. Okay.

Q. Sergeant Gafford, you're with the
Houston Police Department; is that correct?

A. Yes, sir.

1 Q. Are you assigned to a particular
2 division with the Houston Police Department?

3 A. Yes, sir, homicide division.

4 Q. How long have you been in the homicide
5 division?

6 A. A little over four years.

7 Q. Before going to work as a homicide
8 officer, did you work in some other division?

9 A. Yes, sir, I worked in narcotics for a
10 year and a half and in radio patrol for about five
11 years.

12 Q. Okay. Did you attend the police academy
13 here in Houston?

14 A. Yes, sir.

15 Q. Do you have any other background in law
16 enforcement or training in law enforcement?

17 A. No, sir, just with the Houston Police
18 Department.

19 Q. Let me direct your attention back to
20 September of 1988, September 26th of 1988. Were
21 you working that day?

22 A. Yes, sir.

23 Q. Let me ask you first: Within the
24 homicide division, there are many sergeants who
25 investigate cases, and they work by shifts; is

1 that correct?

2 A. That's right.

3 Q. During that time frame, back in
4 September of 1988, were you assigned to a
5 particular shift?

6 A. Yes, sir, on the night shift, working
7 11:00 p.m. to 7:00 a.m.

8 Q. Let's say if you began an investigation
9 you started work on at midnight and worked all the
10 way through till 8:00 o'clock, you continue just
11 working till you drop or someone else takes over
12 that investigation?

13 A. Well, we just -- we worked as long as we
14 need to wrap up the things we're involved in, then
15 we pass onto another detective on day shift.

16 Q. They'll continue with anything that
17 needs to be done during the day?

18 A. That's right.

19 Q. Direct your attention again to September
20 26th of 1988, did you have occasion to receive a
21 call concerning a homicide on the far west side of
22 Houston, Texas?

23 A. Yes, sir, I did.

24 Q. Could you tell the jury the location,
25 specifically, that you responded to?

1 A. Yes, sir, we were given the location of
2 2475 South Kirkwood. 2400 block is where we ended
3 up, and it's a Fuddrucker's restaurant at that
4 location. The scene that we were directed to was
5 directly behind that restaurant on a grassy -- on
6 a field, path through a grassy lot toward an
7 apartment complex.

8 Q. And that's about what? Two or three
9 blocks north of Westheimer, or how far is it?

10 A. I'm not sure. That's about right, I
11 believe.

12 Q. And it's in the general area of major
13 intersections, I guess, Dairy Ashford and
14 Westheimer?

15 A. Yes.

16 Q. After you responded to that Fuddrucker's
17 restaurant, what did you find when you got in that
18 old field?

19 A. We were escorted out there by patrol
20 officers who had received the original call and
21 they led us down the path behind the Fuddrucker's
22 and we first came upon a bloody area in the path.
23 They led us past that point to, say, another 20
24 feet or so. At that point, we found the body of a
25 3-year-old boy.

1 Q. After you found the little boy's body,
2 did you determine whether the child was alive or
3 dead?

4 A. He was deceased.

5 Q. Was anyone else at the scene besides you
6 and you said "we," I believe. Was anyone else
7 with you?

8 A. Myself and Sergeant Bloyd were the ones
9 that made the scene.

10 Q. Is Sergeant Bloyd your regular partner?

11 A. Yes.

12 Q. Was there anyone else there from the
13 homicide division?

14 A. Not from the homicide division, per se.
15 There's a crime scene unit officer, Officer Hale,
16 who was in the area, also.

17 Q. When you say "a crime scene unit," could
18 you describe to the members of the jury what you
19 mean by a crime scene unit, officer?

20 A. Yes, sir. They are units that are
21 detailed specifically to collect evidence, take
22 photographs, fingerprints, anything having to do
23 with the evidence that we locate at a scene.
24 They're the ones that will recover that evidence
25 and process it and send it to its final

1 destination, labs or whatever.

2 Q. They take photographs, things of that
3 nature?

4 A. That's right.

5 Q. In addition to the crime scene unit
6 officer, was there a Sergeant Hamilton also
7 present?

8 A. Yes, sir, there was.

9 Q. After arriving at the scene, did you
10 have a chance to speak with Sergeant Hamilton?

11 A. Yes, sir.

12 Q. Based on the conversation that you had
13 with Sergeant Hamilton and what you observed at
14 the scene, did you go someplace else?

15 A. Yes, sir.

16 Q. Where was that?

17 A. To the Lakehurst apartments. That's
18 directly behind the trail. That's actually where
19 the trail leads to is the rear of that complex.
20 It's 2310 Crescent Parkway, I believe, and we
21 talked to security personnel for that complex
22 and --

23 Q. Was that a Mr. Marshburn and
24 Mr. Guajardo?

25 A. Yes, that's right. We spoke with them,

1 asked them if they could allow us to show pictures --
2 we had taken a Polaroid photo of the little boy.
3 We didn't know who he was at that point and were
4 trying to identify him and locate some family that
5 was possibly somewhere in the complex. So, we
6 took a Polaroid photograph of the boy to the
7 assistant manager of the complex, and she could
8 not identify him, said that she's not sure who he
9 was.

10 Q. Did you have a photograph of the young
11 girl that was found?

12 A. No, we didn't. She had been taken --
13 prior to our arrival, she had been taken to the
14 hospital by an ambulance.

15 Q. Okay.

16 A. We showed her the photograph; she could
17 not identify the boy. We then asked if they could
18 provide us with a list of residents to the complex.

19 Q. At this point -- first of all, could you
20 tell the jury about what time it was when you
21 arrived at the scene?

22 A. Yes, sir. We received the call on the
23 homicide office at about 11:55 and would have
24 arrived out there at about 12:30.

25 Q. When you're talking to the personnel at

1 the Lakehurst apartments, it would have been about
2 2:30?

3 A. No, that would have been later than that.
4 We did our preliminary investigation at the scene,
5 talking to a few people in the area, seeing if
6 they had seen anything and tried to make sure that
7 everything was going well, as far as the
8 processing of the scene; and at that point I went
9 over and talked to them. So, it would have been
10 some 30 minutes later, probably, at least before I
11 got to them.

12 Q. When you went to the Lakehurst
13 apartments, did you have, at least, the name of a
14 suspect in mind to investigate?

15 A. Yes.

16 Q. And was that what you had received from
17 Sergeant Hamilton?

18 A. That's correct.

19 Q. What was that name?

20 A. Preston.

21 Q. Did you have a last name?

22 A. No.

23 Q. Did you have any reason, other than just
24 suspensions, to think that Preston or the offender
25 may be in that apartment complex?

1 A. Only that the trail led from the
2 Fuddrucker's to that apartment complex. We
3 figured that would be a reasonable place to check,
4 to begin with.

5 Q. Were you able to find anything on the
6 records of the apartment complex to reflect that
7 someone named Preston did live there?

8 A. Yes, sir, we did locate one individual
9 in the entire list with the name of Preston; and
10 that was Preston Hughes.

11 Q. Did the information you were provided by
12 the apartment complex give you an apartment number?

13 A. Yes, sir, it was 138-A.

14 Q. Again, Preston Hughes was the only
15 Preston listed in their records as being a tenant
16 in that complex?

17 A. That's correct.

18 Q. What did you do after you got that name
19 and that apartment number?

20 A. We went to the complex office and met
21 with Joe Casler, who was the manager of the
22 complex, and asked him if he could pull his files
23 on Mr. Hughes. We looked over the files and
24 obtained identifying information -- the driver's
25 license number, date of birth, social security

-1 number, the type of vehicle that he had had, this
2 type thing -- and recorded that information; and
3 after we completed doing that, myself and Sergeant
4 Bloyd and Sergeant Hamilton approached the
5 apartment.

6 Q. Okay. Did any of the apartment complex
7 security officers go with you?

8 A. Yes, they did. I believe it was
9 Guajardo that went with us.

10 Q. Were there any plainclothes officers --
11 not plainclothes, but uniformed officers who went
12 along with you to the apartment area?

13 A. I believe there was a uniformed patrol
14 officer that stayed downstairs, but he didn't go
15 up with us.

16 Q. When you say "downstairs," could you
17 describe to the jury the nature of these
18 apartments and whether or not Mr. Hughes'
19 apartment was upstairs or downstairs?

20 A. His apartment was upstairs and there was
21 a balcony door that we allowed or asked the patrol
22 officer to keep an eye on as we went upstairs and
23 it was myself and Sergeant Bloyd and Sergeant
24 Hamilton that went upstairs to the apartment.

25 THE COURT: Mr. Noll -- members of the

1 jury, we're going to take a break here for a few
2 minutes. I'm going to allow you -- there's a
3 coffee machine, there's a coke machine downstairs
4 on the first floor. If you want to go outside and
5 stretch your legs, feel free to do that. Please
6 be back in the jury room at a quarter of 11:00.
7 In case you don't know, you are on the third floor
8 of the old fire station at 1302 Preston. I
9 apologize. It was about -- we had picked about
10 nine of you before we decided you really didn't
11 know or might not know where you are. We come up
12 here everyday and tend to take those things for
13 granted. You are on the third floor of the old
14 fire station at 1302 Preston. Either of those
15 ought to get you here. This is the 174th District
16 Court, but this is not my regular courtroom. It's
17 across the hall. With that, we'll see you at a
18 quarter to 11:00. Please go have a seat in the
19 jury room, the bailiff will be right with you, and
20 then we'll cut you loose for a break.

21 (Jury out.)

22 MR. McCULLOUGH: Preston, what the judge
23 is saying, any exhibits we have, I've got to have
24 them in advance so I can put stickers on them and
25 so I can give them to the court reporter. The

1 judge doesn't want to stop. So, we don't have to
2 stop any time we put something in evidence to get
3 that done. If you got anything, I need to get it
4 to put in evidence as soon as possible.

5 (Short recess.)

6 (State's Exhibit Nos. 13 and
7 14 were marked for identification.)

8 (Jury in.)

9 THE COURT: You may proceed, Mr. Noll.

10 MR. NOLL: Thank you, Your Honor.

11 BY MR. NOLL:

12 Q. Sergeant Gafford, I believe you
13 described the upstairs landing in the defendant's
14 apartment; is that correct?

15 A. Yes, sir.

16 Q. Let me show you what's marked for
17 identification as State's Exhibit 13. This a
18 photograph of the top of that landing at the
19 defendant's apartment?

20 A. Yes, sir, it is.

21 MR. NOLL: Your Honor, I tender the same
22 to counsel for defendant and move State's Exhibit
23 13 into evidence at this time.

24 MR. McCULLOUGH: No objection.

25 THE COURT: It will be admitted.

1 BY MR. NOLL:

2 Q. The landing at the top of these stairs
3 is where you, Sergeant Bloyd, and Sergeant
4 Hamilton were standing?

5 A. Yes, sir.

6 Q. What happened after the three of you got
7 to the top of the landing?

8 A. I knocked on the door. There was no
9 response for several minutes and we decided to
10 ask Mr. Guajardo, one of the security officers at
11 the complex, to go back to the complex office and
12 see if you could find a telephone number for
13 Mr. Hughes; and he went back there, returned three
14 or four minutes later and said that there was no
15 phone number listed. During that entire time, I
16 continued to knock; and this, I guess, is a period
17 of eight to ten minutes now. Finally, Mr. Hughes
18 did open the door.

19 Q. When he initially opened the door, did
20 the defendant say anything to you?

21 A. I don't think he said anything first. I
22 believe the first thing that happened is I asked
23 him what his name was, and he said that he was
24 Preston Hughes.

25 Q. Then what happened?

1 A. I told him that I was a police officer,
2 that I was the homicide division, and we had
3 Sergeant Hamilton with us. He was in uniform, the
4 regulation uniform for the police department,
5 asked him if we could come in and talk to him for
6 a moment. He said that was fine. So, we walked
7 in, and as we entered the apartment, there's just
8 kind of an entryway that connects the whole
9 apartment together. There's a hallway going off
10 to one side, the living room behind and the
11 kitchen to the left. We stood in that area and
12 talked for a few minutes.

13 Q. Standing where you are in the little
14 entryway there, can you more or less get a quick
15 scan of the entire apartment?

+ 16 A. Basically, as we walked in, I looked to
17 the left and there's a kitchen and dining room
18 beyond that and where we were standing, the living
19 room was directly beside me. As a matter of fact,
20 I was standing beside a couch. I could also see
21 down a hallway which led to the bedroom and
22 bathroom.

23 Q. Did you have a search warrant for the
24 defendant's apartment at that point?

25 A. No, sir.

1 Q. Was it your intent to search his
2 apartment at that point?

3 A. No, sir.

4 Q. Did you search his apartment at that
5 point?

6 A. No, sir.

7 Q. What happened after you entered the
8 apartment and identified yourselves as peace
9 officers? Did the defendant then continue to talk
10 with you?

11 A. Yes, sir. I asked him a number of
12 things, identifying information to verify the
13 information that I had already recorded from his
14 lease agreement; and as we continued talking, I
15 asked him questions about where he had been
16 tonight, if he had had any problems with anyone.
17 And to each of these questions, he responded that
18 he hadn't had any problem with anybody, that he
19 had been out and he had gotten home, was watching
20 TV and he was in bed at the time that we came.

21 Q. What was going on in your mind at this
22 point? Was the defendant a suspect in this case
23 or did you know he had done an offense or what was
24 your thinking?

25 MR. McCULLOUGH: Objection. That

1 wouldn't be relevant, what his mental attitude was
2 at this point.

3 THE COURT: That will be overruled.

4 A. I felt at that point that there was a
5 possibility that he was, but we had nothing to
6 substantiate that at that point. All we had was
7 the name of Preston. And so, we didn't know if he
8 had any knowledge of this complainant, you know,
9 if there was any relationship there. So --

10 MR. McCULLOUGH: Object to nonresponsive
11 answer, Your Honor.

12 THE COURT: That will be sustained.

13 BY MR. NOLL:

14 Q. I'll go ahead and ask. Did you have any
15 information at that point to indicate that the
16 defendant, Preston Hughes, III, knew either of the
17 victims in this case?

18 MR. McCULLOUGH: Object to leading.

19 THE COURT: That will be overruled. You
20 may answer, Sergeant Gafford.

21 A. No, sir, we didn't have any information
22 to that effect at that point.

23 BY MR. NOLL:

24 Q. Did you feel that you had enough
25 information to arrest Preston Hughes, III, at that

1 point for any offense?

2 A. No, sir.

3 Q. What happened then after you had the
4 conversations with him concerning whether he had
5 been in any problems that night?

6 A. He, as I stated, said he had not had any
7 problems with anyone --

8 MR. McCULLOUGH: Object to this as being
9 hearsay, Your Honor.

10 THE COURT: That will be overruled.

11 A. I asked him then if he would accompany
12 us voluntarily down to the police station. As I
13 said, we had no reason to arrest him at that point.*
14 And just asked him if he would accompany us on his
15 own, and he stated that he would.

16 BY MR. NOLL:

17 Q. What was his demeanor and attitude
18 during the period of time that you talked with him?

19 A. He was very calm, didn't act excited
20 about anything, spoke matter-of-factly, didn't
21 give us any reason to suspect anything that he
22 said. It was a little bit odd that he never asked
23 us why we were coming to his door asking him
24 questions.

25 MR. McCULLOUGH: Object to

1 responsiveness, Your Honor.

2 THE COURT: That will be sustained.
3 Sergeant Gafford, please listen to his question,
4 answer just that question. He's supposed to be
5 smart enough to be able to think of the next
6 question.

7 THE WITNESS: Okay. Sorry.

8 THE COURT: You may proceed.

9 BY MR. NOLL:

10 Q. Next question: Did the defendant ask
11 you why you were there?

12 A. No, sir.

13 Q. Did that seem odd to you?

14 A. Yes, it did.

15 Q. When you went in the apartment, was
16 there anyone else there that you could see?

17 A. No, sir.

18 Q. Do you recall whether or not the
19 television was on or a radio was on or if there
20 was anything going on in the apartment?

21 A. I don't recall.

22 Q. Was the apartment -- were the apartment
23 lights on or lights off, or do you recall?

24 A. There were lights in the area that we
25 were in, but I'm not sure about the rest of the

1 apartment.

2 Q. Talking about right in the entryway of
3 the front door?

4 A. Yes, and I would assume somewhere in the
5 living room because it was well lit in there.

6 Q. Okay. Once the defendant agreed to go
7 with you downtown -- and when you say "downtown,"
8 are you referring to 61 Riesner, the police
9 headquarters building, here in Houston?

10 A. Yes, sir.

11 Q. Once he agreed to come downtown to
12 answer questions, what happened?

13 A. He asked if he could put some clothes on.
14 He was wearing a pair of gym shorts at that time;
15 and we said, yes, that he could.

16 Q. All right. Did he change clothes there
17 in the living room or some other place?

18 A. No, he went to the bedroom and changed.

19 Q. Did anyone go with him?

20 A. Sergeant Hamilton, I believe, went to
21 the doorway when he was changing; and at one point
22 I may have gone down there as well. I think I may
23 have been at the doorway of the bedroom at some
24 point also.

25 Q. Is there anything unusual about an

1 officer accompanying someone who is a possible
2 suspect to the bedroom to change clothes?

3 A. No, sir. For our own safety, we
4 wouldn't let them just roam around on their own.

5 Q. After the defendant was dressed, what
6 happened?

7 A. We allowed him to secure the door of the
8 apartment, walked out. He was the last one coming
9 out. He locked the door as he came out, and we
10 all left the complex. He was escorted to a patrol
11 car where he was seated and was taken down by a
12 patrol unit. We got in our car in a different
13 part of the complex and went down, also.

14 Q. Was the defendant handcuffed at any
15 point?

16 A. No, sir.

17 Q. Did you say he was placed in a patrol
18 car? Do you remember the name of the officer who
19 was operating that vehicle?

20 A. No, sir, I don't.

21 Q. Okay. Was he in the front seat or the
22 backseat of the patrol car?

23 A. The backseat.

24 Q. Again, was he handcuffed inside the
25 patrol car?

1 A. No, sir.

2 Q. At that point, Sergeant Gafford, had the
3 defendant said, "No, I'm not coming downtown,"
4 what would you have done?

5 A. We would have left him there. We had no
6 reason to take him if he wouldn't come voluntarily.

7 Q. Okay. When you say "the defendant
8 secured his apartment," do you mean he locked the
9 door?

10 A. Yes, sir.

11 Q. Did he keep the key to his apartment?

12 A. Yes.

13 Q. When you went downstairs and put the
14 defendant in the patrol car to be taken down to
15 the headquarters building, did you then go back to
16 his apartment or did you go back to your patrol
17 car?

18 A. We went to our unmarked car, which was
19 parked over by the manager's office, and got in it
20 and drove down to the station from there.

21 Q. Okay. At any time while you were
22 present in the defendant's apartment, did anyone
23 conduct any searches of his personal effects or
24 property?

25 A. No, sir.

1 Q. Did you personally search anything in
2 his apartment?

3 A. No.

4 Q. Did Sergeant Bloyd, who was with you?

5 A. No.

6 Q. Did Sergeant Hamilton, who was with you,
7 search anything?

8 A. No, sir.

9 Q. And again, you did not have a warrant at
10 that point?

11 A. No.

12 Q. Did you just look around to see if there
13 was anything noticeable while you were there?

14 A. I looked around and just scanned the
15 apartment, but didn't move anything or do anything
16 unusual.

17 Q. Did you see anything when you scanned
18 the apartment that would have caused you to have
19 suspicion or to give you enough basis to come back,
20 say, later to search?

21 A. I observed something that I felt was
22 suspicious, but didn't know anything -- know what
23 it was at that point.

24 Q. What was it you observed that was
25 suspicious?

1 A. A pair of eyeglasses that were stuffed
2 between the cushions of the couch. They were
3 partially protruding out from the couch. So, I
4 could see those.

5 Q. Where was that couch located?

6 A. Directly beside me in the living room.
7 That's where I was standing talking to Mr. Hughes.

8 Q. At that time, did you touch those or
9 remove them?

10 A. No, I didn't.

11 Q. But the apartment was then left secured
12 after you left it with the defendant?

13 A. Yes.

14 MR. NOLL: May I approach the witness,
15 Your Honor?

16 THE COURT: You may.

17 BY MR. NOLL:

18 Q. Sergeant Gafford, let me show you what
19 has been marked as State's Exhibit No. 14. I
20 believe this exhibit will more clearly show the
21 path between Fuddrucker's and the apartment
22 complex; is that right?

23 A. Yes, it does.

24 Q. Does this photograph fairly and
25 accurately depict what it purports to represent?

1 In other words, is that the way the Fuddrucker's
2 looked out there that day? And the field, is it
3 about the same that it looked except this is a
4 daytime picture?

5 A. It appears to be, yes.

6 Q. Was the foliage and growth and grass and
7 that sort of thing, is that the same as it was
8 that night?

9 A. Yes, sir.

10 MR. NOLL: Your Honor, I'm tendering to
11 counsel for the defendant, State's Exhibit No. 14
12 and would move the same into evidence at that time.

13 (State's Exhibit No. 15 was
14 marked for identification.)

15 MR. McCULLOUGH: No objection.

16 THE COURT: 14 will be admitted.

17 BY MR. NOLL:

18 Q. Sergeant Gafford, if you can -- and I
19 realize that one of our jurors is kind of at a bad
20 angle here. If you could reach out and point --

21 THE COURT: Stand up, sergeant.

22 THE WITNESS: Yes, sir.

23 BY MR. NOLL:

24 Q. Using my pen, could you point again to
25 the path on the field between the Fuddrucker's and

1 Lakehurst apartments where this occurred?

2 A. Yes, sir. The Fuddrucker's restaurant
3 is here, and you can see a path worn right through
4 here toward this parking lot. That's the path
5 that we're describing.

6 Q. Okay. That's on State's Exhibit No. 14.
7 Sergeant, let me show you what's been marked as
8 State's Exhibit No. 5 and ask you if you recognize
9 this aerial photograph of the scene.

10 A. Yes, sir, I do.

11 Q. Okay. Let me again ask you if this area
12 right here is the Fuddrucker's store on South
13 Kirkwood?

14 A. Yes, it is.

15 Q. The apartments, which are located to the
16 right-hand side, bottom right-hand side of the
17 photograph, are those the Lakehurst apartments?

18 A. Yes, sir, this complex here.

19 Q. Again, could you take my pen and point,
20 if you recall, to the areas of the defendant's
21 apartment, Apartment No. 138, if you recall.

22 A. It's, I believe, his apartment is up in
23 this general area, toward the front of the complex.
24 I'm not sure of the exact location in there, but
25 it's --

1 Q. Are you pointing to the area, perhaps,
2 of this red truck right here?

3 A. Yes, in the area of the red truck.

4 MR. NOLL: If the jury, Your Honor, can
5 see, I'll exhibit the red truck.

6 BY MR. NOLL:

7 Q. The area of the red truck is the area of
8 the defendant's apartment, Apartment No. 138. Can
9 you guesstimate how far the defendant's apartment
10 was from the location where the bodies of the
11 young woman and the child were found?

12 A. Maybe a hundred, 150 yards. It's
13 clearly a guess, something like that.

14 Q. Fairly close?

15 A. Yes, sir.

16 Q. Sergeant Gafford, let me show you what
17 I've marked for identification as State's Exhibit
18 No. 15, a pair of eyeglasses. Do you recognize
19 that?

20 A. Yes, sir, I do.

21 Q. Where did you last see that exhibit?

22 A. These are the glasses I was describing
23 as being stuffed between the cushions of the couch.

24 Q. Let's go, if we can now, to the police
25 station. When you arrived at the 61 Riesner

1 downtown Houston Police Office, did you
2 immediately question the defendant?

3 A. No, sir. He was placed in an interview
4 room, and then I did some background checking and
5 some computer checking to make sure that I could --
6 well, to note everything that I could before I
7 went to the point of interviewing him.

8 Q. After doing that checking, did you have
9 an opportunity to interview the defendant?

10 A. Yes, sir, I did.

11 Q. And when you say he was in an interview
12 room, could you describe for the members of the
13 jury what you mean when you say "interview room"?

14 A. Yes, sir. It's just a small office on
15 one side of the homicide division office that is --
16 there's no windows and it's just about a five foot
17 by eight foot room, something like that, with a
18 door, a table set inside with a typewriter on it
19 and a couple of chairs.

20 Q. When you say "off the homicide office,"
21 could you describe for the members of the jury
22 generally how the area where you and your fellow
23 sergeant's office space? Could you describe how
24 that's laid out in the police department?

25 A. Yes, sir. The main office of the

1 homicide division was just an open room. There's
2 modular furniture and walls set up in the middle
3 of this room. On each wall of the room, there are
4 offices set off to the side. Most of those are
5 used by individual sergeants. They're equipped
6 with computers and desks for the different
7 sergeants, but there's two specific rooms off to
8 one side that are used primarily for interview
9 rooms or holding rooms when we bring somebody into
10 the division.

11 Q. So that the main office is a big open
12 room such as the courtroom is and in the center of
13 that room are these -- I guess people have seen
14 more of it in offices where people are divided up
15 in the little cubicle areas. They don't come up
16 all the way? They're about what? Five feet tall?

17 A. Yes, that would be a good description.

18 Q. Room divider things?

19 A. Yes.

20 Q. The center room is divided up with
21 different sergeants having their own cubicles in
22 that area?

23 A. Right.

24 Q. If this were the homicide office, it
25 would be a door right off that wall, right?

1 A. Yes, that's correct.

2 Q. So that any sergeant or any person,
3 member of the public or news reporter happening to
4 be visiting in the homicide division would be
5 right outside the interview room; is that correct?

6 A. That's correct.

7 Q. When you went to interview the defendant
8 in that room, was he handcuffed, or how was he
9 secured in the room?

10 A. He was never handcuffed. He just was
11 escorted in there and asked to have a seat. He
12 sat down, the door was closed, and he was left
13 there.

14 Q. When you went in to interview him, did
15 you offer him any refreshments or did you ask him
16 if he was comfortable or anything of that nature?

17 A. I asked him if he needed anything. He
18 didn't say anything or didn't ask for anything at
19 that point. And so, I begun just talking to him.

20 Q. Okay. When you talked to the defendant
21 at this point, did you have any additional
22 information that had been developed since you had
23 met him at his apartment which indicated he might
24 have been even more of a suspect in this case?

25 A. There were records --

1 MR. McCULLOUGH: Object, Your Honor, to --

2 THE COURT: Approach the bench, please.

3 (Off the record discussion.)

4 BY MR. NOLL:

5 Q. Let me narrow that down a little bit for
6 you. Had you spoken to any other witnesses who
7 might have led you to believe that the suspect --

8 MR. McCULLOUGH: Object to what
9 information he might have gotten from other
10 witnesses that would be hearsay or conveying that
11 information to the jury in some other way.

12 MR. NOLL: Not offering it for the truth
13 of the matter asserted, but only to show that he
14 then reacted to that information.

15 THE COURT: Okay. As far as the
16 question does not ask for the content of any
17 information that you received but merely what you
18 did and why you did it, with that understanding,
19 your objection is overruled.

20 BY MR. NOLL:

21 Q. I think you could probably answer that
22 question yes or no without getting in any other
23 detail. Did you have any other information which
24 caused you to be more suspicious of the defendant?

25 A. Yes.

1 MR. McCULLOUGH: Your Honor, I would
2 object to a question that calls for the officer to
3 tell the jury that he was suspicious of the
4 defendant because suspicions, clearly, are not
5 evidentiary or they would be more than suspicions.

6 THE COURT: Your point is well taken.
7 However, it still, I think, is admissible in the
8 context of what he did and why he did it.

9 BY MR. NOLL:

10 Q. Did that cause you to question the
11 defendant in more detail?

12 A. Yes.

13 Q. What did you question the defendant
14 about?

15 MR. McCULLOUGH: Your Honor, may I --
16 it's my position that this is now a custodial
17 interrogation. I would object to going into the
18 conversation with the defendant at this time, and
19 may I, to illustrate my point, ask this officer
20 about three questions on voir dire.

21 THE COURT: Very well.

22

23

24

25

1 VOIR DIRE EXAMINATION

2
3 BY MR. McCULLOUGH:

4 Q. You say Mr. Hughes went voluntarily from
5 his apartment on the west side of Houston to the
6 central station downtown?

7 A. Yes, sir.

8 Q. In a patrol car in which he was
9 basically locked in to the back of the patrol car?
10 There's a cage or separation between the backseat
11 and the front seat, is there not?

12 A. There is.

13 Q. No door handles on the inside of the
14 backseat?

15 A. There are handles.

16 Q. There are --

17 A. They don't open the door.

18 Q. All right. A person that's placed in
19 that car, in the backseat of that car, cannot get
20 out until someone on the outside opens the door?

21 A. Yes, that's correct.

22 Q. When he went down to the police station,
23 how long was it from the time he was transported
24 until the time you talked to him?

25 A. We were at his apartment approximately

1 2:30 in the morning and then were there, I would
2 say, 20 minutes, accounting for the time that he
3 got dressed and all --

4 Q. Let me shorten this up. In your report,
5 did you state that you went in the room where he
6 was being held at 4:10?

7 A. At 4:10 I went in to interview him.

8 Q. Didn't you say in your report that he
9 was being held in that room?

10 A. I don't know if it says that or not. I
11 know he was in that room.

12 Q. Well, I'll show you this to refresh your
13 memory, if you're satisfied -- does this appear to
14 be a part of your report? Look at the whole thing,
15 if you wish.

16 A. I can tell just real quickly. Yes, sir,
17 it is my report.

18 Q. And did you write this report?

19 A. Yes, sir.

20 Q. Did you write that he was being held in
21 that interview room?

22 A. Yes, sir.

23 Q. All right.

24 MR. McCULLOUGH: Your Honor, I think
25 we've established this is a custodial

*

1 interrogation.

2 THE COURT: That will be overruled at
3 this point.

4
5 DIRECT EXAMINATION CONTINUED

6
7 BY MR. NOLL:

*8 Q. Sergeant Gafford, if Preston Hughes, III,
9 wanted to get up and walk out of that interview at
10 that point, did you have enough evidence to arrest
11 him?

+12 A. No, sir.

*13 Q. Could he have left if he wanted to?

*14 A. Yes, sir.

15 MR. McCULLOUGH: Object --

16 Q. At this point, you began to question the
17 defendant; is that correct?

18 A. That's right.

*19 Q. What did you say to him?

20 A. Asked him again for all of his
21 information -- name, birth date, social security
22 number, this information -- and then began to ask
23 him about whether or not he knew an individual by
24 the name of Shandra Charles, Marcell Taylor and he
25 stated that he -- I'm sorry. At that point I

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1 believe we had her name as Shawn and I asked her
2 if he knew a girl by the name of Shawn and he said
3 that he did.

4 MR. McCULLOUGH: Your Honor, at least I --
5 to make a point clearly for the record, I wanted
6 to show that my objection goes to the entire
7 conversation between this officer and the
8 defendant from this point on.

9 THE COURT: Very well.

10 MR. McCULLOUGH: I'll presume the ruling
11 will be the same.

12 THE COURT: It will, likewise, be
13 overruled.

14 MR. NOLL: May I proceed, Your Honor?

15 THE COURT: You may.

16 BY MR. NOLL:

17 Q. After he indicated to you that he knew a
18 girl by the name of Shawn, did you ask him any
19 additional questions?

20 A. Yes, sir. I didn't know if the Shawn
21 that he was talking about was the one that was
22 involved in this incident. So, I continued to ask
23 him questions about her. I asked him to describe
24 her for me and he said that she was yellow skinned,
25 light skinned, that she was in approximately the

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1 age limit -- I don't recall the exact age he said,
2 but it was an age of this complainant -- and asked
3 him to describe the way she wore her hair and he
4 said she wore it in braids.

5 Q. How did that coincide with the known
6 information that you had concerning the victim in
7 this case?

8 A. I felt like it was definitely the
9 correct Shawn that we were speaking about. He
10 said that the fact that she wore her hair in
11 braids is the way that this Shawn wore her hair,
12 the age range being the same. He also mentioned
13 that she was a friend of a girl by the name of
14 Evelyn who lived at the complex and I had spoken
15 to the security personnel out there at the complex
16 and they said that --

17 MR. McCULLOUGH: Okay, this is hearsay,
18 Judge.

19 THE COURT: That will be sustained.

20 BY MR. NOLL:

21 Q. Based on what you heard from that
22 security guard, not what you heard, did the fact
23 that the defendant knew a girl named Evelyn become
24 of significance to you in this case?

25 A. Yes, it did.

1 Q. Did you learn anything else from the
2 defendant concerning his knowledge of this case at
3 that point?

4 A. At that point, I don't believe I found
5 out any extra information. I'm not sure if I did.
6 I don't believe there was anything extra at that
7 point.

8 Q. What happened after you learned that
9 information?

10 A. I decided at that point we were talking
11 about the right Preston that was related to us
12 from Sergeant Hamilton and decided that we did
13 have enough information at that point to arrest
14 Mr. Hughes for this investigation.

15 Q. When you say you had enough information
16 to arrest him, did you at some point tell him he
17 was under arrest?

18 A. Yes, sir, I did at that time.

19 Q. What did you do after you told him he
20 was under arrest?

21 A. I immediately read him his Miranda
22 warnings and explained those to him.

23 Q. Now, at this point he was no longer free
24 to leave in your mind; is that correct?

25 A. That's correct. He was under arrest at

1 that point.

2 Q. When you read him what we call the
3 Miranda warnings, are you referring to the
4 warnings on the blue card furnished by the
5 District Attorney's office?

6 A. Yes, sir, I am.

7 Q. Did you bring a blue card like that with
8 you today?

9 A. Yes, I've got one.

10 Q. Could you pull it out?

11 A. Yes.

12 Q. Is that the same card you used to advise
13 Preston Hughes of his rights on the morning of
14 September 27th, 1988?

15 A. Yes, it is.

16 Q. Would you read to the jury the same
17 rights you read to the defendant that morning?

18 A. Yes, sir. First one, "You have the
19 right to remain silent and not make any statement
20 at all and that any statement you make may be used
21 against you and probably will be used against you
22 at your trial." Second one, "Any statement you
23 make may be used as evidence against you in court."
24 Third one, "You have the right to have a lawyer
25 present to advise you prior to and during any

1 questioning." Fourth one, "If you're unable to
2 employ a lawyer, you have the right to have a
3 lawyer appointed to advise you prior to and during
4 any questioning." And the fifth one, "You have
5 the right to terminate this interview at any time."

6 Q. Did the defendant do anything to
7 indicate that he understood those rights that you
8 read him?

9 A. Each time I read one of the warnings to
10 him, I asked him if he understood that.

11 Q. What did he say?

12 A. He said, "Yes, sir," each time.

13 Q. In talking with the defendant, had you
14 formed any opinion as to whether or not he seemed
15 to be of average intellect?

16 A. Yes, sir, he did.

17 Q. Did he seem to have any inability to
18 understand the warnings you had given him?

19 A. Did you say an ability or inability?

20 Q. Inability.

21 A. He did not appear to have any
22 inabilities.

23 Q. Did he stop you at any point and ask you
24 what any word meant, for example?

25 A. No, sir.

1 Q. At that point, did he ask to speak to a
2 lawyer?

3 A. No, he didn't.

4 Q. Did he tell you he didn't want to talk
5 to you anymore?

6 A. No.

7 Q. Did he say anything to indicate to you
8 that he did not want to continue with the
9 interview?

10 A. No, sir.

11 Q. What happened next?

12 A. At that point, after he had -- I asked
13 him at the end of that if he wanted to waive those
14 rights, and he said that he would, that he wanted
15 to talk to me about it, that he hadn't done
16 anything. So, at that point --

17 MR. McCULLOUGH: Your Honor, at this
18 point, the man's clearly under arrest. It is a
19 custodial interrogation. Object to any more
20 testimony about conversations with him.

21 THE COURT: That will be overruled.

22 BY MR. NOLL:

23 Q. After he told you that he wanted to
24 continue to talk to you, what happened?

25 A. I left the interview room for a few

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1 minutes to confer with Sergeant Bloyd to see if he
2 had gained any new information since the time I
3 had been in there with Mr. Hughes, and Mr. Hughes
4 asked if he could have a cigarette. I obtained
5 one for him, and he smoked a cigarette in the room
6 while I was talking to Sergeant Bloyd.

7 Q. After you talked with Sergeant Bloyd,
8 did you go back in the room and continue your
9 interview?

10 A. Yes, sir.

11 Q. What happened after you continued the
12 interview?

13 A. I spoke to him at length about anything
14 he would tell me. I asked him questions about
15 Shawn, about how he came to know her, what his
16 relationship was with her. He related this
17 information to me, was very calm.

18 Q. What did he tell you about how he came
19 to know Shawn?

20 A. I believe that situation was a girl by
21 the name of Evelyn was -- Evelyn Brown, who lives
22 at the complex, is a friend of this Shawn. His
23 cousin, who is Shawn Graham, is also friends with
24 these two girls, and it was through that
25 relationship that he came to know the complainant,

1 Shandra Charles.

2 Q. After he explained all these things to
3 you, did he indicate any knowledge concerning what
4 had happened to Shawn, also known as Shandra and
5 Marcell?

6 A. No, sir, he didn't.

7 Q. Did he eventually agree with you to make
8 a written statement concerning what he knew about
9 the case?

10 A. Yes, sir, he did.

11 Q. And how did you prepare that written
12 statement?

13 A. As we went along, I would ask him
14 questions -- well, first off, went through the
15 entire scenario with him, getting his information
16 and all, spoke to him at great length about the
17 entire episode. He would talk to me, and we would
18 just -- it was more or less conversation and once
19 that part ended, I asked him if he would make a
20 written statement and he said that he would and
21 from that point, I went back to the beginning
22 where he -- and brought up points that he had
23 started off the conversation. I would talk to him,
24 ask him questions and to tell me what had happened.
25 So that he would begin again, and we would take it

1 line by line. I would type it out as he said it,
2 and we would agree on what was to be put down. I
3 would type it out and just the entire statement
4 went the same way.

5 Q. Okay. Did you eventually complete an
6 entire statement with him?

7 A. Yes, sir, I did.

8 MR. NOLL: May I approach the witness,
9 Your Honor?

10 THE COURT: You may.

11 BY MR. NOLL:

12 Q. Sergeant Gafford, let me show you a
13 three-page document entitled statement of person
14 in custody marked State's Exhibit No. 3 and ask
15 you if you recognize that document.

16 A. Yes, sir, this is the typed statement
17 that I took from Mr. Hughes on that night, that
18 day.

19 Q. Again, it is a three-page document; is
20 that correct?

21 A. That's right.

22 Q. Is this the document which you typed as
23 you spoke with Preston Hughes that night?

24 A. Yes, it is.

25 Q. I should say that morning, right?

1 A. Right.

2 Q. Does the first page of the document
3 reflect the date and time the statement was made?

4 A. Yes, sir, it was September 27th, 1988,
5 0555 hours.

6 Q. When it says "0555 hours," that's 5:55
7 a.m.; is that correct?

8 A. That's right.

9 Q. And is that the time that you began
10 talking with him, or what does that reflect?

11 A. That's the time that I actually started
12 typing this statement.

13 Q. Okay. Does each subsequent page of the
14 statement contain another time entry on the top
15 right-hand side of the paper?

16 A. Yes, sir, it does.

17 Q. What is the significance of that time
18 entry on that page?

19 A. That's the time I started the next page,
20 began the first one at 5:55. The second page I
21 started typing at 0613, which would be 6:13 a.m.,
22 and the third page I began typing at 6:33 a.m.

23 Q. Is there anything to indicate the time
24 at which the statement was completed?

25 A. Yes, sir. There's entries at the bottom

1 where the witness signatures are, and they signed
2 that document at 7:15 a.m., indicating that's when
3 they -- the statement was ended just shortly prior
4 to that.

5 Q. On the exhibit that you have before you,
6 at the top of the page in all caps is the "statement
7 of person in custody"; is that correct?

8 A. Yes, sir.

9 Q. Underneath that is some pretyped form
10 language. What is that?

11 A. That's, once again, printed on this form,
12 the legal warnings that I read to him earlier.

13 Q. Okay. Prior to his execution of this
14 signed statement that you have before you, did he
15 read those warnings again; or did you read them to
16 him?

17 A. He was given the paper and was allowed
18 to read them. I also read them aloud to him.

19 Q. Did he do anything to indicate, again,
20 that he understood his rights as he made this
21 written statement?

22 A. Yes, sir. He said that he did
23 understand them and he wanted to waive those
24 rights and would talk to me about it.

25 Q. Did you give Preston a chance to read

1 through the entire statement and to make any
2 changes or alterations which he wanted to make in
3 the typed statement?

4 A. Yes, sir, I did.

5 Q. Did he have changes or alterations which
6 he chose to make?

7 A. Yes, sir, he did. On the first page of
8 the statement, there is a section in the middle of
9 the second paragraph that he said was incorrect.
10 He told me what he wanted to put down there to
11 make it the way he wanted it worded. And so, I
12 scratched through part of a line and a small
13 portion of another line and wrote above that in
14 pen the words that he wanted there, and then he
15 initialed that to show that that change was at his
16 authority. And then on the third page of the
17 statement on the top line, I left out a word and
18 he brought that to my attention. We added that,
19 and he, again, initialed that.

20 Q. After you typed up the statement and
21 Preston had a chance to read through it and make
22 the changes that he wanted to make, what happened?

23 A. I called two sergeants from homicide
24 division into the office and asked them to act as
25 witnesses to the circumstances of the statement

1 and so that they could question him about the
2 statement.

3 Q. Now, again, during the period of time
4 that you questioned the defendant and that you
5 typed up this statement, was there anyone else
6 present in the interview room?

7 A. No, sir, there was no one present during
8 the time that I typed the statement.

9 Q. Okay. Was Sergeant Bloyd, your partner,
10 anywhere in the area?

11 A. He had been in the room when we
12 initially went in to speak with the defendant
13 right as we got to the homicide office and began
14 the initial interview. After the point that
15 Mr. Hughes was arrested, Sergeant Bloyd no longer
16 remained in the room; and I was in there by myself
17 speaking with him and typing the statement. He,
18 Sergeant Bloyd, was in the outer office and were a
19 number of sergeants.

20 Q. At the time these interviews were going
21 on, were you dressed similar to the way you're
22 dressed today, in a suit and tie?

23 A. Yes. I wouldn't have had my jacket on,
24 but I was wearing a suit.

25 Q. Was Sergeant Bloyd, likewise, in

1 civilian clothing?

2 A. Yes.

3 Q. Did you have a gun on?

4 A. Yes, sir.

5 Q. Did you wear your gun into the interview
6 room?

7 A. I'm sure that I did.

8 Q. At any point or at any time, did you
9 ever threaten Preston Hughes, III, to get him to
10 talk with you or to sign this statement?

11 A. No, sir.

12 Q. Did you ever say anything to him to
13 promise anything, any leniency in order to get him
14 to talk with you or to get him to sign this
15 statement?

16 A. No, sir.

17 Q. During the time that you were
18 questioning him, did you do anything to let him
19 know generally what you were investigating, what
20 kind of offense had occurred while you were
21 talking to him?

22 A. Yes, sir. At the time that we spoke to
23 him at the scene, we didn't go into great detail
24 about that. When we had him in the homicide
25 office, I advised him that we were investigating a

1 murder case, and then again, at the time that he
2 was placed under arrest, I advised him he was
3 under arrest for capital murder.

4 Q. Did he ask you any questions about that?
5 Did he seem to understand when you said capital
6 murder and when you said murder and you told him
7 two children had been killed? Did he have any
8 questions about it?

9 A. No, not really. He just gave very
10 little reaction at all.

11 Q. Did his demeanor change any or his
12 attitude change any over the period of time that
13 you talked with him while you were at the police
14 station?

15 A. Only at one point. He, during most of
16 the interview, he had no reaction at all, very
17 calm and didn't express any emotion. There was
18 only one time that he did.

19 Q. When was that?

20 A. During the questioning, at one point, he
21 started weeping and saying that he didn't want to
22 go to jail and that was the only time that he ever
23 showed any emotion.

24 Q. Did he compose himself after he cried?

25 A. Yes.

1 Q. Did he seem to be in a state of mind
2 that you felt was necessary to let him get himself
3 back together or was this a short-lived thing or
4 what?

5 A. It was very short. He broke down for
6 just a second there and was just saying that he
7 didn't want to go to jail and he was silent there
8 for just a few seconds, probably, maybe 30 seconds
9 after that and then again we began talking and he
10 was fine after that.

11 Q. Again, did you promise him anything to
12 get him to start talking to you?

13 A. No, sir.

14 Q. Did you do anything that would indicate
15 to him that if he talked to you or if he gave a
16 confession, things would go easier on him?

17 A. No, sir.

18 Q. Did anyone else, while you were present
19 with the defendant, make any threats to him, hit
20 him, promise him anything or have any contact with
21 him?

22 A. No, sir.

23 Q. After the defendant agreed to sign the
24 statement, looked over the statement, did you ask
25 anyone to come in to be a witness?

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A. Yes, sir, I did.

Q. Who did you ask to come in to be a witness?

A. Sergeants Smith and Ross.

Q. Did you stay in the room while Sergeants Smith and Ross witnessed his execution of the statement?

A. I was there for just the first few minutes after the introduction. Then I believe I stepped to the door. I don't think I ever just went completely away, but I was in the general area there.

Q. Did he then sign the statement in their presence, or how did that happen?

A. Actually, after each page that we typed, I would give it to him and allow him to read over that particular page. When that page was completed and he agreed with the way it was, then he would sign that page; and then we would do the same thing with each subsequent page. Once they came into the room, they went over the statement, asked him if it was his signature and then asked him to do a few other things on the paper.

Q. Okay. On the bottom of the first page, his signature appears both over the line where

SEE PAGE 275 METHOD HEARING LINE 17

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1 it's marked "signature of person making statement"
2 and then again at the end of the last sentence
3 above that. Did he sign both of those in your
4 presence?

5 A. Yes, sir, he did.

6 Q. After executing the defendant's
7 statement, what did you do?

8 A. After the statement was completed, I,
9 again, left him in the interview room for just a
10 few minutes and went out, talked to Sergeant Bloyd
11 and the other detectives that had been assigned to
12 assist in the investigation, just to see if
13 anything new had developed. And after this
14 statement was completed, I believe I presented to
15 him a form which was a document entitled a
16 voluntary consent to obtain different samples.

17 Q. Blood samples?

18 A. Blood samples, urine samples, different
19 things of this nature.

20 Q. Did you also at some point ask him to
21 sign a consent to search his apartment?

22 A. Yes, sir. I had done that before we
23 actually started the typewritten statement.

24 Q. Did he sign such a consent?

25 A. Yes, sir, he did.

1 Q. Did you say to him before he signed it
2 that he didn't have to sign that consent?

3 A. Again, he said that he had nothing to
4 hide, that he would sign it.

5 MR. NOLL: May I approach the witness,
6 Your Honor?

7 THE COURT: You may.

8 BY MR. NOLL:

9 Q. Sergeant Gafford, let me show you what's
10 been marked as State's Exhibit No. 1 for
11 identification and State's Exhibit 2 for
12 identification and ask if you recognize these
13 documents.

14 A. Yes, sir. This form, State's Exhibit 1,
15 is the consent for search and seizure that I
16 filled out and it bears the address of the
17 defendant's apartment and also his name and it was
18 signed by the defendant.

19 Q. Okay. And State's Exhibit 2?

20 A. State's Exhibit 2 is the voluntary
21 consent for taking of samples of blood, urine, or
22 hair that was also obtained after the statement.

23 Q. And these documents were also both
24 witnessed by Officers Bloyd and Ross; is that
25 correct?

4 A. That's right.

5 Q. The voluntary consent for search and
6 seizure was executed at what time?

7 A. That was at 5:30 a.m.

8 Q. Okay. And the consent for the taking of
9 samples of blood, urine, and hair was at what time?

10 A. 7:43 a.m., just around that time.

11 Q. All righty. Are these documents kept in
12 reams, just forms for your availability over in
13 the homicide office?

14 A. They are. However, occasionally we will
15 run out of those forms, and when we know we're
16 getting low on the forms, we'll make xerox copies
17 of the ones that we have, just to keep us going
18 until we get new forms in.

19 Q. The blanks which have been filled in on
20 the xerox form, who filled those blanks in?

21 A. I did.

22 Q. Who signed the document?

23 A. Preston Hughes.

24 MR. NOLL: Your Honor, let the record
25 reflect I am exhibiting to counsel for the

1 defendant State's Exhibits 1 and 2 for
2 identification. We would tender the same into
3 evidence, Your Honor.

4 MR. McCULLOUGH: We would object to
5 State's 2 and 3 for the reasons stated at the
6 previous hearing.

7 THE COURT: I believe that's 1 and 2
8 that's being offered.

9 MR. McCULLOUGH: Excuse me. 1 and 2,
10 excuse me.

11 THE COURT: Very well. Your objections
12 are noted. They are overruled. 1 and 2 are
13 admitted.

14 BY MR. NOLL:

15 Q. Did you yourself have an opportunity,
16 after the defendant signed the consent to search,
17 to go to search his apartment?

18 A. No, sir, I didn't.

19 Q. At the time the defendant executed this
20 statement, had any search of his apartment been
21 accomplished yet?

22 A. No, sir.

23 Q. Okay. Likewise, had any blood samples
24 or any other samples been taken from the defendant?

25 A. No.

1 Q. Following the execution of the statement
2 that he had given to you and after you talked with
3 the other detectives, what did you do next?

4 A. At that point, I spoke with Detectives
5 or Sergeants Ferguson and Yanchak who were going
6 to continue the investigation on the day shift.
7 We had a number of reports to complete on the
8 initial scene investigation and the follow-up that
9 we had done to that point and basically they were
10 the detectives that were going to continue from
11 there. We updated them on everything that was
12 happening to that point and allowed them to go to
13 the defendant's apartment.

14 Q. And I guess at that point you put in
15 your 12 hours and you went home; is that correct?

16 A. We put in considerably more, putting in
17 reports and all, but we were around the division
18 there for sometime after that.

19 Q. Later in that same morning, do you know
20 whether or not the defendant made another
21 statement concerning the events of September 26th
22 of 1988?

23 A. Yes, sir.

24 Q. Did you participate in the taking of
25 that statement?

1 A. No, sir.

2 Q. In anticipation of that statement, did
3 you talk with Sergeants Yanchak and Ferguson
4 concerning your dealings with the defendant?

5 A. Yes, sir, I did.

6 Q. Okay. You kind of debriefed those guys
7 on what you had done up to that point in your
8 investigation?

9 A. That's right.

10 Q. During that morning, did you have
11 occasion to discover the names of the two victims
12 involved in this case?

13 A. Yes, sir, I did.

14 Q. What were their names?

15 A. Shandra Charles, the 15-year-old, and
16 then Marcell Taylor was the 3-year-old.

17 Q. Were you able to discover the parents of
18 Shandra or Marcell, who they were?

19 A. Actually, I had spoken on the phone to
20 the security personnel and then the -- I believe
21 it was Sergeant Ross and maybe one other sergeant
22 that went out to the apartment complex to meet
23 with them.

24 Q. Okay. Did you yourself meet with the
25 parents of any of the children?

1 A. No.

2 Q. Okay. Following the taking of your
3 statement and your debriefing of Sergeants
4 Ferguson and Yanchak, did you continue anymore in
5 the investigation later that day?

6 A. I believe the extent of it was just
7 completing the reports. I don't believe I did
8 anything further.

9 MR. NOLL: Pass the witness, Your Honor.

10 THE COURT: Mr. McCullough.

11

12 CROSS EXAMINATION

13

14 BY MR. McCULLOUGH:

15 Q. I don't recall this. Did you say you
16 arrived at the field behind Fuddrucker's before
17 the female was transported?

18 A. No, she was already gone from the scene
19 when we got there.

20 Q. All right. But the younger child, the
21 3-year-old, was there?

22 A. Yes.

23 Q. And it was your belief, from your
24 investigation up to that point, that the female
25 victim had been stabbed?

1 A. Yes.

2 Q. Or cut with a sharp instrument of some
3 kind?

4 A. Yes, sir.

5 Q. Now, when you went up to that apartment,
6 had you made a sketch or diagram or anything of
7 that apartment?

8 A. I didn't. There may be one somewhere
9 that this crime scene unit made. It would have
10 been Officer Hale.

11 MR. NOLL: Your Honor, for purposes --
12 to move things along, I do have a copy of a
13 diagram prepared by Officer Hale of the apartment.
14 I tender that to counsel for the defendant at this
15 time.

16 MR. McCULLOUGH: May I approach the
17 witness?

18 THE COURT: You may.

19 BY MR. McCULLOUGH:

20 Q. To help me understand your testimony,
21 could you point out the front entrance on this
22 diagram, if it fairly and accurately portrays,
23 schematically, the apartment?

24 A. Okay. I believe the entry should be
25 right here, and the hallway that I was referring

1 to is in this area here.

2 Q. All right. Now, the couch you referred
3 to, where would that be in the diagram?

4 A. Right here.

5 Q. All right. So, as you would walk -- in
6 what area were you standing in talking to
7 Mr. Hughes?

8 A. In this area. We were all gathered just
9 right there.

10 Q. So, that would be at some point between
11 the front door and the end of the couch?

12 A. Right.

13 Q. Got to remember, the jury can't see this
14 diagram.

15 A. Right.

16 Q. The back of the couch is against the
17 wall?

18 A. Yes.

19 Q. And the -- was there a porch light or
20 some light on the outside of the apartment here?

21 A. There probably was, but I don't remember
22 specifically.

23 Q. Did you or any officers or Mr. Hughes
24 turn on any lights in this front area while you
25 were in there?

1 A. We didn't. He may have turned some on
2 before we came in. But I don't think we turned
3 anything else on.

4 Q. Was it lighted?

5 A. Yes. Something was. Whether or not it
6 was in the living room or this hallway or exactly
7 where, I don't know. But it was light enough that
8 we could all see with no problem.

9 Q. At any rate, if there was a light
10 outside on the porch, y'all would all have been
11 standing between that light and the couch?

12 A. We were all inside -- yes, we would --
13 if you're speaking of the lighting in the room, we
14 were standing on this side of the light inside the
15 apartment.

16 Q. So that, with respect to any lighting
17 from the porch area, you and the people in there
18 would have cast a shadow over the couch? The
19 light would have been coming back through you
20 toward the couch?

21 A. If that was the only light on, that
22 would be the case.

23 Q. That's what I'm assuming, for purposes
24 of that question. So that if you saw anything on
25 the couch, there must have been another light on?

1 A. That's right.

2 Q. When you were up there, did you see any
3 bloody instruments or clothing or bloody
4 footprints or handprints or anything in the house?

5 A. No, sir.

6 Q. Did you look for them?

7 A. I was alert for anything like that but
8 didn't search for it.

9 Q. Now, you've testified that you read
10 Mr. Hughes a magistrate's -- I mean, a Miranda
11 warning or blue card warning.

12 A. Yes, sir.

-13 Q. You did not, at any time, on the day --
14 on the 27th of September, ever take him before a
15 neutral and detached magistrate for a warning of
16 his rights?

-17 A. No, I didn't.

18 Q. With regard to State's Exhibit --

19 A. It's this one here.

20 Q. No. 3.

21 MR. McCULLOUGH: Is this in evidence?

22 MR. NOLL: I've not offered it yet, no.

23 BY MR. McCULLOUGH:

24 Q. Is there any significance to the fact
25 that the statement seems to have been completed

1 about the time the shift ended? You said you
2 worked the 11:00 to 7:00 shift?

3 A. That's correct.

4 Q. Were y'all trying to wrap this thing up
5 by the end of your shift?

6 A. I didn't leave till probably 4:00 or
7 5:00 in the afternoon, at the earliest, that day.

8 Q. I believe you stated that Mr. Hughes
9 broke down and cried one time, said he was afraid,
10 afraid of going to jail, didn't want to go to jail?

11 A. Said he didn't want to go to jail.

12 Q. I believe you said in your report,
13 didn't you say he was afraid?

14 A. I'll be glad to look at that and see if
15 that's the wording I used.

16 Yes, sir, it states Hughes broke down,
17 stated he was afraid to go to jail, that he did
18 not want to go to jail.

19 Q. Isn't it kind of inconsistent that a
20 person would sign a confession because they were
21 afraid to go to jail?

22 A. I'm sorry. I don't understand the
23 question.

24 Q. Well, the whole purpose of getting this
25 statement was to convict him of a crime.

1 A. The whole purpose of getting that
2 statement was to learn the truth.

3 Q. Well, but y'all don't just go over there
4 learning the truth.

5 MR. NOLL: I object, this is
6 argumentative. He's being argumentative with the
7 witness.

8 THE COURT: Rephrase the question,
9 Mr. McCullough.

10 BY MR. McCULLOUGH:

11 Q. The point of the police department is
12 not to be truth finders. It is to enforce the law
13 and keep the peace.

14 A. The purpose of the police department is
15 to be truth finders, and whatever is warranted
16 after that point, we will also do.

17 Q. Well, but the point is to make cases,
18 get convictions.

19 MR. NOLL: I'm going to object. This is
20 being argumentative.

21 THE COURT: That will be sustained.

22 BY MR. McCULLOUGH:

23 Q. It never crossed your mind that you
24 weren't going to file this case if you got a
25 confession, did it?

1 A. That had -- any statement he makes had
2 to be corroborated somewhere else.

3 Q. All right.

4 A. And if we had that corroboration, yes, I
5 was going to file charges.

6 Q. So, what I'm getting at is this
7 confession, the purpose of taking it, was to
8 convict him of capital murder. Did you tell him,
9 when you told him he was under arrest, that he was
10 under arrest for capital murder?

11 A. Yes.

12 Q. Your theory at that time was that there
13 was two murders, the same transaction. That was
14 your theory of capital murder?

15 A. Yes, sir.

16 Q. Did you tell him that?

17 A. I told him that there were two
18 individuals killed and that it was capital murder.
19 I don't know if I explained to him that because
20 two instead of one was killed that made it a
21 capital murder.

22 Q. Did you explain -- in telling him that
23 this statement could and would be used against him,
24 did you tell him it could and would be used to try
25 to get a death sentence against him?

1 A. I read him the warnings as they appear.

2 Q. Didn't appear to be something that you'd
3 think you'd want to know, if you were going to
4 give a statement, that it could be used to kill
5 you?

6 A. That's not the case. It wasn't me that
7 was doing it. I read the warnings as I'm required
8 to do. He stated he understood them. He was
9 offered an opportunity to ask questions about it.
10 He had no questions, was willing to talk to me and
11 to make that statement.

12 Q. He opened up the conversation by saying
13 he didn't have anything to hide and he didn't do
14 it.

15 A. Uh-huh.

16 Q. But after you talked to him for a while,
17 you had him saying things like what's in this
18 statement. Is that what you're telling us?

19 A. That I had him saying things? No, he
20 said everything that was there on his own.

21 Q. But he didn't type it, did he?

22 A. No, he didn't.

23 Q. Are these his words?

24 A. For the most part. We would talk about
25 it during the time that I was typing the statement

1 and if I had a question about what he said, he
2 would rephrase it to where I could type it and it
3 was understandable.

4 Q. Well, so you're saying his words needed
5 a little work before they could be put on this
6 paper?

7 A. No, sir. If I needed clarification of
8 what he was saying, then I would ask for that
9 clarification. I would type it down as he said it.
10 There may be an "and" or a "the" out of place, but
11 for the most part, everything is just like he said
12 it.

13 MR. McCULLOUGH: May we take up a matter
14 outside the presence of the jury, Your Honor?

15 THE COURT: Members of the jury, would
16 you please have a seat in the jury room. Please
17 remember the admonishments that I've given you
18 heretofore.

19 I'm not certain, but we may go on and
20 send you to lunch. We're going to take you in a
21 group. That will hopefully save us a little time.
22 It won't necessarily keep you well fed, but we'll
23 get you in a group and get you to lunch. As soon
24 as we get you back, we'll start this afternoon.

25 Would you have a seat in the jury room

1 and wait on us just a few minutes, please.

2 (Jury out.)

3 MR. NOLL: Your Honor, before we get
4 started, due to the nearness to the noon hour, can
5 I cut -- some of these officers work a night shift.
6 Can I cut some of these witnesses loose, except
7 the next two witnesses, perhaps?

8 THE COURT: You can cut them all loose.
9 We'll finish with Sergeant Gafford and then take
10 our noon recess. So, you can let them go for
11 lunch.

12 What's our time constraints, Mr. Morin?
13 About an hour, hour and a half?

14 THE BAILIFF: Hour and 15 minutes.

15 THE COURT: You can cut them loose till
16 1:15.

17 MR. NOLL: Thank you, Judge.

18 THE COURT: You may proceed,
19 Mr. McCullough.

20 MR. McCULLOUGH: My problem does not
21 involve this officer. The thing I want to take up
22 with the Court does not involve Sergeant Gafford.
23 It doesn't -- I can't see why it would hurt for
24 him to be here. My client has several pages of
25 questions he wants me to ask the officer verbatim.

1 I have not seen them. He doesn't want -- if we're
2 going to break, he doesn't want me to have them
3 before I ask them, apparently. I need to read the
4 questions before I ask them. It's as simple as
5 that and I --

6 THE COURT: I don't understand. I think
7 what you just told me was your client's not going
8 to allow you to look at the questions, to read
9 them before you ask them?

10 MR. McCULLOUGH: That's what I
11 understand. At least I need to make a record on
12 this. I'm not going to ask the questions if I
13 don't get a chance to read them before I put them
14 to the officer. I'd like to take a break so I
15 could read the questions, if Mr. Hughes would let
16 me have them on a promise that I would not let the
17 prosecutor see them.

18 THE COURT: Well, I cannot make
19 Mr. Hughes give you the questions. I would be
20 very disappointed to learn that Mr. Hughes is not
21 near as intelligent as he has heretofore seemed
22 like he was in that he would unnecessarily
23 hamstring you by not providing you the questions
24 ahead of time, but whatever Mr. Hughes chooses to do
25 with those questions is between you and Mr. Hughes.

1 It would certainly be with my
2 encouragement to allow you to properly present his
3 defense and make sure that the case is represented
4 to his satisfaction that you be given an
5 opportunity to have the questions ahead of time
6 and prepared. Other than that, I don't think I
7 can do anything.

8 MR. McCULLOUGH: May I have sufficient
9 time to at least read the questions and make a
10 decision on whether I want to use them or not?

11 THE COURT: That's between you and
12 Mr. Hughes. We will take our noon recess at this
13 time. We will be back at 1:15. Whatever you and
14 Mr. Hughes work out between there.

15 Mr. Hughes, I will caution you. You
16 have two very fine, competent attorneys here
17 representing you adequately and doing a good job
18 of protecting your rights. You are not assisting
19 them by withholding things from them. Nor, I will
20 caution you, the law does not allow you hybrid
21 representation; that is, you cannot be represented
22 by Mr. McCullough and Mr. Thomas and represent
23 yourself, nor under any circumstances would I
24 allow you to represent yourself, no matter how
25 gifted you might be, since this is a capital

1 murder case. So, I suggest you do take that under
2 advisement and tailor your actions in assisting
3 your attorneys accordingly. We'll be standing
4 down till 1:15.

5 (Lunch recess.)

6 (State's Exhibit Nos. 16
7 through 26 marked for identification.)

8 (Defense Exhibit No. 6 was
9 marked for identification.)

10 THE COURT: Please come up and have a
11 seat, Ms. Graham.

12 Ms. Graham, I apologize. We evidently
13 had three different Grahams today. You are not
14 the one that was attached. But apparently I think
15 what we're going to do, hopefully we can get your
16 testimony on the record, try to get you in here
17 and out of here today. Okay.

18 Mr. Noll, are you ready to proceed?

19 MR. McCULLOUGH: She's my witness, Judge.

20 THE COURT: I understand that. He gets
21 to play, too.

22 MR. McCULLOUGH: I see.

23 THE COURT: Are you ready to proceed?

24 MR. McCULLOUGH: Yes, sir.

25 THE COURT: You may proceed.

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CHERYL GRAHAM,
was called as a witness by the Defense and, having
been duly sworn, testified as follows:

EXAMINATION

(Out of the presence of the jury)

BY MR. McCULLOUGH:

Q. State your name for the record, please,
ma'am.

A. Cheryl Graham.

Q. How are you employed?

A. National Convenience Stores.

Q. What do you do there?

A. I am the money order coordinator.

Q. Do you have care, custody, and control
over the money order records of the National
Convenience Stores?

A. Yes, sir.

Q. Were you subpoenaed to come here today
and bring us a copy of a certain money order, if
you could find it?

A. Yes, sir.

Q. What was that?

A. It was for probation money order in the

1 amount of \$25.

2 Q. Purchased by whom?

3 A. Preston Hughes.

4 Q. Could you find that money order?

5 A. No, sir.

6 Q. The copy?

7 A. Not at this time, I haven't found it.

8 Q. I believe you told me that you had one
9 more batch of records to look at?

10 A. Uh-huh.

11 Q. We don't want to keep you standing
12 around down here unnecessarily. If you find that
13 record, could you notify me by leaving a message
14 here at the court?

15 A. Uh-huh.

16 Q. What is this phone number here?

17 THE COURT: It won't get here. There's
18 this phone and in chambers. Use Sandy.

19 MR. McCULLOUGH: What's her phone number?

20 THE COURT: 6324.

21 BY MR. McCULLOUGH:

22 Q. By calling 221-6324 and telling the
23 coordinator, whose name is Sandra Jefferson, that
24 you have found the money order that we're looking
25 for or that you could not find it. Could you do

1 that?

2 A. Yes, sir.

3 Q. If you cannot find it, in all likelihood
4 you will not be required to come back down here.

5 MR. McCULLOUGH: Pass the witness.

6 THE COURT: Mr. Noll, any questions?

7 MR. NOLL: Nothing, Your Honor.

8 THE COURT: Ms. Graham, I'm to
9 understand you're going to call us whatever way
10 your search reveals, but you are going to search
11 the remaining batch of records and let the
12 coordinator know. Thank you. You may be excused.
13 We'll wait to hear from you by phone.

14 Anything else?

15 MR. McCULLOUGH: For the record, if I
16 may, Mr. Hughes, you have here several pages, 12
17 pages of written questions you want me to ask
18 Sergeant Gafford on cross examination; is that
19 correct?

20 THE DEFENDANT: Yes, sir.

21 MR. McCULLOUGH: You gave these to me
22 when we broke for lunch.

23 THE DEFENDANT: Yes.

24 THE COURT: Do you want me to ask these
25 questions word-for-word, verbatim, of Sergeant

1 Gafford as part of my cross examination?

2 THE DEFENDANT: Yes.

3 MR. McCULLOUGH: That's all I have.

4 THE COURT: For the record, the Court is
5 not unduly restricting your cross examination
6 anyway but, you know, I have no way of knowing
7 whether the questions are going to be repetitive,
8 cumulative, admissible, properly objectionable as
9 to form; but the Court is not going to make any
10 leniency. The Court is still going to require all
11 forms of cross examination questioning in whatever
12 manner comply and follow the requirements of the
13 rules.

14 MR. McCULLOUGH: That was my
15 understanding, Judge.

16 THE COURT: Very well. Anything else?

17 MR. NOLL: I don't believe so, Your
18 Honor.

19 THE COURT: Ask Mr. Gafford to come in,
20 please, and let's proceed.

21 (Jury in.)

22 THE COURT: Let's proceed, gentlemen.
23
24
25

1 CROSS EXAMINATION CONTINUED
2 OF DENNIS GAFFORD
3

4 BY MR. McCULLOUGH:

5 Q. Officer Gafford, you're the same Police
6 Officer Gafford who was testifying before we broke
7 for lunch?

8 A. That's right.

9 Q. You're still under oath?

10 A. Yes, sir.

11 Q. You'll have to excuse me, but I kind of
12 lost the thread of our conversation. I don't want
13 to be repetitive. Bear with me if I repeat myself.
14 You testified that Mr. Hughes initially told you
15 when you started your interrogation, that he had
16 nothing to hide and he didn't do it or didn't have
17 anything to do with it or something to that effect?

18 A. Right.

19 Q. After you talked to him, you say he
20 eventually, in the manner you described, made the
21 statements and admissions that are contained in
22 State's Exhibit No. 3. I know you don't remember
23 these exhibit numbers.

24 A. Yes, sir, that's right. There's a page
25 missing. There's three pages to this one. Yes,

1 sir.

2 Q. All right. Now, this statement could be
3 read to implicate Mr. Hughes in harming, injuring
4 some way, a girl named Shawn?

5 A. Right.

6 Q. Doesn't say much of anything about the
7 child, Marcell Taylor?

8 A. No, sir, it doesn't.

9 Q. And then you talked over your
10 investigation to the officers that relieved you
11 and then they talked to Mr. Hughes some more and
12 allegedly he then gave a statement marked State's
13 Exhibit No. 4. You're familiar with that, of
14 course.

15 A. I've seen it. I'm not familiar with
16 everything that's in it.

17 Q. And this statement could then be read to
18 implicate Mr. Hughes in the injury or death of
19 Marcell Taylor, in addition to the girl?

20 A. That's right.

21 Q. But at this point, y'all quit taking
22 statements from Mr. Hughes, after you got this
23 State's Exhibit No. 4.

24 A. I wasn't there when they -- I may have
25 been in the office, but I wasn't having anything

1 more to do with handling Mr. Hughes at that point.
2 So, I don't know much about the fact that they
3 quit taking statements from him or if he quit
4 talking or exactly what the situation was.

5 Q. Now, who made the decision that State's
6 Exhibit No. 3 was not sufficiently complete?

7 A. Well, with all of us talking together,
8 we knew what basic elements were involved in the
9 case. We knew that Shandra Charles had been
10 stabbed. We also knew that Marcell Taylor had
11 been stabbed. He made the original statement to
12 me and there was no mention of Marcell Taylor, in
13 particular, and I took the statement as he gave it.
14 And once that was completed, it was -- we'd be
15 very irresponsible if we hadn't gone back and
16 asked him questions to clarify some points about
17 Marcell Taylor because Marcell Taylor was also at
18 the same scene and was stabbed at the same time,
19 it had appeared, and we had to clarify that.
20 That's the reason for the second questioning
21 period.

22 Q. But there is in State's 3 and State's 4
23 considerable differences other than just that
24 relating to the child, Marcell Taylor.

25 A. Okay.

1 Q. The substance of them is quite different
2 in several respects, isn't it?

3 A. As I said, I'm not sure of what's in
4 that statement. I didn't take it and I'm sure I
5 looked over it at that time but I'm not familiar
6 with it.

7 Q. In fact, there's hardly any reference in
8 the statement you took, State's Exhibit No. 3,
9 there's hardly any reference, if any, to the
10 3-year-old; is that correct?

11 A. That's correct.

12 Q. And based on State's Exhibit No. 3, you
13 didn't have a capital murder case at all, did you?

14 A. The case is the same. Whether or not he
15 acknowledged each point of it was irrelevant to me.
16 The case is the same.

17 Q. Well, the only proof that Preston Hughes
18 stabbed either one of these people is contained in
19 these two statements, isn't it?

20 A. No.

21 Q. At any rate, based on any information or
22 evidence you had at the time, you had no evidence
23 that Preston Hughes was involved in the death of
24 that child until you took State's Exhibit No. 4?

25 MR. NOLL: Objection, Your Honor. I

1 don't believe that this witness took State's
2 Exhibit 4. I object to assuming facts not in
3 evidence.

4 THE COURT: That will be sustained.

5 BY MR. McCULLOUGH:

6 Q. Let's just say when you turned the
7 investigation over to the officers that relieved
8 you, you had nothing more than a suspicion because
9 of the proximity of the bodies, that the person
10 that was Preston Hughes was involved in harming
11 that child.

12 THE WITNESS: Your Honor --

13 MR. McCULLOUGH: I withdraw the question.
14 We'll get it straightened out off the record.

15 BY MR. McCULLOUGH:

16 Q. So, did you -- when you went off the
17 shift, some other officer took this over and
18 continued the investigation, Sergeant Ferguson.

19 A. Ferguson and Yanchak, yes, sir.

20 Q. Right. Well, you came back to work,
21 what? The next day?

22 A. That night.

23 Q. That evening.

24 A. On the 27th, yes, sir; it would have
25 been 11:00 o'clock.

1 Q. Did you then go back and continue your
2 interest and investigation in this case?

3 A. Continued completing reports and
4 supplementary reports, but as far as actively
5 pursuing the investigation, the day shift
6 personnel are assigned follow-up because of the
7 number of homicides that occur during the
8 nighttime. The night shift is generally
9 responsible for scene investigations and immediate
10 follow-up, but continued follow-up is done by days
11 and evenings.

12 Q. So, you just wrapped up what you had
13 done up to that point. You didn't start any new
14 areas of investigation, interviewing any new
15 witnesses or anything like that?

16 A. That's correct.

17 Q. And would it have been then Sergeant
18 Ferguson who would have continued the
19 investigation, if anyone did? Would it have
20 become his case?

21 A. He and Yanchak, yes, sir.

22 Q. So, if anyone made the decision that you
23 had enough statements, it would have been them,
24 not you?

25 A. I would assume so.

1 Q. I believe you testified that you stayed
2 in the station house and continued doing report
3 writing or something or other after this statement,
4 State's Exhibit No. 3, after that was taken and
5 signed, which was about 7:15 in the morning?

6 A. Yes, sir.

7 Q. Were you still there at 12:20 -- around
8 noon, at 12:20 p.m.?

9 A. Yes.

10 Q. Were you still there at 1:15 p.m.?

11 A. Yes.

12 Q. On the 27th. So, you were still in the
13 homicide office when State's Exhibit No. 4, if we
14 can rely on these times, was taken?

15 A. Yes.

16 Q. And you knew they were taking this
17 second statement?

18 A. Yes.

19 Q. You conversed with them about it?

20 A. Yes.

21 Q. And you didn't read it after --

22 A. I said I did look the statement over.
23 I'm just not familiar with all that it says. At
24 the time that it was taken, I did. But since that
25 time, I have had no business really looking over

1 that statement.

2 Q. All right. Did you or Sergeant Ferguson,
3 to your knowledge, call the District Attorney's
4 office and confer with them about the
5 investigation or about the statements or about the
6 questioning?

7 A. Sergeant Ferguson was the one that filed
8 the charges. I'm not sure of any other
9 conferences that were held. I don't believe I
10 talked to any other District Attorney about it at
11 the time.

12 Q. Do you know of your own knowledge when
13 charges were filed?

14 A. On the 27th.

15 Q. Do you know when, if ever, Mr. Hughes
16 was taken before a magistrate?

17 A. I'm not sure.

18 Q. It certainly was not before State's
19 Exhibit No. 3 was given?

20 A. Is that the one that I took?

21 Q. Yes, sir.

22 A. No, it was not.

23 Q. So, the only advice that Mr. Hughes got
24 before he purportedly signed this confession,
25 State's Exhibit No. 3, was from police officers?

1 A. Advice, I read him his Miranda warnings.
2 If that's the advice you're talking about, that's
3 what I gave to him.

4 Q. That's the only advice he got, wasn't it,
5 was that blue card warning?

6 A. Well, again, I don't think that's advice.
7 That's warnings.

8 Q. Okay. Was there any particular reason
9 that you did not take him out before a municipal
10 court judge or somebody and have him given a
11 magistrate's warning?

12 A. He's required to have his warnings read
13 before the time that we take a statement, and
14 that's what I did.

15 Q. Did you give Mr. Hughes any reason to
16 think that he wouldn't go to jail or he wouldn't
17 be in trouble if he gave you this statement?

18 A. No, sir.

19 Q. Did you leave him to understand that he
20 was getting himself in real big trouble by signing
21 that statement?

22 A. I didn't leave him to believe anything.
23 I read him his warnings, asked him if he wanted to
24 talk. Why he talked, I don't know. That's in his
25 mind.

~~11~~

1 Q. Well, you know what I'm referring to by
2 "magistrate's warning." You do that all the time?

3 A. No, sir.

4 Q. You do not?

5 A. No, sir.

6 Q. Who are all those officers that bring
7 folks in over there in municipal court before the
8 judges for warnings?

9 A. Well, as I said, I generally work at
10 night. And during the nighttime, magistrates are
11 not always available. Occasionally they are, and
12 they may or may not, I'm not sure, have made
13 improvements on the system that they used of
14 magistrates available now; but our requirement,
15 again, is to read them the Miranda warnings, make
16 sure they're advised of their warnings, and that's
17 what I did, as I was required to do.

18 Q. I have some more questions, if you'll
19 bear with me, Sergeant Gafford. If possible,
20 could you answer these questions yes or no; and if
21 you can't, tell us that. Is that a deal?

22 A. Okay.

23 Q. 1: Isn't it true that you said my
24 client allegedly confessed to allegedly stabbing
25 the two victims?

1 A. Yes.

2 Q. Second: Didn't you type the alleged
3 confession?

4 A. Yes.

5 Q. 3: Did you type the alleged confession
6 word-for-word?

7 A. I can't say just yes or no.

8 Q. Well, let me break it down this way.
9 You typed every word of the confession yourself,
10 as opposed to somebody else doing it?

11 A. Correct.

12 Q. And I think I might have asked this
13 another time. The language of that confession, I
14 believe you have us to understand substantially
15 what you were told even though it may not be in
16 the exact language you were told at the first time?

17 A. That's correct.

18 Q. 4: Could you explain to the ladies and
19 gentlemen of the jury your reasons which you
20 consider the statement you typed being an alleged
21 confession, considering the fact only one of the
22 alleged victims you accused my client of allegedly
23 stabbing is mentioned in the statement you typed?

24 A. That's not a yes or no question.

25 Q. Well, I understand that. I guess it

1 calls for an explanation. So, could you explain
2 that?

3 A. Could you repeat the question again?

4 Q. Okay. I think it could be stated more
5 succinctly: How do you explain the fact that you
6 consider the State's Exhibit No. 3 to be a
7 confession to two killings or stabbings when only
8 one of the victims is mentioned in State's Exhibit
9 No. 3?

10 A. I never said that was an admission to
11 both stabbings.

12 Q. Okay. 5: Considering that State's
13 Exhibit No. 3 only mentions one stabbing victim,
14 do you believe there's such a thing as half a
15 confession, considering the fact you accused my
16 client of allegedly stabbing two people?

17 A. You want me to explain?

18 Q. Yes, sir.

19 A. I believe the people can make an
20 admission but not go all the way and tell the
21 complete truth. As in, make this statement and
22 not say everything that needs to be said in one
23 statement.

24 Q. And along that line, you don't believe
25 everything that's in either one of these

1 statements, do you?

2 A. I don't believe everything that's in
3 either one of them?

4 Q. Right.

5 A. I don't believe some things.

6 Q. That's what I mean.

7 A. About the statement that I took. I
8 don't know about the other one.

9 Q. All right. 6: More succinctly, perhaps,
10 is that the reason there's only one of these
11 people mentioned in State's Exhibit No. 3 is
12 because Mr. Hughes did not talk about the other
13 person?

14 A. No, that's not correct.

15 Q. Well, that might take some explaining.
16 If he had told you when you were taking his oral
17 statement that he killed both of these people,
18 surely you would have put it in the statement for
19 him to sign?

20 A. He didn't say it in that way. What he
21 said during our conversation -- this is prior to
22 the time that I'm typing the statement out. This
23 is during just a conversation that we had before,
24 during the interview. He said that when he had --
25 when they came up behind him, that he just started

1 stabbing, that he saw that she was holding, I
2 believe, that someone else was there -- I can't
3 remember the exact words or what was said and that
4 he started stabbing -- he was explaining the fact
5 that the stabbing occurred but did not want to
6 actually say that he had stabbed the boy. He said
7 instead that he was stabbing high and low, and
8 it's my -- it was my belief at that time and he
9 led me to believe that he had stabbed both of them,
10 was trying to get around the fact of actually
11 saying that he had stabbed the boy, explaining it
12 by saying he stabbed high and stabbed low,
13 explaining the fact that he could stab the boy
14 that was maybe in her arms or something.

15 Q. But none of that is in State's Exhibit
16 No. 3?

17 A. He didn't read that when we were talking
18 about the incident during the time that I was
19 typing the statement. And if he doesn't say it,
20 then I wasn't going to put it down.

21 Q. Okay. 7: If my client had hit you
22 after you assaulted him, would you have continued
23 to assault him?

24 A. That never occurred.

25 Q. After you assaulted my client, he asked

1 you, "Am I under arrest?" And you nodded your
2 head for yes. Considering the fact you never told
3 my client he was under arrest and also never read
4 my client his rights, would you, yes or no, have
5 filed an escape charge against my client, had he
6 attempted to get up and leave?

7 MR. NOLL: Your Honor, I'm going to
8 object. That question is argumentative,
9 accusatory, and duplicitous. I would ask that he
10 narrow it down somehow.

11 THE COURT: That will be sustained.
12 BY MR. McCULLOUGH:

13 Q. 9: In your previous testimony, you
14 denied telling my client, quote, "I talked to
15 Shawn tonight. She told me you took her purse.
16 We searched your apartment. We didn't find her
17 purse. What did you do with it?" Did you tell --
18 we'll break it in two. Did you tell Mr. Hughes
19 that?

20 A. I --

21 Q. Did you make that statement to
22 Mr. Hughes? "I talked to Shawn tonight, and she
23 told me you took her purse. We searched your
24 apartment. We didn't find her purse. What did
25 you do with it?" Did you make that statement to

1 Mr. Hughes?

2 A. No.

3 Q. Okay. Continuing: Should I ask the
4 mother of Shawn if she reported anything missing
5 from her daughter, could you, yes or no, believe
6 she will tell me no? In other words, what would
7 the mother say about something being missing?

8 A. I don't know.

9 Q. 10: Yes or no. Do you believe the
10 marijuana that was found on Shawn came from my
11 client?

12 A. I'm not aware of marijuana being found
13 on any of the complainants.

14 Q. 11: Yes or no. Have you permitted the
15 mothers of the two victims to read the alleged
16 confession you typed which you claim my client
17 gave you since you have them believing my client
18 is allegedly responsible for the death of the two
19 alleged victims? In other words, have you shown
20 State's Exhibit 3 or 4 to the parents of the
21 complaining witnesses?

22 A. I have never met them.

23 Q. 12: Have you explained to the families
24 that the statement, No. 3, does not contain any
25 confession of the stabbing the younger child?

1 Have you told the parents that?

2 A. No.

3 Q. Okay. 13. I'll break this into pieces.
4 The autopsy report states the approximate time of
5 death or wounds at the time the wounds were
6 inflicted on the two victims as around 8:30 p.m.,
7 on September 26th, 1988. Do you know that to be a
8 fact or not?

9 MR. NOLL: Your Honor, object. That is
10 completely false. It is not in evidence, and I
11 move to admit the autopsy report at this time to
12 rebut the flagrant attempt to put evidence before
13 this jury that is inaccurate.

14 THE COURT: Your objection will be
15 sustained. If you think you need to clear it up
16 with any evidence, redirect is the appropriate
17 time to do that.

18 MR. NOLL: Yes, Your Honor.

19 THE COURT: You may proceed.

20 BY MR. McCULLOUGH:

21 Q. The location of the attack is in a field
22 behind Fudarucker's on Kirkwood at Westheimer.

23 A. Correct.

24 Q. And Mr. Hughes told you that he boarded
25 a bus at the corner of Walker and Travis between

1 7:30 and 7:45 p.m. on that same evening. Excuse
2 me. 8:30 and 8:45 on Monday, September 26th, 1988.
3 I believe you might want to refer to this.

4 A. I'm not sure of the times. His
5 statement was that he was dropped off at a corner
6 downtown to catch a bus sometime after 8:10 p.m.,
7 but doesn't say what time he caught a bus.

8 Q. Do you, by the way, have any other notes
9 that you made at the time you were doing this
10 interrogation?

11 A. No, sir. I've got the offense report.

12 Q. You didn't make any other notes at the
13 time?

14 A. No, sir.

15 Q. 14: Would you explain to the jury how
16 it's possible for Mr. Hughes to be in two places
17 at the same time?

18 A. No.

19 Q. 15: In the interrogation room, did you
20 pass a yellow piece of paper, specifically, a
21 money order receipt and your pistol to another
22 detective outside the interview room? Did you do
23 that?

24 A. No, sir.

25 Q. Did you hit Mr. Hughes in the chest or

1 slap him?

2 A. No, sir.

3 Q. Did you assault him?

4 A. No, sir.

5 Q. Did you ever pass your gun to another
6 officer during that interview or before the
7 interview?

8 A. No, sir.

9 Q. 16: You stated that you did not search
10 Mr. Hughes' apartment after he was transported or
11 while he was being transported downtown?

12 A. No, sir.

13 Q. Did you accuse Mr. Hughes, during the
14 interview or at any time, of taking personal items
15 from Shawn?

16 A. No.

17 Q. Did you, in fact, find a pair of glasses
18 at the scene behind Fuddrucker's and accuse him of
19 having been in his apartment?

20 A. No, sir.

21 Q. Did you confront him with the glasses at
22 all?

23 A. No, sir.

24 Q. Did you show some glasses to Shawn's
25 family and tell them that they had come from

1 Preston's apartment?

2 A. No.

3 Q. Did you attempt to obtain identification
4 of any glasses at all, yourself?

5 A. No.

6 Q. 17: Do you not need some type of
7 warrant to go through the residential listings of
8 an apartment complex?

9 A. No, I don't.

10 Q. 18: Do you not need some type of
11 warrant to close up Mr. Hughes' apartment; that is,
12 to order the manager not to let anyone into the
13 apartment? Let me go back a step. Did you or
14 anyone else in the police department tell the
15 manager to close up his apartment during an
16 investigation or --

17 A. Not that I'm aware of. I didn't
18 personally, no.

19 Q. Could you describe a watch that
20 Mr. Hughes was wearing while you were questioning
21 him in his apartment at 2:30 a.m. on Tuesday,
22 September 27th, 1988?

23 A. I don't know if he was wearing a watch
24 or not.

25 I take that back. I think he looked at

1 his watch and said that it was 2:30 in the morning.
2 Assuming he looked at his watch and got that time,
3 he would have been wearing one. I don't know what
4 it looks like.

5 Q. 20: Did you not pass your gun, along
6 with a yellow piece of paper, to another detective
7 standing outside the room you questioned my client
8 in five to ten minutes before you assaulted him?

9 A. No.

10 Q. 21: Isn't it true you gave a
11 description of the watch you claim my client was
12 wearing because he never had a watch on? You
13 can't give a description of the watch?

— 14 Is it true you can't give a description
15 of the watch you claim my client was wearing
16 because he never had a watch on?

— 17 A. I don't know that he had a watch on. He
18 said that the time was 2:30. I'm assuming he
19 looked at his watch. Where he got the time, I'm
20 not sure.

21 Q. Where is the door key that was taken
22 from my client's apartment?

23 A. He maintained the keys until the time
24 that he allowed the other sergeants to go in.
25 Where they're at now, I don't know.

1 Q. 23: If my client never answered the
2 door, would you have obtained a warrant for his
3 arrest?

4 A. I don't know. That's not the case.

5 Q. 24: Isn't it impossible for a police
6 officer to obtain a warrant for a person's arrest
7 with just half a name?

8 A. No.

9 Q. 25: Isn't it true you found Mr. Hughes'
10 full name from the money order receipt you took
11 from his apartment, which is the yellow piece of
12 paper Mr. Hughes saw in your hand before you
13 assaulted him, which you used to forge his
14 signature on these voluntary consent for search
15 and seizure document?

16 A. I don't know anything about a yellow
17 piece of paper, and the rest of the information is
18 false.

19 Q. 26: Do you have the original statement
20 for voluntary consent for taking of samples of
21 blood, urine, or hair, which Mr. Hughes signed?

22 A. I believe it's in evidence.

23 Q. Well, I show you what has been admitted
24 into evidence as State's Exhibit No. 2.

25 A. Yes, sir. This is the original

1 voluntary consent for taking of samples of blood,
2 urine, or hair.

3 Q. Do you not have some of these forms in
4 the office over there that are only about half
5 this big?

6 A. No, that's the one, the only ones that I
7 know of.

8 Q. And I believe you stated that these
9 forms are frequently xeroxed, which would account
10 for some of the markings and lines on the pages?

11 A. Yes, sir. When we run low on the forms
12 that are issued by the department, we will xerox
13 additional ones that we can have when we run out
14 of the stock of them.

15 Q. Similar markings will appear on
16 documents such as this when one document is
17 xeroxed on top of another?

18 A. I don't know.

19 Q. 28: Do you know who authorized the tap,
20 which is placed on Mr. Hughes' mother's telephone?

21 A. There's not now or ever has been a tap
22 on anyone's phone.

23 Q. 29: Were you the officer who
24 interrogated two of Mr. Hughes' relatives along
25 with assistant District Attorney JoAnn Lee?

1 A. No.

2 Q. 30: Could you give me the names of the
3 officers, the uniformed officers who conducted the
4 search of Mr. Hughes' apartment while he was sent
5 downtown to await questioning?

6 A. That didn't occur.

7 Q. Okay. 31. Could it be the reason the
8 little boy you accused Mr. Hughes of allegedly
9 stabbing isn't mentioned in the alleged confession
10 you typed is because Mr. Hughes told you during
11 questioning, quote, "I don't know anyone named
12 Mario," unquote. After you asked him, quote, "Do
13 you know a girl named Shawn Brown and a boy named
14 Mario," quote, unquote.

15 A. I didn't ask him that. I believe I did
16 ask him if he knew Marcell Taylor. He said he did
17 not, and he did not indicate that he hadn't seen
18 the boy. He just did not know the name.

19 Q. 32: Though someone added minor details
20 to the forged signature on the altered statement,
21 voluntary consent for search and seizure, is it
22 your belief that when I take the original money
23 order from the yellow piece of paper Mr. Hughes
24 saw in your hand the morning you arrested him,
25 came and matched the signature on the money order

1 to the signature on the altered statement,
2 voluntary consent for search and seizure, they
3 won't match?

4 A. Again, I don't know anything about a
5 yellow piece of paper that he's speaking of, and
6 the information that you're relating about, an
7 altered document, is false.

8 Q. Okay. I'm going to paraphrase this.
9 You obtained this document, State's Exhibit No. 2,
10 voluntary consent for taking samples of blood,
11 urine, and hair.

12 A. Yes, sir.

13 Q. But you never took any.

14 A. That's right.

15 Q. Did you feel like after State's Exhibit
16 No. 4 was taken that you didn't need any?

17 A. Is 4 the consent form that you're
18 speaking of?

19 Q. No. 4 is the second statement. You
20 knew that had been taken. I think we covered that.
21 You were there.

22 A. Yes. The reason we had that voluntary
23 consent form signed to begin with was if it became
24 necessary at some point to take those samples,
25 that would be done and we could take the samples.

1 However, that never became necessary. So, we
2 never obtained the samples.

3 Q. Well, okay. However, had you taken, say,
4 one of these samples, blood, urine, or hair and
5 run a comparison against some other samples, it
6 could only introduce problems in the case,
7 couldn't it?

8 A. No.

9 Q. Well, what if these samples turn out to
10 be inconsistent with the theory espoused in
11 State's Exhibit No. 4?

12 A. I'm not aware of any samples that were
13 taken anywhere for those to be compared with. If
14 those samples were obtained, we would have gone
15 ahead and obtained samples from him. That could
16 be done today, if we need to.

17 Q. This is kind of long. You might want to
18 answer it in two or three parts. 34: The black
19 line which appears over the titles and below the
20 signature in the two altered xerox copies you gave
21 the District Attorney, Chuck Noll, indicate the
22 original size of the statement, voluntary consent
23 for taking of samples of blood, urine, or hair,
24 which Mr. Hughes signed, the statement, voluntary
25 consent for search and seizure, which you turned

1 my client's signature onto. Is there anything you
2 would like to tell the honorable judge and the
3 ladies and gentlemen of the jury before I perform
4 an experiment which the results will show how you
5 altered the two statements and proved all the
6 alleged evidence the DAs representing the State
7 plan to use against Mr. Hughes is false, created
8 by you and the other officers involved? You
9 understand it's Mr. Hughes' contention that you
10 fabricated those two documents?

11 A. That's right. I understand that.

12 Q. And you understand and I -- didn't we
13 demonstrate this once -- that you can place one
14 document on top of another, run it through a xerox
15 machine, and it will leave a line similar to that
16 one?

17 A. I don't know that. We haven't
18 demonstrated that.

19 Q. But you know that. You deal with xerox
20 materials all the time, don't you?

21 A. Not in the manner that you're speaking.

22 Q. I'm not asking you to admit you
23 fabricated the document. I'm just asking, you
24 have had occasions to cut and paste documents, put
25 them together and xerox them onto one page.

1 You've seen that done for legitimate purposes?

2 A. I've seen that done, yes.

3 Q. Doesn't it leave a line similar to
4 what's illustrated on that particular document?

5 A. Sometimes they do, and sometimes they
6 don't.

7 Q. Okay. 36: Did your investigation
8 indicate that the two alleged victims were
9 returning from the store when they were attacked?
10 From some store?

11 A. I never actually talked to anybody about
12 that, about where they were coming from or going
13 to.

14 Q. Well, did you or anyone else in the
15 police department either trace their movements
16 that evening or attempt to?

17 A. I believe they did.

-18 Q. Okay. 37: Had you obtained a warrant
19 for Mr. Hughes' arrest, would you have taken him
20 before a magistrate immediately after you arrested
21 him? In other words, if you had arrested him with
22 a warrant instead of taking him downtown
23 voluntarily, as you say you did, would you have
24 taken him before a magistrate?

-25 A. No, sir.

1 Q. Are you aware that Article 15.17 of the
2 Vernon's Annotated Code of Criminal Procedure
3 states the following --

4 MR. NOLL: Your Honor, I object to any
5 reading of any law that does not come from the
6 Court's charge. I object to this question to this
7 man. He is not a lawyer. I see where this is
8 going. I object to it. I've been very patient, I
9 believe, in some of these questions in not
10 objecting. I object to this question.

11 THE COURT: That will be sustained.

12 MR. McCULLOUGH: Your Honor, for the
13 record, the question basically sets out the text
14 of that article which relates to my next question.

15 THE COURT: The objection is sustained.
16 Ask your next question, please.

17 BY MR. McCULLOUGH:

18 Q. 39: Do you consider answering
19 telephones to be a necessary delay?

20 MR. NOLL: Your Honor, I have to object
21 to the relevancy of that question unless it can be
22 shown to be somehow relevant to this case.

23 THE COURT: That will be sustained.

24 MR. McCULLOUGH: For the record, Your
25 Honor, Questions 42, 43, all relate similar to law

1 questions. I assume that the ruling would be the
2 same.

3 THE COURT: I have not heard the
4 questions.

5 MR. McCULLOUGH: They have similar text,
6 both Vernon's.

7 BY MR. McCULLOUGH:

8 Q. Why did you ask Mr. Hughes which bus he
9 caught if you didn't intend to investigate his
10 whereabouts to see if he told you the truth?

11 A. The time frame in which he was stating
12 he was on the bus didn't really have anything to
13 do with the time frame of the offense.

14 Q. Well, he gave you information about his
15 whereabouts up until when? About 10:30?

16 A. I think that's right.

17 Q. From the time he got off work until
18 about 10:30?

19 A. Yes, he said that he got home at 10:30
20 or so.

21 Q. So, the statements he told you there
22 about his whereabouts from getting off of work at,
23 what? 5:00 o'clock or so until 10:30, if believed
24 or corroborated, would account for his time during
25 that period of time? He gave you -- he's covered

1 every minute of the time from when he got off work
2 until 10:30 in that statement?

3 A. I think -- yes, that's right.

4 Q. Okay. 45: When you went into
5 Mr. Hughes' apartment, accompanied by the
6 uniformed officer, were any of the family or
7 friends of the victims, complaining witnesses,
8 waiting in the parking lot outside?

9 A. No, sir.

10 Q. 46: Did you not say that Mr. Hughes
11 remained on the homicide floor of the police
12 station between the signing of the two statements?

13 A. Yes, I believe he did.

14 Q. Now, that is presumably -- as opposed to
15 taking him out of homicide and up to the jail
16 floor, which is on the top floor of that building,
17 isn't it?

18 A. It's on the fifth floor. I had never
19 placed him in jail, and I don't think that anyone
20 else did. He had requested to stay in the room
21 there, and so we allowed him to.

22 Q. Did he make any phone calls while you
23 were still present?

24 A. Yes.

25 Q. Was that before or after Statement No. 3

1 was signed? Or State's Exhibit 3, which is the
2 first statement?

3 A. Right. I believe he made phone calls
4 after the statement.

5 Q. Homicide is on what? The third floor?

6 A. Yes, sir.

7 Q. And on the fifth floor there's nothing
8 but jail. I mean, the elevator comes up into the
9 jail?

10 A. Right.

11 Q. Are you familiar with the procedure of
12 being able to make collect telephone calls from
13 the pay phone on the jail floor?

14 A. I know that all -- I believe all they've
15 got is pay phones or something of that nature.
16 They have to pay for their call or call collect,
17 one or the other.

18 Q. All right. I believe -- was he allowed
19 to use the phone in homicide on the floor you were
20 on?

21 A. Yes.

22 Q. All right. And you can't make a collect
23 call or long distance call off of one of those
24 phones, can you?

25 A. Not without some kind of code-type deal.

1 You can make a collect call, I guess, from
2 anywhere, but I'm not sure what the procedure
3 would be. I know we have to have an authorization
4 number when we call out on long distance or
5 something.

6 Q. For instance, you can't dial for
7 information off of one of those phones?

8 A. No, not just straight out, no, sir.

9 Q. If you punch 0, you get the switchboard
10 operator?

11 A. Right.

12 Q. So, in order to make a collect call,
13 you'd have to get the switchboard operator to get
14 you a line, I guess?

15 A. I would assume so.

16 Q. Did Sergeant Yanchak introduce himself
17 to -- 47: Will you explain to the ladies and
18 gentlemen of the jury how my client was able to
19 make collect calls from the telephones located on
20 the fifth floor of the HPD central jail between
21 the signing of the two statements?

22 A. I don't know that that occurred.

23 Q. But your recollection is that he stayed
24 on the homicide floor the entire time?

25 A. That's my belief, yes.

1 Q. He doesn't have access to any pay phone
2 in the homicide division?

3 A. No, sir.

4 Q. You didn't let him go out in the hall?

5 A. No, sir.

6 MR. NOLL: May we approach the bench,
7 Your Honor?

8 THE COURT: You may.

9 (Off the record discussion.)

10 BY MR. McCULLOUGH:

11 Q. Are you familiar with any of the
12 following phone numbers: 221-0089?

13 A. No, sir.

14 Q. 221-9010?

15 A. No, sir.

16 Q. 221-9011?

17 A. Could you repeat that one again?

18 Q. 221-9011?

19 A. No, sir.

20 Q. 225-8036?

21 A. No, sir.

22 Q. 664-3692?

23 A. No, sir.

24 Q. Do you know whether Sergeant Yanchak
25 introduced himself to Mr. Hughes as Sergeant

1 Garrison?

2 A. I wouldn't think so, but I don't think
3 that I was in the room any time that the two met.

4 Q. Did Sergeant Yanchak use his name or
5 Garrison or any other name, make a threat in your
6 presence or within your knowledge on the life of
7 Mr. Hughes?

8 A. No.

9 Q. 50: In your previous testimony you
10 stated the reason for which you arrested
11 Mr. Hughes. Would you tell the ladies and
12 gentlemen what that reason was?

13 A. The reason for the arrest?

14 *Q. Yes, sir.

15 A. After having received the information
16 that the suspect in this case was named Preston,
17 we used that information to locate Preston Hughes
18 at the apartment complex. He's the only Preston
19 listed on the resident list. We spoke with him
20 and asked him if he would mind answering some
21 questions. He never showed any -- well, he never
22 asked us why we were questioning him, coming out
23 in the middle of the night, knocking on the door,
24 asking him to come down to the homicide division.
25 It was somewhat suspicious to us that somebody

1 wouldn't ask why we were there, why we wanted him
2 to come answer questions.

-3 The close proximity of this Preston to
4 the crime scene when Preston was supposedly the
5 suspect, according to our complainant, the fact
6 that the complainant in this case, Shawn, was at
7 the apartment complex to visit a friend named
-8 Evelyn, the fact that this Preston does know
-9 Evelyn and does know Shawn and gave a description
10 of her. In stating his description of Shawn, he
11 said that she was -- that she had yellow skin and
12 in conversation with Preston, he was talking about
13 girls with yellow skin were not any good and they
14 were all stuck up and showed a great deal of
15 tension toward girls in that nature. If I'm
16 leaving something out, I'm sorry; I don't recall
17 anything else.

18 Q. I'll show you what has been marked as
19 State's Exhibit No. 6 and ask you if it fairly and
20 accurately depicts what it shows there.

21 A. I believe it does, as I recall it. I'm
22 not sure of the layout of the entire apartment
23 because I -- when I came in, I was there and maybe
24 went down -- I'm sure I went down to the door of
25 his bedroom at one point, but that was the extent

1 of the area I was in. As far as I can tell, the
2 living room looks similar to what I remember.

3 Q. And the document itself purports to not
4 be to scale?

5 A. That's right.

6 Q. It's only schematic?

7 A. Yes, sir.

8 MR. McCULLOUGH: We would offer
9 Defendant's Exhibit No. 6.

10 MR. NOLL: Your Honor, we don't have any
11 objections. There is some other data on here, but
12 we don't object if the defendant wants to offer it
13 into evidence.

14 THE COURT: It will be admitted.

15 BY MR. McCULLOUGH:

16 Q. Defendant's Exhibit No. 6 is a diagram
17 of Mr. Hughes' apartment?

18 A. Yes, sir.

19 Q. The writing on here shows the area where
20 some things, physical items, were alleged to have
21 been found. That's what explains the writing here.

22 A. Yes, sir.

23 Q. Okay. Sergeant, have you ever told a
24 lie?

25 MR. NOLL: Objection, Your Honor.

1 That's not relevant in this case, and it's
2 argumentative.

3 THE COURT: That will be sustained.

4 BY MR. McCULLOUGH:

5 Q. 53: Your name appeared on the voluntary
6 consent for search and seizure. Who actually
7 conducted the search?

8 A. I believe it was Yanchak and Ferguson.

9 Q. Why is your name on it?

10 A. Because I was the one that presented him
11 with the document, explained it to him, and at
12 that time, I was in charge of the investigation,
13 myself and my partner.

14 Q. Did you previously state that you were
15 the person who took Mr. Hughes to his room to
16 change clothes before going downtown?

17 A. I believe actually Sergeant Hamilton
18 took him back there, and at some point I walked
19 back there, also. But Hamilton was the one that
20 first walked back there with him, I believe.

21 Q. Do you know how Mr. Hughes came to know
22 Evelyn and Shawn?

23 A. I think we talked about that earlier;
24 that is, I believe it's a cousin, named Shawn
25 Graham, has some relationship with one of the two

1 girls, Evelyn or Shandra Charles, and it was
2 through that relationship that he came to know her.
3 That's my belief.

4 Q. Did you formerly say that you answered
5 telephones while Mr. Hughes was in your custody,
6 which is the reason you didn't take him before a
7 magistrate for a warning?

8 A. No, I didn't say that.

9 Q. Well, did you answer telephones while he
10 was in your custody?

11 A. I don't know. I don't think I would
12 have answered a phone call while I was speaking
13 with him or typing a written statement. I left
14 the room on a couple of occasions that I detailed
15 to you earlier, but that would have been the only
16 times.

17 Q. Do you know that Preston's former
18 girlfriend is yellow skinned?

19 A. I don't know his former girlfriend.

20 Q. Do you know that his former roommate is
21 yellow skinned?

22 A. I don't know that, either.

23 Q. Is it not true that Mr. Hughes did not
24 describe Shawn as being yellow skinned but, rather,
25 as being brown skinned?

1 A. No, sir.

2 Q. Did you know that Preston's cousin,
3 Shawn, met Shawn through Preston?

4 A. No, I don't recall that.

5 MR. McCULLOUGH: Pass the witness.

6 THE COURT: Mr. Noll.

7 MR. NOLL: A couple of questions, Your
8 Honor.

9

10 REDIRECT EXAMINATION

11

12 BY MR. NOLL:

13 Q. Sergeant Gafford, at my request did you
14 go out to the medical examiner's office, pick up a
15 little vaginal swab and take it to the Houston
16 Police Department crime laboratory?

17 A. Yes, sir, I did.

18 Q. When did you do that?

19 A. It was a week ago this past Saturday.

20 MR. NOLL: May I approach the witness,
21 Your Honor?

22 THE COURT: You may.

23 BY MR. NOLL:

24 Q. Sergeant, let me show you what is marked
25 as State's Exhibit No. 22. Do you recognize that?

1 A. Yes, sir.

2 Q. And is that the little vaginal swab that
3 you picked up from the medical examiner's office
4 and transported to the Houston Police Crime
5 Laboratory?

6 A. Yes.

7 Q. Thank you. From the questions you were
8 asked on cross, I take it that after you
9 questioned the defendant, you actually let him use
10 the telephone?

11 A. Yes, sir.

12 Q. Let him call anyone he wanted to?

13 A. Yes, sir.

14 Q. Make him pay for the telephone, or was
15 it free access telephone?

16 A. Free access telephone.

17 Q. Did you monitor or record his phone
18 calls?

19 A. No, sir.

20 Q. Did you leave the room while he talked
21 to whoever he wanted to talk to on the phone?

22 A. Yes, sir.

23 Q. Did you place any restrictions on that
24 phone for him to call anyone in the world he
25 wanted to?

1 L. B. SMITH,
2 was called as a witness by the State and, having
3 been duly sworn, testified as follows:
4

5 DIRECT EXAMINATION
6

7 BY MR. NOLL:

8 Q. Sir, would you please state your name
9 for the members of the jury.

10 A. Sergeant L. B. Smith.

11 Q. Sergeant Smith, I'm going to ask you to
12 keep your voice up so the jurors on the very end
13 can hear you.

14 A. All right.

15 Q. How are you employed, Sergeant Smith?

16 A. I'm a homicide sergeant with the Houston
17 Police Department.

18 Q. How long have you been with the homicide
19 division of the Houston Police Department?

20 A. I've been in homicide division for about
21 11 years.

22 Q. Prior to becoming a homicide sergeant,
23 did you work in another division within the
24 department?

25 A. Radio patrol.

1 Q. How long were you a patrol officer?

2 A. Three years.

3 Q. In total, how many years of training or
4 experience in law enforcement do you have?

5 A. 14 years.

6 Q. All of those with the Houston Police
7 Department?

8 A. Yes, sir.

9 Q. Let me direct your attention, sergeant,
10 to September 27th of 1988. On that day did you
11 have occasion to witness a statement given by a
12 defendant by the name of Preston Hughes, III?

13 A. I did.

14 Q. Could you tell the members of the jury
15 how it came that you were a witness on his
16 statement?

17 A. Well, I was at work in my cubicle in my
18 office in the homicide division when I was asked
19 by Sergeant Gafford to enter an interview room to
20 witness his statement.

21 Q. When you say your cubicle, that is one
22 of your divided off areas in the center of the
23 homicide office, the big office?

24 A. That's correct.

25 Q. Is your cubicle near the interview room

1 located in that area?

2 A. Yeah, right across the hallway, short
3 hallway.

4 Q. Hallway, is it a space?

5 A. Right.

6 Q. Your cubicle is where I'm seated,
7 perhaps, and there's a door in the hallway and
8 space between us --

9 A. The hallway is the space formed by the
10 cubicles, line of cubicles. The interview room
11 was to my left and behind me, maybe one door.

12 Q. Was there anyone else who was a witness
13 on the statement with you?

14 A. Sergeant Ross.

15 Q. Okay. Is Sergeant Ross your regular
16 partner or do y'all happen to be in nearby
17 cubicles or what?

18 A. No, Sergeant Ross is a night shift
19 sergeant. I'm a day shift sergeant, and we just
20 happened to be there when he asked.

21 Q. Could you tell the members of the jury
22 what happened when you first entered the interview
23 room where the defendant, Preston Hughes, was
24 located?

25 A. Well, I was asked to witness his signing

1 of the statement. So, when I got in there, I
2 began to ask him some questions.

3 Q. Okay. Why would you want to ask him
4 some questions? Again, officer, try to keep your
5 voice up so these people can hear you.

6 A. The reason I wanted to ask him some
7 questions is to establish the voluntariness of his
8 statement.

9 Q. What sort of things did you ask him?

10 A. I asked him if it was his statement, if
11 this was the statement that he had given. He said
12 it was.

13 Q. When you refer to "this," let me show
14 you what's been marked for identification as
15 State's Exhibit No. 3. Would you examine that and
16 tell the jury if that is the same statement that
17 you witnessed on the 27th of September of 1988, by
18 the defendant, Preston Hughes?

19 A. Yes, it is.

20 Q. When you asked him if that was his
21 statement, did you do anything to make sure that
22 he had, in fact, read that statement or could read
23 the statement?

24 A. I asked him if he had read the statement.

25 Q. What did he say?

1 A. He said that he had.

2 Q. Then what did you ask him?

3 A. Asked him if he read all the rights that
4 are printed on the form. He said that he had.

5 Q. Did he do anything to affirmatively
6 acknowledge that he had read those rights which
7 are printed on each page of the statement?

8 A. If I recall correctly, I asked him to
9 put his initials by each of the rights that he
10 read and understood.

11 Q. Did he do that on that statement?

12 A. He did.

13 Q. Then what happened?

14 A. I asked him if anybody had threatened or
15 coerced him in any way to make the statement. He
16 said that they had not.

17 Q. Then what happened?

18 A. Well, at that time Sergeant Ross then
19 asked him to read a line on the statement that he
20 had made.

21 Q. Did you both listen to him as he read
22 that line?

23 A. Yes, we were both present.

24 Q. Did you look over his shoulders and were
25 you able to determine if, in fact, he could read?

1 A. Well, he was reading from the statement.
2 I could see he was reading from the statement.

3 THE COURT: Officer Smith, please keep
4 your voice up. With all the extraneous noise,
5 they're having a tough time. Make a conscious
6 effort, please. You may proceed, Mr. Noll.

7 MR. NOLL: Thank you, Your Honor. I'm
8 sorry.

9 BY MR. NOLL:

10 Q. Were you able to determine that he
11 actually could read by listening to him read from
12 a line in the statement?

13 A. Yes, I was satisfied he could read.

14 Q. Then what did you do?

15 A. Sergeant Ross asked him to place his
16 initial by a correction that he had made on the
17 statement. A line had been marked out, and some
18 words had been written in. So, she asked him to
19 place his initials by that, which he did.

20 Q. After that, what happened?

21 A. After that, Sergeant Ross asked him to
22 place his name, sign his name at the end of each
23 sentence -- at the end of each page showing that
24 that was the end of that page.

25 Q. Did he do that?

1 A. He did that.

2 Q. Were you satisfied that he was signing
3 this statement? In your own mind, were you
4 satisfied he was signing it of his own free will
5 and voluntarily?

6 A. Oh, yes, definitely.

7 Q. Did he ever say anything to indicate to
8 you that Sergeant Gafford or any other police
9 officer or any other person had threatened him in
10 any way to get him to sign this document?

11 A. No, not at all.

12 Q. Did he explain about any maltreatment at
13 all?

14 A. No.

15 Q. What was his general attitude and
16 demeanor as you dealt with him that morning?

17 A. He was fairly well relaxed and calm,
18 just talked back and forth as normal.

19 Q. Do you recall exactly what time it was
20 when you witnessed these signatures?

21 A. I went in there at about 7:10 a.m., and
22 I signed my name on there at 7:15 a.m.

23 Q. When you put your name on there and put
24 "7:15," do you do that in every case where you're
25 a witness, to indicate the time that you signed

1 your name?

2 A. That's right.

3 Q. Was there anything at all unusual about
4 the defendant's signing of the statement which
5 might lead you to suspect that there had been any
6 sort of maltreatment of this defendant?

7 A. Not at all.

8 Q. Were you present when the defendant used
9 the telephone at all?

10 A. No. I was present when he asked to use
11 the phone so he could call his employer, but I
12 left the room.

13 Q. Okay. Did Sergeant Ross stay there in
14 the room with you?

15 A. Yes.

16 Q. Do you know if he used the phone in her
17 presence?

18 A. I couldn't say. I went back to work.

19 Q. Did you have any other dealings with the
20 defendant that morning?

21 A. No.

22 Q. From your perspective of your cubicle
23 being very near to the interview room, did you at
24 any point in that morning hear any noises coming
25 out of the interview room, loud noises or sounds

1 of anybody banging against the wall or anything
2 like that?

3 A. Nothing at all.

4 Q. Is your cubicle near enough to the
5 interview door where you would hear such a thing
6 if it was going on?

7 A. Yes.

8 MR. NOLL: Pass the witness, Your Honor.

9 THE COURT: Mr. McCullough.

10

11

CROSS EXAMINATION

12

13 BY MR. THOMAS:

14 Q. What are you reading from there,
15 sergeant?

16 A. My offense report, sir. I say my
17 offense report. It's an offense report in regard
18 to what I did that day.

19 MR. THOMAS: May I approach the witness
20 and see what he's reading there, sir.

21 THE COURT: You may.

22 MR. NOLL: If it please the Court, Your
23 Honor, this supplement is included in the offense
24 report I previously provided to counsel. It may
25 be he already has a copy.

1 BY MR. THOMAS:

2 Q. The homicide division is on the third
3 floor of the Houston Police Department; is that
4 fair?

5 A. That's correct.

6 Q. What else is up there?

7 A. What else is on the third floor?

8 Q. Yes, sir.

9 A. Chief's office, burglary and theft
10 offices, forgery offices.

11 Q. Y'all are at the west end of the
12 building?

13 A. Homicide is, yes.

14 Q. If I walk in there at the west end of
15 the building, what do I see?

16 A. From where?

17 Q. From where you get on to the third floor
18 and you're looking west to the homicide office.

19 A. When you get off the elevator, the
20 homicide office where we were is probably about --

21 Q. It's around the corner?

22 A. Yeah, around the corner from the
23 elevator, but if you're looking towards the
24 homicide office, it's about 60 feet or 75 feet, I
25 guess, from the elevator.

1 Q. What do I see when I'm looking there?

2 A. Well, you see a set of double doors.

3 Q. Double doors and there's an insignia,
4 "homicide division."

5 A. Also a little sign sticking out saying
6 "homicide investigation office" before you get to
7 the double doors.

8 Q. I can't walk off the street and walk in
9 the homicide office, can I?

10 A. No.

11 Q. I have to be invited there or taken
12 there?

13 A. Well, normally, yes.

14 Q. I understand that y'all have visitors
15 from time to time, old friends or something like
16 that, but you got to get permission to go in there?

17 A. You should. I'll say that.

18 Q. Well, you reckon if I didn't have
19 permission and hadn't been invited and hadn't been
20 in custody or taken in there, I could?

21 A. Dressed like you are, you bet.

22 Q. Sir?

23 A. Dressed like you are, you probably can.

24 Q. If I just walk in there, I can?

25 A. Uh-huh.

1 Q. Dressed like I am?

2 A. Uh-huh.

3 Q. As I understand your testimony, you said
4 you heard nothing at all coming out of the
5 interview?

6 A. No. I said I didn't hear any sounds
7 that sounded like somebody was being mistreated.

8 Q. That wasn't the question he asked you.

9 A. What was it?

10 Q. He said, "Did you hear anything at all?"
11 You said, "Nothing."

12 What did you hear coming out of the room?

13 A. Well, I guess I didn't hear anything at
14 all, now that you pin it down.

15 Q. Probably because the door was closed?

16 A. No, I don't think the door was closed.
17 In fact, I know the door wasn't closed when he
18 asked me to witness his statement.

19 Q. Describe what's in the interview room.

20 A. It's a small room, I'd say maybe six by
21 six, pretty small. I don't know what the
22 dimensions are, but they're very small. There's a
23 small rectangular formica top table and usually a
24 couple of metal chairs and a couple of stuffed
25 chairs and telephone, possibly a typewriter.

1 Sometimes yes, sometimes no. They get carried
2 around.

3 Q. What time did you get to the homicide
4 division that morning?

5 A. Well, I couldn't say, exactly, but
6 normally I get there around 6:45. I work 7:00 to
7 3:00.

8 Q. Okay. So, 30 minutes after you got
9 there, you witnessed this statement that you
10 testified about?

11 A. That's correct.

12 Q. And whether or not it had been typed
13 before you got there, you don't know?

14 A. Well, I can recall seeing Sergeant
15 Gafford in there with the defendant at a
16 typewriter.

17 Q. Sergeant Gafford at a typewriter?

18 A. Yes, sir.

19 Q. What kind of typewriters?

20 A. I don't recall. All we have is
21 Selectric IBMs, but I don't know which one it was.

22 Q. So, it's electric typewriters?

23 A. Yes.

24 Q. They make a little bit of noise. More
25 noise than what she's messing with here, steno

1 machine?

2 A. Yes, sir.

3 Q. Make more noise than that. All right.
4 Since you said you didn't hear anything at all,
5 then the statement must have already been taken or
6 you disregarded that noise?

7 A. I didn't say that. I don't recall
8 actually hearing the typewriter, but in an office
9 the size of ours, hearing a typewriter would not
10 be anything at all unusual. I would not make note
11 of that.

12 Q. You're the day sergeant?

13 A. I'm sorry, what?

14 Q. You're the day sergeant?

15 A. I don't know what you mean by the day
16 sergeant. There's a whole bunch of us.

17 Q. I got the impression that Sergeant Ross
18 was the night sergeant, whatever that meant. You
19 were the day sergeant?

20 A. I am a day sergeant but not the day
21 sergeant. There's a whole lot of us.

22 Q. Whole lot of you?

23 A. Yeah. In other words, there's -- every
24 sergeant in homicide division is an investigative
25 sergeant. I'm not the only one up there.

1 Q. You're not the boss?

2 A. Oh, no, not at all.

3 Q. Who would have been in charge when you
4 got there?

5 A. Well, at that time there was two day
6 shifts in charge in that area. There was two
7 different squads.

8 Q. Whoever the day lieutenant was, if he
9 was there, he would have been in charge?

10 A. Right.

11 Q. If the night lieutenant hadn't gone off,
12 he would still be in charge?

13 A. That's right.

14 Q. What type of other employees, other than
15 police officers, are in the office?

16 A. Back there generally there's not any
17 others, other than the lieutenants and the
18 sergeants now that some of the clerical help comes
19 back there occasionally to get coffee or whatnot,
20 but they don't work back in that area.

21 Q. Where do the clerical help work?

22 A. You go out through the double doors, and
23 off to your right there's a whole other section of
24 the homicide division that is for administrative
25 sergeants and lieutenants and stenographers.

1 Q. What do they stenog? What do they do,
2 these stenographers?

3 A. Enter reports.

4 Q. Explain that.

5 A. If aggravated assault cases or any sort
6 of report comes in that needs to be entered into
7 the computer, they do that, or sometimes they
8 enter supplements for homicide division, homicide
9 cases.

10 Q. In other words, they do the typing onto
11 some sort of word processor and it goes into a
12 computer that then results in the type of offense
13 report that you've been talking about that you
14 refreshed your memory from?

15 A. They didn't type this one, if that's
16 what you mean. They do type some. Generally they
17 do cases other than homicide cases. They do
18 aggravated assault or telephone harassment or
19 cases that police officers turn in to them on hard
20 paper. We type our own in.

21 Q. You don't -- do you ever use
22 stenographers to do offense reports?

23 A. No. We type directly into the computer.

24 Q. And then it turns out the finished
25 product, which you had in your hand awhile ago?

1 A. Right, that's right.

2 Q. And you and Sergeant Ross, a lady
3 sergeant, went into the interview room at the same
4 time?

5 A. Together.

6 Q. Did you read the statement the defendant
7 had made?

8 A. Did I read it? No, I didn't read it.

9 Q. Had you been briefed on what it was he
10 was making a statement regarding?

11 A. Not that I recall.

12 Q. So, the only interest you had was to
13 determine whether or not he had been coerced?

14 A. My interest was to see whether or not he
15 was making the statement voluntarily, yes.

16 Q. He hadn't been coerced or you don't know
17 whether he had been promised anything or anything
18 like that?

19 A. I asked him.

20 Q. In any event, after you signed what you
21 signed, that's the end of your part of this whole
22 matter?

23 A. That's it.

24 MR. THOMAS: I have nothing further.

25

1 REDIRECT EXAMINATION

2
3 BY MR. NOLL:

4 Q. One other area. The elevators go to the
5 third floor from the first floor of the homicide
6 building, enter into a center hallway; is that
7 correct?

8 A. That's correct.

9 Q. That's the same elevator that goes to
10 the fifth floor jail; is that right?

11 A. Yes.

12 Q. The only way you can get from the third
13 floor to fifth floor is that elevator; is that
14 correct?

15 A. There's a separate elevator that is used
16 specifically for the jail division that runs from
17 booking division and basement to the jails, but
18 the public does not have have access to those
19 elevators.

20 Q. That elevator is on that same hallway,
21 just a little further down; is that correct?

22 A. Not very far from there, but the public
23 doesn't have access to it. It's behind the door.

24 Q. There's some doors that separate it?

25 A. That's correct.

1 Q. But that elevator where a prisoner would
2 be brought down -- you would have to walk right by
3 the public elevator on your way to the homicide
4 office?

5 A. Yes.

6 Q. If you go to the right, you go to the
7 homicide office, right?

8 A. From the public elevators.

9 Q. From the public elevator. If you go to
10 the left, you go to Chief Lee Brown's office; is
11 that correct?

12 A. Right.

13 Q. About 25 feet down the hall?

14 A. If that far.

15 Q. But that's the chief's office?

16 A. That's right. Once you get to the T'd
17 intersection, if you go left, you go to burglary
18 and theft. If you go right, it's to homicide.

19 Q. But the chief's office is right there?

20 A. That's right.

21 MR. NOLL: Nothing further, Your Honor.

22 THE COURT: Mr. Thomas?

23 MR. THOMAS: Nothing further.

24 THE COURT: May this officer be excused?

25 MR. NOLL: Yes, Your Honor.

1 MR. THOMAS: Yes, Your Honor.

2 THE COURT: We'll take our afternoon
3 recess. You are free to go down and get a drink,
4 what have you. Please be back at 3:15.

5 (Jury out.)

6 (Short recess.)

7 (State's Exhibit Nos. 27
8 through 35 were marked for identification.)

9 THE COURT: For the record, I am not
10 ruling this way to unnecessarily restrict your
11 cross examination, nor am I prohibiting you ahead
12 of time from asking any questions, but it will
13 thus forward be this Court's ruling that I am not
14 going to allow you to read verbatim any list of
15 questions submitted by the defendant, Mr. Hughes.
16 If Mr. Hughes wants to suggest questions to you,
17 if you want to read them and paraphrase them and
18 elicit the information, you may feel free to do so.
19 I am not, however, going to permit any longer any
20 reading verbatim a list of questions, 1 through
21 whatever number, to the witness into the record or
22 what have you. If you object and except to that
23 and you want to make them a part of the record,
24 that will be fine. We can do that at the
25 appropriate time.

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Anything else before I bring the jury
back in?

MR. NOLL: No, sir.

MR. McCULLOUGH: No, sir.

THE COURT: Very well. Bring them in,
Ms. Ortiz.

(Jury in.)

THE COURT: You may proceed, Mr. Noll.

MR. NOLL: Thank you, Your Honor.

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THERESA ROSS,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Ma'am, would you please state your name
for the members of the jury.

A. My name is Theresa Marie Ross.

Q. Sergeant Ross, I'm going to ask you to
keep your voice up. There's a vent up here and
noise behind you. It's very difficult, but this
gentleman all the way on the far end needs to hear.
How are you employed?

A. I'm a sergeant in the police department,
and I work in the homicide division at Houston
Police Department.

Q. How long have you been with Houston
Police Department?

A. Over 19 years.

Q. How many years with the homicide
division?

A. A little over 15 years.

Q. Sergeant Ross, were you working in the

1 homicide division on September 27th of 1988, a
2 Monday?

* 3 A. Yes, I was.

* 4 Q. And that Monday morning, did you have
5 have occasion to witness a statement given by the
6 defendant, Preston Hughes, III?

* 7 A. Yes, I did.

8 Q. And do you see that man, Preston Hughes,
9 III, in the courtroom this morning?

10 A. Yes, I do.

11 Q. Would you point to him and describe him,
12 please.

13 A. He's sitting here with a blue blazer and
14 gray slacks and kind of a maroon tie.

15 MR. NOLL: Your Honor, may the record
16 reflect the witness has identified the defendant?

17 THE COURT: Record will so reflect.

18 BY MR. NOLL:

* 19 Q. How did you first come in contact with
20 the defendant, Preston Hughes, III, on that
21 morning?

* 22 A. Sergeant Gafford asked me to come into
23 the room and witness his statement.

* 24 Q. And was there anyone else present in the
25 room at the time you witnessed his statement?

*1 A. Yes, there was.

*2 Q. Who else was that?

*3 A. That was Sergeant Smith.

*4 Q. Okay. If you will take a moment, before
5 you on the counter there is State's Exhibit, I
6 believe, No. 3. Is that the statement that you
7 witnessed that morning?

*8 A. Yes, it is.

*9 Q. How can you tell that's the statement
10 that you witnessed on September 27th of 1988?

*11 A. Well, my signature is on the bottom of
12 each page.

13 Q. Can you tell the members of the jury
14 what happened when you first entered the room
15 where the defendant was present on that morning to
16 witness his statement?

17 A. The first thing that happened?

18 Q. Yes, ma'am.

19 A. I just observed that he was sitting
20 there at a table.

21 Q. What was his demeanor, his attitude when
22 you were there?

23 A. He was sitting there, just sort of
24 looking at this paper.

25 Q. Did you ask him if he had read the

1 statement?

2 A. Sergeant Smith asked him that, yes.

3 Q. Did you hear his response?

4 A. Yes.

5 Q. And what was his response?

6 A. He said that he had read it.

7 Q. Did you do anything to satisfy yourself
8 that he could, in fact, read the English language
9 and had read that statement?

10 A. After Sergeant Smith had asked him
11 several questions, I had him read a portion of the
12 statement.

13 Q. Did he accurately read that portion of
14 the statement?

15 A. Yes, he did.

~~16~~ Q. Did he do anything in your presence to
17 indicate that he understood the rights which are
18 contained and listed on the top of each page of
19 that statement?

~~20~~ A. Well, he initialed them.

21 Q. Did anyone advise him of those rights in
22 your presence while in that room?

23 A. No one advised him. Sergeant Smith
24 asked him if he understood and if he understood
25 what they said.

*1 Q. Okay. Did he initial them while you
2 were watching him there?

*3 A. Yes.

4 Q. Did he initial each of his rights that
5 are listed on each of those pages?

6 A. On the first page only.

7 Q. Did he do anything else to indicate that
8 he wanted to make any changes in that statement or
9 add anything to it or take anything out of it?

10 A. A change was made, and I had him initial
11 that change.

12 Q. Did he indicate, after he made that
13 change, that he wished to change anything else?

14 A. No.

15 Q. Did he wish to take anything out of the
16 statement, or did he tell you that he wished to
17 add anything to the statement?

18 A. Not that I recall, no, sir.

*19 Q. Okay. After the defendant initialed his
20 rights and made the changes that you've indicated,
21 what happened?

*22 A. Well, I had him sign it.

*23 Q. Okay. Did you have him sign each page
24 of the statement?

*25 A. Yes, I did.

1 Q. At the end of the text portion, I guess?
2 A. Yes.
3 Q. Were you satisfied in your mind that the
4 defendant signed the statement voluntarily?
5 A. Yes, I was.
6 Q. All right. Did the defendant say
7 anything in your presence which would indicate
8 that someone had threatened him in any way to get
9 him to sign the statement?
10 A. He did not say anything to me.
11 Q. Did he indicate that anyone had made him
12 some promises, perhaps, that things would go
13 easier for him if he made a statement?
14 A. No.
15 Q. Did he say anything to indicate to you
16 that threats or coercion of any kind had been used
17 to obtain his signature on his statement?
18 A. No.
19 Q. Have you ever witnessed a statement
20 before?
21 A. Yes, I have.
22 Q. On many, many occasions?
23 A. Several occasions, yes, sir.
24 Q. After the defendant signed this
25 statement, which is marked as State's Exhibit 3,

1 was he allowed the opportunity to use a telephone?

2 A. Yes, he was.

3 Q. Is that telephone located in the witness
4 room or in the interview room where he was located?

5 A. It was in the room where I was, yes.

6 Q. Did he call anyone in your presence?

7 A. I left the room. He asked if he could
8 use the phone and I told him that he could and I
9 left the room.

10 Q. So, he was allowed to use the telephone
11 in private?

12 A. Yes.

13 Q. Do you know who he called?

14 A. He told me that he called several people.
15 I don't know for a fact that he -- he told me that
16 he called his boss and his parole officer.

17 MR. McCULLOUGH: Excuse me. I didn't
18 hear the last --

19 MR. NOLL: Excuse me, Your Honor.

20 BY MR. NOLL:

21 Q. Before you answer that last thing again.
22 He said he had called several people; is that
23 correct?

24 A. Yes.

25 MR. THOMAS: I think we better have the

1 jury retired.

2 THE COURT: Members of the jury, would
3 you have a seat in the jury room, please.

4 (Jury out.)

5 MR. THOMAS: Judge, I believe
6 inadvertently the witness has interjected the
7 specter of a criminal record into the record here.
8 The answer to the question asked by the
9 prosecution as to who he called was a boss and a
10 parole officer. I don't see how that can be -- it
11 cannot be a parole officer. It may have been a
12 probation officer. But the specter of parole is
13 now before this jury, and I don't believe that an
14 admonition could possibly -- but certainly we'll
15 ask you to ask that the jury be instructed to
16 disregard that last comment and we intend to ask,
17 also, for a mistrial, but would rather not do it
18 in front of the jury.

19 THE COURT: I will, of course, admonish
20 the jury not to consider the last remark. The
21 question then becomes -- well, we're going to
22 strike the last answer. We're going to ask them
23 not to pay any attention to it, not consider it
24 for any purpose whatsoever. Part of the answer
25 was okay, for lack of a better term, but parole

1 officer, certainly would be objectionable. I
2 would just assume, admonish them just to disregard
3 the last answer, without again drawing attention
4 to the word "parole officer."

5 MR. THOMAS: We further would object to
6 any conversation that this man has been
7 interrogated, he's in custody, he's under arrest
8 and suggest that any oral statement he makes not
9 be admitted before this jury. And further, the
10 specter of this business of parole has tainted the
11 jury, and we ask for a mistrial.

12 THE COURT: That will be denied. Your
13 other point with regard to the oral statements is
14 well taken. However, the tone has been that we
15 are testing the voluntariness of the confession.
16 Therefore, all the facts and circumstances
17 surrounding the taking of same would be admissible
18 and need to be explored by both sides in order to
19 develop that record. I don't know how on earth we
20 could mix and match unless we take the testimony
21 and then excise that which we would think was
22 totally relevant to that and no other items in
23 issue in the trial.

24 MR. THOMAS: But who he calls has
25 absolutely nothing to do with the voluntariness of

1 the confession or whatever statement that's
2 already been witnessed by Sergeant Ross, and we
3 suggest that this jury is tainted to the extent
4 that the defendant cannot get a fair trial, his
5 rights have been prejudiced, and I recognize it
6 may have been an inadvertent thing by the officer,
7 but that no instruction of the Court can cure this
8 business of parole because to cure that up would
9 then put the matter of probation before the jury
10 and we just suggest that that one comment so
11 taints the record that this defendant is not able
12 to get a fair and impartial trial of a jury of his
13 peers.

14 THE COURT: Your objection, your
15 feelings, will be noted for the record and taken
16 into consideration. However, let the record also
17 reflect that I disagree strongly with the fact; we
18 don't necessarily need to explain probation to
19 clear up the parole remark. There could be
20 several other proper admissible means, witnesses,
21 et cetera, to clear up that parole remark. But
22 with the state of the record as it is, let's bring
23 the jury back in. I'm going to admonish them not
24 to consider. We will strike the last answer,
25 admonish them not to consider it for any purpose

1 and how do y'all want to handle your motion for a
2 mistrial?

3 MR. McCULLOUGH: I want to make a
4 suggestion before the jury came in.

5 MR. NOLL: I just wanted to assist the
6 Court in any determination, just so the Court is
7 apprised of our other witnesses. Mr. Mikal Klumpp,
8 who was at the time a probation officer for this
9 defendant, is going to be a witness for the State
10 and the defendant is alleged to have made
11 admissions concerning this offense to him in the
12 course of a telephone conversation from the
13 interview room at the homicide office. That may
14 be of some assistance to the Court in ruling on
15 this matter in terms of skunk in the box.

16 MR. McCULLOUGH: One, if we get to a
17 point where the Court wants to hear the testimony
18 of that person, he could give that testimony
19 without identifying himself as a probation officer.

20 MR. NOLL: The jury is certainly
21 entitled to know the man's occupation, background,
22 and training in connection to this case.
23 Otherwise, it would be like bringing in martians
24 to testify he had communications with the
25 defendant. His position is an integral part and

1 the reason for the defendant's call to him. His
2 call, without going into his testimony, I believe --

3 THE COURT: Wait a minute. We're not
4 going to go into a free look at the basic theories
5 or evidence, and I'm not going to prejudge or
6 prerule or precommit. I will say, however, that
7 given the tone of the Jackson Deno hearings and
8 some of the items and some of the defendant's
9 testimony, with that, I do not know whether he is
10 going to testify here. I do not know what he
11 intends to put before the jury, but certainly at
12 some point, the calls that he made were in issue
13 and, you know, it's likely or would become likely
14 that such calls might be admissible at that time.
15 However, at this particular point, what I'm going
16 to do is I am going to strike the last answer. I
17 am going to admonish the jury to disregard it for
18 any purpose whatsoever. Now, how do you wish to
19 handle the motion for a mistrial?

20 MR. McCULLOUGH: At that point, Your
21 Honor, if it appears that further relief would be
22 in order, I will simply make a motion for further
23 relief which I would like the Court to interpret
24 as a motion for a mistrial.

25 THE COURT: Very well. The record will

1 so reflect. Bring in the jury, please.

2 MR. McCULLOUGH: I have one more thing
3 before they come, but I'm sorry. I lost it. I
4 can't recall what it was now.

5 THE COURT: Bring them in, please.

6 (Jury in.)

7 THE COURT: Members of the jury,
8 Sergeant Ross' last answer will be stricken from
9 the record. You are to disregard that last answer
10 and not consider it for any purpose whatsoever in
11 aiding you in your assessment of the testimony and
12 the credibility of the witnesses and the weight to
13 be given the same.

14 Anything else?

15 MR. McCULLOUGH: Yes, Your Honor, we
16 would request further relief.

17 THE COURT: That will be denied.

18 You may proceed, Mr. Noll.

19 BY MR. NOLL:

20 Q. Sergeant Ross, was the defendant
21 permitted access to a telephone and allowed to
22 make telephone calls?

23 A. Yes, he was.

24 Q. Okay. After the defendant used the
25 phone, did you continue with your duties, or were

1 you involved any further in the investigation of
2 this case?

3 A. I talked with him a couple of times
4 later.

5 Q. Okay. At any time, did he ever advise
6 you or tell you that he had been threatened in any
7 way by any officer or other person to take his
8 statement?

9 A. No, he didn't.

10 Q. Okay. At any point in your later
11 conversations, were they concerned with the taking
12 of his statement, which is marked before you as
13 State's Exhibit No. 3? Did your later
14 conversations have anything to do with the
15 statement that is marked as State's Exhibit No. 3?

16 A. No.

17 Q. Okay. Were the later conversations you
18 had with him dealing with his subsequent statement?

19 A. No, sir.

20 Q. And did they involve the allegations in
21 this case or were they about something else?

22 A. He asked me at one point if --

23 MR. THOMAS: Object to any further
24 statements made by the defendant while he's in
25 custody, doesn't have anything to do with what

1 we're talking about. We object.

2 THE COURT: Rephrase your question, Mr.
3 Noll.

4 MR. NOLL: Let me narrow it down to
5 another area.

6 BY MR. NOLL:

7 Q. Did you witness any other documents this
8 defendant signed that morning?

9 A. Yes, I did.

10 Q. What document did you witness that he
11 signed?

12 A. Voluntary consent for search and seizure,
13 which was done actually prior to the --

14 Q. The taking of the statement?

15 A. Taking of the statement.

16 Q. At the time that you witnessed the
17 voluntary consent for search and seizure, was
18 there anyone else present -- I assume this was in
19 the same interview room; is that correct?

20 A. Yes, it was.

21 Q. Was there anyone else present at the
22 time you signed the consent to search?

23 A. Sergeant Bloyd was there.

24 Q. Okay. And did the defendant sign the
25 document in your presence?

1 A. Yes, he did.

2 Q. And did you witness his signature on
3 that document?

4 A. Yes, I did.

5 Q. And did Sergeant Bloyd also act as a
6 witness on that signature?

7 A. Yes, he did.

8 Q. Would you look at the document that's in
9 front of you, I believe it's State's Exhibit No. 1;
10 is that correct?

11 A. Yes, it is.

12 Q. And is that the same search and seizure
13 document which you witnessed the defendant's
14 signature on?

15 A. Yes, it is.

16 Q. At the time you witnessed his signature,
17 there were several blanks in the document. Had
18 they been filled in by someone else?

19 A. Yes, they were already filled in.

20 Q. So, the part the defendant signed was
21 only his signature, not the part where it has his
22 consent for the specific officers to conduct a
23 search at a certain location?

24 A. It was only the signature.

25 MR. NOLL: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 BY MR. NOLL:

4 Q. This document is apparently a xerox copy
5 of another document --

6 MR. McCULLOUGH: Objection. That's
7 leading, Your Honor.

8 MR. NOLL: I'll rephrase it, Your Honor.

9 BY MR. NOLL:

10 Q. Sergeant Ross, is this a xerox copy of
11 an original form?

12 A. Yes, it is.

13 Q. Okay. Do you have a lot of these lying
14 around over at the homicide office?

15 A. Yes, we do.

16 Q. Do you use a lot of them?

17 A. Yes, we do.

18 Q. So, a lot of times you make copies; is
19 that correct?

20 A. Yes, we do.

21 Q. Look at this document and tell me, did
22 y'all forge this document or is this document a
23 truthful original which the defendant signed?

24 A. It's the one that the defendant signed.

25 Q. Nobody took his signature and played

1 with the xerox machine and tried to make it look
2 like he signed it?

3 A. Not that I'm aware of, no, sir.

4 Q. When you came in the room, the document
5 was all filled out except for the part where it
6 says "signed"; is that correct?

7 A. That's correct.

8 Q. And did the defendant, in your presence,
9 sign right above the line? If you'll take my pen,
10 point to the jury where he signed it.

11 A. He signed right here.

12 Q. Again, did anybody promise him anything
13 or threaten him in any way to get him to sign this
14 document?

15 A. No, sir.

16 Q. Did you also sign or sign as a witness
17 on the voluntary consent for taking of samples,
18 State's Exhibit No. 2?

19 A. Yes, sir, I did.

20 Q. Again, did anybody promise the defendant
21 anything or threaten him in any way to get him to
22 sign that document?

23 A. Not in my presence, no, sir.

24 Q. Did he sign the document voluntarily in
25 your presence?

1 A. Yes, he did.

2 Q. Again, y'all didn't play any games with
3 the xerox machine and get his signature someplace
4 else and try to make it appear as though it
5 appeared placed on that document?

6 A. No, sir.

7 Q. What would you do if you found out
8 another sergeant had been guilty of that kind of
9 conduct?

10 MR. McCULLOUGH: Objection. That will
11 be speculation.

12 MR. NOLL: Nothing further, Your Honor.
13 Pass the witness.

14

15 CROSS EXAMINATION

16

17 BY MR. McCULLOUGH:

18 Q. Ms. Ross, referring to State's Exhibit
19 No. 3, are you saying that nobody, when you
20 witnessed the statement, nobody read Mr. Hughes
21 his legal warning at that time? He was just
22 asked -- I believe you said Sergeant Smith asked
23 him if he understood them; is that correct?

24 A. As well as I recall, yes, sir.

25 Q. Did anyone -- did you or anyone in your

1 presence tell him that the purpose of that
2 statement was to bring a charge of capital murder
3 against him?

4 A. No, sir.

5 Q. Did you or anyone in your presence tell
6 him that that instrument could be the most
7 important piece of evidence in getting a death
8 penalty against him?

9 A. No, sir.

10 Q. Did I understand you to say that it was
11 you who had something to do with this
12 interlineation in the statement?

13 A. I had him put his initials here because
14 there was a correction there.

15 Q. Well, excuse me. I'm not trying to --
16 I'm having a hard time getting to where I need to
17 be, I guess. Are you saying that when you first
18 saw this document, was this line -- were these
19 words stricken out and this interlineation already
20 made on it?

21 A. Yes.

22 Q. But those initials were not placed there
23 at that time?

24 A. That's the way I remember it. I had him
25 place his initials here.

1 Q. Are you saying that he did both of these?

2 A. Yes.

3 Q. Do they look like they're made with the
4 same hand to you?

5 A. Well, they do to me.

6 Q. Okay. Now, are you familiar how you can
7 take a document and do a cut and paste with a
8 document, cut out pieces of one document and place
9 them on another piece of paper with scotch tape
10 and then run it through a xerox machine and make a
11 copy that has those different things on one piece
12 of paper?

13 A. I've seen it done, yes, sir.

14 Q. When you do that, sometimes, doesn't it
15 leave a line similar to this that's on this
16 State's Exhibit No. 1, where one piece of paper
17 overlaps the other one?

18 A. It would leave a line, yes, sir.

19 Q. Okay. With regard to State's Exhibit
20 No. 1, which is the voluntary consent for search
21 and seizure, I was sitting over there and I
22 couldn't see too well, but when you first saw this
23 document, which part of it was filled in?

24 A. This upper portion is filled in. He
25 signed it and then we signed it. But this portion

1 is filled in.

2 Q. All right. Was there really five
3 minutes between when Sergeant Bloyd witnessed that
4 and when you witnessed it?

5 A. Apparently so.

6 Q. Y'all weren't together when this
7 happened?

8 A. We were together, yes, sir.

9 Q. How did -- who wrote the times on there
10 by your signatures?

11 A. I wrote my time from my watch.

12 Q. That could account for -- maybe your
13 watches weren't coordinated?

14 A. That's possible, but I always look at
15 the time on my watch and that's what I put down.

16 Q. Theresa Ross standard time?

17 A. It's the time on my watch.

18 Q. That's what I mean.

19 A. Yes, sir.

20 Q. Was Detective Gafford anywhere around
21 when you witnessed State's Exhibit No. 3?

22 A. He was not in the room. As to being
23 around, he was in the office somewhere.

24 Q. I forgot. Were you on days or nights?

25 A. I worked nights.

1 Q. So, you were going off your shift when
2 you did this?

3 A. Yes, sir.

4 Q. Well, you were late in your -- it was
5 late in your shift?

6 A. We were late in our shift. We work
7 11:00 to 7:00.

8 Q. Did you work after 7:00?

9 A. That particular morning?

10 Q. Yes, ma'am.

11 A. Yes, I did.

12 Q. Did you work on this case?

13 A. Yes, part of the time.

14 Q. Did you -- you did not, however --
15 weren't called on to witness a statement that's
16 marked State's Exhibit No. 4, I take it, since
17 your name isn't on it?

18 A. No, sir.

19 Q. You've never seen this before, for
20 purposes of --

21 A. No, I haven't.

22 Q. Well, did you tell Mr. Hughes before he
23 signed this that the purpose of using this piece
24 of paper was to go out and find evidence to
25 convict him of capital murder?

1 A. No, sir, I did not.

2 Q. Did you know that? Did you know what he
3 was suspected of or what he was being investigated
4 for?

5 A. I knew he was being investigated for
6 murder.

7 Q. Did you ask him, while you were making
8 your determination whether or not Mr. Hughes was
9 taken before a magistrate or magistrate's warning
10 before he signed State's Exhibit No. 3?

11 A. As far as I know, he had not been before
12 a magistrate.

13 Q. Is there a policy in the homicide office
14 to not take people for magistrate's warning?

15 A. We do if there's one available at the
16 time.

17 Q. How do you find out whether one's
18 available or not?

19 A. Well, during normal business hours when
20 there is one available we will take them.

21 Q. Are there not municipal court judges on
22 call for that very purpose around the clock?

23 A. Municipal court? We've been told not to
24 take them before a municipal court.

25 Q. Who told you that?

1 A. This has been policy for some time.

2 Q. Well, your municipal court judges are
3 magistrates, though?

4 A. As far as I know, they are.

5 Q. And officers do take prisoners before
6 municipal court judges for magistrate's warnings?

7 A. Yes, they do, for some offenses, yes,
8 sir.

9 Q. And the municipal courts building is
10 right on the property right adjacent to the police
11 station?

12 A. Yes, it is.

13 Q. Maybe 50 feet -- I mean, 50 yards maybe
14 from front door to front door, something like that?

15 A. I don't know how far, but it's next door.

16 Q. Well, doesn't Riesner make a little
17 curve and turn into Lubbock, all there within one
18 block?

19 A. Yes, it does.

20 Q. And those courts over there start up at
21 least by 8:00 o'clock in the morning, don't they?
22 They have 8:00 o'clock dockets over there, don't
23 they?

24 A. I assume they do. I don't know what
25 time they start.

1 Q. Well, they're having trials over there
2 in municipal court from 8:00 o'clock in the
3 morning till 10:00 o'clock every night, aren't
4 they?

5 MR. NOLL: Your Honor, I object to the
6 relevancy of this line of questioning concerning
7 when and when they're not available. It's not
8 relevant.

9 THE COURT: If she knows.

10 A. I assume that they do start up around
11 8:00 o'clock. I don't know what time they start
12 up.

13 BY MR. McCULLOUGH:

14 Q. If there's any disagreement, referring
15 to State's Exhibit No. 3, about somewhere in the
16 middle of the typed paragraph, there's a line
17 stricken out, says, "waiting for her at the
18 Fuddruckers on Kirkwood" and there's an
19 interlineation of "looking around outside,"
20 period. There's a "P.H. III," at the end of that
21 and "P.H. III," at the end of that line; is that
22 correct?

23 A. Yes, it is.

24 Q. Is your statement that you had Mr.
25 Hughes put those initials there in your process of

1 witnessing this statement?

2 A. Yes, sir.

3 Q. And that Sergeant Gafford was not in the
4 cubicle or the room or in the immediate area?

5 A. Not when this was done, no, sir.

6 MR. McCULLOUGH: Pass the witness.

7 THE COURT: Mr. Noll.

8

9

REDIRECT EXAMINATION

10

11 BY MR. NOLL:

12 Q. Sergeant Ross, is there any requirement
13 in the law at all that says you have to take a
14 suspect before a judge before you can talk to them
15 or take their statement?

16 MR. McCULLOUGH: I object, Judge. We
17 tried to read that very law into the record.

18 MR. NOLL: I'm asking what she knows as
19 a 19-year sergeant.

20 THE COURT: What she knows.

21 MR. NOLL: Yes.

22 A. No, sir.

23 MR. NOLL: Thank you.

24 We have nothing further, Your Honor.

25 THE COURT: Recross.

1 MR. McCULLOUGH: We have no recross.

2 THE COURT: May this officer be excused?

3 MR. NOLL: Yes, sir.

4 THE COURT: Thank you, Sergeant Ross,
5 you may go about your duties. Call your next,
6 counsel.

7 MR. NOLL: Your Honor, at this time the
8 State would offer what's been marked State's
9 Exhibit No. 3, voluntary statement of person in
10 custody and ask permission to publish the same to
11 the jury at this point.

12 MR. McCULLOUGH: We would object to
13 State's Exhibit No. 3 on the basis that it is not
14 voluntary, does not comply with the Texas Code of
15 Criminal Procedure, and for all of the reasons
16 stated in this hearing and the prior hearing.

17 THE COURT: Your objection will be
18 overruled. State's Exhibit 3 is admitted. You
19 may read the same to the jury, Mr. Noll.

20 MR. NOLL: Thank you, Your Honor.

21 If it please the Court. Statement of
22 Preston Hughes, III, taken in Harris County, Texas.
23 Prior to making this statement, I have been warned
24 by Sergeant D. G. Gafford, the person to whom the
25 statement is made, that one, I have the right to

1 remain silent and not make any statement at all
2 and any statement I make may and probably will be
3 used against me at my trial; two, any statement I
4 make may be used as evidence against me in court;
5 three, I have the right to have a lawyer present
6 to advise me prior to and during any questioning;
7 four, if I am unable to employ a lawyer, I have
8 the right to have a lawyer appointed to advise me
9 prior to and during any questioning; and five, I
10 have the right to terminate this interview at any
11 time.

12 Prior to and during the making of this
13 statement, I have knowingly, intelligently and
14 voluntarily waived the rights set out above and
15 make the following voluntary statement: My name
16 is Preston Hughes, III, and I am 22 years old. I
17 was born on December 24th, 1965, in Buffalo, New
18 York. I now live at 2310 Crescent Park, No. 138-A,
19 Houston Texas.

20 I have been having trouble with a girl
21 named Linda for about two weeks. Me and Linda had
22 been talking for about a month. She came over to
23 my house and said that she didn't want to go home
24 because she was afraid her husband was going to
25 beat her ass. She said that she wanted to get a

1 divorce and that she wanted to be with me. She
2 came over on a Thursday night and we made love
3 when she spent the night. She stayed at my
4 apartment when I went to work. While I was at
5 work, a man called me and he was saying that he
6 was going to call the police because I had
7 kidnapped his wife. He said that he was going to
8 come and kill me after that.

9 I had Sylvia Woods, who was a former
10 roommate of my mine, go to my apartment and check
11 and make sure everything was all right while I was
12 looking around outside. Sylvia was at the
13 apartment and I went on up and everything was okay.
14 Sylvia stayed another 30 minutes or so and then
15 left, but Linda spent the night again.

16 Saturday morning, Linda's husband,
17 brothers and sisters came to my apartment and
18 knocked on the door but they were covering up the
19 peephole. So, I didn't open the door. They
20 started calling her name and I looked out the
21 window and saw them there. Linda said that she
22 didn't want to go but after a few minutes, decided
23 to go. She went with them and a little later,
24 Officer Smith and other officers came over and
25 questioned me about that and they realized that I

1 hadn't kidnapped her and they let me go after
2 Linda and her brothers left.

3 While the brothers were still there, one
4 of them was still saying that I was going to die.
5 Ever since that time, I have been looking over my
6 shoulder thinking that they were going to come
7 after me. I have been checking to see who was
8 standing around outside the apartment before going
9 out, and when I leave to go to the bus stop I walk
10 the long way around, going along the path from the
11 apartment complex to the Fuddrucker's so that I
12 can check the bus stop and make sure no one is
13 around. When I come home, I walk the same way
14 along the path so that I can see the parking lot.

15 Tonight I worked until about 6:30 p.m.
16 and I waited for a buddy when he got off at 7:00
17 p.m. and we both went with a few others to a
18 liquor store downtown to get some Crystal Clear.
19 The guys there were Kenny Mouton, Jesse Mills,
20 Calvin Williams and me. We stayed in the parking
21 lot and drank the Crystal Clear and talked about
22 getting together this weekend to do something. We
23 left there about 8:10 p.m., and Jesse and Kenny
24 dropped me off at Fannin and Walker, and I walked
25 to the Circle K at Main and Walker to get

1 something to eat. I ate two hot dogs and then
2 went and caught the bus at Travis and Walker, the
3 82-Westheimer/Dairy Ashford bus. I was feeling
4 good and fell asleep on the bus and then didn't
5 wake up until the end of the route at Westheimer
6 and Highway 6.

7 I walked a couple of blocks to a
8 Circle K at 14244 Westheimer and called for a cab.
9 A Yellow Cab took me to my apartment complex,
10 right in the parking lot behind my apartment. I
11 got home about 10:30 or so and went in my
12 apartment and turned the TV on to check the game.

13 Then I walked my dog and we went through
14 the path to the Fuddrucker's. Fuddrucker's was
15 closed and I started back home. I told my dog to
16 go on home because I had been training her and I
17 wanted to see if she knew the way. As I got into
18 the field walking along the path, someone came up
19 behind me. Nobody said anything and I felt
20 someone touch me on the shoulder.

21 I have been carrying a knife ever since
22 these guys had been talking about trying to kill
23 me. The knife is an army knife with brown handles,
24 a rusty blade, and it's about five or six inches
25 long. I carry it in a gray sheath on the right

1 side of my belt. When I felt someone touch me, I
2 turned to my left and threw a block with my left
3 arm and just started sticking with the knife. It
4 was dark and I couldn't tell who was there.

5 When I swung the first time, it hit.
6 But I didn't know it went in or nothing. After I
7 stuck the first two times, I saw that it was Shawn.
8 I was fucked up and I just got scared and kept
9 sticking. I swung the knife six, eight, probably
10 ten times, and then just took off running toward
11 my apartment. I went straight up to my apartment
12 and turned the TV back on to see what the score
13 was.

14 I had a pair of red shorts on under my
15 clothes and I took off all my clothes except for
16 the shorts. I walked outside to get the dog and
17 she wanted to play. So, I ran back and forth a
18 couple of times with her. I saw the police
19 helicopter fly over then. I went back into the
20 apartment and that's when I took the knife off my
21 belt and put it in my closet. I put it in a box
22 in the bedroom closet on the floor.

23 The box is a brown cardboard box with
24 clothes in it and the knife is stuck down on the
25 side. The closet is in a bedroom to the right as

1 you go toward the back of the apartment, the
2 bedroom with the twin bed in it. The clothes I
3 was wearing, blue jean pants and a maroon short
4 sleeved shirt, and a blue Dickey brand work shirt.
5 I was wearing the maroon belt that I have on now
6 and the tennis shoes that I have on now. The
7 clothes are laying on the floor of my bedroom. I
8 did not take anything from Shawn at the time that
9 I stabbed her. Signed, Preston Hughes, III.

10 State would call Sergeant Ferguson, Your
11 Honor.

12 THE COURT: You may proceed, Mr. Noll.

13 MR. NOLL: Thank you, Your Honor.

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25

1 D. A. FERGUSON,
2 was called as a witness by the State and, having
3 been duly sworn, testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. NOLL:

8 Q. Sergeant, state your name for the record.

9 A. Sergeant D. A. Ferguson.

10 Q. Who are you employed by?

11 A. Houston Police Department.

12 Q. How long have you been with the police
13 department?

14 A. Approximately 13 years.

15 Q. Are you assigned to a particular
16 division within the police department?

17 A. Yes, sir, homicide division.

18 Q. How long have you been with the homicide
19 division?

20 A. Approximately six years.

21 Q. Let me direct your attention, sergeant,
22 back to September 26th and 27th of 1988. Were you
23 on duty on that Monday, the 27th of September?

24 A. Yes, sir, I was.

25 Q. On that day, did you have occasion to

1 come into contact with a suspect by the name of
2 Preston Hughes, III?

3 A. Yes, sir, I did.

4 Q. Do you see that suspect or that person
5 in the courtroom today?

6 A. Yes, sir.

7 Q. Would you point to him and describe how
8 he's dressed?

9 A. He's the man in the blue blazer with the,
10 I believe, maroon tie and moustache.

11 MR. NOLL: Your Honor, may the record
12 reflect the witness has pointed to the defendant,
13 Preston Hughes, III?

14 THE COURT: Record will so reflect.

15 BY MR. NOLL:

16 Q. How did you first come into contact with
17 the defendant that morning?

18 A. We were assigned to do some follow-up
19 investigation by my duty lieutenant.

20 Q. When you say "we," are you referring to
21 your partner?

22 A. My partner, E. T. Yanchak.

23 Q. Did you first meet Mr. Hughes there in
24 the homicide offices or where was it?

25 A. It was in the homicide office.

1 Q. Do you recall about what time it was
2 when you first had contact with the defendant?

3 A. It was probably sometime around, I'd say,
4 8:30 in the morning.

5 Q. And do you recall where he was exactly
6 at that point?

7 A. He was in one of our interview rooms
8 within the homicide office.

9 Q. Did you go in and talk to him or was
10 someone else in there talking with him at that
11 time?

12 A. I believe Sergeant Gafford was in there
13 talking to him.

14 Q. What was the nature of your first
15 contact with the defendant?

16 A. I went to get some keys to his apartment.

17 Q. Okay. And after you got the keys to his
18 apartment, what did you do?

19 A. Myself and Sergeant Yanchak went out to
20 his apartment.

21 Q. And that apartment is located where?

22 A. It would be the Lakeview apartments,
23 2310 Crescent Park, Apartment No. 138-A, as in
24 Adam.

25 Q. Is that Lakeview or Lakehurst?

1 A. I'm sorry. Lakehurst.

2 Q. At the time you went to search the
3 defendant's apartment, did you have a consent to
4 search or did you have a search warrant?

5 A. We had a consent to search.

6 Q. And did you take that document with you
7 when you went out to the suspect's apartment?

8 A. Yes, sir, we did.

9 Q. Did you utilize his key to enter his
10 apartment?

11 A. Yes, sir, we did.

12 Q. Who all was with you?

13 A. Myself and Sergeant Yanchak. We also
14 had a crime scene unit officer, Officer Hale.

15 Q. Officer F. L. Hale?

16 A. F. L. Hale, yes, sir.

17 MR. McCULLOUGH: May we take up a matter
18 outside the presence of the jury?

19 THE COURT: Members of the jury, have a
20 seat in the jury room. We'll be right back with
21 you.

22 (Jury out.)

23 MR. McCULLOUGH: May I ask this officer
24 a couple of questions on voir dire?

25 THE COURT: You may.

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VOIR DIRE EXAMINATION

(Out of the presence of the jury)

BY MR. McCULLOUGH:

Q. Officer, I'll show you what's been marked and entered into evidence as State's Exhibit No. 1, a document entitled voluntary consent for search and seizure.

A. Yes, sir.

Q. Is that document the authority under which you undertook to search that apartment?

A. Yes, sir.

MR. McCULLOUGH: Your Honor, this document, if it means anything, is a consent given by Preston Hughes, III, to Sergeant D. J. Gafford and Sergeant T. C. Bloyd to search his residence. He did not authorize anyone else to search his residence.

THE COURT: Is that the substance of your objection?

MR. McCULLOUGH: Yes, sir, and I object and move to suppress the evidence of any search of Mr. Hughes' residence by this officer.

THE COURT: That will be overruled. Anything further?

1 MR. McCULLOUGH: That's it.

2 THE COURT: Bring them back in, please.

3 (Jury in.)

4 THE COURT: You may proceed, Mr. Noll.

5 MR. NOLL: Thank you, Your Honor.

6

7

DIRECT EXAMINATION CONTINUED

8

9 BY MR. NOLL:

10 Q. Sergeant Ferguson, I believe you had
11 just gone to the defendant's apartment with a
12 consent to search; is that correct?

13 A. Yes, sir, that's correct.

14 Q. With you was Sergeant Yanchak and also
15 Officer F. L. Hale; is that correct?

16 A. Yes, sir.

17 Q. Once inside the apartment, did you have
18 anything in particular that you were looking for?

19 A. We were looking for the clothing that
20 was worn by the defendant that night and also we
21 were looking for a knife and knife sheath that he
22 said was located in the apartment.

23 Q. Were you able to find any of those kind
24 of items in the apartment?

25 A. Yes, sir, we did.

1 Q. Specifically, did you personally find a
2 knife inside the apartment?

3 A. Yes, sir, we did.

4 MR. NOLL: May I approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 BY MR. NOLL:

8 Q. Sergeant, let me show you what I have
9 marked for identification as State's Exhibits 20
10 and 21. Can you identify those items?

11 A. Yes, sir, that's the knife and knife
12 sheath that we located in the defendant's
13 apartment.

14 Q. And how do you know that's the same
15 knife and knife sheath?

16 A. Well, because it was tagged in this
17 evidence bag that you have there on the table.

18 Q. Did you give that item at the apartment
19 to Officer Hale?

20 A. Yes, sir, he recovered the items himself.

21 Q. Did you observe them yourself there?

22 A. Yes, sir, I was present.

23 Q. After they were recovered, did Sergeant
24 or Officer Hale then have the responsibility of
25 tagging it in the property room?

1 A. Yes, sir, that's correct.

2 MR. NOLL: May I approach the witness
3 again, Your Honor?

4 THE COURT: You may.

5 BY MR. NOLL:

6 Q. Sergeant, let me also show you what's
7 been marked for identification as State's Exhibit
8 No. 16. I'm going to ask you if you recognize
9 what that is?

10 A. Yes, sir, that's the blue jeans we
11 recovered in the defendant's apartment.

12 Q. And also State's Exhibit No. 18?

13 A. A blue work shirt that we recovered in
14 the defendant's apartment.

15 Q. And State's Exhibit No. 19, for
16 identification?

17 A. That's another blue work shirt that we
18 recovered in the defendant's apartment.

19 Q. And State's Exhibit No. 17, for
20 identification.

21 A. That's a maroon shirt that we recovered
22 in the defendant's apartment.

23 Q. Were these items all given to Officer
24 Hale for him to tag and take to the property room?

25 A. That's correct, yes, sir, that's correct.

1 THE COURT: Mr. Noll, what are the
2 exhibit numbers on the knife and the sheath?

3 MR. NOLL: The knife itself is No. 20,
4 Your Honor, the sheath is No. 21.

5 THE COURT: Thank you.

6 BY MR. NOLL:

7 Q. Do you recall finding any eyeglasses
8 inside that apartment, also?

9 A. Yes, sir, we did.

10 Q. Let me show you what I've marked for
11 identification purposes as State's Exhibit No. 15.
12 Do you recognize those?

13 A. Yes, sir.

14 Q. Are those the same or similar eyeglasses
15 as the ones you found inside that apartment?

16 A. Yes, sir.

17 Q. Were these given to Officer Hale -- I'm
18 going to promote him before this trial is over --
19 to tag in the property room?

20 A. Yes, sir, that's correct.

21 Q. Did Officer Hale also, as a part of his
22 responsibilities, take photographs of the
23 apartment as it appeared that morning?

24 A. Yes, sir, he did.

25 MR. NOLL: May I approach the witness

1 again?

2 BY MR. NOLL:

3 Q. Let me ask you to look at these
4 photographs, which are marked 23 through 35, and
5 without saying what they are, would you look at
6 them and see if each of those photographs
7 accurately depict the scene of the defendant's
8 apartment as you observed it on the morning of
9 September 27th, 1988.

10 A. Yes, sir, they do.

11 MR. NOLL: Your Honor, may the record
12 reflect I'm tendering to counsel for the defendant
13 State's Exhibits 23 through 35 for identification
14 and would move the same into evidence at this time.

15 MR. McCULLOUGH: May I ask him a couple
16 of questions, Judge?

17 THE COURT: You may.

18

19 VOIR DIRE EXAMINATION

20

21 BY MR. McCULLOUGH:

22 Q. Sergeant Ferguson, what point, in doing
23 the search of this house, were these pictures
24 taken?

25 A. Before we recovered the evidence.

1 Q. Are you saying that y'all hadn't moved
2 anything before the pictures were taken?

3 A. No, sir. We always take our pictures
4 before we recover anything.

5 Q. Are you, for instance, saying that in
6 regard to State's Exhibit No. 24 that the knife
7 and sheath were laying just like that, wherever
8 this is?

9 A. That was laying -- we located the knife
10 and sheath inside the box. We took the -- took a
11 picture of the sheath inside the box and we
12 removed it and laid it on the floor and I took a
13 picture of it.

14 Q. The picture of the couch, had y'all done
15 anything to the couch or any items in or on it
16 before you took these pictures?

17 A. No, sir.

18 Q. Was this --

19 MR. McCULLOUGH: I have no objections.

20 THE COURT: Very well. State's Exhibits
21 23 through 35 will be admitted.

22 MR. McCULLOUGH: I have no objections
23 other than my aforesated objection to the entry
24 of the apartment, itself. I do reurge my
25 objection to entering the apartment, seizing

1 evidence, taking pictures, all of which were
2 stated at the previous hearing, and my other
3 motion made out of the presence of the jury.

4 THE COURT: Your objection will still be
5 noted and still overruled and they will be
6 admitted.

7 MR. McCULLOUGH: I have no other
8 objection to the photographs.

9 THE COURT: Very well.

10 MR. NOLL: May I proceed, Your Honor?

11
12 DIRECT EXAMINATION CONTINUED

13
14 BY MR. NOLL:

15 Q. Sergeant, I believe you just told Mr.
16 McCullough that State's Exhibit No. 24, a
17 photograph, I believe, of a knife and a sheath?

18 A. Yes, sir.

19 THE COURT: Sergeant Ferguson, why don't
20 you stand up and turn the photo toward the jury so
21 they can see it and hear you. You might step back
22 toward Mr. Noll so defense counsel and everybody
23 can see.

24 You may proceed, Mr. Noll.

25 MR. NOLL: Thank you, Your Honor.

1 BY MR. NOLL:

2 Q. State's Exhibit No. 24 is a photograph
3 of the knife and sheath after it was removed from
4 a box; is that correct?

5 A. Yes, sir.

6 Q. Let me show you State's Exhibit 23, and
7 if you could show the jury that, also. Is that
8 the box where the knife and sheath were found?

9 A. Yes, sir, that's correct. You see it
10 right here.

11 Q. Okay. And, again, let me show you
12 State's Exhibit No. 25. Is that the same box at a
13 different angle?

14 A. Yes, sir.

15 Q. State's Exhibit 28, are these the blue
16 jeans which you previously identified?

17 A. Yes, sir.

18 Q. Again, State's Exhibit 34, could you
19 tell the jury what that is?

20 A. That's a couch that was in the living
21 room. We recovered the eyeglasses that were in
22 between the cushion. You can see them right here,
23 if you're looking close at the picture.

24 Q. And State's Exhibit 35 is what?

25 A. That's just a close-up of the same couch,

1 of the glasses in between the cushions right here.

2 Q. And that couch was located in which room?

3 A. In the living room of the apartment.

4 Q. After you completed the search of the
5 defendant's apartment, what did you do?

6 A. We returned to the homicide office.

7 Q. And when you returned to the homicide
8 office, what did you do?

9 A. We reviewed the statement that the
10 defendant had given Sergeant Gafford.

11 Q. Okay. That would be the same statement
12 which is now marked as State's Exhibit No. 3, I
13 believe, a three-page statement?

14 A. Yes, sir.

15 Q. And when you say "we," you said, "We
16 came back and we did this." Are you referring to
17 your partner?

18 A. My partner, Sergeant Yanchak, yes, sir.

19 Q. After you reviewed the statement the
20 defendant had already given earlier in the morning,
21 what did you decide to do next?

22 A. We decided to reinterview the defendant
23 because he did not relate anything in this
24 statement here about how the 3-year-old boy was
25 stabbed.

1 Q. Okay. Where was the defendant when you
2 came back to the homicide office?

3 A. He was already up in the jail, the men's
4 jail.

5 Q. So, someone had taken him up to the
6 fifth floor jail?

7 A. Yes, sir.

8 Q. Did you have to bring him back down from
9 the jail to the homicide offices?

10 A. Yes, sir, I went and checked him out
11 myself, on the fifth floor.

12 Q. Okay. When you went to check him out,
13 can you tell the jurors what route you followed
14 from your third floor homicide office? Where did
15 you go?

16 A. Well, I went down our hallway to the
17 elevator on the third floor, I caught the elevator
18 and took it up to the fifth floor, and that's
19 where we check our -- check prisoners out of the
20 jail for interviews.

21 Q. Did you use the elevator that's public
22 access?

23 A. Yes, sir, public elevator.

24 Q. When you got to the fifth floor jail,
25 did you check the defendant out?

1 A. Yes, sir, I did.

2 Q. Did you have any uniformed officers with
3 you? Were you by yourself?

4 A. I was by myself.

5 Q. Do you remember what time it was when
6 you checked the defendant out of the jail?

7 A. Approximately 11:45 a.m.

8 Q. Okay. During the period of time that
9 the defendant had been left in the jail on the
10 fifth floor, had he had access to telephones or to
11 call anybody he wanted to, things of that nature?

12 A. I assume that he did, yes, sir.

13 Q. Certainly you did nothing to restrict
14 his access to phones or to call people?

15 A. No, sir, I did not.

16 Q. There are pay phones available for
17 inmates to use on that fifth floor jail?

18 A. Yes, sir, there are.

19 Q. When you returned, did you personally
20 escort the defendant back to the homicide offices
21 on the third floor?

22 A. Yes, sir, I did.

23 Q. Which elevator did you use when you came
24 back down from the fifth to the third floor?

25 A. Same public elevators.

1 Q. Why didn't you use the prisoner
2 elevators?

3 A. That's for the jail transfers from the
4 bottom where they're booked in up to the fifth
5 floor.

6 Q. Basement facilities?

7 A. Right. That's just for jail personnel.

8 Q. When you escorted the defendant, was he
9 handcuffed at this point?

10 A. Yes, sir, I did handcuff him.

11 Q. After you took him back to the homicide
12 offices, did you use a homicide interview room or
13 put him in the cubicles or what?

14 A. I used one of our homicide interview
15 rooms.

16 Q. Was there anyone else with you when you
17 went to pick up the defendant and after you went
18 into the interview room?

19 A. After I went in the interview room,
20 there was.

21 Q. After the trip to the jail on the fifth
22 floor and the interview room, itself, did you come
23 in contact with any other homicide officers or
24 plainclothes officers?

25 A. No, sir.

1 Q. Did anyone talk to the defendant, say
2 anything to the defendant as you walked down the
3 halls?

4 A. No, sir.

5 Q. When you got to the interview room, was
6 your partner there?

7 A. Yes, sir, he came up shortly after I sat
8 him down and took the handcuffs off his hands.

9 Q. When you first went in the room it was
10 empty and Sergeant Yanchak later met you in the
11 room?

12 A. That's correct.

13 Q. Did the two of you question the
14 defendant together or did you do it separately?

15 A. We questioned him together.

16 Q. Did you have -- you'd already read his
17 previous statement; is that correct?

18 A. That's correct.

19 Q. Did you talk to him about that statement
20 and indicate that you thought part of it may not
21 be accurate?

22 A. Yes, sir, that's correct.

23 Q. And did you tell the defendant again
24 that he didn't have to talk to you if he didn't
25 want to?

1 A. That's correct.

2 Q. Did you advise him of his rights
3 completely from scratch again?

4 A. Yes, sir, my partner did, Sergeant
5 Yanchak.

6 Q. After Sergeant Yanchak advised him of
7 his rights, did he indicate any objections to
8 continuing with the interview with you and
9 Sergeant Yanchak?

10 A. No, sir.

11 Q. Did he ask for a lawyer?

12 A. No, sir, at no time.

13 Q. Did you then continue to question the
14 defendant concerning the events of the previous
15 night, September 26th?

16 A. Yes, sir, we did.

17 Q. Were you able to have the defendant tell
18 you anything to do to the statement that he had
19 given in the morning?

20 A. Yes, sir, we did.

21 Q. How did that come about?

22 A. Well, we asked him to explain what he
23 did not relate in his first statement about how
24 the little boy got stabbed and we wanted to go
25 over that episoded as it happened.

1 Q. Did he say anything to you at that point?

2 A. Yes, sir, he said that he would, you
3 know, tell us, you know, how that happened.

4 Q. What did he tell you?

5 A. Basically that as he was stabbing the
6 young girl that the little boy looked up and
7 started crying in his face and --

8 MR. McCULLOUGH: Objection, Your Honor,
9 object to going into oral statements taken in
10 custodial interrogation.

11 THE COURT: Overruled.

12 BY MR. NOLL:

13 Q. You may continue.

14 A. The little boy looked at up at him and
15 was crying and then he stabbed him. And then
16 after --

17 Q. When you say "him," you mean the little
18 boy?

19 A. Stabbed the little boy.

20 Q. Did he say what happened next?

21 A. He then got his knife and ran back to
22 his apartment.

23 Q. Did he indicate to you a willingness to
24 reduce this new information to writing?

25 A. Yes, sir, he did.

1 Q. Did you promise him anything or did
2 Sergeant Yanchak promise him anything to get him
3 to make another statement?

4 A. No, sir, at no time.

5 Q. Did anybody, including yourself, tell
6 him things might go easier for him if he made the
7 statement?

8 A. No, sir, at no time.

9 Q. Did anybody tell him, "Things are going
10 to go harder on you if you don't give a
11 statement"?

12 A. No, sir.

13 Q. Did anybody threaten him physically in
14 any way?

15 A. No, sir.

16 Q. Did anyone strike him in any way?

17 A. No, sir.

18 Q. Did you then try to reduce to writing
19 the oral communications that you'd had with the
20 defendant?

21 A. Yes, sir, I did.

22 Q. How did you do that?

23 A. On the typewriter.

24 Q. Did you just sit down and type it all up
25 yourself or did you have him tell you what to say

1 and you typed it or how, physically, did you go
2 about taking the statement?

3 A. It was a question and answer, free
4 narrative type interview taking of his statement.

5 Q. Was Sergeant Yanchak in the room
6 throughout the taking of the typed statement?

7 A. No, sir, he was in and out of the room
8 as I was typing his statement.

9 Q. Were he and you both dressed in your
10 civilian attire?

11 A. Yes, sir, we were.

12 Q. Did you have guns on when you were in
13 there?

14 A. No, sir.

15 Q. Were there any uniformed officers in
16 there with you?

17 A. None whatsoever.

18 Q. Anybody with guns on them hanging around
19 the room?

20 A. No, sir.

21 Q. After the defendant dictated the
22 statement to you and you typed it, did you give
23 him an opportunity to read the statement?

24 A. Yes, sir.

25 Q. Did he read it page-by-page?

1 A. Yes, sir.

2 Q. Did you tell him he could change
3 anything he wanted to on it?

4 A. Yes, sir.

5 Q. Did he indicate he wanted to change
6 anything?

7 A. Yes, sir.

8 Q. Did he make any changes?

9 A. Two items on the first page.

10 Q. Did he make any changes on the second
11 page?

12 A. No, sir.

13 Q. After he read it, did he indicate to you
14 it was, in fact, his statement of what occurred
15 that night?

16 A. Yes, sir, that's correct.

17 Q. Did you do anything at that point to
18 have witnesses come in to witness the signing of
19 his statement?

20 A. Yes, sir, I did.

21 Q. Do you recall who the witnesses were?

22 A. Sergeant Clappart and Sergeant Swaim.

23 Q. Did they happen to be hanging around or
24 was there some reason you wanted Sergeants
25 Clappart and Swaim? Were they on duty that day?

1 A. They were on duty that day in the office.

2 Q. Did you stay in the room with the
3 defendant, Sergeants Clappart and Swaim as they
4 acknowledged his statement?

5 A. I was standing just outside the door.

6 Q. Where was Sergeant Yanchak?

7 A. I believe he was outside the door, too,
8 or in the same general area.

9 Q. At the time the defendant signed his
10 statement or before that time, did you have him
11 initial his rights or anything concerning his
12 rights on the blue form?

13 A. Yes, sir.

14 Q. How did you do that?

15 A. I just asked him if he understood each
16 right I had read to him before I took the
17 statement. He told me, yes, yes, he did, and I
18 had him initial each one.

19 Q. After Sergeant Yanchak read him his
20 rights from the DA blue card, did you again, are
21 you saying, read him the rights on the top of the
22 statement form?

23 A. Yes, sir, I did, before I began the
24 statement.

25 MR. NOLL: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 BY MR. NOLL:

4 Q. Let me show you what's been marked as
5 State's Exhibit No. 4 and ask you if you recognize
6 that exhibit.

7 A. Yes, sir, it is. I do.

8 Q. What is it?

9 A. Statement I took from the defendant on
10 September 27th.

11 Q. On the first page, does it show the two
12 changes that he made?

13 A. Yes, sir.

14 Q. Did he make the initials next to those
15 in your presence?

16 A. Yes, sir, he did.

17 Q. Are there any changes on the back page?

18 A. No, sir.

19 Q. Did he actually sign it in your presence
20 or you were outside the room when he was signed it?

21 A. I was standing just outside by the door.

22 Q. On the second page of that statement
23 there's a big initial written across the bottom of
24 the page. Did he sign that in your presence?

25 A. Like I say, I was standing outside the

1 door. If you want to call that my presence, I
2 guess so.

3 Q. Did the defendant, at the time that you
4 talked to him concerning this second statement,
5 ever accuse Sergeant Cafford of threatening him or
6 physically abusing him?

7 A. No, sir.

8 Q. Did he tell you at the time of the
9 taking of his first statement that anybody had
10 threatened him or coerced him in any way?

11 A. No, sir, he did not.

12 Q. Did he seem to you to be in a calm
13 demeanor or was he excited? How would you
14 describe his attitude and demeanor?

15 A. Calm, relaxed.

16 Q. In your opinion, did he understand his
17 rights and voluntarily waive the same?

18 A. Yes, sir, he did.

19 Q. Did he, in fact, initial all those
20 rights on that form?

21 A. Yes, sir, he did.

22 MR. NOLL: Pass the witness, Your Honor.

23 THE COURT: Mr. McCullough.

24

25

1 CROSS EXAMINATION

2
3 BY MR. McCULLOUGH:

4 Q. Sergeant Ferguson, I show you State's
5 Exhibit No. 35. It appears that those glasses are
6 stuffed down in between those cushions; is that
7 correct?

8 A. Yes, sir.

9 THE COURT: Mr. McCullough, you're going
10 to have to keep your voice up. They're having
11 trouble hearing you.

12 MR. McCULLOUGH: Yes, sir.

13 BY MR. McCULLOUGH:

14 Q. It appears these glasses are tucked down
15 between these cushions or they're down between the
16 cushions.

17 A. Yes, sir, that's correct.

18 Q. They're not sticking up above the
19 cushions, above the level of the fabric?

20 A. No, sir.

21 Q. And this is another view, State's
22 Exhibit No. 34?

23 A. Yes, sir.

24 Q. Now, these pictures are both taken from
25 the front of the couch, correct?

1 A. Well, this one here, from the top, and
2 this one from the front.

3 Q. All right. Was this -- y'all went out
4 there in daylight?

5 A. Yes, sir, that morning.

6 Q. And these are shot with a flash?

7 A. Yes, sir.

8 Q. Did y'all have to turn on any lights or
9 anything in the apartment so you could see?

10 A. I believe we turned on some lights in
11 the living room, yes, and the kitchen.

12 Q. Imagine that you were standing at this
13 end of the couch, which I believe is in an area
14 between the couch and the doorway. Is that the
15 way you remember it?

16 A. I'd have to look at the diagram.

17 Q. Would that be correct, if someone was
18 standing here in this area, here in this front
19 room, at the intersection of this passageway from
20 the entrance to the couch and beside the kitchen
21 area and the hallway going back into the bedroom
22 and bathroom area -- do you understand what I'm
23 talking about?

24 A. (No response.)

25 Q. Okay. If someone were standing in this

1 area and they looked toward this couch, they would
2 be standing here, looking this direction, correct?

3 A. Yes, sir, I think so.

4 Q. If they did that and those glasses were
5 down in the cushion the way they're shown to be
6 here, you couldn't see them from the end of the
7 couch looking that way because they would be down
8 below the eye level in between the cushions; is
9 that correct?

10 A. I would -- yes, sir.

11 Q. That's why you had to shoot this picture
12 from the top and this one from the front in order
13 to get the glasses in the picture at all?

14 A. That's correct.

15 Q. All right. Now, did you find any
16 puddles of blood or any bloody handprints or
17 fingerprints or anything around that apartment?

18 A. No, sir, we did not.

19 Q. Did you find any blood in the bathroom?

20 A. No, sir.

21 Q. Kitchen?

22 A. No, sir.

23 Q. Any droplets of bloody water on the
24 basin or anywhere?

25 A. No, sir.

1 Q. Any towels in the bathroom with blood at
2 all?

3 A. No, sir.

4 Q. What appeared to be blood?

5 A. No, sir.

6 Q. This knife, I presume that your theory
7 is that this knife is the murder weapon; is that
8 correct?

9 A. It's a possibility.

10 Q. State's Exhibit -- you don't know? This
11 is not your theory?

12 A. We're just going by what the defendant
13 told us.

14 Q. Well, this knife, State's Exhibit No. 20
15 didn't have any blood on it, did it?

16 A. I do not know.

17 Q. Hadn't been cleaned up, has it?

18 A. I do not know if it was or not.

19 Q. Was this what it looked like when you
20 found it?

21 A. Yes, sir, it was.

22 Q. Would you look at it?

23 A. Yes, sir.

24 Q. You would be interested to know if there
25 was any blood on it?

1 A. We didn't see any blood on it that day,
2 no, sir.

3 Q. If there had been some blood on it, you
4 could have got a type on it and compared it to one
5 of the victims and it would have been real
6 damaging evidence, wouldn't it?

7 A. Not if it would have been washed.

8 Q. Well, was it wet?

9 A. No, sir.

10 Q. Is this a leather handle?

11 A. I don't know. It's a possibility. Or
12 some type of hard vinyl. I don't think it's
13 leather.

14 Q. Well, I'll ask you to look at it a
15 little more closely and see if it doesn't look
16 like the way they used to make them where it's got
17 leather washers running on there and then all
18 ground off to make a smooth surface.

19 A. Like I say, it could be. I'm not sure.

20 Q. Well, if it's leather and it had been
21 washed, it would have felt damp when you found it,
22 wouldn't it?

23 A. Not necessarily, could have dried, could
24 have dried off, could have been blown dry with a
25 hair drier.

1 Q. Did you find a hair drier?

2 A. Yes, sir, there was.

3 Q. Did you pick it up?

4 A. Just looked at it, saw it in the
5 bathroom.

6 Q. Any blood on it?

7 A. No, sir.

8 Q. Well, these things come apart, don't
9 they? If they get blood or something on these
10 things, doesn't it get down on the cracks on these
11 knives?

12 A. I assume that it could. It's possible.

13 Q. You can take this rivet out and take
14 this apart, couldn't you?

15 A. I assume you could. I'm not an expert
16 on knives.

17 Q. If you were to take this apart and all
18 these washers come off there, you would get all
19 the way down to the guard, couldn't you?

20 A. Like I say, that's a possibility. I'm
21 not an expert on knives.

22 Q. If you did that and there was some blood
23 on there, you could find it, couldn't you?

24 A. Yes, sir, I assume you could.

25 Q. That's what the crime lab is in the

1 business of doing over there, isn't it?

2 A. Yes, sir, that's correct.

3 Q. Any fingerprints on that knife?

4 A. No, sir, not to my knowledge.

5 Q. Well, you knew when you went back to get
6 this statement that there was no blood on that
7 knife when you found it.

8 A. We didn't see any visible blood on it,
9 no, sir.

10 Q. Is that why it says in the statement
11 that, "I got home and looked on the knife to see
12 if there was any blood on it. I did not see any
13 and I put it in a box in the closet." Is that
14 what it says here?

15 A. I typed what he told me.

16 Q. You already knew there wasn't any blood
17 on it when you typed this statement.

18 A. I didn't know if there was or not. Like
19 I say, it could have been --

20 Q. You had already gone out there and found
21 this stuff when you took this statement?

22 A. Like I say, there could have been some
23 blood on it which is not visible by the naked eye,
24 which is very possible. I was just typing what he
25 told me to type as it was his statement.

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Q. Those eyeglasses, any fingerprints on them?

A. No, sir, none to my knowledge.

Q. Was there anything -- well, has all this stuff been submitted to the crime lab? Let me ask it this way. What did you do with this stuff when you got back down to the police station?

A. Officer Hale submitted it to the proper labs for processing.

Q. Have you seen it since then?

A. No, sir, I have not.

Q. But that's done routinely?

A. Yes, sir.

Q. One of the things, don't you always look for, in a murder case, especially stabbing, is blood?

A. Yes, sir.

Q. There usually is some, isn't there?

A. Well, it depends. You talking about on the body or what are you referring to?

Q. Kind of gets all over everything, doesn't it?

A. Not if the defendant takes the time to wash the clothing or wash, you know, blood from a knife or anything like that. Anything's possible.

1 Q. Pretty hard to wash -- well, these jeans,
2 this stuff here wasn't in a washer, was it?

3 A. No, sir.

4 Q. Purportedly, the jeans are just laying
5 on the floor in the bedroom?

6 A. Yes, sir, that's correct.

7 Q. Weren't wet, were they?

8 A. No, sir.

9 Q. Are you a hunter?

10 A. Yes, sir.

11 Q. Ever get -- ever clean a deer?

12 A. Oh, yes, sir.

13 Q. How hard is it to get that blood out of
14 your clothes, off your hands?

15 A. Takes a little effort to clean it.

16 Q. All right. Wash them three or four
17 times in cold water, it will start fading out,
18 won't it?

19 A. Well, I know my wife does the washing.
20 It usually comes out the first time.

21 Q. Did you tell Mr. Hughes before he signed
22 this piece of paper that he might well be
23 committing suicide?

24 MR. NOLL: Objection, Your Honor,
25 argumentative question. It's uncalled for.

1 THE COURT: That will be sustained.

2 BY MR. McCULLOUGH:

3 Q. Did you tell him that was going to be
4 used to try to get a capital murder conviction on
5 him?

6 A. No, sir, I did not.

7 Q. Did you tell him that the penalty for
8 that was death?

9 A. No, sir, I did not.

10 Q. You don't think that's something
11 somebody ought to know before they sign something
12 like this?

13 A. My job is to get the facts of the case
14 and that's what I was doing.

15 Q. Well, you knew before you went to that
16 apartment that y'all were going to file capital
17 murder charges on Mr. Hughes?

18 A. That was a possibility, but we don't
19 make that final decision. That's up to the
20 District Attorney's office.

21 Q. Did you tell Mr. Hughes when you told
22 him you wanted to talk to him again -- your
23 testimony is you told him that that other
24 statement wasn't complete enough or something
25 because it didn't have enough details in there

1 about the little boy?

2 A. That's correct.

3 Q. Did you tell him that the difference
4 between a murder and a capital murder in this case
5 was whether or not you could prove he murdered the
6 little boy?

7 A. No, sir, I did not tell him that.

8 Q. Well, there's considerable difference
9 between -- there's more than just details about
10 the little boy in State's Exhibit No. 4. It's
11 considerably different in State's Exhibit No. 4
12 than the statement given in State's Exhibit No. 3.

13 A. There's some difference, yes, sir.

14 Q. Well, as a matter of fact, State's
15 Exhibit No. 3 would have made the stabbing of
16 Shawn, the girl, to mistake her for somebody else.

17 MR. NOLL: Your Honor, I'm going to
18 object. That's calling for, I think, a legal
19 conclusion on the part of this witness now as to
20 what may or may not have been the results of that
21 statement.

22 THE COURT: That will be sustained.
23 Rephrase it, Mr. McCullough.

24 BY MR. McCULLOUGH:

25 Q. Doesn't State's Exhibit No. 3 say that

1 he grappled with someone, stabbed at them and
2 struck them, and then realized it was Shawn?

3 A. Correct, yes, sir.

4 Q. Now, this statement you took is
5 considerably different than that.

6 A. Yes, sir, to a certain point. There's
7 some differences in the two statements.

8 Q. Like this one says they argued over sex
9 or something.

10 A. And money, yes, sir.

11 Q. And that he did know it was her?

12 A. Yes, sir.

13 Q. Who made the decision that y'all needed
14 to take another statement that turned out to be
15 this State's Exhibit 4?

16 A. Well, myself and my partner because it
17 was just like I said earlier, in his first
18 statement he didn't mention anything in that
19 statement about stabbing the little boy. We
20 wanted to know how that occurred.

21 Q. When did you talk to Sergeant Gafford
22 about the case?

23 A. It was when we reported to work that
24 morning and my lieutenant assigned us to the case.

25 Q. Did Gafford tell you you needed to get

1 another statement?

2 A. No, sir.

3 Q. Did you tell him he didn't get enough in
4 the statement he took?

5 A. No, sir.

6 Q. Who decided or how did you decide
7 whether to go search the apartment first or take
8 another statement?

9 A. Well, we already had the consent to
10 search and we just wanted to get the search of the
11 apartment out of the way first before we came back
12 and --

13 Q. How did you get in the apartment?

14 A. With a key that he gave us, the
15 defendant gave us.

16 Q. You personally got it from Mr. Hughes?

17 A. Yes, sir.

18 Q. Well, did you just ask him for it or
19 what?

20 A. I asked him for it and he gave it to me.

21 Q. What did you do with it when you were
22 done?

23 A. Put it in his property bag that was in
24 the jail.

25 Q. When did you put that key back in his

1 property?

2 A. It was sometime that day.

3 Q. Was that before he was booked into the
4 jail?

5 A. Well, it was after I took him back up to
6 the fifth floor after I got finished, you know,
7 taking his statement from him. Because they keep
8 all the property bags down on the first floor. So,
9 I had to go back down to the first floor of the
10 jail and I put the key in that.

11 Q. Well, do they add that on to the
12 inventory of his property or something when you do
13 that?

14 A. Yes, sir, they do.

15 Q. That would be reflected then on his
16 property envelope?

17 A. Yes, sir, it should.

18 Q. Who made the decision to not take a
19 third statement?

20 A. There was no need for a third statement.

21 Q. Well, seeing as there's quite a bit of
22 difference between State's Exhibit 3 and State's
23 Exhibit 4, if there had been another one, there
24 might have been even more difference, right?

25 A. Well, I think he related in his second

1 statement I took from him that he wanted to tell
2 the complete truth. So, that's why the second
3 statement was taken.

4 Q. So, you believe that?

5 A. Yes, sir. It supported the evidence,
6 you know, some of the evidence that was out there
7 at the scene.

8 Q. Well, did you tell him, for instance,
9 that you didn't believe State's Exhibit No. 3,
10 that you'd read it and you didn't think that was
11 true?

12 A. No, sir, we just told him that we felt
13 like we wanted to know how the little boy was
14 stabbed, that was omitted from the first statement.
15 That's why we took the second statement.

16 Q. Why then did he say all this other stuff
17 that's different? Were you asking him questions?

18 A. Like I said, he said at the beginning of
19 the statement that he wanted to tell the complete
20 truth about what happened out there. That's why
21 all that other stuff, those other items were added
22 to the statement. Probably he wanted to clear his
23 conscience.

24 Q. You have videotaping equipment over
25 there in the police station, don't you?

1 A. Yes, sir.

2 Q. You have the capability of making
3 videotaped statements?

4 A. Yes, sir.

5 Q. You do it, as a matter of fact? I mean,
6 you do make them?

7 A. Some people do.

8 Q. And you have tape recorders?

9 A. Yes, sir.

10 Q. And you can take tape recorded
11 statements?

12 A. Yes, sir.

13 Q. Why didn't you make a videotaped
14 statement in this case?

15 A. Well, I guess it really comes down to
16 personal preference, what you feel more
17 comfortable with doing. I feel more comfortable
18 with taking a typewritten statement. That's what
19 I've always done. That's what I feel more
20 comfortable with.

21 Q. The thing is, of course when you look in
22 the videotape, it's all, what you see is what you
23 get. I mean, the typed statement is about the
24 nature of it, just the part that you decided to
25 type.

1 A. Well, like I said, it just comes down to
2 personal preference, what you feel more
3 comfortable with.

4 Q. Let me ask you this. Are you saying
5 that it's just your custom that you never take
6 videotaped statements?

7 A. I've never done it, no, sir.

8 Q. Did you, at any time prior to your
9 taking this statement -- you had been working on
10 this case -- when you took this statement it was
11 about 1:15 in the afternoon?

12 A. Well, I began the statement, I think, at
13 12:30, 12:20.

14 Q. It was witnessed at 1:15, if we can rely
15 on these?

16 A. Yes, sir.

17 Q. And you had come on that shift at 7:00
18 o'clock in the morning?

19 A. Yes, sir.

20 Q. Start working on this case then?

21 A. Yeah, shortly after, yes, sir.

22 Q. And what time did y'all go out to the
23 apartment?

24 A. I think we arrived out there at the
25 apartment about 9:15. So, we probably left around

1 8:30 or so.

2 Q. And at no time from the time you started
3 working on this case until after 1:15 when this
4 statement was witnessed did you take Mr. Hughes
5 before a magistrate for a warning?

6 A. No, sir, I did not.

7 Q. And the municipal courts, which are
8 about 50 yards away from the police station, open
9 up and start holding court at 8:00 o'clock in the
10 morning?

11 A. Yes, sir, sometime around there.

12 Q. So, before you even went to the
13 apartment, you could have taken Mr. Hughes over
14 there for a magistrate's warning?

15 A. I suppose we could have done that.

16 Q. Is it the policy in homicide division to
17 not get magistrate's warnings at all?

18 A. No, sir, there's really no policy, to my
19 knowledge.

20 Q. Is there a policy in homicide division
21 to not get municipal court judges to give
22 magistrate's warnings?

23 A. No, sir, no policy.

24 Q. You've never heard anything about that?

25 A. No, sir.

1 Q. Never been told to not use municipal
2 court judges?

3 A. No, I have not. As a matter of fact, I
4 have used them on some occasions.

5 Q. Is there any particular reason you did
6 not in this case?

7 A. No, sir.

8 Q. Up until the time -- from the time you
9 took over this case until this statement was
10 signed, Mr. Hughes had received no advice or
11 warnings from anyone other than police officers?

12 A. That's correct.

13 MR. McCULLOUGH: Pass the witness.

14 THE COURT: Mr. Noll.

15

16 REDIRECT EXAMINATION

17

18 BY MR. NOLL:

19 Q. Sergeant Ferguson, do you know of any
20 requirement in the law at all that requires you to
21 take a suspect before a judge before you question
22 him about a case?

23 A. No, sir.

24 Q. Do you know of any requirement under the
25 law at all that requires you to take a suspect

1 before a judge before you take his confession?

- 2 A. No, sir.

3 Q. As long as you advise him of those same
4 rights?

5 A. That's correct.

6 Q. Did you take some photographs of the
7 defendant after he was questioned and after he
8 signed those statements?

9 A. Yes, sir, I did.

10 Q. May I approach the witness, Your Honor?

11 THE COURT: You may.

12 (State's Exhibit No. 36, 37
13 and 38 were marked for identification.)

14 BY MR. NOLL:

15 Q. Let me show you what's been marked for
16 identification purposes as State's Exhibit No. 36,
17 37 and 38, and ask you if you recognize these
18 photos.

19 A. These photographs here are photographs
20 that I took and had him initial after they were
21 taken on that day.

22 Q. Was his appearance in the photographs or
23 do these photographs accurately depict his
24 appearance as it was when you interviewed him?

25 A. Yes, sir, they do.

1 Q. Also the other exhibit?

2 A. Yes, sir, it does.

3 Q. Does that photograph accurately depict
4 his appearance as you observed him?

5 A. Yes, sir.

6 Q. This was after he had already signed his
7 statement?

8 A. Yes, sir, that's correct.

9 MR. NOLL: Your Honor, I'm tendering to
10 counsel for the defendant State's Exhibits 36, 37
11 and 38. I move the same into evidence at this
12 time.

13 MR. McCULLOUGH: May I ask him a
14 question?

15 THE COURT: (Nods head affirmatively.)

16

17 VOIR DIRE EXAMINATION

18

19 BY MR. McCULLOUGH:

20 Q. Did you take anymore pictures of Mr.
21 Hughes, other than these three?

22 A. No, I just took two of those.

23 Q. Were there any side views taken of him?

24 A. I don't believe.

25 MR. McCULLOUGH: No objection to these

1 pictures.

2 THE COURT: 36, 37 and 38 will be
3 admitted.

4

5 REDIRECT EXAMINATION CONTINUED

6

7 BY MR. NOLL:

8 Q. Sergeant, in the course of investigating
9 a homicide, let's say you're questioning a suspect
10 and a defense lawyer calls you on the phone and
11 says, "That's my client, stop talking to him,"
12 what do you have to do?

13 A. Stop talking to him.

14 Q. Do you recall getting any messages that
15 a lawyer called after his statement was signed at
16 1:30 in the morning? Do you know anything about
17 that?

18 A. Shortly after taking the statement, Mr.
19 Ron Mock called.

20 Q. Would it have been appropriate for you
21 to continue taking any statements from this
22 defendant?

23 A. No, sir, it would not.

24 Q. In fact, it would not have been
25 admissible, would it?

1 A. That's correct.

2 (State's Exhibit No. 39 was
3 marked for identification.)

4 BY MR. NOLL:

5 Q. Let me show you what's marked as State's
6 Exhibit No. 39. Does this look familiar to you at
7 all?

8 A. Yes, sir.

9 Q. What is that?

10 A. Apartment key that we used to get in the
11 apartment with that day.

12 Q. Defendant's apartment key?

13 A. Yes, sir.

14 Q. After you used it, you took it back and
15 put it in an envelope as a part of this file; is
16 that correct?

17 A. That's correct.

18 MR. NOLL: We would offer State's
19 Exhibit No. 39, Your Honor, having tendered same
20 to counsel for the defendant.

21 MR. McCULLOUGH: Are you passing the
22 witness?

23 MR. NOLL: (Shakes head negatively.)

24 MR. McCULLOUGH: I have no objections to
25 this key.

1 THE COURT: 39 will be admitted.

2 MR. NOLL: We pass the witness, Your
3 Honor.

4

5

RE CROSS EXAMINATION

6

7 BY MR. McCULLOUGH:

8 Q. All right. Now, I thought you said you
9 took this key and went and put it in the
10 defendant's property in the city jail.

11 A. From what I recall, that's what I did.

12 Q. Well, did you just testify that you put
13 it in an envelope, I presume that one the DA
14 flashed there, that was part of the file in this
15 case? That's not the same thing.

16 A. Well, I just assumed he was talking
17 about the jail property bag. From what I recall,
18 I thought I took it and put it in the jail
19 property bag.

20 Q. That envelope that the DA took the key
21 out of is not a jail property bag, is it?

22 A. No, sir, that's one of our file bags
23 there. So, I assume that I made a mistake on my
24 testimony.

25 Q. It happens.

3 quit taking statements from Mr. Hughes? Because
4 you finally got one that you completely believed
5 or because Ron Mock called and said he was
6 representing him?

7 A. Because he told us -- we asked him -- we
8 took the second statement because we wanted to
9 know about the little boy and we finished that
10 statement and I took my pictures at 1:25. I think
11 I reflect that on the back of the pictures which
12 he initialed and I think Mr. Ron Mock -- if I can
13 refer to my supplement, I think I have the times
14 that he did call.

15 Q. I was trying to get straight which
16 reason was prevalant in your decision to not take
17 another statement. You're correct. This does say
18 1:25.

19 A. Correct.

20 MR. McCULLOUGH: Pass the witness.

21 MR. NOLL: Nothing further, Your Honor.

22 THE COURT: May this officer be excused?

23 MR. NOLL: We ask he be excused.

24 THE COURT: Thank you, Sergeant Ferguson.
25 You may step down. Call your next.

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MR. NOLL: Sergeant Clappart.

A JUROR: Your Honor, may I ask you a question? It's about parking. I parked where I left my keys with an attendant. Am I going to be able to get my car?

THE COURT: Yes, ma'am. I promise.

(Witness sworn.)

THE COURT: You may proceed, Mr. Noll.

MR. NOLL: Thank you, Your Honor.

1 S. L. CLAPPART,
2 was called as a witness by the State and, having
3 been duly sworn, testified as follows:
4

5 DIRECT EXAMINATION
6

7 BY MR. NOLL:

8 Q. Sir, would you please state your name
9 for the members of the jury?

10 A. Steve Clappart.

11 Q. Are you employed by the Houston Police
12 Department?

13 A. Yes, sir, I am.

14 Q. Are you a sergeant in the homicide
15 division?

16 A. Yes, sir.

17 Q. Sergeant Clappart, how long have you
18 been with the police department?

19 A. 21 years.

20 Q. How long have you been with the homicide
21 division, as a sergeant in the homicide division?

22 A. Since 1976.

23 Q. Let me direct your attention back to
24 September 26th of 1988 -- actually, September 27th
25 of 1988. On that day, did you have occasion to

1 come into contact with the defendant in this case,
2 Preston Hughes, III?

3 A. Yes, sir, I did.

4 Q. Do you see that person, Preston Hughes,
5 III, in the courtroom this morning?

6 A. Yes, sir.

7 Q. Would you point to him and describe how
8 he's dressed?

9 A. The gentleman seated in the blue double
10 breasted sport coat with the gray slacks.

11 MR. NOLL: Your Honor, may the record
12 reflect the witness has identified the defendant?

13 THE COURT: Record will so reflect.

14 BY MR. NOLL:

15 Q. How did you first come into contact with
16 Mr. Hughes that morning?

17 A. I was working my usual hours in the
18 office and I was approached by Detective Ferguson,
19 I believe, and asked if I would mind witnessing
20 the signing of a statement or confession.

21 Q. At that time were you working the day
22 shift or the night shift?

23 A. Day shift.

24 Q. There's another shift in there someplace,
25 I forgot.

1 A. Evening shift, yes, sir.

2 Q. But you were on day shift at that time?

3 A. Yes, sir.

4 Q. As a day shift officer, what time, if
5 you recall, did you come in that morning?

6 A. 7:00 o'clock in the morning.

7 Q. Do you recall, after Sergeant Ferguson
8 contacted you, where you went to meet the
9 defendant, Preston Hughes?

10 A. He was seated in an interview room on --
11 in one of the sides of the office. There's two
12 interview rooms that are designated as interview
13 rooms and reserved for that purpose. He was
14 seated in one of those rooms.

15 Q. Was there anyone else with you who was
16 going to serve as a witness on his statement?

17 A. Yes, sir.

18 Q. Who was that?

19 A. J. R. Swaim.

20 Q. And he's also a sergeant with the
21 homicide office?

22 A. Sergeant in homicide, yes, sir.

23 Q. Did you and Sergeant Swaim go into the
24 room together and witness the signing of the
25 statement together?

1 A. Yes, sir.

2 Q. Was Sergeant Ferguson present in the
3 room at the time the statement was executed?

4 A. He was standing by the door.

5 Q. Was Sergeant Yanchak, his partner,
6 anywhere in the room?

7 A. No, sir, not in the room.

8 Q. When you went into the room, did you do
9 the talking or did Sergeant Swaim do the talking?

10 A. I did some of the talking and Sergeant
11 Swaim did some of the talking. We each asked
12 different questions.

13 Q. What did you ask the defendant?

14 A. I asked him if he had been abused, if he
15 had been given any food, if he had been given any
16 rest, if he needed anything, or if he had any
17 problems that he would like to discuss.

18 Q. What did he say?

19 A. He said no.

20 Q. He had been there quite a long time.
21 Did he indicate that he needed some rest or he had
22 not been provided a place to rest?

23 A. No, sir, not at that time.

24 Q. Did he tell you specifically whether or
25 not Sergeant Gafford had abused him, struck him

1 physically?

2 A. There was never any mention made of
3 anything like that.

4 Q. How about Sergeant Ferguson? Did he say
5 anything about Sergeant Ferguson?

6 A. No, sir.

7 Q. Did he say anything about Sergeant
8 Yanchak?

9 A. No, sir, he did not.

10 Q. Did he do anything to indicate to you
11 that he was being coerced in any way into making
12 this statement?

13 A. No, sir.

14 Q. Did he indicate in any way that someone
15 had promised something to him, perhaps said it
16 will be a little lighter on you or it will go
17 better if you make a statement?

18 A. He made no mention of that.

19 Q. Did you question him about those sort of
20 things completely?

21 A. Yes, sir.

22 Q. What else did you talk to him about?

23 A. In my presence, Sergeant Swaim asked him
24 if he could read and he said yes and he was given
25 the opportunity to read several lines out of a

1 paragraph within the statement and then he was
2 also asked to read the statutory warning, which is
3 located on the top of the statement, and place his
4 initials by each one of those warnings.

5 Q. Did he actually read out loud the
6 warnings that he initialed?

7 A. Yes, sir.

8 Q. Did he do that on both pages of the
9 statement or on the first page?

10 A. Just on the first page. He initialed
11 them on both pages. They were identical forms.

12 Q. On the second page of the statement,
13 there's a line that goes from the end of the text
14 to the signature line of Preston Hughes, III, and
15 "P. H. III" in big letters on there. Who wrote
16 that on the statement?

17 A. Preston Hughes did.

18 Q. Did he sign both pages of the statement?

19 A. Yes, sir, he did.

20 Q. He signed both pages of the two-page
21 statement?

22 A. Yes, sir, he did.

23 Q. At the time he signed it, did you sign
24 your name to it?

25 A. Yes, sir, after he completed signing

1 both pages, I signed it and Sergeant Swaim signed
2 it.

3 Q. Next to your signature is there a date
4 or a time?

5 A. Yes, sir, there is.

6 Q. What does it say?

7 A. It says, "1:15 p.m., 9-27-88."

8 Q. Did you write that on there yourself?

9 A. Yes, sir.

10 Q. Can you tell the jury what the
11 defendant's attitude and demeanor was during the
12 time that you spoke with him prior to the signing
13 of this statement?

14 A. At the time I was speaking with him, it
15 was almost an air of relief. It seemed as though
16 he may have gotten something of an air of relief.
17 Seemed as though he had gotten something off his
18 shoulder. He did not show fatigue or anything I
19 could see was abnormal. He just was almost even
20 flippant about it. You know, he made some jokes
21 about dropping a pen and this, that, and the other.
22 He was asked to make some corrections within the
23 document, as far as spelling and things like this,
24 and he took care of those things.

25 Q. Did he place his initials on the first

1 page in two spots where there's some
2 interlineations? Did he place his initials on
3 there in your presence?

4 A. Yes, sir.

5 Q. After the defendant signed the statement
6 and you placed your initials and signature on the
7 statement, did you have any further contact with
8 Mr. Hughes that day or again?

9 A. No, sir, I did not.

10 Q. So, your function in this whole
11 investigation was just to witness this statement?

12 A. Yes, sir.

13 Q. Did you actually read the body of the
14 statement, itself?

15 A. No, sir, I did not read the body.

16 Q. And other than having the defendant read
17 his rights out loud and initial them, were you
18 present when anyone else advised him of his rights
19 concerning the statement?

20 A. No, I was not present when anybody else
21 said anything about that.

22 MR. NOLL: Pass the witness, Your Honor.

23 THE COURT: Mr. Thomas.

24

25

1 CROSS EXAMINATION

2
3 BY MR. THOMAS:

4 Q. Sergeant Clappart, had you talked to any
5 of the other detectives about what it was that you
6 were witnessing, what the man was charged with?

7 A. What the man was charged with?

8 Q. Yes.

9 A. No. I had not talked to anybody
10 specifically about this. It was supposed to be a
11 confession and then, of course, a lot of people
12 had discussed what he was up there for early on.

13 Q. You had already known then what he was
14 up there before, what the alleged facts were
15 surrounding his being at the homicide office?

16 A. Yes, sir.

17 Q. Did you know what time he had been
18 brought there the night before?

19 A. No, sir, I did not.

20 Q. You've indicated that he appeared to be
21 quite rested. You made a big point of that in
22 your testimony here. You don't know what time?

23 A. That was his appearance. It's a common
24 factor for a person who is operating on adrenalin
25 to appear that way.

1 Q. You think he was -- was having adrenalin
2 rushes?

3 A. Observing people over many, many years,
4 I would say that he probably was having adrenalin.

5 Q. Let's talk about what you saw when you
6 witnessed the statement that you talked about.
7 Are you saying that the man was having an
8 adrenalin rush?

9 A. I don't know. I said he appeared rested
10 and he was alert.

11 Q. A person with an adrenalin rush would
12 not appear to be rested, would they?

13 MR. NOLL: Argumentative form of the
14 question, I object.

15 MR. THOMAS: He brought it up, Judge.

16 THE COURT: Rephrase it, Mr. Thomas.
17 The objection is sustained.

18 BY MR. THOMAS:

19 Q. You said you thought he might be having
20 an adrenalin rush, correct?

21 A. I said he could have.

22 Q. Well, you've seen people under those
23 circumstances do that many times?

24 A. Yes.

25 Q. Are you telling this jury that people

1 you've seen with adrenalin rushes appear to be
2 restive?

3 A. It depends. Everybody reacts
4 differently. Some people under the influence of
5 drugs will appear that way. Some people under the
6 influence of excitement, where their adrenalin
7 gets pumped up, will be able to operate for long
8 periods of time and then they will seem rested
9 when they're worn out.

10 Q. What type of circumstances do you know
11 that cause people to have an adrenalin rush?
12 Pressure on them?

13 A. Pressure can.

14 Q. Okay. That's enough. Now, you know
15 Sergeant Ross?

16 A. Yes, sir.

17 Q. Has she ever been your partner?

18 A. No, sir.

19 Q. Have you before been told not to take
20 defendants to the magistrates at the City of
21 Houston for a magistrate's warnings?

22 A. Have I ever been told not to?

23 Q. Yes.

24 A. No, sir, I have not.

25 Q. Who is your immediate supervisor?

1 A. My immediate supervisor is Richard
2 Holland, he's a lieutenant.

3 Q. Richard who?

4 A. Richard Holland.

5 Q. And he's been your supervisor for about
6 two weeks, three weeks? Who was it before that?

7 A. Nelson Zach.

8 Q. Did Lieutenant Zach ever tell you,
9 "Don't take defendants to get magistrate warnings
10 at the City of Houston"?

11 A. Nope, not to my knowledge.

12 Q. No policy of that has ever existed?

13 A. Not to my knowledge. If the magistrates
14 are available, we're free to use them.

15 Q. You've done that many times, have you
16 not? Over the years, you've carried defendants
17 over to municipal courts or Harris County where
18 judges like His Honor to your right is sitting and
19 have them warned?

20 A. Unless there's mitigating circumstances,
21 like crowded docket or something like that where
22 they're not available.

23 Q. You've done it many times in the past at
24 or around 8:00 o'clock in the morning, sometime
25 like that?

1 A. 8:00 o'clock in the morning, now there's
2 some problems. There's some security problems and
3 then there's some problems as far as the number of
4 people that are in the courtrooms. Sometimes it's
5 very difficult to and sometimes the judges don't
6 really appreciate us bringing somebody in.

7 Q. That's what they're for, is it not?

8 A. Not necessarily. They're there to try
9 traffic court cases and municipal court cases.

10 Q. But their duty is to warn persons and
11 you know that.

12 MR. NOLL: This is getting argumentative.
13 Who knows what the judge's attitudes are? It's
14 not relevant to this case. I object.

15 THE COURT: That will be overruled.

16 BY MR. THOMAS:

17 Q. You know one of their duties over there
18 is to warn defendants?

19 A. Yes, sir, they will warn them.

20 Q. You also know the statement that you
21 witnessed was taken during ordinary business hours,
22 somewhere between and after 10:00 o'clock in the
23 morning and when you witnessed it at what? 1:30?

24 A. 1:15.

25 Q. You know darn well that officers of the

1 court are available over there for warning
2 purposes?

3 A. Yes, sir.

4 Q. Now, you've witnessed a statement that
5 appears to be how many pages?

6 A. Appears to be two pages, sir.

7 Q. And does it say on there to your
8 information as to when and what time that
9 statement began to be taken? I mean, that's the --
10 when the time is put on this at the beginning of
11 the statement, that's when the typing begins; is
12 that not correct?

13 A. Yes, sir, that's 12:20 p.m.

14 Q. Let's use your arithmetic and tell us
15 how long it took to reduce that thing to writing.

16 A. About 50 minutes, 55 minutes.

17 Q. Who teaches you guys how to type?

18 A. Nobody, to be quite frank, nobody.

19 Q. Where did you learn?

20 A. I learned how to type sitting on
21 midnights in the juvenile division. I bought a
22 book named Typing Made Simple and that's exactly
23 where I learned how to type.

24 Q. How long have you been entering your
25 offense report into the computer directly?

1 A. Since we've had the computers and we had
2 access to them, which would be probably about 1981.

3 Q. That's eight years that you've been
4 doing it?

5 A. As far as -- now, statements are
6 different than reports. We've only been using the
7 computer for statements for about three years now,
8 four years. And other than that, we reduce it to
9 hard copy like this.

10 Q. Well, what would a statement of an
11 accused look like if it was on some other type
12 paper? Are you talking about the computer?

13 A. It looked like the offense report that
14 you have seen.

15 Q. And where are those machines located?

16 A. They're located in the homicide office.

17 Q. Well, I'm not sure I understand. Did
18 you ever see the statement of the accused, 3 or 4,
19 that was reduced to these offense report type
20 circumstances?

21 A. This particular statement here?

22 Q. Yes, sir.

23 A. No, I have never seen it in any other
24 form but in this form.

25 Q. What type of typewriter is available for

1 the officers to use?

2 A. Whatever kind we can piece together. We
3 have a stack of IBM typewriters that are about six
4 high. The city has opted not to repair them. So,
5 we have to repair our own typewriters out of our
6 coffee fund. Whatever is available that day is
7 what we have to use. Some of them are correctable,
8 some of them are not correctable. Some of them
9 have margins, some of them don't. It just depends
10 on what we have available.

11 Q. You're given shoddy material.

12 A. Exactly. You hit the nail on the head.

13 Q. These computers aren't shoddy material,
14 are they?

15 A. If they're working right. What happens
16 is the computers, in the middle of the day, they
17 shut the computer system down so that the
18 identification division and records division can
19 catch up on input.

20 Q. Would that be true early in the morning?

21 A. Yes, it would, because they do it in the
22 middle of the night and they do it in the middle
23 of the day.

24 Q. It would not be that way at 7:00 in the
25 morning?

1 A. I can't tell you when they're going to
2 do it because they send you a message right in the
3 middle of your entry saying, "We will shut down in
4 15 minutes," and it blanks out what you have up
5 there so you have to start all over again. Then
6 they will shut the computer down for whatever time
7 it takes them to do what they're going to do and
8 we'll start back up again. We don't know when
9 they're going to do it. It's like the state
10 computers on checking ID information and driver's
11 licenses and automobile registrations.

12 Q. Over the period of your time with the
13 homicide division, would you state about how many
14 statements of an accused have you taken?

15 A. I couldn't even hazard a guess. I've
16 made over 2300 murder scenes.

17 Q. All these statements were taken then at
18 the homicide division on the third floor of HPD?

19 A. How many statements are taken there?

20 Q. No, no. All the statements you've taken
21 have been on the third floor of HPD?

22 MR. NOLL: I object to the relevance of
23 this line of questioning. We're getting really
24 far afield.

25 MR. THOMAS: I have something in mind.

1 THE COURT: Let's get to ringing the
2 bell.

3 A. How many statements have I taken --

4 BY MR. THOMAS:

5 Q. Better than that. How many have you not
6 taken at HPD on the third floor?

7 A. The statements are taken wherever it's
8 necessitated. I went to Minnesota, St. Paul, and
9 took a statement in a corn field.

10 Q. Who did you get to witness?

11 A. I had two deputies and an illegal alien
12 itinerant worker witness it. It depends on where
13 you are and what you have available.

14 Q. You have took a statement of an accused
15 in a field in Iowa?

16 MR. NOLL: I object. No matter how
17 entertaining this is, it is totally irrelevant.

18 THE COURT: That will be sustained.
19 Move along, Mr. Thomas.

20 BY MR. THOMAS:

21 Q. Are there people available on the third
22 floor, second floor, first floor, that are not
23 sergeants of the homicide division of the Houston
24 Police Department that could witness statements of
25 an accused while they're in custody?

1 A. At the time, I don't know. It depends
2 on who's available.

3 Q. At 1:15 when you did it, were there
4 other people around there other than sergeants of
5 the homicide division of the Houston Police
6 Department?

7 A. I don't know because I didn't check.

8 MR. THOMAS: I have nothing further.

9

10 REDIRECT EXAMINATION

11

12 BY MR. NOLL:

13 Q. Sergeant, in fact, in the past you
14 probably used sergeants or administrative workers --

15 MR. McCULLOUGH: I think this will be
16 leading, Your Honor.

17 BY MR. NOLL:

18 Q. Have you used anybody like you just
19 described to witness a confession?

20 A. Yes, sir.

21 Q. Any big deal about the fact that
22 sergeants were used this case instead of
23 administrative assistants?

24 MR. McCULLOUGH: Object to the term "big
25 deal."

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THE COURT: Sustained.

BY MR. NOLL:

Q. Any significance that can be attached to the fact that trained professionals, homicide sergeants were used instead of a secretary?

A. No, sir.

MR. NOLL: Pass the witness.

THE COURT: May this officer be excused?

MR. NOLL: We ask he be excused.

THE COURT: Thank you, Sergeant Clappart.
You may be excused.

Call your next, counsel.

MR. NOLL: Sergeant Swaim, Your Honor.

(Witness sworn.)

THE COURT: Sergeant Swaim, I'm going to ask you to keep your voice up. We've got a lot of extraneous noise. Make a conscious effort to speak up so they can all hear, please.

Mr. Noll, you may proceed.

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JOHN R. SWAIM,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Sir, would you please state your name
for the members of the jury? Tell them how you're
employed.

A. John R. Swaim, sergeant with the Houston
Police Department homicide division.

Q. How long have you been with the homicide
division, Sergeant Swaim?

A. Since 1982.

Q. Before that, did you work in another
division within the department?

A. I did.

Q. How long have you been a policeman
overall?

A. 16 years.

Q. Let me direct your attention to
September 27th, 1988, a Monday afternoon. Were
you on duty that day?

A. I was.

1 Q. On that day did you have occasion to
2 come in contact with a man you later came to know
3 as Preston Hughes, III?

4 A. I did.

5 Q. Do you see that man in the courtroom
6 today?

7 A. Yes.

8 Q. Would you point to him and describe how
9 he's dressed?

10 A. Black gentleman right there in the dark
11 suit, white shirt, and, I guess, a purple tie.

12 Q. Close enough.

13 MR. NOLL: Your Honor, may the record
14 reflect the witness has identified the defendant?

15 THE COURT: Record will so reflect.

16 BY MR. NOLL:

17 Q. How did you first come into contact with
18 the defendant that morning?

19 A. I was in the office and Sergeant
20 Ferguson came to me and was looking for several
21 sergeants to talk to Mr. Hughes about his
22 confession.

23 Q. Were you working the day shift at that
24 time or night shift, officer, or evening shift?

25 A. Day shift.

1 Q. Did you go to the interview room where
2 the defendant was located or did he come to you
3 where you were or what?

4 A. Sergeant Ferguson came and got me and I
5 went to the interview room.

6 Q. Who all was present in the interview
7 room besides the defendant when you talked to him?

8 A. When I spoke with him, myself and
9 Sergeant Clappart were in there.

10 Q. And did you ask him questions?

11 A. I asked him some questions.

12 Q. And do you recall what kind of questions
13 you asked him?

14 A. I first asked him -- Sergeant Clappart
15 asked him some questions and I asked him if he
16 could read.

17 Q. Did he indicate that he could?

18 A. He stated he could. Then I had him read
19 the first line of the first page of his confession.

20 Q. Was he successful in reading the first
21 line?

22 A. Yes, he was.

23 Q. What else did you ask him?

24 A. I asked him if he had read the statement.
25 He stated that he had. I asked him if he had read

1 his rights that are here on the top of the form
2 and he stated that he had. And I asked him if you
3 have read those, to please initial each -- by each
4 number that you've read them.

5 Q. Did he initial those rights in your
6 presence?

7 A. He did.

8 Q. Did he do that on each page of the
9 two-page statement?

10 A. As I recall, it was just on the first
11 page.

12 Q. Can you look at the exhibit that's
13 before you up there, State's Exhibit 4, I believe?

14 A. Yes.

15 Q. Does it indicate that there's initials
16 on the first and second page?

17 A. Yes, there is.

18 Q. On both pages?

19 A. Right.

20 Q. Are the initials on the second page
21 those of Preston Hughes, III?

22 A. Yes.

23 Q. At the bottom of the second page, there
24 appears to be a line drawn from the text, the
25 bottom of the text all the way to the signature

1 line and then some initials across that. Do you
2 recall who wrote those on there and who drew that
3 line?

4 A. Mr. Hughes drew the line and initialed
5 it. I asked him to do that.

6 Q. Did you ask him anything else about the
7 statement itself or about his feelings or his
8 desires concerning the statement?

9 A. As I recall, no.

10 Q. Did he indicate to you that anybody had
11 threatened him in any way to get him to sign this
12 statement?

13 A. He indicated that no one had threatened
14 him or coerced him in any way.

15 Q. Did anybody in your presence make any
16 promises to Mr. Hughes to get him to sign this
17 statement?

18 A. No, sir.

19 Q. Did he say anything to you to indicate
20 that someone might have made some promises to him?

21 A. No.

22 Q. At the time that he signed his statement,
23 did he actually sign it in your presence while you
24 were in the room?

25 A. Yes, sir.

1 Q. And did you then sign your name
2 underneath it as a witness?

3 A. Yes, I did.

4 Q. Did you place a time and a date next to
5 your signature?

6 A. I did.

7 Q. And right underneath your signature,
8 someone has written in red, "first line of first
9 page," and initials, looks like "J. R." on there.
10 Did you write that?

11 A. Yes, it's "J. S.," small "S."

12 Q. That is in reference to your asking him
13 earlier to read the first line in the statement?

14 A. That's correct. And him doing so.

15 Q. At the time you talked to the defendant,
16 did he appear -- what was his appearance, his
17 attitude and demeanor to you?

18 A. He was very cooperative.

19 Q. Did he appear to you to have been under
20 any sort of undue influence or stress at the time
21 he signed the statement?

22 A. No.

23 Q. Did he appear as though he had been
24 deprived of sleep? Were his eyes red and
25 bloodshot, or could you tell?

1 A. Not that I recall.

2 Q. Was there anything about his physical
3 appearance which caused you concern or which
4 caused you to perhaps doubt that he knew what he
5 was doing?

6 A. No.

7 Q. Did he have any signs of any abuse or
8 maltreatment? Were there any marks on him or
9 indications that he had been roughed up in any way?

10 A. None whatsoever.

11 Q. After he signed the statement and you
12 initialed and signed as a witness, did you have
13 any participation in the further investigation of
14 this case, Sergeant Swaim?

15 A. No.

16 Q. Were you involved at all in any other
17 investigation of this particular case?

18 A. None whatsoever.

19 Q. Were you even aware of the facts of this
20 case?

21 A. No, I wasn't.

22 Q. Did you read the statement?

23 A. No, I never read the statement.

24 Q. You weren't involved in any
25 investigation?

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A. No.

MR. NOLL: Pass the witness, Your Honor.

CROSS EXAMINATION

BY MR. McCULLOUGH:

Q. Did you tell Mr. Hughes that the State of Texas might kill him if he signed this piece of paper?

A. I certainly did not.

Q. Or that one there?

A. No.

Q. You knew it was a capital murder investigation?

A. I just testified that I'm not -- I wasn't aware of the facts of the case.

Q. Well, how long had you been on the floor when you did witness this statement?

A. I'm sorry?

Q. How long had you been in the homicide office on this day when you witnessed this statement there, State's Exhibit 4?

A. How long had I been in the office?

Q. Yeah.

A. I was probably working 7:00 to 3:00 or

1 6:00 to 2:00 or 8:00 to 4:00, one of those shifts.

2 Q. So, you had been up there three or four
3 hours? Had he been up there, Mr. Hughes been up
4 there all that time?

5 A. I don't know, sir.

6 Q. Were you ever informed of a policy that
7 you were not supposed to take prisoners before
8 municipal court judges for magistrate's warnings?

9 A. Have I ever heard of a policy of that?

10 Q. Yes, sir.

11 A. No.

12 Q. Do you, in fact, personally ever take
13 prisoners before magistrates for warnings?

14 A. I have, yes.

15 Q. Do you have any policy against it now?
16 Or was there any at the time of the statement,
17 State's Exhibit 4, was taken?

18 A. There's no written policy on it that I
19 know of, no.

20 Q. Well, is there any word-of-mouth policy?

21 A. No.

22 Q. Were you and Sergeant Clappart together
23 when you did this witnessing? Were y'all in the
24 room, the little cubicle together?

25 A. It was in an interview room.

1 Q. An interview room?

2 A. Yes, we were together, with Mr. Hughes.

3 Q. Just the three of you or was there
4 somebody else present?

5 A. Just the three of us.

6 Q. Did Mr. Hughes drop a pencil while he
7 was fumbling around to sign that statement?

8 A. I beg your pardon?

9 Q. Did he drop a pencil or pen or anything,
10 Mr. Hughes, when he was in the process of signing
11 that statement you witnessed?

12 A. Not that I recall.

13 Q. Did he make any jokes with you or
14 Officer Clappart?

15 A. No.

16 Q. Did he appear to be fatigued? Did he
17 appear to be tired or fatigued?

18 A. No, sir.

19 Q. Did he look like he had recently slept?
20 Can you give us some idea of what his appearance
21 was in that regard?

22 A. I really couldn't give an opinion. I
23 can testify that he did not look sleepy or he
24 didn't look tired or overly fatigued, no.

25 Q. He didn't look, other than like he was

1 tired or fatigued or like he was trying to wake up?

2 A. Either way.

3 MR. McCULLOUGH: Pass the witness.

4 MR. NOLL: No further questions, Your
5 Honor.

6 THE COURT: May this officer be excused?

7 MR. NOLL: We ask he be excused.

8 THE COURT: Thank you, Sergeant Swaim.

9 You may go about your duties.

10 MR. NOLL: Sergeant Yanchak, Your Honor.

11 THE COURT: Approach the bench,
12 gentlemen.

13 (Off the record discussion.)

14 THE COURT: You may proceed, Mr. Noll.

15 MR. NOLL: Thank you, Your Honor.

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E. T. YANCHAK,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Sir, would you please state your name
for the members of the jury?

A. Sergeant E. T. Yanchak.

Q. Sergeant Yanchak, are you with the
Houston Police Department?

A. Yes, sir.

Q. How long have you been with the Houston
Police Department?

A. Today is 22 years.

Q. Today?

A. Today.

Q. How long have you been with the homicide
division?

A. 14 years.

Q. Sergeant, back on September the 27th of
1988, were you on duty that day? It was a Monday,
I believe.

A. Yes, sir, I was.

1 Q. Do you recall whether you were on the
2 night shift, day shift or evening shift?

3 A. Day shift.

4 Q. On that day did you have occasion to be
5 involved in an investigation of the defendant in
6 this case, Preston Hughes, III?

7 A. Yes, sir.

8 Q. Do you see the person that you knew on
9 that day as Preston Hughes, III, present in the
10 courtroom today?

11 A. Yes, sir, I do.

12 Q. Would you point to him and describe his
13 clothing?

14 A. The black gentleman sitting between his
15 attorneys wearing a blue suit and tie.

16 MR. NOLL: Your Honor, may the record
17 reflect the witness has identified the defendant?

18 THE COURT: Record will so reflect.

19 BY MR. NOLL:

20 Q. On the -- later in the morning of
21 September 27th, did you have occasion to assist or
22 help Sergeant Ferguson in taking a statement from
23 the defendant, Preston Hughes, III?

24 A. Yes, sir.

25 Q. And on that day, how did you first come

1 into contact with the defendant? Where were you
2 when you first met him that day, I guess?

3 A. We were in the homicide office.

4 Q. Were you in the interview room or just
5 in the outside area of the office?

6 A. In the interview room.

7 Q. Had you returned from the search of his
8 apartment?

9 A. That is correct.

10 Q. And did you go get the defendant out of
11 the jail or did your partner, Sergeant Ferguson?

12 A. Sergeant Ferguson.

13 Q. And while he was gone to get the
14 defendant out of the fifth floor jail, what did
15 you do?

16 A. I remained there in the homicide office
17 until he returned.

18 Q. And when they returned, did y'all go to
19 a particular location within the office?

20 A. We went to the interview room, 363-A.

21 Q. While inside that room, did you have
22 occasion to advise the defendant of his rights?

23 A. Yes, sir.

24 Q. And how did you accomplish that?

25 A. From a blue card that is issued by the

1 District Attorney's office.

2 Q. Do you have a copy of your blue card
3 with you today?

4 A. Yes, sir, I do.

5 Q. Could you take it out, please?

6 A. (Witness complies.)

7 Q. Is that the same blue card from which
8 you read the defendant his rights back in
9 September or is this a new card?

10 A. It's not the same one. It's probably
11 another one.

12 Q. Are the rights on that card the same as
13 the rights you advised the defendant?

14 A. Yes, sir.

15 Q. Would you read those rights to the jury,
16 please?

17 A. Warnings to be given before taking any
18 oral or written confession. Number one, you have
19 the right to have a lawyer present to advise you
20 either prior to any questioning or during any
21 questioning. Number two, if you are unable to
22 employ a lawyer, you have the right to have a
23 lawyer appointed to counsel with you prior to or
24 during any questioning. And number three, you
25 have the right to remain silent and not make any

1 statement at all and that any statement you make
2 may and probably will be used in evidence against
3 you at your trial. Number four, you have the
4 right to terminate the interview at any time.
5 Number five, if you are a juvenile, 15 or 16 years
6 of age at the time of the violation of a law of
7 the grade of felony, the juvenile court may waive
8 its jurisdiction and you may be tried as an adult.

9 Q. Are those the rights you advised the
10 defendant of that morning?

11 A. Yes, sir.

12 Q. Did he do anything to indicate that he
13 understood those rights?

14 A. After each right, I asked him if he
15 understood them and he stated that he did.

16 Q. Did he indicate to you and Sergeant
17 Ferguson that he wished to waive those rights and
18 continue talking with the two of you?

19 A. Yes, sir.

20 Q. After he waived his rights and talked
21 with you, can you explain to the jury how it was
22 that a statement was eventually taken from him?
23 Did y'all just sit down and type up a statement or
24 did you talk with him first? How did you do that?

25 A. We talked with him, we discussed the

1 fact about the young boy.

2 Q. Why is it that y'all were taking a
3 second statement from the defendant? He had
4 already given a statement in the morning; is that
5 correct?

6 A. That is correct.

7 Q. Why were you taking a second statement
8 from him?

9 A. Because there is nothing mentioned in
10 the first statement about the young boy.

11 Q. Did you and Sergeant Ferguson both talk
12 to him about it?

13 A. That is correct.

14 Q. Did he indicate a willingness to discuss
15 the circumstances surrounding the death of the
16 little boy?

17 A. Yes, sir.

18 Q. Now, is this something where it happened
19 just real quick, you told him, "Hey, tell us about
20 the little boy," and he told; or was there some
21 give and take, some discussion with him before he
22 actually told you about the boy?

23 A. No, sir, we basically went over his
24 first confession and the explanation he gave in
25 his first confession and then we discussed the

1 fact there was nothing about the young boy being
2 stabbed.

3 Q. At that time, did you tell him that the
4 young boy and the young girl had both died? Was
5 he aware of the fact that both people had died?

6 A. Yes, sir.

7 Q. Did you tell him you were investigating
8 that murder, a capital murder?

9 A. Yes, sir.

10 Q. As far as you know, is there any
11 requirement in the law that you, instead of doing
12 that, take him before a magistrate?

13 A. No, sir.

14 Q. After you do the advisements of the
15 rights, as far as you know there is no requirement
16 that you take him over to a judge and have the
17 judge do it again?

18 A. No, sir. I think the state laws state
19 either a police officer or judge can give the
20 defendant his warnings.

21 Q. After you advised the defendant of his
22 rights and talked with him for a while, did there
23 come a point when it was decided he would make a
24 written statement?

25 A. Yes, sir.

1 Q. Was there some reason that Sergeant
2 Ferguson typed the statement as opposed to you or
3 is he a better typist or what?

4 A. No, sir, he just chose to do it.

5 Q. Did you stay in the room while Sergeant
6 Ferguson and the defendant talked and typed up his
7 statement?

8 A. No, sir, I did not.

9 Q. You left the room?

10 A. Yes, sir.

11 Q. When did you come back in the room?

12 A. I never was inside the room until
13 Sergeant Ferguson completed the statement and that
14 he requested two witnesses to come in there and
15 witness the statement. At that time, the door was
16 open and I was standing near the door at that time.

17 Q. So, at the time the defendant signed his
18 statement, you were not actually in the room but
19 were standing by the door?

20 A. That is correct.

21 Q. Did you participate with Sergeants
22 Clappart and Swaim in witnessing his statement at
23 all?

24 A. No, sir, I did not.

25 Q. During the period of time that you did

1 question the defendant and were with him, did he
2 appear to you to be unduly tired?

3 A. No, sir.

4 Q. Did you get a good look at his eyes?
5 Could you see where whether they were red and
6 bloodshot or were they clear?

7 A. They were clear.

8 Q. Did he appear to you to understand the
9 nature of what was going on with this statement?

10 A. Yes, sir.

11 Q. Okay. Was he excited, upset? How would
12 you characterize his attitude and demeanor?

13 A. I would say he was cool, calm and
14 collected.

15 Q. Was he crying, for example?

16 A. No, sir, he was not.

17 Q. Was there anything about him which would
18 indicate to you that he was signing this statement
19 under anything other than his own free will?

20 A. No, sir.

21 Q. Did he at any point ever tell you or
22 complain to you that Sergeant Gafford, perhaps, or
23 Sergeant Bloyd had threatened him in any way to
24 get him to make his first statement?

25 A. No, sir.

1 Q. Did he complain about anybody else
2 abusing him or threatening him in any way?

3 A. No, sir.

4 Q. Did you personally threaten him in any
5 way?

6 A. I did not, no, sir.

7 Q. Did you make him any promises, for
8 example, say things would go lighter on him if he
9 made a statement, or anything like that?

10 A. No, sir.

11 Q. In your presence, did anyone else
12 promise him or threaten him in any way to get him
13 to make a statement?

14 A. No, sir.

15 MR. NOLL: Pass the witness, Your Honor.

16

17 CROSS EXAMINATION

18

19 BY MR. McCULLOUGH:

20 Q. Could I see the blue card, officer?

21 A. Yes, sir.

22 Q. You touched briefly on the fact that you
23 and Sergeant Ferguson and, perhaps, someone else
24 went out to Mr. Hughes' apartment, I think, didn't
25 you?

1 A. That is correct.

2 Q. How did you get in?

3 A. We -- Sergeant Ferguson, my partner had
4 obtained the keys from the defendant earlier that
5 day.

6 Q. Did you see him do that?

7 A. No, sir, I did not.

8 Q. Do you know what happened -- what
9 happened to the key after the apartment was
10 searched?

11 A. I don't recall if it was turned over to
12 the manager or not. It may have been. I don't
13 exactly recall.

14 Q. The manager of the apartments?

15 A. That is correct.

16 Q. Is there something that happened that
17 makes you think that maybe that's what happened?

18 A. No, sir. I'm not sure. I just -- I'm
19 just assuming that we may have turned it over to
20 the apartment manager.

21 Q. Did you ever have the key in your
22 possession?

23 A. No, sir.

24 Q. How long were y'all in that apartment?

25 A. I would say approximately 40 to 45

1 minutes.

2 Q. I take it it was the third officer who
3 was the photographer?

4 A. Officer Hale, yes, sir.

5 Q. Is that what he does mostly for the
6 police department or how did he happen to be the
7 cameraman?

8 A. He's with one of our crime scene units
9 which entails taking photographs at the scene.

10 Q. Did you -- did it ever cross your mind
11 to take Mr. Hughes before a magistrate?

12 A. No, sir, it did not.

13 Q. Do you know of any policy that forbids
14 that?

15 A. No, sir.

16 Q. Do you know of any informal policy or
17 understanding that y'all aren't supposed to take
18 prisoners before municipal court judges for
19 warnings, for instance?

20 A. No, sir, there's no policy.

21 Q. What did you tell Mr. Hughes y'all were
22 going to do with this statement?

23 A. (No response.)

24 Q. When you told him you wanted to talk
25 about what happened to the little boy, what did

1 you tell him?

2 A. I just, like I said, I advised him of
3 his rights and I asked him did he understand his
4 rights. He said he did and I asked him was he
5 willing to talk to us about the death of the
6 little boy.

7 Q. Did you tell him why you needed to talk
8 to him about the death of the little boy?

9 A. No, sir.

10 Q. Did you tell him that without the second
11 statement, there wasn't any evidence that he'd
12 killed the little boy?

13 A. No, sir.

14 Q. Did you tell him that without that
15 evidence, you probably couldn't make a capital
16 murder case?

17 A. No, sir.

18 Q. Did you tell him that with this evidence,
19 you might be able to make a capital murder case?

20 A. No, sir, that's not my obligation.

21 Q. Did you tell him that this instrument
22 was, you know, equivalent to a death warrant, that
23 it could be used to kill him by the State of Texas?

24 A. No, sir, that's not my obligation.

25 MR. NOLL: Objection, that is a

1 mischaracterization of the statement and it's just
2 not good facts. We object to the question.

3 THE COURT: That will be sustained.
4 Rephrase, Mr. McCullough.

5 BY MR. McCULLOUGH:

6 Q. Well, when you tell them that this
7 statement can be used against them, that implies
8 that that can be used to obtain a criminal
9 conviction, correct?

10 A. If he understood his warning, yes.

11 Q. Are you saying he didn't understand it?

12 A. He told me he did, sir.

13 Q. But you don't know whether he did if you
14 don't know whether he knew what "being used
15 against him" could mean.

16 A. I'm not saying that I personally --
17 other than what this warning entails, and he
18 stated he understood his warning. In the warning
19 it says that the statement can be used against him.

20 Q. But that doesn't mean much if they don't
21 know it can be used to convict him of a crime and
22 get them a life sentence, get a death penalty or
23 something can happen to him as a result of signing
24 it.

25 MR. NOLL: Objection, Your Honor, that

1 calls for vast speculation of factors which would
2 be outside the knowledge of the officer at the
3 time of the taking of the statement.

4 THE COURT: That will be sustained.

5 BY MR. McCULLOUGH:

6 Q. Who made the decision or who was
7 involved in making the decision that you needed to
8 take another statement?

9 A. It was myself, Sergeant Ferguson and
10 basically that's it.

11 Q. Did you talk to Gafford?

12 A. Not me personally, no, sir.

13 Q. Was he around the homicide office at the
14 time when y'all made this decision to take another
15 statement?

16 A. He probably was, yes, sir.

17 Q. How was it decided that this statement
18 was good enough and not take another, a third
19 statement?

20 A. I think the truth concerning the death
21 of the little boy was kind of -- I think the
22 statement speaks for itself.

23 Q. Well, was there any other reason that
24 you didn't talk to Mr. Hughes anymore, if you
25 didn't?

1 A. No, sir.

2 Q. What was Mr. -- who took Mr. Hughes back
3 up to the jail?

4 A. I did, sir.

5 Q. What was his demeanor at that time?

6 A. About the same as it was during the
7 taking of the statement.

8 Q. Who briefed you on the facts of this
9 case when y'all came on duty that morning?

10 A. I think it was Lieutenant Zach.

11 Q. Did you have any conversation with
12 Sergeant Gafford about this case?

13 A. I may have. I don't know personally,
14 probably my partner could have.

15 Q. Who is Zach?

16 A. He is my lieutenant, my supervisor,
17 immediate supervisor.

18 Q. On the day shift?

19 A. That is correct.

20 Q. Well, would it have been -- we
21 established that Sergeant Gafford did the initial
22 investigation on the night shift?

23 A. That is correct.

24 Q. He was still in the office when you got
25 there?

1 A. That is correct.

2 Q. Would you then have gone to Zach or to
3 Gafford to get briefed on the case you were taking
4 on?

5 A. The case was first assigned to us by my
6 lieutenant, Lieutenant Zach. Now, I did not, I
7 don't think personally talk with Sergeant Gafford.
8 I may have; but if I didn't, I know my partner,
9 Sergeant Ferguson, did.

10 Q. When did y'all decide to go to the
11 apartment?

12 A. Well, right after we received the case
13 and received the necessary information that we
14 need to follow up on.

15 Q. Would that have been later, 9:00, 9:30,
16 10:00 o'clock, something like that?

17 A. Somewhere around there, yes, sir.

18 Q. So, y'all were obtaining information or
19 what? From 7:00 till then? From 7:00 o'clock
20 till 9:00 or whenever you went over to the
21 apartment.

22 A. I probably was, yes, sir.

23 Q. And you don't know from whom you got
24 that information. You think Ferguson might have
25 been the one that did that.

1 A. Probably so, yes, sir.

2 Q. Were you working on another case there
3 that morning on that shift?

4 A. I could have. I'm not for sure about it.
5 Possibility, I could have.

6 Q. Was the defendant still there in the
7 interview room or something or other when you came
8 on shift?

9 A. Yes, sir.

10 Q. When did Ferguson get the key from the
11 defendant?

12 A. I guess shortly before we went out to
13 the apartment.

14 Q. Did you see that happen?

15 A. No, sir.

16 Q. So, you think that's what happened
17 because that's what Ferguson said?

18 A. That is correct.

19 MR. McCULLOUGH: Pass the witness.

20 MR. NOLL: Nothing further, Your Honor.

21 THE COURT: May this witness be excused?

22 MR. NOLL: We ask he be excused, Your
23 Honor.

24 THE COURT: Thank you, Sergeant Yanchak,
25 you may go about your duties.

1 MR. NOLL: At this point the State would
2 offer State's Exhibit No. 4, the second statement
3 of the defendant in this case, and request, if
4 it's admitted, to publish the same to the jury.

5 MR. McCULLOUGH: I would object to
6 State's Exhibit No. 4 for the reasons that it is
7 not voluntary, does not comply with the Texas Code
8 of Criminal Procedure, and for all the reasons
9 urged at the previous hearing.

10 THE COURT: Your objection will be
11 overruled. State's Exhibit 4 will be admitted.
12 You may present it to the jury, Mr. Noll.

13 MR. NOLL: Thank you, Your Honor.

14 If might please the Court, statement of
15 person in custody dated September 27th, 1988,
16 12:20 p.m. Statement of Preston Hughes, III,
17 taken in Harris County, Texas. Prior to taking
18 this statement, I have been warned by Sergeant
19 D. A. Ferguson, the person to whom this statement
20 is made, that: one, I have the right to remain
21 silent and not make any statement at all and any
22 statement I make may and probably will be used
23 against me at my trial; two, any statement I make
24 may be used as evidence against me in court; three,
25 I have the right to have a lawyer present to

1 advise me prior to and during any questioning;
2 four, if I am unable to employ a lawyer, I have
3 the right to have a lawyer appointed to advise me
4 prior to and during any questioning; and five, I
5 have the right to terminate this interview at any
6 time.

7 Prior to and during the making of this
8 statement, I knowingly, intelligently, and
9 voluntarily waive the rights set out above and
10 make the following voluntary statement: Earlier
11 this morning, I gave a statement to Sergeant
12 Gafford. Some of the things that I told Sergeant
13 Gafford in the written statement was not the
14 complete truth. I am giving this second statement
15 to Sergeant Ferguson on my own free will and
16 voluntarily. I was not threatened to give this
17 statement.

18 Everything in the first statement is
19 correct except what happened when I met Shawn on
20 the trail between Fuddrucker's and the apartment
21 complex. Shawn did not come up behind me and tap
22 me on the shoulder. I was walking with my dog
23 from the Lakehurst apartments toward Fuddrucker's
24 on the trail. As I was walking down the trail, I
25 saw Shawn walking down the trail from Fuddrucker's

1 toward the apartment complex. She was walking
2 with a little boy. I did not know who he was. We
3 then met in the middle of the trail. Shawn spoke
4 first and she told me that she was on the way to
5 my house. I then asked her what for. She told me
6 she was coming to use my contacts. I told her
7 that she was a damn fool, that she was not wearing
8 my contacts. She then gave me a kiss. She then
9 started rubbing my crotch. She then unbuttoned my
10 jeans. She then pulled her zipper down on her
11 shorts. Shawn then placed my penis in the slit of
12 her vagina. We call that, in quotes, "grinding"
13 if you don't put it in the hole. We did this for
14 about 30 seconds.

15 While we were "grinding," unquote, the
16 zipper on her shorts rubbed against the sore on my
17 penis. I then pulled away and buttoned up my
18 jeans. The little boy that was with her was
19 standing next to us.

20 I then said, in quotes, "Fuck this shit,"
21 because I hurt the sore. She then asked me if I
22 had some money. I told her that I keeps money.
23 She then asked me for \$50 and I told her no. She
24 then started telling me that she was going to have
25 me arrested for rape. I told her that I never

1 forced her to do nothing with me. She then raised
2 her hand and hit me. I then blocked her with my
3 left hand. I hit her in the throat. She then
4 came back at me with her hand open. She was
5 coming at my face.

6 I had my knife in a sheath on the right
7 side of my pants on my belt. I then pulled my
8 knife and stabbed at her six or eight or ten times.
9 I'm not sure. I just started stabbing. I'm not
10 sure how many times I stabbed her. As I was
11 stabbing her, the little boy looked up at me and
12 started crying. He then ran in between us and I
13 stabbed him. I don't know how many times I
14 stabbed him. I stopped and looked at Shawn and
15 she was looking at me. I then put the knife in my
16 sheath and ran home.

17 When I got home, I looked at the knife
18 to see if there was any blood on it. I did not
19 see any, and put it in a box in the closet. I
20 then turned on the TV to see what the score was on
21 the football game. When I got home, I also took
22 my clothes off in the bedroom. I then went
23 outside to get my dog. I got my dog and took her
24 back in the apartment, went to bed and got woke up
25 about 2:30 a.m. by the police.

1 forced her to do nothing with me. She then raised
2 her hand and hit me. I then blocked her with my
3 left hand. I hit her in the throat. She then
4 came back at me with her hand open. She was
5 coming at my face.

6 I had my knife in a sheath on the right
7 side of my pants on my belt. I then pulled my
8 knife and stabbed at her six or eight or ten times.
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10 sure how many times I stabbed her. As I was
11 stabbing her, the little boy looked up at me and
12 started crying. He then ran in between us and I
13 stabbed him. I don't know how many times I
14 stabbed him. I stopped and looked at Shawn and
15 she was looking at me. I then put the knife in my
16 sheath and ran home.

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18 to see if there was any blood on it. I did not
19 see any, and put it in a box in the closet. I
20 then turned on the TV to see what the score was on
21 the football game. When I got home, I also took
22 my clothes off in the bedroom. I then went
23 outside to get my dog. I got my dog and took her
24 back in the apartment, went to bed and got woke up
25 about 2:30 a.m. by the police.

1 call any lawyers, policemen or friends, ask them
2 to identify or clear up any terms or anything for
3 you. The reason we do that, we want you to get
4 the facts you need to resolve this case here in
5 the courtroom and only from the courtroom. Please
6 remember the additional admonishments I have given
7 you. We'll see in the morning at 9:30. You may
8 be excused.

9 (Jury out.)

10 MR. NOLL: Your Honor, just so there's
11 no problem tomorrow morning, I would like to bring
12 in the witnesses, have the Court admonish them
13 that we're taking a break and order them to return
14 to court tomorrow morning at the appropriate time.

15 THE COURT: When is this?

16 MR. NOLL: I'm going to bring all of
17 them, Judge. I don't want any holdups in the
18 morning. I want to make sure they're all aware of
19 the circumstances.

20 THE COURT: Very well.

21 MR. McCULLOUGH: While we're at this
22 juncture, could you estimate how long your case is
23 going to run?

24 MR. NOLL: Your Honor, all we have left
25 is six witnesses, but amongst them is Sergeant

1 Hale, who merely tagged this property into the
2 property room, should not be very long; Ms. Evelyn
3 Brown may be a little while; Mr. Klumpp should not
4 take very long; and Mr. Bolding from the lab, who
5 examined the clothing; the medical examiner; and
6 the mother of the child. Depending on things,
7 there's a good chance we could be done --

8 THE COURT: We should finish yours early
9 tomorrow afternoon, if not before noon.

10 MR. NOLL: Yes, sir, if that helps.

11 MR. McCULLOUGH: Did you include the
12 medical examiner in that group?

13 MR. NOLL: Yes, sir. Sergeant Hale, Ms.
14 Brown, Mr. Klumpp, Mr. Bolding, medical examiner
15 and Ms. Charles.

16 MR. McCULLOUGH: Sounds like it would be
17 premature for any witnesses to be here first thing
18 after lunch, if he's got to get through all of
19 those.

20 THE COURT: Doesn't sound like it would
21 be premature in the least to have them here after
22 lunch.

23 MR. McCULLOUGH: I'll do that.

24 THE COURT: Get your witnesses in,
25 please, Mr. Noll.

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(Witnesses enter courtroom.)

THE COURT: We are in recess until 9:30 in the morning, 9:30 in the morning. Unless you have specific permission from the Court through the lawyers, be back at 9:30 a.m. tomorrow morning, please. The rest of you may be excused at this time.

Mr. Noll, bring your two ladies in as soon as they get out.

(Witnesses enter courtroom.)

THE COURT: Ladies, and you, sir, in the green, are y'all witnesses in the case?

MR. NOLL: Ms. Brown and Ms. Charles are witnesses.

THE COURT: Very well. We are going to resume testimony tomorrow morning at 9:30, 9:30 a.m. Unless you are specifically excused by me or through one of the lawyers who have cleared it with me, be back in court at 9:30 a.m. tomorrow morning. You may be excused for the day. Thank you.

(Court in recess for the day.)

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MIKAL KLUMPP,

was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

(Out of the presence of the jury)

BY MR. NOLL:

Q. Sir, would you please state your name
for the judge?

A. Mikal Klumpp.

Q. Mr. Klumpp, how are you presently
employed?

A. As a probation officer for U.S.
Probation, Central District of California.

Q. Let me direct your attention back to
September of 1988. At that time, how were you
employed?

A. I was employed as a probation officer
for Harris County Adult Probation.

Q. And at that time, and prior to that time,
did you have occasion to be the supervising
probation officer for a defendant by the name of
Preston Hughes, III?

A. Yes, I do.

1 Q. Do you see the person that you knew as
2 Preston Hughes, III, in the courtroom today?

3 A. Yes.

4 Q. Would you point to him and describe how
5 he's dressed?

6 A. This is Preston Hughes, III, dressed in
7 gray slacks, navy blue blazer, white shirt, maroon
8 tie.

9 MR. NOLL: Your Honor, may the record
10 reflect the witness has pointed to the defendant.

11 THE COURT: Record will so reflect.

12 BY MR. NOLL:

13 Q. Do you recall whether or not Preston was
14 on what we generally refer to as regular probation
15 or was he on some other special form of probation?

16 A. He was on deferred adjudication.

17 Q. Did he report to you on a monthly basis
18 or on a more regular basis?

19 A. A monthly basis.

20 Q. Was he on intensive supervision or
21 regular supervision?

22 A. Regular supervision.

23 Q. Do you recall approximately when it was
24 that you received Preston Hughes as a probationer
25 for your supervision?

1 A. I would have gotten the file the end of
2 July, 1986. I saw him the first time in my office,
3 would have been August of 1986.

4 Q. And do you recall the cause numbers of
5 the cases on which Preston Hughes was on probation
6 or deferred adjudication?

7 A. Well, it would be right here. Cause No.
8 427632.

9 Q. What offense was that for, if you recall?

10 A. That would have been aggravated sexual
11 assault.

12 Q. Was there another case?

13 A. Yes. Also, Cause No. 446873.

14 Q. And do you recall the terms of the
15 number of years the defendant was on deferred
16 adjudication?

17 A. Yes, it was ten years.

18 Q. During the period of probation, did you
19 ever go over the conditions of probation with the
20 probationer, Mr. Hughes?

21 A. Yes.

22 Q. Did you explain to him, specifically,
23 that he was not to commit any offense against the
24 laws of this or any other state or of the United
25 States?

1 A. Yes.

2 Q. Among other things, did you advise him
3 to report to you in person on certain dates?

4 A. Yes.

5 Q. And was that on a monthly basis?

6 A. Yes.

7 Q. And was he supposed to have reported to
8 you on, I believe, the 11th day of each month?

9 A. Approximately.

10 Q. Did you tell him if there was a problem
11 with him reporting on that date that he needed to
12 call you and reschedule the date?

13 A. Yes.

14 Q. Did you advise him if he did not make
15 that reporting date that it was his responsibility
16 to call you and that he could not reschedule
17 without your permission?

18 A. Yes.

19 Q. Was he also supposed to pay any kind of
20 supervisory fee?

21 A. Yes, he was to pay \$25 a month.

22 Q. During the period of time that you
23 supervised Mr. Hughes, did he report to you as
24 directed, according to the terms and conditions of
25 his probation?

1 A. No.

2 Q. Can you tell the Court when it was that
3 he failed to report? I realize you don't have
4 your file before you and Ms. Battenfield is not
5 here yet this morning. Is that something you need
6 to refresh your memory from your files to tell,
7 specifically, the dates?

8 A. Yes, to make sure. I mean, I could give
9 you a guess from having read the file yesterday.
10 But to be 100 percent sure, I'd have to look at
11 the file.

12 Q. Okay. Let me direct your attention then
13 to September the 27th of 1988, a Monday morning.
14 Were you working for the probation department at
15 that time?

16 A. Yes.

17 Q. And do you recall anything unusual that
18 occurred that morning?

19 A. Yes. I got to work, I usually get to
20 work at 7:00 or a few minutes after. I had been
21 there maybe 20 or 30 minutes when I got a phone
22 call from Preston.

23 Q. And do you recall what the gist of the
24 phone call was from Preston?

25 A. Yes. He told me that he was at the

1 police station, that he had been picked up and was
2 being questioned regarding the stabbing death of
3 two people.

4 Q. Did you already have any information
5 concerning that killing?

6 A. On my way to work that morning, I had
7 heard on the radio that they had found a
8 15-year-old girl and a 3-year-old boy in the woods
9 off of Westheimer.

10 Q. Was that anywhere near your offices in
11 the probation department?

12 A. Yes, it was about, I guess probably two
13 to three miles away from our office.

14 Q. Did Preston say anything to you
15 specifically concerning a boy and a girl?

16 A. Yes. The girl, specifically. I don't
17 know that I can say for sure about the boy.

18 Q. Would you tell the judge what it was
19 that Preston said to you on the telephone when he
20 called you that morning?

21 A. Okay. He specifically was calling to
22 make sure that I knew his side of what had
23 happened.

24 Q. Okay.

25 A. He wanted me to know what had happened.

1 He told me that he was scared of a particular
2 individual, a man, I guess, because he had been --
3 Preston had been messing around with this guy's
4 girlfriend. So, he was scared. He had been
5 walking through the woods close to his apartment
6 that night, he had been tapped on the shoulder and
7 turned around and started stabbing before he
8 realized who it was. He said when he realized who
9 it was, he got scared and ran home. He said that
10 the police had come to his apartment approximately
11 2:30 that morning and had taken him in for
12 questioning.

13 I asked him what, specifically, he was
14 being charged with. He said at that point he
15 thought he was being charged with assault. He
16 asked me if there was anything I could do for him.
17 I told him at that point that there was nothing,
18 it was out of my hands, that my job would be to
19 file the motions to the Court and it would be up
20 to the Court to decide what to do.

21 Q. Did Preston, at this point, sound unduly
22 excited to you?

23 A. No. In fact, it surprised me that he
24 sounded very calm.

25 Q. Did he tell you at that time or complain

1 to you about any police brutality?

2 A. No.

3 Q. Did he say anything to you specifically
4 concerning Sergeant Gafford?

5 A. I've never heard the name before.

6 Q. Did he accuse anyone at all of forcing
7 him or coercing him into making some statements to
8 the police officers?

9 A. No, he did not.

10 Q. Okay. This was after you got to work or
11 about 7:30; is that correct?

12 A. 7:30, 7:40, somewhere.

13 Q. Did you talk any further with Preston on
14 the telephone?

15 A. No, that was pretty much it.

16 Q. Did you give him some indication as to
17 whether or not you would be filing a motion to
18 revoke his probation?

19 A. Yes, I told him that that's what I would
20 have to do as a probation officer with a law
21 violation.

22 Q. Okay. At that point, Preston had not
23 been reporting on a regular basis either, had he?

24 A. No, he had not.

25 Q. Had you been considering his file for

1 any purpose before he called you that day?

2 A. Yes. Again, the date was the 27th.

3 Q. Of September.

4 A. He had a scheduled appointment on the
5 29th of September. And I had told him in a phone
6 conversation -- I believe the week before -- that
7 if he failed to report on the 29th, that I would
8 be filing a motion to adjudicate guilt based on
9 failure to report.

10 Q. Had you had any other problems with Mr.
11 Hughes as a probationer?

12 A. He was delinquent on fees at that time.

13 Q. Do you know how delinquent he was?

14 A. \$75, which would be three months. Also,
15 about a year and a half before, approximately, I
16 guess, six to eight months after he started
17 probation, he did test positive for marijuana on
18 two occasions. I believe it was February -- would
19 have been February, '87 and March, '87.

20 Q. Did you talk to him about the testing
21 positive for marijuana?

22 A. After it happened, yes.

23 Q. And what did he tell you?

24 A. I explained to him what the judge's
25 policies were concerning illegal drug usage and he

1 assured me that it would not happen again.

2 Q. Did he admit to you that he had been
3 using marijuana?

4 A. Yes.

5 Q. Following the phone call you got from
6 Preston, did you cause a motion to adjudicate his
7 probation to be filed or did you forward the file
8 to someone else or what?

9 A. I started it, yes. We start the
10 paperwork and then send it to the CLO.

11 Q. Did you then subsequently move or change
12 jobs and when was that?

13 A. I changed jobs in April of 1989.

14 Q. Okay. Did you have any contact at all
15 with Preston Hughes, III, following the phone
16 call that you got from him in September and the
17 time you left the probation department in April?

18 A. No. No contact whatsoever.

19 MR. NOLL: Pass the witness, Your
20 Honor.

21

22

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24

25

1 CROSS EXAMINATION

2 (Out of the presence of the jury)

3
4 BY MR. McCULLOUGH:

5 Q. Did you say that Mr. Hughes told you he
6 was going to be filed on for assault?

7 A. That's what he told me at the time of
8 the phone conversation. I asked him what was he
9 being charged with. He said he thought he was
10 being charged with assault.

11 Q. Did he say anything in his conversation
12 about the death of a 3-year-old boy?

13 A. I don't remember that, not about the
14 3-year-old boy.

15 Q. You would have remembered that if he had
16 said anything about it?

17 A. I probably would have. He indicated
18 that it was two people, but the age wasn't
19 mentioned of the 3-year-old boy.

20 Q. The only one he specifically talked
21 about was the female?

22 A. A girl.

23 MR. McCULLOUGH: I don't have any other
24 questions.

25 MR. NOLL: Nothing else at this point.

1 We'll probably have to recall him. I think we've
2 got most of the stuff covered.

3 THE COURT: You've got about ten minutes.
4 I'm going to put the jury in the box at 9:30.

5 (Short pause.)

6 MR. NOLL: May I continue, Your Honor?

7 THE COURT: You may.

8
9 REDIRECT EXAMINATION

10 (Out of the presence of the jury)

11
12 BY MR. NOLL:

13 Q. Mr. Klumpp, would you take the
14 opportunity to refresh your memory from your file
15 to determine what days the defendant failed to
16 report as directed.

17 A. It was February of '88, May of '88, July
18 of '88 and August of '88.

19 Q. So, he had not reported for at least two
20 months prior to the phone call you received and
21 had missed a couple of months prior to that?

22 A. Correct.

23 Q. And having reviewed your file, is there
24 anything else concerning the phone call you
25 received from Preston Hughes as to time or that

1 was specifically noted in your file?

2 A. Well, I do see that, yes, by my chrono
3 entry on the 27th, a little boy was mentioned. I
4 was wrong. It says "stabbing of girl and a little
5 boy."

6 Q. Having refreshed your memory from the --
7 first of all, let me ask you this. When you say
8 you're referring to your chrono log, is that
9 something that you wrote down at or near the time
10 that you received the phone call from Preston?

11 A. Yes, I wrote this pretty much right
12 after I received the phone call.

13 Q. Could you tell the judge how that works?
14 I assume you keep some kind of paperwork on each
15 defendant; is that correct?

16 A. Correct. We keep chrono entries so that
17 any contact made with the defendant, we enter into
18 the file.

19 Q. So, the entries you made in your records
20 there were ones you made immediately after talking
21 with Preston back on the 27th of September, 1988?

22 A. Yes.

23 Q. Having refreshed your memory from
24 reading your notes there, do you remember him
25 saying something about the little boy to you?

1 A. Yes, because I wrote that in here.

2 Q. Do you remember exactly what he said or
3 do you have notes as to what he said?

4 A. Well, just, it says that he was being
5 questioned by HPD officers for the stabbing of a
6 girl and a little boy. The girl and boy were
7 found in the woods at Kirkwood and Westheimer. I
8 told him that I had heard on my way to work of the
9 killings, and he wanted to explain what had
10 happened and from there, it's --

11 Q. When he explained what had happened, did
12 he tell you anything about the little boy? Did he
13 mention the little boy also, when he talked to you?
14 Other than the fact that he was being questioned
15 by the police about the killing of the little boy,
16 what, specifically, did he tell you about the
17 stabbing, itself?

18 A. Just that he had turned -- that he was
19 walking through the woods, had been startled by a
20 tap on the shoulder, turned around, started
21 stabbing before he realized who it was. When he
22 realized who it was, he ran for his apartment
23 because he was scared.

24 Q. Did he indicate -- did he continue to
25 stab after he realized who it was or did he say he

1 stopped after he saw who it was?

2 A. From my chrono entry, just says he
3 started stabbing before he realized who it was.

4 Q. Do you have any independent recollection
5 of anything else that he said to you?

6 A. No.

7 MR. NOLL: We pass the witness, Your
8 Honor.

9 THE COURT: Mr. McCullough.

10

11 RE CROSS EXAMINATION

12 (Out of the presence of the jury)

13

14 BY MR. McCULLOUGH:

15 Q. Did Mr. Hughes make telephone contact
16 with you regarding his reporting date in February,
17 May, July and August of 1988?

18 A. He called me on February 29th, 1988.

19 Q. That was the reporting date?

20 A. Well, no, he was calling after he had
21 failed to report. He had been scheduled to report
22 on 2-25-88 at 6:30 p.m. He called me four days
23 after.

24 Q. And did he make an explanation of why he
25 hadn't reported?

1 A. No chrono entry as to, you know, why he
2 didn't report.

3 Q. Didn't he tell you on each of these
4 reporting dates that his work schedule conflicted
5 with his reporting?

6 A. Yes. I remember that he usually worked
7 late and he had transportation problems, but I
8 explained to him very clearly that that's not an
9 excuse for not reporting during a month. He still
10 had to make plans and set things up so that he
11 could report each month.

12 MR. McCULLOUGH: That's all I have.

13

14 FURTHER REDIRECT EXAMINATION

15 (Out of the presence of the jury)

16

17 BY MR. NOLL:

18 Q. Mr. Klumpp, isn't it a fact that you
19 even made special arrangements to try to stay late
20 to meet with Preston on those dates when he
21 complained he couldn't get from work to your
22 office on time?

23 A. All officers are required to work one
24 late night a week till 7:00 o'clock. Usually I
25 quit seeing people at 6:30. There were times I

1 saw Preston even after 6:30 to make sure he could
2 report each month.

3 Q. You did everything you could to
4 accommodate his work?

5 A. Yes.

6 Q. Did he bring you any proof he was
7 employed during the time he was on probation? Did
8 he bring you any evidence of what his pay was from
9 his job?

10 A. He would bring check stubs. He didn't
11 bring them all the time, but he would bring them
12 on occasion.

13 Q. Did he give any reasons as to why he was
14 not paying his \$25 a month supervisory fee?

15 A. None that I can remember.

16 Q. Did he ever complain about any financial
17 problems or inability to pay bills, things of that
18 nature?

19 A. No.

20 Q. Did he ever ask your assistance in
21 budgeting things so that he could pay his
22 supervisory fee?

23 A. No.

24 MR. NOLL: Nothing else, Your Honor.

25 THE COURT: Mr. McCullough.

1 MR. McCULLOUGH: Nothing further.

2 THE COURT: Thank you, Mr. Klumpp. You
3 may step down.

4 MR. NOLL: Your Honor, there is one
5 matter I would like to take up before the jury
6 returns.

7 THE COURT: Let's take it up.

8 MR. NOLL: Judge, a couple of things.
9 First of all, I would like to advise the Court
10 that I have notified the medical examiners's
11 office and instructed them to have a medical
12 examiner here at 10:30 this morning. They have
13 passed word back to me that they can't be here at
14 10:30, they would be here at 11:00. I want to
15 advise the Court I've done all I can advising them
16 they're due in court. If there's a delay, I
17 apologize to the Court.

18 Your Honor, I would like to discuss with
19 the Court Mr. Klumpp's testimony before the jury.

20 THE COURT: I would, of course, -- I'm
21 inclined to allow Mr. Klumpp to relate to the jury
22 the conversations that he's just testified to. I
23 am not inclined to permit the testimony that he is
24 on probation or how he came to know Mr. Hughes.
25 At this point, I just don't see anything to be

1 gained by muddying the water. I appreciate the
2 State's position and appreciate the law that a
3 party is entitled to place the witness and
4 normally that would allow that to come into
5 evidence. However, in an abundance of caution and
6 not muddying it up, Mr. Klumpp may state his name,
7 he may state that he received a call from Mr.
8 Hughes, he may state the substance of that call,
9 but the fact that he was a probation officer and
10 had Mr. Hughes on probation, I'm not going to
11 allow. So, now with that, you may do with it what
12 you wish, Mr. Noll.

13 MR. NOLL: Yes, Your Honor.

14 THE COURT: Is there anything else?

15 MR. NOLL: No, sir.

16 MR. McCULLOUGH: I have nothing.

17 THE COURT: Let's bring them in.

18 Mr. Noll, are you going to call him now
19 as a first witness?

20 MR. NOLL: No, sir.

21 THE COURT: Okay. Fine. When we do it,
22 let's clear that up. Okay?

23 MR. NOLL: My first witness, Your Honor,
24 is going to be Sergeant Hale -- I mean, Officer
25 Hale.

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(Witness sworn.)

(Jury in.)

THE COURT: Good morning, members of the jury.

You may proceed, Mr. Noll.

MR. NOLL: Thank you, Your Honor.

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F. L. HALE,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Sir, would you please state your name
for the members of the jury? And try to keep your
voice up so this gentleman all the way in the back
can hear you.

A. Officer F. L. Hale.

Q. How are you employed?

A. City of Houston Police Department.

Q. Officer Hale, do you work for any
particular division of the Houston Police
Department?

A. Currently I'm assigned to the crime
scene section out of the homicide division.

Q. Can you tell the jury what it is that a
person assigned to the crime scene unit actually
does day-to-day?

A. Currently I'm working night shift. I
work from 9:30 at night till 7:30 in the morning.
We're on ten-hour shift. We go out to the scenes,

1 we photograph, recover evidence. We do diagrams,
2 majority of the deal is photographing and
3 recovering evidence.

4 Q. Let me direct your attention back to
5 September 26th, late evening; and early morning
6 hours, September 27th of 1988. Were you working
7 that day or those days?

8 A. Yes, I was.

9 Q. Did you have occasion to go to the scene
10 of a double homicide in a field between a
11 Fuddrucker's store on South Kirkwood and an
12 apartment complex on, I believe, Crescent Park?

13 A. Yes, I did.

14 Q. While at that scene, did you photograph
15 the area, itself?

16 A. Yes, I did.

17 Q. Did you also, as part of the
18 investigation of that offense, go to an apartment
19 located in the Lakehurst apartments?

20 A. Yes, I did.

21 Q. Do you recall who it was you went with
22 to that location?

23 A. Homicide Sergeants Yanchak and Ferguson.

24 Q. Okay. You say Yanchak. Is that Yanchak?

25 A. Yanchak. I'm sorry.

1 Q. I know it's hard. While present at that
2 apartment, what were your duties as a crime scene
3 unit officer on a search?

4 A. To photograph and recover the evidence.

5 Q. And if other persons, for example, were
6 to find a piece of evidence, would they collect it
7 and give it to you then?

8 A. No. They would point the evidence out
9 and I would recover it.

10 Q. You recover it?

11 A. Yes, sir.

12 Q. What do you do with it? Say if you
13 found a knife at a crime scene, what would you do
14 with that thing?

15 A. Currently with the budget problem that
16 we're having at the city, the evidence, instead of
17 sending it off to the crime lab, would be taken
18 and placed in a property room. Once it's placed
19 in a property room, the detectives working the
20 scene would request that that piece of evidence be
21 taken to the crime lab where they do the analysis;
22 but at the present time, other than latent prints,
23 evidence to be printed is submitted to the
24 property room.

25 Q. Did you collect a number of items of

1 evidence in the apartment at the Lakehurst
2 apartments back on September 27th of 1988?

3 A. Yes, I did.

4 Q. Did you then take them to the property
5 room at the Houston Police Department?

6 A. Yes, sir.

7 Q. Subsequent to that, at my request, did
8 you go by both the property room and the crime lab
9 and retrieve some of those items?

10 A. Yes, I did.

11 Q. I should say all of those items?

12 A. Yes, sir.

13 Q. Did you bring them to the courtroom to
14 me yesterday morning?

15 A. Yes, I did.

16 MR. NOLL: May I approach the witness,
17 Your Honor?

18 THE COURT: You may.

19 BY MR. NOLL:

20 Q. Let me show you what's been marked for
21 identification as State's Exhibit No. 15, and I'll
22 ask you if you can identify that.

23 A. These are a pair of glasses that I had
24 recovered inside the apartment in the living room
25 area in the cushion of the couch against the south

1 wall.

2 Q. Okay. And when you recovered it, did
3 you place it in this plastic bag?

4 A. Yes, I did.

5 Q. Did you make any notations on there
6 concerning the location of recovery and the date
7 and time of recovery?

8 A. Upon recovering the items, the items
9 themselves are not marked, they're placed in the bag;
10 and I marked the bag showing the location, my name,
11 the case number for identification purposes.

12 Q. Okay. Did you also prepare this diagram,
13 which has been admitted into evidence as
14 Defendant's Exhibit No. 6?

15 A. Yes, I did.

16 Q. And is that a diagram of the apartment
17 at the Lakehurst apartments, No. 138-A?

18 A. Yes, sir.

19 Q. Is that to scale or did you just rough
20 that out?

21 A. They had a model of the apartments and
22 it was traced off that.

23 Q. Okay. And the numbers on the exhibit
24 correspond to circled numbers on the diagram that
25 you've drawn here; is that correct?

1 A. Yes, sir.

2 Q. Next to each of those numbers circled
3 off to the side is the description of the item
4 that was recovered and where it was you had found
5 it; is that correct?

6 A. Yes, sir.

7 Q. Let me also show you what's been marked
8 for identification purposes as State's Exhibit No.
9 16 and I'll ask you if you can identify it.

10 A. Those are the pair of jeans that I
11 recovered out at the southeast bedroom.

12 Q. That's, again, at the same apartment?

13 A. Yes, sir.

14 Q. Let me also show you what's been marked
15 as State's Exhibit No. 17 and ask if you can
16 identify it.

17 A. It's a maroon shirt which I recovered
18 inside the apartment on the kitchen table.

19 Q. Let me show you what's been marked for
20 identification as State's Exhibit No. 18 and ask
21 if you can identify this.

22 A. This is a blue shirt that was also
23 recovered on the floor in the southeast bedroom.

24 Q. Okay. And let me show you what's been
25 marked for identification as State's Exhibit No.

1 19 and ask you if you can identify it.

2 A. This is also another blue shirt
3 recovered off the floor in the southeast bedroom.

4 Q. And State's Exhibit 20 and 21.

5 A. It's a knife with the sheath recovered
6 from inside the bedroom.

7 Q. The knife is No. 20; is that correct?

8 A. Yes, sir, knife is 20; and the sheath is
9 21.

10 Q. Did you also, in addition to tagging
11 several of these items, go to a West Houston
12 hospital and recover some personal effects
13 concerning the female victim in this case?

14 A. After I had left the scene there on
15 South Kirkwood, I went to the hospital and
16 recovered some personal property belonging to the
17 No. 2 Complainant.

18 Q. And among those items which you
19 recovered, did they include State's Exhibits 11
20 and 12?

21 A. Yes.

22 Q. And on 11 and 12, there's some
23 handwritten notations in black ink. Did you put
24 those on there?

25 A. No, sir, I did not.

1 Q. And State's Exhibit No. 10?

2 A. These are the shorts that we recovered.

3 Q. And these were recovered --

4 A. At the hospital, yes.

5 Q. Also, at the hospital did you recover

6 any items of value that were on the person of the

7 complainant in this case?

8 A. Inside the pants pocket was a chain and

9 five ones.

10 Q. Was it a gold chain?

11 A. Yes, sir.

12 MR. NOLL: Your Honor, at this time the

13 State would offer State's Exhibits 15 through 22.

14 THE COURT: I'm sorry, Mr. Noll. 16

15 through 22?

16 MR. NOLL: Your Honor, 15, the

17 eyeglasses; 16, the pair of blue jeans; 17, the

18 maroon shirt.

19 THE COURT: I've got all that. What's

20 22?

21 MR. NOLL: I'm sorry, Judge. Through 21.

22 THE COURT: All right. Mr. McCullough?

23 Those were admitted yesterday?

24 MR. McCULLOUGH: That's what I was

25 trying to figure out.

1 MR. NOLL: Are 11 and 12 and 10?

2 MR. McCULLOUGH: I object to their
3 admission based on my previously stated objection
4 to the search itself.

5 THE COURT: That will be overruled.
6 State's 15 through 21 will be admitted.

7 MR. NOLL: We pass the witness, Your
8 Honor.

9 THE COURT: Mr. McCullough.

10

11 CROSS EXAMINATION

12

13 BY MR. McCULLOUGH:

14 Q. With regard to those shoes and shorts
15 that are --

16 A. 10 and 11, I think.

17 Q. Yeah, the shorts are 10 and the shoes
18 are 11 and 12. You say you recovered them from
19 the hospital. From whom did you recover them?

20 A. Just the attending nurse. I don't have
21 her name.

22 Q. Some nurse?

23 A. Yes, sir.

24 Q. And you only know what she told you
25 about where they came from?

1 A. Yes, sir.

2 Q. And I haven't unfolded and looked at
3 these shirts, but these pants have some fresh
4 holes cut in them. I presume that was done after
5 you submitted them to the property room or
6 something.

7 A. I don't remember the holes being cut in
8 there, no.

9 Q. They appear to have been -- these holes
10 appear to have been cut rather than being worn
11 through, right?

12 A. Oh, yes, sir.

13 Q. Did you hold them up and look at them --

14 A. No, sir.

15 Q. So, you can't say whether those holes
16 were there or whether it was done during some
17 examination?

18 A. I would say more than likely it was
19 examination, but I did not do that, no.

20 Q. Well, did you find anything else at the
21 scene?

22 A. At the scene?

23 Q. Yes, sir.

24 A. I recovered a white shoulder strap and a
25 small Avon ring. This was done after -- that was

1 done during a daylight search that the ring was
2 found, a Busch beer can that I had found at the
3 scene. Those were the only three items that I had
4 recovered at the scene.

5 Q. And that's all you know about this case?

6 A. Yes, sir.

7 MR. McCULLOUGH: Pass the witness.

8 MR. NOLL: Nothing further, Your Honor.

9 THE COURT: May this officer be excused?

10 MR. NOLL: Yes, Your Honor.

11 THE COURT: Thank you, Officer Hale.

12 You may go about your duties.

13 Call your next.

14 MR. NOLL: Sergeant Bloyd, Your Honor.

15 THE COURT: Mr. Noll, you may proceed.

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T. C. BLOYD,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Sir, would you please state your name
for the members of the jury.

A. Ted C. Bloyd.

Q. How are you employed?

A. I'm a sergeant with the Houston Police
Department.

Q. Are you assigned to any particular
division within the department?

A. Homicide division.

Q. How long have you been with the homicide
division, Sergeant Bloyd?

A. Since 1981.

Q. Is your partner Sergeant Gafford?

A. He is -- or, correction, he was. He's
since gone day shift.

Q. Are you still working night shifts?

A. Yes, I am.

Q. Let me direct your attention back to

1 September 26th and 27th of 1988. At that time,
2 were you working night shifts or day shifts?

3 A. Night shift.

4 Q. And did you have occasion to respond to
5 a homicide scene on the west side of town between
6 the Fuddrucker's on South Kirkwood and the
7 Lakehurst apartments on another street one block
8 over?

9 A. Yes, sir.

10 Q. During the course of that investigation,
11 did you subsequently participate in the
12 questioning of a suspect by the name of Preston
13 Hughes, III?

14 A. Yes, sir.

15 Q. Do you see the person that you met that
16 night and knew as Preston Hughes, III, in the
17 courtroom today?

18 A. Yes, sir, I do.

19 Q. Would you point to him and describe how
20 he's dressed?

21 A. It's the man in the dark colored suit
22 here.

23 MR. NOLL: Your Honor, may the record
24 reflect the witness has pointed to the defendant?

25 THE COURT: Record will so reflect.

1 BY MR. NOLL:

2 Q. Sergeant Bloyd, how was it you first
3 came into contact with the defendant that night?

4 A. We had made a check with the apartment
5 manager's office and went through their records
6 looking for someone that might be named Preston
7 and his name was found on their records, and we
8 went to his apartment.

9 Q. Who was with you when you went to
10 Mr. Hughes' apartment, if you recall?

11 A. Sergeant Gafford and Sergeant Hamilton.

12 Q. Sergeant Gafford was your partner; is
13 that correct?

14 A. Yes, sir.

15 Q. Sergeant Hamilton you were referring to,
16 was he the uniformed patrol officer from the west
17 side?

18 A. Yes, sir.

19 Q. When you went to the defendant's
20 apartment, was there one officer among you who was
21 more or less spearheading the investigation at
22 that point?

23 A. Yes, sir, Sergeant Gafford.

24 Q. When you went to the defendant's
25 apartment, did he knock on the door or did you?

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A. He knocked on the door.

Q. What happened then?

A. Well, there wasn't an answer for some time and we were just about ready to leave when Mr. Hughes answered the door.

Q. After he answered the door, did he invite y'all into his apartment?

A. Yes, sir.

Q. Do you remember whether or not there was any lights on, either in the apartment or lights coming in from outside?

A. I think it was dimly lit inside there.

Q. After you entered the apartment, did anyone question Mr. Hughes?

A. We just asked him his name and if it was his apartment and if there's anybody else there.

Q. And did he talk with y'all?

A. Yes, sir.

Q. Can you describe to the jury what his attitude and demeanor was when you entered his apartment?

A. Very calm, relaxed.

Q. Did he ask you what you were doing there, anything like that?

A. No, sir.

1 Q. Did you find that unusual?

2 A. No, sir.

3 Q. After he talked -- after Sergeant
4 Gafford talked with the defendant for a while, did
5 there come a time when he was asked to accompany
6 you downtown for questioning?

7 A. Yes, sir, we asked him if he would come
8 down and talk to us further.

9 Q. Prior to going downtown, did the
10 defendant do anything in his apartment?

11 A. He changed clothes.

12 Q. While he was changing clothes, where
13 were you?

14 A. I was still in the living room.

15 Q. Did he leave the living room then to
16 change clothes?

17 A. Yes.

18 Q. Where did he go?

19 A. To his bedroom.

20 Q. Did anyone go with him to the bedroom?

21 A. Sergeant Hamilton.

22 Q. While he was in the bedroom, did you
23 search his apartment?

24 A. No, sir.

25 Q. Did you look around?

1 A. I stayed there and just gazed around.
2 But I didn't pick up anything and look around, no.

3 Q. At that point, did you have a warrant to
4 search the defendant's apartment?

5 A. No, sir.

6 Q. Did you have his consent to search his
7 apartment?

8 A. No.

9 Q. Did you have any legal basis that you
10 could have searched his apartment?

11 A. No, sir.

12 Q. While you looked around the apartment,
13 did you notice anything unusual, any weapons or
14 anything of any evidentiary value that you thought
15 about?

16 A. No, sir, I didn't.

17 Q. Could you clearly see into the living
18 room from your location while he was changing
19 clothes?

20 A. I was in the living room.

21 Q. Could you see the dining area from that
22 location?

23 A. Yes, sir.

24 Q. Was there anybody else in that apartment?

25 A. Only Sergeant Hamilton, Sergeant Gafford

1 and Mr. Hughes and myself.

2 Q. Did anyone else search in his apartment
3 while you were there present?

4 A. No, sir.

5 Q. Specifically, did Sergeant Gafford look
6 around the apartment? Did he pick up any cushions
7 or anything like that?

8 A. No, sir.

9 Q. How about Sergeant Hamilton? Did you
10 see him do any searching?

11 A. No, sir, he did not.

12 Q. After the defendant changed clothes,
13 what happened?

14 A. We then went downstairs and came down to
15 the police station.

16 Q. Once you were back at the police station,
17 and by that, I assume you refer to the 61 Riesner
18 headquarters building in downtown Houston?

19 A. Yes, sir.

20 Q. When you got to that location, did you
21 go to the homicide office?

22 A. We did.

23 Q. Those are on the third floor in that
24 building?

25 A. Yes, sir.

1 Q. Did you participate in questioning the
2 defendant at the homicide offices?

3 A. Just briefly.

X 4 Q. What did you do after you met with the
5 defendant in the interview room? Did you talk to
6 him at all or advise him of his rights or anything
7 like that?

X 8 A. Well, Sergeant Gafford and I were in the
9 room with him and we asked him a few preliminary
10 questions about date of birth, where he worked,
11 background things like that, and then asked him if
12 he knew the complainant, Shandra Charles, and when
13 he began talking about her and he mentioned that
14 she was associated with a woman by the name of
15 Evelyn, that pretty much connected him; and at
16 that point we considered him a suspect. Sergeant
17 Gafford and I looked at each other, kind of shook
18 our heads "yeah," and Sergeant Gafford then
19 informed him he was under arrest and began reading
20 him his legal warnings. At that time, I left and
21 went ahead and started typing in our report.

22 Q. Okay. So, after the point where he was
23 actually placed under arrest, you left the
24 interview room and when you say, "started writing
25 the reports," what exactly do you mean? Could you

1 explain to the jury what you mean by "writing the
2 report"?

3 A. Well, we type a report into a computer
4 and it listed all the information that we've
5 collected through our investigation.

6 Q. And you actually sit down at a terminal
7 somewhere and type all that in?

8 A. Yes, sir.

9 Q. So, while Sergeant Gafford questioned
10 the defendant, you prepared and typed the report?

11 A. That's correct.

* 12 Q. Do you recall whether or not the
13 defendant was advised of his rights in your
14 presence?

* 15 A. Yes, sir. Sergeant Gafford was in the
16 process of advising him of his rights when I left.

17 Q. Do you recall how it was that he advised
18 him of his rights? What manner and means he used
19 to do that?

20 A. Reading it from a blue card.

21 Q. That's the blue card issued by the DA's
22 office?

23 A. Yes, sir.

24 Q. Did he also tell the defendant that he
25 suspected him of killing two people out there that

1 night?

2 A. Yes, he informed him he was under arrest
3 for capital murder.

4 Q. Are you sure he didn't say assault?

5 A. No, sir.

6 Q. At some point were you asked to come
7 back into the interview room to be a witness on a
8 document?

9 A. Yes, sir, sometime later on that morning
10 Sergeant Gafford asked myself and Sergeant Ross to
11 witness a consent to search form.

12 MR. NOLL: May I approach the witness,
13 Your Honor?

14 THE COURT: You may.

15 BY MR. NOLL:

16 Q. Sergeant Bloyd, let me show you what's
17 been marked State's Exhibit No. 1. I'm going to
18 ask you if you recognize this document, and
19 remember, please, keep your voice up.

20 A. Yes, sir, I recognize it.

21 Q. What is this document?

22 A. This is a voluntary consent for search
23 and seizure.

24 Q. Now, this document is obviously a form
25 that has been filled in by ink pen; is that

5 A. Sergeant Gafford.

6 Q. Okay. Now, there's a line and
7 underneath is the typed word "signed" in
8 parentheses above that. Whose signature is that?

9 A. Preston Hughes.

10 Q. Did you actually observe the defendant
11 sign his name to that document?

12 A. Yes, I did.

13 Q. Did you sign as a witness on the case?

14 A. Yes, sir, I did.

15 Q. Did you put the date and time next to
16 your signature?

17 A. Yes, sir, along with my payroll number.

18 Q. What is your date and time on there?

19 A. The time is 5:30 a.m.

20 Q. At the time that Mr. Hughes signed this
21 document, did he explain to you about any abuse by
22 Sergeant Gafford or tell you that he had been
23 coerced into signing this document?

24 A. Oh, no, sir.

25 Q. Did he indicate that he understood that

1 he didn't have to sign the document if he didn't
2 want to?

3 A. Yes, sir, we went over that with him
4 when he signed it, to make sure that it was
5 voluntary.

6 Q. Did you actually go out and search his
7 apartment after he signed that consent?

8 A. No, sir, I did not.

9 Q. What did you do after you witnessed him
10 signing it?

11 A. I went back to typing in a report.

12 Q. Did you participate in any way in the
13 subsequent search of his apartment?

14 A. No, sir.

15 MR. NOLL: Pass the witness, Your
16 Honor.

17 THE COURT: Mr. McCullough.

18 MR. McCULLOUGH: No questions.

19 THE COURT: May this officer be
20 excused?

21 MR. NOLL: Yes, Your Honor.

22 MR. McCULLOUGH: Yes, sir.

23 THE COURT: Thank you, Sergeant Bloyd,
24 you may go about your duties. Call your next,
25 counsel.

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MR. NOLL: Ms. Evelyn Brown, Your Honor.

(Witness sworn.)

THE COURT: Mr. Noll, you may proceed.

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EVELYN BROWN,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Evelyn, would you tell the jury what
your name is?

A. Evelyn Brown.

THE COURT: You're going to have to do a
lot better than that. I know it's hard. Go ahead.

A. Evelyn Brown.

THE COURT: Thank you.

BY MR. NOLL:

Q. I realize you're probably nervous; is
that right?

A. (Nods head affirmatively.)

Q. You're going to have to talk loud enough
so this lady back here and this gentleman can hear
you, okay? Try to keep your voice up.

A. Okay.

Q. Evelyn, how old are you?

A. 18.

Q. Do you work, go to school or what?

1 A. Go to school.

2 Q. Where do you go to school?

3 A. Robert E. Lee.

4 Q. What grade are you in?

5 A. Twelfth.

6 Q. Is this your senior year then, in high
7 school?

8 A. (Nods head affirmatively.)

9 Q. Evelyn, let me direct your attention
10 back to September of 1988, okay?

11 A. (Nods head affirmatively.)

12 Q. At that time, did you have a girlfriend
13 by the name of Shandra Charles?

14 A. Yes.

15 Q. Did you know her by the name Shandra or
16 LaShandra or did you know her by another name?

17 A. All of them.

18 Q. Did she also use the name Shawn?

19 A. Uh-huh.

20 Q. Shawn was kind of a nickname, right?

21 A. Yeah.

22 Q. She also went by --

23 MR. McCULLOUGH: Object to leading, Your
24 Honor.

25 THE COURT: Ms. Brown, first, I want you

1 to keep your voice up. Okay. You're dropping it
2 down and we need you to make an effort to keep it
3 up so we can all here you.

4 Don't lead your witness, Mr. Noll.

5 MR. NOLL: Yes, Your Honor.

6 BY MR. NOLL:

7 Q. How well did you know Shawn or Shandra?

8 A. Very well.

9 Q. Would you characterize yourselves as
10 girlfriends?

11 A. Yeah.

12 Q. How often did you see Shandra?

13 A. Everyday.

14 Q. Did y'all meet through school or through
15 somebody else?

16 A. Through school, going to each other's
17 house, stuff like that.

18 Q. Did you spend the night over at her
19 house?

20 A. Yeah.

21 Q. Did she spend the night at your house?

22 A. Yeah.

23 Q. Did y'all talk about things together?

24 A. Yeah, a lot of things.

25 Q. Remember to keep your voice up. I'm

1 having trouble hearing you.

2 A. Okay.

3 Q. Was she your best friend?

4 A. Yes, she was.

5 Q. Do you know most of the things that were
6 going on in her life and she knew most of the
7 things that were going on in your life?

8 A. She was kind of secretive, though.

9 Q. Did she share her secrets with you
10 sometimes?

11 A. Some of them.

12 Q. Let me direct you to a Sunday evening,
13 September 26, 1988. On that day, did you see
14 Shandra?

15 A. Yeah.

16 Q. Back then, were you living on the west
17 side of town?

18 A. Yes.

19 Q. Where were you living?

20 A. Nashville House apartments on Westheimer.

21 Q. You lived there with your momma and your
22 brother?

23 A. Yeah.

24 Q. Where was Shandra living at that time?

25 A. On Hayes in the Waverly apartments.

1 Q. Are both of those -- are the Waverly
2 apartments, in particular, close to the Lakehurst
3 apartments?

4 A. Yeah.

5 Q. Okay. Now, do you know where the
6 Lakehurst apartments are?

7 A. Yeah.

8 Q. They're on Crescent Park; is that
9 correct?

10 A. Yeah.

11 Q. Now on Sunday, the 26th of September,
12 did you see Shandra that afternoon?

13 A. Yeah.

14 Q. And where did you see her?

15 A. We were together.

16 Q. Okay. What had y'all been doing?

17 A. Walking around. Mostly, she spent the
18 night at my house. So, mostly we were at my house
19 swimming in the pool and stuff.

20 Q. Keep your voice up. There's a fan right
21 up here and these people have to hear you, okay?
22 You said you were mostly at your house that day?

23 A. Yeah.

24 Q. What had y'all been doing?

25 A. Swimming and listening to music and

1 stuff.

2 Q. Was there anyone else with you then?

3 A. Yeah, my brother was in the house.

4 Q. Later on in the evening or the afternoon,
5 did you ever go over to Shawn's house?

6 A. Yeah. It was later that night, though.
7 We had caught the Metro and went over there.

8 Q. About what time was it? Do you remember?

9 A. It was about -- probably about 7:00,
10 going on 8:00 or something like that.

11 Q. And why did you go over to her house?

12 A. She had to go get a change of clothes.

13 Q. And when you went to her house, was
14 there anyone else over there besides Shawn and you?

15 A. No, because her mom was over her
16 friend's house.

17 Q. While y'all were there, did her momma
18 come home?

19 A. Huh-uh, we had to go there to get -- to
20 see her mom.

21 A JUROR: I can't hear.

22 THE COURT: Okay. Ms. Brown, could you
23 move forward, just a little bit, and now I really
24 want you to exaggerate the loudness, okay? In
25 other words, just make an effort to yell, if you

1 have to, but we need to hear you, okay?

2 Go ahead, Mr. Noll.

3 BY MR. NOLL:

4 Q. Where had y'all gone that evening -- and
5 speak up as loud as you can.

6 A. Nowhere.

7 Q. You left your house and went to whose
8 house?

9 A. Her house.

10 Q. When you got there, was there anybody
11 home?

12 A. No.

13 Q. What did y'all do at her house?

14 A. She got a change of clothes and we went
15 to where her mom was.

16 Q. What kind of clothes did she put on? Do
17 you remember?

18 A. She had a pair of white shorts on and a
19 black and white shirt.

20 Q. Did she have on any shoes?

21 A. She had on some white shoes.

22 MR. NOLL: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25

1 BY MR. NOLL:

2 Q. Evelyn, let me show you State's Exhibit
3 No. 10. Do these shorts look like the shorts that
4 Shandra had on that night?

5 A. Yeah, they were.

6 Q. When she put them on at her house, were
7 they in the same condition they are right now?

8 A. Huh-uh.

9 Q. Were they clean?

10 A. Yeah.

11 Q. Let me show you State's Exhibits 11 and
12 12. Do you recognize this pair of shoes?

13 A. Yeah, they were hers.

14 Q. Keep your voice up. These people have
15 to hear you.

16 THE COURT: I know you want to talk to
17 him right there. You drop your voice a little bit.
18 Those people over there need to hear you. Please
19 keep your voice up.

20 A. Yeah, they were hers.

21 BY MR. NOLL:

22 Q. Did she have them on that night?

23 A. Yes, she did.

24 Q. When you saw her with them on, were they
25 clean or did they have this stain on them?

1 A. No, they were clean.

2 Q. Did she have any jewelry on?

3 A. She had two necklaces on and her glasses.

4 Q. Let me show you what's been marked as
5 State's Exhibit No. 15. Do you recognize these
6 glasses?

7 A. Yeah, they're Shawn's.

8 Q. Speak up so these people can hear you.

9 A. Yeah, they're Shawn's.

10 Q. Did you see Shawn wearing those glasses?

11 A. Yeah, she had them on.

12 Q. Did she have them on on September 26th?

13 A. Yes, she did.

14 Q. Are you sure?

15 A. Yeah.

16 Q. Take your time and look at them.

17 MR. McCULLOUGH: Bolstering before she's
18 been cross examined, Your Honor.

19 BY MR. NOLL:

20 Q. Are these prescription glasses or do you
21 know?

22 A. No, they're just clear glasses.

23 Q. She didn't need glasses, she just wore
24 those --

25 A. Yeah.

1 MR. McCULLOUGH: Object to leading.

2 THE COURT: Don't lead your witness, Mr.
3 Noll.

4 BY MR. NOLL:

5 Q. Did she need to wear glasses?

6 A. No, she didn't.

7 Q. Why did she wear those?

8 A. Fashion.

9 Q. Okay. After y'all changed clothes,
10 where did you go?

11 A. To where her mom was.

12 Q. Where was her mom?

13 A. Over at a friend's house in the same
14 apartment, same complex.

15 Q. At Hayes Road apartments?

16 A. Yeah.

17 Q. After you went to her momma's house or
18 to where her momma was, did you meet anybody else
19 there?

20 A. Her mom's sister was there and her
21 little nephew was there or cousin.

22 Q. Do you know what her nephew's name was?

23 A. Marcell.

24 Q. While you were at the place where her
25 mother was, did y'all decide to go anywhere?

1 A. First we went to the pool to just sit
2 down and talk, and then we went back up there.

3 Q. When you say "we," are you referring to
4 you and Shandra?

5 A. Yeah, just me and Shawn.

6 Q. After you left the pool, where did you
7 go?

8 A. We went back to the apartment.

9 Q. Now, which apartment did you go back to?

10 A. Where her ma'am was.

11 Q. Now, do you recall if it was getting
12 dark about this time or what time --

13 A. Yeah, it was dark.

14 Q. Do you know, specifically, what time it
15 was?

16 A. Huh-uh.

17 Q. After you got back to the apartment
18 where her mother was, did y'all decide to go
19 somewhere else?

20 A. Yeah, because her mom -- first we were
21 sitting on the steps and her mom called her in the
22 apartment and I was sitting outside, she came out
23 with Marcell. I said, "Where we going?"

24 She said, "My mom want me to go to the
25 store."

1 I said, "Okay."

2 Q. Which store were y'all going to go to?

3 A. She send us to King Saver but Shawn
4 wanted to walk to Jumbo.

5 Q. King Saver is located where, in
6 relationship to Hayes Road apartments?

7 A. Just right there.

8 Q. You said Shawn wanted to go to Jumbo?

9 A. Yeah.

10 Q. Where is the Jumbo grocery store?

11 A. Jumbo is over there by Lakehurst on
12 Kirkwood.

13 Q. Is it across the street from the
14 Fuddrucker's there on South Kirkwood?

15 A. Yeah.

16 Q. Was Marcell with her?

17 A. Yeah.

18 Q. Did you know Marcell?

19 A. Uh-huh.

20 Q. What was the relationship between
21 Marcell and Shandra?

22 A. They were close.

23 Q. Did you want Marcell tagging along that
24 night?

25 A. Huh-uh.

1 Q. Did you say anything to Shandra?

2 A. I said, "Shawn, take Marcell back in the
3 house, because what if something happened that we
4 have to run and he can't run."

5 She say, "That's okay, I'll pack him,
6 I'll pack him."

7 Q. "I'll pack him"?

8 A. Yeah.

9 MR. McCULLOUGH: Object to any other
10 conversation between the -- outside, it would be
11 hearsay.

12 THE COURT: Don't tell us what anyone
13 told you. You may say what you said and what you
14 saw, but don't tell us what anyone told you, okay?

15 THE WITNESS: Okay.

16 BY MR. NOLL:

17 Q. After you talked, without saying what
18 anybody said, did Marcell end up tagging along?

19 A. Yeah.

20 Q. Where did y'all go when you left the
21 apartments there on Hayes Road?

22 A. We were walking to Jumbo.

23 Q. Now, as you walked to the Jumbo, what
24 path did you take?

25 A. We didn't take a path. We were going

1 straight through in the back, Lakehurst, right
2 there in the driveway, and I told her I had to go
3 home.

4 Q. So, you walked from the Hayes Road
5 apartments over to the Lakehurst apartments; is
6 that correct?

7 A. Yeah.

8 Q. How far is that?

9 A. God, it's about two blocks, something
10 like that.

11 Q. Two blocks?

12 A. Yeah, something like that.

13 Q. Do you know why you were going to the
14 Jumbo as opposed to the grocery store right across
15 the street?

16 A. Just wanted to take a walk, I guess.

17 Q. When you got to the Lakehurst apartments,
18 why did you decide not to go on to the Jumbo and
19 to go home instead?

20 A. Because I have to go home because my mom
21 was getting on me about coming home late and stuff
22 like that.

23 Q. Do you remember about what time it was
24 when y'all got to the Lakehurst apartments?

25 A. Huh-uh.

1 Q. Was it dark?

2 A. Yeah, it was dark.

3 Q. Okay. What happened when you got to the
4 Lakehurst apartments?

5 A. Nothing, really. We was just stopped
6 and we started talking. I told her I had to go
7 home.

8 Q. Where were you, specifically, if you
9 remember, in the Lakehurst apartments? Like, were
10 you in the pool area or parking lot?

11 A. No, we were in the parking lot, right in
12 the back of it.

13 Q. In the back of the apartments?

14 A. Yeah.

15 Q. Evelyn, let me show you what's been
16 marked as State's Exhibit No. 5, all right? This
17 is a photograph. Do you recognize the Lakehurst
18 apartments here on the bottom right-hand part?

19 A. Yeah.

20 Q. And would this be the Puddrucker's where
21 the metal roof is shown?

22 A. Yeah.

23 Q. Can you tell from this photograph where
24 you-all were when you were there at the Lakehurst
25 apartments that evening?

1 A. We were down here somewhere.

2 Q. Okay.

3 THE COURT: Ms. Brown, I know you're
4 just talking right there with him but you need to
5 pretend like you're talking to somebody against
6 that back wall. Okay. Please keep your voice up.
7 BY MR. NOLL:

8 Q. Why don't you stand up and it will be a
9 little easier for you to direct it to them. Take
10 my pen. Point on State's Exhibit 5 to the area
11 where you last saw your friend Shandra in the
12 parking lot at the Lakehurst apartments.

13 A. Right there. About right down here.

14 Q. Are you pointing to the little red truck
15 here?

16 A. Yeah, we were down here somewhere, right
17 in this parking lot where you can enter right
18 there, that's where we were.

19 Q. You're pointing to the little area where
20 the little red truck is. Is the street right on
21 the outside of that?

22 A. Yeah.

23 Q. How far is the street from where the
24 little red pickup truck is parked on State's
25 Exhibit No. 5?

4 Q. Was Marcell Taylor with you at that
5 point?

6 A. Yes, he was.

7 Q. Did you tell Shandra you had to go home
8 then?

9 A. Yeah.

10 Q. What happened then?

11 A. Then I went home.

12 Q. When you last saw Shandra, was she
13 wearing those eyeglasses?

14 A. Yes, she was.

15 Q. And that was -- can you guess what time
16 it was?

17 A. Huh-uh.

18 Q. What time did you get home?

19 A. Time I got home, it was about
20 10:00-something.

21 Q. How long did it take you to get from the
22 Lakehurst apartments to get home?

* 23 A. Not that long because I had a ride home.

24 Q. Okay. You got a ride in a car home?

25 A. Yeah.

1 Q. Some friends drove by or what?

2 A. Yeah, some friends drove by.

3 Q. So, if you got home about 10:00, do you
4 know -- did it take you 10 minutes, 15 minutes or
5 how long to get home from the Lakehurst apartments?

6 A. I'd say about 15 minutes.

7 Q. Okay. When was the next time you saw
8 your friend Shandra?

9 A. After that? At the funeral.

10 Q. Evelyn, do you know whether or not
11 Shandra knew Preston Hughes, III?

12 A. Yeah, she knew him.

13 Q. Do you know Preston Hughes, III?

14 A. Yes, I do.

15 Q. Do you see him in this courtroom this
16 morning?

17 A. This morning? Yes, I do.

18 THE COURT: Speak up please, Evelyn.

19 BY MR. NOLL:

20 Q. Speak up. Will you point to him and
21 describe how he's dressed?

22 A. Right there. He's got on a blue suit
23 and tie, white shirt.

24 MR. NOLL: Your Honor, for the record
25 may it reflect she pointed out the defendant?

1 THE COURT: Record will so reflect.

2 BY MR. NOLL:

3 Q. How did Shandra know Preston Hughes?

4 A. As a friend.

5 Q. Keep your voice up so they can hear.

6 How did she know him?

7 A. As a friend.

8 Q. How did she meet him?

9 A. Just hanging around the apartments.

10 Q. Did she used to hang around the
11 Lakehurst apartments?

12 A. Yes, she used to live in Lakehurst.

13 Q. Speak up. I can't hear you.

14 A. She used to live in Lakehurst.

15 Q. When did she used to live in Lakehurst?

16 A. I don't know because we moved there
17 before she did. So, I don't know exactly when she
18 moved in. Because I met her through some friends.

19 Q. Okay. Had you ever been with Shandra
20 when you were around Preston Hughes?

21 A. Yes.

22 Q. So, you had seen her actually with
23 Preston Hughes?

24 A. Yeah.

25 Q. Did they speak to each other?

1 A. Yeah, we like friends and stuff, you
2 know, talking, stuff like that.

3 Q. Do you know if she had ever been up to
4 his apartment?

5 A. Yeah.

6 Q. Had you ever been up to his apartment?

7 A. Yeah.

8 Q. Do you know what his apartment number
9 was?

10 A. I think it was 138-A or something like
11 that.

12 Q. Looking again at this exhibit, this
13 picture where the little red truck is?

14 A. Uh-huh.

15 Q. Is that where his apartment is?

16 A. Yeah, upstairs.

17 Q. Upstairs?

18 A. Yeah.

19 Q. Right above the little red truck; is
20 that right?

21 A. Yeah.

22 Q. Is that the same place where you left
23 your friend Shandra on Sunday night, the 26th of
24 September?

25 A. Yes, it was.

1 Q. Did she tell you she was -- don't say
2 what she told you. Do you know where she was
3 going?

4 A. No, I don't.

5 Q. Did you say anything to her?

6 A. No, I told her to be careful.

7 Q. Do you know what name the defendant
8 Preston Hughes used to call Shandra?

9 A. Shawn.

10 Q. So, when he talked about Shandra Charles,
11 he called her Shawn, didn't he?

12 A. Yeah.

13 Q. Do you know if he knew her little cousin,
14 Marcell?

15 A. I don't think so. I don't know.

16 Q. Do you know -- and only if you know --
17 whether or not Shandra had ever had sexual
18 relationships with Preston Hughes, III?

19 A. No, I don't know.

20 MR. McCULLOUGH: Objection. That will
21 be irrelevant, Your Honor.

22 THE COURT: It will be overruled. She
23 may answer, if she knows.

24 BY MR. NOLL:

25 Q. Do you know?

1 A. No, I don't.

2 Q. To your knowledge, did Shandra mess
3 around?

4 MR. McCULLOUGH: Objection, Your Honor,
5 irrelevant.

6 THE COURT: Be overruled.

7 MR. McCULLOUGH: Could we have a better
8 definition of "mess around"?

9 BY MR. NOLL:

10 Q. Do you know what I mean when I say that?

11 A. Yes, I do.

12 MR. McCULLOUGH: The problem is I don't
13 and I don't know if the jury does.

14 MR. NOLL: I'll rephrase it, Your Honor.

15 THE COURT: Rephrase your question.

16 BY MR. NOLL:

17 Q. Evelyn, did Shandra have sex with boys?

18 A. I don't think so. If she did, she never
19 told me.

20 Q. Do you know if she had sex with anyone
21 Sunday, September 26th, 1988?

22 A. No.

23 Q. In fact, she spent the day with you,
24 didn't she?

25 A. Yeah.

1 Q. Do you know where she was Saturday night?

2 A. With me.

3 Q. She spent Saturday night with you?

4 A. Uh-huh.

5 Q. Were y'all with any boys?

6 A. No.

7 Q. Do you know whether or not she had sex
8 with any boys Saturday night?

9 A. No.

10 Q. How about during the day Saturday?

11 A. No.

12 Q. Was she with you that day?

13 A. Yeah.

14 Q. What did y'all do that the day?

15 A. Hung around.

16 Q. And were you with her all day long?

17 A. Yeah.

18 Q. And to your knowledge, did she have sex
19 with any boys on Saturday, the 25th of September?

20 A. No.

21 Q. Did you see her Friday night, the Friday
22 before that Sunday?

23 A. Yeah.

24 Q. Did y'all hang out that night also?

25 A. Yeah.

1 Q. Did she have sex with any boys that
2 night that you know of?
3 A. No.
4 Q. Friday during the day, did you see
5 Shandra?
6 A. Yeah.
7 Q. How did you see her on Friday?
8 A. Were y'all at school together?
9 A. Yeah, school. Come home together.
10 Q. Did you see her after school that Friday?
11 A. Yeah.
12 Q. Were y'all together immediately after
13 school got out?
14 A. Yeah.
15 Q. Did y'all hang out together that
16 afternoon?
17 A. Yeah.
18 Q. Okay. And that evening, did you hang
19 out together?
20 A. Yeah.
21 Q. What time did you go home that evening?
22 A. Oh, I don't even -- I can't remember
23 back that far.
24 Q. Did she spend the night at your house?
25 A. Yeah.

1 Q. On Friday night?

2 A. Yeah.

3 Q. And then Saturday, y'all were together
4 all day?

5 A. Yeah.

6 Q. Saturday night, did y'all go home, apart
7 from each other?

8 A. No.

9 Q. Did y'all spend the night together on
10 Saturday night?

11 A. Yeah.

12 Q. At whose house?

13 A. Mine.

14 Q. It's fair to say you were with her from
15 the time school got out Friday afternoon all the
16 way until you left her Sunday night?

17 A. Yeah.

18 Q. During that period of time, did she have
19 sex with any little boys?

20 A. No.

21 MR. NOLL: Pass the witness, Your Honor.

22 THE COURT: Mr. McCullough.

23

24

25

1 CROSS EXAMINATION

2
3 BY MR. McCULLOUGH:

4 Q. I believe you testified that Shawn
5 cannot tell you everything. She was secretive.

6 A. Yeah.

7 THE COURT: Ms. Brown, please keep your
8 voice up, okay? I can barely hear you up here.

9 BY MR. McCULLOUGH:

10 Q. You say that Shawn had some glasses like
11 these that she wore just for decoration, for
12 fashion?

13 A. Yeah.

14 Q. Were you with her when she bought them?

15 A. Oh, no.

16 Q. Do you know where she got them?

17 A. No.

18 Q. Have you ever seen any others like them?

19 A. Yeah, I had a gold pair.

20 Q. Did any of the kids at school have some
21 like them?

22 A. Yeah.

23 Q. So, there are more than one pair like
24 that?

25 A. Uh-huh.

1 Q. Are they real expensive?

2 A. I don't think so. Probably \$3,
3 something like that.

4 Q. Where do you get glasses like that?

5 A. You can go to the mall and get them,
6 Fiesta, something like that, you know.

7 Q. So, they're pretty common?

8 A. Yeah.

9 Q. Are you aware of the fact that Shawn had
10 gone to Preston's apartment on occasions to use
11 the hair drier and take a shower and stuff like
12 that when lights were off over at her apartment?
13 Do you recall that?

14 A. Huh-uh, she used to come to my house and
15 do that while we were living at Lakehurst.

16 Q. Every time?

17 A. Not every time.

18 Q. And she did keep some secrets?

19 A. Yeah.

20 Q. Do you know who introduced Preston and
21 Shawn? Was it a man named Franklin, Arnell
22 Franklin?

23 A. Yeah.

24 Q. That's how he met her?

25 A. Yeah.

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MIKAL KLUMPP,

was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Sir, would you please state your name
for the record.

A. Mikal Klumpp.

Q. Mr. Klumpp, let me direct your attention
back to September 27th of 1988. On that day or on
that morning, did you receive any unusual phone
calls?

A. Yes.

Q. Did you receive a phone call from
Preston Hughes, III?

A. Yes, I did.

Q. Did Preston Hughes, III, tell you where
he was when he called you?

A. Yes, he did.

Q. What did he tell you?

A. He told me he was at HPD station --

MR. McCULLOUGH: Your Honor, object to
testimony of any conversation that this man had

1 with Mr. Hughes on that date.

2 THE COURT: That will be overruled. You
3 may proceed.

4 BY MR. NOLL:

5 Q. After he called you on the phone and
6 told you where he was, did he tell you why he was
7 at the Houston Police Department?

8 A. Yes.

9 Q. What did he tell you?

10 A. He told me that he had been picked up
11 and was being questioned about the stabbing deaths
12 of a girl and a little boy.

13 Q. Do you recall about what time it was
14 when you received this phone call?

15 A. Approximately 7:30 a.m.

16 Q. And did he tell you -- first of all, did
17 he seem to you to be unduly upset or how did he
18 sound on the telephone?

19 A. He did not seem unduly upset, no.

20 Q. Was he able to talk to you in a
21 conversational tone? Was he excited or what?

22 A. He carried on a conversation. He did
23 not seem to be upset or excited.

24 Q. The same as we're talking right now?

25 A. Pretty much, yes.

1 Q. Did he tell you that he had been
2 threatened by a Sergeant Gafford?

3 A. No.

4 Q. Did he tell you anything about being
5 threatened by the police at all?

6 A. No.

7 Q. Did he make any complaints to you about
8 any abuse by any law enforcement officer?

9 A. No, he did not.

10 Q. Did he tell you that someone had
11 promised him something?

12 A. No.

13 Q. Did he tell you that he had made a
14 statement to the police?

15 A. Yes.

16 Q. And did he tell you what he said?

17 A. Yes.

18 Q. What did he tell you?

19 A. He told me that he had told the police
20 that he was -- he had been threatened by a man for
21 messing around with his girlfriend.

22 MR. McCULLOUGH: Your Honor, I would
23 object to this. If this is a rendition of what
24 Mr. Hale said he had told the police, then it is
25 not an admission. It is a statement of what he

1 told someone else. It's not a statement of what
2 he said he did. Object to it.

3 THE COURT: That will be overruled.

4 BY MR. NOLL:

5 Q. Continue.

6 A. Okay. And that the man evidently had
7 threatened his life. So, he was scared. He had
8 been walking through the woods late that night and
9 felt a tap on his shoulder. He had just
10 immediately turned around and started stabbing
11 before he realized who it was. When he realized
12 who it was, he became scared and ran to his
13 apartment.

14 Q. Did he tell you who he realized it was?

15 A. It was a girl and a little boy.

16 Q. Did he tell you anything else about the
17 stabbing incident?

18 A. No, other than the fact that he had been
19 picked up about 2:30 a.m. by the police.

20 Q. Did he tell you anything about what he
21 expected to be charged with or something of that
22 nature?

23 A. I asked him, yeah, if he was going --
24 what he thought he was going to be charged with
25 and he said at that point he thought he was going

1 to be charged with assault.

2 Q. Did he indicate whether or not he knew
3 the children had died?

4 A. Yes, at that point he knew that the
5 children had died.

6 Q. Again, at the close of your conversation,
7 can you describe his tone of voice and manner and
8 demeanor to you over the telephone?

9 A. Like I said, he seemed to be pretty much,
10 you know, he was calm and carrying on a
11 conversation.

12 Q. Again, did he ever make any statements
13 to you which indicated he was being coerced or
14 threatened in any way by the police officers?

15 A. No, none whatsoever.

16 MR. NOLL: Pass the witness, Your
17 Honor.

18 THE COURT: Mr. McCullough.

19 MR. McCULLOUGH: No questions.

20 THE COURT: May this witness be
21 excused?

22 MR. NOLL: Yes, Your Honor.

23 THE COURT: Thank you, Mr. Klumpp. You
24 may be excused.

25 Call your next, counsel.

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MR. NOLL: Mr. Jim Bolding, Your Honor.

(Witness sworn.)

THE COURT: You may proceed.

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JIM BOLDING,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Sir, would you please state your name
for the members of the jury.

A. My name is James Bolding.

Q. Mr. Bolding, how are you employed?

A. I'm employed by the City of Houston at
the Houston Police Crime Laboratory.

Q. Mr. Bolding, what kind of background,
training, and education do you have for your job
at the police crime lab?

A. I have a BS and MS degree in biology and
biochemistry from Texas Southern University. I
have further credits forward the PhD degree in
biochemistry from the University of Texas. I've
undergone extensive training in forensic science
and forensic serology at the FBI Academy; at the
Forensic Science Research Institute of California;
at Allotype Company in Atlanta, Georgia; and the
Houston Police Department at the crime laboratory.

1 Q. How long have you worked for the crime
2 laboratory?

3 A. Just under ten years.

4 Q. Do you have a specific position in the
5 crime lab?

6 A. Yes, sir.

7 Q. What is your current position in the
8 crime lab?

9 Q. I'm a Criminalist III, supervisor in the
10 serology section at the crime laboratory.

11 Q. When you say the "serology section of
12 the crime lab," could you explain to the jury what
13 is done in the serology section?

14 A. Yes, sir. Serology is that aspect of
15 science and forensic science that seeks to analyze
16 body fluids -- those body fluids include blood,
17 saliva, semen, and other kinds of bodily products --
18 and we attempt to associate them or to
19 disassociate them with crime scenes.

20 Q. Mr. Bolding, is it possible for you at
21 the crime lab to receive a sample of semen and to
22 determine the blood type in the semen?

23 A. That's sometimes possible, yes, sir.

24 Q. When that is possible, is it then
25 possible to compare that blood type with a known

1 blood type of someone else and determine if it's
2 the same blood type?

3 A. Yes, sir.

4 Q. If it is the same blood type, what does
5 that prove, if anything?

6 A. It doesn't deprove that the individual --
7 it is possible that the blood or the semen sample
8 has come from that individual that it was typed to
9 or against.

10 Q. All right. For example, if the semen
11 was Type O and the person compared to was Type O,
12 you could say they have the same blood type?

13 A. That's correct.

14 Q. That wouldn't be evidence that that
15 person committed the offense, but a person with
16 Type O committed the offense?

17 A. That's correct.

18 Q. However, if someone had semen Type O and
19 the suspect was Type A or -- is that one of the
20 blood types, A or AB?

21 A. Yes, sir.

22 Q. Would that exclude him from being a
23 person who had left that deposit of semen?

24 A. Yes, sir, that would be exclusion. We
25 would be able to say he did not do that.

1 Q. Do you ordinarily conduct such tests in
2 sexual assault cases?

3 A. Yes, sir.

4 Q. Let me direct your attention to a case
5 that you received from Sergeant Gafford of the
6 homicide division this past couple of weeks. Do
7 you recall Sergeant Gafford delivering a vaginal
8 swab to you?

9 A. Yes, sir.

10 MR. NOLL: May I approach the witness,
11 Your Honor?

12 THE COURT: You may.

13 BY MR. NOLL:

14 Q. Let me show you what's marked as State's
15 Exhibit No. 22 and ask you if you can identify
16 what is in the little vial.

17 A. Yes, sir, I can.

18 Q. And what is State's Exhibit No. 22?

19 A. It's a part of a --

20 MR. McCULLOUGH: Object to testimony
21 about this -- whatever that is. It's not in
22 evidence. We don't know where it came from and
23 object to testimony about it.

24 MR. NOLL: I'm getting there Judge, if I
25 can.

1 my memory in talking to counsel, Your Honor. My
2 recollection is that that thing that he's going to
3 say is a vaginal swab. There is no predicate been
4 laid that a sample was taken from the deceased in
5 this case. All we have is, I believe, Gafford
6 identifying that, but the other end of it is not
7 linked up to the deceased.

8 THE COURT: Well, they might have a
9 chance or plan to do that later on. So, what's
10 the objection?

11 MR. McCULLOUGH: Well, that it --

12 THE COURT: It hasn't been offered into
13 evidence at this time.

14 MR. McCULLOUGH: Yes, sir, but this
15 testimony he's fixing to give is going to be in
16 evidence and they're going to hear it and they're
17 going to know all about this thing and it may well
18 not be admissible.

19 THE COURT: Well, they better tie it up
20 properly. If they don't, Mr. Hughes may not be
21 the only one charged with murder. And it has not
22 been offered yet. They've still got to lay the
23 predicate at some point.

24 Now, he's still entitled to testify to
25 what it is and, if anything, he did to it; and at

1 the appropriate time, if it is offered into
2 evidence, I will entertain any objection that you
3 have.

4 Now, what else do we need to go over?

5 MR. McCULLOUGH: That's all I have. I
6 made my point, I think, that I -- if the jury
7 hears this, it's not tied up, I'm hurt.

8 THE COURT: Your point is well taken.
9 If it comes to that, I will entertain your
10 objection at the appropriate time.

11 MR. McCULLOUGH: Yes, sir.

12 MR. NOLL: May I proceed then, Your
13 Honor? Judge, just for your information, I
14 anticipate the testimony from Mr. Bolding is going
15 to be there is insufficient sample in this swab to
16 make any comparison. I will tie up its relevancy
17 through the medical examiner. I don't anticipate
18 that any of that could be -- it's just his
19 testimony to show the jury we did check, not to
20 show any evidence against the defendant, as I
21 understand your testimony; is that right?

22 THE WITNESS: That's right.

23 THE COURT: For whatever purpose, it
24 still needs to be tied up and the proper predicate
25 needs to be made.

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(Short recess.)

MR. McCULLOUGH: The jury's not in the room and he wanted to take up something quickly with Mr. Bolding.

EXAMINATION

(Out of presence of the jury)

BY MR. McCULLOUGH:

Q. Mr. Bolding, do I understand your testimony is going to be that you found some substance on State's Exhibit 16, which is a pair of jeans, which is consistent with blood stains, but that you cannot testify that it is human blood?

A. That's correct.

Q. Is that a fair summary of what you're going to say?

A. Yes, sir.

Q. Have you had the chance -- you've got the knife there and you've got some chemicals. Have you had a chance to perform any tests on the knife?

A. Yes.

Q. Very briefly, what are you going to say about the knife?

1 A. The knife also has substances that give
2 the reaction for blood.

3 Q. Are you going to be able to say that it
4 is human blood?

5 A. Not at this time, no, sir.

6 Q. Are you going to be able to say -- give
7 any kind of time frame within which the blood, if
8 it is blood samples or stains, could have been
9 left on the jeans or on the knife?

10 A. No, sir, there's no time frame involved.

11 Q. All right. Is your testimony of such
12 nature that you can testify that no other
13 substances could give that reaction?

14 A. The testimony cannot be that no other
15 substances give that reaction but there are some
16 other substances that do.

17 MR. McCULLOUGH: Your Honor, based on
18 the proposed testimony, I would move to exclude
19 this testimony. It would be harmful to my client.
20 It is prejudicial, testimony is definitely not
21 conclusive that this is human blood on the jeans
22 or on the knife or when it got there and I would
23 move to exclude it.

24 THE COURT: That will be overruled.

25 MR. McCULLOUGH: We'd further argue,

1 Your Honor, that we had a lengthy motion for
2 discovery on file. The District Attorney has made
3 the file available to me and I've had numerous
4 conversations with him since I was appointed on
5 this case in which I asked if there were blood
6 results and he informed me -- during jury
7 selection, by telephone, that there was some
8 positive reaction on the jeans for blood. There
9 was no mention up until the present time about
10 blood on the knife, the shoes, or any other
11 matters. We feel like that our motion -- our
12 discovery motion was timely filed and pursued.
13 We've been diligent in trying to get this
14 information, prepare for trial and we feel like
15 that any testimony about the blood and jeans,
16 knife, the shoes or any other items at this time
17 deprive us of a fair trial.

18 MR. NOLL: Your Honor, I would like to
19 put on something in that regard for the record, if
20 I may, Your Honor, through Mr. Bolding.

21 MR. McCULLOUGH: I would also state as
22 far as I know, none of this is the fault of Mr.
23 Noll personally, but the system or whatever that
24 caused this has put us in a lurch and we object to
25 it. I'm not accusing Mr. Noll of anything

1 underhanded.

2 MR. NOLL: Just so the record is clear,
3 though, Your Honor, may I ask a few questions Mr.
4 Bolding?

5 THE COURT: You may.

6

7

EXAMINATION

8

(Out of the presence of the jury)

9

10 BY MR. NOLL:

11 Q. Mr. Bolding, do you recall my contacting
12 your department, I believe last week, concerning
13 taking some blood sample tests on evidence in the
14 property room?

15 A. Yes, sir.

16 Q. And did you, at my request, just last
17 week, start trying to conduct those tests?

18 A. Yes, sir.

19 Q. When did you notify me of the results of
20 your test?

21 A. I think it was Friday I gave you
22 preliminary results that there was, in fact, an
23 indication of presence of blood; and on Monday, I
24 confirmed with you that I could not or I told you
25 that I could not confirm whether or not it was

1 human. I could not get a reaction in that.

2 Q. When you say "Friday," you mean this
3 past Friday, the 28th of April, and when you say
4 "Monday," you mean yesterday; is that correct?

5 A. Yes, sir.

6 Q. Prior to that, did you have any results
7 from your tests?

8 A. No, sir.

9 Q. Had you conducted any such tests?

10 A. No, sir.

11 Q. The test on the knife you conducted five
12 minutes ago here in the courtroom, did you not?

13 A. Yes, sir.

14 Q. Did you conduct a test on that shoe?

15 A. Yes.

16 Q. Did you get any results?

17 A. The results were negative.

18 Q. So, your test results were made
19 available only this past Friday and yesterday
20 morning?

21 A. That's correct.

22 MR. NOLL: Thank you, Mr. Bolding. I
23 wanted to point out to the Court, Your Honor, we
24 made the results available to counsel for the
25 defendant as soon as they were available to the

1 State of Texas.

2 THE COURT: For the record, Mr.
3 McCullough, your objection, though well taken, is
4 going to be overruled. Apparently you've got
5 something that many defense lawyers have always
6 wanted; that is, you're seeing the actual testing
7 right before your very eyes.

8 Let the record further reflect I find
9 this cavalier attitude and lackadaisical attitude
10 of doing tests right while we've got a jury
11 waiting to come in and hear testimony unacceptable.
12 I am not pointing blame. Every one of us have our
13 blames with the causes and delays of this system.
14 One of the main causes is that we let ourselves
15 lower our guards so that we simply accept them and
16 I'm not happy about this at all. Bring in the
17 jury.

18 MR. McCULLOUGH: May we at some point be
19 allowed time to obtain an expert to perform our
20 own tests on these exhibits?

21 THE COURT: Well, we'll see what the
22 testimony is and which way you want to go with
23 that.

24 MR. McCULLOUGH: If we didn't mention it
25 before, of course, we are surprised, particularly

1 about the testimony with regard to the knife.

2 (Jury in.)

3 THE COURT: You may proceed, Mr. Noll.

4

5 DIRECT EXAMINATION CONTINUED

6

7 BY MR. NOLL:

8 Q. Mr. Bolding, directing your attention,
9 again, to what has been marked as State's Exhibit
10 No. 22. I believe I may have already asked this
11 but is this something you received from Sergeant
12 Dennis Gafford; is that correct?

13 A. Yes, sir.

14 Q. And can you describe to the jury what
15 exactly that exhibit is, No. 22?

16 A. It's a piece of cotton gauze that has
17 been taken off of a Q-tip and had been soaked in
18 something.

19 Q. Okay. And is it placed in some kind of
20 container?

21 A. Yes, sir.

22 Q. Are there any markings on that container?

23 A. Yes, sir, there are.

24 Q. After you received that container and
25 the cotton type material from Sergeant Gafford,

1 what did you do with the cotton swab type material?

2 A. I placed it into solution; that is, I
3 soaked onto it distilled water and attempted to
4 wash off any secretions that may be on that cotton
5 gauze.

6 Q. Okay. Were you looking for anything in
7 particular by doing that test?

8 A. Yes, sir, I was.

9 Q. What were you looking for?

10 A. I was looking for semen. I was looking
11 for secretions that may indeed be semen.

12 Q. Did you find any?

13 A. Yes, sir.

14 Q. Were you able to determine the blood
15 type of the person who would have deposited that
16 semen?

17 A. No, sir, I was not.

18 Q. Is there a reason why you were unable to
19 make a determination of the blood type?

20 A. Yes, sir.

21 Q. What is that?

22 A. It is my opinion that on that particular
23 cotton gauze, that was not enough of the semen in
24 order for me to complete a true and accurate test
25 of the substances there.

1 Q. So, the most you can say about that
2 piece of cotton is that it does contain semen, but
3 you do not have a sufficient sample to do any
4 blood comparisons?

5 A. That's correct.

6 Q. So, it wouldn't do any good to obtain a
7 blood sample from anybody else because there would
8 be nothing on that cotton swab to compare it to?

9 A. That's correct.

10 Q. In addition to the test that you
11 performed on that cotton swab, have you also
12 conducted some examinations of some exhibits which
13 have been laid on the table here, State's Exhibit
14 No. 16, a pair of blue jeans; and No. 19, a blue
15 shirt?

16 A. Yes, sir.

17 Q. And what did you do with the blue jeans,
18 first?

19 A. I used a chemical reagent that would
20 enhance and cause a fluorescence of any blood or
21 possible blood that was detected or placed on that
22 pair of blue jeans.

23 Q. Now, I note on these blue jeans there's
24 some holes that appear to be cut out of the blue
25 jeans. I'm holding the blue jeans up for the jury

1 to see and for you to see, also. Do you know how
2 these holes came to be in these jeans?

3 A. Yes, I do.

4 Q. How did they come to be there?

5 A. I put those in there myself.

6 Q. Why did you cut these holes out of these
7 jeans?

8 A. Again, I was attempting to do secondary
9 testing in those substances that I got a positive
10 reaction for the chemical that I used.

11 Q. When you tested the jeans the first time,
12 did you get any reaction?

13 A. Yes, sir.

14 Q. What was that reaction?

15 A. I got a positive reaction for the
16 presence of blood.

17 Q. Okay. Does the test that you use
18 provide you with sufficient information to say
19 what kind of blood that was?

20 A. No, sir.

21 Q. Could you even distinguish whether it
22 was human blood or animal blood?

23 A. No, sir, I could not.

24 Q. The best you can say through the test is
25 that there was some kind of blood on the jeans?

1 A. There was an indication that blood was
2 present on these blue jeans.

3 Q. Did you attempt, by cutting out those
4 little spots, to do further testing on it, to
5 develop a blood type or something like that?

6 A. Yes, sir.

7 Q. Was there sufficient sample to develop a
8 blood type?

9 A. No, sir, there was not.

10 Q. Did you do any similar testing on the
11 blue shirt, which is here on the table before me
12 and which is marked as State's Exhibit No. 19?

13 A. Yes, sir.

14 Q. What test did you perform on this
15 exhibit?

16 A. I again used the chemical reagent to
17 react with the area that was positive or that gave
18 an indication that blood was present.

19 Q. Okay. Now, on this blue shirt there
20 appears to have been a magic marker or circle
21 drawn or something on here. Do you know what that
22 is?

23 A. Yes, sir.

24 Q. What is that?

25 A. That is the area that I reacted my

1 chemical with, that gave me a positive reaction
2 for the presence of blood.

-3 Q. And again, is that test sufficient for
4 you to be able to give an opinion as to whether or
5 not that blood is human or animal blood?

-6 A. No, sir, it is not.

7 Q. It merely tells you there was some blood
8 on that shirt?

9 A. That's correct.

10 Q. Again, was there sufficient sample for
11 you to do any further evaluation to determine
12 blood type or something of that nature?

13 A. No, sir, there was not.

• 14 Q. A few moments ago, did you also perform
15 another blood test here in the courtroom?

• 16 A. Yes, sir, I did.

• 17 Q. What did you perform that test on?

• 18 A. A hunting knife.

19 Q. Is that what is before you on the
20 counter?

21 A. Yes, sir.

22 Q. Are you referring to what has been
23 marked as State's Exhibit No. 20?

24 A. Yes, sir.

25 Q. And what test did you perform on State's

1 Exhibit No. 20?

2 A. I used a chemical reaction to detect
3 whether or not substances that appeared to be
4 blood indeed gave the reactions for blood.

5 Q. As a result of your test on State's
6 Exhibit 20, did you get any indication as to
7 whether or not there was a presence of blood on
8 the knife?

9 A. Yes, sir, I did.

10 Q. What was that indication?

11 A. It gave the positive indication that
12 blood, indeed, was present on the shank and the
13 blade portion of the knife.

14 Q. Now, again, Mr. Bolding, can you tell
15 the jury -- can you tell the jury from your test,
16 whether or not the indication is it was human
17 blood or animal blood or just that it was blood
18 present?

19 A. I cannot say what species of creature
20 left that blood there.

21 MR. NOLL: Pass the witness, Your Honor.

22 THE COURT: Mr. McCullough.

23

24

25

1 CROSS EXAMINATION

2
3 BY MR. McCULLOUGH:

4 Q. Was the test that you performed on the
5 shirt, the jeans, and the knife all the same test
6 using the same reagents?

7 A. No, sir, they were not.

8 Q. What was the difference?

9 A. The differences that the -- the
10 chemicals, indeed, were different from the blue
11 jeans and the shirt. I use a fluorescent reagent
12 that reacts only in dark. And this -- the test on
13 the knife had to be performed in the courtroom in
14 light. So, I used a color change reaction test.

15 Q. All right. I see you have two little
16 bottles sitting in front of you. Are those the
17 reagents that you used to test the knife?

18 A. Yes, sir.

19 Q. What are they?

20 A. One is O-tolidine. The other is
21 hydrogen peroxide.

22 Q. We all know hydrogen peroxide is a
23 common chemical that's available in drug stores
24 and whatnot. What's the other one?

25 A. O-tolidine is a chemical dye.

1 Q. Does it have any other uses other than
2 the tests you performed?

3 A. In our laboratory, no, sir.

4 Q. You keep it only for that purpose?

5 A. Yes, sir.

6 Q. Do you carry those little bottles around
7 with you everywhere?

8 A. No, sir, I do not.

9 Q. How did they get there today?

10 A. One of the serologists from the crime
11 lab brought it up approximately 15, 20 minutes ago.

12 Q. Does the size of the holes you cut in
13 these jeans have any relationship to the size of
14 the specimen?

15 A. They do roughly correlate to the size of
16 the reaction that I got.

17 Q. Of the area that seemed to give a
18 reaction?

19 A. That's correct.

20 Q. And on the shirt, you say -- you've
21 drawn a what? A circle about eight inches in
22 diameter here that includes the flap of the left
23 pocket?

24 A. Yes, sir.

25 Q. Were you saying this entire area gave a

1 reaction?

2 A. No, sir.

3 Q. But somewhere within that area you got a
4 reaction?

5 A. Yes, sir.

6 Q. Can you show us what part of the knife
7 you tested and got a reaction?

8 A. I tested the blade portion here on both
9 sides, I tested the shank of the blade here on
10 both sides.

11 Q. Okay. Can you tell me whether or not
12 that handle is leather or not?

13 A. I don't think it is.

14 Q. Okay. All right. What would it take to
15 find out?

16 A. Whether it was leather?

17 Q. Uh-huh.

18 A. Usually those knives are -- it's a wood
19 or cork or a material like that, rather than
20 leather. Again, it appears not to be leather to
21 me.

22 Q. Now, is there anything about the tests
23 you ran, either on the knife or on the clothing,
24 that gives any indication how long the stains that --
25 or the materials that you tested for had been on

1 there?

2 A. No, sir.

3 Q. Could it have been for years?

4 A. I would imagine that's possible, yes,
5 sir.

6 Q. And we already know that if it was blood,
7 it could have been a rabbit or anything else that
8 has blood?

9 A. The test is universal in that it did not
10 test for species.

11 Q. Now, I believe in our previous
12 conversation you told me that these reactions,
13 there are other substances other than blood that
14 will also give the same reaction.

15 A. Yes, sir, I did.

16 Q. What are those other substances?

17 A. They are vegetable peroxides that will
18 give a reaction for the -- with the chemical I
19 used on the knife.

20 Q. Vegetable peroxides?

21 A. Yes, sir. Radishes --

22 Q. That's something that occurs naturally
23 in vegetables?

24 A. Right. Radishes, carrots and beets, and
25 those things that have those kind of chemicals.

1 Q. Could you chop up a radish with that
2 knife and test it and get that same reaction?

3 A. You would get a reaction. It would not
4 necessarily be the same reaction.

5 Q. Are there other substances other than
6 blood that would give a reaction to the test you
7 ran on these clothes?

8 A. Yes, sir.

9 Q. What might some of those be?

10 A. Again, they would be other bodily
11 products that do cause an enzymatic fluorescence;
12 that is, an enzymatic light color change in the --

13 Q. Sweat?

14 A. No, sir. Cerebrospinal fluid,
15 intestinal contents or those things that are
16 associated with it.

17 Q. You mean if somebody threw up on these
18 clothes and then you tested them, you could get a
19 positive reaction?

20 A. No, sir, those are stomach contents.
21 Intestinal contents are those enzymes that are
22 associated with intestines.

23 Q. Have you tested anything else --
24 withdraw that question and ask you this question.
25 How long did it take you to test that knife?

1 A. Several minutes.

2 Q. And you used only these two reagent
3 bottles that have eye droppers in them that are
4 about three inches tall and an inch in diameter?

5 A. Yes, sir.

6 Q. And a couple of pieces of filter paper?

7 A. Yes, sir.

8 Q. The test you run there, that's kind of a
9 screening test, right? To locate possible blood
10 stains or blood samples so that it can be further
11 tested by more refined means?

12 A. That's correct.

13 Q. The test you ran on the clothes and on
14 the knife both would fit in the category of
15 inconclusive tests for blood.

16 A. As far as they are nonconfirmatory tests,
17 if that is the question, yes, sir.

18 Q. Did you run any tests on the knife
19 sheath?

20 A. No, sir, I did not.

21 Q. Well, I'll show you what's been marked
22 and admitted into evidence as State's Exhibit No.
23 21.

24 MR. McCULLOUGH: Let the record reflect
25 the witness has inspected State's Exhibit No. 21,

1 which is a knife sheath.

2 BY MR. McCULLOUGH:

3 Q. Looking at State's Exhibit No. 20 with
4 the naked eye, you can't see any blood, can you?

5 A. That's correct.

6 Q. If somebody killed and butchered a
7 rabbit with this knife two or three years ago,
8 wiped it off, stuck it back in this sheath, it
9 could leave traces of blood inside the sheath?

10 A. That's possible.

11 Q. So, no matter what you did with this
12 knife, every time you stuck it back in that sheath,
13 you would get the blood contaminated again?

14 A. That's correct.

15 Q. So, that knife could have as many
16 different kinds of blood on it as times as it's
17 been used?

18 A. If it were not cleaned properly, yeah,
19 that's possible.

20 Q. What all do you have to do to get all
21 the blood off something like that knife so that
22 you wouldn't get a reaction with the test that you
23 ran there?

24 A. You would have to rinse it with water
25 very thoroughly and that would get a sufficient

1 amount of blood off that. It would not be
2 detected.

3 Q. Well, all right. I want you -- if you --
4 is there anything you could do to the handle of
5 this knife to determine whether or not it's a
6 porous material-like leather? I mean, like, could
7 you make a cut or something on there so that you
8 could see the material?

9 A. Again, I suppose you could but --

10 Q. Would you look at that knife?

11 A. (Witness complies.)

12 Q. It appears to have some leather, some
13 hide or --

14 A. Yeah. Something porous?

15 Q. Yes, sir.

16 A. So, porous means that it would absorb
17 water?

18 A. That's correct.

19 Q. And it would get wet?

20 A. It would.

21 Q. And being leather, it would stay wet for
22 a long time, wouldn't it?

23 A. If it were leather, a hide would stay
24 wet, yes, sir.

25 Q. So, in order to clean that knife up with

1 water, it's almost impossible to not get that
2 leather handle wet.

3 A. That's quite subjective, sir.

4 Q. Well, okay. The hardest place to clean
5 blood off any knife would be down here by the
6 guard?

7 A. Yes, sir.

8 Q. In order to get that clean, it's going
9 to be almost impossible to not get whatever you're
10 cleaning it with over on the handle?

11 A. It would be very difficult to do that
12 but it's possible.

13 Q. As a matter of fact, right around here
14 by this guard is going to be about the first place
15 you look for blood; isn't it?

16 A. It would be the first place to look.

17 Q. Because it's the hardest place to get it
18 off.

19 A. Yes, sir.

20 Q. Okay. You tested that knife about 30
21 minutes ago.

22 A. Yes, sir.

23 Q. When did you perform the examination of
24 the jeans and the shirt?

25 A. On Friday.

1 Q. This is Tuesday. You mean the last
2 Friday?

3 A. Yes, sir. I think it was the the 28th
4 of April.

5 Q. What time of day?

6 A. As I recall, it was just after lunch,
7 around 1:30.

8 Q. When did you first get a request to
9 examine these clothes and that knife?

10 A. I think earlier on in the week.

11 Q. Could you be more precise?

12 A. I have no records to -- I don't -- I
13 don't recall exactly what time or what day it was
14 that we requested to analyze it.

15 Q. Well, the reason that swab was submitted
16 to you was for the very purpose of getting a blood
17 type off of it if possible?

18 A. Yes, sir.

19 Q. So, that procedure of taking a swab
20 sample that size does sometimes work. You
21 frequently do get a sufficient sample size to type?

22 A. Yes, sir.

23 Q. Well, when did you do the serology on
24 that swab?

25 A. It was begun on the 25th.

1 Q. Of --
2 A. April.
3 Q. 1989?
4 A. Yes, sir.
5 Q. Would it have helped any if it had been
6 done back in October of 1988?
7 A. In my opinion?
8 Q. Yes.
9 A. No, sir.
10 Q. Is it possible?
11 A. It's quite unlikely, in my opinion.
12 Q. I think we've already established, but
13 one more time, had you gotten a sufficient sample
14 to type, all you could have said is it was
15 consistent with a person of that blood type
16 leaving that deposit?
17 A. That's correct.
18 Q. But it could have excluded anyone with a
19 different blood type from leaving that deposit?
20 A. That's possible, yes, sir.
21 Q. So, the value of that test would
22 primarily be of interest to the defense to exclude
23 their client as opposed to the prosecutor, to
24 conclusively show that it was another -- was the
25 defendant, right?

1 A. I would imagine to both sides, both
2 counsel, it would be quite valuable information.

3 Q. What I'm saying is, if it's possible to --
4 if the sample had been large enough -- we're not
5 talking about large here. We're talking about
6 concentration, right?

7 A. Yes, sir.

8 Q. Had there been sufficient concentration
9 of semen in that swab, it's possible that could
10 have been proof that this man didn't leave that
11 sample?

12 A. That's possible, yes, sir.

13 Q. And that test -- when was it requested?

14 A. I received the sample on April 24th, 1989.

15 Q. And you didn't receive any samples of
16 blood, hair, urine or semen from Preston Hughes,
17 III, to compare to anything, did you?

18 A. No, sir, I did not.

19 MR. McCULLOUGH: Pass the witness.

20

21 REDIRECT EXAMINATION

22

23 BY MR. NOLL:

24 Q. Who requested you to do these tests?

25 A. Mr. Chuck Noll.

1 Q. Me, right?

2 A. Yes, sir.

3 Q. Mr. McCullough didn't ask you to do
4 these tests, did he?

5 A. No, sir.

6 MR. NOLL: Nothing further, Your Honor.

7

8 RE CROSS EXAMINATION

9

10 BY MR. McCULLOUGH:

11 Q. Do you work for me?

12 A. No, sir, I do not.

13 Q. Who pays your salary?

14 A. The City of Houston.

15 MR. McCULLOUGH: Thank you.

16

17 FURTHER REDIRECT EXAMINATION

18

19 BY MR. NOLL:

20 Q. Do I pay your salary, sir?

21 A. No, sir, you do not.

22 Q. Do I work for the City of Houston?

23 A. No, sir, you do not.

24 Q. In fact, if the defense attorney had
25 requested a test from you through order of the

1 Court, you would have performed that test,
2 wouldn't you?

3 A. Yes, sir.

4 MR. McCULLOUGH: Object to the form of
5 the question.

6 THE COURT: Sustained.

7 BY MR. NOLL:

8 Q. Have you in the past performed various
9 tests that were conducted at the request of the
10 defendant?

11 A. Yes, sir.

12 Q. The presence of semen on the swab,
13 assuming the swab had been made from the vagina of
14 a woman, would that indicate sexual intercourse
15 had occurred?

16 A. Yes.

17 MR. NOLL: Nothing further, Your
18 Honor.

19

20 FURTHER RECROSS EXAMINATION

21

22 BY MR. McCULLOUGH:

23 Q. Do I understand y'all take in outside
24 work over there?

25 A. No, sir, we do not.

1 Q. I mean, I couldn't bring you a sample
2 off the street and ask you to perform a test on it
3 and be willing to pay you \$12 an hour to get you
4 to do it, could I?

5 A. No, sir, you could not.

6 Q. In order to get you to do a test for
7 me, I would have to get the judge to get you to do
8 it.

9 A. Not necessarily a court order, but an
10 agreement between the State and defense.

11 Q. You would do it for me if Mr. Noll
12 agreed for you to?

13 A. If there was a consent on both behalfs,
14 I would do the testing.

15 Q. But I don't have to agree to nothing for
16 you to do it for him?

17 A. That's correct.

18 MR. McCULLOUGH: Pass the witness.

19 MR. NOLL: Nothing further, Your Honor.

20 THE COURT: May this witness be
21 excused?

22 MR. NOLL: We ask he be excused and
23 allowed to return to his duties, Your Honor.

24 THE COURT: Thank you, Mr. Bolding. You
25 may be excused to return to your duties. Call

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your next.

MR. NOLL: Dr. Jordan, Your Honor.

(Witness sworn.)

THE COURT: You may proceed.

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ROBERT JORDAN,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Would you please state your name to the members of the jury and tell them what you do for a living.

A. Dr. Robert Jordan, and I'm an assistant medical examiner for Harris County.

Q. Dr. Jordan, how long have you worked for the medical examiner's office?

A. Seven years.

Q. And what is your position at the medical examiner's office?

A. I'm an assistant medical examiner.

Q. And do you have any training which prepares you for that position?

A. I received a doctor of medicine degree, had four years of pathology residency and am a board certified forensic pathologist.

Q. Other than formal educational training, have you had any, for want of a better description,

1 on-the-job training in forensic pathology?

2 A. Yes, sir.

3 Q. Could you describe that to the members
4 of the jury?

5 A. As an assistant medical examiner for
6 Harris County, I have done a number of autopsies
7 on various decedents of Harris County.

8 Q. And can you tell the members of the jury
9 under what circumstances autopsies are performed
10 here in Harris County, Texas?

11 A. By statute, anyone who dies of unusual
12 causes, including accidents, suicides, homicides,
13 without medical attention or who was in a hospital
14 for less than 24 hours, is autopsied.

15 Q. Can you tell the members of the jury
16 what an autopsy is?

17 A. An autopsy is a medical procedure
18 performed on a dead person to determine the cause
19 of death.

20 Q. As they are conducted here in Harris
21 County, Texas, could you just, without reference
22 to any specific autopsy, describe to them how
23 generally an autopsy is performed at the medical
24 examiner's office.

25 A. The first order of business is to

1 examine the body as it is brought into the morgue
2 externally, any clothing on the body is examined
3 and documented and photographs are taken.

4 Q. At the time that the examination of the
5 internal aspects of the body are made, is there a
6 record made of the results of the autopsy,
7 contemporaneous with the examination?

8 A. Yes, sir.

9 Q. On television, they always show a
10 microphone hanging from the ceiling. Is that how
11 you do it here, dictate into a microphone that's
12 hanging?

13 A. Yes, sir, during an autopsy, the
14 findings are dictated into a microphone onto a
15 cassette by a pathologist which is later
16 transcribed and made a permanent record.

17 Q. After the comments of the pathologist
18 are transcribed into report form, is there any
19 overview or review done of that by someone in the
20 medical examiner's office?

21 A. Yes, sir. The pathologist who performed
22 the autopsy has signatory responsibility as well
23 as the chief medical examiner.

24 Q. Who is the chief medical examiner?

25 A. Dr. Joseph Jachimczyk.

1 Q. Does Dr. Jachimczyk review each and
2 every one of the autopsies performed by the
3 pathologists who are assistant medical examiners?

4 A. He does.

5 Q. In the course of performing an autopsy,
6 you mentioned that photographs are taken; is that
7 correct?

8 A. That is correct.

9 Q. Also, in the course of performing the
10 examination of the body, is there a number
11 assigned to that particular examination?

12 A. Yes, sir.

13 Q. And how do you arrive at that number?

14 A. The number assigned to each case is a
15 chronological record of all the cases received by
16 the office and consists of the year and a
17 numerical number assigned each case in order.

18 Q. Is there anything done or any
19 photographs made which would connect or relate the
20 number assigned to a case to the individual upon
21 whom the autopsy is performed?

22 A. Yes, sir.

23 Q. How do you do that?

24 A. A black card is placed on the body
25 bearing the medical examiner's number and a

1 photograph is taken.

2 Q. Are those photographs retained and made
3 a part of your medical examiner's records?

4 A. They are.

5 Q. As a result of having that kind of
6 record, is it then possible several months after
7 that autopsy is performed for an assistant medical
8 examiner, perhaps one who did not even perform the
9 autopsy, to review a written autopsy report and
10 examine those photographs and determine if the
11 written autopsy report is the one done concerning
12 the photograph with the number on it?

13 A. Yes, sir.

14 Q. In fact, you do that on a regular basis?

15 A. Yes, sir.

16 Q. How many autopsies have you performed in
17 your career, Doctor, just a guess?

18 A. Over a seven-year period, approximately
19 500 a year, 3500 autopsies.

20 Q. Let me ask, at my request you brought
21 with you today autopsy reports prepared in Cases
22 No. 88-6084, on Marcell Lee Taylor; and 88-6085,
23 Shandra Charles?

24 A. Yes, sir.

25 Q. Did you actually perform the physical

1 examination or an autopsy procedure on those
2 bodies?

3 A. No, sir.

4 Q. Do you know who actually did the
5 physical examination of the body?

6 MR. McCULLOUGH: Objection, unless he
7 knows of his own knowledge, Your Honor.

8 THE COURT: If he knows.

9 BY MR. NOLL:

10 Q. Do you know?

11 MR. McCULLOUGH: By his own knowledge,
12 for clarification, I mean not from reading the
13 report or some other materials but something he
14 knows from his own knowledge.

15 A. Dr. Vladimir Parungao performed the
16 autopsy.

17 BY MR. NOLL:

18 Q. Is Dr. Parungao in town, today?

19 A. No, sir, he isn't.

20 Q. He's in Washington, DC, I believe; is
21 that correct?

22 A. That is correct.

23 Q. Have you had an opportunity to review
24 the report prepared by Dr. Parungao concerning the
25 autopsies of both Marcell Taylor and LaShandra

1 Charles?

2 A. I have.

3 Q. In reviewing those autopsy reports --
4 okay.

5 MR. McCULLOUGH: Object to him
6 testifying about autopsy reports that he neither
7 prepared or has laid any history predicate, for
8 testifying as to hearsay.

9 THE COURT: That will be sustained.

10 BY MR. NOLL:

11 Q. Are the autopsy reports which you have
12 reviewed ones that are prepared contemporaneously
13 with the performance of the autopsy itself?

14 A. They are.

15 Q. And that's done in the manner you've
16 described to the jury; is that correct?

17 A. Yes, sir.

18 Q. After they are performed, do they
19 reflect information which is known to, say, Dr.
20 Parungao, at the time that he performed the
21 autopsy?

22 MR. McCULLOUGH: Objection, unless he
23 knows of his own knowledge, Your Honor.

24 THE COURT: That will be overruled.

25 A. That is correct.

1 BY MR. NOLL:

2 Q. And are these records things that are
3 later reduced to writing; is that correct?

4 A. Yes, sir.

5 MR. McCULLOUGH: Your Honor, object.
6 He's laid no predicate for how this man knows how
7 things are done. Are we testifying about custom
8 in the office or what was done in this case? It's
9 unclear to me from the testimony.

10 THE COURT: That will be overruled.

11 BY MR. NOLL:

12 Q. In the regular course of business
13 everyday for the last seven years you've worked at
14 the autopsy office out at the medical examiner's
15 office, are autopsy reports subsequently reduced
16 to writing or typed up after they're performed by
17 the doctor?

18 A. Yes, sir.

19 Q. Is that done in the regular course of
20 business out there everyday of the year?

21 A. Yes, sir, it is.

22 Q. Maybe not on Sundays; or is it done on
23 Sundays, too?

24 A. Everyday of the year.

25 Q. Y'all are open all the time?

1 A. That is correct.

2 Q. Now, are those autopsy reports documents
3 which reflect what was known by a doctor, not
4 necessarily Dr. Parungao in a general sense, do
5 they reflect information personally known by that
6 doctor at the time he dictated his report?

7 A. Yes, sir.

8 Q. Are these records, these autopsy reports,
9 kept in the regular course of business of the
10 Harris County Medical Examiner's Office?

11 A. They are.

12 Q. That's what y'all are in the business of
13 doing is preparing these reports concerning cause
14 of death; is that correct?

15 A. That is correct.

16 Q. As an assistant medical examiner, do you
17 have routine care, custody and control of the
18 records kept by your office?

19 A. I do.

20 Q. Did you, at my request, bring those
21 records with you down here today?

22 A. I did.

23 Q. Specifically concerning the Autopsy No.
24 88-6085 and 88-6084?

25 A. Yes, sir.

1 Q. Now, have you reviewed those autopsy
2 reports?

3 A. I have.

4 Q. I realize, of course, you did not
5 personally perform the autopsies. But could you,
6 in reference to Case No. 88-6084, testify
7 concerning the cause of death in that case?

8 A. Yes, sir.

9 MR. McCULLOUGH: Objection, Your Honor,
10 unless he has first-hand knowledge, the records
11 will speak for themselves. Is he going to
12 interpret these reports or what? I would object
13 to his testimony if the records are going to speak
14 for themselves.

15 THE COURT: That will be sustained.

16 MR. McCULLOUGH: We have a matter to
17 take up outside the presence of the jury, Your
18 Honor.

19 THE COURT: Approach the bench.

20 (State's Exhibit Nos. 40
21 through 44 were marked for identification.)

22 (Off the record discussion.)

23 BY MR. NOLL:

24 Q. Dr. Jordan, let me show you what I've
25 marked for identification purposes as State's

1 Exhibit No. 40.

2 A. State's Exhibit No. 40?

3 Q. Don't say what it is. Would you please
4 examine it?

5 A. (Witness complies.)

6 Q. Would you please examine what I have
7 marked as State's Exhibit No. 41?

8 A. (Witness complies.)

9 Q. You examined it?

10 A. Yes, sir.

11 Q. Let me also ask you to examine what I
12 have marked as State's Exhibit Nos. 42, 43 and 44.

13 A. Yes, sir.

14 Q. Okay. Are State's Exhibit Nos. 40 and
15 41 true and correct copies of the autopsy reports
16 prepared by your office in Cases No. 88-6084 and
17 88-6085?

18 A. They are.

19 Q. And the photographs which I have shown
20 you, which are marked as State's Exhibits 42, 43
21 and 44, I believe?

22 A. That is correct.

23 Q. Okay. Are those the photographs which
24 you have previously described, which are taken in
25 the course of or the performance of an autopsy

1 report?

2 A. They are.

3 Q. On those photographs you will note the
4 little board lying on the bodies. Is that the
5 board that you previously described to the members
6 of the jury?

7 MR. McCULLOUGH: Object to testifying
8 from pictures that are not in evidence, Your Honor.

9 THE COURT: That will be overruled. You
10 may lay the predicate, Mr. Noll.

11 BY MR. NOLL:

12 Q. On those boards, do you note numbers?

13 A. The numbers are indicative --

14 Q. Without saying what the numbers are, are
15 there numbers on there?

16 A. Yes, sir.

17 Q. Are those numbers on the type of board
18 you use out there everyday when you perform
19 autopsies?

20 A. That is correct.

21 Q. And the numbers on those boards
22 correspond with the numbers we just mentioned?

23 A. They do.

24 Q. Are these boards placed on a person in
25 the process of determining cause of death, of the

1 autopsy?

2 A. They are.

3 Q. Of course, these photographs are
4 maintained as part of your records out there?

5 A. Yes, sir.

6 Q. They reflect the position of the actual
7 physician performing the autopsy?

8 A. They do.

9 Q. After the photographs are taken, they're
10 maintained as records of your department?

11 A. Yes, sir.

12 Q. Do you have care, custody and control of
13 the records in that department?

14 A. Yes, sir.

15 Q. And, in fact, are supervising medical
16 examiner in this respect, are you not?

17 A. That is correct.

18 MR. NOLL: Your Honor, at this time I
19 would tender to counsel for the defendant State's
20 Exhibits 40, 41, 42, 43 and 44, and move the same
21 into evidence.

22 MR. McCULLOUGH: May I ask the doctor a
23 couple of questions on voir dire?

24 THE COURT: You may.

25

1 VOIR DIRE EXAMINATION

2
3 BY MR. McCULLOUGH:

4 Q. Doctor, referring to Exhibits 42, 43, 44,
5 which are pictures.

6 A. Yes, sir.

7 Q. You were not present when those pictures
8 were taken?

9 A. No, I was not.

10 Q. When was the first time you saw them?

11 A. This morning.

12 Q. Where?

13 A. In my car.

14 Q. Is that where they're kept?

15 A. No, sir.

16 Q. Where did you get them?

17 A. They were given to me by the caretaker
18 of the records at the Harris County Medical
19 Examiner's Office.

20 Q. You don't know where she got them?

21 A. Yes, sir.

22 Q. Did you watch her?

23 A. It's a he.

24 Q. Did you watch him?

25 A. No, sir.

1 Q. Well, so you don't know where they came
2 from?

3 A. Yes, sir.

4 Q. Are you psychic?

5 A. They're kept in a file.

6 Q. A file?

7 A. Yes, sir.

8 Q. What all is in that file?

9 A. The records of the medical examiner's
10 office.

11 Q. Well, is it a file full of pictures or
12 what?

13 A. The files are divided into two sections.
14 The written protocols are kept in one section and
15 the pictures are kept in another.

16 Q. So, the autopsy report and the pictures
17 are not part of the same file?

18 A. They are connected by number only.

19 Q. Since you did not -- do you know where
20 you were on September 27th of 1988 personally?

21 A. I don't recall.

22 Q. You did not watch Dr. Parungao conduct
23 this autopsy?

24 A. No, sir.

25 Q. You did not review it. That was done by

1 Joseph Jachimczyk?

2 A. That is correct.

3 Q. The first time you saw these autopsy
4 reports or these pictures was today?

5 A. Yes, sir.

6 Q. You came down here in a capital murder
7 case today to testify about the cause of death and
8 the first time you ever saw this stuff was this
9 morning?

10 A. That's correct.

11 Q. Since you weren't there when these
12 pictures were taken, you could not possibly say
13 that they fairly and accurately depict what is
14 shown in the picture.

15 A. I can.

16 Q. You can?

17 A. Yes, sir.

18 Q. Can you do that from any picture or does
19 it have to be from the medical examiner's office?

20 A. Medical examiner's office.

21 Q. I couldn't show you just any other
22 picture and you'd know of your own knowledge that
23 it fairly and accurately depicted what was in the
24 picture?

25 A. No, sir.

1 MR. NOLL: Going to object, this exceeds
2 appropriate voir dire at this point.

3 THE COURT: That's sustained.

4 MR. McCULLOUGH: I object to the
5 pictures, I object for the basis that he cannot
6 possibly testify that he knows they fairly and
7 accurately reflect what's shown in them. I object
8 to the predicate, which purports business records
9 predicate, in regard to State's Exhibits 40 and 41,
10 42, 43 and 44, and I object to State's 40 and 41
11 because they are copies.

12 THE COURT: May I have them, Mr.
13 McCullough?

14 MR. McCULLOUGH: I object to the
15 pictures because they are gruesome and would only
16 inflame the minds of the jury and add nothing to
17 the information in the autopsy report.

18 THE COURT: Your objections will be
19 overruled.

20 You may proceed, Mr. Noll.

21 MR. NOLL: Thank you, Your Honor.

22
23
24
25

1 DIRECT EXAMINATION CONTINUED

2
3 BY MR. NOLL:

4 Q. Doctor, based on the report concerning
5 the autopsy of the deceased, Marcell Taylor, do
6 you have or does the report indicate an expert
7 medical opinion as to the cause of death?

8 MR. McCULLOUGH: Objection. The records
9 speak for themselves.

10 THE COURT: That will be overruled.

11 A. Yes, sir.

12 BY MR. NOLL:

13 Q. What was the cause of death of Marcell
14 Taylor?

15 A. The cause of death of Marcell Lee Taylor
16 was a result of a stab wound to the neck through
17 and through.

18 Q. Does the report reflect if any other
19 injuries were sustained by Marcell Taylor?

20 A. Yes, sir.

21 Q. What other injuries does the report
22 reflect?

23 A. In addition to the stab wound to the
24 neck, there was a stab wound to the chest, which
25 was also through and through, a cutting wound to

1 the chest and a cutting wound to the left arm.

2 Q. Does the report indicate the nature of
3 the cutting wound to the neck, the damage caused
4 by that cut?

5 A. There was a stab wound of the neck.

6 Q. Stab wound, I'm sorry.

7 A. And Dr. Parungao described that the
8 wound was caused by an instrument which traveled
9 completely through the neck in a direction of
10 front to back, slightly upwards and slightly to
11 the left. The instrument perforated the common
12 carotid artery, which is a large blood vessel in
13 the neck, and the jugular vein.

14 Q. Does the report indicate an exit wound
15 for that stab wound?

16 A. It does.

17 Q. Where is the exit wound of the stab
18 wound?

19 A. The exit wound of the instrument was
20 located on the back of the neck in line with the
21 entrance wound.

22 Q. Does the report describe what, if any
23 injuries were sustained by the stab wound to the
24 chest?

25 A. Yes, sir.

1 Q. What are those?

2 A. The instrument, again, went entirely
3 through the body, did not enter the chest cavity,
4 and came out the back.

5 Q. Does the track of that stab wound to the
6 chest indicate that the instrument that caused the
7 injury passed through any cartilage or bone?

8 A. Yes, sir.

9 Q. Would you describe that to the members
10 of the jury, please.

11 A. On coming out of the back, the
12 instrument penetrated the scapula, which is the
13 large flat bone, exposing part of the shoulder.

14 Q. Is that the bone which is commonly
15 referred to as the shoulder blade?

16 A. That is correct.

17 Q. If you could explain to the jury, is
18 that a bone or a cartilage? What is that scapula
19 composed of?

20 A. The shoulder blade originally is
21 composed of cartilage, but as one ages, it becomes
22 calcified, ossified, forming true bone, which is
23 much tougher than cartilage.

24 Q. Does the report indicate to you the date
25 of birth of the child, Marcell Taylor?

1 A. It does.

2 Q. What is that?

3 A. Child was three years old and was born
4 April 4th, 1985.

5 Q. So, actually, his birthday would have
6 been -- April 4th of '89 would have been his
7 fourth birthday. So, at the time of September
8 26th of 19 --

9 MR. McCULLOUGH: Object to testimony
10 from the prosecuting attorney, Your Honor.

11 THE COURT: Be sustained.

12 BY MR. NOLL:

13 Q. The child was approximately 3 years old?

14 A. Yes, sir.

15 Q. At that age, could you describe the
16 nature of the scapula, what kind of condition
17 would it be in terms of, as opposed to cartilage
18 to bone, if you know?

19 A. Well, the shoulder blade calcifies from
20 the central portion --

21 MR. McCULLOUGH: Object to this
22 testimony unless he knows of his own knowledge
23 with some certainty what -- as opposed to what it
24 might have been or would have been, as the
25 question was posed.

1 THE COURT: Be overruled.

2 BY MR. NOLL:

3 Q. You may proceed, Doctor.

4 A. Medically, the ossification centers of
5 the scapula usually mature faster in the midpoint
6 than they do peripherally so that the scapula of
7 the 3-year-old child demonstrates some
8 ossification and calcification in the central
9 portion.

10 Q. In layman's terms, would that mean that
11 toward the center it would be calcified and toward
12 the edges it would be more cartilage?

13 A. That is correct.

14 Q. When you say "calcified," what do you
15 mean by that?

16 A. Calcification is the laying down of
17 calcific bone. In other words, cartilage is
18 relatively soft compared to bone. Bone is very
19 hard.

20 MR. McCULLOUGH: Your Honor, object to
21 the relevancy of this anatomy lesson.

22 THE COURT: I'd like to know it myself.

23 MR. NOLL: Your Honor, the knife in this
24 case passed through this child's scapula --

25 THE COURT: You demonstrated that.

1 Let's move along.

2 MR. NOLL: Getting to the degree of
3 force required is what I'm getting at.

4 BY MR. NOLL:

5 Q. Could you describe to the members of the
6 jury what cartilage is like, what consistency, how
7 hard it is, that sort of thing.

8 A. Cartilage has the consistency of a thick
9 sheet of cardboard, such as found in large boxes,
10 packing boxes.

11 Q. As a person ages, that becomes harder;
12 is that correct?

13 A. That is correct.

14 Q. As to the injuries sustained by Marcell
15 Taylor, does the report indicate any other
16 injuries besides those two stab wounds?

17 A. Yes, sir.

18 Q. Could you describe those injuries to the
19 members of the jury?

20 A. There was a cutting wound to the chest
21 which is described in the external examination
22 located on the left upper side measuring 1 inch in
23 length and gaping to a width of 5/16 of an inch.
24 In addition, there was a cutting wound to the left
25 arm which measured one quarter of an inch in

1 length and gaped 3/16 of an inch. The difference
2 between a cutting wound and a stab wound is that
3 cutting wounds are longer than they are deep and
4 stab wounds are deeper than they are long.

5 Q. Did you note any other injuries to the
6 child, Marcell Taylor?

7 A. There were some abrasions, which is a
8 scraping of the superficial skin surrounding the
9 stab and cutting wounds.

10 Q. In the examination of the internal
11 organs of the child, was there detected any other
12 pathology?

13 A. There was no pathology related to
14 natural disease. The only pathology observed was
15 that related to a sharp trauma inflicted by the
16 instrument.

17 Q. And could you tell the members of the
18 jury what we mean by "pathology"?

19 A. The pathology is the study of disease;
20 and during an autopsy, observations are made to
21 make sure there was no natural disease which might
22 have contributed to the death.

23 Q. In layman's terms, does that mean there
24 was no natural causes in the death of this child?

25 A. That is correct.

1 Q. Doctor, moving along to the autopsy
2 report prepared on the body of the young woman in
3 this case, Shandra Charles, having reviewed that
4 report, do you have a medical opinion as to the
5 cause of death of Shandra Charles?

6 A. Yes, sir.

7 Q. What is that?

8 A. LaShandra Charles died as a result of a
9 stab wound to the neck.

10 Q. Could you describe more specifically
11 that stab wound to the neck?

12 A. Yes, sir. There was a stab wound to the
13 left side of the neck located 2 inches to the left
14 of the midline and 8 inches below the top of the
15 head. The instrument perforated the left jugular
16 vein and the left common carotid artery, two of
17 the large vessels in the neck.

18 Q. Is this injury similar to the injury
19 that the child, Marcell Taylor, received?

20 A. That is correct.

21 Q. In fact, the arteries and veins were
22 severed the same as on the child, Marcell Taylor?

23 A. That is correct.

24 Q. Did you note any other stabbing injuries
25 or wounds on Shandra Charles?

1 A. There was a stab wound to the chest.

2 Q. Could you describe that more
3 specifically to the jury?

4 A. Yes, sir.

5 Q. The instrument penetrated the left side
6 of the chest, 1 1/2 inches to the left of the
7 midline and 4 inches below the external notch,
8 which is where the collarbones come together, went
9 into the chest and ended at approximately 4 inches
10 below the entrance; in other words, the instrument
11 penetrated to a depth of 4 inches.

12 Q. Does the report indicate the approximate
13 width of the stabbing wound?

14 A. Yes, sir.

15 Q. What was that?

16 A. The wound gaped up to approximately 1/2
17 an inch in width.

18 Q. Does the report indicate a length of the
19 wound?

20 A. Yes, sir. Wound measured 1 inch in
21 length.

22 Q. And when we say "gaped up to," I believe
23 you said "1/2 inch"?

24 A. That is correct.

25 Q. Does that mean the wound is an inch long

1 but is open, sort of being pushed open, an eighth
2 of an inch? I'm sorry? Half an inch or eighth of
3 an inch?

4 A. Gaped 1/2 an inch.

5 Q. 1/2 inch?

6 A. When a sharp instrument enters the skin
7 and subcutaneous tissues, the edges are pulled
8 apart by the little muscular fibers and collagen
9 fibers in the skin. So, it gapes open.

10 Q. Did you note any other injuries on --
11 not you. Did your report note any other injuries
12 on Shandra Charles?

13 A. No, sir.

14 Q. Doctor, let me show you what has been
15 marked and offered into evidence and admitted into
16 evidence as State's Exhibit No. 20. Would you
17 please examine that knife? I'll give you a
18 yardstick. Would you measure the blade on the
19 knife for me, please.

20 A. State's Exhibit 20 is what is classified
21 as a sharp instrument, a hunting knife, with a
22 blade that measures a little more than 5 1/4
23 inches in length with a width of slightly more
24 than an inch. It is a single-end weapon with a
25 leather --

1 MR. McCULLOUGH: Object to
2 responsiveness, Your Honor.

3 A. -- with a leather --

4 MR. McCULLOUGH: Objection.

5 THE COURT: It will be sustained.

6 BY MR. NOLL:

7 Q. That's all right, Doctor. The blade
8 you've examined and measured?

9 A. Yes, sir.

10 Q. Would an instrument such as that
11 instrument -- or would the injuries that are
12 described in the autopsy report of Shandra Charles
13 and Marcell Taylor -- let me rephrase that. Would
14 that instrument be of a type that would be
15 consistent with the injuries that you've noted in
16 those two autopsy reports?

17 A. It is.

18 Q. You can't say whether it is the knife
19 that was used to cause those injuries, could you?

20 A. No, sir.

21 Q. Is the best you can say is that the
22 injuries would be consistent with such an
23 instrument?

24 MR. McCULLOUGH: Object to leading.

25 THE COURT: Be overruled.

1 A. That is correct.

2 BY MR. NOLL:

3 Q. The injuries sustained by Shandra
4 Charles, is it possible to determine, just from an
5 autopsy report or from performing an autopsy, at
6 specifically what time that injury occurred?

7 A. Within broad limits, yes.

8 Q. Okay. Assuming that the deceased,
9 Shandra Charles, was found at approximately
10 between 11:00 and 11:30, let's say 11:15 in the
11 evening, by the nature of the injuries that she
12 had sustained which you have reviewed in your
13 autopsy report, can you make a determination as to
14 approximately how far back from that time she had
15 sustained those injuries if she was conscious at
16 about 11:15 or 11:30 but died shortly thereafter?

17 A. Within limits, yes, sir.

18 Q. Do you know what time she died?

19 A. No, sir. The record states that she was
20 pronounced dead.

21 Q. Do you know what time she was pronounced
22 dead?

23 A. At 12:58 a.m., on September 27th, 1988.

24 Q. That was at which hospital?

25 A. At Ben Taub General.

1 Q. Does the record indicate she had been
2 transferred from another hospital to Ben Taub?

3 A. According to the record, decedent was
4 picked up by ambulance at the scene and taken to
5 Ben Taub General Hospital.

6 Q. Okay. Can you make any determination
7 from the information you have available to you in
8 your report and if you assume the facts that the
9 deceased was seen alive at approximately 9:30 or
10 10:00 without any injuries and was found with the
11 injuries at about 11:15 or 11:30 and died at that
12 time, is there any way you can determine where in
13 there she was actually stabbed?

14 A. No, sir.

15 MR. McCULLOUGH: Object to the
16 hypothetical not being based on the evidence, Your
17 Honor.

18 THE COURT: Well, that will be sustained.

19 BY MR. NOLL:

20 Q. Let me ask you this, Doctor. Would it
21 have been possible, based on her injuries, for her
22 to have been stabbed as early as 8:30 in the
23 evening on September 26th of 1988, if she died
24 from these injuries at 12:58, I believe you said,
25 in the a.m. on the following day?

1 MR. McCULLOUGH: Object to the question,
2 Your Honor. There's no testimony she died at
3 12:58.

4 THE COURT: That will be overruled.

5 BY MR. NOLL:

6 Q. Can you tell?

7 A. Not with any certainty.

8 Q. Okay. Is it difficult to pinpoint times
9 of injuries and times of death when cutting and
10 stabbing injuries are involved?

11 A. Yes, sir.

12 Q. Is that because -- why is that?

13 A. The determination of the time of death
14 is difficult, at best. With cutting and stabbing
15 injuries, it is even more difficult because one
16 has to consider the loss of blood and people bleed
17 at different rates from different sharp trauma
18 wounds. One cannot be sure, either, of the amount
19 of medical support the decedent received in the
20 interval from injury to death.

21 Q. Would it be possible to give an expert
22 medical opinion in this particular case as to
23 either the time the injury occurred without being
24 there personally at the exact time of death?

25 A. No, sir.

1 MR. NOLL: May I approach the witness,
2 Your Honor?

3 THE COURT: You may.

4 BY MR. NOLL:

5 Q. Let me show you what's been marked as
6 State's Exhibit No. 42. Could you describe to the
7 jury what this is a photograph of?

8 A. State's Exhibit No. 42 is a photograph
9 of the decedent, Marcell Lee Taylor, designated
10 Case No. 88-6084.

11 Q. Does the photograph show the wounds
12 which you have described, including the chest
13 wounds and entry wound of the neck?

14 A. Yes, sir.

15 Q. State's Exhibit No. 43 I will show you
16 now. Does it show and demonstrate the exit wounds
17 on the back and on the back of the neck that you
18 have described?

19 A. Yes, sir.

20 Q. Let me also show you State's Exhibit No.
21 44. And can you describe to the members of the
22 jury what this is a photograph of?

23 A. State's Exhibit No. 44 is a photograph
24 of the decedent, LaShandra Charles, designated
25 88-6085.

1 Q. And does this photograph demonstrate or
2 show the wound to the chest this child received?

3 A. Yes, sir.

4 Q. Does it also show the entry wound at the
5 neck of the woman?

6 A. Yes.

7 Q. Does your report reflect the height and
8 weight of the deceased, Marcell Taylor?

9 A. Yes, sir.

10 Q. What does it reflect?

11 A. The decedent, Marcell Taylor, measured
12 41 inches in length and weighed 39 pounds.

13 Q. And the same question as to Ms. Charles.

14 A. The decedent, LaShandra Charles,
15 measured 65 inches in length and weighed 127
16 pounds.

17 Q. That's 5 foot 5 and --

18 A. Yes.

19 Q. 127 pounds. At the time the autopsy was
20 performed on Ms. Charles, was there any toxicology
21 examination performed?

22 A. Yes, sir.

23 Q. And when I say "toxicology," can you
24 explain to the members of the jury what that means
25 and what to check for?

1 A. Toxicology refers to examinations done
2 on body fluids to determine if there were any
3 drugs present or any unusual substances.

4 Q. Was such examination performed in this
5 case?

6 A. Yes, sir.

7 Q. And what kinds of toxicology were
8 checked?

9 A. The blood and cerebrospinal fluid were
10 examined for alcohol.

11 Q. What was the indication?

12 A. There was none found. Bile was examined
13 for opiates. There was none found. A drug screen
14 performed on bile was negative. A test was
15 performed for P30, which is acid phosphatase, and
16 was found to be positive in vaginal secretions.
17 Acid phosphatase is an enzyme found in male semen.

18 Q. What is the indication, then, if the
19 indication of the toxicology was positive for acid
20 phosphatase? Did I say that right?

21 A. Acid phosphatase.

22 Q. If there is a positive reaction to that,
23 what does that indicate to you?

24 A. There was sexual activity.

25 Q. Was your toxicology such that it would

1 examine the blood type, if possible, from the swab
2 that was made to determine the vaginal toxicology?

3 A. Blood type or typing was not performed
4 as far as I know from reading the record on the
5 oral, rectal or vaginal swabs. Blood group was
6 determined by examination of the decedent's blood
7 and was found to be O positive.

8 Q. After a swab is taken in the course of a
9 performance of an autopsy, is it submitted to your
10 own laboratory toxicology department there in the
11 medical examiner's office?

12 A. Yes, sir.

13 Q. Doctor, let me show you what's been
14 marked for identification as Exhibit No. 22. Can
15 you identify what it is?

16 A. State's Exhibit No. 22 consists of
17 carrier bag with a container labeled "P-30" and
18 "Inhibition" with the Case No. ML88-6085,
19 corresponding to the autopsy on LaShandra Charles.

20 Q. Is it further designated as a vaginal
21 swab?

22 A. Yes, sir.

23 Q. Could you also note on the container
24 itself, State's Exhibit No. 22, are there any
25 markings on that container itself?

1 A. Yes, sir.

2 Q. What are they?

3 A. Marking on the container itself consists
4 of "6085 Vaginal" and the numbers "89-4594."

5 Q. Do the numbers of 6085 correspond to the
6 numbers in the autopsy of Shandra Charles?

7 A. They do.

8 Q. After the swab is taken in the actual
9 performance of the autopsy, is the entire Q-tip
10 saved or you keep that little bitty piece that's
11 inside that container?

12 A. The end of the Q-tip is broken off and
13 placed in the container.

14 Q. You don't keep the whole stick?

15 A. That is correct.

16 Q. This container is sent to your own
17 toxicology lab within the medical examiner's
18 office?

19 A. That is correct.

20 Q. It's kept in the regular course of
21 business in the medical examiner's office?

22 A. Yes, sir.

23 Q. If it's to be further examined by the
24 crime lab, someone has to come and pick it up and
25 take it out to the crime lab; is that correct?

1 A. Yes, sir.

2 MR. NOLL: Your Honor, at this time we
3 would offer into evidence State's Exhibit No. 22.

4 MR. McCULLOUGH: I object to State's
5 Exhibit No. 22. We still don't know where it came
6 from or how it was obtained. May I ask this
7 doctor a couple of questions about it?

8 THE COURT: You may.

9

10 VOIR DIRE EXAMINATION

11

12 BY MR. McCULLOUGH:

13 Q. Doctor, I've already established that
14 you didn't do this autopsy that you're testifying
15 about here.

16 A. That is correct.

17 Q. You didn't take any swabs from Ms.
18 Charles?

19 A. My knowledge is based on established
20 procedure.

21 Q. So, you assume from procedure that swabs
22 were taken?

23 A. That is correct.

24 Q. You can't say that you know anything at
25 all about what's in this little brown bottle

1 marked State's Exhibit No. 22?

2 A. That is correct.

3 Q. And you didn't bring this here today
4 with you, did you?

5 A. No, sir.

6 Q. And you don't know for sure where it
7 came from, do you? You would have to speculate on
8 that, wouldn't you?

9 A. No, sir.

10 Q. Well, you didn't bring it here and you
11 didn't see anybody else bring it here?

12 A. No, sir.

13 MR. McCULLOUGH: I object to State's
14 Exhibit No. 22, Your Honor, no predicate laid for
15 its admission.

16 THE COURT: That will be overruled.
17 State's 22 will be admitted.

18 MR. NOLL: Pass the witness, Your Honor.

19 MR. McCULLOUGH: May we approach the
20 bench?

21 THE COURT: You may.

22

23

24

25

CROSS EXAMINATION

1
2
3 BY MR. McCULLOUGH:

4 Q. You testified from the records that
5 there were numerous stabbing or cutting wounds on
6 these two victims.

7 A. Yes, sir.

8 Q. Some of them were deep and serious and
9 some of them were superficial.

10 A. That is correct.

11 Q. But they all would have caused bleeding?

12 A. Yes, sir.

13 Q. Several of them would have caused
14 copious bleeding?

15 A. Yes, sir.

16 Q. Particularly the ones where an artery
17 was perforated?

18 A. That is correct.

19 Q. Because arteries have pressure on them,
20 they're called spurting wounds, aren't they?

21 A. Yes, sir.

22 Q. You consistently referred to whatever
23 caused these injuries to be an instrument.

24 A. Yes, sir.

25 Q. That's because you don't know what it

1 was.

2 A. That is correct.

3 Q. Could be a sword?

4 A. Yes, sir.

5 Q. Spear?

6 A. Yes, sir.

7 Q. Or anything sharp enough to penetrate
8 the tissue in the way that this was penetrated?

9 A. That is correct.

10 Q. And you've done autopsies on people
11 killed with all of those sort of things, haven't
12 you?

13 A. Yes, sir.

14 Q. Now, is it possible that the instrument,
15 assuming a single instrument was used and used
16 repeatedly, would not have copious amounts of
17 blood on it?

18 A. It would.

19 Q. Would not the hands of the person
20 holding the instrument, assuming it was short
21 enough -- well, assuming it was something that
22 looked like this knife that had a short handle as
23 opposed to a spear that was 5 feet long, would it
24 be possible for the wounds that you described to
25 have been made without blood getting all over the

1 hands and the handle of an instrument shaped like
2 State's Exhibit 20? Bear in mind one of those
3 wounds you described as being 4 1/2 inches deep or
4 something like that.

5 A. Yes, sir.

6 Q. Which, if it were this instrument, would
7 have been almost the entire blade.

8 A. That is correct.

9 Q. All right. Now, that -- would there
10 have -- in the wounds that you have described here,
11 would there have been spurting and splattering of
12 blood?

13 A. Yes, sir.

14 Q. Which would have involved anyone close
15 enough to have used that 5 1/2-inch weapon as
16 opposed to a 6-foot spear.

17 A. That certainly is possible.

18 Q. And you would expect to find that the
19 knife, if one was used, or the instrument used or
20 the clothing worn by the assailant would have
21 generous samples of human blood on them?

22 A. Not necessarily.

23 Q. You wouldn't think somebody would --
24 well, as a matter of fact, I believe from your
25 testimony, wouldn't it be right to assume that the

1 child, Marcell Taylor, bled to death?

2 A. Yes, sir.

3 Q. And probably from a stab wound in the
4 throat that cut the jugular vein and the carotid
5 artery, both very large blood vessels; is that
6 correct?

7 A. Yes, sir.

8 Q. And through and through wound in the
9 neck? And likewise, the girl, LaShandra Charles
10 probably bled to death, too, from that wound in
11 the neck, too, didn't she?

12 A. That is correct.

13 Q. The same blood that they lost that cost
14 them their lives would have been deposited on the
15 instrument that caused it and on the person who
16 held the instrument?

17 A. That is correct.

18 Q. Is it possible to describe how large a
19 sample of blood it takes to do blood typing?

20 A. Usually about 5 millileters.

21 Q. Would that exclude them from ever being
22 able to type dried blood?

23 A. Dried blood can be typed, yes, sir.

24 Q. How much dried blood would it take to
25 get a blood type?

1 A. Usually about 10, 15 grams.

2 Q. Would you have to dissolve it in
3 something in order to do the blood typing?

4 A. Yes, sir.

5 Q. 5 millileters. How much is that? Is
6 that one of those test tubes or one of those tubes
7 that they take blood samples with or give me some
8 idea how big 5 millileters is.

9 A. Well, 5 millileters would be, I'd say, a
10 little more than a teaspoonful.

11 Q. Dried blood would take how many grams or
12 milligrams, did you say?

13 A. 10 to 15.

14 Q. Grams?

15 A. Yes, sir.

16 MR. McCULLOUGH: Pass the witness.

17 MR. NOLL: Just a couple of questions.

18

19 REDIRECT EXAMINATION

20

21 BY MR. NOLL:

22 Q. Doctor, let me clear up. If someone,
23 for example, were to use a knife similar to the
24 one you examined in this case, would it be
25 possible for the person who used that knife and

1 stabbed someone, causing the injuries such as you
2 described to Shandra Charles and Marcell Taylor,
3 to not be covered in blood?

4 A. Yes, sir.

5 Q. Depends on how the injuries occurred; is
6 that correct?

7 A. That is correct.

8 Q. And it could have been that a person
9 could stab someone and cause the injuries, such as
10 Marcell and Shandra suffered, and have no blood on
11 their person?

12 A. That is correct.

13 Q. At the same time, depending on how else
14 it occurred, they might have been covered with
15 blood?

16 A. Yes, sir.

17 Q. We don't know from this case or can you
18 tell anything from your medical knowledge as to
19 whether or not the person in this case who
20 committed this offense would have been covered in
21 blood or had no blood at all?

22 A. No, I cannot.

23 Q. Without being there to see how the
24 killing was done?

25 A. That is correct.

1 Q. Just because someone has a substantial
2 artery and vein cut, does that mean there's going
3 to be blood gushing from that wound?

4 A. Yes, sir, but to give you an example, I
5 could stab somebody with a weapon like that and
6 have gloves on, I wouldn't have any blood on my
7 hands at all.

8 Q. Likewise, depending on how far away from
9 him -- depending on the distance, there may be
10 some blood or no blood. Is that fair to say?

11 A. That is correct.

12 Q. When we say a gushing, bleeding wound,
13 are we talking about something that is shooting
14 out away from the body or is it something that's
15 oozing out of the body? Is there a difference in
16 your mind?

17 A. Well, arterial pressure is considerably
18 higher than venous pressure; and usually when an
19 artery is severed, it is followed by spurting of
20 blood and it can go some distance.

21 Q. Now, would the angle of the head, given
22 the nature of these wounds, have anything to do
23 with where it spurting?

24 A. Certainly.

25 Q. For example, if Shandra Charles had been

1 wearing these white shorts at the time she was
2 stabbed, depending on the angle that the blood was
3 going, there may not have been any blood on these
4 shorts, could there?

5 A. That is correct.

6 Q. Even though she was stabbed right here
7 in the neck and right here in the chest, her
8 shorts could still have no evidence of blood on
9 them?

10 A. That is correct.

11 Q. Certainly if her shorts could have no
12 evidence of blood, the man who or woman who
13 stabbed her might have had no evidence of blood on
14 them; is that correct?

15 A. Yes, sir.

16 Q. Depends on how it happens; is that right,
17 Doctor?

18 A. Yes, sir.

19 MR. McCULLOUGH: Is this argument? I
20 object to the form of the question.

21 MR. NOLL: Nothing further, Your Honor.

22 THE COURT: Recross.

23

24

25

1 a Nomex suit with a helmet and you take -- and I'm
2 covered with blood and you take that helmet and
3 Nomex suit and gloves away, I haven't got a drop
4 on me.

5 Q. That's not the question, is it? Because
6 the question would be it got on the clothing, the
7 rain coat and the helmet. That's what I asked you,
8 wasn't it?

9 A. Again, the position of the assailant and
10 the type of wound and how it's afflicted have a
11 lot to do with that.

12 Q. All right. It's sure going to come out
13 the hole the instrument went in, isn't it?

14 A. Yes, sir.

15 Q. It's going to start bleeding immediately
16 as soon as that artery or vessel is cut?

17 A. That is correct.

18 Q. You cannot pull that knife out or sword
19 or spear or bamboo pole, whatever it is, fast
20 enough to keep from getting blood on the
21 instrument.

22 A. Suppose the knife isn't pulled out?

23 Q. I guess it would have still been in
24 there -- is it still in the autopsy report -- it's
25 still in the body?

1 THE COURT: Be back at a quarter of 2:00.

2 (Lunch recess.)

3 MR. McCULLOUGH: We would offer to
4 stipulate that the people in these pictures are
5 the people named in the indictment.

6 THE COURT: What says the State? Any
7 reason to do that?

8 MR. NOLL: We appreciate the offer, Your
9 Honor, but we would decline.

10 THE COURT: Very well.

11 MR. McCULLOUGH: For the record, we
12 would offer to stipulate that the bodies depicted
13 in State's Exhibits 42, 43 and 44 are the same
14 individuals named in the indictment and we offer
15 to do that primarily to spare the family members
16 of those folks who are fixing to be called in here
17 to make that identification from going through
18 that. Seems like a needless exercise to put them
19 through that. It also, having these grieving
20 family members in here, is prejudicial to the
21 defendant and the prosecutor just told us he
22 refuses to accept that stipulation, which
23 reinforces my belief, and I would urge on the
24 Court that the only reason they're doing this is
25 for the inflammatory value of it, since we're

1 offering to prove it for them without putting the
2 witnesses on.

3 MR. NOLL: If I may respond, Your Honor.
4 The jury, as I understand it, is in the jury room
5 ready to proceed. The stipulation has not been
6 reduced to writing, which would be required by law
7 as a stipulation of fact in this case. The
8 witness is here ready to proceed. She's been, up
9 until this very moment, fully expecting to testify.
10 There will be no alleviation of her trauma by a
11 stipulation at this late hour. We're ready to
12 proceed at this point to the testimony. She's
13 also got other matters to testify to concerning
14 her daughter. We save no time, from the point of
15 view of economy, and obtain no purpose by
16 stipulating at this point, especially since
17 there's no stipulation prepared.

18 THE COURT: Very well. Bring in the
19 jury, please.

20 MR. NOLL: Our next witness will be Ms.
21 Charles. Should I bring her in?

22 THE COURT: Please.

23 Has this witness been sworn?

24 MR. NOLL: I believe she has, Your Honor.
25 Ms. Charles, were you sworn the other day when you

1 came in?

2 THE WITNESS: (Shakes head negatively.)

3 (Witness sworn.)

4 MR. NOLL: May I proceed, Your Honor?

5 THE COURT: You may.

6 (Jury in.)

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CYNTHIA CHARLES,
was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Ma'am, would you please state your name
for the members of the jury? Remember to keep
voice up so that everyone, even the gentleman in
the back chair, can hear you, all right?

A. Cynthia Charles.

Q. You need a moment? Can you get it
together here just a little bit?

A. Cynthia Charles.

Q. Ms. Charles, did you have a daughter by
the name of Shandra Charles?

A. Yes, sir.

Q. Did she also go by the names of Shawn
and LaShandra?

A. Yes, sir.

Q. And do you have a sister, also?

A. Yes, sir.

Q. And what is her name?

A. Sharon Brown.

1 Q. And did Ms. Brown also have a child?
2 A. Yes, sir.
3 Q. What is her child's name?
4 A. Marcell Taylor.
5 Q. Okay. Keep your voice up so this
6 gentleman can hear.
7 A. Marcell Taylor.
8 Q. Do you know where your sister Sharon
9 Brown is today?
10 A. She is in the hospital.
11 Q. Let me direct your attention back to
12 September 27th of 1988, okay?
13 A. (Nods head affirmatively.)
14 Q. Do you remember that day?
15 A. (Nods head affirmatively.)
16 Q. The day before, on the 26th of September
17 of 1988, had you and your sister been visiting at
18 your apartment?
19 A. Yes, sir.
20 Q. Where was your apartment at that time?
21 A. In The Waverly off of Hayes Road.
22 Q. Okay. Try to keep your voice up.
23 A. The Waverly off of Hayes Road.
24 Q. On that day, was your sister's son with
25 her?

1 A. Yes, sir.

2 Q. Where was your daughter, Shandra, that
3 day?

4 A. She was with Evelyn and they came to the
5 house from school.

6 Q. Okay. When you said "Evelyn," that is
7 Evelyn Brown?

8 A. Yes, sir.

9 Q. Who is Evelyn Brown?

10 A. She's Shandra best friend.

11 Q. That weekend before the 27th or the 26th
12 of September, had Shandra been spending the
13 weekend with her friend, Evelyn Brown?

14 A. Yes, sir.

15 Q. When they came to your apartment over on
16 Hayes Road, were they alone or was anybody else
17 with them?

18 A. Nobody else was with them.

19 Q. When they came -- were you at your
20 apartment over there or somebody else's apartment?

21 A. I had left my apartment and went over to
22 Clifton's house to do her hair.

23 Q. I'm sorry. Keep your voice up. I can't
24 hear you.

25 A. I had left from my house and went over

1 to Clifton's house to do her hair.

2 Q. Clifton is a friend of yours?

3 A. Uh-huh.

4 Q. When you say do your hair, what do you
5 mean by that?

6 A. She wanted it braided.

7 Q. Is that similar to the way you're
8 wearing your hair?

9 A. Yes, sir.

10 Q. Did your daughter Shandra also have her
11 hair braided?

12 A. Yes, sir.

13 Q. Did you braid her hair for her?

14 A. Yes, sir.

15 Q. Did Shandra and her friend Evelyn come
16 to your friend's apartment that evening?

17 A. Yes, sir.

18 Q. Do you know where they went after they
19 left your friend's apartment?

20 A. She went to take Evelyn to try to get a
21 way home.

22 Q. Did anyone leave the apartment with
23 Shandra and Evelyn?

24 A. Marcell. He was crying to go.

25 Q. After they left, did there come a point

1 then later in the evening when you became
2 concerned because they had not returned?

3 A. Yes, sir.

4 Q. What did you do after you became
5 concerned after her failure to return?

6 A. I went out looking for them.

7 Q. Who all went looking?

8 A. Me and my sister.

9 Q. Ms. Sharon Brown?

10 A. (Nods head affirmatively.)

11 Q. Did anyone go with you?

12 A. No, sir.

13 Q. Where did you go to look?

14 A. Over in the apartments where she was
15 supposed to went to try to get Evelyn a way home.

16 Q. Is that the Lakehurst apartments?

17 A. (Nods head affirmatively.)

18 Q. Did you find her?

19 A. No. I asked the police officer had he
20 seen her and he asked me how did they look, and I
21 described them and he told me to come into the
22 office; and they kept us there till homicide got
23 there.

24 Q. Did someone eventually come down from
25 the homicide office and talk to you there at the

1 Lakehurst apartments?

2 A. Later on that morning. We had to sit
3 there till in the morning.

4 Q. You were there, you and your sister
5 Sharon; is that correct?

6 A. (Nods head affirmatively.)

7 Q. Do you recall who the officer was that
8 came down from the homicide office to talk to you?

9 A. I don't know her name, but I know her
10 when I see her.

11 Q. Did you see her here yesterday?

12 A. Uh-huh.

13 Q. Do you remember how she was dressed
14 yesterday?

15 A. She had a black and yellow skirt on.

16 Q. I'm sorry. You have to talk out.

17 A. A black and yellow skirt on.

18 Q. Would that have been Sergeant Ross?

19 A. I think that's her name.

20 Q. Lady officer?

21 A. (Nods head affirmatively.)

22 Q. When Sergeant Ross came out to the
23 Lakehurst apartments that morning, what did you
24 find out?

25 A. I found out that they were dead.

1 MR. NOLL: May I approach the witness,
2 Your Honor?

3 THE COURT: You may.

4 BY MR. NOLL:

5 Q. Ms. Charles, I'm going to ask you to
6 look at a photograph and tell me if you can
7 identify the person in this photograph, all right?
8 Let me show you what's been marked as State's
9 Exhibit No. 44. Do you know the person in this
10 photograph?

11 A. My daughter.

12 Q. What was your daughter's name in her
13 lifetime?

14 A. Shandra.

15 Q. You have to speak up now.

16 A. Shandra.

17 Q. What was her last name?

18 A. Charles.

19 Q. Let me show you what's been marked as
20 State's Exhibit No. 42 and ask you if you knew the
21 child in this photograph.

22 A. Marcell Taylor.

23 Q. Your nephew, Marcell Taylor?

24 A. Yes, sir.

25 Q. When your daughter left your apartment

1 that evening, was she wearing any glasses?

2 A. Yes, sir.

3 Q. Did she need prescription glasses?

4 A. No.

5 Q. Were these just fashion glasses?

6 A. Yes, sir.

7 Q. Let me show you what's been marked for
8 identification as State's Exhibit No. 15. I ask
9 you if you recognize these glasses.

10 A. They hers.

11 Q. Okay. Take your time and look at them.
12 How do you know that they're hers?

13 A. Because I had a picture with those
14 glasses. They was round, she got them all the
15 time on her eyes.

16 MR. McCULLOUGH: I can't hear.

17 A. She wore them all the time.

18 BY MR. NOLL:

19 Q. You have to speak up so the gentleman in
20 the back can hear.

21 A. She wore them all the time.

22 Q. Did she have on these glasses when you
23 saw her the last time she was alive on September
24 26th of 1988?

25 A. She had them on.

1 Q. I'm sorry. I can't hear you.

2 A. She had them on.

3 MR. NOLL: Pass the witness, Your Honor.

4 THE COURT: Mr. McCullough.

5

6

CROSS EXAMINATION

7

8 BY MR. McCULLOUGH:

9 Q. Ms. Charles, when was the first time
10 you've seen these glasses that are in this package
11 here that I just showed you? When was the first
12 time you saw these, ma'am?

13 A. The first time I saw them?

14 Q. Yes, ma'am.

15 A. I can't remember that because she had
16 them all the time.

17 Q. I mean since then, since the date that --
18 the last time you saw her wearing them, when was
19 the first time you saw the glasses in this package,
20 in this --

21 A. The first time?

22 Q. In this ziploc bag, yeah.

23 A. When he showed them to me.

24 Q. Was that yesterday?

25 A. Yeah.

1 Q. Had you ever discussed Shawn's glasses
2 with the police before?

3 A. They didn't ask me.

4 Q. Okay. So, the subject of the glasses
5 never came up before?

6 A. No.

7 Q. Between you and any of the police
8 officers?

9 A. No.

10 Q. All right. Well, when you told the
11 police officers about your daughter being missing,
12 were you hunting for her?

13 A. Right.

14 Q. Did you tell them what she was wearing?

15 A. I described in detail some of what she
16 had on, yeah.

17 Q. Did you tell them that she was wearing
18 glasses?

19 A. No, they didn't ask me.

20 Q. Was your daughter carrying a purse when
21 you last saw her?

22 A. She had a purse but she left it at the
23 house.

24 Q. Well, my next question was going to be:
25 Did you tell the police whether or not she had

1 been carrying a purse when she left the house?

2 A. They didn't ask me. The only thing, I
3 was trying to look for them. I didn't think about
4 all that. Only thing I described was what she had
5 on.

6 Q. I understand. Ms. Charles, did you once
7 have a party for Shawn or with Shawn at which you
8 used Mr. Hughes' stereo or something?

9 A. I never used his stereo.

10 Q. Did you have a party where you used any
11 of his equipment?

12 A. No.

13 Q. Did you have --

14 A. Because I didn't even know him.

15 Q. Did you have a party that he came to?

16 A. No.

17 Q. Did you have a party at which some man
18 got into a fight with you and Shawn?

19 A. No man got into a fight. They got into
20 a fight with another girl and I was stopping the
21 fight.

22 Q. Did Mr. Hughes intervene to help you --

23 A. Mr. Hughes wasn't there. This is my
24 first time ever seeing him when this incident
25 happened, this is my first time ever seeing him.

1 room for a few minutes. We'll be with you in a
2 few minutes and begin testimony.

3 (Jury out.)

4 MR. McCULLOUGH: At this time, Your
5 Honor, State having rested its case, the jury is
6 out of the room, we would move for a directed
7 verdict for the reason that the State has failed
8 to prove what they've alleged in the indictment,
9 failed to prove that either victim was killed by
10 being stabbed with a knife, they failed to prove
11 that it was a single criminal transaction, they
12 failed to prove that Marcell Taylor -- or the
13 3-year-old child if I have remembered his name
14 incorrectly -- was killed intentionally. In fact,
15 proof such as there is is to the contrary. I
16 believe that states our grounds and, of course, we
17 would reurge our objections to all of the evidence
18 that we attempted to exclude up to this point. I
19 believe that's all my grounds, Your Honor.

20 THE COURT: Your motion for directed
21 verdict will be denied. Your reurging of your
22 objection to the items of evidence will, likewise,
23 still be overruled.

24 MR. McCULLOUGH: We have a development
25 that will probably save the Court some time,

1 couple of hours in the long run but it's thrown
2 our schedule off quite a bit. Could I have about
3 a ten-minute recess to reorganize?

4 THE COURT: For what purpose? You asked
5 me yesterday and I told you that I thought it
6 would be incredibly appropriate to have your
7 witnesses here after lunch today.

8 MR. McCULLOUGH: Yes, sir, we have some
9 witnesses here. We don't have them all and we've
10 worked all morning to get them here. But let me
11 put this on the record and go from here. I want
12 to call Mr. Hughes to the stand to testify out of
13 the presence of the jury about his decision to
14 testify or not in this case.

15 THE COURT: Very well.

16 MR. McCULLOUGH: We'll call Mr. Hughes
17 to the stand.

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1 PRESTON HUGHES, III,
2 the defendant, having been duly sworn, testified
3 in his own behalf, as follows:
4

5 EXAMINATION

6 (Out of the presence of the jury)
7

8 BY MR. McCULLOUGH:

9 Q. Once again, for the record, the jury is
10 out of the room and this is housekeeping. Mr.
11 Hughes, just before or during Ms. Charles'
12 testimony, you told me that you do not intend to
13 testify in this case; is that correct?

14 A. Yes.

15 Q. All right. Now, I'm not trying to talk
16 you into or out of it but I want to -- since this
17 is important, this might be the biggest decision
18 in this case. I just want to go through it with
19 you. You know that you have an absolute right to
20 not testify and nobody can call you up there
21 against your will. You know that?

22 A. Yes.

23 Q. You know you have an absolute right to
24 testify if you choose to?

25 A. Yes.

1 BY MR. McCULLOUGH:

2 Q. And there are many other less specific
3 instances in which, as the judge has alluded to,
4 the door can be opened to bringing in the evidence
5 that you are on probation; and most of the ways to
6 open up those doors are through the defendant's
7 testimony. If you denied certain things or made
8 certain assertions that were inconsistent with
9 having been arrested, with having been on
10 probation or done certain acts, you could be cross
11 examined about those things.

12 What I was thinking about specifically a
13 minute ago is that I do believe that if character
14 witnesses were put on the stand, they could be
15 asked if they had heard that you'd even been
16 arrested for certain offenses when they are
17 arriving at their opinion of your character.

18 Obviously if you testify, all your prior --
19 any statements that you've made previously that
20 would be in any way inconsistent with your
21 testimony could be brought out in cross
22 examination with you. Knowing all of that, is it
23 your decision to not testify in this case and rely
24 on your Fifth Amendment right to remain silent and
25 rely on the right to make the State prove their

1 case against you without any testimony from you?

2 A. I'm sorry the two kids were killed, but
3 I didn't do it. He has to prove it. I'm not
4 testifying.

5 THE COURT: I'm sorry, Mr. Hughes. I
6 did not hear your last --

7 THE DEFENDANT: I said I'm sorry the two
8 kids were killed --

9 THE COURT: I heard everything but the
10 last part. You're not testifying. Is that what
11 you said?

12 THE DEFENDANT: Yes, sir.

13 MR. McCULLOUGH: I don't have anything
14 else.

15 THE COURT: Anything further?

16 BY MR. McCULLOUGH:

17 Q. I want to ask this. Some of the
18 witnesses that you have provided me are of the
19 nature of character witnesses. And if a person
20 testifies about your character directly using the
21 magic words, saying that you have a good
22 reputation, good character, or if they say things
23 that are equivalent to that by saying you're a
24 good guy or you'll never do anything like that or
25 words to that effect that puts your character into

1 evidence, then they may be cross examined about
2 things in your past like being arrested for
3 aggravated sexual abuse and things like that.

4 It's considered good practice many times
5 to not put your character into evidence in that
6 manner in such a way that the jury would become
7 aware indirectly that you have been charged with
8 offenses before.

9 A. Well, after I was charged, accused and
10 arrested behind accusations, received probation, I
11 told everyone I met in case they heard it
12 otherwise different from anybody else, you know.
13 So, I don't worry about -- my former girlfriend,
14 the woman that lived with me, too, she knows about
15 it. Everybody knows how I am.

16 THE COURT: Mr. Hughes, I'm not trying
17 to cut you off but what everybody knows is not the
18 point. The point is the jury, at this point, does
19 not know that. And the jury at this point,
20 theoretically, would make up their mind based upon
21 the evidence that they have heard without letting
22 any of your prior history prejudice them one way
23 or the other. What Mr. McCullough is getting at
24 by calling, what I'm going to loosely refer to as
25 character witnesses or reputation witnesses, you

1 may, by doing that, allow the State to then come
2 back and rebut that evidence of good character or
3 good reputation with evidence of your past
4 criminal misconduct, if there is any. Okay? And
5 that's what we're getting at. You have to make a
6 decision here. Do you want to call those
7 witnesses for the possible benefit of showing the
8 jury that you have people who will say good things
9 about you and thereby expose them to the
10 possibility that the jury may also thereby know
11 some of the bad things about you, if any; or if
12 you don't call them, you don't put anything on,
13 then you don't run the risk of exposing them to
14 the negative evidence, if there is any. Okay? Of
15 course, if you don't call them, then you haven't
16 offered any positive evidence. So, that's the
17 trade-off. That's what Mr. McCullough's getting
18 at. You're going to have to decide. Do you want
19 to call the character or reputation witnesses or
20 do you not? It's your pleasure.

21 THE DEFENDANT: Call them.

22 BY MR. McCULLOUGH:

23 Q. Let me go one step further before you
24 make that decision. If you were convicted of this
25 offense, there would then follow what we call the

1 punishment phase of the trial. At that phase of
2 the trial, the jury can be told about your
3 criminal history without any doors being opened to
4 it. Therefore, we would not be inviting that
5 testimony by putting character evidence on at that
6 stage of the trial. Some people find it's better
7 practice to save character evidence till the
8 punishment phase of the trial, if there is any.
9 Of course, if there ain't any, you haven't got
10 anything to worry about. You follow me?

11 A. Well, some of the people I had you get
12 in contact are witnesses of my whereabouts.

13 Q. Right. Those are fact witnesses and
14 we're going to put those on in this phase of the
15 trial.

16 A. Just put them on in this phase, the
17 character witnesses, should I be found guilty, put
18 them on at that phase.

19 MR. McCULLOUGH: We'll do it that way.
20 That's all I have.

21 THE COURT: Anything else? You may have
22 your seat, Mr. Hughes.

23 MR. McCULLOUGH: What I referred to
24 before, Your Honor, was that we had all this time
25 been under the hundred percent belief that Mr.

1 Hughes would insist on testifying, even if we
2 advised otherwise. Therefore, we planned on
3 putting him on the stand first and assumed that
4 that would take, you know, like half the afternoon.
5 So, we'll do what we can with what we've got.

6 THE COURT: We sure will. Let's bring
7 in the jury.

8 (Jury in.)

9 THE COURT: The State of Texas rests.
10 What says the defense?

11 MR. McCULLOUGH: We call Sylvia Woods.

12 THE COURT: Please have a seat, Ms.
13 Woods. Were you sworn yesterday?

14 THE WITNESS: Uh-huh.

15 THE COURT: I want you to keep your
16 voice up. We got terrible acoustic problems.
17 There's an air conditioner vent there. There's
18 going to be an air compressor going off behind us.
19 Pretend like you're talking to somebody on the
20 back wall, okay?

21 THE WITNESS: Okay.

22 THE COURT: You may proceed, Mr.
23 McCullough.

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SYLVIA WOODS,
was called as a witness by the Defense and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. State your name for the record, Ms.
Woods.

A. Sylvia Denise Woods.

Q. They can't hear you at all. You're
going to have to yell if you have to, okay?

A. Sylvia Denise Woods.

Q. How old are you?

A. 26.

Q. Where do you live?

THE COURT: Ms. Woods, please, you're
talking to him right there. That's the way a good
examination should go, but I need you to pretend
he's sitting back there. Okay.

BY MR. McCULLOUGH:

Q. Where do you live?

A. 12811 Bay Cedar.

Q. What part of town is that in?

A. Southeast.

1 THE COURT: Ms. Woods, can you lean
2 forward a little bit, too, please. We need to let
3 all the jurors see you. Go ahead, Mr. McCullough.

4 BY MR. McCULLOUGH:

5 Q. What part of town is that in?

6 A. Southeast.

7 Q. What kind of work do you do?

8 A. I'm not working right now.

9 Q. What kind of work do you do when you
10 work?

11 A. I'm a cashier.

12 Q. Cashier?

13 A. Cashier.

14 Q. Are you from Houston?

15 A. No.

16 Q. How long have you lived in this area?

17 A. I've been living in Houston about 11
18 years.

19 Q. Well, that's close enough to being from
20 here. Are you acquainted with Mr. Preston Hughes,
21 my client sitting at the back of the table here?

22 A. Yes.

23 Q. How long have you known him?

24 A. About five months. About five months.

25 Q. Five months? Where did you meet him?

1 A. Through my brother, around the apartment
2 complexes.

3 Q. What is his name?

4 A. Brian. Brian.

5 Q. And I take it you must have lived --
6 then you must have lived in the same -- near the
7 same apartment complex Mr. Hughes did?

8 A. Uh-huh, with my brother.

9 Q. Where is that?

10 THE COURT: Mr. McCullough, this is not
11 working. Could I get you -- if it won't totally
12 throw you off or something. We've got to shock
13 her into raising her voice.

14 MR. THOMAS: Turn on the microphone.

15 THE COURT: The microphone does not work.
16 It's going to fade out. I can't hear when I'm
17 right here. See if this will help us.

18 I want you to yell at him, okay?

19 BY MR. McCULLOUGH:

20 Q. Can you see me?

21 A. Yes.

22 Q. Okay. You say you know Preston Hughes,
23 you met him about five months ago?

24 A. I met him last April, not this month.

25 Q. Okay. A year ago.

1 A. '88.

2 Q. Where was it that you met him and knew
3 him?

4 A. Lakehurst apartments.

5 Q. Okay. Did you live there then?

6 A. Uh-huh.

7 Q. What was your relationship with Mr.
8 Hughes?

9 A. We was friends.

10 Q. Friends?

11 A. Uh-huh.

12 Q. Did you ever live with him?

13 A. Yes.

14 Q. And where was that?

15 A. Lakehurst apartments.

16 Q. And how long did you live in Mr. Hughes'
17 apartment?

18 A. Maybe three, about three months.

19 Q. All right. Now, you're getting dim
20 again.

21 A. Three months.

22 Q. You have a very soft voice. So, you
23 need to speak up a little bit. Who all lived in
24 that apartment at the time you lived there?

25 A. Me, Preston, a guy name Arnell and my

1 daughter.

2 Q. A guy named Arnell?

3 A. Uh-huh.

4 Q. Do you recall his last name?

5 A. I don't know it.

6 Q. And how old was your daughter when you
7 lived there?

8 A. 7.

9 Q. Did you know a person named Shandra
10 Charles?

11 A. Yes.

12 Q. Did she have a nickname, a street name?

13 A. I only called her Shawn.

14 Q. Shawn?

15 A. Shawn.

16 Q. Did you ever see her around that
17 apartment?

18 A. Yes.

19 Q. Did she have a running buddy that she
20 came up to the apartment with?

21 A. Yes.

22 Q. Who was that?

23 A. A girl name Evelyn and a girl name Tasha.

24 Q. Evelyn and whom?

25 A. Tasha.

1 Q. I can't --

2 A. Tasha.

3 Q. Tasha?

4 A. Tasha.

5 Q. I probably look about 23 or 24 to you,

6 but my ears are 53 years old. So, you're going to

7 have to help me, okay? How often would Shawn and

8 Tasha and Evelyn come around that apartment when

9 you lived there?

10 A. Just about everyday.

11 Q. What would they do there?

12 A. Asking to use the electricity.

13 Q. Use the electricity?

14 A. Uh-huh.

15 Q. How come?

16 A. Because her mom didn't keep no

17 electricity.

18 Q. They had problems keeping the lights on?

19 A. Uh-huh.

20 Q. What would they use the electricity for?

21 A. Curling they hair and ironing they

22 clothes.

23 Q. What kind of relationship did Mr. Hughes

24 have with Shawn?

25 A. They was friends. He was like a big

1 brother.

2 Q. What's your sister's name?

3 A. Detria.

4 Q. Would she ever be there?

5 A. No, not that much.

6 Q. What was her relationship with Mr.

7 Hughes at that time?

8 A. Girlfriend and boyfriend.

9 Q. And did she have a child?

10 A. Uh-huh.

11 Q. How old was the child then?

12 A. She was months.

13 Q. Ma'am?

14 A. She was in the months.

15 Q. Less than a year?

16 A. Yeah.

17 Q. Okay. What kind of relationship did

18 Preston have with your child?

19 A. Oh, it was nothing wrong with it. He

20 tended to her while I was at work.

21 Q. Okay. What kind of work were you doing?

22 A. Cashier.

23 Q. Were you leaving that child in his care

24 on a regular basis?

25 A. Yes.

1 Q. Do you know a guy named Doug?
2 A. Yes.
3 Q. Who is he?
4 A. I don't know his last name but he was
5 just a guy around the apartments.
6 Q. Ma'am?
7 A. I don't know his last name but -- I
8 don't know his last name.
9 Q. It's the last part of it I couldn't hear.
10 A. Just somebody, just come up to Preston's
11 and, you know, just around the apartments.
12 Q. What did he look like?
13 A. He was tall and slim and dark, dark guy.
14 Q. Like -- similar to Preston?
15 A. About Preston's height and a little bit
16 darker than Preston.
17 Q. Did he have any characteristic of his
18 dress?
19 A. Yes, he always wore a towel around his
20 neck. Wasn't necessarily white but it was always
21 a towel.
22 Q. And that was a habit he observed,
23 wearing a towel around his neck?
24 A. Uh-huh.
25 Q. Well, is he still around or do you know?

1 A. No. About two months ago, everybody was
2 asking, "Where Doug," and we hadn't seen Doug
3 since after it happened. Then a guy, about two
4 months ago, said, "Doug moved to California."
5 Nobody have seen Doug.

6 Q. Did Shawn, back when you were staying
7 over at Preston's apartment and Shawn was coming
8 over there, did she have a boyfriend?

9 A. Uh-huh.

10 Q. Do you recall his name?

11 A. It was, at the time, it was a white guy
12 named Chris.

13 MR. NOLL: I'm sorry, Your Honor, I
14 couldn't hear.

15 THE COURT: A white guy named what?

16 THE WITNESS: A white guy by the name of
17 Chris.

18 BY MR. McCULLOUGH:

19 Q. Chris?

20 A. Uh-huh.

21 Q. Did Shawn have a period of depression
22 over her relationship with that man?

23 A. Yes.

24 Q. Was Chris older than her or what?

25 A. He was older. Not much older than her

1 but a couple of years older.

2 Q. Couple of years or something?

3 A. Yeah, about 16 or 17.

4 Q. What kind of emotional problem did she
5 have over this before?

6 MR. NOLL: I object to the phrase
7 "emotional problem." It assumes facts not in
8 evidence.

9 THE COURT: That will be --

10 MR. McCULLOUGH: I'll rephrase the
11 question.

12 BY MR. McCULLOUGH:

13 Q. Did she have a period of depression over
14 her relationship with Chris?

15 A. Yes.

16 Q. How bad did that get?

17 A. To where she wanted to commit suicide.

18 Q. Did anyone talk to her about that?

19 A. Yes.

20 Q. Who?

21 A. Preston.

22 Q. Did he talk her out of it?

23 A. Talked her out of it, then called the
24 guy over.

25 Q. Well, was Preston a friend to Shawn in

1 any other ways other than what you've told us
2 about, use his electricity, use his apartment?

3 A. No.

4 Q. I'll show you what's been marked and put
5 into evidence as State's Exhibit No. 39, ask you
6 if you recognize it.

7 A. It's the house key.

8 Q. Ma'am?

9 A. My house key -- well, the house key I
10 use.

11 Q. Now, the house key you use to what house?

12 A. To Preston's apartment.

13 Q. Well, where did you last see it?

14 A. I gave it to Preston.

15 Q. When?

16 A. Right after I moved out.

17 Q. Okay. And I forgot and maybe the jury
18 has. When was that? When did you move out?

19 A. In August, early part of August.

20 Q. Okay. Moved out in August.

21 A. But he gave it back to me after I gave
22 it to him, and one day at work I was tired and he
23 had came through and I asked him to use his
24 apartment to lay down and he was going somewhere.
25 So, he gave me the key back. Then I gave him the

1 key back.

2 Q. You gave it back to him again?

3 A. Uh-huh.

4 Q. But last time you saw it before today,
5 it was where?

6 A. Preston's.

7 Q. Did you attend a party at Ms. Charles'
8 place?

9 A. No.

10 MR. McCULLOUGH: Pass the witness.

11

12 CROSS EXAMINATION

13

14 BY MR. NOLL:

15 Q. Ms. Woods, you moved in with the
16 defendant, Mr. Hughes, in April of 1988; is that
17 correct?

18 A. It was the end of April.

19 Q. End of April?

20 A. Uh-huh.

21 Q. You were living there during May and
22 June and July; is that correct?

23 A. Uh-huh.

24 Q. In August, did you say the beginning or
25 late --

1 A. The early part.

2 Q. Early August you moved out and gave your
3 key back to the defendant?

4 A. Uh-huh.

5 Q. You were not living with him in
6 September of 1988; is that correct?

7 A. No.

8 Q. Where were you living then?

9 A. With my roommate at 12811 Bay Cedar.

10 Q. I'm sorry?

11 A. I was living at 12811 Bay Cedar.

12 Q. What part of town is that address in?

13 A. Southeast.

14 Q. Now, Preston's apartment where you lived
15 with him is on the far west side of town on Dairy
16 Ashford; is that correct?

17 A. Uh-huh.

18 Q. Does that mean during the period of time
19 when you moved out of his apartment, you last had
20 contact with him.

21 A. No, I continued going to work.

22 Q. Where did you work?

23 A. Fuddrucker's.

24 Q. You were working at the Fuddrucker's
25 behind the Lakehurst apartments?

1 A. Yes, sir.

2 Q. Preston came up there all the time,
3 didn't he?

4 A. Yes.

5 Q. He knew about the path that was between
6 Fuddrucker's and the Lakehurst apartments?

7 A. I did, too.

8 Q. You were walking back and forth there
9 all the time?

10 A. Uh-huh.

11 Q. Were you working at the Fuddrucker's on
12 September 27, 1988?

13 A. Uh-huh.

14 Q. Did Preston come and see you that night?

15 A. I don't know if that was the date, but I
16 seen him at night.

17 Q. Do you remember the night when Shandra
18 Charles and her nephew, Marcell Taylor got
19 murdered in that lot between Fuddrucker's and
20 Lakehurst?

21 A. Uh-huh.

22 Q. That night, did he come see you at work?

23 A. No.

24 Q. What time did you get off work that
25 night?

1 A. I got off at 5:00.

2 Q. I'm sorry?

3 A. 5:00.

4 Q. Where did you go after you got off at

5 5:00?

6 A. Went home.

7 Q. Did you see Preston that day at all?

8 A. No.

9 Q. Did you seem him the next day?

10 A. No.

11 Q. Preston and Shawn or Shandra were

12 friends, weren't they?

13 A. Yeah.

14 Q. He knew her very well, didn't he?

15 A. Yeah.

16 Q. Think he could recognize her if he saw

17 her walking down that path in the little area

18 between Fuddrucker's and Lakehurst?

19 A. Uh-huh.

20 Q. Did Preston tell you about how he was

21 afraid for his life about that time frame?

22 A. Uh-huh.

23 Q. Were you afraid to be around him?

24 A. No.

25 Q. Was he carrying a knife all the time?

1 A. Not that I seen.

2 Q. Are you sure he wasn't carrying a knife
3 on his belt all the time about that time?

4 A. No, I didn't see it.

5 Q. How often did you see him?

6 A. See Preston after I moved?

7 Q. Uh-huh.

8 A. Not too many times. He would come over
9 to Fuddrucker's or I would go over to his house,
10 but not everyday.

11 Q. So, let's say during September of 1988,
12 are you saying that he was not carrying a knife on
13 him all the time?

14 A. I didn't see it.

15 Q. And you saw him a good bit; is that fair
16 to say?

17 A. Not that much.

18 Q. Did you see him once a week?

19 A. Maybe twice.

20 Q. Twice a week?

21 A. Uh-huh.

22 Q. During September?

23 A. Uh-huh.

24 Q. And during that period of time, you did
25 not notice that he was carrying a knife around on

1 his waist?

2 A. No.

3 Q. Let me show you what's been marked for
4 identification as State's Exhibits 20, 21. Do you
5 recognize these?

6 A. Huh-uh. I never seen the knife.

7 Q. I'm sorry, ma'am. You have to keep your
8 voice up because they can't hear.

9 A. No, I never seen the knife.

10 Q. You never seen Preston with this knife
11 before?

12 A. No.

13 Q. You lived in his apartment?

14 A. Uh-huh.

15 Q. You never saw him with this knife?

16 A. No.

17 Q. Did you ever look in his closet in his
18 bedroom?

19 A. No.

20 Q. Did he ever show you this knife?

21 A. No.

22 Q. Did he ever tell you he was so afraid
23 for his life that he had to carry this around with
24 him?

25 A. No, he told me he was afraid for his

1 life but he didn't tell me he was packing anything.

2 Q. Did he keep a shotgun in the house?

3 A. It was one in there.

4 Q. I'm sorry?

5 A. Yeah.

6 Q. How well did you know Shawn or Shandra?

7 A. About the time I lived with Preston
8 until I moved.

9 Q. During June and July, did she ever come
10 by y'all's apartment?

11 A. Uh-huh.

12 Q. Did she come there in a bathing suit
13 sometimes?

14 A. If she did, she had shorts over the
15 bathing suit.

16 Q. Were you ever there when she came by the
17 apartment and showed her breasts to Preston Hughes?

18 A. No.

19 Q. Were you ever there when she came back
20 and pulled her pants down and showed her personal
21 parts to Preston Hughes?

22 A. No.

23 Q. Did you ever see Preston Hughes touch
24 her on her personal parts?

25 A. No.

1 Q. Believe that ever happened?

2 A. No.

3 Q. Was she the kind of girl that would do
4 that?

5 A. No, I don't think. She told us she was
6 still a virgin.

7 Q. She told you she was still a virgin?

8 A. Uh-huh, I asked her.

9 Q. Now, you talking about depression about
10 her boyfriend. She was 15 years old; is that
11 right?

12 A. Uh-huh.

13 Q. Do you know any other girls 15?

14 A. Not too many.

15 Q. How old are you now?

16 A. 26.

17 Q. Do you remember back when you were 15?

18 A. Uh-huh.

19 Q. Did you ever get depressed over
20 boyfriends?

21 A. I didn't have any, no.

22 Q. You're a pretty girl now.

23 A. I didn't.

24 Q. That's hard to believe. Did you ever
25 have any girlfriends that got depressed over a

1 boyfriend?

2 A. No.

3 Q. Never?

4 A. (Shakes head negatively.)

5 Q. Do you know anything about what happened
6 in that empty field when Shandra and her little
7 cousin Marcell got stabbed?

8 A. No.

9 Q. Do you know who did it?

10 A. No.

11 Q. Are you trying to tell this jury you
12 think this fellow that you named that went to
13 California -- what's his name?

14 A. Doug?

15 Q. Doug?

16 A. Doug.

17 Q. You think Doug did it?

18 A. I don't know who did it. But, you know,
19 we seen him up until the time --

20 Q. I'm sorry?

21 A. I say we seen him up until the time and
22 after that everybody was looking for him. Then it
23 came out that he went to California.

24 Q. He just moved to California?

25 A. He just moved to California.

1 Q. Then again, people are moving in and out
2 of the Lakehurst apartments all the time?

3 A. But when I was catching my bus going
4 home, he was catching the bus with me going to
5 work. Then all of a sudden, he stopped. So, he
6 still had a job.

7 Q. You don't know anything that would
8 indicate in any way he was involved in the killing
9 of Shawn and her cousin Marcell?

10 A. No.

11 Q. In fact, you don't know anything about
12 what happened out there in the woods between the
13 Fuddrucker's and the Lakehurst apartments the
14 night that Shawn and Marcell got killed that night,
15 do you?

16 A. No.

17 Q. You don't know if the defendant had
18 anything to do with it or not?

19 A. No.

20 Q. Just friend of his; is that right?

21 A. (Nods head affirmatively.)

22 Q. Down here to help him as much as you can.

23 A. Yeah, I was called here.

24 MR. NOLL: Nothing further, Your Honor.

25

1 REDIRECT EXAMINATION

2
3 BY MR. McCULLOUGH:

4 Q. Do you remember the night that Shawn got
5 killed? Did you know about it at the time or did
6 you hear about it the next day or what?

7 A. I heard about it the next day when I got
8 to work.

9 Q. Were you working at Fuddrucker's the
10 night before?

11 A. Uh-huh, but I got off at 5:00 in the
12 afternoon, evening.

13 Q. Did you see any investigation or
14 anything had taken place in that area behind the
15 restaurant?

16 A. No, until the next day. I seen a TV,
17 cameramen out there.

18 Q. Okay.

19 MR. McCULLOUGH: Pass the witness.

20 MR. NOLL: Nothing further, Your Honor.

21 THE COURT: May this witness be excused?

22 MR. NOLL: Nothing further, Your Honor.

23 MR. McCULLOUGH: I would prefer she stay
24 until the end of the day, seeing as we're in kind
25 of a state of flux.

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THE COURT: Very well, Ms. Woods.
Please remain in the hall.
Call your next.
MR. McCULLOUGH: Detria Woods.
THE COURT: You may proceed, Mr.
McCullough.

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DETRIA WOODS,
was called as a witness by the Defense and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. State your name for the record, please.

A. Detria Woods.

Q. Ms. Woods, the judge just told you and
now the reason I'm sitting back here is so that
you'll talk to me like I was a long way away and
maybe this last person back here can hear you.
You probably have a soft voice, don't you?

A. Uh-huh.

Q. The other thing you have to do is answer
out because this lady is sitting with her back to
you and can't see you or record nods and shakes.

A. Okay.

A JUROR: Can she move forward, please.

THE COURT: Move forward in the seat so
they can see you, please.

BY MR. McCULLOUGH:

Q. How old are you, Ms. Woods?

A. 18.

1 Q. Are you related to the lady that just
2 walked out of here, Sylvia Woods?

3 A. Yes.

4 Q. What's your relationship with her?

5 A. She's my sister.

6 Q. Are you in school or do you work or what?

7 A. I'm in school and I work.

8 Q. Ma'am?

9 A. I'm in school and I work.

10 Q. Where are you going to school?

11 A. Worthing, Worthing Senior High.

12 Q. Okay. Are you married or single?

13 A. Single.

14 Q. Do you know this man here, Preston
15 Hughes, III?

16 A. Yes.

17 Q. How long have you known him?

18 A. Over a year now.

19 Q. Where did you meet him?

20 A. In the apartment complex.

21 Q. Which apartment complex?

22 A. Lakehurst.

23 Q. All right. And what was your
24 relationship with Mr. Hughes?

25 A. He was my boyfriend.

1 Q. That was about a year ago?

2 A. Uh-huh.

3 Q. Did you ever live in his apartment?

4 A. Yes.

5 Q. Did you ever visit there when you didn't
6 live there?

7 A. Yes.

8 Q. Did you know a girl named Shawn or
9 LaShandra Charles?

10 A. Yes.

11 Q. How did you know her?

12 A. She used to come up to the apartment all
13 the time.

14 Q. Ma'am?

15 A. She used to come up to the apartment all
16 the time.

17 Q. And what kind of relationship did she
18 have with Mr. Hughes?

19 A. He was her friend.

20 Q. What would she come to the apartment for?

21 A. Sometimes to curl her hair or iron her
22 clothes or listen to his stereo so they could
23 practice they dances.

24 Q. Okay. You say "they." Who do you refer
25 to when you say "they"?

1 A. Her and a couple of her other friends.
2 Q. Do you know their names?
3 A. One name is Tasha and the other one name
4 is Evelyn.
5 Q. Did you see Evelyn out here in the hall
6 yesterday when everybody was out there?
7 A. Yes.
8 Q. Did you see her earlier today?
9 A. No.
10 Q. When did you get here?
11 A. About a quarter to 1:00.
12 Q. Did Shawn have a boyfriend back when she
13 was coming around there?
14 A. Yes.
15 Q. What was his name?
16 A. Chris.
17 Q. Chris?
18 A. (Nods head affirmatively.)
19 Q. Did Shawn ever get depressed about her
20 relationship with Chris?
21 A. Yes.
22 Q. What happened? How bad did it get?
23 A. She wanted to commit suicide.
24 Q. Why didn't she?
25 A. Preston talked her out of it.

1 Q. Well, did Preston have a
2 boyfriend/girlfriend relationship with her or more
3 like a big brother or friend or what was his --
4 what kind of relationship did she have?

5 A. A big brother and a friend.

6 Q. Are you acquainted with a guy named Doug?

7 A. Uh-huh.

8 Q. Who was he and where did you know him?

9 A. He used to come up to the apartment and
10 sometimes he wait for Preston when he got off work
11 or play dominoes.

12 Q. All right. What did he look like?

13 A. He was tall, he was a little darker than
14 Preston, and he had moustache and he had kind of a
15 low cut --

16 MR. NOLL: Your Honor, I couldn't hear
17 the last part.

18 THE COURT: Please speak up, Ms. Woods,
19 okay.

20 A. A low cut, a low haircut.

21 MR. NOLL: Low haircut. Okay.

22 BY MR. McCULLOUGH:

23 Q. What is a low haircut?

24 A. Not too short, but about the length of
25 Preston's or a little bit more than what Preston

1 have.

2 Q. A little more than what he has right now?

3 A. Uh-huh.

4 Q. Did it look similar to that but maybe a
5 little bit longer?

6 A. Yeah.

7 Q. Was he tall or short or about the same
8 size as Preston?

9 A. About the same size.

10 Q. Was there anything distinctive about the
11 way he dressed?

12 A. He always had a white towel around him
13 when you see him. I guess because he sweated a
14 lot.

15 Q. Have you seen him lately?

16 A. No.

17 Q. Do you remember when you quit seeing him?

18 A. Last time I seen Doug was when I was
19 staying with Preston.

20 Q. When you were staying with Preston, who
21 all was staying in that apartment?

22 A. Me, Preston and myself, and her little
23 girl and my little girl.

24 Q. How old was your little girl at the time?

25 A. About two or three months.

1 Q. Were you working then?

2 A. No.

3 Q. Were you going to school?

4 A. No.

5 Q. Did you ever go to a party at Ms.

6 Charles' house where Shawn was in attendance?

7 A. Yeah.

8 Q. Was there a fight that broke out there?

9 A. Yes.

10 Q. What happened?

11 A. This guy and his girlfriend got into a
12 fight and Shawn got into it because it was one of
13 her friends and then Preston ran downstairs to try
14 and break the fight up between Shawn, and then her
15 momma was down there, too, but the guy, he slammed
16 Shawn head into the glass but then he -- Preston
17 stopped him and he ran off.

18 MR. McCULLOUGH: Pass the witness.

19

20 CROSS EXAMINATION

21

22 BY MR. NOLL:

23 Q. Glass didn't get broken, did it?

24 A. Yeah.

25 Q. Did Shawn get pushed through that glass

1 window?

2 A. Her head.

3 Q. When was that party?

4 A. I don't know. It was, I think the
5 beginning of the summer, somewhere around there.
6 I don't know the date.

7 Q. Last year?

8 A. Uh-huh.

9 Q. When you say "the beginning of summer,"
10 you mean June?

11 A. Probably at the end of May, at the
12 beginning of June, somewhere around there.

13 Q. How come you remember that party so well?

14 A. Because it was Evelyn's birthday party.

15 Q. And you're sure Preston was there?

16 A. Uh-huh, I was there with him.

17 Q. When did you move in with Preston, ma'am?

18 A. The middle part of last April.

19 Q. Last April?

20 A. Uh-huh.

21 Q. April of 1988?

22 A. (Nods head affirmatively.)

23 Q. Where did you live before you moved in
24 with Preston?

25 A. With my mom.

1 Q. Where does your momma live today?

2 A. 4243 Lee Ann.

3 Q. Here in Houston?

4 A. Uh-huh.

5 Q. Was she living in Houston during the
6 period of time you lived with the defendant, Mr.
7 Hughes?

8 A. Uh-huh.

9 Q. Had your sister Sylvia been living with
10 your mom, also?

11 A. No.

12 Q. Where had she been living?

13 A. Before? With my brother.

14 Q. So, you and your sister both decided to
15 move in with Preston?

16 A. My sister did. Her and Preston decided
17 to become roommates.

18 Q. Okay. Did you also live there?

19 A. Yeah. After that, though.

20 Q. So, first your sister moved in.

21 A. Uh-huh.

22 Q. When did she move in?

23 A. I guess around the same time. I'm not
24 sure.

25 Q. Who met Preston first? Your sister or

1 you?

2 A. My sister. She met him through my
3 brother.

4 Q. Through your brother?

5 A. (Nods head affirmatively.)

6 Q. She moved in with Preston as his
7 roommate?

8 A. Uh-huh.

9 Q. Then you met Preston?

10 A. Well, I met Preston before she moved in,
11 though, over the telephone.

12 Q. Did you become Preston's girlfriend
13 before you moved in?

14 A. Yeah.

15 Q. How old were you when you became his
16 girlfriend?

17 A. 17.

18 Q. Did you already have a child at that
19 time?

20 A. Yes.

21 Q. Is Preston the father of your child?

22 A. No.

23 Q. How old was your child when you moved in
24 with Preston?

25 A. I think she was a month and a half, two

1 months.

2 Q. Okay. So, you had just broken up with
3 another boyfriend?

4 A. Well, yeah, I guess you call it that.

5 Q. And moved in with Preston?

6 A. Uh-huh, with my sister, rather.

7 Q. Let me be blunt about it. Were you
8 sleeping with Preston at that time?

9 A. No.

10 Q. So, you were just there living as a
11 roommate with Preston?

12 A. I was his girlfriend, but we weren't
13 sleeping together yet.

14 Q. You did not have sex?

15 A. No.

16 Q. Even though you were living in his
17 apartment with you and your sister, you did not
18 have sexual relations with Preston Hughes?

19 A. Not when I first moved in the apartment,
20 no.

21 Q. At some point did you begin to have
22 sexual relationships with Preston Hughes?

23 A. Yeah.

24 Q. From that did you continue a
25 relationship with him that included sexual

1 relations?

2 A. Yes.

3 Q. How long did that last?

4 A. About three or four months, I guess.

5 Q. When did the relationship end?

6 A. Last July or August, around that time.

7 Q. Did you move out of his apartment when
8 you started having relations with him?

9 A. Uh-huh.

10 Q. Was that the same time your sister moved
11 out?

12 A. No.

13 Q. Did she move out after you moved out?

14 A. Uh-huh.

15 Q. If she moved out in August sometime, you
16 moved out before that?

17 A. Yeah.

18 Q. You were not living in Preston Hughes'
19 apartment in September of 1988; is that correct?

20 A. No.

21 Q. Where were you living in September of 88?

22 A. With my mother.

23 Q. That is on what street again?

24 A. Lee Ann.

25 Q. What part of town is Lee Ann in?

1 A. Southeast.

2 Q. You were not living anywhere near the
3 Lakehurst apartments in September of 1988.

4 A. No.

5 Q. After you broke up with Preston, did you
6 go over to his apartment everyday?

7 A. No, not everyday.

8 Q. Did you see him on a regular basis?

9 A. I seen about two or three times
10 afterwards.

11 Q. Two or three times after you broke with
12 him in July or August?

13 A. Yeah.

14 Q. When was the last time you saw him
15 before September 26th?

16 A. All I remember was -- I don't know what
17 date but it was one Sunday.

18 Q. I'm sorry. I can't hear you.

19 A. One Sunday I went to go get my sister.
20 She was coming over to our house for a barbecue
21 and I went to go pick her up. It was a Sunday.

22 Q. That was while she was living with
23 Preston?

24 A. Yeah.

25 Q. If she moved out in early August, it was

1 in early August when you saw him last?

2 A. Yeah.

3 Q. At that point, did he tell you anything
4 about being afraid of some man that was
5 threatening to kill him?

6 A. Not then, no.

7 Q. Did he talk to you about that later?

8 A. Yeah.

9 Q. What did he tell you?

10 A. That some guys was threatening him.

11 Q. Did he tell you he was so scared that he
12 had to carry a knife around with him everyday?

13 A. Yeah.

14 Q. Did you see him carrying that knife?

15 A. No.

16 Q. Have you ever seen him carrying that
17 knife around?

18 A. No.

19 Q. During the period of time that you lived
20 in his apartment, did you ever see a knife in
21 there?

22 A. Yeah.

23 Q. Is this it? Showing you State's Exhibit
24 No. 20?

25 A. I never seen that one.

1 Q. You never saw this knife before?

2 A. No. It was another one. It was like a
3 pocketknife but that's -- I never seen that.

4 Q. Did you ever see Preston wearing State's
5 Exhibit No. 20 on his belt?

6 A. No.

7 Q. How often did you see Shawn or Shandra?

8 A. Sometimes everyday, sometimes every
9 other day.

10 Q. Were y'all good friends?

11 A. Yeah.

12 Q. Did you talk with her?

13 A. Uh-huh.

14 Q. Girl kind of talk?

15 A. Yeah.

16 Q. Talk about her boyfriend?

17 A. Yeah.

18 Q. You indicated she was depressed over her
19 boyfriend Chris; is that right?

20 A. Yeah.

21 Q. Have you ever been depressed over a
22 boyfriend before?

23 A. No, not to want to kill myself, no.

24 Q. I'm sorry?

25 A. No, not to where I want to kill myself,

1 no.

2 Q. Have you ever just been depressed,
3 though?

4 A. Yeah.

5 Q. Are you saying that Shawn told you she
6 was going to kill herself?

7 A. Yeah.

8 Q. And that Preston talked her out of it?

9 A. (Nods head affirmatively.)

10 Q. After you broke up with Preston and
11 moved out of his house, did you have occasion to
12 see Shawn ever again?

13 A. I seen Shawn one night.

14 Q. When was that?

15 A. This was after I moved out. I don't
16 know why I was over there but I seen her walking
17 through the parking lot.

18 Q. At Lakehurst apartments?

19 A. Uh-huh.

20 Q. She was over there all the time, wasn't
21 she?

22 A. Yeah.

23 Q. And her friend Evelyn lived over there
24 and Tasha lived over there?

25 A. Tasha didn't, I don't think so, but

1 Evelyn did, I think.

2 Q. Preston knew she was there all the time,
3 right?

4 A. If he seen her. Sometimes he would come
5 home late at night.

6 Q. He knew her very well, though, didn't he?

7 A. Yeah.

8 Q. Saw her all the time and she was in his
9 apartment all the time?

10 A. Yeah, I guess, when he was there.

11 Q. When you were living there in June and
12 July, did she ever come over to the apartment?

13 A. Yes, sir.

14 Q. Did she come over there in a bathing
15 suit?

16 A. No.

17 Q. Did she ever come over there in a
18 bathing suit and expose her breasts to Preston?

19 A. No.

20 Q. Did she ever come over there and drop
21 her panties in front of Preston?

22 A. No.

23 Q. Is she the kind of girl that would do
24 something like that?

25 A. Well, it's hard to say because she told

1 us that she never, you know -- the way that they
2 carried theyselves, you know, she probably would.

3 Q. You said she told you she never what?

4 A. Had sex before.

5 Q. Had sex before. So, as far as you know,
6 she was a virgin; is that right?

7 A. Uh-huh.

8 Q. Certainly you never saw Preston touch
9 her private parts, did you?

10 A. No.

11 Q. You never saw Preston touch her breasts
12 or anything?

13 A. No.

14 Q. You were not living with Preston in
15 September of 1988?

16 A. No.

17 Q. And you weren't living in Lakehurst
18 apartments?

19 A. No.

20 Q. In fact, you don't know anything about
21 what happened out there in September, do you?

22 A. No.

23 Q. Are you aware of the night that Shawn
24 and her cousin Marcell were stabbed to death in
25 that path behind Lakehurst going to Fuddrucker's?

1 A. Yeah, I heard about it.

2 Q. You heard about it. Were you out there
3 in that area that night?

4 A. No.

5 Q. Did you see Preston that day?

6 A. No.

7 Q. Did you see him the day before?

8 A. No.

9 Q. The day after?

10 A. Nope.

11 Q. Did you talk to him this day?

12 A. No.

13 Q. Do you know anything at all about where
14 Preston was that day or what he did that day?

15 A. No.

16 Q. You certainly weren't out there on that
17 pathway late on Monday night, were you?

18 A. No.

19 Q. You don't know anything at all about
20 what happened to Shawn or her cousin Marcell?

21 A. No.

22 Q. When I say "Shawn," some people knew her
23 as Shandra. Did you know her as Shawn?

24 A. Yeah, I know her by Shawn.

25 Q. This fellow Doug that you talked about,

1 was he out there that night?

2 A. I don't know.

3 Q. You don't know anything about who was
4 out there or what happened, do you?

5 A. No.

6 Q. Certainly you don't have any reason to
7 believe that Doug had anything to do with stabbing
8 Shawn and Marcell to death, do you?

9 A. I don't know.

10 Q. You don't know anything about it?

11 A. No.

12 MR. NOLL: Nothing further, Your Honor.

13

14

REDIRECT EXAMINATION

15

16 BY MR. McCULLOUGH:

17 Q. I'll show you what has been marked as
18 State's Exhibit No. 39. Do you recognize it?

19 A. Yeah.

20 Q. What is it?

21 A. My sister's -- that was her house key.

22 Q. Can y'all hear?

23 Okay. This is your sister's house key.

24 To which house?

25 A. Preston's apartments.

1 Q. Where was it the last time you saw it?

2 A. Huh.

3 Q. Where was it the last time you saw it
4 before today?

5 A. The key? I think one night I went to
6 the movies and I went get the key from my sister
7 off work.

8 A JUROR: We can't hear.

9 A. One night I went to go get the key from
10 my sister because I was going to the movies and
11 there wasn't nobody there. So, I had to lock the
12 house.

13 MR. McCULLOUGH: Pass the witness.

14 MR. NOLL: Nothing further, Your Honor.

15 THE COURT: May this witness be excused?

16 MR. McCULLOUGH: Once again, since it's
17 so late, if she would stay here the day.

18 THE COURT: Please wait outside, Ms.
19 Woods.

20 Call your next witness, please.

21 (Defense Exhibit Nos. 7
22 through 18 were marked for identification.)

23 THE COURT: You may proceed, Mr.
24 McCullough.

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BRENDA JOHNSON,
was called as a witness by the Defense and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. State your name for the record, please,
ma'am.

A. Brenda Johnson.

Q. Where do you live, Ms. Johnson?

A. I live at 9700 Court Glen.

Q. Is that here in Houston?

A. Houston, Texas.

Q. How long have you been in Houston?

A. Since 1981.

Q. Where do you work?

A. I work at the Men's Wearhouse.

Q. Are you related by blood or marriage to
Preston Hughes, III?

A. He's my son.

Q. Where did Preston go to school?

A. He went to Burgard High School in
Buffalo, New York.

MR. NOLL: Your Honor, I object to the

1 relevancy of this question.

2 THE COURT: Get to the point, please,
3 Mr. McCullough.

4 BY MR. McCULLOUGH:

5 Q. I show you what has been marked as
6 Defendant's Exhibit No. 18 and ask you if you can
7 identify it.

8 A. Yes, it's the keys to his apartment.

9 Q. Did you bring that here today?

10 A. Yes, I been carrying it with me ever
11 since the trial.

12 Q. Okay. Where did you get it?

13 A. From his property at the Harris County
14 sheriff's department.

15 Q. How did you do that?

16 A. I went to visit him on October 8th with
17 his father when he was here in Texas, and Preston
18 had asked me a week ago to get his furniture out
19 of his apartment, you know, go in and put it in
20 storage for him. And when I went to call, I
21 called the apartment complex in September, around
22 September 27th or 28th.

23 MR. NOLL: I'm going to have to object
24 to relevancy plus the narrative response.

25 THE COURT: Keep it question and answer,

1 please.

2 BY MR. McCULLOUGH:

3 Q. The ruling is: Answer questions as
4 short as you can and I'll ask more questions.

5 A. All right. Okay.

6 Q. When you went down to the sheriff's
7 department to get that key, what did you have to
8 do to get it?

9 A. I had -- Preston had to ask an officer
10 to let me get his keys out of his property.

11 Q. All right. Out of his property, what do
12 you mean? Where was it?

13 A. I went down to master control and told
14 them that I needed to get my son's property, his
15 keys. The officer said -- he filled out some
16 papers and he went upstairs to get his okay to
17 release them.

18 Q. Then you gave somebody those papers and
19 what happened then?

20 A. The officer had the papers all the time.

21 Q. But did they just write you and hand you
22 a key or what happened?

23 A. They hand me an envelope with his keys
24 and necklace and stuff inside the envelope.

25 Q. Did the envelope have any writing on the

1 outside of it?

2 A. Had what was inside the envelope. Did
3 it have his name or S.O. number on it or do you
4 remember?

5 A. I can't recall; but I know they gave a
6 receipt, I believe to my ex-husband, and he's
7 looking for it now.

8 Q. Have you kept that key in your
9 possession ever since you got it from the
10 sheriff's department?

11 A. Right.

12 Q. And have you ever attempted to use that
13 key on Preston's apartment door, what was his
14 apartment door?

15 A. 138-A.

16 Q. Did you use it?

17 A. Yes.

18 Q. Did it open it?

19 A. No.

20 Q. Why was that?

21 A. Because the locks was changed.

22 MR. McCULLOUGH: Pass the witness.

23

24

25

1 CROSS EXAMINATION

2
3 BY MR. NOLL:

4 Q. Police Johnson, you weren't with
5 your son on September 26 and 27th, 1988, were
6 you?

7 A. No, I wasn't.

8 Q. Certainly you were not present when
9 Shawn and her little cousin Marcell were stabbed
10 to death on that pathway behind his apartments,
11 were you?

12 A. No.

13 Q. You don't know anything about what
14 happened out there, do you?

15 A. No, I don't know exactly what happened
16 out there.

17 Q. Is Preston your only son?

18 A. No, I have a daughter.

19 Q. He's your only son, though?

20 A. Yes, he's my only son.

21 MR. NOLL: Nothing further, Your
22 Honor.

23 THE COURT: You may step down, Ms.
24 Johnson. Thank you.

25 Call your next, counsel.

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MR. McCULLOUGH: Call Mr. Casler.

(Witness sworn.)

THE COURT: You may proceed.

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JOSEPH CASLER,
was called as a witness by the Defense and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. State your name for the record, please,
sir.

A. Joseph Franklin Casler.

Q. How are you employed, Mr. Casler?

A. Project manager of Lakehurst apartments.

Q. How long have you held this job?

A. Since July 5th of 1988.

Q. Are you acquainted with this man here,
Preston Hughes, III?

A. He was one of my residents at one time.

Q. Did you know him by sight at the time?

A. I did.

Q. Do you know what apartment he occupied
in that project?

A. Yes, sir.

MR. McCULLOUGH: May we approach the
bench?

THE COURT: You may.

1 (Off the record discussion.)
2 (Defense Exhibit No. 19 was marked
3 for identification.)

4 BY MR. McCULLOUGH:

5 Q. Did you ever cause the lock to be
6 changed on the apartment that had been occupied by
7 Mr. Hughes?

8 A. After it had been vacated, it's standard
9 procedure.

10 Q. So, you are familiar with the keys and
11 the lock system at the Lakehurst apartments?

12 A. Yes, sir, I am.

13 Q. I show you what has been marked as
14 State's Exhibit No. 39 and Defendant's Exhibit No.
15 19 and ask you if you can identify them.

16 A. These are an old key system. It's a
17 Harloc key is the name of the lock that it goes
18 into. We use a Kwikset now. We switch out the
19 Harloc with the Kwiksets -- I mean, sorry, with
20 the Weslock. Excuse me.

21 Q. Okay. Are these keys to locks from the
22 Lakehurst apartments?

23 A. Older locks, yes.

24 Q. Can you tell by examining those whether
25 or not they fit the same lock?

1 A. They look like identical keys.

2 Q. How many keys are issued to a tenant
3 when they have --

4 A. Depending upon the size of a family,
5 normally we make two keys. If they need any
6 additional keys, we'll give them more keys.

7 Q. Two and more, if they need them?

8 A. That is correct.

9 Q. After -- did you become aware that Mr.
10 Hughes had been arrested while he was living there?

11 A. Yes, I did.

12 Q. For the offense that he's here for today?

13 A. Yes, I did.

14 Q. Did the police or anybody have you lock
15 that apartment up or restrict entrance to it
16 during their investigation?

17 A. When they went to Mr. Hughes' apartment
18 that evening or that morning, I should say, they
19 had a set of my master keys to get in. Once they
20 brought those keys back to me, they, you know
21 basically said, "Don't go back into the apartment."

22 Q. Okay. Did they tell you when you could
23 go back into the apartment?

24 A. They said that the apartment would be
25 released sometime in the future.

1 Q. Did they show you any authority or
2 anything to get the master key from you?

3 A. The identification, the police
4 identification.

5 Q. Did they show you a piece of paper of
6 any kind, warrant or search warrant or form of any
7 kind?

8 A. I can't remember.

9 Q. But at any rate, having identified
10 themselves at least, you gave them master keys to
11 get into the apartment?

12 A. Yes, sir, I did.

13 X Q. Is that why they came to see you to get
14 the keys or for some other purpose?

15 A. For that purpose.

16 Q. You say "that morning," could you put a
17 date on that?

18 A. I can't remember the exact date exactly,
19 you know, because it's been quite a few months ago.

20 Q. All right. Would it have been the
21 morning after the murder happened? Did you hear
22 about it on the news media?

23 A. No, sir. I was called at my house by my
24 security requesting my presence at Lakehurst
25 apartments. The call came in at about 12:30 a.m.

1 I cannot give you the specific date. I responded
2 to the apartment complex within 30 or 40 minutes.
3 I was told to go to the, I believe it was the
4 southwest corner; I went there, I was instructed
5 to leave that corner and go back around Westheimer
6 and cut up Kirkwood and go to the back of
7 Fuddrucker's, which I did. I was met there by the
8 police and from there --

9 Q. 12:30 a.m., you're talking about right
10 after midnight?

11 A. Yes, sir.

12 Q. And --

13 A. 12:30 to 1:00 o'clock, somewhere in
14 there.

15 Q. The officers that met you there to go
16 into his apartment give you their names?

17 A. Yes, sir, there was a detective, strange
18 spelling, starts with a G, if I'm not mistaken.

19 Q. Does Gafford ring a bell?

20 A. That's it. That's it.

21 Q. Did he have anybody with him?

22 A. There was another officer that was
23 around him. I don't know if I was formally
24 introduced or not.

25 Q. Another plainclothes officer or

1 uniformed officer?

2 A. Plain clothes and there were numerous
3 uniformed.

4 Q. All right. Does Bloyd ring a bell?

5 A. No, sir.

6 Q. All right. Did you go over to the
7 apartment and see them go in?

8 A. As a matter of fact, no, I remained back
9 in the -- in my office. I asked them if they
10 needed my services. They said, no, that they did
11 not need me.

12 Q. So, you couldn't even see Mr. Hughes'
13 apartment from your office then. You couldn't see
14 where they went in or not or did you observe at
15 all?

16 A. No, no, I stayed in my office. I did
17 what I was instructed to do.

18 Q. You say that they came to your office to
19 get the key to the apartment and you said you gave
20 them your master keys. Now, do you have a master
21 key that opens all the doors in the complex or
22 were there more than one key that you referred to
23 as master keys?

24 A. As I mentioned earlier, when my company
25 took over the project, the existing locks were

1 Harloc masters, which is just a name brand of the
2 lock. When we take over, we change the key to a
3 Weslock key system. So, therefore, I had existing
4 tenants that were there, you know, had the old
5 Harlocs; we had the new Weslocks. So, I kept --
6 probably there was two or three different masters
7 from the existing keys to our one single master.
8 So, therefore, I probably had three, four or five
9 keys on a ring.

10 Q. My question is: Did you give them the
11 whole ring or did you take the master key off the
12 ring that matched Mr. Hughes' apartment and give
13 it to them only?

14 A. I gave them a set of master keys that
15 had five or six keys that I used for the whole
16 entire complex.

17 Q. And just indicated which one would work
18 on that apartment?

19 A. I indicated that if it's a Harloc, it
20 would be one of these three keys; if it was a
21 Kwikset, it would be this type.

22 Q. Did you see Mr. Hughes that early
23 morning that we're talking about?

24 A. No, sir.

25 Q. Did you see him the evening prior?

1 A. No, sir.

2 MR. McCULLOUGH: Pass the witness.

3

4

CROSS EXAMINATION

5

6 BY MR. NOLL:

7 Q. Mr. Casler, the first time the police
8 came out to your apartment complex at Lakehurst
9 was in the early morning hours. By that, I mean
10 2:00 o'clock, 2:30 in the morning; is that correct?

11 A. No, sir.

12 Q. Do you remember what time it was?

13 A. I believe it was, like 12:30 a.m. I
14 believe they may have been there sooner than that
15 because that's when I was called by my answering
16 service to respond to the property.

17 Q. You were called there by 12:30; is that
18 right?

19 A. Yes, sir. They were there much sooner
20 than that.

21 Q. They were already conducting the
22 investigation?

23 A. Yes, sir.

24 Q. Is that when you gave them the master
25 keys?

1 A. No, sir, I did not give them the master
2 keys until approximately 1:00 o'clock in the
3 morning after I arrived on the property.

4 Q. You were called at 12:30 but you didn't
5 arrive to the property until about 1:00 or what
6 time?

7 A. 1:00 o'clock. I'm 20 to 30 minutes away
8 from the property from where I live.

9 Q. At that point they asked you was there
10 anyone there by the name of Preston Hughes, didn't
11 they, or by the name of Preston, I believe?

12 A. When we were in the back in the field,
13 they asked me if the name Preston meant anything
14 to me.

15 Q. What did you say?

16 A. I said, "Preston Hughes, III, is a
17 resident."

18 Q. You immediately said, "Preston Hughes,
19 III"?

20 A. Yes, sir, that's because that's the only
21 Preston Hughes I know.

22 Q. The only Preston that lived in the
23 apartment; is that right?

24 A. Yes, sir, because as we went back to the
25 apartment complex, I picked up a rent roll. I did

1 not remember exactly -- I knew the area, I did not
2 know the exact apartment number. I looked in the
3 rent roll and we found Preston Hughes, III, 138-A.

4 Q. At that time you checked your roster and
5 there was no one else using the name Preston
6 living in your apartment complex?

7 A. No, sir, there was not.

8 Q. At that point there was some security
9 guards walking out there, Mr. Guajardo and
10 Marshburn; is that correct?

11 A. The first one I don't recognize, but the
12 second one I do. But there were two out there,
13 yes.

14 Q. But you're sure of Mr. Marshburn?

15 A. Yes, sir.

16 Q. On that evening did the police tell you
17 they suspected Preston might have been involved in
18 a homicide? You knew that's what they were
19 investigating, a murder that occurred behind your
20 complex?

21 A. Yes, sir.

22 Q. And they left from your office at some
23 time that morning to go to the apartment that you
24 directed them to, No. 138-A belonging to Preston
25 Hughes, III; is that correct?

1 A. That is correct.

2 Q. There were three of them, Sergeant
3 Gafford, Sergeant Bloyd and a black sergeant in
4 uniform by the name of Hamilton; is that correct?

5 A. Yes, sir. And Marshburn kind of
6 followed them.

7 Q. And Marshburn followed them over to
8 Preston's apartment?

9 A. Yes, sir.

10 Q. Did you go with them to the apartment?

11 A. No, sir.

12 Q. Do you know if they entered his
13 apartment at that time?

14 A. I heard that they did, yes.

15 Q. But you didn't see it yourself?

16 A. No, I didn't see it, no, sir.

17 Q. Do you know if Preston Hughes was
18 present at home at that time?

19 A. Only that they said that he was there.

20 Q. Did you personally see them leave the
21 complex with Preston Hughes, III?

22 A. I believe I saw them put him into a
23 vehicle, police vehicle, and leave. But I again,
24 was still on the inside of the property looking
25 out the window.

1 Q. After they put Preston in the police
2 vehicle, they didn't sneak back to his apartment
3 and go in, did they?

4 A. No, no one went in.

5 Q. No one went in?

6 A. No one went in.

7 Q. They left?

8 A. Yes, sir.

9 Q. Did they bring the keys back to you?

10 A. No, sir, they said they would be back
11 with some other pictures to see if I could
12 identify. So, I hung around.

13 Q. Later that night, a couple of ladies
14 came by looking for children, didn't they?

15 A. Yes, sir, they did.

16 Q. Turned out to be the mothers of the
17 children that had been murdered?

18 A. Yes, it was really kind of strange
19 because this makes it about -- I don't remember
20 the exact time but I want to stay almost 3:00
21 o'clock in the morning, somewhere around that area,
22 a car pulled in and did not pull into a designated
23 parking spot but pulled up directly in front of
24 the building --

25 Q. We can narrow this down without going on

1 and on. In any event, two women came and you
2 found out they were parents of the victims in this
3 case?

4 A. Yes, I did.

5 Q. Sergeants came back from the homicide
6 division and met with those women; is that correct?

7 A. They did.

8 Q. Took them back down to the police
9 department?

10 A. They did.

11 Q. At this point you were still at your
12 complex?

13 A. I was.

14 Q. Were you there the following morning
15 when police officers came back out and did go into
16 Preston's apartment?

17 A. I was there until 2:30 that afternoon.
18 I never left the property from the time that I
19 arrived.

20 Q. So, you had a long day that day. You
21 started out at --

22 A. 1:00 a.m. --

23 Q. When you got there that night and stayed
24 the whole day?

25 A. That is correct.

1 Q. You were present when the police came
2 out the next day and searched his apartment?

3 A. Yes, I was.

4 Q. Between the time the officers left that
5 evening with him in the patrol car and the time
6 they came back the next day and went in his
7 apartment to search, did anybody else go in that
8 apartment?

9 A. No, sir.

10 Q. You're sure Sergeant Gafford didn't
11 sneak back in there?

12 A. No, sir. You know, I'm right there in
13 front. I can see the corner of the apartment. I
14 cannot see the actual door to it. I requested
15 nobody even get anywhere close to it.

16 Q. Let me ask you to stand up, Mr. Casler,
17 if you can, so this gentleman down here on the
18 floor can see. Let me show you what has been
19 introduced as State's Exhibit No. 5. Do you
20 recognize this as an aerial photograph including a
21 part of your apartment complex, the Lakehurst
22 apartments?

23 A. Yes, sir, I do.

24 Q. These are the Lakehurst apartments down
25 here on the bottom corner; is that correct?

1 A. Yes, sir.

2 Q. Let me direct your attention to what
3 appears to be a little red truck parked right by
4 this building.

5 A. Yes, sir.

6 Q. Is that where Preston Hughes, III, lived?

7 A. Yes, sir, he does, upstairs apartment on
8 the corner.

9 Q. Okay. And you're pointing to the little
10 red truck, the upstairs apartment on the corner in
11 State's Exhibit No. 5; is that correct?

12 A. That is correct.

13 Q. On September 26th, 1988, is that where
14 Preston Hughes, III, lived?

15 A. That is correct.

16 Q. Did he live there alone?

17 A. I don't know --

18 Q. As far as you know?

19 A. As far as I know, yes.

20 Q. Could have been a woman living there.
21 You don't know?

22 A. I don't know. He was the only one on
23 the lease, if I'm not mistaken.

24 Q. Do you really care whether or not there
25 was one or two keys to the apartment?

1 A. No, sir, I do not.

2 Q. Other than your involvement in
3 identifying that particular apartment as being the
4 apartment where Preston Hughes, III, lived, do you
5 know anything at all about what happened to those
6 two children on that pathway behind your apartment
7 complex?

8 A. No, sir.

9 Q. Were you present out there that night,
10 September 26th?

11 A. Not till after the fact.

12 Q. Did you see Preston Hughes that night at
13 all other than when the police contacted him in
14 his apartment?

15 A. No, sir, I did not.

16 Q. Did you talk to Preston Hughes, III?

17 A. No, sir, I didn't.

18 MR. NOLL: Pass the witness, Your Honor.

19

20 REDIRECT EXAMINATION

21

22 BY MR. McCULLOUGH:

23 Q. Excuse me, sir. I've forgotten or I
24 didn't ask. When did you get your master keys
25 back from Sergeant Gafford?

1 A. About 15, 20 minutes after I gave them
2 to him.

3 Q. They been up to the apartment and come
4 back or stayed in the area --

5 A. They went up to the apartment, they were
6 gone for about 10 to 15 minutes, they came back,
7 they handed me my keys and said, "Thank you very
8 much." They left the project with Mr. Hughes.

9 Q. Did they come back that morning? I mean --

10 A. When we called them and asked them to
11 come back when the two girls showed up.

12 MR. McCULLOUGH: Pass the witness.

13 MR. NOLL: Nothing further, Your Honor.

14 THE COURT: May this witness be
15 excused?

16 MR. McCULLOUGH: Yes.

17 THE COURT: Thank you, Mr. Casler. You
18 may go about your business.

19 Members of the jury, we're going to take
20 our afternoon break. Please be back in the jury
21 room at 3:45. You may be excused.

22 (Jury out.)

23 MR. McCULLOUGH: We call Brenda Johnson.

24 THE COURT: Very well.

25 (Jury in.)

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THE COURT: You may proceed.

MR. McCULLOUGH: Defendant recalls
Brenda Johnson.

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BRENDA JOHNSON,
was recalled as a witness by the Defense and,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. Ms. Johnson, are you the same Brenda Johnson that testified here a few minutes ago?

A. Yes, I am.

Q. You realize you're still under oath?

A. Yes, I do.

Q. I think we made an error a minute ago we need to straighten up. When you went down to the jail to get your son's keys, was the key you showed us all by itself or was it on --

A. No.

Q. What was it with?

A. These.

Q. You're holding up a big key chain with 20, 30 keys on it?

A. Right.

Q. And a simulated bull or something?

A. Yeah.

Q. Was that was in your son's evidence

1 envelope?

2 A. Right.

3 Q. And you gave Mr. Thomas a key out of
4 that envelope?

5 A. Yes, I did.

6 Q. All right. Now, you previously
7 identified Defendant's Exhibit 18 as being his
8 house key. I now show you what has been marked as
9 Defendant's Exhibit 19 and ask if you can identify
10 it.

11 A. Yeah, that's his keys but they all look
12 alike. They all say "Cole."

13 Q. Did 19 come off of his key chain, this
14 marked Defendant's 19? Is this the one that you
15 gave Mr. Thomas that came off that key chain?

16 A. Yeah, I just gave him that one, yeah.

17 MR. McCULLOUGH: Your Honor, at this
18 time we would offer Defendant's Exhibit No. 19
19 into evidence.

20 MR. NOLL: Judge, is this the same key
21 that Mr. Casler was shown?

22 MR. McCULLOUGH: Yes, that he identified
23 as being the same as the door key of the apartment.

24 MR. NOLL: Is that somehow different
25 from the key that Ms. Johnson first presented?

1 MR. McCULLOUGH: Yes, this one fits a
2 different lock.

3 MR. NOLL: With that understanding, we
4 have no objection.

5 THE COURT: Very well.

6 MR. McCULLOUGH: May we then give
7 Defendant's 18 back to Ms. Johnson to put on her
8 key ring?

9 Pass the witness.

10

11 CROSS EXAMINATION

12

13 BY MR. NOLL:

14 Q. When was it when you went out to try to
15 get in your son's apartment?

16 A. It was a Saturday, the first of October.

17 Q. First of October?

18 A. Right.

19 MR. NOLL: Nothing further, Your Honor.

20 I'm sorry, Your Honor.

21 BY MR. NOLL:

22 Q. That was after September when he was
23 arrested?

24 A. No, I went there the first time. Now,
25 when I used the key, it wasn't the first of

1 October.

2 Q. No, when you went there and you tried to
3 use the key and it wouldn't work?

4 A. When I first used the key it was on
5 October -- because I picked it up the 8th. I went
6 there that Sunday. I went there that Sunday.

7 Q. I'm sorry. We can't hear, ma'am.

8 A. I picked the keys up on Friday the 8 --
9 I mean Saturday the 8th, and I went there Sunday
10 the 9th.

11 Q. That was the month after your son was
12 arrested?

13 A. The 9th of October I went to use the key.

14 Q. Of 1988?

15 A. Right.

16 THE COURT: You may step down, Ms.

17 Johnson. Call your next.

18 MR. McCULLOUGH: Call Sergeant Gafford.

19 THE BAILIFF: Said he returned to the
20 station, Judge.

21 MR. NOLL: It's my understanding he was
22 released after he testified earlier. I don't
23 recall him being asked to be held.

24 MR. McCULLOUGH: He was here earlier
25 today and I asked Mr. Noll if he was going to

1 testify and he said that he was. So, I assumed
2 that he was still here.

3 MR. NOLL: Judge, I told them he might
4 testify in rebuttal. I didn't understand --

5 THE COURT: We don't need to get into
6 this right now. He's not here. Call your next
7 witness. We can get Sergeant Gafford back, I
8 assume.

9 MR. NOLL: We sure can, Your Honor.

10 MR. McCULLOUGH: Ms. Calhoun.

11 (Witness sworn.)

12 THE COURT: Please have a seat, ma'am.
13 You may proceed.

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ROSALYND CALHOUN,
was called as a witness by the Defense and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. What's your name, ma'am?

A. Rosalynd Calhoun.

Q. Are you married or single?

A. I'm divorced.

Q. All right. Where do you live?

A. At 4545 Cook Road.

Q. Where, ma'am?

A. 4545 Cook Road.

Q. What part of town is that in?

A. Alief.

Q. Are you familiar with a Fuddrucker's
restaurant on Kirkwood and Westheimer?

A. Yes, I am.

Q. That area?

A. Yes.

Q. Kirkwood, Westheimer area?

A. Yes.

Q. Did it come to your attention that there

1 had been some children murdered in a field
2 adjacent to that Fuddrucker's restaurant on
3 September 26th of 1988?

4 A. Yes.

5 Q. Had you been in the area of that
6 restaurant on September 26th of 1988?

7 A. Yes, I had.

8 Q. What time of day or night were you in
9 that area?

10 A. Now, I can't say an exact time but it
11 was around 9:00, 9:15 at night.

12 Q. And what were -- were you in a car or on
13 foot or --

14 A. I was in a car.

15 Q. Where were you going?

16 A. I was going to Fuddrucker's.

17 Q. Do you go there frequently or is that
18 the first time?

19 A. That was the first time, I believe, that
20 I had been there, around one of the first times.

21 Q. Did you see anything that attracted your
22 attention when you were in that area?

23 A. Yes. Well, yes. I noticed three people
24 going across the parking lot and what attracted my
25 attention was the man had what I thought was a

1 neck brace around his neck.

2 Q. All right. What did the -- describe the
3 three people.

4 A. It was a man, I guess he was about 5' 9"
5 or so, about 155 pounds, 150 pounds, not a real
6 big person, not a real little person, and I
7 thought it was a lady, you know, young lady.

8 Q. Was she tall or shorter than the man?

9 A. She was shorter than the man.

10 Q. Could you guesstimate her age?

11 A. Well, I thought she was a lady, like in
12 her 20's.

13 Q. How close were you to her?

14 A. When I first noticed them, we had turned
15 into the median and that made the car face the
16 parking lot. So, I guess I was about 150 feet
17 away, I guess.

18 Q. Was there anyone else with the man and
19 lady?

20 A. A little child.

21 Q. A boy or girl or could you tell?

22 A. I can't say for sure.

23 Q. Could you say approximately how old or
24 how tall the child was?

25 A. The little kid was about, I guess about

1 4 years old, looked like about a 4-year-old child.

2 Q. All right. Which direction were they
3 headed?

4 A. They were headed toward the vacant lot
5 in the back.

6 Q. Were they -- were these three people
7 black, white or --

8 A. They were black.

9 Q. Did you notice their clothing at all?

10 A. The only thing that I can say about the
11 clothing, you know, it's been so long ago, but I
12 don't recall the lady -- I know she didn't have a
13 dress on because I would have noticed a dress.
14 And the child didn't have a dress on. So, you
15 know, everybody had on pants or blue jeans or
16 something like that but nobody had a dress on.

17 Q. All right. Look at this man sitting
18 here at the table with us. Do you recognize him?

19 A. No. I wasn't close enough to see
20 anybody's face up that close.

21 Q. Could you tell whether or not this would
22 be the man -- I mean, I know what you said but I
23 just want -- is it possible you could identify
24 this man or not?

25 A. The person I saw was about that size but

1 I can't say it was that man.

2 (Defendant stands.)

3 A. Yeah, he was about that size but, you
4 know, I didn't see his face.

5 (Defendant seated.)

6 MR. McCULLOUGH: Pass the witness.

7 THE COURT: Mr. Noll.

8

9

CROSS EXAMINATION

10

11 BY MR. NOLL:

12 Q. The man you saw walking with the woman
13 and child was about the same size as this man,
14 right?

15 A. Yes.

16 Q. About the same color?

17 A. Yes.

18 Q. About the same hairdo?

19 A. Yes, about the same hairdo.

20 Q. The woman -- did the man have on blue
21 jeans?

22 A. You know, I can't say that -- I can't
23 say for sure.

24 Q. Do you remember what kind of shirt the
25 man had on?

1 A. I don't even know the color of shirt
2 because it's been so long ago, I don't, you know.

3 Q. Was the woman about the same height as
4 the man?

5 A. She was a little shorter than the man.

6 Q. How much shorter?

7 A. The lady -- let me see. God, I'm going
8 to say she may have been about 5' 4" maybe or --

9 Q. You're a hairdresser by profession; is
10 that correct?

11 A. Well, I own a beauty shop.

12 Q. A beauty shop. Called the Fingernail?

13 A. The Finger Bowl.

14 Q. The Finger Bowl. I'm sorry. Do you do
15 ladies' hair?

16 A. I do manicures and I have hairdressers
17 work for me.

18 Q. The reason I ask, I was thinking maybe
19 you noticed the girl's hairdo, the woman's hairdo.
20 Did you notice it?

21 A. No, I didn't. I didn't notice her
22 hairdo.

23 Q. Did you notice anything unusual about
24 her hairdo?

25 A. No, I didn't. I didn't notice anything

1 unusual about it.

2 Q. Do you remember if the woman had on a
3 pair of shorts, maybe?

4 A. Gosh.

5 Q. If you know?

6 A. I'm not sure. I'm not sure if she had
7 on shorts or pants but it wasn't a dress.

8 Q. Okay. So, the only thing you're sure
9 about is it wasn't a dress but you don't know if
10 it was short pants or long pants?

11 A. Right.

12 Q. The child, you're not sure if it was a
13 boy or a girl?

14 A. No, all I knew, it was a little child.

15 Q. Do you recall what color the clothing
16 was the little child had, boy or girl, whatever it
17 was? Do you recall at all the color of the
18 clothing, regardless of what it was?

19 A. I can't say.

20 Q. So, you're not sure if it was a little
21 boy or little girl. You don't know how the child
22 was dressed. Are you sure it was a young woman or
23 a woman who looked, a person who looked to be a
24 young woman to you?

25 A. Yeah.

1 Q. Was the young woman dark complected or
2 light complected?

3 A. She wasn't light complected. She was
4 about -- not real dark but, you know about medium
5 complexion. Not --

6 Q. Let me say -- in comparison to the
7 defendant, would you say he was dark, light or --

8 A. He's dark.

9 Q. Was the young woman you saw there the
10 same as the defendant, darker than the defendant,
11 lighter than the defendant?

12 A. She might have been a little lighter.

13 MR. NOLL: May I approach the witness,
14 Your Honor?

15 THE COURT: You may.

16 BY MR. NOLL:

17 Q. I'm going to ask you to look at a
18 picture and I apologize in advance for having to
19 show it to you but I like you, without paying too
20 much attention, other than the skin tone of the
21 lady in this picture, all right. Was the woman
22 you saw the same color at this woman?

23 A. She could have been.

24 Q. Was this the woman you saw?

25 A. I don't know. I didn't see her face

1 that good.

2 Q. Could you tell whether the woman out
3 there that day had her hair braided?

4 A. This was at night and the lights were on
5 in the parking lot but I didn't really look that
6 close, you know, at the hairdo and all that.

7 Q. I understand.

8 A. Because I was really just paying
9 attention to this -- to the guy, you know, in the
10 brace. I wasn't really, you know --

11 Q. Had you seen that person earlier in the
12 day -- you had seen someone earlier in the day who
13 had a neck brace on; is that correct?

14 A. I saw someone earlier during the day at
15 the Stop and Get -- going to the Stop and Go.

16 Q. Do you recall if that was the same
17 person you saw later in the parking lot?

18 A. I can't say if it was the same person
19 but it was another person of the same statue (sic).

20 Q. It's the neck brace that got your
21 attention, correct?

22 A. That's right.

23 Q. Is that why you don't recall what the
24 people looked like so much?

25 A. Yeah, because I was concentrating on

1 this neck brace.

2 Q. When you say "a neck brace," are you
3 talking about when someone has a car wreck, rubber
4 foam things they wear around their neck to make
5 you hold your neck up straight?

6 A. Something that looked like that.

7 Q. You don't know if it was this man or not?

8 A. I can't say for sure because I wasn't
9 close enough.

10 Q. Do you think it might have been this man
11 right here?

12 A. I don't know. I can't say.

13 Q. So, you just don't know?

14 A. I don't know. I can't say -- only way I
15 could know is if I was close enough to see his
16 face.

17 Q. Just someone about the same size as this
18 man, meaning the defendant, but you don't know if
19 it was him or not, you don't know how the woman
20 was dressed and you're not sure whether the child
21 was a boy or girl?

22 A. Right. I can't say for sure.

23 MR. NOLL: Nothing further, Your Honor.

24

25

1 REDIRECT EXAMINATION

2
3 BY MR. McCULLOUGH:

4 Q. Were these people walking away from you?

5 A. They were walking -- now, they didn't
6 have their back to me. When I saw them, they were
7 walking at an angle where I could -- you know, if
8 I had been close enough, I could have seen
9 features, but I wasn't close enough.

10 Q. My point was: Could the thing you
11 thought was a neck brace, could it have been a
12 towel around the man's neck?

13 A. It could have been.

14 Q. How were they walking? Was the child
15 between them or on the outside?

16 A. The child was on the outside, the lady
17 was in the middle and the man was, you know, on
18 the other side of the lady.

19 Q. Were they walking close together, arm in
20 arm, far apart?

21 A. They were walking close together but
22 they weren't arm in arm. They were walking as if
23 they were together.

24 Q. How far were they from the woods when
25 you last saw them?

1 A. I guess about 12 feet.

2 Q. And it was already dark?

3 A. It was dark.

4 Q. Was the man walking with a normal gait?
5 Did he limp? Did he stagger?

6 A. He didn't limp or stagger. They were
7 all walking normal.

8 MR. McCULLOUGH: Pass the witness.

9

10 RE CROSS EXAMINATION

11

12 BY MR. NOLL:

13 Q. Did you go in the Fuddrucker's and get
14 your hamburgers that night?

15 A. We went in there and ate our hamburgers
16 in there.

17 Q. They were still open and you had time to
18 finish your burger and do all that?

19 A. Uh-huh, yeah.

20 Q. Do you know what time Fuddrucker's
21 closes?

22 A. Well, I know now; but at the time I
23 wasn't sure.

24 Q. What time do they close now? Do you
25 know?

1 A. At 10:00.

2 Q. At that time, did they close at the same
3 time?

4 A. I'm sure they did.

5 Q. So, they close at 10:00 o'clock?

6 A. Uh-huh.

7 Q. Were they closing up when you left that
8 night?

9 A. No, they weren't closing but we were the
10 only ones in there. It was kind of late.

11 Q. Okay. So, it was sometime before 10:00
12 o'clock then obviously that you saw these people?

13 A. Yes, it was before 10:00 o'clock.

14 MR. NOLL: Nothing further, Your Honor.

15 MR. McCULLOUGH: No questions.

16 THE COURT: May this witness be
17 excused?

18 MR. NOLL: We have no objection, Your
19 Honor.

20 MR. McCULLOUGH: Yes.

21 THE COURT: Thank you, Ms. Calhoun. You
22 may go about your business. Call your next,
23 counsel.

24 MR. McCULLOUGH: Kenny Mouton.

25 THE COURT: You may proceed.

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A JUROR: Can he move forward?

THE COURT: Please sit forward in the
seat.

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KENNY MOUTON,

was called as a witness by the Defense and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. State your name for the judge and the
jury.

A. Kenneth Mouton.

Q. Mr. Mouton, the reason I'm sitting way
back here instead of up closer is so that you'll
be reminded to talk loud enough so I can hear you
and, therefore, these people back here can hear
you. Okay?

A. Yes, sir.

Q. All right. How old are you?

A. 23.

Q. Where do you live?

A. 8282 Cambridge, by the Astrodome.

Q. Okay. That's here in Houston?

A. Yes.

Q. Do you know this man sitting here,
Preston Hughes?

A. Yes.

1 Q. Where do you know him from?

2 A. Work.

3 Q. Where did y'all work?

4 A. Montgomery Wards warehouse.

5 Q. Are you still working there?

6 A. No, sir.

7 Q. When did you quit working there?

8 A. January.

9 Q. How long did you work there with Mr.
10 Hughes?

11 A. From August up until the time he was
12 picked up.

13 Q. All right. How did you find out he had
14 been picked up?

15 A. Went in to work the next morning and
16 personnel director notified me that he had been
17 picked up.

18 Q. All right. That was on the 27th?

19 A. Yes.

20 Q. Of September, 1988?

21 A. Yes.

22 Q. A Tuesday morning?

23 A. Yes.

24 Q. Had you seen Mr. Hughes the day before?

25 A. Yes.

1 Q. Did y'all work the same hours?

2 A. Yes. We were on the same shift.

3 Q. What was your shift?

4 A. It was from -- well, they changed verily
5 throughout the week but we mostly come in about
6 7:00 in the morning. Left anywhere from 12:00,
7 12:30 up until 6:00 o'clock in the evening.

8 Q. Do you know how long you and Mr. Hughes
9 worked on that previous Monday, on the 26th?

10 A. Up until about right at 5:00 o'clock.

11 Q. Did y'all leave work together?

12 A. Yes.

13 Q. Where was this location of your job?

14 A. It's on Clinton, right off of Jensen.

15 Q. All right. What did you do after you
16 got off work, you and Mr. Hughes?

17 A. We waited for my cousin and another
18 friend and we went up to a store.

19 Q. What store did you go to?

20 A. It's called The Food Store and it's on
21 Franklin right after you get over the bridge
22 entering downtown.

23 Q. What did y'all do there?

24 A. We bought -- I think it was a pint of
25 Everclear and some grape soda water.

1 Q. What did y'all do then?

2 A. Started drinking and talking.

3 Q. Where? There at the same time or did
4 y'all move on?

5 A. At the same time.

6 Q. How long did y'all stay there?

7 A. Till about 7:45, 8:00 o'clock.

8 Q. Then what did y'all do?

9 A. I dropped Preston off downtown at Fannin
10 and Walker. That's where I would drop him off
11 when he would ride with me to go home.

12 Q. All right. What was the purpose of
13 dropping him off at the corner of Fannin and
14 Walker?

15 A. He would catch the bus to go home.

16 Q. For those who don't know, where is
17 Fannin and Walker located?

18 A. Downtown.

19 Q. In the area where the courthouse is? In
20 the downtown area?

21 A. Yes, sir.

22 Q. That would be -- how far in blocks would
23 that be from here, if you had to guess?

24 A. Approximately five blocks going west.

25 Q. And what time did you leave him off

1 there at the bus stop?

2 A. Right before 8:00 o'clock. Because his
3 bus, he said his bus came right at about 8:00, a
4 little after.

5 Q. Did you see him anymore that night?

6 A. No, sir, I didn't.

7 Q. What was he doing when you last saw him
8 that evening?

9 A. Getting out of my car. We were saying
10 we were going to see each other at work the next
11 day and he was walking toward Main, going west.

12 Q. Do you know anybody named Dry Rod?

13 A. Name doesn't sound familiar.

14 Q. Did you ever call this man Dry Rod?

15 A. Yes.

16 Q. Why?

17 A. Just a name. It's like you give
18 different people pet names.

19 Q. Do you recall why you started calling
20 Preston Hughes Dry Rod?

21 A. No, I don't.

22 MR. McCULLOUGH: Pass the witness.

23 THE COURT: Mr. Noll.

24

25

1 CROSS EXAMINATION

2
3 BY MR. NOLL:

4 Q. Mr. Mouton, was Mr. Hughes drunk when
5 you left him off at the bus stop?

6 A. Yes, sir.

7 Q. Was he staggering drunk?

8 A. Just about, sir.

9 Q. What did you have to drink that night?

10 A. Everclear and grape soda water.

11 Q. You said you bought a pint of Everclear?

12 A. If a pint is about this size, that's
13 what we had, sir.

14 Q. You made a motion with your hands of
15 what? About a foot high? What is that? How many
16 inches?

17 A. About eight, nine inches.

18 Q. You call that a pint?

19 A. It was more than a pint, sir.

20 Q. Was it a fifth?

21 A. Looking at a fifth, sir.

22 Q. And y'all drink that with grape juice?

23 A. Grape soda water. We had some grape
24 soda water.

25 Q. There were how many of you? Four?

1 A. Yes, sir.

2 Q. The four of you drank that?

3 A. Yes, sir.

4 Q. Where were you now when you were
5 drinking this stuff?

6 A. On the side of the building of The Food
7 Store on Franklin.

8 Q. Were you drunk?

9 A. Yes, sir.

10 Q. Was everybody else drunk?

11 A. Yes, sir.

12 Q. But you still recall that you got to the
13 bus stop on time?

14 A. Yes, sir.

15 Q. Why is it you recall that you got there
16 at a certain time?

17 A. Because at the time that we were
18 drinking and it was starting to get dark, I looked
19 at my watch and we noticed it was about 7:15 and
20 we were all talking earlier about looking at the
21 game on TV. That's what made me know about what
22 time it was when we got to the bus stop.

23 Q. What game was on TV that night?

24 A. Miami against somebody else. I can't
25 recall the other team.

1 Q. Monday night football, though, right?

2 A. Yes, sir.

3 Q. Preston a big football fan?

4 A. We talked about it. I don't know if you
5 consider that being a big football fan.

6 Q. There's some guys who wouldn't miss
7 Monday night football for anything, there's some
8 guys who care less, and some guys that fall in
9 between. Would Preston be the kind of guy who
10 would be really concerned about keeping up with
11 the score on that game?

12 A. I'd say he's in between.

13 Q. Certainly not a fanatic football fan.
14 Is that what you're saying?

15 A. Yes, sir.

16 Q. After you saw Preston at the bus stop
17 there, you didn't see him again, period, right?

18 A. Correct, sir.

19 Q. And you just met him that August, which
20 was about a month before this date; that true?

21 A. Yes, sir.

22 Q. So, you've known him about a month as a
23 co-worker and dropped him off at a bus stop at
24 about 8:00 o'clock on the 26th of September of
25 1988, and that's the last you saw of him?

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A. Yes.

Q. Do you know where he went that night?

A. No, I don't.

Q. Do you know if he even caught the bus?

A. No, I don't.

Q. Do you know anything at all about the
stabbing deaths of a little girl by the name of
Shandra Charles and her cousin, Marcell Taylor?

A. Only by what I read in the paper.

Q. Did you know Shandra Charles?

A. No.

Q. Known as Shawn?

A. No.

Q. You didn't know Marcell Taylor?

A. None of them personally.

Q. You didn't know any of those people?

A. No.

Q. Don't know anything about what happened
out there that night?

A. Only what I've read in the paper.

MR. NOLL: Nothing further, Your Honor.

1 REDIRECT EXAMINATION

2
3 BY MR. McCULLOUGH:

4 Q. Who else were you drinking with besides
5 Preston?

6 A. My cousin, Jesse Miles, and another
7 friend name Calvin Williams.

8 Q. Were they all in the car when you
9 dropped Mr. Hughes off?

10 A. Just Jesse.

11 MR. McCULLOUGH: Pass the witness.

12 MR. NOLL: Nothing further, Your Honor.

13 THE COURT: May this witness be excused?

14 MR. McCULLOUGH: Yes.

15 MR. NOLL: We have no objection.

16 THE COURT: Thank you, Mr. Mouton. Go
17 about your business. Call your next, counsel.

18 MR. McCULLOUGH: Could we check the call
19 for Mr. Gafford? If he's not there, we would call
20 Elizabeth Stroman.

21 THE COURT: Approach the bench, please,
22 gentlemen.

23 (Off the record discussion.)

24 THE COURT: You may proceed, Mr.
25 McCullough.

1 ELIZABETH STROMAN,
2 was called as a witness by the Defense and, having
3 been duly sworn, testified as follows:
4

5 DIRECT EXAMINATION
6

7 BY MR. McCULLOUGH:

8 Q. State your name, please, for the record
9 and for the judge and the jury.

10 A. Elizabeth Stroman.

11 THE COURT: Ms. Stroman, we've got a
12 compressor behind us. We've got air conditioning.
13 I want you to yell at that back wall, if you have
14 to. Okay? Please move forward.

15 A. Elizabeth Stroman.

16 BY MR. McCULLOUGH:

17 Q. How are you employed, Ms. Stroman?

18 A. The Men's Wearhouse.

19 Q. Where is that located?

20 A. 5507 Renwick.

21 Q. What part of town is that in?

22 A. Southwest.

23 Q. Are you acquainted with Brenda Johnson?

24 A. Yes, sir.

25 Q. How do you know her?

1 A. I work with her.

2 Q. What is your job at the Men's Wearhouse?

3 A. Administrative assistant.

4 Q. Ma'am?

5 A. Administrative assistant.

6 Q. Were you employed there in September of
7 1988?

8 A. Yes, sir.

9 Q. What were you doing at that time? What
10 was your job at the Men's Wearhouse at that time?

11 A. Reception -- I was administrative
12 assistant, also working a receptionist job because
13 our receptionist had left.

14 Q. By "receptionist," what kind of work did
15 you do as a receptionist?

16 A. Switchboard operator.

17 Q. You acquainted with this man sitting
18 here, Preston Hughes, III?

19 A. Yes, sir.

20 Q. How do you know him?

21 A. By Brenda coming up to the office.

22 Q. You mean Preston Hughes had visited in
23 your office is how you knew him?

24 A. Yes, sir.

25 Q. Had he ever worked at the Men's

1 Wearhouse?

2 A. Yes, sir.

3 Q. When had that been?

4 A. He worked in the warehouse in the back
5 of our offices. It was in the years before, off
6 and on, through that year, of last year.

7 Q. How much -- did you have any contact
8 with him when he was an employee? You were
9 working in the office, he's working in the
10 warehouse. Did y'all have any contact?

11 A. They came in and out.

12 Q. Did you know Brenda Johnson first or
13 Preston Hughes first?

14 A. Brenda Johnson.

15 Q. How long have you worked at the Men's
16 Wearhouse?

17 A. Five years.

18 Q. Did you have any conversations with
19 Preston Hughes, III, on the 27th of September of
20 1988?

21 A. When he called from the jail?

22 Q. Did he?

23 A. Yes, sir.

24 Q. How many times did he call?

25 A. Three, maybe four times. Three, for

1 sure.

2 Q. Do you recall the time of day that he
3 called you the first time, the first call?

4 A. Morning.

5 Q. Can you get any closer than that? What
6 time do you start to work?

7 A. 9:30.

8 Q. 9:30?

9 A. I start at 9:00. Then I started at 9:00.

10 Q. Okay. With that as a frame of reference,
11 do you recall what time of day he called you the
12 first time?

13 A. Called in the morning about from 9:00 to
14 10:00, somewhere in that time frame.

15 Q. Was there anything unusual about the
16 call, the first one?

17 A. He said he was in jail.

18 Q. Well, was it a normal telephone call?

19 A. No, sir.

20 Q. What was different about it?

21 A. It was a collect call.

22 Q. Did you normally, as a switchboard
23 operator, accept collect calls?

24 A. No, sir.

25 Q. Why did you on this occasion?

1 A. Because the operator said it was from
2 Preston Hughes.

3 Q. Did she say where he was calling from?

4 A. From the jail.

5 Q. Did you talk to Mr. Hughes?

6 A. Yes, sir.

7 Q. What did he say to you?

8 A. He said that they arrested him the night
9 before for killing two children.

10 Q. What else did he say about it?

11 A. He was upset and I couldn't carry on a
12 conversation with him because it was off and on, I
13 had to put him on hold and on and off. He was --
14 I remember the fact that he was upset and I was
15 asking him if he had contacted his mother. He had
16 called looking for his mother. I told him that he
17 needed to call her at home, that she wasn't at
18 work.

19 Q. Well, did he place the call to you or
20 how did -- did you get the call only because you
21 were the telephone receptionist?

22 A. Yes, sir.

23 Q. Who was he actually calling for?

24 A. Well, it was just, "Will you accept a
25 collect call from Preston Hughes?"

1 Q. Was he asking for anyone specifically?

2 A. The operator didn't.

3 Q. What makes you say that he was upset?

4 What evidence of being upset did he portray to you?

5 A. That he was in jail and that they had
6 come over the night before to pick him up.

7 Q. Was there anything about his voice or
8 what he said or anything that made you conclude
9 that he was upset?

10 A. I could just tell he was upset.

11 Q. Okay. What else did he say to you in
12 the first telephone conversation?

13 A. That they went over to his apartment and
14 the policemen took him down for questioning or
15 they arrested him, they took him to jail, that
16 they were accusing him of killing two children. I
17 was asking him when. He was telling me "last
18 night." I asked him what happened. He said he
19 was walking in a field and that somebody had
20 tapped him and he turned around and was struggling
21 with someone.

22 Q. I'm trying to get this into, if you can,
23 distinguish between what was said in the first,
24 second or third or however many calls there were.
25 If you can't, we'll just do the best we can with

1 it. Is that all that he told you in the first
2 conversation or -- if you recall?

3 A. I don't remember. The conversation was
4 hard to hold because I was putting him on hold a
5 lot, answering other lines. I was asking him if
6 he's contacted his mother, if he had talked to her
7 before.

8 Q. Well, can you recall --

9 A. It had to be about 9:30 or 10:00 because
10 his mother wasn't in the office.

11 Q. I'm sorry. I couldn't hear you.

12 A. Had to be about 9:30 or 10:00 because
13 his mother wasn't in the office.

14 Q. What time did she come in?

15 A. She didn't come in.

16 Q. How long after the first telephone call
17 was the second telephone call?

18 A. Before lunch.

19 Q. What did he say to you in the second
20 telephone call?

21 A. He was telling me that he had to change
22 his statement and I was asking him, "You gave a
23 statement?"

24 And he said, "They're telling me to
25 change my statement. I have to go to change my

1 statement."

2 Q. What did -- did you say anything to him
3 about that?

4 A. I was asking him why. "Why are you
5 going to go change your statement?"

6 And he said, "Because they told me I had
7 to."

8 And as we were talking, he had to get
9 off the phone because they were ready to take him.
10 He said, "They're here. I have to go."

11 Q. Now, this second telephone call, was it
12 like the first one, a collect call from the jail?

13 A. I beg your pardon?

14 Q. Was the second telephone call like the
15 first one? Was it a collect call?

16 A. Yes, sir.

17 Q. Or a normal call?

18 A. It was a collect call.

19 Q. And you accepted the charges?

20 A. Yes, sir.

21 Q. For the Men's Wearhouse?

22 A. (Nods head affirmatively.)

23 Q. Did you get anymore telephone calls from
24 Mr. Hughes that day?

25 A. In the afternoon, after lunch.

1 Q. How much later, would you say?

2 A. Had to be between 1:30 -- after 1:30.

3 Q. What did he tell you in that telephone
4 call?

5 A. He said he changed his statement.

6 Q. Did he say anything else about the
7 statement?

8 A. That the policeman told him to change
9 his statement.

10 Q. Anything else about it?

11 A. No.

12 Q. Was that now the third telephone call
13 we're talking about?

14 A. Yes, sir. When he told me he changed
15 his statement, I told him he needed to talk to his
16 mother to contact his mother and that I would try
17 to find out where she was at.

18 Q. Go back. You testified in the first
19 telephone call you thought he sounded upset. In
20 the second telephone call, can you say whether he
21 sounded upset, calm? How would you describe how
22 he sounded on the phone?

23 A. He was upset and rushed. He had to --
24 it was a quick phone call. I mean, he had to get
25 off.

1 Q. In the third phone call, how was his --
2 how did he sound?

3 A. Same.

4 Q. Was that the last one or did you get
5 subsequent phone calls?

6 A. Nothing after that, that day, I don't
7 believe.

8 Q. Can you think of anything else that Mr.
9 Hughes told you on the phone that morning or
10 afternoon that you haven't testified about so far?

11 A. (Shakes head negatively.)

12 Q. Is Brenda Johnson your supervisor?

13 A. No, sir.

14 Q. Are you her supervisor?

15 A. No, sir, she works in a completely
16 different department that I work in.

17 Q. Have you ever visited in her or Mr.
18 Hughes' home?

19 A. No.

20 Q. Have they ever visited in your home?

21 A. No.

22 Q. Are you married or single?

23 A. Single.

24 MR. McCULLOUGH: Pass the witness.

25 THE COURT: Mr. Noll.

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MR. NOLL: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. NOLL:

Q. Ms. Stroman, as I understand it, the first time the defendant called you was at about 9:30 or 10:00 in the morning on the 27th of September. You kept putting him on hold and had to talk to him in between calls that were coming in; is that correct?

A. Yes, sir.

Q. He appeared to be upset to you? As you got back to him, he was upset?

A. When the operator was on the phone, when the operator released the call, that's when I knew he was upset.

Q. Okay. Did you continue, though, to have to answer the incoming phones and put him on hold?

A. Yes, sir.

Q. And he was trying to tell you that he was in jail and he needed to talk to his mother; is that right?

A. Uh-huh.

Q. Yet, you had to continue your job and

1 answer the phones that were coming into the
2 warehouse?

3 A. (Nods head affirmatively.)

4 Q. And obviously he was upset as he
5 attempted to talk to you and talked about his
6 situation? Is that what you're saying? He
7 sounded to you as though he was upset. I believe
8 that was your statement; is that correct?

9 A. I get quite a few different calls. You
10 can tell if someone is upset when you have to put
11 them on hold.

12 Q. Sure you do.

13 A. It's not the same type of being upset.

14 Q. You're saying you knew he was upset
15 about something else?

16 A. Yes, sir.

17 Q. Didn't he tell you in that conversation
18 that he had been walking in a field behind that
19 Fuddrucker's and he had gotten in a fight with a
20 man in that field?

21 A. He said he struggled with someone in the
22 field.

23 Q. He said a man, didn't he? Don't you
24 remember the phone call?

25 A. No, sir, I don't remember.

1 Q. You remember your previous testimony in
2 this case?

3 A. Yes, sir.

4 Q. Do you remember testifying that he told
5 you he had a struggle with a man in that field?

6 A. I know he said he had a struggle with
7 someone.

8 Q. You remember him telling you that he had
9 had a fight with somebody and somebody had been
10 looking for him, a man had been after him?

11 A. Yes, sir.

12 Q. Okay. And then he told you that he was
13 walking through the field, right?

14 A. Yes, sir.

15 Q. And told you it was dark and it was late
16 when he was walking through the field, didn't he?

17 A. Yes, sir.

18 Q. I'm sorry. You have to answer out loud.

19 A. Yes, sir.

20 Q. And he told you that somebody nudged him
21 and grabbed him and pulled him by his shoulder,
22 didn't he?

23 A. No, touched his shoulder.

24 Q. Do you remember your testimony in this
25 courtroom when you said that somebody nudged him

1 or grabbed him, pulled him by his shoulder?

2 A. No, sir. I remember saying he tapped
3 him on the shoulder.

4 MR. NOLL: Can I approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 BY MR. NOLL:

8 Q. Let me show you a transcript of your
9 previous testimony before this Court. Don't
10 repeat it out loud to anyone but just read what
11 your response was to this question. Have you had
12 a chance to read it?

13 A. Yeah. It says "or."

14 Q. Now, did you say, "And then somebody
15 nudged him or grabbed him, pulled him by the
16 shoulder"?

17 A. I know I said, "Somebody nudged him."

18 Q. Is this or is this not your testimony,
19 ma'am?

20 A. If you tell me it is, it is.

21 Q. Having -- well, I can't tell you what it
22 is or what it isn't. Having reviewed this.

23 A. I don't know.

24 Q. Are you saying this transcript is not
25 accurate?

1 A. No, sir, I'm not saying that.

2 Q. If this is an accurate transcript, and
3 if that was your testimony before, are you saying
4 now that was not what you said in this courtroom
5 before?

6 A. I know I said, "Somebody nudged him."

7 Q. But you don't recall saying "Nudged him
8 or grabbed him, pulled him by his shoulder"?

9 A. I may have.

10 Q. I asked you, "Then what else?"

11 You said, "Turned around and started
12 fighting with them." Do you remember saying that?

13 A. "With them"?

14 Q. Yes, ma'am. Do I need to show you your
15 testimony again?

16 A. Yeah.

17 Q. Right after you said that, I asked you,
18 "Then what else?" And you said and -- read that.

19 A. Them or him?

20 Q. Well, having read this testimony, are
21 you saying that the transcript is incorrect?

22 A. No, sir.

23 Q. Okay. So that when you testified before,
24 you said, "He turned and started fighting with
25 them." Is that what you testified before?

1 A. Yes, sir.

2 Q. Would you like to change that testimony
3 today, ma'am?

4 A. No, sir.

5 Q. Is that what he told you or is it not
6 what he told you?

7 A. He said, "him."

8 Q. So, when you testified earlier in this
9 court under oath, you were incorrect?

10 A. I didn't know I said "them."

11 Q. You've read the transcript. Are you
12 saying the transcript is wrong?

13 A. No, sir, I'm not.

14 Q. Okay. Well, it indicates you said "them"
15 on that day. And today you're saying "him." Was
16 it a man? Are we sure now it was a man that he
17 fought with, that he told you it was a man that he
18 fought with?

19 A. Yes, sir.

20 Q. So, you do remember now that he told you
21 he fought in that field late at night in the dark
22 with a man? Told you that, didn't he?

23 A. (Nods head affirmatively.)

24 THE COURT: You have to answer out.

25

1 BY MR. NOLL:

2 Q. He told you after the fight he ran; is
3 that right?

4 A. Yes, sir.

5 Q. Did you tell Preston when he called that
6 first time his mother was not at work yet?

7 A. Yes, sir.

8 Q. Did you tell him what time you expected
9 her in?

10 A. No, sir.

11 Q. Did he know her home phone number?

12 A. I guess he did.

13 Q. Do you know?

14 A. No, I don't know.

15 Q. Did he ask you for his mother's phone
16 number?

17 A. No.

18 Q. Did he ask you to get in touch with his
19 mother for him?

20 A. The first phone call?

21 Q. Uh-huh.

22 A. I told him that I would try to find out
23 where she was at.

24 Q. Okay. In this first phone call, did he
25 complain to you that he had been threatened or

1 coerced by the police into making the statement?

2 A. No, sir.

3 Q. Okay. That phone call ended. Did he
4 have to hang up on you or did you have to hang up
5 on him because you had other calls coming in?

6 A. I had calls coming in.

7 Q. So, you had to hang up on him?

8 A. (Nods head affirmatively.)

9 Q. Did you say, "Bye, Preston, I'll get
10 back to you later," or, "Call me back," or what?

11 A. I told him I would work on looking for
12 his mother, finding out where his mother was at.

13 Q. He called you later in that same day?

14 A. Yes, sir.

15 Q. In the second phone call, do you recall
16 what time it was when he called you back?

17 A. No, sir, I don't.

18 Q. Was it -- what time do you usually eat
19 lunch there?

20 A. A lot of times I don't eat lunch there.

21 Q. Okay. A regular lunch hour where others
22 are leaving and coming and going to lunch?

23 A. 12:00 to 2:00.

24 Q. Do you recall if it was before the
25 lunchtime or after the lunchtime?

1 A. First phone call?

2 Q. Uh-huh -- the second phone call.

3 A. Before lunch.

4 Q. So, it was after -- called you the first
5 time about 9:30 or 10:00 and he called you back
6 sometime after that before the noon hour. Is that
7 your testimony?

8 A. I beg your pardon?

9 Q. He called you the first time about 9:30
10 or 10:00; is that correct?

11 A. Yes, sir.

12 Q. And then you hung up and then he
13 returned the call to you again; is that correct?

14 A. Yes, sir.

15 Q. Is it your testimony that second phone
16 call came in sometime before the noon hour?

17 A. Yes, sir.

18 Q. Do you recall about when?

19 A. No, sir, I don't.

20 Q. In the second phone call, did Preston
21 again sound confused and scared?

22 A. Yes, sir.

23 Q. And did he tell you what had happened,
24 anything else about what had happened out in that
25 dark field that night?

1 A. Not in the second phone call.

2 Q. Did you talk at all about what had
3 occurred in the field on the second phone call?

4 A. No, sir.

5 Q. In the second phone call, you didn't
6 talk at all about what happened in the field?

7 A. We could have. I don't remember.

8 Q. In the first phone call then, he talked
9 to you about some man that he met in the field and
10 having a fight with a man. Then the second phone
11 call, he didn't talk at all about any possible
12 facts of what might have occurred out there. Is
13 that what you're saying?

14 A. I don't remember.

15 Q. So, you don't have any idea what was
16 said in the second phone call?

17 A. Yes, sir. He was upset and he had to
18 get off the phone. It was not a very long
19 conversation.

20 Q. Well, what did he say? When you picked
21 up the phone, you said, "Men's Wearhouse." What
22 did Preston say?

23 A. It was a collect call from the operator
24 and Preston got on the phone and he said has his
25 mother come in yet and I told him no. And he said

1 that he had to go down and change his testimony
2 and I asked him why he was doing that.

3 Q. Did he say?

4 A. Because they told him he had to.

5 Q. Did he say who "they" was, who the "they"
6 was he was referring to?

7 A. Officers.

8 Q. What else did he tell you?

9 A. That was the main conversation on the
10 second telephone call; and then I had to get off
11 the phone.

12 Q. Okay. And then when did he call you
13 back the third time?

14 A. In the afternoon, early afternoon.

15 Q. About what time?

16 A. It was after lunch, after 1:00.

17 Q. After 12:00 o'clock?

18 A. Yes, sir.

19 Q. Would it have been after 1:00 o'clock?

20 A. Yes, sir.

21 Q. 2:00 o'clock?

22 A. Between 2:00 and 3:00 o'clock.

23 Q. Between 2:00 and 3:00 o'clock. What did
24 he tell you when he called you back between 2:00
25 and 3:00 o'clock?

1 A. I told him his mother was home and he
2 needed to call her at home.

3 Q. I'm sorry. I asked you: What did he
4 tell you? I'm sorry. Did you understand my
5 question?

6 A. He told me that he had to go -- that he
7 changed his statement and I asked him why he
8 changed his statement and he said, "They told me I
9 had to change my statement." I don't remember
10 word for word but I told him he needed to contact
11 his mother at home.

12 Q. Did you talk about what he changed in
13 his statement?

14 A. I don't remember.

15 Q. You don't remember?

16 A. (Shakes head negatively.)

17 Q. Your co-worker's son called you from
18 jail and says that in the second phone call that
19 he's being taken away and they're making him
20 change his statement. He called you back in the
21 afternoon and he tells you, "They made me change
22 my statement," and you don't remember anything
23 else he told you in that conversation?

24 A. I don't remember. I remember the fact
25 that I told him to get in touch with his mother

1 and to call her at home.

2 Q. Did you have anymore phone conversations
3 with Mr. Hughes that day?

4 A. No, sir, I don't believe so.

5 Q. You don't believe so?

6 A. No, sir, I didn't have anymore
7 conversations with him.

8 Q. You did not?

9 A. (Shakes head negatively.)

10 Q. Did you have conversations with his
11 mother, perhaps?

12 A. Later that day, no, sir.

13 Q. Did you talk to her the next day?

14 A. Yes, sir.

15 Q. Was the defendant crying when he talked
16 to you on the telephone?

17 A. I don't believe so.

18 Q. I'm sorry?

19 A. I don't believe so.

20 Q. He wasn't screaming?

21 A. No, sir.

22 Q. Wasn't yelling?

23 A. No, sir.

24 Q. Didn't ask you to call a lawyer for him?

25 A. No, sir.

1 Q. Didn't ask you to please go get him some
2 help, call the FBI, anything like that?

3 A. No, sir.

4 Q. Did he tell you the police were beating
5 him up?

6 A. No, sir.

7 Q. He didn't tell you the police had
8 threatened him in any way, did he?

9 A. No, sir.

10 Q. At most, what he said is, "They are
11 making me change my statement"?

12 A. The officers were coming to get him to
13 take him downstairs.

14 Q. To make him change his statement?

15 A. Yes, sir.

16 MR. NOLL: Nothing further, Your Honor.

17 THE COURT: Mr. McCullough.

18 MR. McCULLOUGH: Pass the witness.

19 THE COURT: May this witness be excused?

20 MR. NOLL: We have no objection, Your
21 Honor.

22 THE COURT: Thank you, Ms. Stroman. You
23 may go about your business. Call your next,
24 counsel.

25 MR. THOMAS: May we approach the bench?

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THE COURT: You may.

(Off the record discussion.)

THE COURT: Members of the jury, would y'all have a seat in the jury room. We'll be back with you presently, please.

(Jury out.)

THE COURT: Who are we waiting on now at this particular point?

MR. THOMAS: Hope Leija of Southwestern Bell.

THE COURT: I'm sure I don't have to call to the attention of the lawyers that under the rules, this could have been done pretrial by affidavit two weeks ahead of time and that never would have been a necessity for us to wait on a witness for Southwestern Bell right now. We'll stand down for ten minutes and she better be here.

MR. THOMAS: Actually, the affidavit wouldn't have worked on that woman.

THE COURT: Actually, the affidavit would work. There is not a business record in existence that can't come in pretrial by affidavit with proper notice to the other side.

(Short recess.)

THE COURT: Bring in the jury.

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(Jury in.)

THE COURT: You may proceed, Mr. McCullough. Sergeant Gafford, please remember, keep your voice up.

THE WITNESS: Yes, sir.

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DENNIS GAFFORD,
was called as a witness by the Defense and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. As a matter of fact, I'm sitting back here as a reminder to the witnesses that these folks back here have to hear.

A. Okay.

Q. You're the same Sergeant Gafford of the Houston Police Department, homicide division who testified here yesterday?

A. Yes, sir.

Q. And you're still under oath?

A. Right.

Q. In the early, early morning hours or shortly after midnight of September 27th of 1968, did you, accompanied by some other officers, go to the office of the manager of the Lakehurst apartments?

A. Yes, sir.

Q. Would that have been in an area of 1:00 o'clock in the morning?

1 A. It's about right, I guess, I'm not sure
2 of the exact time.

3 Q. Did you call him at his home and ask him
4 to come over there or how did it happen that he
5 was there?

6 A. You're speaking of Mr. Casler?

7 Q. Yes, sir.

8 A. We went to another manager on the
9 complex and we also had Mr. Casler called by the
10 security officer who called him; or the assistant
11 manager called him. I think he lives off the
12 property. He drove over then.

13 Q. Did you ask Mr. Casler for keys or the
14 key to Preston Hughes' apartment?

15 A. I'm not sure. We may have gotten a pass
16 key to the apartments.

17 Q. You don't --

18 A. Or had the security had one, one or the
19 the other.

20 Q. Did Mr. Casler give you or one of the
21 other officers a ring containing three to five
22 pass keys to the various apartments in the
23 Lakehurst apartment project?

24 A. I don't recall. He may have given some
25 to the security officer, may have given them to

1 one of us. I'm not sure of that.

2 Q. All right. Well, are you saying you're
3 not sure whether he gave it to anybody or not sure --
4 can you say for yourself whether you got any
5 master keys, pass keys from Mr. Casler?

6 A. I don't recall for certain if I did or
7 not.

8 Q. Would you --

9 A. I seem to recall a little bit about
10 asking him for some, but I'm not certain if we
11 obtained any or not.

12 Q. Well, I believe you previously testified
13 that at that point in time you had no right
14 whatsoever to conduct a search of Mr. Preston
15 Hughes' apartment.

16 A. That's right.

17 Q. What did you aim to do with the keys?

18 A. We didn't know at that point but we also
19 assumed at that point that this was a possible
20 suspect. We don't know what's going to happen
21 when we get there. It's standard procedure. It's
22 not anything unusual for us to get pass keys when
23 we go to talk to anyone who we feel is a suspect
24 in a case of this nature.

25 Q. Was there a whole bunch of uniformed

1 officers with you when you went to the manager's
2 office?

3 A. There was Sergeant Hamilton and one or
4 two patrol officers. No more than that, I know.

5 Q. Do you recall -- would it jog your
6 memory or do you recall any incident where you
7 returned any keys to Mr. Casler?

8 A. To my knowledge, all I recall about,
9 once we left there, we went to our car, which was
10 parked right by the manager's office. The
11 security officer was with us and any keys we would
12 have had, we would have given back to him. That's,
13 like I say, I'm not sure if we had any or not.
14 And I assumed that we would have given them to him
15 as opposed to taking them in and giving this to
16 Mr. Casler.

17 Q. Did you ever enter that apartment on any
18 occasion other than the one you testified about
19 where you knocked on the door for eight to ten
20 minutes and Mr. Hughes came to the door and you
21 went in and talked to him in the hallway?

22 A. No, sir, never.

23 Q. Not before that time and not ever since
24 then?

25 A. No, sir.

1 Q. You previously stated that you did not
2 have enough information to place Mr. Hughes under
3 arrest until after he learned -- after you learned
4 down at the police station that he knew a girl
5 named Shawn and you thought -- had recognized it
6 enough to think it was the same one that was the
7 deceased?

8 A. That and other factors.

9 Q. And some other things you mentioned?

10 A. Right.

11 MR. McCULLOUGH: Pass the witness.

12 MR. NOLL: No questions, Your Honor.

13 THE COURT: Thank you, Sergeant Gafford.
14 You may go about your duties. Call your next,
15 counsel.

16 MR. McCULLOUGH: The custodian of
17 records from Southwestern Bell, Hope Leija.

18 THE BAILIFF: No response, Judge.

19 THE COURT: Members of the jury, this
20 becomes a convenient time, I think we'll just shut
21 it off here for the day. I don't know about you.
22 I don't feel like waiting on the telephone company.
23 Please remember the admonishments that I've given
24 you heretofore. They're still in full force and
25 effect. Please be in the jury room at 9:30 a.m.

1 in the morning, by 9:30 a.m. We'll try to get
2 started just as soon as everybody gets here and we
3 get all the parties and what have you together.

4 I don't know what your parking situation
5 has been and I don't really know what it is out
6 there on the street but let me just take a chance.
7 Do not park tomorrow at a lot where they take your
8 keys and your car. Okay? If you need to get here
9 a little earlier or, you know, to see that you
10 don't, you might try to do two things. You might
11 try to park as close to this building as you can
12 and please be sure you park at a lot where you put
13 the keys in your pocket. That may save us some
14 time later on.

15 For the ladies, do not worry about
16 getting to and from your car. If you can't pair
17 up with a gentleman on the jury, we'll have
18 somebody here, myself or one of the bailiffs, that
19 will get you to and from your cars. So, don't
20 worry about that. With those, thank you, you're
21 excused. We'll see you in the morning at 9:30.

22 (Jury out.)

23 THE COURT: What about requested jury
24 charges and instructions?

25 MR. McCULLOUGH: We started just briefly

1 talking about that today, Your Honor, and we don't
2 have anything concrete to suggest. We're going to
3 ask for a charge of murder, lesser included.

4 THE COURT: Okay.

5 MR. McCULLOUGH: We're unsure that we
6 raised any others until we hear the rest of the
7 testimony. At this point, we don't think so.

8 THE COURT: We're not going to buy that
9 law school theoretical argument now. I want to
10 know what you think you may want.

11 MR. McCULLOUGH: That's what I say, I
12 don't think I anticipate we're going to raise any
13 other less includeds.

14 THE COURT: Let's hope for the best. I
15 need to know what they are so I can get them
16 prepared and we'll mix and match as necessary, as
17 raised by the evidence later.

18 MR. McCULLOUGH: It only seems the
19 remotest possibility at this point that we could
20 raise self-defense or voluntary manslaughter or
21 would want self-defense; but there is a smidgen of
22 an inkling of that in the confession.

23 MR. THOMAS: That Leija woman is here.

24 THE COURT: The jury's gone home.

25 MR. THOMAS: Would you bring her in,

1 swear her in, Judge? She told me, said, "I want
2 to be on call. They always leave us on call."

3 I said, "The judge don't like that kind
4 of crap, but okay."

5 THE COURT: We're talking about jury
6 charges. We'll get to her in just a minute.
7 We've got the lesser of murder, self-defense,
8 voluntary?

9 MR. McCULLOUGH: At this point, I don't
10 think they're very likely.

11 MR. THOMAS: Mistake of fact related to
12 self-defense. Mistake of fact would enter into
13 the self-defense charge.

14 MR. McCULLOUGH: On the facts of the
15 first statement where he thought that Linda's --
16 if the jury believes that, that Linda's relatives
17 were out to get him. Right now, Judge, I have
18 nothing else I can tell you.

19 THE COURT: Well, we're going to let you
20 work through the presentation of your case. We
21 are going to allow the State to do any rebuttal,
22 if they so desire. We will then allow y'all the
23 opportunity for any surrebuttal, if necessary. At
24 that point, jury will be charged. I know the
25 custom and practice around Harris County is for

1 everybody to take their shoes off and coats off
2 and wait a half a day to get a jury charge. I do
3 not buy or subscribe to the law school pap that
4 says you have to hear all the evidence before you
5 know what's going in the charge. I asked you all
6 to have requested charges and instructions ready
7 by this afternoon. It is now 5:13 and I'm still
8 getting something that I'd hear from a law school
9 professor. So, if you want something in the
10 charge, I need it. If you want to put it in
11 writing, you better do it to protect the record,
12 or I will give them the charge that I will prepare.

13 Bring Ms. Leija in, please.

14 MR. NOLL: As to the charge, the only
15 thing I was going to inquire of, as I understand
16 it, our agreement on the definition of deliberate
17 will be included in the charge as part of the
18 definition.

19 THE COURT: That won't come until after
20 the punishment phase of the trial.

21 MR. NOLL: Yes, sir.

22 (Witness sworn.)

23 THE COURT: Ms. Leija, I understand you
24 people at the phone company have problems. This
25 Court has now waited 45 minutes in allowing for

1 you people to be on call. I understand the
2 necessity for that. I appreciate your cooperation.
3 But in waiting for you, one person, you have made
4 15 or 20 people wait. Would you please be back in
5 the courtroom at 9:30 a.m. in the morning.

6 THE WITNESS: Yes, sir.

7 THE COURT: I anticipate there will be
8 no wait. You will be the first witness called and
9 we'll take care of it at that time.

10 THE WITNESS: All righty.

11 THE COURT: Thank you very much. You're
12 excused until then.

13 Anything else?

14 MR. McCULLOUGH: No, sir.

15 THE COURT: Very well. You're excused
16 until 9:30 in the morning.

17 MR. NOLL: Can I excuse Sergeant Gafford
18 or is there a need for him to be back?

19 MR. McCULLOUGH: I did what I intended
20 to do by bringing him back here.

21 MR. NOLL: Is it all right if he stays
22 at the office tomorrow?

23 THE COURT: That's fine.

24 (Court in recess for the day.)

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APPELLATE COURT NO. _____
IN THE COURT OF APPEALS
OF THE STATE OF TEXAS
AT HOUSTON

PRESTON HUGHES, III,
Appellant,
VS.
THE STATE OF TEXAS,
Appellee.

APPEAL FROM 174TH DISTRICT COURT OF HARRIS COUNTY,
TEXAS
Judge George H. Godwin, Presiding

STATEMENT OF FACTS
JURY TRIAL
MAY 3, 1989
VOLUME ~~XV~~ OF ~~XXIII~~ VOLUMES

Carrie Hargis
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

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7	5	phone toll statement	3/439	3/440	--
8	6	apartment diagram	18/139	18/180	18/180
9	7	photo	19/585	--	--
10	8	photo	19/585	--	--
11	9	photo	19/585	--	--
12	10	photo	19/585	--	--
13	11	photo	19/585	--	--
14	12	photo	19/585	--	--
15	13	photo	19/585	--	--
16	14	photo	19/585	--	--
17	15	photo	19/585	--	--
18	16	photo	19/585	--	--
19	17	list of questions	19/585	--	--
20	18	key	19/585	--	--
21	19	key	19/593	19/611	19/612
22	20	phone records in envelope	20/680	20/684	20/686
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(Jury in.)

THE COURT: Good morning, members of the jury. I've taken a real chance. I know enough about electricity to keep myself from getting electrocuted. I hope this is going to work. We'll try it. Unless we start getting a bunch of feedback and we may have to go back to the same way. We'll see what we can do.

Call your next witness, please, counsel.

You may proceed, counsel.

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HOPE LEIJA,

was called as a witness by the Defense and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. State your name for the record, please, ma'am.

A. Hope Leija.

Q. Where do you work?

A. Southwestern Bell.

Q. That's going to take a little practice there. What do you do over there?

A. I'm a security manager.

Q. Okay. Southwestern Bell. That's the telephone company we all know and love?

A. Yes, sir.

Q. Services this area?

A. Yes, sir.

Q. All right. And you are a security manager?

A. Yes, sir.

Q. In your capacity as security manager, do you have care, custody, and control of certain

1 records of the telephone company?

2 A. Yes, sir.

3 Q. And were you subpoenaed to bring some of
4 those with you here today?

5 A. Yes.

6 Q. May I see them?

7 A. Yes.

8 (Defense Exhibit No. 20 was marked
9 for identification.)

10 BY MR. McCULLOUGH:

11 Q. I'll show you what has just been marked
12 as Defendant's Exhibit No. 20. Is that the
13 envelope of records you just brought to me?

14 A. Yes, sir.

15 Q. All right. And in it are several sheets
16 of paper; is that correct?

17 A. That's correct.

18 Q. All right. Are these the records you
19 were asked to bring here today?

20 A. Yes, sir.

21 Q. All right. Are the records in this
22 envelope made and kept in the ordinary course of
23 business of Southwestern Bell Telephone Company?

24 A. Yes, they are.

25 Q. Is it the business, among other things

1 of the Southwestern Bell Telephone Company to make
2 and keep such records?

3 A. That is correct.

4 Q. Are the entries or the writings made on
5 these records made by someone with firsthand
6 knowledge of the information they're recording?

7 A. That's correct.

8 Q. Is the information recorded
9 contemporaneous with the acts or with the
10 transaction that they reflect?

11 A. That's correct.

12 Q. Now, I'm going to have to have a little
13 help from you explaining what these are. These
14 look like some computer printouts.

15 A. These are --

16 Q. Don't tell us what the information is.
17 Just tell us what the papers are, where they came
18 from and how you got them.

19 A. This comes from our computer when I run
20 the telephone number to get a listing of a
21 telephone number and the address.

22 Q. And is this information regularly and
23 customarily stored in the computer of the
24 telephone company?

25 A. Yes, sir.

1 Q. All right. Is that the way you, in
2 running your business, would get the same
3 information, if you wanted it for your own
4 purposes?

5 A. That's correct.

6 Q. And did you personally operate the
7 computer terminal that caused these to be printed
8 out?

9 A. Yes, sir.

10 Q. And are they true and correct
11 reflections of the electronic information stored
12 in the computer?

13 A. That's correct.

14 Q. All right. You have here something that
15 apparently is a xerox copy of something or other.
16 What is that and where does it come from?

17 A. This is a xerox copy of a bill and it
18 came from a microfiche. We keep our records in
19 microfiche.

20 Q. Is it a xerox or is it the microfilm
21 printer?

22 A. It's a microfiche -- microfilm printer.

23 Q. Is that the way all of this similar
24 information is stored in the telephone company?

25 A. Yes, sir.

1 Q. And if the telephone company wanted the
2 same information to use internally, is that the
3 way they would get it?

4 A. That's correct.

5 Q. Is this the form it would appear in?

6 A. Yes, sir.

7 Q. Now, the hard copy of this, the actual
8 microfiche, is a -- almost invisible to the human
9 eye, as I understand, the information on the film.

10 A. That's true.

11 Q. And it -- used as a machine to be able
12 to see it and locate it and then when you got on
13 the screen what you want, you punch a button and
14 it prints out this copy here.

15 A. That's correct.

16 Q. Is this a true and correct copy of
17 the information stored on the microfiche
18 equipment?

19 A. Yes, sir.

20 Q. And these three pieces of -- well, this
21 one is two pieces of paper stapled together and
22 this is two pieces of paper that are the computer
23 printout, they were all in this envelope marked
24 Defendant's Exhibit 20?

25 A. That's correct.

1 MR. McCULLOUGH: Tender Defendant's
2 Exhibit 20 and the contents to counsel and offer
3 them into evidence.

4 MR. NOLL: Your Honor, may I have just a
5 moment to look these over?

6 THE COURT: You may.

7 MR. NOLL: Your Honor, may I ask the
8 witness some questions?

9 THE COURT: You may.

10 MR. NOLL: May I approach the witness,
11 Your Honor?

12 THE COURT: (Nods head affirmatively.)

13

14 VOIR DIRE EXAMINATION

15

16 BY MR. NOLL:

17 Q. Ms. Leija, can you help me? I don't see
18 the phone number on this.

19 A. Right here.

20 Q. This top number is the phone number.

21 A. Uh-huh.

22 Q. This number would relate to this
23 location?

24 A. That's correct.

25 Q. All right. This number to this

1 location?

2 A. Uh-huh.

3 Q. This number to this location?

4 A. Yes, sir.

5 Q. And likewise?

6 A. Uh-huh.

7 Q. On this second document which purports
8 to be a bill, there's some items which have been
9 apparently blacked over by magic marker?

10 A. Yes, sir.

11 Q. What is that?

12 A. Because they asked for the 27th collect
13 calls and I have to mark anything after that.

14 Q. So, those calls were -- I believe this
15 says 5-9-29?

16 A. 9-29.

17 Q. 9-29. That would have been September
18 29th; and you've attempted to cross through with a
19 magic marker, although I could probably cheat you
20 and read it if I tried. Is that because of some
21 kind of rules to protect you from a lawsuit or
22 something?

23 A. Yes, sir.

24 Q. Not trying to hide anything from anybody
25 on there, are you?

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A. No.

MR. NOLL: Thank you, Judge. With that explanation, could I have a further moment to try to compare these numbers to make sure they're relevant?

Your Honor, I assume that the defendant is offering the two computer printout papers and what appears to be a bill from the Men's Wearhouse, together with an envelope they contain --

MR. McCULLOUGH: I was offering the entire contents of the envelope, Your Honor. I'll have them separately marked later when it won't take additional time to do that.

MR. NOLL: We have no objection, Your Honor, if you want to admit them all as Exhibit No. 20.

THE COURT: Whatever makes y'all happy as long as the record is clear.

MR. McCULLOUGH: That's fine with me.

THE COURT: They will be admitted.
You may proceed, Mr. McCullough.

1 DIRECT EXAMINATION CONTINUED

2
3 BY MR. McCULLOUGH:

4 Q. Just briefly, this is one of the items
5 from the envelope. What is it?

6 A. It's a billing record for Telephone No.
7 713-664-3692.

8 Q. Who is that listed to?

9 A. The Men's Wearhouse.

10 Q. Okay. And what is attached to that?

11 A. Collect calls on September 27th.

12 Q. And what time were the collect calls
13 received by the Men's Wearhouse or placed?

14 A. On September 27th at 10:22 a.m., 11:02
15 a.m., 2:22 p.m. and 2:51 p.m.

16 Q. Now, I'm sorry. Could you tell us the
17 number from which the call was made in each of
18 those times.

19 A. At 10:22 a.m., the call came from
20 221-0089.

21 Q. The next call?

22 A. 11:02 a.m., from 221-9010.

23 Q. And the next call?

24 A. At 2:22 p.m., from 221-9011.

25 Q. 221-9011, is that what you said?

1 A. That's correct.

2 Q. Was there another one?

3 A. 2:51 p.m., from 221-9011.

4 Q. Can you tell tell from looking at those
5 computer printouts where those telephone numbers
6 are located?

7 A. Yes, sir. 221-0089 is located at 61
8 Riesner and it's a coin phone, fifth floor men's
9 holding. The 221-9010, it's listed to City of
10 Houston at 61 Riesner on the fifth floor and it's
11 a coin phone. The 221-9011 is listed to the City
12 of Houston, 61 Riesner, a coin phone from the
13 fifth floor.

14 Q. Do you know of your own knowledge what's
15 located at 61 Riesner?

16 A. The police station.

17 Q. Is anything else on Riesner Street?

18 A. I don't know. I guess the jail.

19 Q. Thank you.

20 MR. McCULLOUGH: I pass the witness.

21 THE COURT: Mr. Noll?

22 MR. NOLL: No questions, Your Honor.

23 THE COURT: May this witness be

24 excused?

25 MR. McCULLOUGH: Please.

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THE COURT: Thank you, Ms. Leija, you
may go about your business.

MR. McCULLOUGH: Call Mr. Garcia.
(Witness sworn.)

1 THOMAS GARCIA,
2 was called as a witness by the Defense and, having
3 been duly sworn, testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. McCULLOUGH:

8 Q. State your name for the record, please,
9 sir.

10 A. Excuse me?

11 Q. You need to introduce yourself to the
12 jury and to the judge. What's your name?

13 A. My name is Thomas Garcia. I'm the bus
14 driver.

15 Q. Okay. Who do you drive for?

16 A. Metro.

17 Q. All right. How long have you been a bus
18 driver?

19 A. Six years.

20 Q. Back in September of 1988, were you
21 driving for Metro?

22 A. I was driving the 82-Westheimer.

23 Q. 82-Westheimer. Could you explain to us
24 what that is?

25 A. Well, make my trips from downtown, from

1 the convention center to Highway 6.

2 Q. All right. So, 82-Westheimer is a bus
3 route?

4 A. The 82-Westheimer, West Oaks.

5 Q. On September 26th of 1988, were you
6 driving that route?

7 A. Yeah.

8 Q. Okay. Now, you got a subpoena to come
9 here and talk about that day. Do you recall what
10 route you were driving that day from reviewing
11 your bus company's records?

12 A. Well, I remember that date I was working
13 the 82-Westheimer Sharpstown. About 8:30, 8:22,
14 my trip was to -- it was my only trip at that time
15 to that area.

16 Q. What time of day on that date would you
17 have been in the vicinity of Fannin and Walker and
18 downtown Houston?

19 A. The time was around 8:20, 8:25.

20 Q. And do you recall any of the passengers
21 on that bus or have any reason to, that trip?

22 A. Well, no.

23 Q. Okay. What is the far end of that line
24 before you turn around and start back toward the
25 barn?

1 A. Highway 6.

2 Q. Okay. How long does it take you to get
3 from Fannin and Walker and downtown Houston to
4 Highway 6?

5 A. About an hour and 15 minutes.

6 Q. All right. Is that pretty close -- does
7 that vary much?

8 A. (No response.)

9 Q. Does it vary by 5 minutes or 15 minutes?

10 A. Yeah, that's close.

11 Q. All right. Do you recall anything
12 happening when you got out to the end of the line
13 on that particular trip?

14 A. Well, not until I reached the end of the
15 line. That's when I stand up and check the bus,
16 if nobody's left or something like that, and then
17 back again.

18 Q. On that particular run, did you wake
19 anybody up?

20 A. Well, I don't remember.

21 Q. Okay. Does it happen frequently that
22 you have to wake people up?

23 A. Yeah. It happens.

24 Q. Okay. So, from 8:20 or 8:25, an hour
25 and 15 minutes would put you out there -- if this

1 is correct, tell me -- at, say, at 9:40, plus or
2 minus?

3 A. Yeah, around 9:35, 9:40.

4 Q. See this man sitting here with me?

5 A. Yeah.

6 Q. Blue coat? Do you recall him riding on
7 your bus route ever?

8 A. Well, to be exactly, I don't remember,
9 no.

10 MR. McCULLOUGH: Pass the witness.

11 THE COURT: Mr. Noll.

12 MR. NOLL: I have no questions, Your
13 Honor.

14 THE COURT: May this witness be excused?

15 MR. McCULLOUGH: Yes, sir, please.

16 THE COURT: Thank you, Mr. Garcia. You
17 may go about your business. Call your next,
18 counsel.

19 Was he sworn, counsel?

20 MR. McCULLOUGH: At a previous hearing
21 he was put under oath.

22 (Defendant sworn.)

23 THE COURT: You may proceed, Mr.
24 McCullough.

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PRESTON HUGHES, III,
the defendant, having been duly sworn, testified
in his own behalf, as follows:

DIRECT EXAMINATION

BY MR. McCULLOUGH:

Q. State your name for the record, please,
sir.

A. Preston Hughes, III.

Q. You're the defendant in this cause?

A. Yes.

Q. You're the man that people have been
pointing out here as being Preston Hughes, III?

A. Yes.

Q. All right. I want to tell you one more
time. You don't have to do this. You don't have
to put yourself through this if you don't want to.

MR. NOLL: I object to sidebar comments
to counsel. If there's counseling to be done,
it's to be outside the presence of the jury. I
object. It's not a question.

THE COURT: That will be overruled.

MR. NOLL: We object, it's bolstering of
his testimony, also.

1 THE COURT: That will be overruled, also.

2 You may proceed.

3 BY MR. McCULLOUGH:

4 Q. Do you want to testify and tell your
5 side of the story?

6 A. Yes.

7 Q. How old a man are you?

8 A. 23 years old.

9 Q. Where were you living back in September
10 of 1988?

11 A. Lakehurst apartments.

12 Q. How long have you been living there?

13 A. Since October, '87.

14 Q. In September of 1988, were you living
15 alone or was somebody else living with you?

16 A. I was living alone at that time.

17 Q. Where were you working then?

18 A. Montgomery Wards warehouse.

19 Q. How long had you been working at
20 Montgomery Wards?

21 A. Since November of '87.

22 Q. Were you acquainted with a person named
23 Shandra Charles?

24 A. Yes.

25 Q. What did you call her?

1 A. Shawn.

2 Q. How long have you known her?

3 A. Since late February, early March.

4 Q. Of the same year?

5 A. Of '88.

6 Q. How did you meet her?

7 A. Through a former roommate of mine,

8 Arnell Franklin.

9 Q. What kind of relationship did you have

10 with Shandra Charles? Was she your girlfriend or

11 friend or what was your relationship?

12 A. We were friends.

13 Q. Did she ever come over to your apartment?

14 A. Yes.

15 Q. More than once?

16 A. Yes.

17 Q. How often?

18 A. Almost everyday, sort of like that,

19 something like that.

20 Q. What did she come over there for?

21 A. Use my electricity.

22 Q. Did she ever come with anybody else?

23 A. Yes.

24 Q. Who?

25 A. Evelyn, Tasha, or both at the same time.

1 Q. You say she would use your electricity.
2 What do you mean by that?

3 A. She told me that her mother had problems
4 keeping the lights on. So, she wanted to use my
5 electricity to curl her hair and iron her clothes
6 and stuff.

7 Q. Did she bring an iron with her or did
8 you have one or what?

9 A. No, I have one.

10 Q. Did you kill Shandra Charles?

11 A. No.

12 Q. Did you kill Marcell Taylor?

13 A. No.

14 Q. Well, directing your attention to
15 September 26th of 1988, did you work that day?

16 A. Yes.

17 Q. What time did you get off?

18 A. 6:30 p.m.

19 Q. What did you do after you got off work?

20 A. Waited for a fellow employee of mine to
21 get off work so he could give me a ride downtown
22 to catch the bus.

23 Q. Who was that?

24 A. Kenny Mouton.

25 Q. Is that the fellow that testified in

1 here?

2 A. Yes.

3 Q. Did you meet him after work?

4 A. I waited in the warehouse when he got
5 off work, Kenny, Jesse Miles; and I went to get in
6 his car.

7 Q. Where did y'all go?

8 A. On the way out to his car, we met up
9 with a former employee named Calvin Williams. We
10 talked about five minutes or so and decided to go
11 down to the liquor store on Franklin, down the
12 street from the Harris County Jail.

13 Q. Did you do it?

14 A. Yes.

15 Q. What did you do there at that store?

16 A. I bought a pint of Crystal Clear, 190
17 proof, some grape soda and four cups. We stayed
18 in the parking lot drinking and talking about
19 getting together the weekend of September 30th.

20 Q. Did you drink at all?

21 A. Well, I didn't drink it all myself. We
22 split it amongst us.

23 Q. Did the four of you drink it all?

24 A. Yes.

25 Q. What did you do then?

1 A. We stayed the entire night, getting
2 together and talking together. After we talked
3 for a while, Kenny and Jesse took me downtown,
4 Fannin and Walker, dropped me off so I could catch
5 the bus.

6 Q. What bus did you catch?

7 A. 82-Westheimer.

8 Q. Did you ride that bus often?

9 A. If I don't catch the 53, I switch to 82.
10 So, I have to ride the 82 at a certain hour.

11 Q. In other words, you're talking about two
12 buses that run --

13 A. Down Westheimer out to where I stay.

14 Q. One just goes farther than the other?

15 A. Yes.

16 Q. But you customarily rode the bus to your
17 home in the evenings when you got off? Is that
18 what you're telling me?

19 A. I rode it, I meant to get off, fell
20 asleep and missed my stop and ended up at
21 Highway 6.

22 Q. What you mean is you usually rode one of
23 the Westheimer buses out to your apartment after
24 work?

25 A. Yes.

1 Q. On the 26th of September, what time did
2 you catch that bus?

3 A. I say between 8:30 and 8:45 p.m.

4 Q. What happened after you got on the bus?

5 A. I wasn't feeling good from the liquor I
6 was drinking because I had went to the store
7 before I got on the bus and bought two hot dogs;
8 and mixing hot dogs with the liquor after you
9 drink it, it will make you sick. So, I wasn't
10 feeling good. I fell asleep on the bus.

11 Q. Where did you get off the bus?

12 A. Westheimer and Highway 6.

13 Q. How did you happen to get off there?

14 A. The driver woke me up and told me, "The
15 end of the line, you have to get off."

16 Q. Was there anybody else on the bus when
17 you got off?

18 A. No.

19 Q. Did you get off the bus?

20 A. Yeah.

21 Q. How far were you from your home at the
22 Lakehurst apartments out there?

23 A. Walking distance, it would be about an
24 hour, hour and 20 minutes or so.

25 Q. What did you do?

1 A. Walked two blocks down Westheimer to
2 Circle K.

3 Q. What did you do there?

4 A. I got change and called a cab.

5 Q. How long did it take a cab to get there?

6 A. Five or ten minutes or so. It wasn't
7 that long.

8 Q. Did you know what time it was when you
9 were in the Circle K?

10 A. No, I didn't.

11 Q. Do you know what time it was when you
12 got off the bus?

13 A. No. I figured in order for me to be all
14 the way at Highway 6, it had to be somewhere
15 around 10:00 o'clock.

16 Q. Did the cab come?

17 A. Yes.

18 Q. Where did you go in the cab?

19 A. I told them where I wanted to go. I
20 gave them my address to my apartment complex and
21 he took me home.

22 Q. Do you know what time you got home?

23 A. 10:30.

24 Q. What did you do then?

25 A. I went up into my apartment, turned the

1 TV on and watched TV, watched the football game.

2 Q. Did you stay there?

3 A. I kicked my shoes off and watched for a
4 few minutes, then I got up and went and got my dog,
5 took her for a walk, and we walked to Fuddrucker's.

6 Q. Was Fuddrucker's opened or closed?

7 A. It was closed when I got there.

8 Q. What did you do after you went to
9 Fuddrucker's?

10 A. My dog and I turned around and went back
11 home.

12 Q. Anything happen on the way back?

13 A. Yes. I took a different direction and I
14 was walking through the bushes in the field, a guy
15 came up to me from behind, tapped me on the
16 shoulder, black man, about 5' 9", low nappy
17 haircut and a rough beard from what I could feel.
18 That's how I determined it was a black man.

19 Q. What did you do?

20 A. Well, I panicked. I thought he was one
21 of the three guys who had threatened me previously
22 the weekend Hurricane Gilbert was supposed to hit
23 Houston. I turned around and I swung my arm back
24 and I hit him in the side of his head, I kneed him
25 in his groin and placed him in a headlock.

1 Q. Anything else happen?

2 A. Yes. My dog started barking. You know,
3 I pulled my knife while I was doing it, while I
4 was struggling with him. I told my dog, "Go home,
5 get upstairs," like that. The guy punched me in
6 my chest. After he punched me in my chest, I
7 stuck him twice with my knife.

8 Q. Well, you are talking about "sticking."
9 What does that mean?

10 A. I just stuck him. It must have hit his
11 ribs some because I know it didn't go in him at
12 all.

13 Q. Were you trying to drive that knife all
14 the way into him?

15 A. No, I wasn't. I just stuck him, just
16 stuck him, just a reaction to when he punched me.

17 Q. What kind of knife are you talking about?

18 A. A buck knife that you click out or just
19 open it up.

20 Q. A folding knife?

21 A. Yes.

22 Q. How long a knife was it?

23 A. I'd say the blade was about, I don't
24 know, I'd say four inches or five inches or so.

25 Q. Well, was it this knife that the State

1 has introduced into evidence here that's State's
2 Exhibit No. 20?

3 A. No.

4 Q. 21?

5 A. No.

6 Q. And the sheath is 21 and the knife is 20.
7 Was this the knife you were carrying?

8 A. No.

9 Q. Is this your knife?

10 A. That's the knife I had in my apartment.
11 It belonged to my former roommate.

12 Q. Okay. Well, after that struggle out
13 there, what did you do?

14 A. Well, he looked at -- from what I could
15 see, from the light shining from the apartment
16 complex, it looked like he was reaching for
17 something in his pocket. So, I released the lock
18 on his neck and he got up and I kicked him. After
19 I kicked him, I turned around and ran through the
20 apartment through the rest of the path to the
21 opening in the fence to go to my apartment. When
22 I ran through the path, I saw another black man
23 walking towards the path. So, I went off to my
24 right and he cut in through the apartments.

25 Q. What did you do when you got to your

1 apartment?

2 A. Well, I put my dog in. She was outside
3 waiting for me, so I put her back in the patio. I
4 took my glasses off. I was wearing a pair of
5 black sunglasses. I believe at that time I looked
6 at my knife to see if there was any blood on it.
7 There was some blood on it. I washed it off, went
8 to the bedroom and got my shotgun out of a box in
9 the closet and put it together.

10 Q. Where did you put the shotgun?

11 A. What did I put in it?

12 Q. You put it together. What did you do
13 with it then?

14 A. It was loaded -- you take it apart, two
15 pieces, two pieces in the barrel already. I put
16 it together, was walking back and forth in my
17 apartment, looking to see if somebody else was
18 coming over there.

19 Q. You said when you ran into this guy in
20 the field, you thought it was one of the guys that
21 had been looking for you. Are you saying that
22 you'd had some problems with some people?

23 A. Yes.

24 Q. You were anxious about that?

25 A. I was -- I had a relationship with a

1 married woman and her husband found out she was
2 staying at my house for a couple of days; and I
3 don't know how he found out where I worked but he
4 called my job and threatened to kill me, told me
5 he was going to have the police arrest me for
6 kidnapping his wife.

7 Q. What happened next?

8 A. Well, I went into the bedroom and I
9 looked at the time because I figured I was going
10 to be up all night and I noted what time it was
11 and it was 10:47. So, I kept walking back and
12 forth looking out the windows to see if anybody
13 was coming in my apartment. I was going to wait
14 and if they came in there bothering me, then I
15 have the right to defend myself right then and
16 there. Whatever happens to them, I will not be
17 held responsible for.

18 Q. Okay. Did anybody come?

19 A. No.

20 Q. Well, did you go to bed or what?

21 A. Well, I stayed in, laying there in the
22 bed waiting to see, like I said, if anybody was
23 still to come, you know. Nobody showed up. And
24 then I believe -- start believing that the man that
25 I fought with wasn't one of them. Apparently he

1 was probably somebody trying to rob me.

2 Q. Okay. Well, did you go out of the
3 apartment again or did you go to bed or what
4 happened next?

5 A. No, I didn't go out of the apartment but
6 I turned my TV off and I got undressed and I laid
7 in the bed, placed my gun and my knife in the bed
8 with me. And I fell asleep while I was laying up
9 waiting to see if anybody was coming to my
10 apartment.

11 Q. Did the police ever come?

12 A. About 2:30 in the morning.

13 Q. What happened when the police got there?

14 A. I didn't know it was the police when
15 they were knocking on the door. I got up and
16 stood in the doorway of my room, which directs
17 towards the hall, and I was waiting there with my
18 shotgun in case they had broke in or something.
19 When I seen flashlights, lights flashing through
20 my patio window, I walked to the patio door,
21 cracked the curtains, looked out and I seen a
22 bunch of police officers standing out there. So,
23 I ran back to my room, put my shotgun behind the
24 closet door, went and opened my door.

25 Q. What happened when you opened the door?

1 A. Detective Sergeant Gafford, he
2 introduced himself to me as Detective Sergeant
3 Gafford, and he and officer in uniform, sergeant
4 in uniform, along with a white officer in uniform,
5 enter my apartment.

6 Q. What did they do when they came in?

7 A. He asked me is my name Preston, and his
8 second question, which seems strange to me, he
9 asked me do I wear contacts and --

10 Q. What were these officers doing while
11 they were talking to you?

12 A. While Sergeant Gafford was talking to me,
13 the sergeant in uniform walked back down the
14 hallway to my bedroom, was looking to my bedrooms.
15 The white officer in uniform walked to my patio
16 door. He walked through the kitchen, through the
17 dining room to get to the patio, and I noticed
18 that he unlocked my patio door because when you
19 unlock my patio, the door drops. But I never did
20 say nothing about it. And I asked Sergeant
21 Gafford, "Why is that officer searching my
22 bedrooms?" He ignored the question.

23 Q. After he asked you about did you wear
24 contacts, what happened?

25 A. He asked me, does anybody live there

1 with me, what time did you get home tonight, is
2 there anybody here now, anybody been by here
3 tonight? I said no to all of his questions, that
4 nobody stays there, nobody is here and nobody has
5 been by my apartment tonight.

6 And he asked me, "Would you accompany me
7 downtown for questioning?"

8 And I said, "For what?"

9 And he just said, "I just want to know
10 will you come downtown for questioning."

11 And I looked at him and he said, "I just
12 need you to come downtown for questioning."

13 I said, "For what? 2:30 in the morning.
14 I got to get up at 5:00 o'clock to go to work."

15 He said, "Just will you come downtown?"

16 So I looked at him and he looked at the
17 officer coming back down the hallway. So, I told
18 him, "Yes, I'll come."

19 Q. Did you feel like you had any choice?

20 A. I didn't see no choice at all. I
21 thought because I was by myself, had I denied him,
22 they would have been suspecting me of something.
23 So, I went along with him.

24 Q. Who was the last one out of the
25 apartment when you left?

1 A. I locked the door.

2 Q. Did you see the officers do anything
3 else other than what you already described, like
4 unlocking the patio door and stuff?

5 A. When I went to get dressed, Gafford was
6 out of my sight because I had to go into my room
7 to get dressed.

8 Q. All right. Did they put the cuffs on
9 you when they took you downtown?

10 A. No.

11 Q. Put you in a patrol car?

12 A. Yes.

13 Q. What happened when you got downtown?

14 A. Well, Sergeant Gafford instructed the
15 officer that transported me downtown to hold me
16 there and watch me. When I got downtown, we was
17 on the homicide floor, I had to sit on the bench.
18 I was sitting there for half an hour or so, then
19 they transported me to a little room in the
20 homicide office. I sat there about an hour and a
21 half to two waiting for Sergeant Gafford to
22 arrive.

23 Q. Did anything happen while you were
24 waiting for him?

25 A. No, I was just sitting there for a long

1 time.

2 Q. Did Gafford finally show up?

3 A. Yes.

4 Q. What happened when he got there?

5 A. I asked him, "What am I down here for?"

6 He asked me -- he told me, "You're a
7 suspect."

8 I said, "A suspect to what?"

9 He didn't answer the question. He asked
10 me, "Do you know a girl named Shawn Brown and a
11 boy named Mario?"

12 I said, "I know five girls name Shawn.
13 I don't know their last names. I don't know
14 anyone named Mario." He asked me to describe each
15 girl.

16 Q. What happened after that?

17 A. When I came to giving the description of
18 the Shawn Brown in this case, he asked me when was
19 the last time I seen her. I told him in late
20 August, early September. He asked do I know a
21 girl name Evelyn, and I said yes.

22 Q. Then what?

23 A. He say, "When is the last time you seen
24 her?"

25 I said, "That's the last time I seen

1 Shawn. They both were together. They came by my
2 apartment."

3 Q. Then he kept -- did he keep asking you
4 questions?

5 A. Yes. He said, "I have witnesses that
6 seen you tonight."

7 I said, "I don't see how you got
8 witnesses that seen me with her when I haven't
9 even seen her."

10 Q. Did you tell him what you had done that
11 night?

12 A. He asked me what time did I get home
13 again and I told him at 10:30. He asked me where
14 was I before that; and I went into details about
15 my whereabouts and he told me that, "Well, I
16 talked to Shawn tonight. She said that she was at
17 your apartment with you."

18 Q. All right. Did he ever get around to
19 starting to type out a statement?

20 A. Yes.

21 Q. At what point did he start doing that?

22 A. Well, he passed his gun, along with a
23 yellow piece of paper, to a detective standing
24 outside the room and he went on questioning me and
25 he said -- he got mad and said -- how do you put

1 it? "I'm tired of the bullshit and the lies. You
2 saw Shawn tonight, you raped her, stabbed her and
3 took her purse and you turned around and stabbed
4 her cousin in the field behind the Fuddrucker's."

5 Q. What did you say?

6 A. "I didn't see them. I haven't seen
7 Shawn and I don't know no Mario, either. So, what
8 cousin is it you're talking about?"

9 Q. What happened after he told you that?

10 A. He put two pictures of a little boy in
11 my face, about a half inch to an inch away from my
12 face, and told me that, "This boy is dead because
13 of you."

14 Q. Then what did he do?

15 A. He pulled those pictures away from my
16 face and slapped me in my face and punched me in
17 my chest with his right hand.

18 Q. Then what?

19 A. He put the pictures back in my face and
20 told me, "You take a good look at this boy. He's
21 dead because of you. Yeah, you killed him."

22 Q. How did you feel when he did that?

23 A. I felt that my life was in danger and I
24 hadn't did nothing, and the police officers hit me
25 and I haven't been told I was under arrest for

1 anything or whatever. As far as I know, I was a
2 suspect, like he told me.

3 Q. Did he ever start typing a statement?

4 A. Yes.

5 Q. When?

6 A. About five or ten minutes after he
7 assaulted me.

8 Q. I'll show you State's Exhibit No. 3. Is
9 this the statement he typed?

10 A. Yes.

11 Q. Did you stab Shandra Charles?

12 A. No.

13 Q. As it says in this statement that you
14 did?

15 A. No, I didn't.

16 Q. Did you tell Sergeant Gafford that you
17 stabbed her?

18 A. No.

19 Q. Did you tell him you stabbed the little
20 boy?

21 A. No.

22 Q. Well, in other words, are there things
23 in this statement that are untrue?

24 A. Yes.

25 Q. Did you sign it?

1 A. Yes.

2 Q. Why did you sign it?

3 A. Because he told me to sign this
4 statement. When I noticed that my whole name was
5 on the statement, I noticed that wasn't mine, what
6 I said, because I never told him my whole name and
7 I said, "That's not my statement," like that.

8 He said, "Well, sign it, you'll get your
9 chance to change it later, get a chance to change
10 your statement later."

11 Q. What happened after you signed this
12 statement, State's Exhibit No. 3?

13 A. We brought two witnesses in to sign the
14 statement. The female witness asked me, is that
15 my signature on the statement. She didn't ask me
16 if that was my statement at all.

17 I said, "Yes, that's my signature."

18 Q. Did you get a chance to read the
19 statement before you signed it? Did you know what
20 it said?

21 A. I read the first page and part of the
22 other one. I didn't read the third one because I
23 told him, "This is not my statement." When I
24 signed the third sheet, he had his hand over the
25 text of the statement while I signed it.

1 Q. Okay. After the witnesses came in and
2 signed it, what happened after that?

3 A. I told Ms. Ross -- I believe that's her
4 name -- that I didn't stab anybody. And she told
5 me, "Well, a little girl's dead, girl named Shawn.
6 She called the name Preston before she died 45
7 minutes after she'd been transferred to Ben Taub.
8 She called the name Preston. Your name is Preston."
9 So, she didn't believe that I didn't do it.

10 Q. Did you stay there in the homicide
11 division?

12 A. I stayed for a little while. I say -- I
13 requested to make phone calls and I made calls.
14 Ms. Ross told him, "Go get the phone connected."
15 I made phone calls. I say about 9:00 o'clock or
16 so, I was transferred, taken down out of the
17 building completely, walked through the parking
18 lot over to the booking area, put me where I was
19 booked and taken to the fifth floor.

20 Q. Did you make any phone calls from the
21 fifth floor?

22 A. Yes.

23 Q. What time?

24 A. Well, I didn't have a watch. So, I can
25 just guess about the times. I'd say around 9:30

1 or so, something like that.

2 Q. Did you talk to this Elizabeth Stroman
3 that testified here?

4 A. Yes.

5 Q. Did you -- were you ever taken back to
6 the homicide division?

7 A. Yes.

8 Q. When was that?

9 A. I don't know. Sometime, I guess, in the
10 afternoon. I know it was after they fed us lunch
11 there.

12 Q. What happened when you got back down to
13 homicide?

14 A. An officer introduced himself to me as
15 Senior Detective Sergeant Garrison; but from
16 testimony, that same officer, I found out his name
17 was Yanchak.

18 Q. Okay. What happened down there on --
19 now, the jail's on the fifth floor and homicide is
20 on the third floor, right?

21 A. Right.

22 Q. What happened when you got back down to
23 homicide and met this Officer Yanchak?

24 A. I was off in over one of those small
25 rooms. He told me, "I don't believe your story.

1 We found some marijuana on the girl and we found a
2 bag in your apartment. I believe you were with
3 the two kids before you stabbed them."

4 He said, "What did you do, trade drugs
5 for a piece of young, tight pussy?" And he told
6 me, "Come on, you can tell me the truth. I know
7 how you people are, trading drugs for sex." And
8 he continued and said, "You're going to give
9 another statement to my partner, Sergeant
10 Ferguson." And he placed another statement in my
11 hand so I could read to Ferguson to type when he
12 comes into this room. "If you don't, I'm going to
13 kill you because I have kids and I have nightmares
14 about someone like you coming after my kids. Or,
15 hell, if you don't, I'll beat your ass all over
16 this room and place you in Ben Taub. I'm sure
17 they'll love to have and treat another patient."

18 And he asked me, "Who do you think the
19 judge will believe? A piece of shit like you or
20 me, a police officer? Now, do I make myself clear?"

21 Q. What happened then?

22 A. I cooperated and did just as he said.

23 Q. What did he say to do?

24 A. "Read that statement to Sergeant
25 Ferguson so he can type it," his partner.

1 Q. Did he? Is that what happened?

2 A. Yes.

3 Q. I'll show you what's been marked as
4 State's Exhibit No. 4. Is this the statement that
5 Sergeant Ferguson typed?

6 A. Yes.

7 Q. Well, did you sign it?

8 A. In fear for my life.

9 Q. This statement says you killed Shandra
10 Charles and Marcell Taylor. Did you kill them?

11 A. No.

12 Q. Are the things -- are there other things
13 in this statement that are not true?

14 A. The whole thing is not true.

15 Q. Okay. Did you read it before you signed
16 it?

17 A. Yes, he told me to read it. I read it
18 to him. So, I knew it was the same thing. Only
19 thing that's different from it is that paragraph
20 at the top where it says something about me giving
21 the statement to Sergeant Gafford.

22 Q. From the time you went down, went with
23 Sergeant Gafford, when you left your apartment,
24 until the time that you signed State's Exhibit
25 No. 4 in the homicide division, were you ever

1 taken before a magistrate and given any type of
2 warning?

3 A. No.

4 Q. Did you ever tell them you wanted to
5 have a lawyer there?

6 A. I asked him, could I make phone calls
7 before -- when he started accusing me of being
8 with Shawn and making accusations, I asked him
9 could I use the telephone. I was denied it.

10 Q. Did anyone tell you that if you signed
11 either one of these pieces of paper that it would
12 be used as evidence in a capital murder trial or
13 they would attempt to get capital murder charges
14 filed against you?

15 A. No.

16 Q. Did anyone tell you the death penalty
17 could result from you signing these pieces of
18 paper?

19 A. No.

20 Q. I'll show you what's been marked as
21 State's Exhibit No. 39. Can you tell me what that
22 is?

23 A. It's the keys to my apartment that
24 belong to my former roommate.

25 Q. Where was it the last time you saw it?

1 I mean, before this trial?

2 A. On a kitchen counter in my apartment.

3 Q. I'll show you what's been marked as
4 Defendant's Exhibit 19. What is that?

5 A. It's a key to my apartment.

6 Q. Where was it the last time you saw it?

7 A. On my key ring, in my property; but I
8 released my property to my parents.

9 Q. Was that the big key ring your mother
10 showed the jury here today?

11 A. Yes.

12 Q. Was this State's Exhibit No. 39, did you
13 take that out of the apartment with you when you
14 went downtown with the police?

15 A. No.

16 Q. Did you usually carry two apartment keys
17 on your key ring?

18 A. No.

19 Q. Did you have any keys on your key ring
20 with the fob on it and all this stuff?

21 A. No.

22 Q. Well, did you see anyone pick up the
23 State's Exhibit No. 39 while the police were in
24 your apartment?

25 A. No. Like I said, for that key to come

1 up missing out of my apartment, Sergeant Gafford
2 had to take it when he was out of my sight.

3 Q. I'll show you what's been marked as
4 State's Exhibit 15. Appear to be some steel
5 rimmed eyeglasses. You ever seen anything like
6 this before?

7 A. I saw them on Shawn back in September
8 when I saw her, September or August.

9 Q. Were these glasses in your apartment
10 before you went down to the police station?

11 A. No, I haven't seen them in my apartment.

12 Q. Well, could they have been inadvertently
13 stuffed down in a seat cushion or something and
14 you wouldn't have noticed them?

15 A. Yes, they could have.

16 Q. I'll show you what's been marked as
17 State's Exhibits 34 and 35, which, police say, is
18 a picture of a couch in your apartment with some
19 glasses in between the cushions. Were those
20 cushions there on September 26th or in the early
21 morning hours of the 27th when you went down to
22 the police station?

23 A. Were they there?

24 Q. Yes.

25 A. The cushions?

1 Q. No, the glasses.

2 A. No. As far as I know, they was never in
3 my apartment.

4 Q. Well, you know the police say that they
5 found them in your apartment when they searched it?

6 A. Yes, he accused me of taking some
7 glasses when I was downtown, too, when he arrived
8 downtown. He said he found a pair of glasses in
9 my apartment that had been identified as belonging
10 to Shawn.

11 Q. Up and through the time that you signed
12 State's Exhibit No. 4, you say you had never been
13 taken before a judge or magistrate. Were you ever
14 taken before a judge or magistrate and given a
15 legal warning by anyone other than a police
16 officer?

17 A. On that date?

18 Q. Any day. When was the first time you
19 were given a warning by anybody besides a police
20 officer?

21 A. After I been booked into the Harris
22 County Jail.

23 Q. When was that?

24 A. 9-28-88.

25 Q. Had you already been charged with

1 capital murder by then?

2 A. Well, I hadn't known till I came before
3 the magistrate and the District Attorney, JoAnn
4 Lee, presented those two statements to the
5 magistrate.

6 Q. Did you at that time request to have an
7 attorney?

8 A. The judge read me my rights and told me
9 that it will be one appointed to me; but at that
10 time, Ronald Mock was there and he was
11 representing me.

12 Q. Okay. When you talked to Elizabeth
13 Stroman from the -- where did you call from when
14 you talked to her?

15 A. In a holding tank on the fifth floor.

16 Q. At the city jail?

17 A. Yes.

18 Q. Have you heard testimony about: you
19 told her something, you had to get off the phone
20 because you had to change your statement, or words
21 to that effect?

22 A. Yes.

23 Q. How did that come about?

24 A. Two officers that was talking to me
25 while I was talking to her, hollered my name,

1 "Hughes," and told me to, "Get off the damn phone,"
2 and, "We got to go down for something they call
3 probable cause." That's what it was.

4 Q. Is that when you told her that
5 conversation about changing your statement?

6 A. That's when I told her, "They say I got
7 to go change a statement."

8 Q. What's probable cause? What would that
9 turn out to be? Did they go down to take you in
10 front of a judge or did they take you back to
11 homicide?

12 A. Took me back to homicide floor.

13 Q. What made you think you were going to
14 have to change your statement when you were on the
15 fifth floor?

16 A. Well, from the threats Sergeant Yanchak
17 made to me.

18 Q. Up there on the fifth floor?

19 A. No, he made it when I got down; but the
20 two officers that came to get me told me I got to
21 go down for probable cause and give another
22 statement.

23 MR. McCULLOUGH: Pass the witness.

24 THE COURT: Mr. Noll.
25

1 CROSS EXAMINATION

2
3 BY MR. NOLL:

4 Q. Mr. Hughes, stay right there for a
5 moment. You were questioned by Sergeant Gafford
6 earlier in the morning by the homicide office?

7 A. Yes.

8 Q. He quit questioning you after you signed
9 the statement and you were taken to booking and
10 sent to the fifth floor jail; is that correct?

11 A. Yes.

12 Q. What time was it when you got to the
13 fifth floor jail? Do you recall?

14 A. I believe it was somewhere around 9:00,
15 9:30.

16 Q. 9:00 or 9:30?

17 A. About 9:00 o'clock.

18 Q. About 9:00 o'clock. You called Ms.
19 Stroman at the store, according to those phone
20 records, I think at 10:00-something; is that
21 correct? 10:22?

22 A. I didn't have a watch on. I don't see
23 no watches, no clocks in there. So, I wouldn't
24 know exact time.

25 Q. You heard Ms. Leija's testimony. She

1 said that the first phone call she had collect to
2 the Men's Wearhouse from the jail was at 10:22
3 a.m.; is that correct? Did you hear her testimony?

4 A. That's her testimony. That's correct.

5 Q. Okay. And then again, you called at
6 11:02 a.m.; is that correct?

7 A. That's what she said, that's correct.

8 Q. Okay. Those were the only two calls you
9 made until after you made the second statement; is
10 that correct?

11 A. Yes.

12 Q. Okay.

13 A. That's what she said.

14 Q. I'm sorry?

15 A. That's what her testimony was, yes.

16 Q. Now, Ms. Stroman said that you told her
17 on the phone, on the second phone call, I believe,
18 that you had to go because they were making you
19 change your statement.

20 A. Yes.

21 Q. Is that --

22 A. I didn't request somebody to get me to
23 go make another statement.

24 Q. But your testimony now is that you knew
25 that they were going to make you change the

1 statement because the two officers who came to get
2 you from the fifth floor --

3 A. They told me, "Get your ass off the
4 phone." They called my name. "Hughes, get your
5 ass off the phone. You got to go down for
6 probable cause and change your statement."

7 Q. To change your statement. That's a
8 little different. A minute ago you said "to make
9 another statement."

10 A. It was against my will. I never wanted
11 to sign that first statement in the first place.

12 Q. I understand. You say two officers came
13 up and yelled, "Get your ass off the phone"; is
14 that right?

15 A. Uh-huh.

16 Q. They said what now, exactly?

17 A. "Got to go down for probable cause. You
18 got to change your statement."

19 Q. "You got to change your statement?"

20 A. Yeah.

21 Q. So, when you were talking to Ms. Stroman,
22 you hadn't seen Sergeant Yanchak yet and certainly
23 no one had told you their name was Garrison yet
24 and no one had threatened you yet?

25 A. No.

1 Q. When you talked to Ms. Stroman, you
2 weren't referring to any threats any officers made
3 except two officers came up; is that true?

4 A. Right.

5 Q. Uniformed officers who were white that
6 said, "Get off the phone, got to go down for
7 probable cause"?

8 A. I heard them call on some kind of
9 speaker, "He got to go for probable cause."

10 Q. Those two guys didn't say. Somebody
11 else did on a speaker?

12 A. I heard that. That's when they told me,
13 "Get your ass off the phone. You got to go down
14 and make another statement."

15 Q. "Make another statement"?

16 A. Yeah.

17 Q. Okay. So, certainly you didn't mean to
18 insinuate to Ms. Stroman at that point when you
19 talked to her on the phone that Sergeant Yanchak
20 had threatened you? You weren't referring to any
21 threats that he made to make you change your
22 statement?

23 A. No.

24 Q. If she assumed the police had threatened
25 you to make your statement, it was incorrect at

1 that point? At that point Sergeant Garrison
2 hadn't talked to you yet or the person you say
3 identified himself as Sergeant Garrison; is that
4 correct?

5 A. He hadn't seen me yet.

6 Q. Anything you talked to Ms. Stroman about
7 wasn't about any threats he made but about --

8 A. She didn't testify and say any threats
9 were made.

10 Q. I know. I'm trying to make that clear.
11 If she assumed you were somewhere under threats,
12 she was incorrect in that assumption; is that
13 correct?

14 A. She would be correct.

15 Q. Okay. Let's go back a little bit. You
16 knew Shawn and you knew Shawn very well, didn't
17 you?

18 A. Yes.

19 Q. When I say "Shawn," I'm referring to
20 Shandra Charles. You knew her as Shawn; is that
21 correct?

22 A. Yes.

23 Q. You knew Marcell, didn't you?

24 A. No.

25 Q. Had you ever met Marcell before?

1 A. No.

2 Q. And you say the last time you saw Shawn
3 was in September. Is that the same month when she
4 died?

5 A. Late August or early September.

6 Q. Was she in your apartment?

7 A. Yes, when I seen her.

8 Q. She knew exactly where you lived, didn't
9 she?

10 A. Yes.

11 Q. She'd been there many times?

12 A. Yes.

13 Q. On September 26th, you were home that
14 night at no later than 10:30; is that correct?

15 A. About 10:30 I got home.

16 Q. You had been drinking a little bit. So,
17 you were a little drunk, weren't you?

18 A. I threw all that up when I was walking
19 to Circle K.

20 Q. You sobered up after you threw up?

21 A. Uh-huh.

22 Q. Were you under the influence of alcohol
23 at all by 10:30?

24 A. I know it could have been still in my
25 system; but I wasn't staggering or anything.

1 Q. You weren't staggering at all, weren't
2 staggering, stumbling or walking with a limp or
3 anything like that?

4 A. No.

5 Q. You had your wits about you completely?

6 A. Yes.

7 Q. So, there was nothing in the alcohol
8 that would cause you to forget the events of that
9 night or anything of that nature?

10 A. Huh-uh.

11 Q. The statement that Sergeant Gafford took
12 from you is accurate, from what you've seen, in
13 all respects except for the part where on the
14 third page the statement reflects that after you
15 turned and struggled with the man and stuck him,
16 you realized it was Shawn. After that you say
17 it's false; is that correct?

18 A. That's Gafford's testimony.

19 Q. Would you agree with me that this
20 statement that Sergeant Gafford took from you is
21 more or less exculpatory, makes you look pretty
22 good? Makes you look like this is an accidental
23 killing, doesn't it? You didn't know who it was --

24 A. I didn't know what the statement was I
25 was signing in the first place.

1 Q. You've had a chance to read it since
2 then, haven't you?

3 A. I got a chance to read it March 16th.

4 Q. Okay. Are you saying that March 16th is
5 the only chance you've had to read this statement?

6 A. Yes.

7 Q. Isn't it a fact, Mr. Hughes, that I gave
8 your lawyer a copy and he gave you a copy of this
9 statement?

10 A. He gave it to me when I requested it in
11 court.

12 Q. When was that?

13 A. That was, I believe, either the
14 following week after March 16th or -- yeah.

15 Q. So, you've had it in your possession --
16 you've had a copy of this confession since at
17 least March 16th or sometime close to that?

18 A. Uh-huh.

19 Q. You've had a chance to read this
20 statement is my question?

21 A. Yes.

22 Q. You know word-for-word what it says,
23 don't you?

24 A. I didn't bother to memorize it.

25 Q. You didn't memorize anything you've

1 testified about today?

2 A. I memorized that, but that's not my
3 statement. So, why should I memorize what's not
4 mine?

5 Q. You're real good at memorizing things,
6 aren't you?

7 A. I'm not no dummy.

8 Q. Exactly my point. You're not a dummy,
9 are you?

10 A. No.

11 Q. In fact, you finished high school in
12 Buffalo, New York?

13 A. Yes.

14 Q. Went to Burgard High School and
15 graduated from that high school?

16 A. Yes, sir.

17 Q. In fact, active in outside activities;
18 in fact, a black belt in Kung Fu karate?

19 A. Yes.

20 Q. You're an expert in martial arts; is
21 that right?

22 A. Expert is tenth degree.

23 Q. You have a black belt in martial arts;
24 is that correct?

25 A. Yes.

1 Q. Is it fair to say you can take care of
2 yourself, sir?

3 A. To a fair extent. I'm not saying I can
4 beat anybody.

5 Q. 3-year-old boy a match for you?

6 A. I never seen that 3-year-old boy.

7 Q. Is a 3-year-old boy a match for you?

8 A. No.

9 Q. How about a 15-year-old girl?

10 A. No.

11 Q. You could take care of them, couldn't
12 you?

13 A. I don't fight kids. I don't hit kids at
14 all.

15 Q. If you did, you wouldn't need any
16 assistance. You're an expert in the martial arts.

17 A. Yes.

18 Q. In fact, you used to sleep with a knife
19 and nunchakus in your hand with you?

20 A. No, nunchakus were just in there.

21 Q. Just happened to be there?

22 A. Uh-huh.

23 Q. Had a knife, too. You usually sleep
24 with a knife, don't you?

25 A. No.

1 Q. Would you agree with me, in your
2 statement, you've had a chance to read, right?

3 A. Yes.

4 Q. It is essentially a statement that makes
5 you look less guilty, makes it look like it was an
6 accident?

7 A. No, that's Sergeant Gafford's statement.
8 I didn't give that.

9 Q. I'm not asking you if you gave it or
10 Sergeant Gafford gave it. I'm asking you the
11 statement as it was given, as it's written now,
12 you went to work, got off work, caught
13 82-Westheimer, were a little drunk, went too far,
14 the bus driver woke you up, took a cab back to
15 your apartment, got home, took your dog for a walk,
16 went to the Fuddrucker's and it was closed. All
17 that's just what you said, right?

18 A. Yes.

19 Q. But then later on in the statement where
20 it says when you were coming back from
21 Fuddrucker's, the statement indicates that as you
22 were walking through that dark field, some man
23 came up behind you and tapped you on the shoulder;
24 is that correct?

25 A. A man, about 5' 9", to 5' 10", a black

1 man.

2 Q. I'm asking you, Mr. Hughes, what's in
3 this statement, not what you say right now.

4 A. Well, that's not what I said that's in
5 that statement.

6 Q. I'm not arguing with you about that, but
7 in the statement itself -- do you have a copy of
8 it right there in front of you?

9 A. No.

10 MR. McCULLOUGH: That's the first one
11 and this is the second one.

12 BY MR. NOLL:

13 Q. Do you have it there with you?

14 A. Yes.

15 Q. Have you had a chance to read it a bunch
16 since March 16th?

17 A. I read it a couple of times.

18 Q. You've only read it a couple of times?

19 A. Uh-huh.

20 Q. Are you familiar with it?

21 A. So-so.

22 Q. Go ahead and read the last page, page 3
23 of your statement, of the alleged statement that
24 you just gave to Sergeant Gafford on September
25 27th, 1988, starting at where it says "the path."

1 Better yet, start with the first
2 sentence there, the last sentence on page 2 where
3 it says, "As I got in the field walking along"...

4 A. As I got --

5 MR. NOLL: Read it to yourself.

6 MR. McCULLOUGH: I object to --

7 BY MR. NOLL:

8 Q. Read it to yourself to refresh your
9 recollection of what it says.

10 A. Okay.

11 Q. Have you had a chance to refresh your
12 memory from reading that last page?

13 A. Yes.

14 Q. Up until the last page, let's say the
15 first two pages, it's pretty true, pretty accurate
16 as to what happened that night, is it not?

17 A. Not the way I said it.

18 Q. Assuming it may not be word-for-word the
19 way you may have said it to Sergeant Gafford, it
20 carries the same meaning, same general story about
21 what happened?

22 A. Of my whereabouts?

23 Q. Your whereabouts and where you were; is
24 that right?

25 A. Yeah.

1 Q. Nothing in there talking about anybody
2 getting hurt, talking about where you had been and
3 pretty accurately reflects that; is that correct?

4 A. Right.

5 Q. On the third page, that's where you say
6 your story is different from what Sergeant Gafford
7 wrote down; is that correct?

8 A. That's true. It's different.

9 Q. Let's assume just for the record now
10 that Sergeant Gafford made this whole last page up.
11 If he did make it up, he didn't do a very good job
12 of framing you for murder on it, did he?

13 A. He asked me questions why he was typing
14 it. He asked me about the --

15 Q. My question, Mr. Hughes, is you've read
16 that and this last page pretty much says someone
17 came up behind you in a dark field and you, in
18 self-defense, turn around and started stabbing.

19 MR. McCULLOUGH: Object to arguing with
20 the witness.

21 THE COURT: Overruled.

22 BY MR. NOLL:

23 Q. Isn't that what his statement was?

24 A. That's what his statement says.

25 Q. That's what his statement says?

1 A. Yes.

2 Q. That's not murder if you said it like
3 that.

4 MR. McCULLOUGH: Objection. He's not a
5 lawyer.

6 THE COURT: Overruled.

7 BY MR. NOLL:

8 Q. That's self-defense?

9 A. Right.

10 Q. Then the statement says after you
11 started sticking this person, he says in the
12 statement that you realized then that it was Shawn
13 and you kept on sticking. Now you say you didn't
14 say that, that he made that up, right?

15 A. Right.

16 Q. Okay. But still, the way he wrote it up,
17 it's still kind of an accident. You didn't
18 realize what you were doing, right? The way he
19 wrote it?

20 A. He wrote that. I didn't know nothing
21 about it till I got a chance to read it.

22 Q. Let's say you're on the jury and you're
23 reading the statement. Wouldn't it sound like to
24 you somebody came behind Preston in the field, he
25 turned around to defend himself and started

1 sticking and he didn't realize it was Shawn until
2 after she had already been stuck. Then he got
3 scared and ran. Isn't that what it says?

4 A. Yeah, that would look like I asked him
5 or something.

6 Q. That's right. Now, in your testimony
7 you said when the man came up and tapped you on
8 the shoulder, it was too dark for you to see his
9 face; is that right?

10 A. I said I couldn't see his face because
11 there wasn't enough light.

12 Q. Wasn't enough light. In fact, you
13 couldn't even tell if it was a black man or white
14 man until you felt his nappy hair.

15 A. That's when I realized it was a black
16 man.

17 Q. You remember Sergeant Hamilton that
18 testified earlier in this case?

19 A. Yes.

20 Q. You remember him testifying it was dark
21 out there but there was some moonlight and you
22 could generally see a little bit?

23 A. Yeah, I remember that.

24 Q. Are you saying he was lying about that?
25 So dark you couldn't see anything? Couldn't see a

1 man that was as close to you as I am to this juror
2 right now?

3 A. I had dark sunglasses --

4 MR. McCULLOUGH: Object to counsel
5 getting in the jury box, Your Honor.

6 MR. NOLL: I'll try not to, Judge.

7 THE COURT: That will be overruled.

8 BY MR. NOLL:

9 Q. So, you couldn't see because at 10:30 or
10 sometime after 10:30 when you went to walk your
11 dog to Fuddrucker's, you had put on a pair of dark
12 sunglasses. Is that your testimony?

13 A. I wear sunglasses all the time. When I
14 go to work early in the morning and it's dark out
15 I still have them on.

16 Q. You wear them at 10:30 at night when
17 you're walking through a field to go to
18 Fuddrucker's?

19 A. I know the area around there. I know my
20 way around there. I know the area of my home.

21 Q. When the police officers first came to
22 your apartment, you said it was about 2:30 in the
23 morning on September 27th; is that correct?

24 A. Yes.

25 Q. On that morning, your testimony is that

1 Sergeant Gafford appeared at your door with two
2 uniformed officers?

3 A. Yes.

4 Q. And you kept referring to the man in the
5 uniform or the sergeant that went to the bedroom.
6 Who was that? Sergeant Hamilton?

7 A. Hamilton.

8 Q. There was another sergeant there in
9 uniform, you say?

10 A. No, it was just another officer in
11 uniform, just plain officer.

12 Q. Not a sergeant?

13 A. I distinguished him, Sergeant Hamilton,
14 to be a sergeant because his badge is gold.

15 Q. Okay. And the other officer that was
16 with Sergeant Gafford was a uniformed officer who
17 was not a sergeant?

18 A. Right.

19 Q. Now, you saw Sergeant Bloyd who
20 testified in this courtroom, didn't you?

21 A. Yes.

22 Q. Are you saying he lied when he said he
23 was there?

24 A. Yes.

25 Q. Are you saying Sergeant Gafford lied

1 when he said Sergeant Bloyd was there?

2 A. Yes.

3 Q. I guess Sergeant Hamilton is also lying
4 when he said he was there with Sergeants Bloyd and
5 Gafford?

6 A. Yes.

7 Q. And when Sergeant Hamilton testified
8 that he did not search your apartment, he lied
9 also then?

10 A. Yes.

11 Q. When Sergeant Gafford testified that he
12 was in your apartment and looked around but did
13 not search, he also lied?

14 A. Well, I didn't see -- when I went to my
15 room, I didn't see where Sergeant Gafford was. He
16 was out of my sight if he did anything.

17 Q. You mentioned the other officer searched?

18 A. He was looking in my dining room and
19 living room and unlocked my patio door.

20 Q. Sergeant Bloyd lied when he said he was
21 there and did not search?

22 A. Yes.

23 Q. They all lied when they said there was
24 no other uniformed officer there?

25 A. Yes.

1 Q. Even though they didn't find anything or
2 search or seize anything at that time, they're
3 just lying about what happened?

4 A. Right.

5 Q. I assume your testimony would be
6 Sergeant Gafford lied to this jury under oath when
7 he said you never asked them why they were there?

8 A. Yes, he lied.

9 Q. Sergeant Bloyd lied about that?

10 A. Yes.

11 Q. Sergeant Hamilton lied about that?

12 A. Yes.

13 Q. After they asked you to come downtown,
14 you went downtown with them, they told the truth
15 when they said you locked the door behind yourself,
16 didn't they?

17 A. That's the only thing they told the
18 truth about.

19 Q. He said they opened the patio door, some
20 officer opened the patio door --

21 A. White officer in uniform.

22 Q. Left the patio door open?

23 A. He unlocked the patio door.

24 Q. Did he have a name tag on? Did you see
25 what his name was?

1 A. I didn't see a name tag.

2 Q. What did he look like?

3 A. Shorter, about Gafford height or so,
4 little heavier than Gafford, you know. I didn't
5 get a complete description of his face, features
6 or anything.

7 Q. Black hair, brown hair?

8 A. Well, he was standing in the living room.
9 It was dark from where I could see. Only light
10 reflecting was from the kitchen. It wasn't very
11 much.

12 Q. Houston Police Officer?

13 A. Yes.

14 Q. There's no stairs that go from the
15 ground to the patio, are there?

16 A. No.

17 Q. So, it was just a patio on the second
18 floor --

19 A. But you can climb up to my patio from
20 the lower patio.

21 Q. Are you saying that police cracked that
22 door so they could sneak back in there later and
23 climb in your patio?

24 A. I just said he unlocked the door.

25 Q. That's what you're insinuating clearly,

1 isn't it?

2 A. I just said he unlocked the door.

3 Q. What do you think?

4 A. He unlocked the door to conduct illegal
5 search of my apartment.

6 Q. Sneak back in through there?

7 A. Uh-huh.

8 Q. Okay. So, they opened that patio door
9 so they could sneak back in to do the illegal
10 search, right?

11 A. Yes.

12 Q. The next morning before they did the
13 search, they got a key from you, didn't they?

14 A. No.

15 Q. You didn't give them the key the next
16 morning?

17 A. No.

18 Q. If they got in your apartment with a key,
19 it was not with your key?

20 A. They got into the apartment, and it had
21 to be with that key right there which Gafford
22 probably took, either him or the other officer
23 took off the kitchen counter.

24 Q. What other officer?

25 A. The white officer in uniform.

1 Q. Okay. How about Sergeant Hamilton? Do
2 you think he was a part of that, too?

3 A. Sergeant Hamilton was watching me get
4 dressed.

5 Q. After they get you downtown, at that
6 point, nobody has threatened you in any way, have
7 they?

8 A. No.

9 Q. No one said anything to you about, "You
10 got to make a statement or else." No one promised
11 you any benefit if you made statement; is that
12 correct?

13 A. Not at that time.

14 Q. So, you get downtown to the homicide
15 offices on the third floor; is that correct?

16 A. I believe it was fifth; but I guess it's
17 the third.

18 Q. They took you up the elevators, you
19 walked around the corner, sat on the bench?

20 A. Yes.

21 Q. Were you handcuffed?

22 A. No.

23 Q. No one ever handcuffed you at all?

24 A. No.

25 Q. The officer that drove you down to the

1 police station, did he talk to you in any way?

2 A. No.

3 Q. Didn't have any conversation at all with
4 him, did you?

5 A. No.

6 Q. And he put you on this bench outside the
7 homicide offices?

8 A. Yes.

9 Q. Certainly that officer didn't threaten
10 you in any way, did he?

11 A. No.

12 Q. He didn't promise you anything to get
13 you to make these statements?

14 A. No.

15 Q. After Sergeant Gafford arrived at the
16 homicide office, did you go with him immediately
17 into the interview room?

18 A. I was placed in the interview room a
19 half hour after I was sitting on that bench.
20 Sergeant Gafford still hadn't arrived. He didn't
21 arrive till about an hour and a half to two hours
22 later.

23 Q. Is the interview room, as the officers
24 described it, right off the big room with all the
25 other partitions where all the other homicide

1 sergeants sit?

2 A. Yes.

3 Q. Was there a lot of activity in there
4 that morning?

5 A. No, all I seen was when I went in there,
6 it was a detective typing somebody's statement, a
7 white guy's statement, and that was it.

8 Q. And they sat you down in this room?

9 A. Yes.

10 Q. The interview room was, as they
11 described it, correct: table, some chairs, little
12 typewriter and a telephone?

13 A. Yes. Telephone didn't have the receiver
14 hooked to it.

15 Q. Wasn't hooked up?

16 A. Yeah.

17 Q. When you first got there?

18 A. Yes.

19 Q. Sergeant Gafford came down and then
20 entered the room with you; is that correct?

21 A. When he finally got there, yes.

22 Q. Now, at this point again, no one has
23 threatened you in any way or coerced you into
24 making a statement?

25 A. Right.

1 Q. When Sergeant Gafford testified he read
2 you his rights from a blue card, he's simply lying
3 about that?

4 A. Yes, sir.

5 Q. He never told you anything about your
6 rights?

7 A. He hasn't.

8 Q. When he tells you that -- tells the jury,
9 at least, that he advised you not only of your
10 rights but also they were investigating the death
11 of two children, he's lying about that?

12 A. Yes.

13 Q. When he tells the jury that he did not
14 strike you, that he did not threaten you, he's
15 lying about that?

16 A. Yes.

17 Q. And he struck you in the face, slammed
18 you in the face, I guess, struck you in the chest,
19 intimidated you, coerced you, threatened you,
20 violated the law?

21 A. Yes.

22 Q. All to get the statement which is marked
23 as, I think State's Exhibit No. 3, the first
24 statement you made to the police?

25 A. Well, this is his statement. He put in

1 there that pertains to Shawn, not anything that
2 came from me.

3 Q. What I'm saying is you're alleging or
4 you're saying in your testimony that he did all
5 those things and violated the law, put his career
6 on the line, subjected himself to possible federal
7 charges --

8 MR. McCULLOUGH: Object to the testimony
9 of the prosecutor, Your Honor.

10 THE COURT: Let's wrap it up, please.

11 BY MR. NOLL:

12 Q. Is it your testimony he did all those
13 things?

14 A. Yes.

15 Q. In order to obtain your signature on
16 this first statement?

17 A. Every police officer on the force does
18 not tell the truth.

19 Q. Sir, I asked you -- I know that. That's
20 obvious, isn't it?

21 A. Yes, he's lying about everything.

22 Q. He's lying about all that and he did all
23 those things just to get this statement; is that
24 correct?

25 A. Yes.

1 Q. He didn't have anything to do with the
2 second statement?

3 A. No.

4 Q. After he got finished with you on this
5 statement, you didn't see him anymore, did you?

6 A. When he took me to be booked.

7 Q. Booked you into the city jail. Is that
8 what you're saying?

9 A. Right.

10 Q. So, when he said he just left you in the
11 interview room, he's lying again about that?

12 A. Yes.

13 Q. In any event, he didn't have anything
14 further to do with you in relationship in the
15 second statement that you gave?

16 A. He made notes from answers I gave to
17 some questions he had before he started typing
18 this statement and the notes reflect in that
19 statement there.

20 Q. Okay. So, you're saying that the notes
21 he took in your first interview turned up to the
22 second statement?

23 A. Yeah --

24 Q. And sergeant -- I'm sorry?

25 A. In words of their own.

1 Q. Sergeant Gafford didn't have anything to
2 do with taking this statement, did he?

3 A. No, he wasn't in the room.

4 Q. Now, when Sergeant Ferguson testified
5 that later in the day he went to the fifth floor
6 and he personally checked you out of jail and took
7 you back downstairs, he's lying about that; is
8 that right?

9 A. Yes.

10 Q. Okay. And, in fact, when Sergeant
11 Yanchak says that he never threatened you, as you
12 said, as Sergeant Garrison, he's lying about that,
13 too?

14 A. Yes.

15 Q. Your previous testimony was that
16 Sergeant Garrison or Sergeant Yanchak, who you
17 said introduced himself as Garrison --

18 A. I said Sergeant Garrison at my previous
19 testimony. I stated today that I discovered his
20 name is Yanchak.

21 Q. Let's call him Yanchak now, all right?

22 A. Yes.

23 Q. Just keep it clear. Your testimony,
24 previous testimony was that Sergeant Yanchak
25 picked you up out of out of jail, or these two

1 officers did, and Sergeant Yanchak and threatened
2 you with this talk --

3 A. I didn't say Sergeant Yanchak.

4 Q. The man who identified himself as
5 Sergeant Garrison?

6 A. I didn't say Sergeant Garrison picked me
7 up.

8 Q. Who picked you up?

9 A. Two officers.

10 Q. They took you down to the third floor,
11 didn't they?

12 A. Yes, and released me to the detective
13 down there.

14 Q. That was Detective Garrison?

15 A. That's who he identified himself as.

16 Q. Your testimony is two uniformed officers
17 brought you down from the fifth floor to the third
18 floor where Sergeant Garrison, also known as
19 Sergeant Yanchak, took custody of you?

20 A. Yeah.

21 Q. That's what happened to Sergeant
22 Ferguson?

23 A. Ferguson didn't come and get me and take
24 me down and get me back up; and Ferguson didn't
25 get me when Yanchak took me back up, no.

1 Q. When you came down the second time and
2 you say Sergeant Garrison, also known as Sergeant
3 Yanchak, took custody of you, that's when he
4 threatened you to make you make the second
5 statement; is that correct?

6 A. Yes.

7 Q. I believe you testified just exactly
8 what Sergeant Garrison, also known as Sergeant
9 Yanchak, said; is that correct?

10 A. Yes.

11 Q. Can you tell the jury again exactly what
12 it is that Sergeant Garrison, also known as
13 Sergeant Yanchak, said to you?

14 A. "I don't believe your story. We found
15 some marijuana on the girl. We found a bag in
16 your apartment. I believe you were with the two
17 kids before you killed them -- before you stabbed
18 them." He asked me, "What did you do, trade some
19 marijuana for a piece of young, tight pussy? Come
20 on, tell me the truth. I know how you people are,
21 trading drugs for sex."

22 "You're going to give another statement
23 to my partner, Sergeant Ferguson," that's when he
24 placed it in my hand, "when he comes into this
25 room. And if you don't, I'm going to kill you.

1 Because I have kids and I have nightmares of
2 someone like you coming after my kids. Or, hell,
3 I'll just beat your ass all over this room and
4 place you in Ben Taub. I'm sure they would like
5 to have and treat another patient. And who do you
6 think the judge will believe? A piece of shit
7 like you or me, a police officer? Now, do I make
8 myself clear?"

9 Q. It is amazing, that is almost
10 word-for-word exactly what you said on direct
11 examination. Do you realize that?

12 A. If it is, it's true.

13 Q. Did you memorize your testimony today?

14 A. From what?

15 Q. From anything? I'm just asking you,
16 have you memorized your testimony?

17 A. No.

18 Q. Do you remember writing a letter to the
19 judge of this court?

20 A. Yes.

21 Q. In that letter, do you realize your
22 testimony you just made was word-for-word exactly
23 the same as --

24 MR. McCULLOUGH: Object to the District
25 Attorney testifying about these letters. There

1 may be some way to do this without him testifying.

2 MR. NOLL: Let me see if I can do it
3 this way, Your Honor.

4 THE COURT: Very well.

5 BY MR. NOLL:

6 Q. Mr. Hughes, do you recall writing a
7 letter --

8 MR. McCULLOUGH: Your Honor, I don't
9 know of any prior consistent statement impeachment
10 provision. I would object to this procedure.

11 THE COURT: Be overruled.

12 BY MR. NOLL:

13 Q. Do you remember writing a letter to the
14 Court?

15 A. Yes.

16 Q. In that letter, do you remember stating
17 what Sergeant Garrison, also known as Sergeant
18 Yanchak, said to you?

19 A. Yes.

20 Q. Is it exactly word-for-word, almost down
21 to the semicolon, exactly what you just said?

22 A. I stated what he said to me.

23 Q. And almost word-for-word down to the
24 semicolon exactly --

25 MR. McCULLOUGH: Objection, Your Honor,

1 he didn't testify about any semicolons. Object to
2 this line of questions.

3 MR. NOLL: I'll rephrase it, Your Honor.

4 BY MR. NOLL:

5 Q. Is it almost word-for-word, that whole
6 little dialogue you just gave, the same as you
7 testified previously in this court?

8 A. I believe it may be.

9 Q. So that is at least three times under
10 oath where you have given word-for-word the exact
11 same -- using the same words, the same everything
12 as to what he said to you that day?

13 A. Yes.

14 Q. Is your memory that good, sir?

15 A. Like I said, I'm no dummy.

16 Q. Have you memorized your testimony that
17 you gave to this jury?

18 A. No. I haven't rehearsed with my
19 attorneys or nothing.

20 Q. Haven't rehearsed at all with anybody?

21 A. No.

22 Q. Going back to your second statement on
23 September 27th. After you say Sergeant Garrison,
24 also known as Sergeant Yanchak, threatened you,
25 what happened? Where did you go?

1 A. I stayed in that room.

2 Q. Did he threaten you in that same little
3 room?

4 A. Yes.

5 Q. Do you recall ever saying that he
6 threatened you at the elevators out in the hallway?

7 A. No.

8 Q. Never recall saying that?

9 A. Huh-uh.

10 Q. After he got you in the little room
11 there, did he hit you with a gun?

12 A. No.

13 Q. Let's back up. Did Sergeant Gafford
14 ever hit you with a gun?

15 A. No.

16 Q. Anybody ever hit you with a gun?

17 A. No.

18 Q. When sergeant -- you say Sergeant
19 Yanchak, got you in the little room, did he leave
20 and Sergeant Ferguson then come in?

21 A. Yes.

22 Q. So, when Sergeant Ferguson testified, he
23 lied about all of that?

24 A. Yes, he came in and Yanchak introduced
25 hisself to me as Gafford -- Garrison, rather. He

1 left out.

2 Q. I guess when Sergeant Yanchak testified
3 he read you your rights from that blue card, he
4 lied about that, also?

5 A. Yes.

6 Q. Is it your testimony no one ever read
7 you your rights?

8 A. No, Sergeant Ferguson read my rights to
9 me before I signed that statement.

10 Q. That was the first time anybody had ever
11 read you your rights?

12 A. Yes.

13 Q. That was around noontime when you made
14 the second statement?

15 A. I guess, whatever time it stated on
16 there, yeah.

17 Q. Sergeant Gafford lied about reading your
18 rights to you?

19 A. Yes.

20 Q. Sergeant Ross and Sergeant Smith lied
21 when they said they witnessed your statements and
22 you initialed your rights?

23 A. They witnessed the fact my signature is
24 on this statement. They didn't see me write my
25 name into that line where it says "signature of

1 person making statement."

2 Q. Sergeant Ross lied when she said she had
3 you sign right there at the bottom of the text on
4 each page?

5 A. No, she didn't lie about that.

6 Q. You did sign that?

7 A. Yes.

8 Q. So, you did sign each of the ending
9 lines of each paragraph of that statement?

10 A. Yes.

11 Q. And you say now that you told Sergeant
12 Ross, of course, that you didn't stab anybody; is
13 that correct?

14 A. That's what I told her.

15 Q. Of course, you did stab a man out there?

16 A. I didn't stab him. I said stuck.
17 Stabbing and stuck is two different things. When
18 you stab the knife, it enters all the way.

19 Q. In your mind, stabbing is when the knife
20 goes all the way in --

21 A. The amount of blood I saw on the knife,
22 which ran about inch to inch and a half from the
23 tip of my blade, I consider it stuck because I
24 know it hit something on him.

25 Q. So, if the --

1 A. Like little --

2 Q. If a knife goes in an inch, inch and a
3 half, that's stuck --

4 A. I didn't say the knife went in. I say
5 the blood running from the tip of the knife.

6 Q. When you got back to your room that
7 night, you saw blood running from the tip of that
8 knife?

9 A. Yes.

10 Q. It wasn't far enough for you to consider
11 a stab; you consider that a stick.

12 A. It was a thin line.

13 Q. You heard Sergeant Ross testify, didn't
14 you?

15 A. Yes.

16 Q. You heard her say what she asked you and
17 what you said to her?

18 A. Uh-huh.

19 Q. She never said you didn't say any of
20 that stuff.

21 A. I know she didn't.

22 Q. Was she lying in here to the jury?

23 A. Yes, and she never signed any statement
24 which they saying I gave consent for my house to
25 be searched.

1 Q. We'll get to that. But she's lying
2 about this statement, too?

3 A. Repeat the question.

4 Q. She's lying when she said she witnessed
5 this statement and she told us it was your free
6 and voluntary will to do it?

7 A. Yes.

8 Q. Smith lied about that, too?

9 A. My signature was on the statement before
10 they came into the room.

11 Q. In any event, they're lying?

12 A. Yes.

13 Q. Ferguson is lying and Yanchak is lying.

14 MR. McCULLOUGH: Your Honor, I believe
15 this has become repetitive.

16 MR. NOLL: Want to see how many times
17 they all lied on me, Judge.

18 THE COURT: Let's move along.

19 MR. NOLL: Yes, sir.

20 BY MR. NOLL:

21 Q. Second statement you gave or allegedly
22 gave to Sergeant Ferguson, on that statement at
23 the top of each page are certain rights which have
24 initials "P. H., III" next to them.

25 A. Yes.

1 Q. Did you read those and sign your
2 initials by them?

3 A. I signed when those two witnesses came
4 in there.

5 Q. Did you read them?

6 A. When they came in there.

7 Q. So, before anyone signed this, you read
8 your rights up there and put your initials next to
9 it?

10 A. Yes.

11 THE COURT: Mr. Noll, we're going to
12 need to take a break here. Members of the jury,
13 I'd ask you to go have a seat in the jury room
14 right now. The bailiff will release you to go on
15 your morning break and then be back in there by
16 11:20, please. I want you to go to the jury room
17 first and let him release you.

18 (Jury out.)

19 (Short recess.)

20 (Jury in.)

21 THE COURT: You may proceed, Mr. Noll.

22 MR. NOLL: Thank you, Your Honor.

23 BY MR. NOLL:

24 Q. Mr. Hughes, when you were in the
25 interview room the second time and Sergeant

1 Ferguson was talking to you, your testimony is he
2 never advised you of your rights; is that correct?

3 A. I said he advised me of my rights --

4 MR. McCULLOUGH: Your Honor, this is
5 repetitive.

6 MR. NOLL: I'm trying to pick back up.

7 THE COURT: Reset the scene. I'm going
8 to allow a little leeway.

9 A. He advised me of my rights before I
10 signed this statement; after he typed it but
11 before I signed it.

12 BY MR. NOLL:

13 Q. So, before you were shown the statement,
14 he did advise you of your rights?

15 A. Yes.

16 Q. How did he do that?

17 A. He just read them off to me. He had no
18 blue card or anything.

19 Q. He didn't use his blue card, read them
20 off this piece of paper?

21 A. This is just what he did.

22 Q. Show us how he did it.

23 A. You know, you have the right to remain
24 silent, so on and so forth, things like that.

25 Q. He used those words, "so on and so

1 forth"?

2 A. No, I'm saying so on and so forth. He
3 went into them.

4 Q. What I want you to do is read exactly
5 what the sergeant said to you before you signed
6 that statement.

7 MR. McCULLOUGH: I object to him being
8 allowed to read out loud, Your Honor.

9 THE COURT: That will be overruled.

10 BY MR. NOLL:

11 Q. Please read to the jury exactly what the
12 sergeant read to you before he gave you that
13 statement.

14 A. He said you have your right to remain
15 silent -- I have to read it from here?

16 Q. Go ahead and read -- he read from that
17 paper, didn't he?

18 A. No, because he was doing like this and
19 looking at me. He wasn't looking at the paper.

20 Q. So, he didn't read it to you?

21 A. He wasn't reading from the paper.

22 Q. What was he reading from?

23 A. He was looking at me, just reading the
24 rights, saying the rights.

25 Q. Are you saying from memory he did it?

1 A. Yes.

2 Q. Do you remember him testifying you have
3 the right to remain silent and not make any
4 statement at all and any statement you make may
5 and probably will be used against you?

6 A. That's what he said before I signed the
7 statement.

8 Q. Did he also tell you any statement you
9 make could be used as evidence against you in
10 court?

11 A. He just read what was on there, I guess,
12 exactly how it was on here, though, but he didn't --

13 Q. Do you remember him saying that?

14 A. He said it can be used against you.

15 Q. Do you remember him saying that you have
16 the right to have a lawyer present to advise you
17 prior to and during any questioning?

18 A. That's what he said.

19 Q. Do you remember him saying that if you
20 are unable to employ a lawyer, that you'd have the
21 right to have a lawyer appointed to advise you
22 prior to and during any questioning? Do you
23 remember him telling you that?

24 A. Yeah, he said that.

25 Q. Do you remember him telling you that you

1 have the right to terminate the interview at any
2 time?

3 A. He said that.

4 Q. So, he did advise you of your rights
5 prior to giving you this statement, didn't he?

6 A. Before I signed that statement, he had
7 already typed it.

8 Q. All right. Do you remember putting your
9 initials next to those rights?

10 A. Yes.

11 Q. Did you ask him for a lawyer?

12 A. I didn't ask him for nothing. I figure,
13 well, since Sergeant Gafford already got -- made
14 me sign a statement, what rights do I have left?

15 Q. You know, you realize of course, I
16 thought we agreed on that, that the statement you
17 gave Sergeant Gafford was kind --

18 MR. McCULLOUGH: Argumentative, Your
19 Honor.

20 THE COURT: Rephrase it, Mr. Noll.

21 BY MR. NOLL:

22 Q. At that point you knew what the
23 statement was you had given Sergeant Gafford; is
24 that correct?

25 A. No, I didn't read the whole statement.

1 Q. You didn't even read that statement
2 before you gave it to him?

3 A. I didn't read the whole statement. I
4 didn't know what was said on that third sheet or
5 anything because he had it covered with his hand.

6 Q. No idea. Okay. In any event, before
7 you signed the second statement, Sergeant Ferguson
8 did read you your rights?

9 A. Yes.

10 Q. And before you signed it, you put your
11 initials next to each of those rights?

12 A. Yes.

13 Q. You didn't ask him for a lawyer?

14 A. No, because the threat had been made on
15 my life. So, I figured if I didn't cooperate, I
16 would either end up dead or in the hospital.

17 Q. Okay. In any event, you did sign them,
18 you understood them, you just are saying you
19 didn't exercise them because you were afraid for
20 your life; is that correct?

21 A. Yes.

22 Q. There's no question you understood what
23 your rights were; is that correct?

24 A. Correct.

25 Q. You knew what your rights were and you

1 knew how to exercise them but you are just saying
2 you were afraid to exercise them?

3 A. Yes.

4 Q. That's because, again, Officer Garrison,
5 also known as Yanchak, had threatened to harm you?

6 A. Yes.

7 Q. Okay. Now, in the statement that you
8 gave to Sergeant Ferguson, you talk about meeting
9 Shawn or the statement talks about meeting Shawn
10 on the path coming back from Fuddrucker's. Is
11 that false?

12 A. That's false.

13 Q. And the statement says that when you met
14 on the path, that was -- she was the one who first
15 talked to you and said something about that she
16 was on her way to your apartment and at that point,
17 there was some sexual contact, that she unzipped
18 her pants and put her hands on your private parts
19 and rubbed your private parts and that some sort
20 of sexual contact then occurred. That's what the
21 statement says, right?

22 A. That's what it says but I didn't say it.

23 Q. Is that false?

24 A. Yes.

25 Q. Did you have sexual relations with Shawn

1 at all that night?

2 A. I didn't see Shawn and I never had
3 sexual relations with her any time I did see her.

4 Q. You didn't see her any at all that night?

5 A. No.

6 Q. Did you see her that weekend?

7 A. No.

8 Q. Hadn't seen her from a month before then;
9 is that correct?

10 A. It was either late August or early
11 September.

12 Q. Okay. Now, after she unzipped --
13 unbuttoned your pants. By the way, those are
14 buckled pants, are they, those jeans?

15 A. What pants?

16 Q. The jeans are marked as a state's
17 exhibit, those blue jeans you were wearing that
18 night?

19 A. No, I didn't wear those jeans Monday at
20 all.

21 Q. Had you worn them before -- they are
22 your jeans, right? They were in your apartment?

23 A. Yes, they're my jeans.

24 Q. They're 505 button-up jeans, right?

25 A. 501.

1 Q. 501, they button?

2 A. Yes.

3 Q. In the statement it says she unbuttoned
4 your pants. That's when you did something called
5 grinding. Have you ever heard that term?

6 A. I heard of it.

7 Q. What does grinding mean?

8 A. It's just when two people, if you're not
9 having sex, you don't place a penis into the
10 vagina, just grind on each other, like going
11 through the motions, you should say.

12 Q. In any event, after that happened, the
13 statement says you stopped because the zipper on
14 Shawn's pants somehow injured your penis. That's
15 false; is that correct?

16 A. That's false.

17 Q. Do you remember saying that, although
18 this statement is false, that this is something
19 that happened with some other girl?

20 A. Yes, I told, when Sergeant Gafford made
21 the accusation, said, "I talked to Shawn tonight.
22 She told me you raped her."

23 I said, "I haven't seen Shawn, she must
24 be talking about some other person because I
25 haven't seen her and Shawn knows I wouldn't do

1 nothing to her like that. Besides, I can't have
2 sex with anyone because I had sex with this female
3 the week before in which we did it a long time and
4 she got worn out, you should say, and got dry and
5 I kind of got a brush burn from her. It was
6 Wednesday night when we had sex. She came by
7 Thursday and we tried having sex again and I told
8 her she couldn't because of that sore." That's
9 what Sergeant Gafford made notes of.

10 Q. You told Sergeant Gafford this version
11 of a woman that you had sex with her to the point
12 where you injured yourself; and then later when
13 you tried to have sex with her again you couldn't
14 because of the sore?

15 A. Yes.

16 Q. From that you're saying Sergeant
17 Ferguson wrote that statement?

18 A. Sergeant Gafford made notes and from
19 that, that's where they prepared that statement.

20 Q. So, this grinding and meeting on the
21 trail is false as it applies to Shawn and has
22 something to do with some other woman?

23 A. Yes.

24 Q. So, this statement is not totally
25 fiction; it's based, you say, on some kind of

1 notes that Sergeant Gafford took?

2 A. Yes.

3 Q. Now, the part where it says that in the
4 third paragraph, where it says that Shawn said
5 that if you didn't give her some money she was
6 going to start yelling rape, is that false, too?

7 A. Yes.

8 Q. Is it false when it says that you had a
9 knife and a sheath on the right side of your pants
10 on your belt?

11 A. Yes.

12 Q. You did have a knife on out there that
13 night, didn't you?

14 A. It wasn't hanging on me. I had a knife
15 in my pocket.

16 Q. In your pocket. Which pocket was the
17 knife in?

18 A. My left back pocket.

19 Q. Your left back pocket?

20 A. Yes.

21 Q. In your blue jeans?

22 A. Yes. I ain't had on them blue jeans. I
23 had on some faded stonewashed jeans.

24 Q. But it was in some jeans in your left
25 back pocket?

1 A. Yes.

2 Q. What kind of knife was it?

3 A. Buck knife, folding knife.

4 Q. One you have to open up?

5 A. Yes.

6 Q. A folding knife, pocketknife?

7 A. I don't open it; I click the knife like

8 that and it opens up.

9 Q. It's a switchblade knife?

10 A. No, but it's folded knife; but if it's

11 loose up enough, lubricated enough, you can flip

12 it open.

13 Q. That was what was in your back left-hand

14 pocket?

15 A. Right.

16 Q. Are you left handed or right handed?

17 A. Right.

18 Q. If you were going to take the knife out

19 of your left rear pocket, how would you do it?

20 A. With my left hand.

21 Q. With your left hand?

22 A. Yes.

23 Q. When you met that man on the path and

24 you had him in a headlock, did you have him in a

25 headlock with your right hand?

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A. Yes.

Q. You reached in your hip pocket with your left hand?

A. Yes.

Q. And you pulled out that knife?

A. Yes.

Q. And you flicked it, and you stuck him?

A. Stuck him twice.

Q. Twice.

A. But I didn't do it like you're doing it.

Q. How did you do it?

A. I just stuck him, didn't put all the force like you did it.

MR. NOLL: May the witness step down?

MR. McCULLOUGH: We would object to the demonstration, Your Honor.

THE COURT: Overruled.

BY MR. NOLL:

Q. Step down, please.

A. (Defendant complies.)

Q. Why don't you step over here so the jurors can see and this gentleman down here can see.

A. I turned like this, hit him on the side of the head, hit him here, placed him like this,

1 hit him in the groin at the same time (indicating).

2 Q. Where did you stab him?

3 A. On the side.

4 Q. How did you stab him?

5 A. Like that (indicating).

6 Q. He was struggling with you like this?

7 A. Tightened up the lock after he pushed me,
8 just like this.

9 Q. You can let go of me now. All right.

10 A. (Defendant seated.)

11 Q. Didn't have any blood on you from that,
12 Preston?

13 A. No.

14 Q. You're a black belt in Kung Fu but you
15 had to use your knife to subdue that man; is that
16 right?

17 A. Yes, it was just the reaction.

18 Q. It was just reaction to automatically go
19 for that knife, right?

20 A. Yes. When somebody comes up to me
21 head-on, I can see what they're coming with and I
22 can expect what's going to happen.

23 Q. Someone came at you head-on?

24 A. Yeah, but it's different, somebody makes
25 a threat on your life and comes up from behind you,

1 you know.

2 Q. They didn't threaten you that night --

3 A. No, he didn't threaten me but it was a
4 threat made on my life. So naturally if somebody
5 comes up from behind you and surprises you with
6 something, you going to react differently.

7 Q. That's why you were carrying that
8 pocketknife, because somebody had threatened your
9 life?

10 A. Yeah, I carried it.

11 Q. The part about your statement about you
12 carrying a knife on your belt is not totally
13 fiction, it's based kind of --

14 A. Sergeant Gafford asked me, "Are you left
15 hand or right hand person?" I did like this to,
16 indicate right hand.

17 Q. Right handed?

18 A. Now, he typed this statement the way he
19 wanted it to read.

20 Q. Well, now Sergeant Gafford didn't type
21 this statement, did he?

22 A. Not the second one.

23 Q. Sergeant Ferguson did?

24 A. Yes.

25 Q. Gafford is the one that asked you about

1 being right handed?

2 A. Yes.

3 Q. Your position is he made all these notes
4 and snuck them over to Sergeant Ferguson?

5 A. Apparently he did.

6 Q. The part of the statement that says that
7 you stabbed Shawn and that the little boy started
8 crying and ran between you and you stabbed him,
9 that's false; is that correct?

10 A. Yes.

11 Q. So, to the extent that the statement
12 would indicate that it might have been an
13 accidental stabbing of the little boy, that's not
14 true because none of that happened?

15 A. I never seen Shawn or the little boy. I
16 never met him before.

17 Q. In any event, you didn't stab that
18 little boy?

19 A. No, I didn't.

20 Q. You didn't stab him accidentally?

21 A. I never seen him to stab him.

22 Q. And the fact that the officers knew that
23 the knife was in a box in your closet, that's
24 because they had illegally searched your apartment
25 already; is that correct?

1 A. They must have placed the knife there.

2 Q. What did you do with the knife, the
3 pocketknife that you used to stab or stick --

4 A. Sergeant Gafford took every one of my
5 knives I had in my house. I had more than one
6 pocketknife like that.

7 Q. He took all the knives out of your house?

8 A. I had one on my bed, the one I placed on
9 my bed. It was one on the stand in my second
10 bedroom, that's gone, too.

11 Q. Sergeant Gafford took those?

12 A. Yes.

13 Q. Okay. How do you know Sergeant Gafford
14 took them?

15 A. Well, the police officers did.

16 Q. Some police officers?

17 A. Yeah, because none of them are there.

18 Q. So, that means that Sergeants Ferguson,
19 Yanchak and Officer Hale are lying about what
20 happened when they went to search your apartment,
21 too?

22 A. I don't know what they did in there. I
23 didn't see them go in there.

24 Q. You heard Officer Hale's testimony,
25 right?

1 A. Which one is Officer Hale?

2 Q. Officer Hale is the man who is at the
3 crime scene unit that went out and photographed
4 your apartment.

5 A. Yes, okay.

6 Q. You heard his testimony and he was lying
7 about searching your apartment at that point
8 because that was done in the morning?

9 A. Apparently when Gafford went in there
10 after I was sent downtown, he set up things the
11 way they wanted it to look and because I said I
12 went and got my shotgun out of a box, he went back
13 and they placed -- or he told them, somebody did,
14 placed it where they wanted it to be, placed the
15 knife where they wanted it to be.

16 Q. Your position is: After they
17 transported you away from your apartment that
18 morning, Sergeant Gafford snuck back to your
19 apartment and set all these things up in there?

20 A. Yes.

21 Q. And the part about your coming home and
22 turning on the TV to get the game or the score on
23 the football game, that's false, too?

24 A. Yes, because I never turned the TV off
25 when I left.

1 Q. So, the TV was on, you just came back
2 and checked the score?

3 A. No, I came back and I heard what was
4 going on in the game in between the time I was
5 walking back and forth from the back to the front
6 of my apartment.

7 Q. The part that says you walked your dog
8 after you got home, that's false, also, because
9 you already had the dog with you; is that right?

10 A. No, I walked my dog after I got home, I
11 went and got him off the patio.

12 Q. After you had this altercation with the
13 man in the woods, you went and still walked the
14 dog?

15 A. No, I didn't come back and walk the dog.

16 Q. Your story is you had already walked the
17 dog when you were walking in the field?

18 A. When I walked the dog, when I got into
19 it with the man, I hollered at her to make her go
20 back upstairs. Because there was a guy that came
21 and check everything is all right because I told
22 him about the threat that was made on my life.
23 Everybody knows I do not leave my dog outside my
24 front door at all. So, therefore, if they came
25 and see her out there, they would know something

1 is wrong.

2 Q. The part of your statement that says you
3 had not seen Shawn since June or July --

4 A. That's part of their statement.

5 Q. That is true?

6 A. That's their statement. I hadn't seen
7 Shawn since August or September, late August or
8 September.

9 Q. So, if your statement says last night
10 was the first time you had seen Shawn since June
11 or July, that's not true?

12 A. That's not true.

13 Q. Is it true you met her in October of
14 1987?

15 A. No.

16 Q. When did you meet her?

17 A. February or March, late February, early
18 March.

19 Q. Of '87?

20 A. Of '88.

21 Q. Of '88. Did she used to date your
22 cousin, Shawn Graham?

23 A. She met my cousin through me.

24 Q. Did she ever date Shawn?

25 A. Yes.

1 Q. So, the statement is kind of true when
2 you say, "She used to date my cousin, Shawn
3 Graham," that she met him through you --

4 A. I told Sergeant Gafford that and he made
5 notes of it. He asked me how do I know her and he
6 was asking me things about her.

7 Q. In your statement it says on three
8 different occasions Shawn came over to your
9 apartment. Is that true? Or she came over more
10 than that? She came over everyday?

11 A. Shawn came over more than three times.

12 Q. The part of your statement that says she
13 would come over wearing a two-piece bathing suit
14 and would bare her breasts and her vagina, is that
15 true or false?

16 A. Part of her statement that states what
17 you said is false. She came over in her swimsuit
18 before with Tasha, asked to borrow towels because
19 she was going swimming. She used to take Sylvia,
20 my former roommate's daughter, and their little
21 sister named Jackie, she used to take them
22 swimming.

23 Q. The part that says you never had sex
24 with her is true; is that correct?

25 A. That's true. I never had sex with her.

1 Q. So, parts of it are kind of loosely
2 based on these notes that Sergeant Gafford made
3 and parts of it are just outright made up; is that
4 correct?

5 A. True.

6 Q. Again, Sergeant Ferguson made this up
7 and forced you to sign it --

8 A. I didn't say Sergeant Ferguson made it
9 up. All I know is I was handed a sheet of paper
10 with content, the text of what's in here to read
11 to him.

12 Q. Okay. When Sergeant Clappart and
13 Sergeant Swain came in? Do you remember them?

14 A. Yes.

15 Q. Do you recall their testimony in here?

16 A. Yes, ma'am.

17 Q. When they testified that they talked
18 with you and determined that you were signing this
19 freely and voluntarily, they were lying about that?

20 A. They just asked me have I been read my
21 rights.

22 Q. What did you say?

23 A. Yes.

24 Q. Did you tell them that Sergeant Garrison
25 had threatened you if you didn't sign it?

1 A. No.

2 Q. Did you tell them Sergeant Ferguson had
3 threatened you?

4 A. Sergeant Ferguson never threatened me.

5 Q. He never threatened you. Just Garrison,
6 also known as Yanchak?

7 A. Yes.

8 Q. Did you give any indication to Sergeants
9 Clappart and Swaim that this statement was not
10 your statement? You knew it was false and you
11 were admitting to murder?

12 A. No, I didn't give him any indication
13 because I may have been killed if I said something.
14 I waited to report what went on till when I got to
15 Harris County Jail.

16 Q. So, they're telling the truth when they
17 testified that you signed this and you --

18 A. They seen me sign it.

19 Q. You led them to believe that it was your
20 free and voluntary act?

21 A. Yes.

22 Q. So, they told the truth when they
23 testified?

24 A. Yes.

25 Q. It's your story that --

1 A. As far as my dropping a pen and making
2 jokes --

3 Q. That's false?

4 A. That's false.

5 Q. What was your attitude while you were
6 taking these statements? Did you act to them like
7 you were calm or did you act excited or what?

8 A. I was scared. I didn't want to make any
9 wrong moves, give them any indication I was going
10 to jump on them or try and run out of there.

11 Q. Well, you heard them characterize you as
12 being somewhat calm. Is that an accurate
13 characterization of how you appeared to them?

14 A. Well, if that's the way they wanted to
15 state it, it's accurate because, like I said, I
16 didn't want to make any false moves. So, I just
17 sat there and did what they told me to do.

18 Q. Now, in between the time that Sergeant
19 Gafford talked to you and the time that you were
20 taken to the city jail, you were allowed to use
21 the telephone in that interview room, weren't you?

22 A. Yes.

23 Q. Someone came in and connected the little
24 receiver and let you use the phone?

25 A. Yes.

1 Q. Was anybody in the room with you when
2 you used that phone?

3 A. Sergeant Gafford was standing at the
4 door, like I said.

5 Q. Did you think it was a little strange
6 for him after he punched you in the face and chest
7 and threatened to hurt you for him to turn right
8 around and let you use the telephone?

9 A. I commented about it to Sergeant Ross
10 that I needed to use the telephone. She told him
11 to go get the receiver.

12 Q. She let you use the phone? Was she kind
13 of the nice person?

14 A. He went and got it, hooked the receiver
15 up, she walked on out, I used the phone.

16 Q. Who did you call?

17 A. I called my boss at my job, Bill Lilloco.

18 Q. Okay. What did you say to Bill Lilloco?

19 A. Told him, "The police accused me of
20 stabbing two kids. I'm downtown under arrest."
21 Asked him if he could come down and talk to this
22 officer because I did not do it.

23 Q. You told Bill Lilloco you were downtown,
24 police had you in custody and were accusing you of
25 stabbing two kids; is that right?

1 A. Yes.

2 Q. Did you ask him to come down and help
3 you?

4 A. Well, he said he couldn't come down
5 because he had to reschedule somebody to fill in
6 for me.

7 Q. Okay. Did you tell him that the
8 officers had threatened you?

9 A. No, I did not.

10 Q. Did you tell him that Sergeant Gafford
11 had actually struck you at that point?

12 A. No.

13 Q. Now, this was before you talked to
14 Sergeant Garrison; is that correct?

15 A. Yes.

16 Q. Did you make any complaint to him at all
17 about the officers mistreating you in any way?

18 A. No, I did not.

19 Q. Did you tell him to try to call your
20 momma or get out to your apartment because you
21 thought somebody was out there illegally searching
22 it?

23 A. No, it had already been searched as far
24 as I'm concerned.

25 Q. So, all you told him was that you were

1 being held downtown by the police and they were
2 accusing you of stabbing two kids and to come down
3 and help you?

4 A. Yes, because I didn't do it.

5 Q. Because you didn't do it. Are you sure
6 you did that? Are you sure you told him that?

7 A. I'm sure. I'm sure.

8 Q. Okay. Now, who else did you call?

9 A. June Buford.

10 Q. Ms. Buford is a family friend, right?

11 A. She's the wife of a family friend, yeah.

12 Q. That's Mr. Will Buford?

13 A. Yes.

14 Q. And were you actually trying to call Ms.
15 June Buford or were you trying to reach Mr. Will
16 Buford?

17 A. I was trying to reach Will.

18 Q. When you called Ms. Buford, was that
19 right after you talked to Bill Lillico?

20 A. I don't remember what order I made the
21 calls in.

22 Q. Okay. But they were all made at the
23 same time? I mean, you called, like, one person
24 and hang up and called the next person?

25 A. Yes.

1 Q. Pretty close together in time?

2 A. Yes, I suppose so.

3 Q. When you called Ms. Buford, did you tell
4 her that police officers had you downtown and were
5 accusing you of killing a woman and a little boy?

6 A. Yes.

7 Q. You told her that, too?

8 A. Uh-huh.

9 Q. Did you tell her that Sergeant Gafford
10 had hit you, slapped you with his hand in your
11 face and struck you in your chest?

12 A. No, I did not.

13 Q. Didn't tell her that?

14 A. No.

15 Q. Did you tell her that -- in fact, you
16 told her that a police officer hit you in the head
17 with a gun, didn't you?

18 A. No.

19 Q. You didn't tell her that?

20 A. No.

21 Q. After you talked to Ms. Buford, who did
22 you call next or who did you call other than Ms.
23 Buford and Mr. Lillico?

24 A. Denise Johnson.

25 Q. Ms. Johnson is your aunt; is that right?

1 A. Yes.

2 Q. What did you tell Ms. Johnson?

3 A. Same thing I told you.

4 Q. Same thing, police were holding you down
5 there, police were accusing you of killing a
6 little girl and little boy?

7 A. Yes.

8 Q. Did you ask her for help?

9 A. I know she couldn't do nothing. She's
10 not financially able to employ a lawyer. So, I
11 didn't bother to ask her.

12 Q. Did you ask her to call the chief?
13 You're being held in the homicide office by people
14 who are threatening to hurt you. Did you call
15 Chief Brown?

16 A. If somebody did that and it got back to
17 the offices and I'm still in custody, my life was
18 still in danger.

19 Q. You thought these officers would kill
20 you right down the hall from Chief Brown's office;
21 is that right?

22 A. I thought they would kill me. I don't
23 know if it was right down the hall from Chief
24 Brown's office. I didn't know where it was.

25 Q. You heard the testimony it was right

1 around the corner.

2 A. I didn't know that.

3 Q. In any event, you didn't ask Ms. Johnson
4 for any help, that you were being threatened in
5 any way?

6 A. Told her they accused me of killing two
7 people, stabbing two kids.

8 Q. Who else did you call?

9 A. Mikal Klumpp.

10 Q. What did you tell Mikal Klumpp?

11 A. The same thing I told the three above.

12 Q. That you were being held and accused of
13 killing a young woman and a boy?

14 A. Yes.

15 Q. Did you tell Mr. Klumpp you were being
16 threatened in any way?

17 A. No.

18 Q. Did you tell Mr. Klumpp that you thought
19 your life was in danger?

20 A. No, I didn't.

21 Q. Why not?

22 A. Sergeant Gafford was standing right
23 there in the doorway when I made every one of the
24 calls.

25 Q. Do you really think or did you think at

1 that time that Sergeant Gafford would have hurt
2 you if you were sitting there talking on the phone
3 and telling someone, "Sergeant Gafford's fixing to
4 hit me and kill me"? Is that what you're telling
5 the jury?

6 A. If he wouldn't, somebody else probably
7 would have.

8 Q. So, you're telling the jury that while
9 you're sitting there on the telephone telling
10 someone that, "I'm down here at the police station
11 and they're about to hurt me and kill me," that
12 you thought they would actually do that while you
13 talk on the phone to other people, your aunt, your
14 boss, friends of the family?

15 MR. McCULLOUGH: I believe the question
16 has been answered, Judge.

17 THE COURT: Let's move along.

18 BY MR. NOLL:

19 Q. Is that what you're telling the jury?

20 A. Well, I don't know what would happen but
21 I figured I would end up either dead or in the
22 hospital.

23 Q. You know how to find internal affairs
24 division, don't you?

25 A. I don't know where it was in the

1 building.

2 Q. You made a complaint later on, didn't
3 you?

4 A. Yeah, I called my mother once I was
5 transferred to Harris County Jail.

6 Q. You weren't afraid to do it then, were
7 you?

8 A. No, because they couldn't get to me then.

9 Q. You didn't think that Houston Police
10 sergeants, especially ones devious enough to break
11 into your apartment and plant evidence, didn't
12 think they were quick enough --

13 A. Harris County --

14 MR. McCULLOUGH: Object to the form of
15 the question, Your Honor.

16 THE COURT: That will be sustained.

17 BY MR. NOLL:

18 Q. You didn't think these officers could do
19 anything to you once you got in the county jail.
20 Is that what you're telling the jury?

21 A. Right.

22 Q. After you talked to Mikal Klumpp, what
23 did you do?

24 A. That was the last call I made.

25 Q. Okay. Now, after you made those phone

1 calls, that was down on the third floor; is that
2 correct?

3 A. Yes, sir, if that's the homicide floor,
4 it's correct.

5 Q. Now, the statement you made to Sergeant
6 Gafford you signed at about 7:15; is that correct?

7 A. That's what the time states, that's
8 correct.

9 Q. You made all these phone calls. About
10 how long did it take to make all those phone calls?

11 A. I guess about 45 minutes or so, maybe an
12 hour.

13 Q. Then you went upstairs to the fifth
14 floor holding cells?

15 A. No, I sat there. Ferguson came in
16 reading that statement.

17 Q. I'm sorry. Ferguson came in.

18 A. Sergeant Ferguson came in. He was
19 sitting in there reading the statement Sergeant
20 Gafford typed.

21 Q. So, you saw Sergeant Ferguson in the
22 morning and he was reading the statement that
23 Sergeant Gafford had taken?

24 A. Yes.

25 Q. Did he come in and talk to you then?

1 A. He was sitting in there and I tried to
2 tell him I didn't stab those two kids. He said,
3 "I seen the knife. There's blood all over it.
4 You need to come clean with yourself."

5 Q. Are you referring to this knife that's
6 in evidence --

7 A. They didn't show me one. He said, "I
8 seen the knife and there's blood all over it."

9 Q. Did you ever see this knife?

10 A. While I was in homicide?

11 Q. Uh-huh.

12 A. No.

13 Q. Have you ever seen it before?

14 A. Yes.

15 Q. It was in your apartment, right?

16 A. Yes.

17 Q. Have you ever used any knife like this
18 or similar to it?

19 A. Fighting somebody?

20 Q. (Nods head affirmatively.)

21 A. No.

22 Q. Never?

23 A. No.

24 Q. When you got back upstairs to the fifth
25 floor, at some point you started making more phone

1 calls, right?

2 A. Yes.

3 Q. Did Sergeant Ferguson, Gafford or any of
4 these other police officers do anything to stop
5 you from using the public telephone there?

6 A. On the fifth floor?

7 Q. Yes, sir.

8 A. They took me to the booking part, took
9 me out of the jail, I walked through the parking
10 lot to the booking area, I was booked in there,
11 that's when they released me, Gafford went on,
12 they went on their way and the people down there
13 in the basement where the booking is, I was in
14 their custody then. I was booked and sent to the
15 fifth floor.

16 Q. They put you in what's called a holding
17 area; is that correct?

18 A. Once I got back in there?

19 Q. Yes.

20 A. Yes.

21 Q. Is that where the telephones were?

22 A. Yes.

23 Q. And are these pay phones?

24 A. No, just dial collect, make collect
25 calls.

1 Q. They're regular telephones?

2 A. You just make collect calls. You can't
3 drop no quarter in there or nothing.

4 Q. So, there's no limitation, though. You
5 don't have to have coins in your pocket to make
6 phone calls?

7 A. No, you can only make collect calls.

8 Q. These phones are right there in the room?
9 Are there police officers in the holding area,
10 watching people use the telephone?

11 A. Walking back and forth down the hall.
12 There's a holding cell and a lot of cells with
13 four beds in it.

14 Q. But the holding cell is separated from
15 the hallway, is it not?

16 A. Like you got a hallway going between the
17 cell and whatever is on the other side.

18 Q. My question is, Mr. Hughes: Is there
19 some police officer who's watching the telephones
20 in the holding cell?

21 A. No, he doesn't watch them.

22 Q. They put people in there to hold them
23 there without having to watch them?

24 A. Yeah, it's a holding cell.

25 Q. The phones are right there where anybody

1 who's in that holding cell can pick it up and they
2 can call the President of the United States if he
3 accepts the charges, can't they?

4 A. I guess so.

5 Q. There's no limitation on your access to
6 those telephones, is there?

7 A. No.

8 Q. If you wanted to call anybody, a lawyer,
9 your momma, your boss or anybody else, you can do
10 it?

11 A. Collect.

12 Q. In fact, you called your mother's place
13 of employment, I think, four times, didn't you?

14 A. Yes.

15 Q. Both before you went back for your
16 second interview, twice; is that right?

17 A. I don't know if it's twice before or
18 three times before.

19 Q. Well, you got the records that we've got
20 from the phone company there and they show a call
21 at 10:22 a.m., and a phone call at 11:02 a.m., and
22 then the next phone call --

23 A. That's the time the calls were made,
24 yeah, I placed them.

25 Q. You made at least two phone calls to

1 your momma's place of business?

2 A. Yes.

3 Q. Did you call a lawyer?

4 A. No, I did not.

5 Q. Do you know any lawyers?

6 A. Not just call and tell them I'm arrested,
7 being accused of something.

8 Q. Don't know any lawyers?

9 A. No, I don't know any lawyers to call.

10 Q. Mr. Hughes, you're under oath.

11 A. What lawyer am I supposed to know?

12 Q. Do you know Mr. John Wiggins, for
13 example, Mr. Hughes?

14 A. I do not know his number.

15 Q. You know him, don't you?

16 A. He was on my case, previous case.

17 Q. He's a lawyer, isn't he?

18 A. Yes.

19 Q. He handles criminal cases, doesn't he?

20 A. Yes.

21 Q. So, you knew someone you could call for
22 help to help you out of this situation, didn't
23 you?

24 A. But I don't know his number.

25 Q. And you didn't call him?

1 A. No.

2 Q. Okay.

3 A. As far as I'm concerned, he's an
4 attorney that needs to be paid. I do not have the
5 money to pay for an attorney.

6 Q. You didn't think he would help you, even
7 though you were being held in the police jail and
8 you thought you were going to die because of these
9 threats these officers had made to you and you
10 still didn't feel like he would help you?

11 A. I didn't know what he would do.

12 Q. All right. In any event, you didn't
13 call anybody and tell anybody you were in trouble
14 and needed help and protection from these police
15 officers, did you?

16 A. Not while I was in the city jail.

17 Q. And when you made some phone calls later
18 that afternoon, 2:00 o'clock in the afternoon and
19 2:51 in the afternoon, who did you call then?

20 A. I believe I called back to the Men's
21 Warehouse.

22 Q. Men's Warehouse. That was after you
23 signed that statement. Did you ask -- did you
24 talk to Ms. Stroman again when you called the last
25 two times?

1 A. I believe so.

2 Q. Okay. Did you tell Ms. Stroman, "Ms.
3 Stroman, I know a lawyer, John Wiggins, but I
4 don't know his phone number. Will you call him?"

5 MR. McCULLOUGH: Objection, Your Honor.
6 May we approach the bench?

7 THE COURT: It will be sustained.

8 BY MR. NOLL:

9 Q. Did you ask her to call someone to help
10 you?

11 A. No, she was going to look for my mother.

12 MR. NOLL: May I approach the witness,
13 Your Honor?

14 THE COURT: You may.

15 BY MR. NOLL:

16 Q. Mr. Hughes, show you what's been marked
17 as State's Exhibit No. 15. These glasses belong
18 to that dead woman, Shawn, don't they?

19 A. I seen them, a pair of glasses like that
20 on her, the last time I saw her.

21 Q. These aren't your glasses, are they?

22 A. No.

23 Q. They were found in your apartment, right?

24 A. That's what the police officers say.

25 Q. Are you saying they lied and planted

1 these glasses in your apartment?

2 A. Yes.

3 Q. And it's still your testimony to this
4 jury that you never saw Shawn in your apartment
5 that night?

6 A. Yes.

7 Q. The officers just stuck these glasses in
8 that cushion for no reason except to frame you; is
9 that right?

10 A. Yes.

11 Q. Any reason that you know of as to why
12 Sergeants Gafford, Ferguson, Bloyd, almost half
13 the homicide division would want to frame Preston
14 Hughes, III, for the murder of these two people?

15 MR. McCULLOUGH: Objection, asking the
16 defendant to speculate on the motives of the
17 police department.

18 THE COURT: Overruled.

19 BY MR. NOLL:

20 Q. Any reason at all why all these officers
21 with all these years of experience would want to
22 frame an innocent man?

23 A. Political gain.

24 Q. Political gain. Can you expand on that?
25 Can you explain what political gain these officers

1 would have for framing you, sir?

2 A. Yeah. Every conviction they get, they
3 get one step closer to a promotion, just like the
4 DAs.

5 Q. Let me tell you something, in the DA's
6 office --

7 MR. McCULLOUGH: Object to testimony
8 from this assistant District Attorney, unless he
9 wants to gets on the stand so I can cross examine
10 him on it.

11 MR. NOLL: I'll be happy to get on the
12 stand and testify about how far I can get --

13 MR. THOMAS: Object to sidebar.

14 THE COURT: Let's stop sidebar right now.
15 Continue your cross. Move along.

16 BY MR. NOLL:

17 Q. Is it your position these police
18 officers are framing you in order to get promoted?

19 A. Either that or how many they arrested,
20 to meet their quota.

21 Q. Meet their quota?

22 A. Yeah, if they got a certain quota to
23 meet, that's what they do.

24 Q. You think these officers are framing you
25 in a double murder --

1 A. I don't think that. I believe that.

2 Q. Let me finish my question. To make a
3 quota.

4 A. I believe they're framing me. It's not
5 a thought. It's a belief.

6 Q. You believe they're framing you to make
7 a quota?

8 A. Yes.

9 Q. What gives you that belief? What makes
10 you believe that?

11 A. I didn't stab neither one of the kids.
12 I didn't see neither one of those kids Monday,
13 September 26th, 1988.

14 Q. Sergeant Ferguson is lying about what he
15 said he heard out there that day?

16 A. I don't know what he heard out there.

17 MR. McCULLOUGH: Objection, this is
18 repetitive, Your Honor.

19 THE COURT: Approach the bench.

20 (Off the record discussion.)

21 BY MR. NOLL:

22 Q. Mr. Hughes, you and Shandra Charles, who
23 you knew as Shawn, were friends; is that correct?

24 A. Yes.

25 Q. You never had any fights with her?

1 A. No.

2 Q. And in September, the weekend before
3 September 26th, you didn't have any encounters
4 with her or fights with her?

5 A. I haven't seen her.

6 Q. Certainly she was not an enemy of yours
7 and she had no reason to be mad at you or to be
8 antagonistic against you; is that correct?

9 A. She's not an enemy of mine.

10 Q. In fact, you and Shawn, as far as you
11 knew, were friends?

12 A. Yes.

13 Q. Certainly she would have no reason to
14 accuse you of anything?

15 A. No, she wouldn't. As far as I know, the
16 name Preston was called. I'm not the only man in
17 Houston or in this world named Preston. Preston
18 can be a first name or a last name.

19 MR. McCULLOUGH: Objection.

20 BY MR. NOLL:

21 Q. That's correct.

22 MR. McCULLOUGH: Would you admonish the
23 witness to not volunteer statements when he's not
24 being asked?

25 THE COURT: Mr. Hughes, listen to the

1 question. Answer just the question. Okay?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Very well. You may proceed.

4 BY MR. NOLL:

5 Q. Since you did volunteer that, Mr. Hughes,
6 why did you volunteer it?

7 MR. McCULLOUGH: Objection, open-ended
8 question, Your Honor.

9 THE COURT: It's overruled.

10 BY MR. NOLL:

11 Q. Why did you say it? Why did you bring
12 up Preston as a first name and last name? Why is
13 that important? Why did you say that?

14 A. Because from Sergeant Hamilton's
15 testimony, testimony the name Preston was obtained,
16 there was no last name obtained.

17 Q. In what respect are you talking about?

18 A. All he said is he heard the name Preston.

19 MR. McCULLOUGH: Objection, Your Honor,
20 he's trying to insinuate him into someplace where
21 he can't.

22 BY MR. NOLL:

23 Q. You heard his testimony, didn't you?

24 A. Yes, he said she called the name "Preston."

25 Q. What did he say in his testimony?

1 MR. McCULLOUGH: Objection, Your Honor.

2 THE COURT: Approach the bench.

3 (Off the record discussion.)

4 BY MR. NOLL:

5 Q. Since Shawn was your friend, obviously
6 Sergeant Hamilton is not, and I guess if he misled
7 this jury in any way it's because he's lying, too,
8 is that fair to say?

9 A. Well, I'm not saying he's completely
10 lying but I figure Shawn called the name Preston
11 for help.

12 Q. You heard his testimony, sir. Is that
13 what he said she said?

14 A. He said she called the name "Preston."

15 MR. McCULLOUGH: Objection. May we --

16 MR. NOLL: I'm sure the jury remembers
17 what his testimony was, Your Honor.

18 MR. McCULLOUGH: Object to sidebar, Your
19 Honor.

20 THE COURT: The jury will recall the
21 testimony as they heard it. They'll give it the
22 weight that they deem it necessary or worthy of
23 giving.

24 MR. NOLL: We have nothing further.

25 THE COURT: Let's move along.

1 MR. NOLL: We have nothing further, Your
2 Honor.

3 THE COURT: Any redirect?

4 MR. McCULLOUGH: No.

5 THE COURT: You may have your seat, Mr.
6 Hughes. Call your next, counsel.

7 MR. McCULLOUGH: We rest.

8 THE COURT: Very well.

9 Members of the jury, I'm going to go
10 ahead and let have you a lunch break. We'll
11 restart testimony as soon as you get back from
12 lunch. I expect we will be wrapping up the
13 testimony, we will give you the Court's charge and
14 listen to arguments and begin your deliberations
15 this afternoon. Please remember the admonishments
16 that I've given you heretofore. Do not discuss
17 the case, do not discuss anything about the case
18 among yourselves or with anyone else. Have a seat
19 in the jury room. The bailiff will be with you
20 presently.

21 (Jury out.)

22 THE COURT: Okay. Do you have any
23 requested instructions or definitions to go in the
24 charge?

25 MR. McCULLOUGH: No, sir. I do not have

1 any written requested instructions.

2 THE COURT: Very well then. I have
3 given you a copy of two charges. At this point,
4 it is the Court's intention, based upon, if there
5 is no further defensive testimony and unless in
6 some way the rebuttal that the State intends to
7 offer raises it, the Court intends to give the
8 charge without the lesser included offense of
9 murder and without the instructions and
10 definitions with regard to self-defense; that is,
11 the Court's going to give the straight submission
12 on capital murder and capital murder only. We
13 will give the instruction on the voluntariness of
14 the statements with regard to both statements and
15 then the usual boilerplate instructions.

16 MR. McCULLOUGH: I didn't -- did I
17 understand you to say you're not going to give the
18 charge, as you're now thinking about it, on the
19 lesser included charge of murder?

20 THE COURT: That's correct. I do not
21 intend at this point to submit a lesser included
22 offense of murder and I do not intend to submit
23 the instructions and definitions on self-defense.

24 MR. McCULLOUGH: We'll make our --
25 review the proposed charge that the Court has

1 described and make our objections at the
2 appropriate time.

3 THE COURT: Very well. You may be
4 excused until 1:15.

5 (Lunch recess.)

6 (State's Exhibit No. 45 was
7 marked for identification.)

8 (Jury in.)

9 THE COURT: You may proceed, Mr. Noll.

10 MR. NOLL: Thank you, Your Honor.

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STEPHEN MARSHBURN,
was called as a rebuttal witness by the State and,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Sir, would you please state your name to
the members of the jury.

A. Stephen Marshburn.

Q. And, Mr. Marshburn, how are you employed?

A. I'm a police officer for the city of
Iowa Colony.

Q. Do you also hold another job as a
security person? Security guard, I should say?

A. I work extra jobs as security.

Q. Let me direct your attention back to
September 26th and 27th of 1988. Do you recall
working at the Lakehurst apartments located on
Crescent Park on the far west side of Houston that
day?

A. Yes, sir, I do.

Q. And what were you doing out there?

A. I was working property security.

Q. Okay. Are you employed by a private

1 company when you're doing that?

2 A. I was working for the Lakehurst
3 apartments.

4 Q. Okay.

5 MR. NOLL: May I approach the witness,
6 Your Honor?

7 THE COURT: You may.

8 BY MR. NOLL:

9 Q. Are you familiar with the Lakehurst
10 apartments and the location of the apartment in
11 relationship to the Fuddrucker's hamburger store
12 next door?

13 A. Yes, sir.

14 Q. Let me show you what's been marked for
15 identification as State's Exhibit No. 45. Does
16 this photograph fairly and accurately depict the
17 area of the Fuddrucker's hamburger place and the
18 Lakehurst apartments or a portion of the Lakehurst
19 apartments behind it?

20 A. Yes, it does.

21 Q. Now, there are more of the Lakehurst
22 apartments which would continue off the photograph;
23 is that correct?

24 A. That's right.

25 Q. As to the portion exhibited by this

1 photograph, this photograph does accurately depict
2 the area?

3 A. The general area, yes.

4 MR. NOLL: Your Honor, I tender to
5 counsel for the defendant State's Exhibit No. 45
6 and would move the same into evidence at this time.

7 MR. McCULLOUGH: No objection.

8 MR. NOLL: We would offer State's
9 Exhibit 45, Your Honor. I believe Mr. McCullough
10 said, "Objection."

11 MR. McCULLOUGH: I said, "No objection."

12 THE COURT: It will be admitted.

13 BY MR. NOLL:

14 Q. Mr. Marshburn, let me direct your
15 attention, again, back to the early morning hours
16 of the 27th of September, I believe a Tuesday,
17 1988. Did you have occasion that evening to come
18 into contact with several Houston Police Officers?

19 A. Yes, I did.

20 Q. And do you recall the names of those
21 police officers?

22 A. Directly, it would be Sergeant Gafford,
23 Officer Baker, Officer Cook, and Sergeant
24 Gafford's partner.

25 Q. Okay. Do you recall a Sergeant Hamilton,

1 also?

2 A. Yes, sir.

3 Q. Now, Officers Baker and Cook are
4 patrolling officers who routinely patrol that area.
5 Do you know those two officers?

6 A. Yes, sir.

7 Q. Have they made calls at your complex
8 before and worked with you on other cases?

9 A. Many times.

10 Q. How about Sergeant Gafford -- do you
11 remember his partner's name?

12 A. No, sir.

13 Q. Did you know Sergeant Hamilton?

14 A. Not directly.

15 Q. Had you ever met Sergeants Gafford or
16 Hamilton before?

17 A. No, sir.

18 Q. That evening, when you first -- the
19 early morning hours when you first met with
20 Sergeant Gafford, do you know what it was that
21 Sergeant Gafford was doing there, while they were
22 out there at the apartments?

23 A. They were investigating a homicide.

24 Q. Did Sergeant Gafford or anyone else ask
25 you to obtain a pass key to a particular apartment?

1 A. They asked for assistance in obtaining
2 information from the apartment complex.

3 Q. Okay. Did you help him in getting that
4 information?

5 A. Yes, sir.

6 Q. Did they develop a suspect or a
7 particular person who lived in the apartment
8 complex that they wanted to talk to?

9 A. Yes, sir.

10 Q. Okay. After they did that, did you
11 determine what apartment they lived in or did
12 someone else or that the suspect lived in?

13 A. I determined that by the list of current
14 residents that I had -- that I carried with me at
15 the time.

16 Q. Okay. Do you know Mr. Casler that works
17 out there at the apartments?

18 A. Yes, sir, he was the manager at the time.

19 Q. Okay. Did you at any time that evening,
20 after you met with Sergeant Gafford, meet with Mr.
21 Casler?

22 A. Yes, sir. In fact, I was the one that
23 called the manager to the property.

24 Q. Okay. You called Mr. Casler and asked
25 him to come over?

1 A. Yes, sir.

2 Q. Why did you meet with Mr. Casler that
3 evening?

4 A. Because he was needed to get the records
5 out of the office.

6 Q. Okay. Did he also give you any keys to
7 any of the apartments?

8 A. Yes, he did.

9 Q. What kind of keys did he give you?

10 A. He gave me the master key for the
11 apartments on the south end of the property.

12 Q. Was Sergeant Gafford and Sergeant
13 Hamilton and Sergeant Gafford's partner with you
14 when you got the master keys from him?

15 A. Yes, they were.

16 Q. Did y'all then go to a certain apartment
17 in the complex?

18 A. Yes, sir.

19 Q. Did you give the keys to Sergeants
20 Gafford or his partner or Sergeant Hamilton?

21 A. No, sir. I obtained the key and
22 maintained control of it until returning it back
23 to the manager.

24 Q. Did you go to somebody's apartment then?

25 A. Yes, sir.

1 Q. Whose apartment did you go to?

2 A. We went to the apartment of Preston
3 Hughes.

4 Q. Do you know Preston Hughes?

5 A. I've met him several times on the
6 property.

7 Q. Do you see him here in the courtroom
8 today?

9 A. Yes, I do.

10 Q. Would you point to him and describe how
11 he's dressed?

12 A. He's the black male, blue jacket, gray
13 slacks.

14 MR. NOLL: Your Honor, may the record
15 reflect the witness has pointed at the defendant?

16 THE COURT: Record will so reflect.

17 BY MR. NOLL:

18 Q. Is Preston Hughes' apartment an upstairs
19 or downstairs apartment?

20 A. It's an upstairs apartment.

21 Q. That evening -- do you recall what time
22 it was when you went to his apartment at all?

23 A. It was fairly close to 2:00 o'clock.

24 Q. In the morning or in the afternoon?

25 A. In the morning.

1 Q. When you went to his apartment, who all
2 went up to the door of his apartment?

3 A. The two detectives, the uniformed
4 sergeants, and myself.

5 Q. Okay. And when you say "the two
6 detectives," are you referring to Sergeant Gafford
7 and his partner?

8 A. Yes, sir.

9 Q. And also to Sergeant Hamilton?

10 A. Yes, sir.

11 Q. Okay. Now, how was Sergeant Gafford and
12 his partner dressed?

13 A. They were in suits, plain clothes.

14 Q. Okay. How was Sergeant Hamilton dressed?

15 A. He was in regular uniform.

16 Q. And do you know if Sergeant Gafford is a
17 white man or a black man?

18 A. Sergeant Gafford is a white man.

19 Q. Is his partner a white man or black man?

20 A. He is a white male.

21 Q. Is Sergeant Hamilton a white male or
22 black male?

23 A. He was a black male.

24 Q. There were one officer in uniform and
25 two civilian police officers dressed in plain

1 clothes; is that correct?

2 A. That's correct.

3 Q. And you on the landing?

4 A. Yes, sir.

5 Q. Did you, after they knocked on the door,
6 stay on the landing?

7 A. Until the door was opened, yes, sir, I
8 did.

9 Q. When the door was opened, what did you
10 do?

11 A. I, myself and the security officer that
12 also worked that property, went back to the office.

13 Q. So, you left? You did not go in the
14 apartment?

15 A. No, sir.

16 Q. Did you see Sergeant Gafford, his
17 partner, and Sergeant Hamilton actually go in the
18 apartment?

19 A. Yes, sir, I did.

20 Q. Did any other police officers go in the
21 apartment?

22 A. Not to my knowledge.

23 Q. Did anyone else go into the apartment
24 that you saw?

25 A. No.

1 Q. Did you still have the keys, the master
2 keys, in your possession?

3 A. Yes, sir.

4 Q. What did you do with those keys?

5 A. I returned them to the manager of the
6 property.

7 Q. Sure you didn't give them to Sergeant
8 Gafford?

9 A. No, sir.

10 Q. Didn't give them to his partner?

11 A. No, sir.

12 Q. Didn't give them to Sergeant Hamilton?

13 A. No, sir.

14 Q. Were there some other uniformed police
15 officers on the grounds out there that evening?

16 A. Yes, sir, they were.

17 Q. Where did they go?

18 A. There were two in front of the apartment
19 building and two at the rear of the apartment
20 building.

21 Q. Okay. Did you see any of them go into
22 Mr. Hughes' apartment?

23 A. No, sir. They remained on the ground.

24 Q. At some point later that evening, did
25 you see Sergeant Gafford, his partner, Sergeant

1 Hamilton, leave Mr. Hughes' apartment with Mr.
2 Hughes?

3 A. Yes, sir. It was about half an hour
4 later.

5 Q. Okay. And did you see where they went?

6 A. They went downtown.

7 Q. When you said, "They went downtown," did
8 Sergeant Gafford, his partner, and Sergeant
9 Hamilton and the defendant all go together in a
10 car or what?

11 A. The defendant was put into a patrol car
12 and was taken downtown. Sergeant Gafford and his
13 partner went downtown in their own vehicle.

14 Q. Did you actually see them get in their
15 vehicle and leave?

16 A. Yes, sir.

17 Q. Where did Sergeant Hamilton go?

18 A. He was in the patrol vehicle.

19 Q. When you say "a patrol vehicle," are you
20 talking about what we call a black and white or
21 blue and white unit?

22 A. Yes, sir.

23 Q. One with emergency lights on top?

24 A. That's correct.

25 Q. The vehicle Mr. Hughes got into, was it

1 also a police vehicle with the lights on top?

2 A. That's correct.

3 Q. Do you remember what kind of vehicle
4 Sergeant Gafford and his partner were in?

5 A. If I remember right, it's a Chevrolet
6 Celebrity.

7 Q. It's not a police -- sirens on top of
8 the car?

9 A. No, sir.

10 Q. Did you remain there on the property for
11 the rest of the morning or evening?

12 A. I remained on the property till
13 approximately 6:00 a.m.

14 Q. Now, between the time that the sergeants
15 left and Mr. Hughes was taken away from the
16 apartment complex, did you ever see any officers
17 or anybody else, for that matter, come back to Mr.
18 Hughes' apartment?

19 A. Not to the apartment. The only other
20 officers that came on the property came on the
21 property to pick up the mothers of the victims.

22 Q. Okay. So, at some point in the evening,
23 some other officers did return to the property?

24 A. Yes, sir.

25 Q. Is that a female officer or a male

1 officer?

2 A. One of each.

3 Q. And when they came there, did you meet
4 them?

5 A. Yes, I did.

6 Q. And did they come to a certain area
7 within the apartment complex?

8 A. They came directly to the office.

9 Q. Did they leave from the office with the
10 mothers of the two children?

11 A. Yes, sir.

12 Q. Did they go to Preston Hughes' apartment?

13 A. No, sir.

14 Q. Did any other officers come and go
15 anywhere around Preston Hughes' apartment?

16 A. No, sir.

17 Q. Were you in a situation or a position
18 where you could have seen if someone came to
19 Preston's apartment?

20 A. Yes, sir, I was.

21 Q. Did anyone ask you to kind of keep an
22 eye on the apartment to make sure no one was in it
23 or did they just leave?

24 A. Yes, sir, I was asked to do that by a
25 sergeant before they left.

1 Q. Do you remember which sergeant that was?

2 A. I believe it was Sergeant Gafford.

3 Q. On the photograph you just described --

4 MR. NOLL: Your Honor, I would like for
5 the witness to step down so he could point out
6 something.

7 THE COURT: Very well.

8 BY MR. NOLL:

9 Q. Mr. Marshburn, remember to keep your
10 voice up so that all the members of the jury can
11 hear you, all right?

12 A. (Witness complies.)

13 Q. Could you on this photograph -- use my
14 pen, it might be easier -- point out to the
15 members of the jury and you might have to do that
16 where the office is to the Lakehurst apartments.

17 A. The office is right here.

18 Q. Could you hold it close so the members
19 of the jury can see where you're pointing?

20 A. (Witness complies.)

21 Q. Why don't you move it down this way so
22 the members of the jury can see, officer. And
23 hold it out so they can see.

24 A. (Witness complies.)

25 Q. Could you also point, let's start here

1 where Preston Hughes' apartment --

2 A. His apartment is the upstairs apartment.
3 It would be the southeast corner of the property
4 on this building right here.

5 Q. Turn that picture so that these jurors
6 and Ms. Washington can see. You might want to do
7 the same thing down here so these folks can see.
8 His apartment is where you're pointing with the
9 pen?

10 A. That's correct.

11 Q. Do you have a clear line of sight from
12 the office to Preston's balcony of his apartment?

13 A. Yes, sir.

14 Q. So, even if you were sitting in the
15 office or walking around the office, you could
16 still see his apartment?

17 A. Yes, sir, I would.

18 Q. Why don't you go ahead and have a seat.

19 A. (Witness complies.)

20 MR. NOLL: Pass the witness, Your Honor.

21 THE COURT: Mr. McCullough.

22

23

24

25

1 CROSS EXAMINATION

2
3 BY MR. McCULLOUGH:

4 Q. You're not telling us you had that
5 apartment under surveillance every minute until
6 you went off duty?

7 A. From the time that the defendant was
8 taken away until the time that I left the property,
9 I remained in that general area, walking around.

10 Q. I understand that. But you didn't
11 constantly keep your vision fixed on that
12 apartment the entire time you were in the area.
13 Is that what you're saying?

14 A. No, I was concentrating on that main
15 building, under the orders from Sergeant Gafford.

16 Q. Is there any chance that what -- what's
17 his name? Casserly? What's the manager's name?

18 A. Casler.

19 Q. Casler?

20 A. (Nods head affirmatively.)

21 Q. That he could have handed those master
22 keys to Gafford and he could have handed them to
23 you or anything like that could have happened in
24 the office?

25 A. No, sir.

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MR. McCULLOUGH: Pass the witness.

MR. NOLL: Nothing further, Your Honor.

THE COURT: May this witness be excused?

MR. NOLL: We ask he be excused, Your Honor.

THE COURT: Thank you, Mr. Marshburn. You may go about your business. Call your next.

MR. NOLL: Ms. Buford, Your Honor.

(Witness sworn.)

MR. NOLL: May I proceed, Your Honor?

THE COURT: You may proceed.

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JUNE BUFORD,
was called as a rebuttal witness by the State and,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Ma'am, would you please state your name
for the members of the jury.

A. June Buford.

Q. Ms. Buford, do you know the defendant in
this case, Preston Hughes, III?

A. Yes.

Q. If you see him in the courtroom, would
you point to him and describe how he's dressed?

A. He's sitting to my left in a blue suit.

Q. How do you know the defendant, Ms.
Buford?

A. Through my husband. He's a friend of my
husband's.

Q. Do you also know him as a friend?

A. Well, yeah, yeah.

Q. More accurate to say an acquaintance,
maybe?

A. An acquaintance, yes.

1 Q. Let me direct your attention, Ms. Buford,
2 back to Tuesday, the 27th of September of 1988.
3 Did you receive a call that morning from the
4 defendant, Preston Hughes, III, at your house?

5 A. I did.

6 Q. Can you tell the members of the jury
7 what it is that Preston told you when he called
8 you?

9 A. Well, first of all, he was calling my
10 husband and I just happened to be the one at home
11 at the time.

12 Q. Was he there?

13 A. He was not there.

14 Q. After that was established, did you talk
15 with Preston any further?

16 A. I did. He told me that he was being
17 held for murder and he was upset but he -- I asked
18 him -- well, I was in shock and he said they was
19 holding him for murder and he never said he did it
20 but he just said that that's what he was being
21 held for. And he also said that forced statements
22 was forced upon him.

23 Q. Isn't it a fact that he told you that a
24 police officer hit him in the head --

25 MR. McCULLOUGH: Objection, I believe

1 that's leading, Your Honor.

2 MR. NOLL: I'll rephrase the question.

3 BY MR. NOLL:

4 Q. Did he tell you anything specifically
5 about what any police officers had done to him?

6 A. Yes. He told me that he had been abused
7 while in jail, that they had him with a gun and
8 one female officer had threatened his personals.

9 Q. Do you remember about what time it was
10 when he called you?

11 A. Pardon me?

12 Q. Do you remember about what time it was
13 when you received this phone call?

14 A. It was about 8:10, 8:15, something like
15 that.

16 Q. In the morning?

17 A. In the morning.

18 Q. And when he told you that he was being
19 held for murder, there's no mistake in your mind
20 as to what he told you? It was murder, he said?

21 A. Well, yeah.

22 Q. He didn't say assault or anything like
23 that? He said murder.

24 A. I believe that's what he said.

25 Q. In fact, did he tell you he was being

1 accused of killing a young woman and a little boy?

2 A. No, he didn't say that.

3 Q. He didn't say that part?

4 A. No.

5 Q. Did he tell you anything about what he
6 had been -- what he had actually been doing the
7 night before?

8 A. The night before?

9 Q. When he was accused -- when he was
10 supposed to have killed the people? Did he tell
11 you where he was, what he had done?

12 A. He said that he was out walking and
13 someone had came up from behind him and touched
14 him.

15 Q. What did he tell you happened then?

16 A. He just stabbed back.

17 Q. He had been touched and he just stabbed
18 back?

19 A. Uh-huh. He had --

20 Q. I'm sorry. Go ahead.

21 A. He told me that he was having trouble
22 with someone, the reason he was offensive to
23 hisself, to his well-being.

24 Q. Did he tell you something about having
25 been messing around with a married lady or

1 something to that effect?

2 A. Yeah.

3 Q. Did he call you some more after he
4 called you that morning?

5 A. Yeah, I've talked to him after that.

6 Q. I believe you told me earlier you're not
7 sure exactly what all happened and which
8 conversations took place when?

9 A. True.

10 Q. What I would like you to see is if you
11 can narrow it down to the call at 8:00 o'clock
12 that morning. At that call, is that the call
13 you're sure he told you that the police officer
14 had hit him in the head with a gun?

15 A. I'm really not sure if that was the one
16 or not. I was really in shock that morning. I
17 can't remember.

18 Q. Do you remember talking to me in the
19 hallway about 45 minutes ago --

20 MR. McCULLOUGH: Objection, Your Honor,
21 impeaching his own witness and leading, too.

22 THE COURT: Overruled.

23 BY MR. NOLL:

24 Q. Do you remember talking to me in the
25 hallway about 45 minutes ago?

1 A. I do.

2 Q. Do you remember telling me he called you
3 and told you the police officer hit him in the
4 head with a gun at 8:00 o'clock that morning?

5 MR. McCULLOUGH: Objection, testimony of
6 District Attorney, Your Honor, improper.

7 THE COURT: Overruled.

8 BY MR. NOLL:

9 Q. Do you remember the conversation?

10 A. In the hall.

11 Q. When we were talking in the courtroom
12 when everybody else was gone?

13 A. In the courtroom, yes.

14 Q. Do you remember talking to me then?

15 A. Yes.

16 Q. Do you remember telling me you were sure
17 he told you that police officer hit him in the
18 head with a gun that morning?

19 A. I remember telling you that I was sure a
20 police officer had hit him in the head.

21 Q. That was when he called you that morning?

22 A. I believe so.

23 MR. NOLL: Pass the witness, Your Honor.

24 THE COURT: Mr. McCullough?

25

1 CROSS EXAMINATION

2
3 BY MR. McCULLOUGH:

4 Q. You indicated at least at one time that
5 you couldn't really place which conversation took
6 place at which time that morning because there
7 were several calls and you were in shock?

8 A. Right.

9 Q. Is it possible that the telephone call
10 about getting hit with the gun could have been one
11 of the later calls?

12 A. It's possible. I tell you, I really --
13 as I was telling the District Attorney, I really
14 don't remember the dates of what was said.

15 Q. I understand. And you're not on trial
16 here. We just -- if you remember, okay? If you
17 don't, okay. We just want to find out what you
18 know.

19 A. I understand.

20 Q. Did Mr. Hughes say anything to you about
21 one of the officers passing his gun and a piece of
22 paper to another officer before he got hit? Do
23 you recall that?

24 A. I can't remember.

25 MR. McCULLOUGH: Pass the witness.

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MR. NOLL: We have nothing further, Your Honor.

THE COURT: May this witness be excused?

MR. NOLL: Yes, Your Honor.

THE COURT: Thank you, Ms. Buford. You may go about your business. Call your next.

MR. NOLL: Bill Lillico, Your Honor.

(Witness sworn.)

THE COURT: Please have a seat. You may proceed.

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BILL LILLICO,
was called as a rebuttal witness by the State and,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOLL:

Q. Sir, would you please state your name
for the members of the jury.

A. William H. Lillico.

Q. How are you employed?

A. With Montgomery Wards as the supervisor
of receiving and shipping.

Q. Is the defendant in this case, Preston
Hughes, III, an employee of yours or was he an
employee of yours?

A. He was.

Q. Directing your attention back to
September of 1988, around the 26th and 27th, was
he an employee of yours at that time?

A. Yes.

Q. Do you see the man that you know as
Preston Hughes, III, here in the courtroom this
morning?

A. Yes.

1 Q. Would you point to him and describe how
2 he's dressed?

3 THE COURT: Mr. Lilloco, would you lean
4 forward and talk into the mike, please.

5 A. All right. Yes, Preston Hughes is
6 sitting there in the blue suit with the striped
7 shirt.

8 BY MR. NOLL:

9 Q. How well did you know Preston Hughes,
10 III? Back in September of 1988, I guess I should
11 say.

12 A. He was an employee amongst 60 others.

13 Q. Do you remember getting a phone call
14 from Preston Hughes, III, on the morning of the
15 27th of September of 1988?

16 A. Yes, sir.

17 Q. And do you recall what Mr. Hughes told
18 you when he called you on the phone?

19 A. Yes, sir.

20 Q. What did he tell you?

21 A. He told me that he had been picked up by
22 the police.

23 Q. Did he tell you where he was when he got
24 picked up?

25 A. He told me he was in front of a

1 Seven-Eleven, I believe it was.

2 Q. Did he tell you why he had been picked
3 up?

4 A. He did not say why, he just said he had
5 been picked up by the police and that he would
6 probably be able to be in to work the next day.

7 Q. Did he indicate whether or not he knew
8 why he had been picked up?

9 A. No, he did not.

10 Q. Did he say anything to you about the
11 fact that he was being held in investigation for
12 the stabbing death of two people?

13 A. He did not, sir.

14 Q. Did he ask you to come down to help him?

15 A. No, sir.

16 Q. Can you characterize, for the members of
17 the jury, how he sounded on the phone? Was he
18 excited or was he calm or was he crying? How
19 would you characterize the way he sounded to you
20 on the phone?

21 A. Oh, I would say that he was calm, cool,
22 collected, he knew what he was asking, he knew
23 what he was saying.

24 Q. Did he seem to you to have any major
25 concerns or problems?

1 A. Just about his job. He did make the
2 remark that he wanted his job.

3 Q. Okay. Did he say anything to you about
4 being abused by police officers or being
5 threatened by police officers?

6 A. No.

7 Q. Did he say anything to you about being
8 hit --

9 MR. McCULLOUGH: Objection, this is not
10 rebuttal testimony, Your Honor.

11 THE COURT: It will be overruled.

12 BY MR. NOLL:

13 Q. Did he indicate to you at all that he
14 needed any help down at the police station?

15 A. No, sir.

16 Q. Did you have any idea at all what the
17 nature of his trouble was at that point?

18 A. Not at that time.

19 Q. Did he lead you to understand that it
20 was very serious trouble?

21 A. No.

22 Q. Sound like he was calling about a
23 traffic violation, didn't he?

24 A. Really, I didn't speculate. I didn't
25 think about it, you know, because I get these

1 calls everyday.

2 Q. Nothing caused you to be greatly
3 concerned?

4 A. No.

5 MR. NOLL: Pass the witness, Your Honor.

6 THE COURT: Mr. McCullough.

7

8

CROSS EXAMINATION

9

10 BY MR. McCULLOUGH:

11 Q. Did you make any notes or written
12 memorandum of this conversation?

13 A. No. Except that I did make a notation
14 that he wouldn't be in that day and I would have
15 to get somebody else to do his job.

16 Q. And the tone of his conversation was
17 that he wanted to make sure that he was telling
18 you he wouldn't be in that day and he wanted to
19 make sure you held his job?

20 A. That's right.

21 Q. He didn't want to alarm you?

22 A. I don't suppose.

23 Q. All right.

24 MR. McCULLOUGH: Pass the witness.

25 MR. NOLL: Nothing further, Your Honor.

1 THE COURT: May this witness be excused?

2 MR. NOLL: We ask he be excused.

3 THE COURT: Thank you, Mr. Lilloco. You
4 may go about your business. Call your next.

5 MR. NOLL: State rests.

6 THE COURT: State rests. What says the
7 defense?

8 MR. McCULLOUGH: We close.

9 THE COURT: Very well. Members of the
10 jury, I know you just got back from lunch but I'm
11 going to go ahead and let you take about a
12 15-minute break at this point. We have closed
13 with the evidence at this stage of the trial. We
14 need a few minutes to finish putting together the
15 Court's charge that we've spoken to you about. So,
16 please be back in the jury room, please be back in
17 the jury room at 2:40. We'll try to get started
18 right at that time please. You are excused.

19 (Jury out.)

20 THE COURT: Are there any objections to
21 the Court's charge?

22 MR. McCULLOUGH: May we confer about
23 that for a few minutes, Judge?

24 THE COURT: No, you may not. Now is the
25 time. Let's have the objections.

1 MR. THOMAS: Well, first, Judge, we
2 object. The Code of Criminal Procedure says after
3 the State's rested that the Court's charge will --
4 that the lawyers will have an opportunity and
5 reasonable time to make objections to the charge --

6 THE COURT: Let the record reflect that
7 I asked you for requested charges and instructions
8 by yesterday evening. Let the record reflect that
9 I tendered this charge to you immediately this
10 morning. Let the record also reflect that I
11 called Mr. McCullough from the administrative
12 office where I was preparing the charge at 1:30
13 and I've given you ample time and opportunity to
14 give me requested instructions.

15 MR. McCULLOUGH: Your Honor, when you
16 came back from the administrative building and
17 gave us copies of the charge, we started reading
18 it. Before we could finish or confer about it, we
19 came in here and finished the case. We just need
20 a few minutes to go over it and confer before we
21 make our objections.

22 THE COURT: Let the record reflect I
23 gave you that charge before 1:30. We did not
24 start testimony in this case till 2:00 o'clock.
25 You had 30 minutes between that time to look over

1 it.

2 MR. McCULLOUGH: I wouldn't argue with
3 the Court about what time it was. All I know is
4 my previous statement stands. I'll attempt to
5 make my objections to the charge.

6 We object to the Court's charge, the
7 reason being that it does not contain a definition
8 of knife. Knife is alleged in the indictment to
9 be a deadly weapon and this is a problem with this
10 case because the State has a knife in evidence
11 which apparently, it's their theory, it was used
12 to commit the murder. The testimony from the
13 medical examiner was that any sharp or edged
14 object or device or weapon could have been used to
15 inflict the wounds and I don't think -- I think
16 the jury needs some guidance on knowing what a
17 knife is as to compared to some other sharper
18 edged object.

19 I think we need a limiting instruction
20 on the allegation of a rape or attempted rape that
21 was introduced into the evidence very early,
22 starting with the opening statement. Object to
23 the charge in that it does not contain a limiting
24 instruction on the rape allegation --

25 THE COURT: Limiting instruction in what

1 manner?

2 MR. McCULLOUGH: Well, I believe the
3 Court gave an oral instruction at that time, that
4 that testimony could be used by them if, for any
5 purpose, to explain the officer's subsequent
6 actions. That was over our objection to it being
7 admitted to them at all.

8 THE COURT: The Court's recollection is
9 that that testimony was not with regard to a rape
10 but with regard to Shandra Charles' alleged
11 statement that Preston or the name Preston --

12 MR. McCULLOUGH: And that Preston tried
13 to rape her was the testimony that I recall and
14 that was what the District Attorney told the jury
15 in his opening statement and I objected to it at
16 that time and I objected to it before Officer
17 Hamilton testified to that.

18 THE COURT: All right. What else?

19 MR. McCULLOUGH: We object to the
20 proposed charge in that it does not define the
21 term "same criminal transaction" or "transaction"
22 for the jury's guidance in determining whether or
23 not the deaths alleged occurred in this same
24 transaction.

25 We object to the use of the term

1 "lesser" on the third page in the top paragraph
2 where it says, "Then you must resolve that doubt
3 in the defendant's favor and find him guilty of
4 the lesser offense of the murder of Shandra
5 Charles." We would object to "lesser" and ask
6 that it be changed to, "Find him guilty of the
7 offense of murder."

8 THE COURT: Hang on just a second. I
9 cannot find that place.

10 MR. THOMAS: Third page.

11 THE COURT: Very well.

12 MR. McCULLOUGH: You have --

13 THE COURT: What you're asking is we
14 just delete the word "lesser."

15 MR. McCULLOUGH: Yes, sir.

16 THE COURT: Very well. Okay.

17 MR. McCULLOUGH: Object to the charge in
18 both instances where it charges on the use of
19 written statements where it does not -- wherein
20 they, in each case, do not specifically state that
21 a confession obtained under coercion, duress, or
22 threats is an involuntary statement. We object to
23 the proposed charge for the reason that it
24 contains the charge on self-defense with regard to
25 Shandra Charles and I know we had discussed before

1 that that was -- the Court was not -- but we
2 specifically request that not be included.

3 THE COURT: What? The self-defense on
4 Shandra Charles?

5 MR. McCULLOUGH: Yes, sir.

6 THE COURT: All right. Give me your
7 affirmative charge. A written statement obtained
8 under threats. What else?

9 MR. McCULLOUGH: I think I said threats,
10 duress or coercion.

11 THE COURT: Threats, duress or coercion
12 is not a voluntary statement. What you're asking
13 for is an affirmative charge toward your side of
14 the case with regard to the statement.

15 MR. McCULLOUGH: Yes, sir.

16 THE COURT: Anything else?

17 MR. McCULLOUGH: That's as far as I've
18 gotten, Your Honor. I have nothing else at this
19 time.

20 THE COURT: Your objection with regard
21 to the definition of knife will be overruled. Do
22 you have a proposed limiting instruction on the
23 offense or the Court will prepare its own? I'm
24 prepared to give you one.

25 MR. McCULLOUGH: Yes, sir. All the

1 limiting instructions on extraneous offenses that
2 are in the charge bank that I've seen before all
3 appear to be adequate to me.

4 THE COURT: That's fine. I've got no
5 objection to that except that that will not --
6 that will take care of the alleged rape or
7 attempted rape. That may or may not take care of
8 the utterance of the word "Preston."

9 MR. McCULLOUGH: Well, that we objected
10 to on the basis that it was hearsay and the Court --
11 well, of course, we still maintain that position.
12 I believe the Court, likewise, made the oral
13 admonition that they were only to consider that to --

14 THE COURT: Show that the statement was
15 made and explain what the officer did, if anything.

16 MR. McCULLOUGH: Yes, sir. We would ask
17 that they be instructed to so limit the utterance
18 of that word in their deliberations and not
19 consider it for any other purpose.

20 THE COURT: Very well. That will be
21 done. Your objection to definition of the "same
22 criminal transaction" will be denied since
23 there is no legal definition of "same criminal
24 transaction." Your objection as to the deletion
25 of the word "lesser" on the top of page 3, that

1 will be granted. Your motion to have a written
2 statement obtained under threats, duress, or
3 coercion is not a voluntary statement will be
4 granted. Your objection to the charge on
5 self-defense with regard to the murder of Shandra
6 Charles will be granted. That will be deleted.

7 I will now prepare this and, for the
8 record, I would like the record to reflect there
9 is not one thing contained in the requested
10 instructions that could not be done ahead of time.
11 So once more, it's going to take us 30 or 45
12 minutes and we're going to stand around and cool
13 our heels. I am not interested in being
14 sandbagged. I'm interested in preparing a charge
15 that properly protects this defendant's rights and
16 submits the case on all fair theories to the jury.

17 (Short recess.)

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