

1 CROSS EXAMINATION CONTINUED

2 OF DENNIS GAFFORD

3
4 BY MR. McCULLOUGH:

5 Q. Officer Gafford, you're the same Police
6 Officer Gafford who was testifying before we broke
7 for lunch?

8 A. That's right.

9 Q. You're still under oath?

10 A. Yes, sir.

11 Q. You'll have to excuse me, but I kind of
12 lost the thread of our conversation. I don't want
13 to be repetitive. Bear with me if I repeat myself.
14 You testified that Mr. Hughes initially told you
15 when you started your interrogation, that he had
16 nothing to hide and he didn't do it or didn't have
17 anything to do with it or something to that effect?

18 A. Right.

19 Q. After you talked to him, you say he
20 eventually, in the manner you described, made the
21 statements and admissions that are contained in
22 State's Exhibit No. 3. I know you don't remember
23 these exhibit numbers.

24 A. Yes, sir, that's right. There's a page
25 missing. There's three pages to this one. Yes,

1 sir.

2 Q. All right. Now, this statement could be
3 read to implicate Mr. Hughes in harming, injuring
4 some way, a girl named Shawn?

5 A. Right.

6 Q. Doesn't say much of anything about the
7 child, Marcell Taylor?

8 A. No, sir, it doesn't.

9 Q. And then you talked over your
10 investigation to the officers that relieved you
11 and then they talked to Mr. Hughes some more and
12 allegedly he then gave a statement marked State's
13 Exhibit No. 4. You're familiar with that, of
14 course.

15 A. I've seen it. I'm not familiar with
16 everything that's in it.

17 Q. And this statement could then be read to
18 implicate Mr. Hughes in the injury or death of
19 Marcell Taylor, in addition to the girl?

20 A. That's right.

21 Q. But at this point, y'all quit taking
22 statements from Mr. Hughes, after you got this
23 State's Exhibit No. 4.

24 A. I wasn't there when they -- I may have
25 been in the office, but I wasn't having anything

1 more to do with handling Mr. Hughes at that point.
2 So, I don't know much about the fact that they
3 quit taking statements from him or if he quit
4 talking or exactly what the situation was.

5 Q. Now, who made the decision that State's
6 Exhibit No. 3 was not sufficiently complete?

7 A. Well, with all of us talking together,
8 we knew what basic elements were involved in the
9 case. We knew that Shandra Charles had been
10 stabbed. We also knew that Marcell Taylor had
11 been stabbed. He made the original statement to
12 me and there was no mention of Marcell Taylor, in
13 particular, and I took the statement as he gave it.
14 And once that was completed, it was -- we'd be
15 very irresponsible if we hadn't gone back and
16 asked him questions to clarify some points about
17 Marcell Taylor because Marcell Taylor was also at
18 the same scene and was stabbed at the same time,
19 it had appeared, and we had to clarify that.
20 That's the reason for the second questioning
21 period.

22 Q. But there is in State's 3 and State's 4
23 considerable differences other than just that
24 relating to the child, Marcell Taylor.

25 A. Okay.

1 Q. The substance of them is quite different
2 in several respects, isn't it?

3 A. As I said, I'm not sure of what's in
4 that statement. I didn't take it and I'm sure I
5 looked over it at that time but I'm not familiar
6 with it.

7 Q. In fact, there's hardly any reference in
8 the statement you took, State's Exhibit No. 3,
9 there's hardly any reference, if any, to the
10 3-year-old; is that correct?

11 A. That's correct.

12 Q. And based on State's Exhibit No. 3, you
13 didn't have a capital murder case at all, did you?

14 A. The case is the same. Whether or not he
15 acknowledged each point of it was irrelevant to me.
16 The case is the same.

17 Q. Well, the only proof that Preston Hughes
18 stabbed either one of these people is contained in
19 these two statements, isn't it?

20 A. No.

21 Q. At any rate, based on any information or
22 evidence you had at the time, you had no evidence
23 that Preston Hughes was involved in the death of
24 that child until you took State's Exhibit No. 4?

25 MR. NOLL: Objection, Your Honor. I

1 don't believe that this witness took State's
2 Exhibit 4. I object to assuming facts not in
3 evidence.

4 THE COURT: That will be sustained.

5 BY MR. McCULLOUGH:

6 Q. Let's just say when you turned the
7 investigation over to the officers that relieved
8 you, you had nothing more than a suspicion because
9 of the proximity of the bodies, that the person
10 that was Preston Hughes was involved in harming
11 that child.

12 THE WITNESS: Your Honor --

13 MR. McCULLOUGH: I withdraw the question.
14 We'll get it straightened out off the record.

15 BY MR. McCULLOUGH:

16 Q. So, did you -- when you went off the
17 shift, some other officer took this over and
18 continued the investigation, Sergeant Ferguson.

19 A. Ferguson and Yanchak, yes, sir.

20 Q. Right. Well, you came back to work,
21 what? The next day?

22 A. That night.

23 Q. That evening.

24 A. On the 27th, yes, sir; it would have
25 been 11:00 o'clock.

1 Q. Did you then go back and continue your
2 interest and investigation in this case?

3 A. Continued completing reports and
4 supplementary reports, but as far as actively
5 pursuing the investigation, the day shift
6 personnel are assigned follow-up because of the
7 number of homicides that occur during the
8 nighttime. The night shift is generally
9 responsible for scene investigations and immediate
10 follow-up, but continued follow-up is done by days
11 and evenings.

12 Q. So, you just wrapped up what you had
13 done up to that point. You didn't start any new
14 areas of investigation, interviewing any new
15 witnesses or anything like that?

16 A. That's correct.

17 Q. And would it have been then Sergeant
18 Ferguson who would have continued the
19 investigation, if anyone did? Would it have
20 become his case?

21 A. He and Yanchak, yes, sir.

22 Q. So, if anyone made the decision that you
23 had enough statements, it would have been them,
24 not you?

25 A. I would assume so.

1 Q. I believe you testified that you stayed
2 in the station house and continued doing report
3 writing or something or other after this statement,
4 State's Exhibit No. 3, after that was taken and
5 signed, which was about 7:15 in the morning?

6 A. Yes, sir.

7 Q. Were you still there at 12:20 -- around
8 noon, at 12:20 p.m.?

9 A. Yes.

10 Q. Were you still there at 1:15 p.m.?

11 A. Yes.

12 Q. On the 27th. So, you were still in the
13 homicide office when State's Exhibit No. 4, if we
14 can rely on these times, was taken?

15 A. Yes.

16 Q. And you knew they were taking this
17 second statement?

18 A. Yes.

19 Q. You conversed with them about it?

20 A. Yes.

21 Q. And you didn't read it after --

22 A. I said I did look the statement over.
23 I'm just not familiar with all that it says. At
24 the time that it was taken, I did. But since that
25 time, I have had no business really looking over

1 that statement.

2 Q. All right. Did you or Sergeant Ferguson,
3 to your knowledge, call the District Attorney's
4 office and confer with them about the
5 investigation or about the statements or about the
6 questioning?

7 A. Sergeant Ferguson was the one that filed
8 the charges. I'm not sure of any other
9 conferences that were held. I don't believe I
10 talked to any other District Attorney about it at
11 the time.

12 Q. Do you know of your own knowledge when
13 charges were filed?

14 A. On the 27th.

15 Q. Do you know when, if ever, Mr. Hughes
16 was taken before a magistrate?

17 A. I'm not sure.

18 Q. It certainly was not before State's
19 Exhibit No. 3 was given?

20 A. Is that the one that I took?

21 Q. Yes, sir.

22 A. No, it was not.

23 Q. So, the only advice that Mr. Hughes got
24 before he purportedly signed this confession,
25 State's Exhibit No. 3, was from police officers?

1 A. Advice, I read him his Miranda warnings.
2 If that's the advice you're talking about, that's
3 what I gave to him.

4 Q. That's the only advice he got, wasn't it,
5 was that blue card warning?

6 A. Well, again, I don't think that's advice.
7 That's warnings.

8 Q. Okay. Was there any particular reason
9 that you did not take him out before a municipal
10 court judge or somebody and have him given a
11 magistrate's warning?

12 A. He's required to have his warnings read
13 before the time that we take a statement, and
14 that's what I did.

15 Q. Did you give Mr. Hughes any reason to
16 think that he wouldn't go to jail or he wouldn't
17 be in trouble if he gave you this statement?

18 A. No, sir.

19 Q. Did you leave him to understand that he
20 was getting himself in real big trouble by signing
21 that statement?

22 A. I didn't leave him to believe anything.
23 I read him his warnings, asked him if he wanted to
24 talk. Why he talked, I don't know. That's in his
25 mind.

XX

1 Q. Well, you know what I'm referring to by
2 "magistrate's warning." You do that all the time?

3 A. No, sir.

4 Q. You do not?

5 A. No, sir.

6 Q. Who are all those officers that bring
7 folks in over there in municipal court before the
8 judges for warnings?

9 A. Well, as I said, I generally work at
10 night. And during the nighttime, magistrates are
11 not always available. Occasionally they are, and
12 they may or may not, I'm not sure, have made
13 improvements on the system that they used of
14 magistrates available now; but our requirement,
15 again, is to read them the Miranda warnings, make
16 sure they're advised of their warnings, and that's
17 what I did, as I was required to do.

18 Q. I have some more questions, if you'll
19 bear with me, Sergeant Gafford. If possible,
20 could you answer these questions yes or no; and if
21 you can't, tell us that. Is that a deal?

22 A. Okay.

23 Q. 1: Isn't it true that you said my
24 client allegedly confessed to allegedly stabbing
25 the two victims?

1 A. Yes.

2 Q. Second: Didn't you type the alleged
3 confession?

4 A. Yes.

5 Q. 3: Did you type the alleged confession
6 word-for-word?

7 A. I can't say just yes or no.

8 Q. Well, let me break it down this way.
9 You typed every word of the confession yourself,
10 as opposed to somebody else doing it?

11 A. Correct.

12 Q. And I think I might have asked this
13 another time. The language of that confession, I
14 believe you have us to understand substantially
15 what you were told even though it may not be in
16 the exact language you were told at the first time?

17 A. That's correct.

18 Q. 4: Could you explain to the ladies and
19 gentlemen of the jury your reasons which you
20 consider the statement you typed being an alleged
21 confession, considering the fact only one of the
22 alleged victims you accused my client of allegedly
23 stabbing is mentioned in the statement you typed?

24 A. That's not a yes or no question.

25 Q. Well, I understand that. I guess it

1 calls for an explanation. So, could you explain
2 that?

3 A. Could you repeat the question again?

4 Q. Okay. I think it could be stated more
5 succinctly: How do you explain the fact that you
6 consider the State's Exhibit No. 3 to be a
7 confession to two killings or stabbings when only
8 one of the victims is mentioned in State's Exhibit
9 No. 3?

10 A. I never said that was an admission to
11 both stabbings.

12 Q. Okay. 5: Considering that State's
13 Exhibit No. 3 only mentions one stabbing victim,
14 do you believe there's such a thing as half a
15 confession, considering the fact you accused my
16 client of allegedly stabbing two people?

17 A. You want me to explain?

18 Q. Yes, sir.

19 A. I believe the people can make an
20 admission but not go all the way and tell the
21 complete truth. As in, make this statement and
22 not say everything that needs to be said in one
23 statement.

24 Q. And along that line, you don't believe
25 everything that's in either one of these

1 statements, do you?

2 A. I don't believe everything that's in
3 either one of them?

4 Q. Right.

5 A. I don't believe some things.

6 Q. That's what I mean.

7 A. About the statement that I took. I
8 don't know about the other one.

9 Q. All right. 6: More succinctly, perhaps,
10 is that the reason there's only one of these
11 people mentioned in State's Exhibit No. 3 is
12 because Mr. Hughes did not talk about the other
13 person?

14 A. No, that's not correct.

15 Q. Well, that might take some explaining.
16 If he had told you when you were taking his oral
17 statement that he killed both of these people,
18 surely you would have put it in the statement for
19 him to sign?

20 A. He didn't say it in that way. What he
21 said during our conversation -- this is prior to
22 the time that I'm typing the statement out. This
23 is during just a conversation that we had before,
24 during the interview. He said that when he had --
25 when they came up behind him, that he just started

1 stabbing, that he saw that she was holding, I
2 believe, that someone else was there -- I can't
3 remember the exact words or what was said and that
4 he started stabbing -- he was explaining the fact
5 that the stabbing occurred but did not want to
6 actually say that he had stabbed the boy. He said
7 instead that he was stabbing high and low, and
8 it's my -- it was my belief at that time and he
9 led me to believe that he had stabbed both of them,
10 was trying to get around the fact of actually
11 saying that he had stabbed the boy, explaining it
12 by saying he stabbed high and stabbed low,
13 explaining the fact that he could stab the boy
14 that was maybe in her arms or something.

15 Q. But none of that is in State's Exhibit
16 No. 3?

17 A. He didn't read that when we were talking
18 about the incident during the time that I was
19 typing the statement. And if he doesn't say it,
20 then I wasn't going to put it down.

21 Q. Okay. 7: If my client had hit you
22 after you assaulted him, would you have continued
23 to assault him?

24 A. That never occurred.

25 Q. After you assaulted my client, he asked

1 you, "Am I under arrest?" And you nodded your
2 head for yes. Considering the fact you never told
3 my client he was under arrest and also never read
4 my client his rights, would you, yes or no, have
5 filed an escape charge against my client, had he
6 attempted to get up and leave?

7 MR. NOLL: Your Honor, I'm going to
8 object. That question is argumentative,
9 accusatory, and duplicitous. I would ask that he
10 narrow it down somehow.

11 THE COURT: That will be sustained.
12 BY MR. McCULLOUGH:

13 Q. 9: In your previous testimony, you
14 denied telling my client, quote, "I talked to
15 Shawn tonight. She told me you took her purse.
16 We searched your apartment. We didn't find her
17 purse. What did you do with it?" Did you tell --
18 we'll break it in two. Did you tell Mr. Hughes
19 that?

20 A. I --

21 Q. Did you make that statement to
22 Mr. Hughes? "I talked to Shawn tonight, and she
23 told me you took her purse. We searched your
24 apartment. We didn't find her purse. What did
25 you do with it?" Did you make that statement to

1 Mr. Hughes?

2 A. No.

3 Q. Okay. Continuing: Should I ask the
4 mother of Shawn if she reported anything missing
5 from her daughter, could you, yes or no, believe
6 she will tell me no? In other words, what would
7 the mother say about something being missing?

8 A. I don't know.

9 Q. 10: Yes or no. Do you believe the
10 marijuana that was found on Shawn came from my
11 client?

12 A. I'm not aware of marijuana being found
13 on any of the complainants.

14 Q. 11: Yes or no. Have you permitted the
15 mothers of the two victims to read the alleged
16 confession you typed which you claim my client
17 gave you since you have them believing my client
18 is allegedly responsible for the death of the two
19 alleged victims? In other words, have you shown
20 State's Exhibit 3 or 4 to the parents of the
21 complaining witnesses?

22 A. I have never met them.

23 Q. 12: Have you explained to the families
24 that the statement, No. 3, does not contain any
25 confession of the stabbing the younger child?

1 Have you told the parents that?

2 A. No.

3 Q. Okay. 13. I'll break this into pieces.
4 The autopsy report states the approximate time of
5 death or wounds at the time the wounds were
6 inflicted on the two victims as around 8:30 p.m.,
7 on September 26th, 1988. Do you know that to be a
8 fact or not?

9 MR. NOLL: Your Honor, object. That is
10 completely false. It is not in evidence, and I
11 move to admit the autopsy report at this time to
12 rebut the flagrant attempt to put evidence before
13 this jury that is inaccurate.

14 THE COURT: Your objection will be
15 sustained. If you think you need to clear it up
16 with any evidence, redirect is the appropriate
17 time to do that.

18 MR. NOLL: Yes, Your Honor.

19 THE COURT: You may proceed.

20 BY MR. McCULLOUGH:

21 Q. The location of the attack is in a field
22 behind Fudorucker's on Kirkwood at Westheimer.

23 A. Correct.

24 Q. And Mr. Hughes told you that he boarded
25 a bus at the corner of Walker and Travis between

1 7:30 and 7:45 p.m. on that same evening. Excuse
2 me. 8:30 and 8:45 on Monday, September 26th, 1988.
3 I believe you might want to refer to this.

4 A. I'm not sure of the times. His
5 statement was that he was dropped off at a corner
6 downtown to catch a bus sometime after 8:10 p.m.,
7 but doesn't say what time he caught a bus.

8 Q. Do you, by the way, have any other notes
9 that you made at the time you were doing this
10 interrogation?

11 A. No, sir. I've got the offense report.

12 Q. You didn't make any other notes at the
13 time?

14 A. No, sir.

15 Q. 14: Would you explain to the jury how
16 it's possible for Mr. Hughes to be in two places
17 at the same time?

18 A. No.

19 Q. 15: In the interrogation room, did you
20 pass a yellow piece of paper, specifically, a
21 money order receipt and your pistol to another
22 detective outside the interview room? Did you do
23 that?

24 A. No, sir.

25 Q. Did you hit Mr. Hughes in the chest or

1 slap him?

2 A. No, sir.

3 Q. Did you assault him?

4 A. No, sir.

5 Q. Did you ever pass your gun to another
6 officer during that interview or before the
7 interview?

8 A. No, sir.

9 Q. 16: You stated that you did not search
10 Mr. Hughes' apartment after he was transported or
11 while he was being transported downtown?

12 A. No, sir.

13 Q. Did you accuse Mr. Hughes, during the
14 interview or at any time, of taking personal items
15 from Shawn?

16 A. No.

17 Q. Did you, in fact, find a pair of glasses
18 at the scene behind Fuddrucker's and accuse him of
19 having been in his apartment?

20 A. No, sir.

21 Q. Did you confront him with the glasses at
22 all?

23 A. No, sir.

24 Q. Did you show some glasses to Shawn's
25 family and tell them that they had come from

1 Preston's apartment?

2 A. No.

3 Q. Did you attempt to obtain identification
4 of any glasses at all, yourself?

5 A. No.

6 Q. 17: Do you not need some type of
7 warrant to go through the residential listings of
8 an apartment complex?

9 A. No, I don't.

10 Q. 18: Do you not need some type of
11 warrant to close up Mr. Hughes' apartment; that is,
12 to order the manager not to let anyone into the
13 apartment? Let me go back a step. Did you or
14 anyone else in the police department tell the
15 manager to close up his apartment during an
16 investigation or --

17 A. Not that I'm aware of. I didn't
18 personally, no.

19 Q. Could you describe a watch that
20 Mr. Hughes was wearing while you were questioning
21 him in his apartment at 2:30 a.m. on Tuesday,
22 September 27th, 1988?

23 A. I don't know if he was wearing a watch
24 or not.

25 I take that back. I think he looked at

1 his watch and said that it was 2:30 in the morning.
2 Assuming he looked at his watch and got that time,
3 he would have been wearing one. I don't know what
4 it looks like.

5 Q. 20: Did you not pass your gun, along
6 with a yellow piece of paper, to another detective
7 standing outside the room you questioned my client
8 in five to ten minutes before you assaulted him?

9 A. No.

10 Q. 21: Isn't it true you gave a
11 description of the watch you claim my client was
12 wearing because he never had a watch on? You
13 can't give a description of the watch?

— 14 Is it true you can't give a description
15 of the watch you claim my client was wearing
16 because he never had a watch on?

— 17 A. I don't know that he had a watch on. He
18 said that the time was 2:30. I'm assuming he
19 looked at his watch. Where he got the time, I'm
20 not sure.

21 Q. Where is the door key that was taken
22 from my client's apartment?

23 A. He maintained the keys until the time
24 that he allowed the other sergeants to go in.
25 Where they're at now, I don't know.

1 Q. 23: If my client never answered the
2 door, would you have obtained a warrant for his
3 arrest?

4 A. I don't know. That's not the case.

5 Q. 24: Isn't it impossible for a police
6 officer to obtain a warrant for a person's arrest
7 with just half a name?

8 A. No.

9 Q. 25: Isn't it true you found Mr. Hughes'
10 full name from the money order receipt you took
11 from his apartment, which is the yellow piece of
12 paper Mr. Hughes saw in your hand before you
13 assaulted him, which you used to forge his
14 signature on these voluntary consent for search
15 and seizure document?

16 A. I don't know anything about a yellow
17 piece of paper, and the rest of the information is
18 false.

19 Q. 26: Do you have the original statement
20 for voluntary consent for taking of samples of
21 blood, urine, or hair, which Mr. Hughes signed?

22 A. I believe it's in evidence.

23 Q. Well, I show you what has been admitted
24 into evidence as State's Exhibit No. 2.

25 A. Yes, sir. This is the original

1 voluntary consent for taking of samples of blood,
2 urine, or hair.

3 Q. Do you not have some of these forms in
4 the office over there that are only about half
5 this big?

6 A. No, that's the one, the only ones that I
7 know of.

8 Q. And I believe you stated that these
9 forms are frequently xeroxed, which would account
10 for some of the markings and lines on the pages?

11 A. Yes, sir. When we run low on the forms
12 that are issued by the department, we will xerox
13 additional ones that we can have when we run out
14 of the stock of them.

15 Q. Similar markings will appear on
16 documents such as this when one document is
17 xeroxed on top of another?

18 A. I don't know.

19 Q. 28: Do you know who authorized the tap,
20 which is placed on Mr. Hughes' mother's telephone?

21 A. There's not now or ever has been a tap
22 on anyone's phone.

23 Q. 29: Were you the officer who
24 interrogated two of Mr. Hughes' relatives along
25 with assistant District Attorney JoAnn Lee?

1 A. No.

2 Q. 30: Could you give me the names of the
3 officers, the uniformed officers who conducted the
4 search of Mr. Hughes' apartment while he was sent
5 downtown to await questioning?

6 A. That didn't occur.

7 Q. Okay. 31. Could it be the reason the
8 little boy you accused Mr. Hughes of allegedly
9 stabbing isn't mentioned in the alleged confession
10 you typed is because Mr. Hughes told you during
11 questioning, quote, "I don't know anyone named
12 Mario," unquote. After you asked him, quote, "Do
13 you know a girl named Shawn Brown and a boy named
14 Mario," quote, unquote.

15 A. I didn't ask him that. I believe I did
16 ask him if he knew Marcell Taylor. He said he did
17 not, and he did not indicate that he hadn't seen
18 the boy. He just did not know the name.

19 Q. 32: Though someone added minor details
20 to the forged signature on the altered statement,
21 voluntary consent for search and seizure, is it
22 your belief that when I take the original money
23 order from the yellow piece of paper Mr. Hughes
24 saw in your hand the morning you arrested him,
25 came and matched the signature on the money order

1 to the signature on the altered statement,
2 voluntary consent for search and seizure, they
3 won't match?

4 A. Again, I don't know anything about a
5 yellow piece of paper that he's speaking of, and
6 the information that you're relating about, an
7 altered document, is false.

8 Q. Okay. I'm going to paraphrase this.
9 You obtained this document, State's Exhibit No. 2,
10 voluntary consent for taking samples of blood,
11 urine, and hair.

12 A. Yes, sir.

13 Q. But you never took any.

14 A. That's right.

15 Q. Did you feel like after State's Exhibit
16 No. 4 was taken that you didn't need any?

17 A. Is 4 the consent form that you're
18 speaking of?

19 Q. No. 4 is the second statement. You
20 knew that had been taken. I think we covered that.
21 You were there.

22 A. Yes. The reason we had that voluntary
23 consent form signed to begin with was if it became
24 necessary at some point to take those samples,
25 that would be done and we could take the samples.

1 However, that never became necessary. So, we
2 never obtained the samples.

3 Q. Well, okay. However, had you taken, say,
4 one of these samples, blood, urine, or hair and
5 run a comparison against some other samples, it
6 could only introduce problems in the case,
7 couldn't it?

8 A. No.

9 Q. Well, what if these samples turn out to
10 be inconsistent with the theory espoused in
11 State's Exhibit No. 4?

12 A. I'm not aware of any samples that were
13 taken anywhere for those to be compared with. If
14 those samples were obtained, we would have gone
15 ahead and obtained samples from him. That could
16 be done today, if we need to.

17 Q. This is kind of long. You might want to
18 answer it in two or three parts. 34: The black
19 line which appears over the titles and below the
20 signature in the two altered xerox copies you gave
21 the District Attorney, Chuck Noll, indicate the
22 original size of the statement, voluntary consent
23 for taking of samples of blood, urine, or hair,
24 which Mr. Hughes signed, the statement, voluntary
25 consent for search and seizure, which you turned

1 my client's signature onto. Is there anything you
2 would like to tell the honorable judge and the
3 ladies and gentlemen of the jury before I perform
4 an experiment which the results will show how you
5 altered the two statements and proved all the
6 alleged evidence the DAs representing the State
7 plan to use against Mr. Hughes is false, created
8 by you and the other officers involved? You
9 understand it's Mr. Hughes' contention that you
10 fabricated those two documents?

11 A. That's right. I understand that.

12 Q. And you understand and I -- didn't we
13 demonstrate this once -- that you can place one
14 document on top of another, run it through a xerox
15 machine, and it will leave a line similar to that
16 one?

17 A. I don't know that. We haven't
18 demonstrated that.

19 Q. But you know that. You deal with xerox
20 materials all the time, don't you?

21 A. Not in the manner that you're speaking.

22 Q. I'm not asking you to admit you
23 fabricated the document. I'm just asking, you
24 have had occasions to cut and paste documents, put
25 them together and xerox them onto one page.

1 You've seen that done for legitimate purposes?

2 A. I've seen that done, yes.

3 Q. Doesn't it leave a line similar to
4 what's illustrated on that particular document?

5 A. Sometimes they do, and sometimes they
6 don't.

7 Q. Okay. 36: Did your investigation
8 indicate that the two alleged victims were
9 returning from the store when they were attacked?
10 From some store?

11 A. I never actually talked to anybody about
12 that, about where they were coming from or going
13 to.

14 Q. Well, did you or anyone else in the
15 police department either trace their movements
16 that evening or attempt to?

17 A. I believe they did.

-18 Q. Okay. 37: Had you obtained a warrant
19 for Mr. Hughes' arrest, would you have taken him
20 before a magistrate immediately after you arrested
21 him? In other words, if you had arrested him with
22 a warrant instead of taking him downtown
23 voluntarily, as you say you did, would you have
24 taken him before a magistrate?

-25 A. No, sir.

1 Q. Are you aware that Article 15.17 of the
2 Vernon's Annotated Code of Criminal Procedure
3 states the following --

4 MR. NOLL: Your Honor, I object to any
5 reading of any law that does not come from the
6 Court's charge. I object to this question to this
7 man. He is not a lawyer. I see where this is
8 going. I object to it. I've been very patient, I
9 believe, in some of these questions in not
10 objecting. I object to this question.

11 THE COURT: That will be sustained.

12 MR. McCULLOUGH: Your Honor, for the
13 record, the question basically sets out the text
14 of that article which relates to my next question.

15 THE COURT: The objection is sustained.
16 Ask your next question, please.

17 BY MR. McCULLOUGH:

18 Q. 39: Do you consider answering
19 telephones to be a necessary delay?

20 MR. NOLL: Your Honor, I have to object
21 to the relevancy of that question unless it can be
22 shown to be somehow relevant to this case.

23 THE COURT: That will be sustained.

24 MR. McCULLOUGH: For the record, Your
25 Honor, Questions 42, 43, all relate similar to law

1 questions. I assume that the ruling would be the
2 same.

3 THE COURT: I have not heard the
4 questions.

5 MR. McCULLOUGH: They have similar text,
6 both Vernon's.

7 BY MR. McCULLOUGH:

8 Q. Why did you ask Mr. Hughes which bus he
9 caught if you didn't intend to investigate his
10 whereabouts to see if he told you the truth?

11 A. The time frame in which he was stating
12 he was on the bus didn't really have anything to
13 do with the time frame of the offense.

14 Q. Well, he gave you information about his
15 whereabouts up until when? About 10:30?

16 A. I think that's right.

17 Q. From the time he got off work until
18 about 10:30?

19 A. Yes, he said that he got home at 10:30
20 or so.

21 Q. So, the statements he told you there
22 about his whereabouts from getting off of work at,
23 what? 5:00 o'clock or so until 10:30, if believed
24 or corroborated, would account for his time during
25 that period of time? He gave you -- he's covered

1 every minute of the time from when he got off work
2 until 10:30 in that statement?

3 A. I think -- yes, that's right.

4 Q. Okay. 45: When you went into
5 Mr. Hughes' apartment, accompanied by the
6 uniformed officer, were any of the family or
7 friends of the victims, complaining witnesses,
8 waiting in the parking lot outside?

9 A. No, sir.

10 Q. 46: Did you not say that Mr. Hughes
11 remained on the homicide floor of the police
12 station between the signing of the two statements?

13 A. Yes, I believe he did.

14 Q. Now, that is presumably -- as opposed to
15 taking him out of homicide and up to the jail
16 floor, which is on the top floor of that building,
17 isn't it?

18 A. It's on the fifth floor. I had never
19 placed him in jail, and I don't think that anyone
20 else did. He had requested to stay in the room
21 there, and so we allowed him to.

22 Q. Did he make any phone calls while you
23 were still present?

24 A. Yes.

25 Q. Was that before or after Statement No. 3

1 was signed? Or State's Exhibit 3, which is the
2 first statement?

3 A. Right. I believe he made phone calls
4 after the statement.

5 Q. Homicide is on what? The third floor?

6 A. Yes, sir.

7 Q. And on the fifth floor there's nothing
8 but jail. I mean, the elevator comes up into the
9 jail?

10 A. Right.

11 Q. Are you familiar with the procedure of
12 being able to make collect telephone calls from
13 the pay phone on the jail floor?

14 A. I know that all -- I believe all they've
15 got is pay phones or something of that nature.
16 They have to pay for their call or call collect,
17 one or the other.

18 Q. All right. I believe -- was he allowed
19 to use the phone in homicide on the floor you were
20 on?

21 A. Yes.

22 Q. All right. And you can't make a collect
23 call or long distance call off of one of those
24 phones, can you?

25 A. Not without some kind of code-type deal.

1 You can make a collect call, I guess, from
2 anywhere, but I'm not sure what the procedure
3 would be. I know we have to have an authorization
4 number when we call out on long distance or
5 something.

6 Q. For instance, you can't dial for
7 information off of one of those phones?

8 A. No, not just straight out, no, sir.

9 Q. If you punch 0, you get the switchboard
10 operator?

11 A. Right.

12 Q. So, in order to make a collect call,
13 you'd have to get the switchboard operator to get
14 you a line, I guess?

15 A. I would assume so.

16 Q. Did Sergeant Yanchak introduce himself
17 to -- 47: Will you explain to the ladies and
18 gentlemen of the jury how my client was able to
19 make collect calls from the telephones located on
20 the fifth floor of the HPD central jail between
21 the signing of the two statements?

22 A. I don't know that that occurred.

23 Q. But your recollection is that he stayed
24 on the homicide floor the entire time?

25 A. That's my belief, yes.

1 Q. He doesn't have access to any pay phone
2 in the homicide division?

3 A. No, sir.

4 Q. You didn't let him go out in the hall?

5 A. No, sir.

6 MR. NOLL: May we approach the bench,
7 Your Honor?

8 THE COURT: You may.

9 (Off the record discussion.)

10 BY MR. McCULLOUGH:

11 Q. Are you familiar with any of the
12 following phone numbers: 221-0089?

13 A. No, sir.

14 Q. 221-9010?

15 A. No, sir.

16 Q. 221-9011?

17 A. Could you repeat that one again?

18 Q. 221-9011?

19 A. No, sir.

20 Q. 225-8036?

21 A. No, sir.

22 Q. 664-3692?

23 A. No, sir.

24 Q. Do you know whether Sergeant Yanchak
25 introduced himself to Mr. Hughes as Sergeant

1 Garrison?

2 A. I wouldn't think so, but I don't think
3 that I was in the room any time that the two met.

4 Q. Did Sergeant Yanchak use his name or
5 Garrison or any other name, make a threat in your
6 presence or within your knowledge on the life of
7 Mr. Hughes?

8 A. No.

★ 9 Q. 50: In your previous testimony you
10 stated the reason for which you arrested
11 Mr. Hughes. Would you tell the ladies and
12 gentlemen what that reason was?

★ 13 A. The reason for the arrest?

★ 14 Q. Yes, sir.

15 A. After having received the information
16 that the suspect in this case was named Preston,
17 we used that information to locate Preston Hughes
18 at the apartment complex. He's the only Preston
19 listed on the resident list. We spoke with him
20 and asked him if he would mind answering some
21 questions. He never showed any -- well, he never
22 asked us why we were questioning him, coming out
23 in the middle of the night, knocking on the door,
24 asking him to come down to the homicide division.
25 It was somewhat suspicious to us that somebody

1 wouldn't ask why we were there, why we wanted him
2 to come answer questions.

-3 The close proximity of this Preston to
4 the crime scene when Preston was supposedly the
5 suspect, according to our complainant, the fact
6 that the complainant in this case, Shawn, was at
7 the apartment complex to visit a friend named
-8 Evelyn, the fact that this Preston does know
-9 Evelyn and does know Shawn and gave a description
10 of her. In stating his description of Shawn, he
11 said that she was -- that she had yellow skin and
12 in conversation with Preston, he was talking about
13 girls with yellow skin were not any good and they
14 were all stuck up and showed a great deal of
15 tension toward girls in that nature. If I'm
16 leaving something out, I'm sorry; I don't recall
17 anything else.

18 Q. I'll show you what has been marked as
19 State's Exhibit No. 6 and ask you if it fairly and
20 accurately depicts what it shows there.

21 A. I believe it does, as I recall it. I'm
22 not sure of the layout of the entire apartment
23 because I -- when I came in, I was there and maybe
24 went down -- I'm sure I went down to the door of
25 his bedroom at one point, but that was the extent

1 of the area I was in. As far as I can tell, the
2 living room looks similar to what I remember.

3 Q. And the document itself purports to not
4 be to scale?

5 A. That's right.

6 Q. It's only schematic?

7 A. Yes, sir.

8 MR. McCULLOUGH: We would offer
9 Defendant's Exhibit No. 6.

10 MR. NOLL: Your Honor, we don't have any
11 objections. There is some other data on here, but
12 we don't object if the defendant wants to offer it
13 into evidence.

14 THE COURT: It will be admitted.

15 BY MR. McCULLOUGH:

16 Q. Defendant's Exhibit No. 6 is a diagram
17 of Mr. Hughes' apartment?

18 A. Yes, sir.

19 Q. The writing on here shows the area where
20 some things, physical items, were alleged to have
21 been found. That's what explains the writing here.

22 A. Yes, sir.

23 Q. Okay. Sergeant, have you ever told a
24 lie?

25 MR. NOLL: Objection, Your Honor.

1 That's not relevant in this case, and it's
2 argumentative.

3 THE COURT: That will be sustained.

4 BY MR. McCULLOUGH:

5 Q. 53: Your name appeared on the voluntary
6 consent for search and seizure. Who actually
7 conducted the search?

8 A. I believe it was Yanchak and Ferguson.

9 Q. Why is your name on it?

10 A. Because I was the one that presented him
11 with the document, explained it to him, and at
12 that time, I was in charge of the investigation,
13 myself and my partner.

14 Q. Did you previously state that you were
15 the person who took Mr. Hughes to his room to
16 change clothes before going downtown?

17 A. I believe actually Sergeant Hamilton
18 took him back there, and at some point I walked
19 back there, also. But Hamilton was the one that
20 first walked back there with him, I believe.

21 Q. Do you know how Mr. Hughes came to know
22 Evelyn and Shawn?

23 A. I think we talked about that earlier;
24 that is, I believe it's a cousin, named Shawn
25 Graham, has some relationship with one of the two

1 girls, Evelyn or Shandra Charles, and it was
2 through that relationship that he came to know her.
3 That's my belief.

4 Q. Did you formerly say that you answered
5 telephones while Mr. Hughes was in your custody,
6 which is the reason you didn't take him before a
7 magistrate for a warning?

8 A. No, I didn't say that.

9 Q. Well, did you answer telephones while he
10 was in your custody?

11 A. I don't know. I don't think I would
12 have answered a phone call while I was speaking
13 with him or typing a written statement. I left
14 the room on a couple of occasions that I detailed
15 to you earlier, but that would have been the only
16 times.

17 Q. Do you know that Preston's former
18 girlfriend is yellow skinned?

19 A. I don't know his former girlfriend.

20 Q. Do you know that his former roommate is
21 yellow skinned?

22 A. I don't know that, either.

23 Q. Is it not true that Mr. Hughes did not
24 describe Shawn as being yellow skinned but, rather,
25 as being brown skinned?

1 A. No, sir.

2 Q. Did you know that Preston's cousin,
3 Shawn, met Shawn through Preston?

4 A. No, I don't recall that.

5 MR. McCULLOUGH: Pass the witness.

6 THE COURT: Mr. Noll.

7 MR. NOLL: A couple of questions, Your
8 Honor.

9

10 REDIRECT EXAMINATION

11

12 BY MR. NOLL:

13 Q. Sergeant Gafford, at my request did you
14 go out to the medical examiner's office, pick up a
15 little vaginal swab and take it to the Houston
16 Police Department crime laboratory?

17 A. Yes, sir, I did.

18 Q. When did you do that?

19 A. It was a week ago this past Saturday.

20 MR. NOLL: May I approach the witness,
21 Your Honor?

22 THE COURT: You may.

23 BY MR. NOLL:

24 Q. Sergeant, let me show you what is marked
25 as State's Exhibit No. 22. Do you recognize that?

1 A. Yes, sir.

2 Q. And is that the little vaginal swab that
3 you picked up from the medical examiner's office
4 and transported to the Houston Police Crime
5 Laboratory?

6 A. Yes.

7 Q. Thank you. From the questions you were
8 asked on cross, I take it that after you
9 questioned the defendant, you actually let him use
10 the telephone?

11 A. Yes, sir.

12 Q. Let him call anyone he wanted to?

13 A. Yes, sir.

14 Q. Make him pay for the telephone, or was
15 it free access telephone?

16 A. Free access telephone.

17 Q. Did you monitor or record his phone
18 calls?

19 A. No, sir.

20 Q. Did you leave the room while he talked
21 to whoever he wanted to talk to on the phone?

22 A. Yes, sir.

23 Q. Did you place any restrictions on that
24 phone for him to call anyone in the world he
25 wanted to?

1 A. No, sir, not at all.

2 Q. It's your belief that the defendant

3 stayed on the third floor homicide office after

4 you questioned him. After you questioned him and

5 turned the investigation over to Sergeant Ferguson,

6 could he have been taken upstairs to the fifth

7 floor jail?

8 A. That's possible. I just don't know.

9 Q. You just don't know?

10 A. Right.

11 MR. NOLL: Nothing further, Your Honor.

12 THE COURT: Mr. McCullough?

13 MR. McCULLOUGH: Nothing further.

14 THE COURT: May this officer be excused?

15 MR. NOLL: Yes, sir.

16 MR. McCULLOUGH: Yes, sir.

17 THE COURT: Thank you, Sergeant Gafford.

18 You may go about your duties.

19 Call your next.

20 MR. NOLL: Sergeant Smith, Your Honor.

21 (Witness sworn.)

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

23 MR. NOLL: Thank you, Your Honor.

24

25