

CAUSE NO. 9407130

THE STATE OF TEXAS * IN THE 248th DISTRICT COURT
 *
VS. *
 *
CHARLES DOUGLAS RABY * HARRIS COUNTY, T E X A S

A P P E A R A N C E S

FOR THE STATE OF TEXAS:

Mr. Roberto Gutierrez
District Attorney's Office
201 Fannin
Houston, Texas

FOR THE DEFENDANT:

Mr. Felix Cantu
Attorney at Law
618 East 28
Houston, Texas 77008
And
Mr. Michael P. Fosher
Attorney at Law
440 Louisiana
Houston, Texas 77002

BE IT REMEMBERED, that upon this 18th day of May, 1994, the above entitled and numbered cause came for **MOTION TO SUPPRESS** before Woody R. Densen, Judge of the 248th District Court of Harris County, Texas; and the State appearing by counsel and the Defendant appearing in person and by counsel announced ready to proceed; and all preliminaries having been disposed of, the following proceedings were had, viz:

MAY 18, 1994

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THE COURT: Gentlemen, if you will stand,
raise your right hands and be sworn.

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MR. CANTU: We have a young lady, too.

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THE COURT: Everyone raise your right hand.

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(Whereupon the witnesses were duly sworn.)

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THE COURT: And I assume you want to invoke

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the rule?

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MR. GUTIERREZ: Yes, sir.

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THE COURT: Gentlemen and lady, the rule has
been invoked, which means you cannot discuss your
testimony amongst yourselves and you must remain
in the hallway until you are called in
individually.

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State will call your first witness.

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MR. GUTIERREZ: State would call Officer
Stephens.

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(Whereupon the witnesses left the
courtroom.)

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BILL STEPHENS

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

THE COURT: Mr. Gutierrez, you may proceed.
MR. GUTIERREZ: Yes, Your Honor.

DIRECT EXAMINATION BY MR. GUTIERREZ

Q State your name, please.
A Bill Stephens.
Q Mr. Stephens, would you tell us, for the record, what you do for a living?
A I'm a sergeant with the Houston Police Department and I'm assigned to the Homicide Division.
Q And how long have you been so employed?
A I have been with the Houston Police Department for 14 years and I have been in Homicide for 10 years.
Q Are you a police officer?
A I'm a sergeant.
Q Okay, sergeant. Now, in terms of your assignment, what division are you assigned to now?
A To the Homicide Division.
Q And I don't know if you already said it, but how long have you been assigned to that division?

1 **A** For 10 years.

2 **Q** Were you so assigned back in 1992?

3 **A** Yes, I was.

4 **Q** Did you have an occasion at some point, specifically

5 October 16th, 1992, to be assigned to work a case

6 involving the killing of a lady by the name of Edna

7 Franklin?

8 **A** Yes.

9 **Q** Did you make the scene on that particular case?

10 **A** No, I did not.

11 **Q** For the record, Ms. Franklin had been found with her

12 throat cut on October 15th, 1992; is that correct?

13 **A** That's correct.

14 **Q** And that would have been at 617 Westford,

15 W-e-s-t-f-o-r-d, Street, in Houston, Harris County,

16 Texas.

17 When you were assigned to the case, specifically

18 what was your function?

19 **A** I was assigned to assist Sergeants Allen and Wendel,

20 who are also Homicide sergeants, with some follow-up


21 investigation and go back and recanvas the

22 neighborhood.

23 **Q** Did you do that?

24 **A** I did.

25 **Q** Would you briefly tell us what you did?

1 **A** I first went to the morgue and observed the partial
2 autopsy, as much as Dr. Bellas did at the time, and
3 observed some collecting of evidence from the
4 Complainant, and from there, I returned back to the
5 Homicide office, where I spoke by phone to a man by
6 the name of Hillary Truitt, who lived in a house
7 directly behind 617 Westford. In that location
8 where Mr. Truitt lives is 616 Wainwright. And from
9 there, I went out and interviewed Mr. Truitt in
10  person and some other folks as well.

11 **Q** Let's stop there for just a second. Did you view
12 the body of Edna Franklin?

13 **A** Yes, I did.

14 **Q** And did you observe Dr. Bellas -- Dr. Bellas is
15 spelled B-e-l-l-a-s for the record. He is an
16 assistant medical examiner, is he not?

17 **A** Yes, he is.

18 **Q** And he was back in October of 1992 as well?

19 **A** Correct.

20 **Q** What was it that you observed him remove in terms of
21 evidence from the body of Ms. Franklin?

22 **A** Some hair. There was some black course hair as well
23 as some brown longer hair.

24 **Q** And at that time did you believe it might be
25 possibly the hair of her assailant?

1 A Yes.

2 Q Any other evidence taken from her that you can recall
3 at the morgue that may have had anything to do with
4 a possible suspect?

5 A He did like a rape kit, a standard kit where he
6 takes slides and smears from the vaginal, anal and
7 oral vaults. ¹.

8 Q In terms of the wound on Ms. Franklin, do you recall
9 offhand the type of wound that she had and the type
10 of weapon that was consistent with?

11 A Yes.

12 Q Would you explain?

13 A There were two large cutting wounds on the neck, and
14 the type of weapon would have been a knife.

15 Q Okay. And that information came from Dr. Bellas as
16 well?

17 A Yes.

18 Q So you went to talk to Mr. Truitt in person. Let's
19 jump forward and talk about him. Did H.L. Truitt --
20 spelled T-r-u-i-t-t -- live at 616 Wainwright,
21 spelled W-a-i-n-w-r-i-g-h-t; is that correct?

22 A That's correct.

23 Q And that is in Houston, Harris County, Texas?

24 A It is.

25 Q And so was Ms. Franklin's home, which we previously

1 described as having been at 617 Westford. That's
2 also in Houston, Harris County, Texas; is that
3 correct?

4 A That's correct.

5 Q And Mr. Truitt's house was directly behind that of
6 Ms. Franklin's; is that correct?

7 A Yes.

8 Q So when you went to talk to Mr. Truitt, basically
9 what did you find? What did he tell you?

10 A That he had observed a white male that he described
11 as early 20's, 5-7 to 5-8, 155 to 165 pounds, with
12 dark-colored hair but not black; medium-short, as far
13 as the hair. No glasses, no facial hair. Wearing
14 dark-colored jeans and dark-colored jacket and a
15 dark-colored T-shirt under the jacket, leaving his
16 yard, which has a fence around the perimeter of the
17 yard.

18 Q Did this arouse Mr. Truitt's suspicion in any way?

19 A Yes, it did.

20 Q What did he do? 3.

21 A He got with his brother-in-law, who had just pulled
22 into the driveway as the male was jumping the front
23 fence and, in fact, had directed Mr. Truitt's
24 attention to the male, and they followed the male
25 down the street or down Wainwright Street for a short

1 distance, to where they verbally confronted him and
2 asked him basically what he was doing, and that's
3 where they got a good look at him. #

4 Q And they described him. Do you recall about what
5 time it was that Mr. Truitt and, I believe, his
6 brother-in-law that was with him had the
7 confrontation with this individual?

8 A Approximately 8:15 p.m.

9 Q Why was Mr. Truitt sure about the time?

10 A His mother, Mr. Truitt's mother, was in the hospital
11 and he recalled that time vividly because of the
12 hospital visits and the scheduling that he had done
13 to take care and see his mother.

14 Q Okay. And the time was important in reference to
15 the killing of the deceased, Edna Franklin, for what
16 reason?

17 A It was within the window of opportunity that the
18 assailant had.

19 Q And all this would have been October 15th, 1992?

20 A Correct.

21 Q The same day that Ms. Franklin was found deceased.
22 So what else did Mr. Truitt tell you?

23 A That when they talked to the male, that the male had
24 put his hands in his pockets and then opened his
25 jacket up and said, "See, I don't have anything."

1 And then once they did that, they returned back to
2 Mr. Truitt's residence, "they" being Mr. Truitt and
3 his brother-in-law. 5

4 Q Did you talk to some other folks, in terms of who
5 might fit that description?

6 A Yes.

7 Q And whom did you talk to and what name was
8 mentioned?

9 A I talked to some of the family members of the
10 Complainant as well as a lady by the name of Shirley
11 Gunn, and the description fit a male they knew as
12 Mr. Raby, the Defendant.


13 Q And as a result of that, did Ms. Gunn see Mr. Raby
14 with anything sometime shortly before Ms. Franklin
15 was killed?

16 A Yes. Ms. Gunn told me that she saw Mr. Raby between
17 5:00 and 6 o'clock p.m. as he had come by the
18 residence next door to her, and she had talked to
19 him at that point, and while he was there, he pulled
20 out a pocketknife and used that knife to clean his
21 fingernails.

22 Q And that pocketknife would have fit the description
23 of the weapon that had been used in the killing; is
24 that correct?

25 A Yes. 6

1 Q In terms of anything else, what else did Ms. Gunn
2 tell you that Mr. Raby -- she knew Raby by name; is
3 that correct?

4 A She knew him by name and sight. She also gave a
5 clothing description, which she described as dark
6 stone-washed jeans, a black Concert T-shirt, a black
7 leather jacket and a pair of dark shoes, which was
8  consistent with what Mr. Truitt had said earlier. 7

9 Q Did you talk to a lady by the name of Mary Scott?

10 A Yes, I did.

11 Q And she lived at 607 Wainwright; is that correct?

12 A That's correct.

13 Q And where would that be in terms of proximity to the
14 house of Ms. Franklin?

15 A Again, on the same block as Mr. Truitt; well within
16 walking distance.



17 Q Did she tell you about having seen Mr. Raby sometime
18 about dusk of the day that Ms. Franklin was killed?

19 A Yes.

20 Q And what was it she told you?

21 A She said it was just getting dark. By the time she
22 got to the door, she saw the person who was knocking
23 on her door, and that had aroused her attention and
24 made her go to the door, walking down the street,
25 and she recognized the person as Charles Raby. She

1 said that she could tell that he was wearing a dark
2 jacket and dark jeans when she saw him at her house.
3 Q In terms of dusk, where would that have been in
4 relation to when the body was found, the body of Ms.
5 Franklin?
6 A Before.
7 Q So, did you talk to anyone else?
8 A Yes, I did.
9 Q Who else did you talk to?
10 A I talked to the daughter of the Complainant, Linda
11 McClain, who we discussed with her any property that
12 might have been taken from the Complainant.
13 Q In terms of the belongings of the Complainant, just
14 for the record, were they found strewn around the
15 body, outside of the purse at the time she was
16 found?
17 A Yes.
18 Q Was her body partially nude?
19 A Yes.
20 Q Pants taken off, panties ripped off?
21 A Yes.
22 Q In terms of Mr. Raby, what else did you learn in
23 terms of -- and I ask you this question, you're
24 aware obviously that this question cannot be asked in
25 front of a jury -- but did you find out anything

1 about whether or not Mr. Raby had recently made
2 parole on a charge of aggravated robbery?
3 A Yes, I did.
4 Q Is your recollection that he had been paroled about
5 two months before the killing of Ms. Edna Franklin?
6  A Yes, on a robbery charge, where he had used a knife. Y
7 Q Now, did you talk to -- I believe that you said that
8 you had talked to Mary Scott; is that correct?
9 A Correct.
10 Q Ms. Scott gave you a description of the kind of
11 clothing that he'd been wearing when she saw him
12 walking away from her driveway shortly before or
13 right at the time that the sun was going down. How
14 did she describe that?
15 A Again, the dark clothing, dark jacket and dark pants.
16 Q Did you also talk to someone by the name of Blaine
17 Earl Wright, Junior?
18 A Yes.
19 Q And what did he tell you?
20 A He told me that Mr. Raby had come by his house and
21  that his father had run Mr. Raby off around 6:30 9
22 p.m., and that as he was driving down Irvington with
23 his mother, that he had seen Mr. Raby, who he knows
24 by name and sight, walking down the street, and he
25 also gave me a clothing description of Mr. Raby that

1 is consistent with the dark pants, stone-washed jeans
2 and dark jacket and dark T-shirt.

3 Q Now, for the record, in your offense report you wrote
4 his name down as "Rady." That was your understanding
5 at the time; is that correct?

6 A That's a typographical error. I switched it back
7 and forth through the offense report and I was not
8 aware of it until I read it today.

9 Q Since then, it was discovered his name was Raby,
10 R-a-b-y?

11 A That's correct.

12 Q But we're talking about the same individual?

13 A Yes, sir.

14 Q Mr. Wright, when you said that he was driving down
15 Irvington, you're referring to the fact that Mr.
16 Wright told you that he and his mother were driving
17 down Irvington, which is close to where Ms. Franklin
18 lived, and that they saw the Defendant sometime after
19 7:00 p.m., after he had been run off of Mr. Wright's
20 home; is that correct? 10.

21 A That's correct.

22 Q And do you know offhand where Mr. Wright's home was,
23 7719, in relation to the home of the victim Ms.
24 Franklin, in terms of whether it was near or far or
25 walking distance?

1 **A** It's near. I'm not sure if it's walking distance or
2 not; I don't recall. I did not go to his house. I
3 talked to him by phone.

4 **Q** At any rate, Irvington is approximately a block-and-
5 a-half or two or perhaps three at the most from 617
6 Westford; is that correct?

7 **A** Yes; it's very close.

8 **Q** So you had information that he used a knife, that he
9 had been to the penitentiary, where he had used a
10 knife in an aggravated robbery, that he had been in
11 very close proximity to the home of the Complainant
12 immediately before the killing, and based on a
13 description, you believed that the person that had
14 jumped the fence at Mr. Truitt's house had been the
15 Defendant; is that correct?

16 **A** That's correct.

17 **Q** Based on this and any other information that you
18 might have had, did you try to obtain a warrant?

19 **A** I did.

20 **Q** Explain to the Judge what you did in that regard.

21 **A** I went to the Special Crimes Division of the Harris
22 County District Attorney's Office and met with
23 Assistant District Attorney Ted Wilson and explained
24 the facts to him and he constructed a warrant for
25 the arrest and for obtaining the blood of Mr. Raby.

1 And from there, I took the warrant to 339th District
2 Court, where it was signed at approximately 7:15 p.m.
3 by Judge Ackerman. I take that back: I met him at
4 201 Fannin.

5 Q Did he drive down to that location?

6 A Yes, he did.

7 Q Or walk down, whatever. At 7:15 on October 16th,
8 1992; is that correct?

9 A That's correct.

10 Q So this is approximately 24 hours or within 24 hours
11 of the time that the Complainant was found or maybe
12 a little bit more than 24 hours after she was found
13 dead; is that correct?

14 A That's correct.

15 Q What happened next?

16 A From there, I assisted Sergeants Wendel and Allen and
17 Shirley, Swaim and investigator Brown in attempting
18 to locate Mr. Raby.

19 Q Now, the warrant you had was on the basis of a
20 criminal trespass that had occurred at Mr. Truitt's
21 house; is that correct?

22 A That's correct. //

23 Q And also it was an arrest and search warrant, trying
24 to obtain his blood, hair, possibly body fluid and
25 things like that; is that correct?

1 **A** That's correct.

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(Whereupon State Exhibit No. 1 was
previously marked for identification purposes.)

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Q I'll show you what has been marked as State Exhibit
No. 1 and I will ask you whether or not that is a
certified copy of the original arrest warrant --
search and arrest warrant, excuse me.

11

A Yes, sir, it is.

12

13

Q And as you inspect it, make sure all the pages are
there and everything else.

14

A Yes, sir.

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Q And this one, by the way, for the record, contains
the signature of the Judge, your signature before the
Judge and the Judge's signature, and you swore to it
and it recites some of the facts that you have
mentioned right now and additional facts as well; is
that correct?

21

A That's correct.

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MR. GUTIERREZ: Your Honor, I would like
the record to reflect that I am tendering
State's Exhibit No. 1 for the Court's

1 inspection. It was previously shown to the
2 Defense, Mr. Cantu.

3 THE COURT: Is there any objection, for the
4 purposes of this hearing, introducing this?
5 Are you offering it at this time?

6 MR. GUTIERREZ: At this point I was merely
7 offering it to the Court. I don't have any
8 objection if the Defense wants to --

9 THE COURT: Well, I'll look at it. If you
10 want to offer it for the purposes of this
11 hearing.

12 MR. GUTIERREZ: Yes, sir, that's fine.

13 THE COURT: Any objection?

14 MR. CANTU: May I look at it, Judge? I
15 think I've seen it.

16 Is this the one you have shown me?

17 MR. GUTIERREZ: Yes.

18 MR. CANTU: No objections, Your Honor.

19 THE COURT: State Exhibit 1 is admitted
20 into evidence for the purpose of this hearing.

21 MR. GUTIERREZ: At this time, Your Honor, I
22 pass the witness on this issue.

23 THE COURT: Mr. Cantu.

24 MR. CANTU: I don't have any questions of
25 this witness. 12



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MR. GUTIERREZ: State would call Officer Allen, Your Honor.

May we ask that Officer Stephens remain in case there's a need to recall him?

THE COURT: Okay.

WAYMON ALLEN

was called as a witness by the State, and after having been previously duly sworn, testified under his oath as follows:

DIRECT EXAMINATION BY MR. GUTIERREZ

Q State your name for the record, please.

A Sergeant Waymon Allen.

Q Have you already spelled your name for the benefit of the court reporter?

A Yes, I did.

Q Would you explain to us and to the Judge and for the record what you do for a living?

A I'm a sergeant with the Houston Police Department.

Q And you are a police officer; is that correct?

A That's correct.

Q How long have you been a police officer?

A It will be 20 years in November.

1 Q And in those 20 years, how long have you been
2 assigned to Homicide?
3 A Since 1986.
4 Q Did you have occasion to be assigned to a Homicide
5 back in October of 1992?
6 A Yes, sir, I was.
7 Q Did you have an occasion to be dispatched to the 600
8 block of Westford, spelled W-e-s-t-f-o-r-d, in
9 Houston, Harris County, Texas, to investigate the
10 killing or the apparent homicide of a lady that you
11 later learned to be Edna Franklin?
12 A Yes, sir, I was assigned by the night shift
13 lieutenant to make that murder investigation.
14 Q What shift were you working at the time, Sergeant?
15 A Day shift.
16 Q And what hours would those be?
17 A 7:00 a.m. to 3:00 p.m.
18 Q In this particular case, you had worked overtime; is
19 that correct?
20 A That's correct. My squad was on call for that month
21 to make call-outs for the Homicide Division.
22 Q So did you personally go to 617 Westford, where Ms.
23 Franklin was found?
24 A Yes, sir, I did.
25 Q And did you observe her body at the scene?

1 **A** Yes, sir.

2 **Q** Did you observe the knife wounds, the apparent knife
3 wounds, on her throat?

4 **A** Yes, sir, I did.

5 **Q** And the way in which the body was found, semi-nude?

6 **A** That's correct.

7 **Q** And you were part of the investigation regarding her
8 death; is that correct?

9 **A** That's correct. I was the scene investigator.

10 **Q** I know that you did several things in this case, but
11 let me get to the point of the arrest of the
12 Defendant. Did you take part in the arrest of the
13 Defendant?

14 **A** Yes, sir, I did.

15 **Q** Was he arrested pursuant to a warrant that was
16 obtained by Officer W -- is it I. Stephens?

17 **A** Yes, sir, it's Sergeant W.I. Stephens.

18 **Q** Okay. Which is now marked as State Exhibit No. 1,
19 based on an arrest warrant. Did you help arrest him
20 pursuant to that warrant?

21 **A** Yes, sir, I did.

22 **Q** And when did that arrest take place and where?

23 **A** The arrest took place on Monday, October the 19th, at
24 approximately 11:15 a.m. in the morning and it was at
25 706 Reid Street, in Houston, Harris County, Texas.

1 Q Do you recall how Reid Street is spelled?

2 A I believe it's R-e-i-d.


3 Q Who led you to that location?

4 A We had gone earlier that morning to the Defendant's

5 girlfriend's house, and her sister told us that the

6 Defendant Charles Raby and Mary Gomez might be at his

7 stepfather's house. She had accompanied us to Reid

8  Street and pointed out the house. 13

9 Q Now, for the record, you have observed Mary Gomez in

10 the courtroom today shortly before we began this


11 hearing; is that correct?

12 A That's correct, sir.

13 Q And when you refer to Mary Gomez during the course

14 of your testimony, are you referring to the same

15 individual that was here in the courtroom earlier

16  today? 14

17 A Yes, I am.

18 Q What type of structure was it that you went to at

19 607 Reid Street?

20 A Was it 607 or 706?

21 Q Let's see, what supplement are we looking at?

22 A No. 9. 706 Reid.

23 Q Okay. That's my typographical error. Not yours.

24 A Okay.

25 Q So at 706 Reid, was it a home or was it a trailer?

1 **A** Yes, sir, it was a one-story house.

2 **Q** Would you explain to the Judge what happened once you
3 got there?

4 **A** We arrived at the location. I say "we," Your Honor,
5 myself, Sergeant Swaim, Officer Brown, Sergeant
6 Stephens. I believe I recollect that Swaim and Brown
7 went to the back door of this house and I went to
8 the front door to knock on the door and the door was
9 opened by the Defendant.

10 **Q** When you talk about the Defendant, are you talking
11 about the individual to my far left, Charles Raby?

12 **A** Yes, sir, the one with the light-blue shirt and the
13 blue-striped tie.

14

15 **MR. GUTIERREZ:** Your Honor, I would like
16 the record to reflect that the witness has
17 identified the Defendant.

18 **THE COURT:** The record will so reflect.

19

20 **Q** (By Mr. Gutierrez) What happened then?

21 **A** Immediately when we had gotten to the door, I said,
22 "Police officers." Raby stepped out on the porch.
23 He was advised he was under arrest. Raby said that
24 he hadn't done anything. He was handcuffed for our
25 protection per procedure. He was walked to Sergeant

1 Shirley's unmarked car and placed in that car.

2 Q I want to go back just a second, in terms of whether
3 or not the Defendant made any unsolicited comments,
4 in other words, some comments, some statements, that
5 were not the result of custodial interrogation. In
6 other words, specifically, did he make the statement
7 to the effect, "I'm not going to run"?

8 A Give me one second here. It's verbatim in the
9 offense report. The time that I approached him on
10 the front porch, I advised him he was under arrest
11 and noted the time, it was 11:15, and Raby
12 unsolicited, stated, "I did not do anything, and I
13 don't know why I ran the other night." 15.

14 Q I want you to look up a little higher in your
15 report. Specifically, it's a few lines up. I want
16 to back up, in terms of time, at the point where you
17 walked up to the front porch and the Defendant came
18 out as per your offense report. What was the
19 Defendant's first comment?

20 A His first statement to me was that he was not going
21 to run.

22 Q And then in terms of sequence of events, what
23 happened after that, leading up to his next comment?

24 A That's when he was searched and handcuffed and
25 escorted to Sergeant Shirley's vehicle.

1 Q At what point did he say, "I didn't do anything. I
2 don't know why I ran the other night. I was just
3 scared"? 16

4 A That was when we put him in the car.

5 Q Was anybody questioning him at that time?

6 A No.

7 Q Did he make that comment, "I did not do anything. I
8 don't know why I ran the other night. I was just
9 scared"?

10 A Yes, sir, he did.

11 Q The reference to "the other night," what did that
12 pertain to, to your knowledge?

13 A This was Monday. Over the weekend several other
14 investigators involved in this investigation --
15 Sergeant Stephens and Wendel and the other
16 officers -- had gone to 1201 East 26th Street, which
17 is the residence of Mary Gomez, and attempted to
18 execute the arrest of Charles Raby and he fled from
19 them that night.

20 Q Going out the back door of Mary Gomez' house?

21 A That's correct. 17

22 Q Now, in terms of the Defendant, he's put in the car
23 by Officer Shirley, who takes him to the police
24 station? 18

25 A Sergeant Shirley transported Raby to the Homicide

1 Division. That was after I had read him his rights
2 from a blue card, issued by the D.A.'s office, at
3 the scene, and I asked him to sign a voluntary
4 consent to search form so that we might could look
5 for any evidence that would be at his stepfather's
6 home in connection with this homicide.

7 Q And what did the Defendant agree to do?

8 A He, of course, stated he understood his rights. He
9 waived his rights, a form was completed by Sergeant
10 Shirley, was given to me, and I read this form to
11 Charles Raby. He stated that he understood it, and
12 he signed the form. 19.

13 Q And this form, is that what is titled Voluntary
14 Consent to Search and Seizure, marked State Exhibit
15 No. 2, for purposes of this hearing?

16 A Yes, it is.

17

18 (State Exhibit No. 2 was previously marked
19 for identification purposes.)

20

21 Q Is that the Defendant's signature on the bottom
22 right?

23 A Yes, sir.

24 Q What officers witnessed him signing that voluntary
25 consent to search?

1 **A** Officer Allen, Brown and Sergeant John Swaim.
2 **Q** And this was done in your presence, is that correct?
3 **A** That's correct.
4 **Q** And you saw the Defendant sign that and that was in
5 your presence as well?
6 **A** Yes, sir.
7 **Q** Did you satisfy yourself of the Defendant, after you
8 read him this voluntary consent to search form, that
9 he understood his rights as set out in the form?
10 **A** Yes, sir.
11 **Q** And did he sign that voluntarily?
12 **A** Yes, sir.
13 **Q** Did he voluntarily consent to the search and seizure
14 of any property in his home?
15 **A** Yes, sir.
16
17 **MR. GUTIERREZ:** I would like to have the
18 record reflect I am tendering State's Exhibit
19 No. 2 to the Defense. I would like to ask that
20 it be admitted into evidence for purposes of
21 this hearing.
22
23 **Q** (By Mr. Gutierrez) Was a search conducted of his
24 home?
25 **A** Yes, sir, it was.

1 Q Or his stepfather's home?

2 A His stepfather's home.

3 Q What kind of property was retrieved from the inside?

4 A We had left the location. It's my understanding that

5 Sergeant Swaim and Officer Brown had located a

6 jacket, and I don't recall for sure, but maybe a

7 shirt.

8 Q Possibly pants as well?

9 A Right. I wasn't involved in that search.

10 Q Okay. At any rate, the Defendant signed the

11 voluntary consent to search, and where did you all go

12 after that?

13 A We left 706 Reid and drove directly to the Homicide

14 Office at 61 Riesner.

15 Q Now, in fact, just for clarity's sake, had you read

16 him his Miranda Warnings at the scene where he was

17 arrested; is that correct?

18 A That's correct.

19 Q Do you have what's called the blue card in Harris

20 County?

21 A Yes, I do.

22 Q Would you please pull that and, for the record, read

23 the warnings as you read them to the Defendant the

24 first time when he was taken into custody.

25 A This is a magistrate's warning, Texas Statutory

1 Warnings: "You have the right to remain silent and
2 not make any statement at all, and any statement that
3 you make may be used against you and probably will
4 be used against you at your trial; any statement you
5 make may be used as evidence against you in Court;
6 you have the right to have a lawyer present to
7 advise you prior to and during any questioning; if
8 you are unable to employ a lawyer, you have the
9 right to have a lawyer appointed to advise you prior
10 to and during any questioning; and you have the right
11 to terminate the interview at any time." 2^d

12 Q Did the Defendant acknowledge, during the course of
13 you reading those warnings or at the conclusion of
14 them, that he understood his rights?

15 A Yes, he did.

16 Q And which way did he do it, after each one or after
17 all of them together, if you recall?

18 A I asked him if he understood all of the rights that
19 I had read to him and he stated that he did.

20 Q This was before he was put in the car by Officer
21 Shirley; is that correct?

22 A No, sir. We were at the car at that time. I went
23 to the car and read him his rights there.

24 Q At some point the Defendant ended up at the police
25 station; is that correct?

1 A Yes, sir. We left, as I testified, 706 Reid.
2 Sergeant Shirley drove the Defendant, Charles Raby,
3 to the Homicide Division. I followed with Mary Gomez
4 and her infant in my car.
5 Q So you went straight to the Police Department; is
6 that correct?
7 A That's correct.
8 Q About how long did it take you to get there,
9 approximately?
10 A Oh, probably 15 minutes or so.
11 Q What happened there?
12 A On our arrival, I escorted Ms. Gomez up to the 3rd
13 floor of the Homicide Division, where she was seated
14 in the waiting room that we have there for families.
15 Charles Raby was placed in an Interview Room by
16 myself and was unhandcuffed. ²¹
17 Q Did he ask for any refreshments or did you provide
18 him with any refreshments?
19 A At that time I provided Charles Raby and myself with
20 coffee. ²²
21 Q Did you ask him how he liked it?
22 A Yes, sir. He took his coffee black.
23 Q And did you provide it to him that way?
24 A That's correct.
25 Q What was his emotional demeanor at this time?

1 A He at that time and throughout the majority of our
2 interview was -- he seemed slightly nervous, somewhat
3 downcast, but was cooperative the whole time he was
4 there. ²³

5 Q So you gave him the coffee, and what happened next?

6 A Then I obtained a Statement of Person in Custody form
7 which was a blue form, that on many occasions a
8 statement can be typed on the form itself. It's
9 used in interviewing persons that are in custody. I
10 obtained that form and advised Charles Raby that I
11 wanted to talk to him about a murder case, and I
12 asked him if he knew Eric Bengé and Lee Rose. He
13 stated that he did. And I told him it was their
14 grandmother that had been murdered, ²⁴ and I gave him
15 his rights again from the Statement of Person in
16 Custody form.

17 Q This is the second time; is that correct?

18 A That's correct, sir.

19

20 (State Exhibit No. 3 was previously marked
21 for identification purposes.)

22

23 Q I'll show you what has been marked as State's Exhibit
24 No. 3. I'll ask you whether or not that is the
25 Statement of Person in Custody form that you're

1 referring to.

2 A Yes, sir, it is.

3 Q And in this particular warning page, would you, for
4 the record, read again the warnings that you read to
5 him on that day?

6 A Read it verbatim like it is?

7

8 THE WITNESS: Is that okay, Your Honor?

9

10 Q (By Mr. Gutierrez) The way you read it to him.

11 A It's filled in by myself. This is my handwriting.
12 This is Statement of Person in Custody, dated October
13 the 19th, 1992, at approximately 12 o'clock noon.
14 Statement of Charles Douglas Raby, taken in Harris
15 County, Texas.


16 "Prior to making this statement, I have been
17 warned by Sergeant W.O. Allen of the Houston Police
18 Department, the person to whom the statement is made,
19 that I have the right to remain silent and not make
20 any statement at all and any statement I make may
21 and probably will be used against me at my trial.
22 Any statement I make may be used as evidence against
23 me in Court. I have the right to have a lawyer
24 present to advise me prior to and during any
25 questioning. If I am unable to employ a lawyer, I

1 have the right to have a lawyer appointed to advise
2 me prior to and during any questioning I have the
3 right to terminate the interview at any time.

4 "Prior to and during the making of this
5 statement, I knowingly, intelligently and voluntarily
6 waive the rights set out above and make the following
7 voluntary statement." ²⁵

8 Q Now, did Mr. Raby acknowledge that he understood
9 these rights?

10 A Yes, sir, he did. I make it a point that when I go
11 over these warnings, that I explain that "waive"
12 means to give up; that you're actually giving up your
13 rights, that's what "waive" means, and "terminate"
14 means you can stop the interview at any time you
15 wish. I asked him if he fully understood all of
16 these rights and he stated he did. ²⁶ I asked him to
17 initial each one of those warnings to indicate that
18 was an acknowledgement, that he did understand his
19 rights, and he initialed not only the warnings but at
20 the time that I gave him the warnings, he wrote in
21 his handwriting that he fully understood his rights
22 and was willing to talk to Sergeant Allen. I had
23 him draw a line across the sheet so that nothing
24 could be added to this form, and he signed across it
25 Charles D. Raby, and then I asked Sergeant Swaim and

1 Brown to step into the room and to go over these
2 warnings with him, and, they also asked him if he
3 fully understood his rights, and he stated he did,
4 and they witnessed the signing at the bottom where it
5 says "signature of person making statement."
6 Q And all this that you have been talking about, the
7 writing being on something, it's all on State's
8 Exhibit No. 3; is that correct?
9 A That's correct.
10 Q And you observed Mr. Raby sign State's Exhibit No. 3;
11 is that correct?
12 A Yes.
13 Q Now, for the record, the exact quote in terms of
14 what is written, "I fully understand my rights, that
15 I will talk to Sergeant Allen," that's what it says;
16  is that correct? 27
17 A That's correct.
18 Q And there's a line drawn diagonally with the name
19 Charles D. Raby. All this writing, including the
20 part that says "Signature of person making statement"
21 as well as the initials on the left of the warnings
22 numbered one through five on the top left, all those
23 are in the Defendant's handwriting; is that correct?
24 A Yes.
25 Q As is the "C.R." next to the time, at the top, the

1 "C.R." under the statement explaining that he
2 knowingly, intelligently and voluntarily waives his
3 rights and is going to make a voluntary statement,
4 that "C.R." is the Defendant's writing; is that
5 correct?

6 **A** Yes, sir.

7

8 **MR. GUTIERREZ:** Your Honor, I would like to
9 ask the record to reflect I am tendering these
10 exhibits to the Defense, which I have tendered
11 to before -- in fact, I have given a copy to
12 the Defense of State Exhibit No. 3. I would
13 like to ask that State Exhibit No. 3, and in
14 the event State's 2 is not in evidence in this
15 hearing, I would like to ask that both State
16 Exhibits 2 and 3 be admitted into evidence for
17 purposes of this hearing.

18 **THE COURT:** Any objections?


19 **MR. CANTU:** No objections, Your Honor.

20 **THE COURT:** State's Exhibits 2 and 3 are
21 admitted into evidence.

22 **MR. GUTIERREZ:** And I would like to tender
23 this to the Court so the Court will inspect
24 these.

25

1 Q (By Mr. Gutierrez) Sergeant Allen, what happened
2 next?

3 A After he had given up his rights to an attorney, to
4 remain silent, I continued the interview. We started
5 to discuss -- I asked him if he knew the deceased,
6 the Complainant, in this case, Edna Franklin. He did
7  know her first name. ²⁸ I asked him to recollect --
8 well, I asked him if he had been to her house
9 Thursday night, which was the night of the murder.
10 He stated he had not. And there were several
11 interruptions in this little office. This Interview
12 Room was next to the coffee pot there in the
13 Homicide Division. Recently they have placed a
14 number of old case files in the office, so there
15 was a lot of interruptions in and out of the door.
16 So I moved Charles Raby to another office located
17 within our Interview Room so we could continue our
18 interview.

19 Q Let me stop you just there. At some point, say, 12
20 minutes past 12:00, to be specific, did you ask the
21 Defendant to sign another voluntary consent to
22 search, this time for blood, urine, hair or body
23 fluid in general? ~~24~~

24 A Yes, sir, I did.

25

1 (State Exhibit No. 4 was previously marked
2 for identification purposes.)
3

4 Q And that is what has been marked as State Exhibit
5 No. 4?

6 A Yes, it is.

7 Q And would you explain to the Judge how you went
8 about explaining this to the Defendant and how he
9 went about signing it?
10

11 THE WITNESS: Your Honor, I asked him if he
12 would be willing to give up any blood or hair
13 specimens so that we could use them for
14 comparison purposes to any evidence in this
15 case. He stated he had no objections. I
16 obtained the voluntary consent for taking of
17 samples: blood, urine or hair. This form is
18 completed by me. It's dated October 19th, 1992.
19 I placed the Defendant's name, "I, Charles D.
20 Raby," who I was asking to give consent, at the
21 top of the form, and asked him if he was
22 willing to do this. I read the form to him. ²⁹
23 Again, he stated that he would be willing to
24 consent to the taking of blood, hair or urine
25 specimens, which was needed, and he signed this

1 form at 12:12 p.m., Charles D. Raby, and again
2 this was witnessed by Sergeant John Swaim and
3 Officers Allen and Brown.

4
5 Q (By Mr. Gutierrez) And this was also done in your
6 presence; is that correct?

7 A That is correct.

8 Q And you observed Mr. Raby sign where it says "sign"
9 and then there's an "X", and it's signed Charles D.
10 Raby, 12:12 p.m.; is that correct?

11 A Yes, sir.

12

13 MR. GUTIERREZ: Your Honor, I would like
14 the record to reflect that I am tendering
15 State's Exhibit No. 4 to the Defense lawyer for
16 their inspection. I would ask that State
17 Exhibit 4 be admitted into evidence for purposes
18 of this hearing.

19 THE COURT: Any objections?

20 MR. CANTU: No objections, Your Honor.

21 THE COURT: State's Exhibit 4 is admitted
22 into evidence.

23 MR. GUTIERREZ: And I would like the record
24 to reflect I am tendering State's Exhibit No. 4
25 to the Court for his inspection.

1 Q (By Mr. Gutierrez) Getting back to you, Sergeant,
2 Mr. Raby did understand that he was consenting to the
3 taking of blood or fluid or saliva, body fluids in
4 general, for purposes of whatever the State wanted to
5 use them for; is that correct? ³⁰
6 A That's correct.
7 Q And he voluntarily waived his rights regarding that
8 as well?
9 A Yes, sir.
10 Q I'm sorry to interrupt you. You were talking about
11 your conversation with him. Let me ask you very
12 briefly, did he first deny having been the person who
13 had committed the killing of Edna Franklin?
14 A Yes, sir, he did. ³¹
15 Q Did he at some point confess?
16 A Yes, sir, he did. ³²
17 Q Explain to the Judge how that happened.
18 A As I stated, I moved the Defendant Charles Raby to
19 the other Interview Room due to the interruptions
20 that were occurring, coming in there. Like I said,
21 there had been a lot of boxes and old files put in
22 that room and it's a very small room, so we moved to
23 another Interview Room within the Homicide Office,
24 that was located at the back of the room. It's a
25 very large room. There were two sergeants actually

1 working in the room when we entered it. It does not
2 have a door on that particular Interview Room, so
3 it's open to anyone during those hours. We were
4 seated in the room. We, again, started to continue
5 the interview, and at one point he asked to go to
6 the rest room, so I escorted him to the rest room,
7 and he did go to the rest room.

8 Sergeant Shirley at one point brings in
9 hamburgers and a Coke and we were eating as the
10 interview is continuing. The chemist arrived to take
11 the blood during this interview time and actually
12 withdraws the blood, so the interview is stopped at
13 that time. That's when the chemist's name is filled
14 in at the top of the form. ³³ At that time she takes
15 the blood, so then we still continue the interview.

16 I asked Raby to recollect where he had been the
17 previous Thursday. He gave a very detailed
18 description of places he had gone to that evening.
19 He stated that he had gone to visit a brother and
20 other friends' houses, acquaintances that he knew in
21 the north side of Houston.

22 Q Some of them in close proximity to the house of the
23 victim?

24 A That is correct. However, he denies that he had
25 actually gone to the victim's house. I told him

1 that I knew he wasn't being truthful, that he had
2 been identified as going over a fence from the
3 victim's backyard, and at that time Raby looked down
4 at the floor and his eyes teared up and he stated
5 that he was there. ³⁷

6 Q What happened next?

7 A I asked him if he would be willing to give a written
8 statement, and he stated that he would. He asked me
9 if he could talk with his girlfriend before we took
10 a statement. I told him that I would allow him to
11 talk with her for a few moments. I escorted him
12 over to the family waiting area, where Ms. Gomez was
13 located, and allowed him to talk with her briefly,
14 and then we returned to the Interview Room and I
15 took a written statement from him. ³⁵

16 Q Would you explain -- you said when he talked to Mary
17 Gomez, were you present when he talked or did you
18 leave the two alone for a while?

19 A I left them briefly. ³⁶

20 Q After you went back for him and started taking the
21 statement, would you explain to the Judge what
22 procedure you followed then?

23 A Yes, sir. The statement was taken on a computer, on
24 a Word Processor computer. In taking that statement,
25 I had Charles Raby seated to my right. The

1 statement was displayed on the monitor, where he
2 could read the statement as it's typed. I asked him
3 if he could read it; he said that he could.³⁷ Since
4 it is a Statement of a Person in Custody, the
5 warnings that I read to him earlier on the blue
6 form, that's been provided to the Court, is displayed
7 on that monitor. I read him his rights again. At
8 that time we went over the warnings and he stated
9 that he understood them and gave up his rights. And
10 I asked him about the statement, and I quote, he
11 told me to put it down like it happened. Yes, sir,
12 he told me to go ahead and put it down like it was,
13 because I had asked him, that he wasn't telling me
14 the truth earlier and he said, "Well, just go ahead
15 and put it down like it was. I was not telling the
16 truth at first." And I asked him why he didn't
17 tell the truth, and he responded that he was scared.

18

19 (State Exhibit No. 5 was previously marked
20 for identification purposes.)

21

22 Q I'll show you what has been marked as State Exhibit
23 No. 5 and ask you whether this is the printed-out
24 version of the statement that you took from the
25 Defendant.

1 **A** Yes, sir, it is.

2 **Q** In terms of -- you said earlier that the Defendant
3 could see it as you typed it. Did he acknowledge
4 that in the statement itself? In other words,
5 there's a statement in there where he says --

6 **A** That's correct, sir. The first two paragraphs on the
7 first page is an introduction into the statement. It
8 covers his information, his age, where he was born,
9 where he went to school, years of education, where we
10 were, that we were at the Houston Police Department,
11 the date and time, and acknowledgement that I've read
12 him his rights on two occasions prior to this, that
13 he understood his rights, that he hadn't been
14 threatened or promised anything in return to make
15 this statement. 38

16 **Q** But in this particular statement, he acknowledges
17 that he can read the statement as it's being typed?


18 **A** That's correct.

19 **Q** Now, what time did you begin to take the statement?

20 **A** At 1:24 -- approximately 1:24 is the time that this
21 written statement was started.

22 **Q** Now, as you indicated, State's Exhibit No. 5 is also
23 titled at the top, Statement of Person in Custody; is
24 that correct?

25 **A** Yes, sir.

1 Q And it has the same warnings that you have read in
2 State's Exhibit No. 3; is that correct?
3 A That's correct.
4 Q That is, a blue form that we submitted earlier, with
5 the Defendant's signature on it; is that correct?
6 A That is correct.
7 Q Now, as you read him his warnings, did you ask him
8 anything regarding whether or not he understood these
9 warnings?
10 A Yes, sir, I did.
11 Q Would you please explain?
12 A In the computer format, it's set up to where you can
13 type in an acknowledgement by the person that you're
14 interviewing and it has a space for the response of
15 that individual after each warning, and as I read
16 each warning, I asked him if he understood that
17 warning, and he responded yes.
18 Q And you have written this on State's Exhibit No. 5,
19 is that correct?
20  A Yes, sir; that was typed on there. 39
21 Q Would you please, very quickly, read the first
22 warning and his response all the way through 5 -- 6,
23 I'm sorry. All the way through 6.
24 A And just read the first one?
25 Q Well, why don't you go ahead and read them very

1 quickly and talk about what his response was to each
2 one.

3 A All right. "Prior to making this statement, I was
4 warned by Sergeant W.O. Allen of the Houston Police
5 Homicide Division, the person to whom this statement
6 was made, that I have the right to remain silent and
7 not make any statement at all, and any statement I
8 make may and probably will be used against me at my
9 trial. "Response: Yes."

10 "Any statement I make may be used as evidence
11 against me in Court. Response: Yes.

12 "I have the right to have a lawyer present to
13 advise me prior to and during any questioning.

14 Response: Yes, sir.

15 "If I am unable to employ a lawyer, I have the
16 right to have a lawyer appointed to advise me prior
17 to and during any questioning. Response: Yes, sir.

18 "I have the right to terminate or stop this
19 interview at any time. Response: Yes, sir.

20 "Prior to and during the making of this
21 statement, I knowingly, intelligently and voluntarily
22 waived or gave up the rights set out above and made
23 the following voluntary statement. Response: Yes,
24 sir.

25

1 Q Now, did the Defendant indicate how far he had gone
2 in school?
3 A Ten years of education.
4 Q Did you satisfy yourself at some point that he knew
5 how to read and that he could understand what was
6 being written down and had been written down?
7 A Yes, sir.
8 Q And did the Defendant understand what was being
9 written and did he have a chance to read his
10 confession?
11 A Yes, sir, he did.
12 Q I think you said you started at 1:45, at least
13 that's the time that's on the front of the page.
14 A 1:24.
15 Q 1:24?
16 A Yes, sir.
17 Q What time did you finish typing it and what time --
18 let me ask you specifically, once you printed it out,
19 what time did the Defendant or the witnesses indicate
20 that it was when they signed?
21 A The statement was completed at around sometime close
22 to 2:15 and 2:20. It's actually witnessed at 2:25
23 by Officers Abbandonolo and Drehel, and they
24 actually witnessed the Defendant Charles Raby sign
25 his statement and went over the statement with him

1 outside my presence.

2 Q And this would have been October 19th, 1992; is that
3 correct?

4 A That's correct, sir.

5 Q Overall, do you recall how many cups of coffee you
6 gave him?

7 A No, sir. It's documented in the report. We had
8 coffee. He had a Coke and hamburger, he had
9 cigarettes, he had water. He had gone to the rest
10 room. Whatever he wanted.

11 Q The Defendant was not intoxicated when you talked to
12 him?

13 A No, sir.


14 Q What was his demeanor like after he told you that he
15 had done it?

16 A The only thing that changed, like I stated, he teared
17 up when he admitted that he had actually been to the
18 Complainant's home and that he was there. That was
19 his statement. "His initial statement was, "I was
20 there," and he looked downcast. He regained his
21 composure, and pretty much his demeanor was just one
22 of -- he seemed a little nervous but he wanted to
23 talk about what had happened.

24 Q And then the written statement that you took, he
25 essentially admits to having killed Edna Franklin

1 with a knife; is that correct?

2 A That's correct.

3 Q And a lot of the things that were in the arrest
4 warrant, in fact, he verified: the jumping over the
5  fence, things like that; is that correct? ⁴⁰

6 A That's correct, sir.

7 Q Now, you did not actually see Mr. Raby sign that
8 confession; is that correct?

9 A No, sir.

10 Q Why not?

11 A It's been our policy in taking of confessions from
12 suspects that by leaving the room, it affords that
13 individual to go over his statement with other
14 officers who are not actually involved in the
15 investigation and afford them an opportunity to make
16 any additions or deletions. They also have an
17 independent observation of that individual and can
18 talk to them about whether or not the statement was
19 voluntarily given or was coerced or anything of that
20 nature.

21

22 (State Exhibit No. 6 was previously marked
23 for identification purposes.)

24

25 Q Now, I'll show you what has been marked as State's

1 Exhibit No. 6. I'll ask you if you can tell me what
2 State's Exhibit 6 is.

3 A This is another voluntary consent to search and
4 seizure form; the residence of 706 Reid, in Harris
5 County. That's Charles Raby's stepfather. This is
6 filled out by myself at approximately 3:05 p.m.,
7 October the 19th of 1992, asking Charles Raby for
8 permission to return to the address, if needed, to
9 conduct any further searches.

10 Q Did you all ever return for other searches, that you
11 can recall?

12 A My partner, Sergeant Wendel, had gone or had actually
13 returned Ms. Gomez back to her location. He
14 recovered a blue hat, but I think -- well, I'm
15 actually not clear if he got the hat from the Reid
16 location or if he got that from her house over on
17 Sherman. 41

18 Q And in terms of the Defendant's consent to search for
19 body fluids, were you present or do you know whether
20 other officers withdrew additional body fluid or took
21 pubic hair or head hair from the Defendant?

22 A No, sir. I was not present for that. 42

23 Q But just for the record, is it your understanding
24 that that was in fact done, that he did volunteer
25 that?

1 **A** Yes, sir, he did volunteer it.

2

3 **MR. GUTIERREZ:** Your Honor, I would like
4 the record to reflect that I am tendering
5 State's Exhibit No. 6 to the Defense for their
6 inspection, understanding that I have to call an
7 additional witness to testify regarding the
8 signature of the Defendant, and in anticipation
9 of doing so, I would still like to offer State's
10 Exhibit No. 5 for purposes of this hearing.

11 **MR. CANTU:** Your Honor, we're going to
12 object based on that very reason, that's not
13 proper signatures on here at this time. ⁴³

14 **THE COURT:** Okay. I'm not going to allow
15 that exhibit in at this time. But for purposes
16 of this hearing, is there any objection to State
17 Exhibit No. 6?

18 **MR. CANTU:** No, Your Honor.

19 **THE COURT:** State Exhibit No. 6 is admitted
20 into evidence.

21 **MR. GUTIERREZ:** I'll pass the witness.

22 **THE COURT:** Let's take a short recess, a
23 couple of minutes.

24

25

(A recess.)

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THE COURT: You may proceed.

CROSS EXAMINATION BY MR. CANTU

Q Sergeant Allen, I'm going to ask you about the arrest --

A Yes, sir.

Q -- of Mr. Raby on the 19th, as I recall it, and I recall you saying somewhere -- you were there along with your squad. You were in charge of the number of officers on that arrest date?

A I hate it when I'm asked if I was in charge. Sergeant Stephens and Swaim and Brown were all in the same squad. This is my case, as far as I made the actual murder scene investigation, and they were assisting me with the investigation. 44

Q But to take you back to Reid Street, that's really where the issue starts, 706 Reid, on the 19th.

A Yes, sir.

Q Approximately what time was this, again?

A I was called from my house, because we were on call that night. I believe it was like between 10:22, something like that, that Lieutenant Gaford, who was the night shift Homicide Lieutenant at that time, called me, 22:15 hours, and assigned me to this

1 scene.

2 Q So that's 11:15?

3 A 10:15.

4 Q 10:15. And you got to Reid Street at approximately
5 at what time, do you recall?

6 A 10:45.

7 Q A.M.?

8 A P.M.

9 Q Okay. And then you made the arrest, right? You
10 made the contact with Charles Raby at that time?

11 A No, sir.

12 Q Let's fast-forward you to the time you made contact
13 with Charles Raby at Reid Street, right?

14 A Right.

15 Q That was approximately sometime in the morning, was
16 it not?

17 A 11:15; that's on the 19th. We made the murder on
18 the 15th.

19 Q On the 15th? And what time now, again? I didn't
20 catch it. What time did you say?

21 A Which, the arrest or the murder?

22 Q No, the arrest.


23 A Approximately 11:15 in the morning.

24 Q And I know there were a number of police officers
25 there. Do you recall which one made the initial

1 contact or put Charles Raby into the patrol car?
2 You described it as being your patrol car.
3 **A** So for everyone's understanding, it wasn't my car; it
4 was Sergeant Shirley's car. These are unmarked
5 vehicles. I made first contact with Charles Raby at
6 the front door. Sergeant Shirley, who was also in
7 my squad, came up to the front porch, placed
8 handcuffs on Charles Raby, and we escorted him,
9 walked him to Sergeant Shirley's car, which was
10 parked out in front of the house at 706 Reid.
11 **Q** Anyone else, any other police officers involved in
12 the controlling of Charles Raby at that point?
13 **A** No, sir.
14 **Q** Minutes later, you've testified that minutes later
15 you all drive off in that one patrol car, Sergeant
16 Shirley's patrol car or the unmarked patrol car where
17 Charles Raby is. He's taken alone, driven by
18 Sergeant Shirley or yourself, but nevertheless,
19 driven to the police station; is that correct?
20 **A** That's correct.
21 **Q** And then I think you testified that you drove Ms.
22 Gomez to the police station in another automobile?
23 **A** In my car, yes, sir.
24 **Q** And you put her at approximately sometime before noon
25 in a separate room at the police station?

1 A That's correct.


2 Q Along with her child?

3  A That's right. 45

4 Q Did you have occasion to speak with her after putting
5 her in the room?

6 A No, sir, I did not talk to her. My partner did
7 speak to her later.

8 Q Which one, which partner are we talking about?

9  A It was Sergeant Wendel. 46

10 Q And he's not one of the fellows here today?

11 A No, sir.

12 Q Is Sergeant Wendel any of the fellows that signed any
13 of these documents we discussed this morning as a
14 witness? Were there a number of consents, do you
15 recall?

16 A I don't think he signed any of those consents. I
17 think that his name is included on the No. 6
18 Exhibit, the last one that was tendered to the Judge.
19 I think Sergeant Wendel's name was placed on that
20 because he's my regular partner and in the event we
21 needed to go back and search any further. But I
22 don't recollect that he witnesses any of those.

23 Q There's not much active participation in this case by
24 him that's documented?

25 A Well, yes, sir, he has several supplements throughout

1 the report. He made the murder scene with me.

2 Q But as far as this hearing is concerned right now.

3 A In the arrest, he was not actually involved directly

4 in the arrest.

5 Q And how long a period do you have Ms. Gomez and her

6 child in the family room?

7 A I don't know at which point she left the Homicide

8 Division. Sergeant Wendel transported her at a later

9 time from the office. I can tell you, again, based

10 on recollection in the report, we arrived at around

11 noon, and I allowed her to visit with Charles Raby

12 prior to taking the written statement, which I

13 believe shows 1:24 that it began. So I know she was

14 there for that amount of time. She may have been

15 there until about 2 o'clock or so. I don't really

16 know. ⁴⁷

17 Q She was there obviously for some length of time and

18 duration that you all had Charles in custody at the

19 police station --

20 A That's right.

21 Q -- in discussing the case? Did you at any time talk

22 to Charles about Ms. Gomez, any fights or any

23 problems that she might have in reference to this?

24 A No, sir.

25 Q To this case? Were you present when any other

1 police officers might have discussed with Charles any
2 problems that Mary Gomez might have had in reference
3 to this case?

4 **A** I don't recollect that there were any
5 conversations --

6

7 **MR. GUTIERREZ:** I would object to the
8 question as being vague.

9 **THE COURT:** Well, do you want to rephrase
10 it?

11 Do you understand the question?

12

13 **A** To my knowledge, there was never any conversations
14 about Mary Gomez other than Charles Raby asked me to
15 speak with her, and I allowed that. From the time
16 that I arrived at the Homicide Division and gave him
17 his warnings at 12 o'clock there on that blue form
18 until the time that he was placed in the City Jail,
19 he was in my presence. ⁴⁸

20

21 **MR. CANTU:** Nothing further. Thank you.

22 **THE COURT:** Any further questions?

23 **MR. GUTIERREZ:** No, that's all. I would
24 ask that he remain until we're through.

25 **THE COURT:** Okay. Officer, if you will

1 remain.

2 MR. GUTIERREZ: State would call Officer
3 Abbondondolo. That's Abbey for short. And for
4 purposes of the record, Your Honor, Officer
5 Abbondondolo's name is spelled A-b-b-o-n-d-o-n-d-
6 o-l-o, first initial C as in Charlie. For the
7 record also, Officer Drehel's name is spelled,
8 first initial N, and last name is spelled
9 D-r-e-h-e-l.

10 THE COURT: You may proceed.

11

12 C.P. ABBONDONDOLO

13 was called as a witness by the State, and after having
14 been previously duly sworn, testified under his oath as
15 follows:

16

17 DIRECT EXAMINATION BY MR. GUTIERREZ

18

19 Q State your name, please.

20 A C.P. Abbondondolo.

21 Q Officer Abbondondolo, I have already spelled your
22 name for the benefit of the court reporter. Would
23 you tell us, for the record, what you do for a
24 living?

25 A I'm a Homicide detective.

1 Q And how long have you been employed as a peace
2 officer?
3 A Thirteen years.
4 Q And in those 13 years, how long have you been
5 assigned to the Homicide Division of the Houston
6 Police Department?
7 A Two years.
8 Q Were you so assigned back in October in 1992?
9 A I was, sir.
10 Q Did you have an occasion in October of 1992,
11 specifically the night of October, or, the day,
12 excuse me, of October 19, 1992, to have contact with
13 an individual by the name of Charles Douglas Raby?
14 A Yes, sir.
15 Q Do you see that individual, Charles Douglas Raby, in
16 the courtroom today?
17 A I do, sir.
18 Q Would you, please, for the record point him out and
19 describe what he is wearing today?
20 A The gentleman sitting at the table with the blue
21 buttoned-down shirt and striped tie.
22 Q Now, there's two gentlemen at the counsel table.
23 You're talking about the man with the real tie; is
24 that correct?
25 A Yes, sir, the real tie.

1 Q Not to be confused with the two strings that Mr.
2 Cantu has.

3

4 MR. GUTIERREZ: Your Honor, I would like
5 the record to reflect that the witness has
6 identified the Defendant, Mr. Raby.

7 THE COURT: The record will so reflect.

8

9 Q (By Mr. Gutierrez) Now, would you tell the Judge
10 what your role was in this case?

11 A Yes, sir. I was the witness to the signature of the
12 confession made by Mr. Raby.

13 Q I'll show you what has been marked as State Exhibit
14 No. 5 and I will ask you whether or not your
15 signature appears anywhere on these three pages where
16 it says "witnesses."

17 A Yes, sir, it does.

18 Q And on how many pages does it appear?




19 A On all three.

20 Q And did you witness Mr. Raby sign the confession and
21 put his signature where it says "signature" and where
22 the name Charles D. Raby is written?

23 A Yes, sir.

24 Q Is this individual, the one you pointed out with the
25 striped tie and the blue shirt, is he the gentleman

1 who signed there where it says Charles D. Raby on
2 the third page of State Exhibit No. 5?
3 **A** He is.
4 **Q** In terms of the signature and the witnessing, would
5 you explain to the Judge what your role was as a
6 witness? What did you do?
7 **A** Okay. I walked into the office where Mr. Raby was
8 seated and asked him if he understood what had
9 happened. I asked him if he was able to read
10 English, understood the English language. I asked
11 him to read to me the first line of his statement,
12 which was one of his legal warnings. I asked him,
13 had he been threatened or abused by Sergeant Allen. 49
14 **Q** Let's stop right there for a second. You said you
15 asked him if he could read the English language.
16 What did he say?
17 **A** He said he could.
18 **Q** Did you ask him if he could read?
19 **A** Yes, sir.
20 **Q** He said he could? You said you asked him to read?
21 **A** Yes, sir, I did.
22 **Q** And what did he do?
23 **A** He read the first line I had pointed to.
24 **Q** Did he read it out loud?
25 **A** Yes, sir, he did.

1 Q Were you satisfied that he could read the English
2 language?
3 A Yes, sir. I stopped him as he continued to read.
4  Q Okay. What else did you ask him? 50
5 A I asked him if he had been treated okay or abused by
6 Sergeant Allen or threatened. He stated he had not.
7 Q Well, you got three questions in there. Let's take
8 it one at a time. When you asked him if he had been
9 treated okay, what did he say?
10  A He said he was fine. 51
11 Q When you asked him whether or not he had been
12 coerced or threatened, what did he say?
13 A He shook his head, that he had not been threatened.
14 Q At the time that you were there, were you there with
15 another officer, Officer Drehel?
16 A Correct.
17 Q And were either one of you wearing any side arms?
18 A No, sir; we had taken them off.
19 Q So you were not wearing firearms?
20 A That's correct.
21 Q What else did you ask the Defendant to do?
22 A I asked him to initial his legal warnings and asked
23 him if he had read the statement over, and he stated
24  he had. 52
25 Q In your opinion, did the Defendant know what was

1 going on?

2 A Yes, sir, he did.

3 Q Did he voluntarily sign that confession?

4 A Yes, sir, he did.

5 Q And was it done free of threats or coercion?

6 A Yes, sir.

7 Q And was he sober at the time?

8 A He was sober. He spoke in a clear voice, made eye
9 contact with us. ~~57~~

10

11 MR. GUTIERREZ: Your Honor, the State would
12 like to reurge its motion on the admissibility
13 on admitting State's Exhibit No. 5 for purposes
14 of this hearing.

15 THE COURT: Any objections?

16 MR. CANTU: No objections. That was the
17 one with the signature, right?

18 MR. GUTIERREZ: Yes.

19 THE COURT: State's Exhibit No. 5 is
20 admitted into evidence.

21 MR. GUTIERREZ: And we previously tendered
22 a copy of that to the Defense. We would like
23 the record to reflect that we offer it to the
24 Court for its perusal.

25 THE COURT: Okay.

1 Q (By Mr. Gutierrez) You said Mr. Raby -- you asked
2 him to put the initials next to the warnings to
3 indicate he understood the warnings?

4 A Yes, sir.

5 Q And in your opinion, did he voluntarily waive those
6 warnings and intelligently and willingly sign that
7 confession?

8 A Yes, sir.

9

10 MR. GUTIERREZ: I pass the witness.

11 THE COURT: Mr. Cantu.

12 MR. CANTU: Thank you, Your Honor.

13

14 CROSS EXAMINATION BY MR. CANTU

15

16 Q Officer, we know that you went in at about 13:24,
17 which is about 1:24, 1:30, and you participated in
18 the questioning of Mr. Raby, of the questions that
19 you just indicated. How long a process did that
20 take, do you recall?

21 A My section, in talking with him?

22 Q Yes, sir.

23 A It was very short.

24 Q Could you tell us in seconds or minutes how long, if
25 you can recall.

1 **A** No more than five minutes.

2 **Q** Had you ever had contact with Mr. Raby prior to this
3 five-minute discussion you had with him?

4 **A** No, sir.

5 **Q** On this day did you have occasion to talk to Mary
6 Gomez?

7 **A** No, sir. ⁵³

8

9 **MR. CANTU:** We have no further questions,
10 Your Honor.

11 **THE COURT:** Officer Abbondandolo, you may
12 be excused unless someone needs him.

13 **MR. GUTIERREZ:** Well, I would like for him
14 to remain briefly.

15 **THE COURT:** If you will just remain
16 briefly.

17 **MR. GUTIERREZ:** That's all we have at this
18 time, Your Honor.

19 **THE COURT:** Does the Defense have anything?

20 **MR. CANTU:** Yes, Your Honor. We would call
21 Mr. Raby.

22 **THE COURT:** Mr. Raby, you weren't sworn in
23 with the other witnesses, were you?

24 **MR. CANTU:** No, he was not, Your Honor.

25 **THE COURT:** Raise your right hand and be

1 sworn.

2

3

CHARLES D. RABY

4 was called as a witness by the Defense, and after having
5 been first duly sworn, testified in his own behalf as
6 follows:

7

8

THE COURT: Mr. Cantu, you may proceed.

9

MR. CANTU: Thank you, Your Honor.

10

11

DIRECT EXAMINATION BY MR. CANTU

12

13

Q Your name is Charles Douglas Raby?

14

A Yes, sir.

15

Q Charles, I'm going to take you back to -- you're
16 obviously the person, for the record, who's accused
17 in this case, Cause No. 9407130, right?

18

A Right.

19

Q Let me take you back to the date that you were
20 arrested by Sergeant Allen and Shirley and Drehel.
21 Do you remember that date?

22

A Yes, sir.

23

Q Tell me approximately what time of day that was.

24

A It was about 10:00 in the morning.

25

Q Where were you when you were arrested?

1 A At my mother's boyfriend's house.

2 Q And what was the address of that house?

3 A I don't know the address, but it's on Reid Street.

4 Q You wouldn't argue with the recollection of the
5 police officer, that it was 706 Reid, would you?

6 A No, sir.


7 Q That's the first time you had contact with Sergeant
8 Allen?

9 A Yes, sir.

10 Q What occurred once you had contact with Sergeant
11 Allen?

12 A Well, they come up -- they drove up. I was
13 sleeping, me and Mary were sleeping, and I heard some
14 cars drive up and I got up and I told her it's the
15 police. I told her I'm not going to go nowhere; I'm
16 going to talk to them. And before he could knock on
17 the door, I opened it and told him, I said, "I'm
18 Charles," and he said, "Well, come on out. Come out
19 here and let me talk to you." So I went out there
20 and started talking to him.

21 Q Who is it you were talking to?

22 A Sergeant Allen. And he was the one on the porch,
23 and then we went off the porch and went by the car,
24 and that's when he handcuffed me and asked me to get
25  in the back of the car. 57

1 Q Did you?

2 A Yes, sir. And then they asked me if I wanted to let
3 them search the room that I was sleeping in.

4 Q Who is "they"?

5 A There was four of them. It wasn't Sergeant Allen.
6 There were four other officers there. I mean, three
7 others besides him, and one of them asked me if I'd
8 sign the warrant saying they could search the front
9 room that I was sleeping in, and I told them yeah,
10 and I signed it and I signed some rights.

11 Q Do you recall whether there were any guns drawn by
12 Sergeant Allen or the other police officers there?

13 A No, sir, there wasn't. I didn't see the ones in the
14 back, but Sergeant Allen didn't have no gun.

15 Q And you signed a consent to search that residence?

16 A The front room.

17 Q And they did; is that correct?

18 A Yes, sir.

19 Q What occurred then?

20 A Well, they come out with a black T-shirt, and that
21 was it.

22 Q And what occurred after that?

23 A Well, then some officer, he come up and opened the
24 door and was talking to me. They were taking Mary
25 Alice to the other car with Christopher, the baby.

1 Q How old was the baby, Christopher?

2 A About a month and two weeks, a little over six

3 weeks. I asked them where they were going and they

4 said they were going to take her home, and I said,

5 "All right." And he goes -- I don't know which one

6 it was. I think it was the one that just left -- he

7 said, "Look me in the eyes and tell me you didn't do

8 it." ⁵⁵

9 Q You're talking about police officer Abbandonolo or

10 something like that?

11 A I don't know. The first one that was up here.

12 Q Sergeant Allen?

13 A No. The other sergeant.

14 Q Officer Stephens?

15 A I think that's his name.

16 Q Sergeant Stephens spoke to you?

17 A Right. And I told him I didn't do it.

18 Q What was the response?

19 A He said something. He said something about, "You

20 know you did it, so don't lie." ⁵⁶ And then I told

21 him -- I said, "What about Mary? What are you all

22 going to do with her?" And they said, "We're going

23 to take her home."


24 Q Who's speaking to you at this point?

25 A I don't know his name. ⁵⁷

1 Q It's still the same person?

2 A Right. And then he slammed the door on me. And
3 then here comes Sergeant Shirley, and he told me,
4 "You want to sign another one of these?" It was
5 another piece of paper. I think it was my rights.
6 And I told him, "Yeah." And they pulled me out of
7 the car, unhandcuffed me, and I was on top of the
8 roof of the car, signing it, and then they put me
9 back in the car and then we left.

10 Q Did you have occasion to read that document?

11  A Right. Yeah, I read it. 58

12 Q Do you recall what that was that you signed?

13 A Yes, sir. It was my rights.

14 Q To what?

15 A To my right to remain silent, to counsel and stuff.

16 Q That first document, that long document?

17 A Right.

18 Q What occurred after you signed the document?

19 A Well, they kept me in the car for a little while and
20 then went back in the house.

21 Q How long was that?

22 A The whole process took about 20 minutes from the time
23 I talked to the Sergeant out at first and then they
24 went back into the bedroom and they got a bunch of
25 the baby's stuff and took it to Mary out in the car

1 and then they went on the side of the house, and
2 there was a truck and a big old, like a shrimp truck
3 you see on the side of the road, and they went in
4 there and was looking all in there and stuff, and
5 then after that, they said, "Are you all ready?"
6 And we went, me and Mr. Shirley, Sergeant Shirley, we
7 left to drive to the police station.

8 Q Who else was in the car with you and Sergeant
9 Shirley?

10 A It was just me and Sergeant Shirley.

11 Q Any conversation while in the car?

12 A Yeah. I kept asking him, what were they going to do
13 with Mary, and he kept saying they were going to
14 take her home. And then he said, "We can get her
15 for aiding and abetting," they told me, because they
16 did tell her if she was to see me, to contact them
17 right away. And he told me, since she didn't do
18 that, that they can get her for that. And they said
19 if we take her, then we'll call somebody to come
20 pick up the baby, one of the family members, and
21 we'll see -- we'll go from there.

22 Q What occurs -- where did Sergeant Shirley take you
23 while in the car? ⁵⁹

24 A He took me to HPD, to the Homicide Division.

25 Q How long was that process? How long did the drive

1 take?

2 A About 15 minutes; 10, 15 minutes.

3 Q Do you recall Sergeant Allen saying that you all got
4 there approximately a little before 12:00?

5 A Right.

6 Q Is that a correct statement?

7 A Yeah, it was before 12:00.

8 Q Do you recall talking to Sergeant Allen there at the
9 police station?

10 A Right.

11 Q Do you recall talking to Sergeant Allen about Mary
12 Gomez?

13 A Right.

14 Q Do you recall that conversation?

15 A Yes, sir.

16 Q What do you recall about that conversation in
17 reference to Mary Gomez?

18 A Well, I didn't know -- I thought they took her home
19 at first, and then he asked me if I wanted some
20 coffee, and I told him yeah. He said, "Would you
21 like to go to the bathroom?" And I told him I
22 wanted to go to the bathroom and I heard the baby
23 crying, and then right away --

24 Q What occurred then once you heard the baby crying?

25 A Well, I heard Mary telling him -- you know, like

1 singing to him or cooing him to be quiet, and I
2 said, "Well, I thought you all took her home," and
3 they said, "We're going to hold her here in case we
4 need to talk to her for a little while." And then I
5 went in the bathroom and come back out and then we
6 went and took the statement.

7 Q Was that the statement that was typed out from a
8 computer?

9 A Yes, sir.

10 Q Was that the statement that you signed sometime after
11 1 o'clock?

12 A I believe so. I believe it was after 1:00. It was
13 a while.


14 Q Did you see Mary Gomez prior to this time?

15 A I didn't see her until after the statement was taken.

16 Q And who allowed you to see Mary Gomez?

17 A Sergeant Allen.

18 Q Did Sergeant Allen say anything to you about Mary
19 Gomez?

20  A No, he didn't. 60

21 Q Did anyone else mention Mary Gomez to you?

22 A No. After the statement, they let me call her, and
23 that was like after Sergeant Allen went home -- I
24 think he was the one who took her home or somebody

25  else took her home. 61

1 Q How did you feel about Mary Gomez being there at the
2 police station with you? What was your feeling at
3 that point?

4 A Well, I kept asking him, I don't see why they got
5 her there, since I'm the one they wanted and they
6 got me now and I come out and talk to them. He
7 said, "Well, we just want to talk to her." And I
8 said, well, I don't think it was right to take her
9 and her little baby up there. They didn't have no
10 diapers or nothing, and they took her all the way up
11 there just to talk, you know, talk to me. ⁶²

12 Q During the time you signed these documents, in
13 particular, the Statement of Person in Custody, the
14 one that's off the computer, what was your
15 impressions of Mary Gomez, her plight and any
16 condition she might be in at this time?

17 A Well, he wouldn't let me talk to her until, you
18 know, after I took the statement. And then after I
19 talked to her, she told me she was all right and
20 everything. But he didn't leave; he was right there
21 the whole time I was talking to her. ⁶³

22

23 MR. CANTU: I'll pass the witness, Your
24 Honor.

25 THE COURT: Mr. Gutierrez.

CROSS EXAMINATION BY MR. GUTIERREZ

1

2

3 Q Mr. Raby, you heard Officer Allen testify about the
4 fact he read your warnings three times. You don't
5 disagree with that, do you?

6 A No, sir.

7 Q And each time he read you those warnings, you
8 understood what your rights were?

9 A Yes, sir.

10 Q And you voluntarily and intelligently waived those
11 rights and went ahead and talked to him?

12 A Yes, sir.

13 Q So what you're talking about, Mary Gomez, you were
14 concerned about an inconvenience, but you weren't
15 worried about her safety any? You weren't worried
16 about somebody beating her up, were you? ⁶⁴


17 A No. I was worried about them putting her in jail.
18 I thought they were going to put her in jail for
19 being with me. ⁶⁵

20 Q She, in fact, had been present when the police drove
21 up a few days before and when you decided to run out
22 the back door?

23 A Right.

24 Q That is true; is that correct?

25 A Yes, sir.

1 Q So she had full knowledge that the police wanted to
2 talk to you and were trying to arrest you, because
3 you told her that yourself; isn't that correct?
4 A Yes, sir.
5 Q You basically told her that the police were trying to
6 arrest you and you were going to split, you were
7 going to run away?
8  A Right. 66
9 Q And after --
10 A Well, I didn't tell her that. They just like come
11 up. When the cops drove up over to her house, I
12 just walked out the back door and just kept on
13 walking.
14 Q Well, after she had the conversation with the police
15 and knew there was a warrant for your arrest, then
16 she agreed to go hide out with you; is that correct?
17 A Well, yeah, I guess. Yeah.
18 Q Was it your stepdad's house?
19 A No, my mom's boyfriend.
20 Q And who was that now?
21 A David Reed.
22 Q Spelled just like the street name?
23 A R-e-e-d.
24 Q And the reason you were there, you were hoping to
25 elude the police while you were there?

1 **A** No. That Monday, the same day they come and got me,
2 I was going to go up and turn myself in. My mom
3 gave me \$10 to go up there and talk to them, and
4 that's what I was going to do; I was going to go up
5 there. I got tired of running. Mary kept telling
6 me -- kept crying and telling me to go talk to them.
7 My mom kept telling me to go talk to them. So I was
8 just going to go up and talk to them, and before I
9 could make it up there, they drove up right about
10 that time.

11 **Q** So you said that they knocked on the door and you
12 came out?

13 **A** No. I didn't let them get the chance to knock. I
14 seen Sergeant Allen coming and I opened the door and
15 told them I was Charles.

16 **Q** So you went out there because you knew they were
17 looking for you?

18 **A** Right.

19 **Q** Okay. And you didn't want to make things difficult
20 or be difficult?

21 **A** No.

22 **Q** You will agree that Sergeant Allen never told you
23 that she was going to be charged with anything? ^{to}

24 **A** No, Sergeant Allen never said nothing like that.

25 **Q** And you said the only person that told you that was

1 Officer Shirley, who said, "We can get her for aiding
2 and abetting"?

3 **A** Right.

4 **Q** Now, you're saying that you had already given the
5 statement when you found out she was there or --

6 **A** No. I walked to the bathroom, then I heard she was
7 there. I seen her. I asked if I could talk to her,
8 and he said, "Not right now." And he said, "We'll
9 go back in here and talk some more," and that's when
10 I gave the statement. Then after I gave the
11 statement, that's when I talked to her.

12 **Q** When you talked to her, what did you all talk about?

13 **A** I just asked her how she was doing and how
14 Christopher was doing, and she said he needed some
15 more diapers and she kept asking when was she going
16 to go home. She asked me if I was coming with her,
17 and I told her, "No. I got to stay here for a
18 little while."

19 **Q** Did you ever tell her that you had done this?

20 **A** No.

21 **Q** In terms of all those consent to searches that we've
22 got, that have been submitted in evidence, you're not
23 contesting the fact that you signed that voluntarily?
24 You signed all those consent to searches because you
25 wanted to cooperate?

1 **A** Right.

2 **Q** And all that was done with your full agreement and
3 consent, the taking of blood and hair and all your
4 body fluids, wherever they searched and got evidence
5 in this case, and also where they got those
6 statements signed from you, the consent to searches,
7 all that was with your agreement and consent?

8 **A** Right.

9 **Q** So you're telling this Court the only thing you're
10 worried about is her?

11 **A** Right.

12 **Q** You said that you asked somebody, "Why do you have
13 her down here when the person you want to talk to is
14 me?" Who did you tell that to?

15 **A** Excuse me?

16 **Q** Who did you tell that to?

17 **A** I told that to Sergeant Allen.

18 **Q** What was his response?


19 **A** He just said they had her down here in case they
20 wanted to talk to her after they finished talking to
21 me.


22 **Q** So Sergeant Allen didn't indicate to you that he had
23 any intent whatsoever to mistreat her in any way?

24 **A** No.

25 **Q** And he never said, "We're going to file charges on

1 her," he never led you to believe that he was
2 interested in that?

3  A No, not Sergeant Allen.

4 Q Would you agree with me that that would make sense,
5 I mean, if you were there, it would make sense for
6 Ms. Gomez to be there, at least long enough to be
7  asked some questions? ⁶⁹

8 A Well, I thought, you know, because they told me that
9 they would take her home, they said, "Don't worry,
10 we're going to take her home."

11 Q Who told you that?

12 A I can't remember. There was four of them: there
13 were two young guys and two older -- Sergeant Allen
14 and another older guy. The other guy was Sergeant
15 Shirley. The two young guys, I don't really remember
16 them. But one of them said they were going to take
17 her home.

18 Q They did, didn't they? They eventually did?

19 A Yeah, later on that night -- that day.

20 Q When did you learn that the baby needed diapers?

21 A After I got to talk to her.

22 Q And did you ever tell anybody about the fact that
23 the child needed diapers?

24 A No. She did. She told Sergeant Allen. I think I
25 was there when she told him. I can't really

1 remember.

2 Q But you're not for sure?

3 A Right.

4 Q Do you know any reason why she didn't take any
5 diapers?

6 A Well, she had some, but she was there for a while.
7 We was there for quite a while.

8 Q So when she left the house, she left sufficiently
9 prepared, that she took some diapers?

10 A Yeah.

11 Q And when we talk about diapers, we're talking about
12 Pampers, the plastic kind, the ones that kind of
13 retain a lot of fluids when the baby goes to the
14 rest room?

15 A Yeah. I think there were diapers, and getting close
16 to being out of milk.

17 Q But she did take some with her?

18 A Right.


19 Q But no one mistreated you, would you agree with that?

20 A No.

21 Q You do agree that nobody mistreated you?

22 A No.

23 Q And nobody mistreated Ms. Gomez?

24  A No. 70

25 Q Your only concern is that she was being

1 inconvenienced some and you were just concerned about
2 her?

3 A Yeah.

4 Q Okay. Well, would agree with me, Mr. Raby, there
5 was nothing really about that that would have made
6 your signing a confession involuntary?

7 A Well, I didn't want her to go to jail.

8 Q I understand. No one threatened you with that,
9 right?

10 A Well, he said he could put her in jail, you know.

11 Q Who said that?

12 A Mr. Shirley. I think that's the one that gave me a
13 ride to the police station.

14 Q My point is this. Assuming that that were true,
15 Sergeant Allen certainly didn't say, "You better sign
16 this confession or I'll put her and the baby in
17 jail"? I mean, he never did that?

18 A No. 71

19 Q So that's my point. In terms of you giving that
20 confession, you were giving the confession because
21 you wanted to come straight with Sergeant Allen?

22 A Yeah. And I wanted her to go home. The quicker I
23 got that over with, the quicker she could get out of
24 there, because I knew it was just already going to
25 tear her all up, and why get her even more mad at

1 me?

2 Q I know how women can get mad at you. The point is,
3 you were going to turn yourself in anyway?

4 A Right.

5 Q And you were going to give the police a full
6 confession anyway?


7 A Well, I was going down there and talk to them. I
8 wasn't planning on -- because that's all they said,
9 they told my mom they just wanted to talk to me, and
10 they told her mom and her, they just wanted to talk.

11 Q But you knew what they wanted to talk to you about?

12  A Right. 72

13 Q Are you telling the Judge that you would have come
14 clean with the police anyway or not?

15 A I don't know. I don't know if I would then or not,
16 because I was prepared to lie then. I was going to
17 lie, whatever it took to try to convince them I

18  didn't do it. 73

19 Q Did you ever tell Sergeant Allen that's how you were
20 feeling?

21 A No.

22 Q And you're not telling the Judge that the only reason
23 you signed the confession was because you wanted to
24 get her out of there? You signed it because you did
25 it voluntarily and because it's true, right?

1 A Because it's true and, you know -- well, he didn't
2 force me to do it, but I wanted her to go home. I
3 didn't feel that it was right for her to be there. ⁷⁴
4 Q And charges never were filed on her, were they?
5 A No, they wasn't filed. 75

6

7 MR. GUTIERREZ: I'll pass the witness, Your
8 Honor.

9 THE COURT: Any further questions?

10 MR. CANTU: Just one question.

11

12 REDIRECT EXAMINATION BY MR. CANTU

13

14 Q Mr. Raby, what was the time frame from the time that
15 you knew Ms. Gomez was there, and you testified that
16 you were in the bathroom and you heard a voice that
17 you recognized as being her voice; what was the time
18 frame from that point to the time that you signed
19 the confession, if you can recall?

20 A I don't know. It took us a while to take it down,
21 because, like he said, all the interruptions and
22 stuff.

23 Q Did it start at 3:30 or 3:24 -- I'm sorry, not 3:24,
24 1:24, 13:24?

25

1 **A** I don't really remember.

2 **Q** Okay.

3

4 **MR. CANTU:** Judge, I have nothing further.

5 **MR. GUTIERREZ:** Nothing further at this
6 time, Your Honor.

7 **THE COURT:** Mr. Raby, you may step down,
8 sir.

9 **MR. GUTIERREZ:** Your Honor, I had not been
10 given notice that Officer Shirley would be
11 injected in this hearing. I didn't make plans
12 for him to be here, because obviously I had no
13 way of knowing.

14 **THE COURT:** Do you want to call him as
15 rebuttal?

16 **MR. GUTIERREZ:** I plan to, but I can't
17 guarantee the Court I can get him today.

18 **THE COURT:** Why don't we continue at 10:00
19 tomorrow. Bring all your witnesses in.

20 **MR. GUTIERREZ:** I may need to call Sergeant
21 Allen.

22 **THE COURT:** Well, if you want to bring him
23 back tomorrow also, that's fine.


24

25

THE STATE OF TEXAS *
*
COUNTY OF HARRIS *

I, GINA BENCH, Certified Court Reporter for the 248th District Court of Harris County, Texas, do hereby certify that the foregoing pages of typewritten material contain a true and correct transcript of all evidence adduced and admitted at the MOTION TO SUPPRESS in the case shown in the caption hereof; that I was present in open court and reported said testimony in shorthand, and that later I transcribed same into typewriting.

IN TESTIMONY WHEREOF, witness my official signature on this the 17th day of November, 1994.


GINA BENCH
Certified Court Reporter
248th District Court
Harris County, Texas

Certification Number: 221
Certification Expires: 12-31-94
Business Address: 248th District Court
301 San Jacinto
Houston, Texas 77002
Telephone Number: (713) 755-7094

71938

IN THE COURT OF CRIMINAL APPEALS
IN THE STATE OF TEXAS
AT AUSTIN

CAUSE NO. 9407130

THE STATE OF TEXAS

Appellee

VS.

CHARLES DOUGLAS RABY

Appellant

APPEAL FROM THE 248TH DISTRICT COURT OF
HARRIS COUNTY, TEXAS
Honorable Woody R. Densen, Judge Presiding

STATEMENT OF FACTS

MOTION TO SUPPRESS

VOLUME XXVI OF XL VOLUMES

MAY 19, 1994

ORIGINAL

GINA BENCH
Certified Court Reporter
Harris County, Texas

FILED IN
COURT OF CRIMINAL APPEALS

FEB 15 1995

Thomas Lowe, Clerk

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CAUSE NO. 9407130

THE STATE OF TEXAS * IN THE 248th DISTRICT COURT
 *
VS. *
 *
CHARLES DOUGLAS RABY * HARRIS COUNTY, T E X A S

A P P E A R A N C E S

FOR THE STATE OF TEXAS:

Mr. Roberto Gutierrez
District Attorney's Office
201 Fannin
Houston, Texas

FOR THE DEFENDANT:

Mr. Felix Cantu
Attorney at Law
618 East 28
Houston, Texas 77008
And
Mr. Michael P. Fosher
Attorney at Law
440 Louisiana
Houston, Texas 77002

BE IT REMEMBERED, that upon this 19th day of May, 1994, the above entitled and numbered cause came for MOTION TO SUPPRESS before Woody R. Densen, Judge of the 248th District Court of Harris County, Texas; and the State appearing by counsel and the Defendant appearing in person and by counsel announced ready to proceed; and all preliminaries having been disposed of, the following proceedings were had, viz:

1 that correct?

2 **A** That's correct.

3 **Q** Would you tell us, for the record, what you do for a
4 living?

5 **A** I'm a Houston police sergeant, assigned to the
6 Homicide Division.

7 **Q** And how long have you been assigned to the Homicide
8 Division?

9 **A** I have been in Homicide for 13 years.

10 **Q** Overall, how long have you been a police officer?

11 **A** Twenty-one years.

12 **Q** Were you a peace officer assigned to the Homicide
13 Division back in October of 1992?

14 **A** Yes, I was.

15 **Q** Did you have an occasion on October 19th, '92, to be
16 part of the arrest team that arrested a person by
17 the name of Charles Douglas Raby?

18 **A** Yes, sir, I was.

19 **Q** Do you see him in the courtroom today?

20 **A** Yes, sir. He's seated beside Defense counsel,
21 wearing a light-blue shirt.

22
23
24
25

MR. GUTIERREZ: Your Honor, I would like
 the record to reflect that the witness has
 identified the Defendant.

25 name out for the benefit of the court reporter; is
24 Sergeant Shirley, I believe you already spelled your **Q**

22 DIRECT EXAMINATION BY MR. GUTIERREZ

21
20 You may proceed.
19 discuss their testimony with you.
18 with the other witnesses nor allow them to
17 which means you can't discuss your testimony
16 **THE COURT:** And the rule has been invoked,

15
14 follows:
13 having been first duly sworn, testified under his oath as
12 was called as a rebuttal witness by the State, and after

11 D.D. SHIRLEY

10
9 and be sworn.
8 **THE COURT:** If you will raise your right hand

7 recall Sergeant Allen, and that's it.
6 **MR. GUTIERREZ:** I'm going to call him and

5 **THE COURT:** Is this the last witness?

4 **MR. GUTIERREZ:** He's right here.

3 **THE COURT:** Call your next witness.

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THE COURT: The record will so reflect.

Q Specifically, Sergeant Shirley, do you remember handcuffing the Defendant and then driving him in your police vehicle, unmarked vehicle, to the police station?

A Yes, sir.

Q About how long did it take you to drive from the 700 block of Reid, R-e-i-d, in Houston, Texas, to the Police Department?

A At that time we were -- our Homicide office was downtown, and it probably took ten minutes or less.

Q During that time did you have any conversation with the Defendant at all?

A No, sir, I did not. 76

Q If there was an assertion made that you either threatened or made the comment that Ms. Mary Gomez, whom I believe you have seen in the courtroom a few minutes ago before she stepped out; is that correct?

A That's correct.


Q -- that Mary Gomez could be charged with aiding and abetting the Defendant in trying to escape the police, would that be true or untrue?

A It would be untrue. 77

Q Did you make any such remarks to the Defendant?

1 A No, I did not.

2 Q Did you have any conversation at all about anything?

3 A Other than reaching the police station and leaning in
4  and asking him to step out of my car, no, sir. 78

5

6 MR. GUTIERREZ: Pass the witness.

7 THE COURT: Mr. Cantu.

8

9 CROSS EXAMINATION BY MR. CANTU

10

11 Q Officer Shirley --

12 A Sergeant.

13 Q I'm sorry. Sergeant Shirley. Sergeant Shirley, did
14 you have any dealings with Mr. Raby at the police
15 station or the Homicide Department once you all got
16 there?

17 A No, sir, I did not.

18 Q Who do you recall dealt with Mr. Raby at that time?

19 A I believe it was Sergeant Allen and possibly an
20 Officer Brown.

21 Q Your position is that you handed Mr. Raby to Sergeant
22 Allen and one of the other officers with you on that
23 date of arrest, right?

24 A That's correct.

25 Q And that was at the Homicide Office?

1 **A** That is correct.

2 **Q** And do you recall whether there were any persons
3 taken to the Homicide Office on that date?

4 **A** I know that Ms. Gomez was transported to the station
5 by Sergeant Allen, and he followed directly behind me
6 en route to the station.

7

8 **MR. CANTU:** We'll pass the witness, Your
9 Honor.

10 **MR. GUTIERREZ:** No further questions, Your
11 Honor.

12 **THE COURT:** Officer Shirley, you may be
13 excused unless they need you.

14 **MR. GUTIERREZ:** In the event that the
15 Defense should decide to put on evidence, I
16 would just like that this witness remain
17 briefly.

18 **THE COURT:** If you will remain here
19 briefly.

20 **MR. GUTIERREZ:** State would like to recall
21 Sergeant Allen.

22

23

WAYMON ALLEN

24 was recalled as a rebuttal witness by the State, and
25 after having been previously duly sworn, testified under

1 his oath as follows:

2

3

DIRECT EXAMINATION BY MR. GUTIERREZ

4

5 Q State your name, please.

6 A Waymon Allen.

7 Q Sir, for the record, are you the same Waymon Allen
8 who testified previously in this hearing?

9 A Yes, I am.

10 Q And you are the same police sergeant that took the
11 Defendant's confession; is that correct?

12 A Yes, sir, it is.

13 Q Sergeant Allen, regarding the sequence of events, for
14 example, going to the police station with the
15 Defendant, did you or anyone else suggest to him that
16 Mary Gomez might be in danger of being charged with
17 something?

18 A No, sir.

19 Q Aiding and abetting perhaps?

20 A No, sir.

21 Q Anything else?

22 A No, sir.

23 Q Did you make it clear to the Defendant, if you did,
24 that you wanted to talk to her about the case?

25 A At no time did I ever discuss with the Defendant

1 about talking with her, period.

2 Q Now, you never made any suggestion to him in any way
3 that if he did not talk to you or confess to you,
4 that she would be charged with something; is that
5 correct?

6 A Absolutely not.


7 Q In terms of sequence of events, once you were at the
8 police station, I believe you said that the Defendant
9 had gone to the rest room; is that correct?

10 A Not immediately. What I testified to and what is
11 correct is that during the interview process, he had
12 asked to go to the rest room at one time prior to
13 the written statement being taken.

14 Q Now, you allowed the Defendant to talk to Ms. Gomez
15 at some point; is that correct?

16 A Yes, sir, I did

17 Q In reference to the Defendant agreeing to giving a
18 confession -- and I was about to ask you two
19 questions. Let me rephrase it. In terms of the
20 Defendant giving you the confession and signing it,
21 did you allow the Defendant to talk to Ms. Gomez
22 before he signed the confession or after he signed
23 the confession?

24 A It was before, because the written statement didn't
25  even start until after he had spoken with her. 79

1 Q So you in no way ever suggested to him that if he
2 didn't sign a confession, that he couldn't talk to
3 Mary Gomez?

4  A No, sir. 80

5 Q And did the Defendant ever express any concern about
6 Ms. Gomez being there with her child?

7 A No, sir. As I stated, he had asked to speak with
8 her before giving a written statement, and I granted
9 that request. Even though I felt that it might be
10 risky to do so, I allowed him to do that.


11 Q You say it might be risky. Why would that be, for
12 the record?

13 A Well, he, of course, had said that he would give a
14 statement, and there was always a possibility that he
15 could change his mind or that she may tell him not
16 to give a written statement. There was that
17 possibility, but I didn't want to refuse. Also, by
18 not letting him speak with her, he could have said,
19 "Well, I'm not going to give you a statement."


20 Q In terms of them speaking together, did you stand
21 there when they talked or did you walk away when
22 they talked?

23 A No, sir, I gave them just a few minutes.

24 Q Of privacy?

25  A Yes, sir. 81

1 Q And you were not present during their conversation?

2  A No. 82

3 Q In terms of Ms. Gomez, before she went down to the
4 police station, did you or any of the officers give
5 her time to gather her things, the things she needed
6 for the baby, like Pampers or napkins or -- I'm
7 sorry, not napkins, diapers, along with food for the
8 baby?

9 A Yes, sir, I helped her gather up those things. I
10 think we got a carrier for the baby and there was
11 some sacks of clothing, I believe, and some other
12 things.

13 Q Now, in terms of from the time that you arrived at
14 the arrest location, if you will, I think you
15 testified that he was arrested about 11:15 in the
16 morning. How long were you there preparing Ms.
17 Gomez's things before you left?

18 A I would imagine from the time of the arrest, which
19 was approximately 11:15, that we were at the Reid
20 address, maybe to 11:40, 11:45, give or take a few
21 minutes either way, because he signed a consent at
22 11:25, and it was after that was done that we
23 discussed that Sergeant Swaim and Officer Brown would
24 remain at the location. I talked with Ms. Gomez
25 about her accompanying us to the Homicide office so

1 we could talk with her and I made arrangements for
2 Ms. Gomez's sister to be transported back to her
3 house.

4 Q Did you make it clear to Ms. Gomez that you just
5 wanted to talk to her?

6  A Yes, sir. ~~83~~

7 Q Now, from the time that you went down to the police
8 station until the time she was taken home, about how
9 much time passed?

10 A Well, we arrived shortly before noon. The Defendant
11 talked with her prior to the written statement being
12 taken, so at that point I was with them. I'm not
13 exactly sure what time she left. My partner,
14 Sergeant Wendel, spoke with her, and he carried her
15 home. So I guess a couple hours, two-and-a-half
16 hours.

17 Q But, I mean, like she wasn't there like 18 hours, 15
18 hours, anything ungodly, I mean, anything just
19 exaggerated?

20 A No, sir.

21 Q And did she ever -- well, let me withdraw that last
22 question.

23

24 MR. GUTIERREZ: I'll pass the witness, Your
25 Honor.

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THE COURT: Mr. Cantu.

MR. CANTU: I have nothing of this witness,
Your Honor. ~~87~~

THE COURT: Officer Allen, you may step
down. You're going to be excused shortly, I
assume.

MR. GUTIERREZ: That's all we have at this
time, Your Honor.

THE COURT: Mr. Cantu, do you have any
witnesses?

MR. CANTU: No, Your Honor. That's the
extent of our -- *85*

THE COURT: Do you want to be heard on the
motion or do you want me to just rule on it?

MR. CANTU: I would like to be heard, Your
Honor, for a brief summation, if the Court will
allow.

THE COURT: Okay.

MR. CANTU: Your Honor, our position is, we
would ask the Court to grant our motion to
suppress the confession, and our position is
that Mr. Raby, Charles Raby, was coerced into
giving a statement to the police, not only by
the actions of Sergeant Shirley, who stepped in
today and controverts our position, but also by

1 another police officer, and I forget his name --
2 I think it's Abbondondolo.

3 MR. GUTIERREZ: Abbondondolo.

4 MR. CANTU: Abbondondolo. Nevertheless,
5 there's another police officer who testified
6 yesterday, a young police officer, who also
7 explicitly threatened and coerced Mr. Raby into
8 making a statement to Sergeant Allen. There's
9 no contention here that anything was said by
10 Sergeant Allen. The contention is that it
11 was --

12 MR. FOSHER: Excuse me. The witness --

13 THE COURT: You don't want him here during
14 the argument?

15 MR. FOSHER: No, sir.

16 THE COURT: If you will remain outside.

17 MR. CANTU: There's no contention here as
18 to Sergeant Allen's actions. The contention by
19 the Defense is, the actions by Sergeant Shirley
20 and the other young officer coerced Mr. Raby
21 into making a statement to Sergeant Allen. And
22 his duress was that his belief was that Mary
23 Gomez, his loved one, was -- if he didn't give
24 a statement, that she was subject to criminal
25 charges, and he believed the only way he could

1 prevent that is by making statements to Sergeant
2 Allen. Those statements were given because of
3 the action of other parties, particularly,
4 again, as I said, Sergeant Shirley and the other
5 young officer that testified yesterday. ~~86~~

6 THE COURT: Mr. Gutierrez?

7 MR. GUTIERREZ: Your Honor, my recollection
8 was that Officer Abbondandolo did nothing, and
9 that there was an allegation that an officer by
10 the name of Stephens leaned toward the Defendant
11 and told him, "Look me in the eye and tell me
12 you're not lying. Tell me you didn't do it."
13 The Defendant couldn't exactly name who it was
14 that had told him that she was going downtown,
15 but the long and short of it is, Detective
16 Shirley said he never said those things to him.
17 And assuming that he had, without conceding that
18 they were said, it was not a coercive-type thing
19 that would make a confession unreliable. ~~87~~

20 The Defendant has taken the position that
21 that was nothing more than an inconvenience. ~~88~~ He
22 acknowledged yesterday when he testified that he
23 knew his rights, he understood them, all of the
24 consent to search, including the confession, he
25 said were signed voluntarily and he waived his

1 rights knowingly, intelligently and voluntarily.
2 And he conceded yesterday that he at no time
3 ever thought she was going to be thrown in jail
4 with the baby or even she was going to be
5 thrown in jail. At one point Mr. Raby said he
6 didn't want her to be any more mad at him than
7 she already was. Now, understanding that the
8 wrath of a woman can be overpowering at times, I
9 really don't think that the Defendant even said
10 that that would rise to that occasion. I mean,
11 his fear of her being angry didn't cause him to
12 confess, but he did admit the confession was
13 voluntary, and although he had intentions of
14 turning himself in, he was prepared to lie and
15 not admit it. So, if anything, he's saying that
16 he was afraid she would be inconvenienced, so he
17 told the truth. And there's nothing in the
18 record to indicate from the State's witnesses
19 that that was the case. Officer Allen certainly
20 let him talk to her in private before he gave a
21 confession. So the Defendant's assertion that
22 that was done only after he signed the
23 confession is clearly untrue,⁸⁹ although our
24 position is that the parts where Mr. Raby does
25 admit that it was voluntary is true.

1 **THE COURT:** I am denying Defense's motion
2 to suppress the confession.

3 **MR. CANTU:** Thank you, Your Honor. Your
4 Honor, we have a number of motions.

5 **THE COURT:** I know. We're going to get to
6 them.

7 **MR. GUTIERREZ:** May I release my witnesses,
8 Your Honor?

9 **THE COURT:** Yes.

10 In the first motion I have got before me,
11 this motion only asks for a hearing on the
12 admissibility of any statements by the
13 Defendant, whether written or oral, or evidence
14 resulting from same. This motion only asks for
15 a hearing; is that correct?

16 **MR. CANTU:** Yes, Your Honor.

17 **THE COURT:** You received a hearing. This
18 would be a moot question, would it not?

19 **MR. CANTU:** Yes.

20 **THE COURT:** I won't even rule on that one.
21 Defendant's motion -- well, I granted it
22 subsequently to the time -- we already had a
23 hearing. I'll grant it.

24 **MR. GUTIERREZ:** Your Honor, insofar as the
25 declarations that were made by the Defendant, I

1 know he made some statements that were non-
2 custodial interrogation-type statements, in other
3 words, he was not --

4 THE COURT: Right, I remember that. I
5 believe some of the officers testified to that.

6 MR. GUTIERREZ: Yes, sir. And since he was
7 not being interrogated, it would be our position
8 that they would be admissible. I would simply
9 ask the Court to make a ruling --

10 THE COURT: Well, if they're non-custodial
11 statements and not made as a result of a
12 custodial interrogation, then I believe they
13 would be admissible at the time of trial, and if
14 anything comes up that you haven't heard of,
15 make an objection and I'll hear it outside the
16 presence of the jury.

17 MR. CANTU: Well, we would like to be told
18 by the prosecution that a particular witness --

19 THE COURT: Well, they are, but you just
20 had discovery, arresting officers, the officers
21 who took the confession. I don't know what else
22 you want. I will order the State to give you
23 any statements that he made if they come across
24 anything additional.

25 MR. GUTIERREZ: But in terms of the

1 statements he made about "I'm not running" and
2 "I don't know why I ran the other night. I
3 guess I was scared," would those statements in
4 particular be admissible should the State choose
5 to use them?

6 THE COURT: It appears to me that they
7 would be. They're non-custodial, not subject to
8 any interrogation.

9 MR. GUTIERREZ: Well, I mean, I guess he
10 would have been in custody.

11 THE COURT: Well, some of these things may
12 become evidentiary, and I can't rule on
13 everything. At this time they appear to be
14 admissible, but if you want to make your
15 objection for the record during the course of
16 the trial, I'll rule on it.

17 MR. CANTU: Thank you, Judge. We will. ⁹⁰

18 THE COURT: Notice to the Defendant of the
19 State's intent to use extraneous offenses and
20 prior convictions for impeachment purposes.
21 Well, this belongs to the State. There's
22 several State's motions.

23 I just have a memorandum of law in support
24 of Defendant's motion to allow prospective
25 jurors to be questioned. I have already ruled

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on this one.

As far as requiring mitigation to be considered, well, I certainly will, and there will be a special issue on it, so I will grant that.

Motion to hold unconstitutional Article 37.071, Section 2(e) and (f) burden of proof, what is this?

MR. GUTIERREZ: I believe it's an attack on the statutory scheme that Texas has, Judge. We would ask the Court to deny it.

THE COURT: What statutory scheme?

MR. CANTU: The punishment questions, Your Honor.

THE COURT: Oh, you don't want the punishment questions?

MR. GUTIERREZ: No. They're asking the Court to declare the whole scheme unconstitutional. Naturally the State is opposed to that.

THE COURT: One motion just asked me to consider mitigation, and now you want me to hold that unconstitutional? I will deny your motion.

MR. CANTU: Thank you, Judge.

THE COURT: Motion to declare

1 unconstitutional Article 37.071(g) of the Texas
2 Code of Criminal Procedure. What is this one
3 all about?

4 MR. CANTU: The problem is that we had them
5 all bound and in order, and I thought --

6 THE COURT: Well, I'm reading your motion.
7 I'm sure you're familiar with them. What are
8 you asking the Court to do?

9 MR. CANTU: The motion to declare
10 unconstitutional Article 37.07(g).

11 THE COURT: Well, I will deny that motion.

12 MR. CANTU: Your Honor, this is one of the
13 many motions that the State and I discussed, and
14 the State was opposed to this motion.

15 MR. GUTIERREZ: That's true.

16 MR. CANTU: We gave the Court the
17 motions --

18 THE COURT: Well, I'm going through them.
19 That's what I'm doing.

20 Defendant's second motion to set aside the
21 indictment, unconstitutionality of statute,
22 you're talking about the entire penal section on
23 capital murder? I'm reading it to you, your
24 motion to set aside the indictment,
25 unconstitutionality of the statutes. In other

1 words, you're asking me to declare this entire
2 statute unconstitutional?

3 MR. CANTU: Yes, Your Honor.

4 THE COURT: I will deny that motion.

5 MR. CANTU: If the Court would bear with
6 us, we have them in a bound form, Your Honor,
7 different order than the Court, and as soon as
8 the Court reads them, we'll search them out in
9 our bound form.

10 THE COURT: I'm going to rule on them as I
11 go through them.

12 Motion to discover the portions of the
13 Defendant's statement which the State intends to
14 use at the time of trial. I assume the State
15 is intending to use the confession?

16 MR. GUTIERREZ: Yes, sir.

17 THE COURT: And also any statements that
18 the State alleges that were non-custodial and
19 subject to interrogation, I think we discussed
20 that one. Well, I will deny your motion --
21 excuse me. You want to discover it. Well, you
22 discover it. So I will grant this motion.

23 MR. GUTIERREZ: In terms of -- I think this
24 is a motion to discover the portions of
25 Defendant's statement --

1 THE COURT: Right.

2 MR. GUTIERREZ: -- that the State intends
3 to use at the time of trial. At this point we
4 intend to use his entire statement. And I think
5 we have agreed -- correct me if I'm wrong --
6 that you all are going to leave this statement
7 intact?

8 MR. CANTU: Right. We had discussed that,
9 whether there would be some excisions, and we
10 had agreed that there were not going to be. We
11 determined to submit the whole statement.

12 THE COURT: Motion to discover arrest and
13 conviction records of witnesses. Is this
14 something that the State has given to the
15 Defense or you intend to?

16 MR. GUTIERREZ: We will be happy to comply
17 with the Court's order to that effect, Judge.

18 THE COURT: Well, if you have it, give it
19 to them.

20 MR. GUTIERREZ: Okay, Judge.

21 THE COURT: Granted.

22 MR. GUTIERREZ: This would mean that we
23 would search them out, and if the Court orders
24 us to do that, we'll do that.

25 THE COURT: Okay. Do it for them, if you

1 have it. I think they're certainly...

2 Defendant's motion to provide funds for
3 expert assistance, jury study.

4 MR. CANTU: That's a moot point. *what?*

5 THE COURT: This is all moot? Okay.

6 MR. CANTU: I would think so.

7 THE COURT: Motion for equal access to
8 background information of prospective jurors. I
9 believe you have been given that.

10 MR. CANTU: That was ordered earlier, yes,
11 Your Honor. Apparently that order hasn't been
12 signed, but that was an order that you gave
13 prior to starting the voir dire.

14 THE COURT: Okay.

15 MR. GUTIERREZ: Yes, Judge, and the State
16 has complied with that order.

17 THE COURT: It's granted.

18 Motion to propound specific questions to
19 veniremen regarding the burden of proof on
20 special issue in mitigation. I believe --

21 MR. CANTU: That was granted as to
22 mitigation, as I recall.

23 THE COURT: That's granted?

24 MR. GUTIERREZ: Which one was that, Your
25 Honor? No. 18? I think the Court's ruling on

1 that one, Judge, was that the Defense could ask
2 them anything they wanted about mitigation,
3 except that they were not allowed to tie them
4 down and commit them as to what evidence they
5 could consider as mitigation.

6 THE COURT: Right. I think I explained the
7 ruling on the record.

8 MR. CANTU: Right, that's been discussed
9 and ordered earlier, Your Honor.

10 THE COURT: Motion to require the State to
11 reveal agreements. Has the State revealed any
12 agreements?

13 MR. GUTIERREZ: No, Your Honor, because at
14 this point there are no agreements.

15 THE COURT: But if there are --

16 MR. GUTIERREZ: I'll be happy to provide
17 it, yes.

18 THE COURT: Okay. Motion to investigative
19 fee in indigent case. I believe I granted you
20 that.

21 MR. CANTU: Right.

22 THE COURT: Motion to the Court to direct
23 court reporter to take voir dire
24 examination of the jury and bench
25 conferences and of all final arguments.

1 That will be granted.

2 **MR. CANTU:** Obviously that's been granted,
3 Judge.

4 **THE COURT:** Defense motion to present
5 written questions to jury panel has been
6 complied with, the questionnaire.

7 **MR. CANTU:** Yes, Your Honor, that has been
8 complied with. That's another voir dire issue.

9 **THE COURT:** Motion for jury list. That's
10 been given to you, so that's granted.
11 Demand for individual voir dire, that's
12 been granted.

13 Defendant's special request for instruction
14 regarding extraneous offenses in punishment.

15 **MR. GUTIERREZ:** We have agreed that I will
16 provide them with a written notice. I have
17 complied with that in part, but I'm still in the
18 process of compiling a list.

19 **THE COURT:** That will be granted.
20 Motion to reserve right to file other
21 motions. Well, I will grant you that.

22 Motion in limine, character of the
23 Complainant, victim impact. Well, I don't know
24 if there is any evidence that might be
25 admissible regarding some issue of attack or

1 defense or assaultive nature of a victim. I
2 don't know, I think that might be evidentiary.

3 MR. CANTU: That's basically what we want.
4 We want the Court to assume there is, and if
5 there is, we ask the Court to grant our motion
6 to require the State to give us that type of
7 information.

8 THE COURT: Well, I don't know if there's
9 anything that they know about her, the victim,
10 that would be admissible.

11 MR. GUTIERREZ: She was a 71-year-old lady,
12 Judge. To my knowledge, she had no criminal
13 record and she did not have a disreputable
14 character. If I find anything out, I'll let
15 them know.

16 THE COURT: Well, in case you find that
17 out, you'll let the Defense know.

18 MR. CANTU: Thank you, Judge. I appreciate
19 it.

20 THE COURT: Motion to voir dire veniremen
21 on victim impact testimony. I guess you did
22 that, so that will be granted.

23 Motion to preclude the prosecution from
24 seeking the death penalty.

25 MR. GUTIERREZ: State would object

1 strenuously to that.

2 THE COURT: I would assume you would. That
3 will be denied.

4 Motion to discovery of victim impact
5 testimony. I don't know, has the State told the
6 Defense basically what you intend to present as
7 far as victim impact?

8 MR. GUTIERREZ: I would like the record to
9 reflect that the State at this time has opened
10 its entire file to the Defense.⁹¹ They have seen
11 my offense reports, they have seen judgments and
12 sentences. For the record, we have also agreed
13 to submit a bunch of records on the Defendant,
14 all of which are on file, dating back to the
15 time when the Defendant was 12 years old.

16 THE COURT: The things they're talking
17 about, victim impact. Are you talking about
18 impact on the victim, the deceased, or the
19 family?

20 MR. CANTU: Family, Your Honor. Basically
21 that's where we're going to get the testimony,
22 if there's any, and we would like to know what
23 type of testimony they're going to receive.

24 MR. GUTIERREZ: I'm sure that there will be
25 some testimony to that effect. I have not

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covered that with the victim's family, but I will be happy to do so.

THE COURT: Okay. Well, if you will do so, I'll grant that.

Motion for discovery and inspection I think you've been granted that. It's my understanding that the State has opened the file to the Defense, and I know from previous conversations on and off the record, the State has agreed to give you just about everything that they have.

MR. GUTIERREZ: That's correct, Your Honor. Both lawyers have looked at the State's case. They have taken a lot of time doing that. I kept them abreast on a daily basis of the latest developments as I find incriminating evidence or exculpatory evidence, as it were. I have turned over the names of at least one or two witnesses they may want to call in mitigation on punishment. And as I said before, we have provided them with a copy of all records of everything on file. *He didn't.*



THE COURT: Your discovery motion is granted.

The Defendant's requested charge number --

1 well, is this something you want me to rule on
2 at the punishment phase in the event we get
3 there? Because you're asking for specific
4 charges and I can't rule on them right now.

5 MR. CANTU: Yes, Your Honor, that's true.

6 THE COURT: Motion to unseal jury list and
7 information cards. Well, you were given
8 everything about that.

9 MR. CANTU: Yes, sir.

10 THE COURT: That's granted.

11 Defendant's written objection to
12 admissibility of extraneous offenses, request for
13 procedural determination by the trial court,
14 with findings of fact and conclusions of law and
15 for limiting instructions. I will certainly,
16 during the trial, consider any objection of any
17 extraneous offenses.

18 MR. CANTU: Okay. So we understand from
19 the Defense's side, you will rule on that later,
20 Judge, as it comes up during the trial?

21 THE COURT: Well, I'm going to grant you a
22 hearing on it if it's something we need to
23 discover whether it's admissible or not, and we
24 can do it outside the presence of the jury.

25 MR. GUTIERREZ: We are talking about at the

1 case-in-chief, are we not, Your Honor?

2 THE COURT: Well, assuming anything, if
3 they think it's inadmissible, if you have an
4 objection, I'll certainly rule on it, and if you
5 are entitled to hear something outside the
6 presence of the jury, I'll give you a hearing on
7 it.

8 MR. CANTU: So we understand, you're going
9 to grant us a hearing if it comes up?

10 THE COURT: A hearing and probably limiting
11 instruction on extraneous offenses, which you
12 are generally entitled to in a charge, prior
13 convictions, extraneous, that sort of thing ⁹³

14 MR. GUTIERREZ: For the case-in-chief, Your
15 Honor, I agree that before I bring in any
16 extraneous offense, I will approach the bench
17 and ask permission of the Court to have a
18 hearing outside the presence of the jury before
19 I mention anything like that. In terms of the
20 punishment phase, I am giving them written
21 notice of just about everything, and all I ask
22 the Defense is, if they anticipate they will
23 have objections to some things, I prefer to keep
24 the evidence from being interrupted in the
25 middle of trial. Perhaps they could raise these

1 things before we even start so that the Court
2 might rule on --

3 THE COURT: Well, we might do it in an
4 orderly fashion, if possible. We might take
5 some of them up out of the presence of the jury
6 before they intend to put them on. That might
7 be a good procedure and you'd be heard on it.

8 MR. CANTU: We'll try to object
9 expeditiously, Your Honor, but we haven't seen
10 everything and we haven't digested it. And what
11 concerns me is, as the prosecutor said, that
12 they're going to present almost everything to us
13 and there are a few exceptions, and those are
14 the ones that we're concerned about.

15 MR. GUTIERREZ: I will agree that in terms
16 of the extraneous that I intend to use on
17 punishment or anything that might come up during
18 the guilt phase, I'll be happy to give them oral
19 notice as soon as I find out about it, and if
20 they prefer for me to supplement my written
21 notice after I do that, I'll be happy to do
22 that as well.

23 THE COURT: Okay. Defendant's motion to
24 compel disclosure of evidence favorable to the
25 Defendant in the form of a Brady motion, that

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will be granted. 94

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MR. CANTU: Thank you, Judge.

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THE COURT: Motion in limine regarding

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prior convictions, extraneous offenses and

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pending cases, appearance of Defendant at

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arrest, expert assistance for Defendant. Well,

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some of these things may be admissible, and at

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the proper time, if you want to object to them,

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but I'm not going to order the State not to

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mention these things, because it appears that

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some of them may be admissible, and I think we

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have kind of gone over some of them. So I'm

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going to deny your motion in limine, but I will

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rule on them upon proper objection if there is

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something that would be inadmissible.

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Motion to exclude evidence of unadjudicated

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extraneous offenses during the punishment phase.

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I think they may be entitled to do that, if

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there are extraneous offenses.

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MR. GUTIERREZ: The State has already

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agreed to do that, to disclose what we intend to

22



use at punishment 95

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THE COURT: Well, they want to exclude,

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they want to keep it out, not to give it to

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them.

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MR. GUTIERREZ: I'm sorry, I thought that was motion for written notice.

THE COURT: Well, I'm going to deny it, but upon proper objection, if there's something that may not be admissible, I'll certainly exclude it.

Motion to disclose existence of extraneous offenses to be offered in the punishment phase of the trial and motion in limine. I think we have pretty well covered that, and the State has agreed to give you all of that information. ⁹⁶

MR. GUTIERREZ: That's correct, Your Honor. It's the motion to exclude that we don't agree with.

THE COURT: Right.

Motion for discovery of extraneous offenses. I will grant it, but it seems like the State has given it to you and they're going to give you anything further.

MR. CANTU: Yes, Your Honor, they have agreed.

THE COURT: Motion for discovery and inspection of alleged deadly weapon. Well, was one ever found, according to the testimony?

MR. GUTIERREZ: The deadly weapon that was

1 supposedly used, according to the Defendant's
2 confession, is a knife.

3 THE COURT: But it was never found?

4 MR. GUTIERREZ: No, sir.

5 THE COURT: Well, if you ever find it,
6 you're ordered to let Mr. Cantu and Mr. Fosher
7 examine it.

8 MR. GUTIERREZ: We may -- and I emphasize
9 the word "may" -- try to buy one, but it would
10 be represented to the jury obviously only for
11 demonstrative purposes, if at all.

12 THE COURT: Okay.

13 MR. CANTU: And we would like to see that
14 piece of evidence that he's going to use for
15 demonstrative purposes prior to the trial.

16 MR. GUTIERREZ: Yes, sir. If I decide to
17 spend my money at Academy to buy one, I'll
18 definitely show it to the Defense. ⁹⁷ *used for...*

19 THE COURT: Okay. Motion to declare the
20 Texas capital sentencing scheme unconstitutional
21 and motion to preclude imposition of the death
22 penalty. I'll deny that.

23 Motion for production and inspection of
24 Grand Jury transcript.

25 MR. GUTIERREZ: Your Honor, to my

1 knowledge, there was no one who testified in
2 this case at the Grand Jury level. I received
3 this case when I came to the Court, and it was
4 already indicted once. I reindicted it. I know
5 for sure I never called anybody to the Grand
6 Jury.

7 MR. CANTU: So I guess the position is, if
8 there is, the Court would grant it?

9 MR. GUTIERREZ: Well, I would be opposed to
10 that because --

11 THE COURT: Unless there's a particularized
12 need to the Grand Jury testimony.

13 MR. CANTU: Our need would be, of course,
14 to --

15 THE COURT: Well, I don't know how it's
16 going to fit into your written order, but if
17 there is any testimony before the Grand Jury and
18 you show a particularized need, I will rule on
19 it. ⁹⁸ *Zeisel has been indicted*

20 MR. CANTU: Thank you.

21 THE COURT: Defendant's motion to set aside
22 the indictment, jury questions. Are you talking
23 about studies by Dr. Zeisel? What does this
24 have to do with the indictment? Well,
25 apparently you're asking for some kind of study

1 to be conducted in Harris County.

2 MR. CANTU: Yes, Your Honor.

3 THE COURT: As I understand this motion,
4 I'll deny it.

5 Those are all the motions of the Defense.
6 We have also here a notice to the Defendant.
7 This is the State's motion, I believe, of the
8 State's intent to use extraneous offenses and
9 prior convictions for impeachment purposes. And
10 it seems like this is going to comply with a
11 lot of these motions you filed, because in this
12 notice they're giving you, they have listed
13 several cases, case numbers, courts. So we'll
14 just make a note of that. It's on the record.
15 It's nothing I've ruled on.

16 State's motion to have clerk make entry of
17 the affirmative finding of a deadly weapon.
18 Well, in the event that this is supported by the
19 evidence, I will grant it.

20 MR. GUTIERREZ: Thank you, Your Honor.

21 THE COURT: This motion, do you want me to
22 rule on it after the evidence?

23 MR. GUTIERREZ: Well, Your Honor, I'm
24 filing this in order to not have to interrupt
25 the Court when it's addressing the jury at the

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time of trial.

THE COURT: All right. I'll hold onto it then, and if the evidence supports a deadly weapon was used, I'll sign it.

MR. GUTIERREZ: So the Court is not going to consider signing it now, but order the clerk in the event --

THE COURT: How can I have her enter a finding when we haven't even started the trial?

MR. GUTIERREZ: I know. That's why the motion is -- I'm certainly not arguing with the Court. If you don't want to sign it, that's fine.

THE COURT: I will order her to do it -- I will put this on the record, if there is evidence of a deadly weapon used in the commission of this offense.

MR. CANTU: And, conversely, you would order her not to if there is no evidence?

THE COURT: Right.

MR. GUTIERREZ: But what the order specifically says, it simply says, in the event that they find him guilty, as alleged in the indictment, or in the event they find him guilty of a lesser offense and a special issue is

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submitted to the jury on a deadly weapon and they answer it yes, in those events, then she should make the entry.

THE COURT: It goes into that kind of detail?

MR. GUTIERREZ: Yes, Your Honor.

THE COURT: This is in the event there is a finding of a deadly weapon, for her to make an entry in her record, in the Court's record. I will do it on that condition. We all understand that, if there is no finding of a deadly weapon whether it's in the case-in-chief or a lesser included offense, the Court will order her not to.

MR. CANTU: And once we get there, we'll address that issue again, Judge, so it's clear to the Court. Would the Court allow us to do that?

THE COURT: Certainly.

MR. CANTU: Thank you.

Well that is it. It is all up to the courts now. Thank you for taking the time to read the transcript and what I have to say. Thank you.

