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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

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INDEX TO WITNESSES

VOL./PAGE

3 MAY 1, 1989

4	ARRAIGNMENT -----	18/13
5	OPENING STATEMENT	
	By the State - Mr. Noll-----	18/14
6	V.L. COOK	
	Direct - Mr. Noll -----	18/18
7	Cross - Mr. McCullough -----	18/34
8	D. HAMILTON	
	Direct - Mr. Noll -----	18/36
9	Voir Dire - Mr. McCullough -----	18/46
	Direct - Mr. Noll -----	18/48
	Cross - Mr. McCullough -----	18/59
10	DENNIS GAFFORD	
11	Direct - Mr. Noll -----	18/69
	Voir Dire - Mr. McCullough -----	18/100
12	Direct Continued -----	18/102
	Cross - Mr. McCullough -----	18/126
13	CHERYL GRAHAM	
	Out of the presence of the jury - Mr. McCullough	18/140
14	DENNIS GAFFORD - Continued	
15	Cross continued - Mr. McCullough -----	18/144
	Redirect - Mr. Noll -----	18/183
16	L.B. SMITH	
	Direct - Mr. Noll -----	18/186
17	Cross - Mr. Thomas -----	18/194
	Redirect - Mr. Noll -----	18/203
18	TERESA ROSS	
19	Direct - Mr. Noll -----	18/207
	Cross - Mr. McCullough -----	18/225
20	Redirect - Mr. Noll -----	18/233
21	D.A. FERGUSON	
	Direct - Mr. Noll -----	18/241
	Voir Dire	
	Out of the presence of the jury - Mr. McCullough	18/245
22	Direct continued - Mr. Noll-----	18/246
	Voir Dire - Mr. McCullough -----	18/250
23	Direct continued - Mr. Noll -----	18/252
	Cross - Mr. McCullough -----	18/267
24	Redirect - Mr. Noll -----	18/285
	Voir dire - Mr. McCullough -----	18/287
25	Redirect continued - Mr. Noll -----	18/288

1	INDEX TO WITNESSES, cont'd	<u>VOL./PAGE</u>
2		
*3	D.A. FERGUSON, Continued Recross - Mr. McCullough -----	18/290
4	S.L. CLAPPART	
5	Direct - Mr. Noll-----	18/293
5	Cross - Mr. Thomas -----	18/301
6	Redirect - Mr. Noll -----	18/311
6	JOHN R. SWAIM	
7	Direct - Mr. Noll -----	18/313
7	Cross - Mr. McCullough -----	18/320
8	* E.T. YANCHAK	
9	Direct - Mr. Noll -----	18/324
9	Cross - Mr. McCullough -----	18/333
10	<u>MAY 19, 1989</u>	
11	MIKAL KLUMPP - Out of the presence of the jury	
11	Direct - Mr. Noll -----	19/354
12	Cross - Mr. McCullough -----	19/364
12	Redirect - Mr. Noll -----	19/365
13	Recross - Mr. McCullough -----	19/368
13	Further Redirect - Mr. Noll -----	19/369
14	F.L. HALE	
14	Direct - Mr. Noll -----	19/374
15	Cross - Mr. McCullough -----	19/382
16	* <u>T.C. BLOYD</u>	
16	Direct - Mr. Noll -----	19/385
17	<u>EVELYN BROWN</u>	
17	Direct - Mr. Noll -----	19/398
18	Cross - Mr. McCullough -----	19/423
19	MIKAL KLUMPP	
19	Direct - Mr. Noll -----	19/426
20	* <u>JIM BOLDING</u>	
20	Direct - Mr. Noll -----	19/432
21	Out of the presence of the jury - Mr. McCullough	19/439
21	Out of the presence of the jury - Mr. Noll	19/442
22	Direct continued - Mr. Noll -----	19/445
22	Cross - Mr. McCullough -----	19/452
23	Redirect - Mr. Noll -----	19/463
23	Recross - Mr. McCullough -----	19/464
24	Further Redirect - Mr. Noll -----	19/464
24	Further Recross - Mr. McCullough	19/465
25		

1	INDEX TO WITNESSES, cont'd	
2		<u>VOL. / PAGE</u>
3	ROBERT JORDAN	(468)5
3	Direct - Mr. Noll -----	19/432
4	Voir Dire - Mr. McCullough -----	19/481
4	Direct continued - Mr. Noll -----	19/485
5	Voir dire - Mr. McCullough -----	19/504
5	Cross - Mr. McCullough-----	19/506
6	Redirect - Mr. Noll -----	19/510
6	Recross - Mr. McCullough -----	19/514
6	Further Redirect - Mr. Noll -----	19/516
7	CYNTHIA CHARLES	
8	Direct - Mr. Noll -----	19/520
8	Cross - Mr. McCullough -----	19/528
9	<u>STATE RESTS</u> -----	19/531
10	MOTION for DIRECTED VERDICT -----	19/532
11	PRESTON HUGHES, III	
11	Out of the presence of the jury-Mr. McCullough	19/534
12	SYLVIA WOODS	
12	Direct - Mr. McCullough -----	19/542
13	Cross - Mr. Noll -----	19/553
13	Redirect - Mr. McCullough -----	19/563
14	DETRIA WOODS	
15	Direct - Mr. McCullough -----	19/565
15	Cross - Mr. Noll -----	19/571
15	Redirect - Mr. McCullough -----	19/584
16	BRENDA JOHNSON	
17	Direct - Mr. McCullough -----	19/586
17	Cross - Mr. Noll -----	19/590
18	JOSEPH CASLER	
18	Direct - Mr. McCullough -----	19/592
19	Cross - Mr. Noll -----	19/599
19	Redirect - Mr. McCullough -----	19/607
20	BRENDA JOHNSON, recalled	
21	Direct - Mr. McCullough -----	19/610
21	Cross - Mr. Noll -----	19/612
22	ROSALYND CALHOUN	
22	Direct - Mr. McCullough -----	19/615
23	Cross - Mr. Noll -----	19/619
23	Redirect - Mr. McCullough -----	19/625
24	Recross - Mr. Noll -----	19/626
25		

1	INDEX TO WITNESSES, cont'd	
2		VOL./PAGE
3	KENNY MOUTON	
	Direct - Mr. McCullough -----	19/629
	Cross - Mr. Noll -----	19/634
4	Redirect - Mr. McCullough -----	19/638
5	ELIZABETH STROMAN	
	Direct - Mr. McCullough -----	19/639
6	Cross - Mr. Noll -----	19/649
7	DENNIS GAFFORD	
	Direct - Mr. McCullough -----	19/665
8	<u>MAY 3, 1989</u>	
9	HOPE LEIJA	
	Direct - Mr. McCullough -----	20/679
	Voir Dire - Mr. Noll -----	20/684
10	Direct continued - Mr. McCullough -----	20/687
11	THOMAS GARCIA	
	Direct - Mr. McCullough -----	20/690
12	PRESTON HUGHES, III	
13	Direct - Mr. McCullough -----	20/694
	Cross - Mr. Noll -----	20/726
14	DEFENSE RESTS -----	20/811
15	<u>REBUTTAL</u>	
16	STEPHEN MARSHBUM, rebuttal	
	Direct - Mr. Noll -----	20/814
17	Cross - Mr. McCullough -----	20/829
18	JUNE BUFORD, rebuttal	
	Direct - Mr. Noll -----	20/831
	Cross - Mr. McCullough -----	20/837
19	BILL LILLICO	
20	Direct - Mr. Noll -----	20/839
	Cross - Mr. McCullough -----	20/843
21	STATE RESTS -----	20/844
22	DEFENSE CLOSES -----	20/844
23	OBJECTIONS/CHARGE -----	20/844
24		
25		

INDEX TO EXHIBITS

No.	Marked	Offered	Admitted
	VOL./PAGE	VOL./PAGE	VOL./PAGE
FOR THE STATE:			
1	consent to search	18/123	18/123
2	consent for blood, urine, and hair	18/123	18/123
3	original statement No. 1	18/23	18/234
4	original statement No. 2	18/342	18/342
5	photo	18/23	18/24
6	photo	18/23	18/24
7	photo	18/30	18/31
8	photo	18/31	18/32
9	photo	18/31	18/32
10	shorts	18/45	18/46
11	shoe	18/45	18/46
12	shoe	18/45	18/46
13	photo	18/80	18/80
14	photo	18/80	18/92
15	eyeglasses	18/92	19/381
16	blue jeans	18/139	19/381
17	maroon shirt	18/139	19/381
18	blue workshirt	18/139	19/381
19	blue workshirt	18/139	19/381
20	knife	18/139	19/381
21	sheath	18/139	19/381
22	vaginal swab	18/139	19/504
23	photo	18/139	18/250

	No.	Description	Marked	Offered	Admitted
1					
2	24	photo	18/139	18/250	18/251
3	25	photo	18/139	18/250	18/251
4	26	photo	18/139	18/250	18/251
5	27	photo	18/205	18/250	18/251
6	28	photo	18/205	18/250	18/251
7	29	photo	18/205	18/250	18/251
8	30	photo	18/205	18/250	18/251
9	31	photo	18/205	18/250	18/251
10	32	photo	18/205	18/250	18/251
11	33	photo	18/205	18/250	18/251
12	34	photo	18/205	18/250	18/251
13	35	photo	18/205	18/250	18/251
14	36	photo	18/286	18/287	18/288
15	37	photo	18/286	18/287	18/288
16	38	photo	18/286	18/287	18/288
17	39 ,	key	18/289	18/289	18/290
18	40	autopsy report	19/477	19/480	19/484
19	41	autopsy report	19/477	19/480	19/484
20	42	photo	19/477	19/480	19/484
21	43	photo	19/477	19/480	19/484
22	44	photo	19/477	19/480	19/484
23	45	photo	20/813	20/816	20/816
24					
25					

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No.	Description	Marked	Offered	Admitted
FOR THE DEFENSE:				
1	copy - statement No. 1	2/23	2/78	2/78
2	copy - statement No. 2	2/23	2/78	2/78
3	list of questions	3/386	3/386	3/386
4	inmate request form	3/388	3/391	3/391
5	5 ✕ phone toll statement	3/439	3/440	--
6	apartment diagram	18/139	18/180	18/180
7	7- photo	19/585	--	--
8	8- photo	19/585	--	--
9	9- photo	19/585	--	--
10	10- photo	19/585	--	--
11	11- photo	19/585	--	--
12	12- photo	19/585	--	--
13	13- photo	19/585	--	--
14	14- photo	19/585	--	--
15	15- photo	19/585	--	--
16	16- photo	19/585	--	--
17	17 list of questions,	19/585	--	--
18	18 - key	19/585	--	--
19	19 - key	19/593	19/611	19/612
20	20 phone records in envelope	20/680	20/684	20/686

1
2
3
4
5
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CAUSE NO. 511676

STATE OF TEXAS IN THE 174TH DISTRICT COURT
VS. OF
PRESTON HUGHES, III HARRIS COUNTY, T E X A S

A P P E A R A N C E S:

For the State: Mr. Chuck Noll
 Assistant District Attorney
 Harris County, Texas

For the Defendant: Mr. Ellis McCullough
 Mr. Al Thomas
 Attorneys at Law
 Houston, Texas

BE IT REMEMBERED that upon this the 1st
day of May, A. D. 1989, the above entitled and
numbered cause came on for Jury Trial before the
Honorable George H. Godwin, Judge of the 174th
District Court of Harris County, Texas; and the
State appearing by counsel and the Defendant
appearing in person and by counsel, announced
ready for Jury Trial and a jury having been
selected, impaneled, and sworn and all preliminary
matters having been disposed of, the following
proceedings were had, viz:

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.