

TRIAL
10-14-85
244-185
Vol-18

1 DENNIS GAFFORD,

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

10 A. Sergeant Dennis J. Gafford.

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

16 You may proceed.

17 BY MR. NOLL:

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

22 A. Okay.

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

25 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 suspicions, 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~~Q~~. 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

*

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

+

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

* 2
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

* 2

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?

* 1 A. Yes, sir, I did.

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

* 4 A. Sergeants Smith and Ross.

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

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

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

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

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

SEE PAGE
273 MARCH
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.