NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO: 05-75-8614 DIVISION "H" SECTION 1

KENNETH WHITMORE

VERSUS

N. BURL CAIN, Warden

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APPLICATION FOR POST-CONVICTION RELIEF

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APPLICATION FOR POST-CONVICTION RELIEF

Petitioner, Kenneth Whitmore, through counsel, moves this Court pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1, Sections 2, 3, 5, 13, 14, 16, 17, 19, 20, 22, and 24 of the Louisiana Constitution of 1974, and Articles 926, 930.3, 930.8 (A)(1) of the Louisiana Code of Criminal Procedure, to grant his application for post-conviction relief.[1]

I. INTRODUCTION

Kenneth Whitmore has spent nearly 40 years of his life incarcerated at the Louisiana State Penitentiary for the murder of Marshall Bond – a murder Mr. Whitmore did not commit.[2] As the instant petition demonstrates, Mr. Whitmore was convicted as a result of a prejudiced investigation, prosecutorial misconduct, withheld exculpatory evidence, and perjured testimony. The state's case rested almost exclusively on a false confession unconstitutionally coerced from Mr. Whitmore after he suffered a head injury, had been deprived of food, water, and sleep for almost two days, and then interrogated for 34-36 hours. To compensate for its weak case, the prosecution continued engaging in gross misconduct by 1) presenting perjured testimony, 2) suppressing exculpatory evidence, and 3) participating in racially biased extrajudicial activities in violation of the due process and equal protection clauses of the Fourteenth Amendment.

In addition, a member of Mr. Whitmore's defense failed to disclose an important conflict of interest: that he had been intimidated by members of the community for his representation of Mr. Whitmore. Mr. Whitmore's defense also failed to adequately investigate the circumstances surrounding his confession. These failures rendered Mr. Whitmore's representation constitutionally ineffective. Today, Mr. Whitmore has uncovered new evidence that highlights his innocence and shows that his conviction is predicated on myriad Constitutional violations so egregious that this court should grant his post-conviction relief application.

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1 This application tracks the Uniform Application for Post-Conviction Relief, which is attached to the back of this pleading, before the certificate of service. Counsel for Mr. Whitmore reserve the right to supplement this petition with additional legal arguments and facts in support, including facts developed through further discovery.

2 Since Kenneth Whitmore's arrest in February of 1975, he has spent over 35 years in solitary confinement, including the last 28 consecutive years. *See* First Amended Complaint, *Whitmore v. Cain*, No. 14-0004 (M.D. La. 2014)

Arrested in Zachary on February 20, 1975 for an incident unrelated to the Bond homicide, Mr. Whitmore arrived in the East Baton Rouge Parish prison eighteen months after Mr. Bond's death. While a pre-trial detainee at the prison, Mr. Whitmore made two involuntary and coerced statements to Assistant District Attorney Warren Hebert, Detective Louis Russell, and Detective Carson Bueto. New evidence, in the form of new witnesses, reveals that Mr. Whitmore made these statements while suffering from a head injury and almost two days of very little food, water, or sleep. Two days prior to Mr. Whitmore's false confession, prison officials placed him in the dungeon after an inmate fight, during which he was kicked in the head numerous times and knocked to the ground. The dungeon's air quality was so poor that the 6-8 inmates in the 9'x6' cell took turns breathing through the small space between the door and the floor. All of the men had been stripped of their clothes. By the time District Attorney Ossie Brown came to interrogate Mr. Whitmore, a day and a half or two after his placement in the dungeon, Mr. Whitmore had not slept, eaten, or received any medical attention. In light of his physical condition and the circumstances of his 34-hour-long interrogation, Mr. Whitmore's confession was taken in violation of his constitutionally protected rights under the Fifth Amendment.

At his trial, Mr. Whitmore testified that he was told what to say during his confession, however, in light of the lack of physical evidence and the District Attorney's testimony to the contrary, the jury gave little to credit Mr. Whitmore's version of the events. The Assistant District Attorney who took Mr. Whitmore's taped statements has made a sworn statement now crediting Mr. Whitmore's version of events: that Ossie Brown was the first person to get an inculpatory statement from him. This statement not only supports Mr. Whitmore's original trial testimony, it demonstrates that the State allowed two witnesses to perjure themselves in an effort to secure Mr. Whitmore's conviction.

Moreover, new evidence, in the form of previously withheld East Baton Rouge Sheriff's reports and Louisiana State Police crime laboratory reports, identifies exculpatory evidence wrongfully withheld from Mr. Whitmore's defense team. These reports show that the Sheriff's office had in its possession potential murder weapons, leads on viable suspects with legitimate

motives, crime scene photographs and physical evidence that contradicted Mr. Whitmore's coerced confessions, and information that would have assisted the defense in attacking the credibility of the State's witnesses and bolstering its theory of events. By denying access to these reports and evidence, the state hindered Mr. Whitmore's attorneys in developing a robust and effective defense, and in turn violated constitutional mandates required under *Brady v. Maryland*, 373 U.S. 83 (1963).

Compounding the above constitutional violations, the State repeatedly told the jury that "almost no, what could be considered evidence was found" at the crime scene. Tr. p. 42 (Mr. Whitmore's trial transcript is attached as Exhibit G, but is referred to as Tr. throughout). Not only was that statement false, but it ignored the fact that an investigator for the District Attorney's office had removed all of the physical evidence from the crime lab on November 4, 1976, a mere two months after Mr. Whitmore was appointed counsel, and never checked back in. None of this evidence collected at the scene or gathered during the initial investigation was presented at trial or disclosed to the defense. The current District Attorney's office has been unable to produce any documentation showing what happened to this evidence. As more fully set forth below, proof that the District Attorney was in possession of this evidence not only violates *Brady*, but also confirms that the state presented perjured testimony to Mr. Whitmore's jury.

Further, Mr. Whitmore has obtained documents from the Federal Bureau of Investigation showing that Ossie Brown was closely affiliated with the region's chapter of the Ku Klux Klan—a white supremacist organization well-known for extra-judicial violence—and had been a robed speaker at meetings. Mr. Brown actively participated in Mr. Whitmore's prosecution by interrogating and coercing him prior to his confessions and also took the stand at trial to tell the jury Mr. Whitmore had "told the truth" during his subsequent taped statements. Mr. Brown's association with the Klan while serving as a public official and his failure to disclose such an affiliation was not only a *Brady* violation, but also created an environment of prosecutorial misconduct that violated Mr. Whitmore's constitutional rights to due process and equal protection before the law.

Individually and cumulatively, these constitutional violations produced a verdict unworthy of confidence. Each of Mr. Whitmore's post-conviction claims standing alone justifies vacating his conviction. Taken collectively, however, the state's prejudiced and tainted proceeding against Mr. Whitmore violated his fundamental rights guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments and the resulting verdict, a 10-2 decision, is so unreliable and unconstitutional that this court should vacate his conviction.

II. STATEMENT OF FACTS

A. Marshall Bond's Murder

Marshall Bond was well-known in the town of Zachary. He had lived there most of his life and was involved in town politics, having been both the mayor and a city council member. He ran a successful pharmacy in town and was known to loan money to anyone, black or white, who had a need.

In the days leading up to his murder, Mr. Bond was not his usually affable self. Ex. A, pp. 18, 40, 49, 51, 70. He was described as "upset from Monday through the Wednesday he was killed." Ex. A, p. 49. His altered state of mind was "noticeable by everyone who he had contact with." Ex. A, p. 49. Town members told deputies about Mr. Bond's business deal to start a metal fabrication shop in town. When this fell through, Bond lost $65,000 and told people he intended a show down with his former business partner. Ex. A, p. 49. The two "were considered bitter enemies as a result of this business venture failure." Ex. A, p. 49. Deputies interviewed this bitter enemy and noted he was completely evasive during the interview. Ex. A, p. 49. Because of this, deputies asked him to take a polygraph examination; he never showed up for the exam. Ex. A, p. 49-50.

At the town council meeting the day before Mr. Bond was killed, the Mayor, Jack Breaux, noted Bond was upset and antagonistic. Ex. A, p. 51. Another attendee described Bond as having been "very upset" and in a state of mind he had never been seen in before. Ex. A, p. 51. "[W]hen Bond gave the invocation he asked forgiveness of sins and nearly cried at this point, but recovered and became antagonistic to every item on the agenda." Ex. A, p. 51.

On Monday and the day he was killed, an anonymous caller phoned a woman who could see the pasture where he was found beaten. Both days the caller asked her if it was raining. On

the Tuesday before the murder, the caller held the phone a few seconds and then hung up. Ex. A, p. 42.

On the morning he was killed, Mr. Bond's maid overheard him tell a caller, "I'll be there in five minutes, and you had better be there." Ex. A, p. 70. Mr. Henry Sessums spoke with Bond at his drugstore between 9:30 and 10:20 that morning. Mr. Sessums described Bond as "not his normal self that day, very upset over town politics, town work and general business in the town of Zachary. In all his years of knowing Mr. Bond, Mr. Sessums had never seen him "in the state of mind he was in that day." Ex. A, p. 40.

Bond spent between 11:30 and 2:00 p.m. on the day he was killed with the Vice President of the Bank of Zachary, Jessie Donze. Ex. A, p. 8. Mr. Donze told deputies that Bond was "unusually upset about something, even to the point he cut off short the President of the Bank on the phone, while in conversation and later called him back and apologized." Ex. A, p. 18. Mr. Donze reported he went with Bond to collect a debt, which was unsuccessful, further upsetting Mr. Bond. Ex. A, p. 18. One of Mr. Bond's drugstore employees estimated that at the time he was killed he was owed over $140,000 in uncollected loans. Ex. A, p. 18.

In the afternoon, around 4:00 Mr. Bond travelled to the home of a woman with whom he had been having a long term affair. He had called her that morning, "acted very upset, talked about having to do some banking business," and assured her he would see her later that day. Ex. A, p. 44. When he arrived at her house, he "sat on the porch and poured his heart out to her." Ex. A, p. 44. He talked about failed business dealings and how he was involved with someone who had a bad reputation and cost him a lot of money. Ex. A, p. 44. He told her someone had been tampering with his farm vehicle and his truck and had put tacks in the road at his farm. Ex. A, p. 44. He spoke of his belief that his wife's family would profit most from his death. Ex. A, p. 44. When she told him to be careful, he said no one would bother him at his store in town, but that he might get killed in his pasture. He then assured her he carried a pistol for protection against this. Ex. A, p. 44.

He left her porch that afternoon and she never saw him again. Mr. Bond was killed in his pasture near the barn later that evening.

Before sundown, Mr. Bond was found bleeding from the head, but alive and breathing hard near his barn. He died before reaching the hospital from trauma to the brain caused by multiple skull fractures. Tr. 122-123. He suffered ten to twelve blows to the head, one to the lip, and his eyes were blackened. Tr. 121. The blows to the head left lacerations of various lengths caused by what the coroner estimated to be a "blunt instrument." *Id.* He suffered ten superficial puncture wounds to the left chest and left side of his chest, two to his left forearm, and had six small lacerations on the back of his right hand. Tr. 121-122. The coroner described the puncture wounds as "peculiar looking" and "caused by a laceration or like maybe a Phillips screwdriver." Tr. 121. The coroner also stated that the lacerations to his right hand would not "have been caused by the same instrument that caused those puncture type wounds." Tr. 122. The coroner estimated that when he saw Mr. Bond's body between 8 and 8:30 that night, the wounds "had not been over a couple of hours old." Tr. 123.

B. <u>The Investigation into Marshall Bond's Murder</u>

Since the beginning of the investigation, East Baton Rouge Parish Sheriff's officers knew that Mr. Bond was a man with enemies and problems in town. Only five days after his death, deputies spoke with Mr. Donze, the Vice President of the Bank of Zachary, who had been with Bond the day he was killed. Ex. A, p. 18. Donze described a man who was out of character and "unusually upset." *Id.* Within two weeks of investigation, deputies had learned "from most everyone who saw him" that on the day he was killed and the days leading up to it, he was upset and in an unusual state of mind. Ex. A, p. 40-41. Deputies spoke with Mr. Bond's mistress, probably the last person to see him alive other than his killer, on September 6, 1973. She told them about his erratic behavior, his premonition he would be killed in his pasture, the man with a bad reputation with whom he had become involved, and that Bond carried a pistol for protection. Ex. A, p. 44-45. Deputies taped an interview with the business partner with whom Bond intended a show down. Ex. A, p. 49. The business partner who caused Bond to lose $65,000, but never showed up for his polygraph examination. Ex. A, p. 49-50. In spite of this man's motive, there is no mention of him again in the police reports, no indication of how or if he was eliminated as a suspect. *See* Ex. A.

By September 27, 1973, almost 6 weeks after Bond was killed, Deputies felt that "there are particularly two things that … if it could be found out, it would lead to solving the Marshall Bond Case." Ex. A, p. 70. The first was who Mr. Bond spoke with the morning he was killed. He told the person, "I'll be there in five minutes, and you had better be there." He then left the house. Ex. A, p. 70. The second was who phoned Bond at his drugstore that afternoon and caused him to leave and go to the pasture immediately. This belief was based on the state Bond left the drugstore in. It was not his habit to leave the place with money lying around and the safe unlocked. Ex. A, p. 71.

In spite of this theory of the case, that Marshall Bond had been killed by someone who knew him and knew he was in danger, deputies polygraphed a number of suspects, predominantly black men, who had no association with Mr. Bond. *See* Ex. A, pp. 12, 14, 74, 77, 79, 98. New evidence will show that two of these men, Michael Ghoram and David Rogers, were asked to confess a man named Ralph Ball had paid them to kill Mr. Bond, or were asked if Mr. Ball had paid them to kill Mr. Bond. Ex. I, ¶¶4-5; Ex. J, ¶5. Neither Mr. Rogers nor Mr. Ghoram knew anyone named Ralph Bond.

In spite of the viable lead on a suspect who was evasive during interview, had motive to kill Marshall Bond, and who Marshall Bond swore he would have a show down with, the deputies did not track the man who failed to show up for his polygraph examination. Instead, almost 18 months after these valuable leads were left unfollowed, deputies charged Mr. Whitmore and Mr. Donahue with murdering Marshall Bond.

In addition to unfollowed leads, deputies left numerous items of physical evidence untested, yet when it came time to try Mr. Whitmore, the evidence was nowhere to be found. The day of the murder, deputies recovered the victim's pants and apparently found a splatter that tested positive for human blood, whose human blood was never determined. *See* Ex. B, pp. 2, 27. Deputies recovered the following items from the scene: Mr. Bond's hat with hair samples, hair samples from the bloodied tin bench, the hood of Mr. Bond's car, and a three-and-a-half foot long 1 x 4 with a nail sticking out of the end. Ex. B, p. 3. The car, the bench, and the board all had hair samples on them. These items were submitted to the crime lab for hair comparison and

serology, but no results are in the files. Deputies also found a bloody coke bottle and finger prints on the outside of the car and the bloody tin bench. Ex. B, pp. 8-26. It appears these prints were run against a couple of suspects, Ex. B, pp. 1-2. One test shows negative results, the other test does not indicate the results. *Id.* Nothing in the crime lab documents shows that deputies printed Mr. Bond's former business partner and sworn enemy. Nothing in the crime lab documents shows Mr. Whitmore's prints were ever run against the ones collected from the scene of the crime.

As the investigation unfolded in the days following Mr. Bond's death, deputies recovered more physical evidence and possible murder weapons in addition to the 1 x 4 board. A rusty automobile bumper jack was found on the ground about 18" from the fence at the southwest corner of Mr. Bond's pasture. Ex. B, p. 5. The jack "had evidently been there only a short time as the grass under the jack was not dead or discolored." Ex. B, p. 4. This jack was sent to the crime lab for analysis. Ex. B, p. 5. A galvanized anchor bolt was found only one foot Northwest of the pecan tree where Mr. Bond's body was found. Ex. A, p. 22. This anchor bolt was sent to the crime lab for analysis. Ex. B, p. 5; Ex. B, p. 7 [LSP crime lab docs].

On February 4, 1975, deputies collected evidence from Mr. Carl Bond, Marshall's brother. This evidence came from Mr. and Mrs. Cole. The Coles lived a few miles from where Mr. Bond had been killed and three days after his death, they saw a car drive down their road at a high rate of speed and saw a man throw something out the window into a ditch. Ex. A, p. 101. This turned out to be a small steak knife. Ex. p. 101. At the time, the Coles did not put this incident together with Marshall Bond's death. In January 1975, the grass in the ditch was moved and the Coles recovered a pocket knife and a nut driver. Carl Bond later went to the ditch with a metal detector and further recovered a ½" reinforcement rod and a yellow-handled flat head screwdriver. Ex. A, p. 101. The items were turned over to deputies and sent to the crime lab for blood, hair, and fiber analysis. Ex. B, p. 9. No results are in the crime lab files. Exs. B-C.

When the deputies began investigating the alleged confessions by Mr. Whitmore and Mr. Donahue, they searched Mr. Donahue's car. Ex. B, p. 10. The items recovered included a torque wrench, a jack handle, and lug wrench. Ex. B, p. 10. These items were sent to the crime lab for

serology analysis. Ex. B, p. 10. The last pieces of evidence collected during the entire course of the investigation included the only item presented at trial, a rusty metal bucket.

The bucket was allegedly one that came from Mr. Bond's barn and had been missing since the day of his death. The crime lab document showing the bucket turned over by Zachary Police Officer John Womack, actually lists two different buckets that had been found and submitted for analysis. Ex. B, p. 11 (items 1 and 2, both 5 gallon pails, black in color). The Sheriff's report describing the retrieval of the items from Ligon park in Port Hudson does not mention two buckets, it reports that the items turned over by Officer Womack included "a paint bucket, jack insert (upright), a 10 oz. coke bottle, and some linens." Ex. M, p. 11. As will be shown below in further detail, one bucket, although it is unclear which, was the only piece of physical evidence admitted at Mr. Whitmore's trial. In fact, in its opening statement the prosecution lamented the lack of physical evidence and complete absence of fingerprints at the scene. Tr. 59.

III. WHAT THE JURY HEARD: THE STATE'S CASE

The State's case against Kenneth Whitmore relied almost exclusively on two taped statements taken from him after almost 34 hours of questioning. *See* Tr. 50 ("I have never tried a criminal case where I had a confession that was my only evidence to prove the defendant's guilt."). These two statements conflicted with one another and they conflicted with the evidence withheld from the defense. The only other evidence the State presented was one of the two rusty buckets found in a park in Port Hudson 18 months after Mr. Bond was killed.

A. The State Affirms No Physical Evidence or Prints were Found at the Scene

The State tried to paint Mr. Whitmore as a violent killer who went to Marshall Bond's pasture on August 15, 1973 with the intent to rob him and who ended up stabbing him with a screwdriver and hitting him with a tire iron. The State averred, time and again, that almost no evidence was found at the scene of the crime and that no fingerprints were located. Tr. 58-59 ("the scene as I stated, had no fingerprints. All rough surfaces. Nothing left there.... Only one piece of evidence which was later found which would connect this defendant, physical evidence which would connect this defendant to the crime."). To secure a conviction, the prosecutor had to convince the jury that Mr. Whitmore's confessions were voluntarily given and true.

The State told a short story of Mr. Bond's death. Mr. James Robinson testified he found came in from the pasture before the sun began to set and found Mr. Bond laying in a pool of blood and breathing hard. Mr. Robinson had been out cutting limbs with a chainsaw and had come in to the barn because he ran out of gasoline. Tr. 71-72. Robinson left the scene and got in his truck to get Mr. Carl Bond from his drugstore in town (both of the Bond brothers ran his own drugstore in town). Tr. 74. Robinson followed Carl Bond back to the barn and the rescue unit came behind them. Tr. 75. Mr. Bond was dead by the time the rescue unit arrived at the hospital around 7-7:30.

The State called Mr. Bond's wife and a store employee, Mrs. Doris Hanna, to establish that Mr. Bond carried large amounts of cash and likely had between $1,000 and $1,100 on him the day he was killed. Tr. 64, 104. Mr. Bond's brother testified Marshall had no "folding money" left on his person, only change and keys. Tr. 112-113.

The coroner testified next, stating Mr. Bond died from trauma to the brain from multiple skull fractures. Tr. 122-123. He suffered ten to twelve blows to the head, one to the lip, and his eyes were blackened from blows. Tr. 121. The blows to the head caused lacerations of various lengths from what the corner estimated to be a "blunt instrument." *Id.* He suffered ten superficial, "half inch deep," puncture wounds to the left chest and left side of his chest, two to his left forearm, and had six small lacerations on the back of his right hand. Tr. 121-122. The coroner described the puncture wounds as "peculiar looking" and "caused by a laceration or like maybe a Phillips screwdriver." Tr. 121. The coroner also stated that the lacerations to his right hand would not "have been caused by the same instrument that caused those puncture type wounds." Tr. 122. Mr. Whitmore's counsel did not cross-examine the coroner.

Lieutenant Bueto took the stand next and described the scene of the crime briefly, noting that the deputies found a bloody coke bottle, a spot of blood near the base of a tree close to the barn, the victim's hat, and a tin bench covered with blood. Tr. 127-128. When Bueto testified that Sergeant Baxter with the State Police came to the scene that night to assist, the prosecuting district attorney, Lennie Perez, asked Bueto if Baxter was a "fingerprint expert," which he was, Bueto responded that he "did not have knowledge of that." Tr. 130. Bueto testified that the

investigation initially lasted "three to four months steady at the outset," and then "just off and on as information or something came up on it." Tr. 137.

The rest of the State's case was spent attempting to convince the jury that Mr. Whitmore's confessions were given voluntarily. Little time was spent showing that the confessions matched with the limited evidence presented.

B. Mr. Whitmore's First Taped Statement

Deputy Bueto was the first witness to testify regarding Mr. Whitmore's taped statements. Bueto testified that Mr. Whitmore gave his first statement at 2:45 a.m. on the morning of February 25, 1975. Bueto denied Whitmore had been mistreated, threatened, or offered any deals in exchange for his statement. Tr. 157. Bueto indicated he was "in and out" during the first statement and conceded he did not know whether Ossie Brown spoke with Mr. Whitmore before Mr. Whitmore gave his first taped statement. Tr. 159, 161.

The first taped statement was admitted through ADA Warren Hebert. Hebert testified he spoke with Whitmore for about 15 minutes prior to recording his statement along with Russell and Bueto. During this time "we questioned him about the Marshall Bond case and advised him about some information we had." Tr. 166. When asked if anyone made promises of lenient or harsh treatment to Mr. Whitmore in exchange for his statement, Hebert stated "No. To my knowledge, this was – we were the first ones to talk to him with regard to this particular matter." Tr. 166. He further testified that Ossie Brown was not at the parish prison when "Kenneth Whitmore was taken out of his cell and brought to the interview room." Tr. 169. And that he did not recall Ossie Brown speaking to Mr. Whitmore in his (Hebert's) presence at all. Tr. 169. In weighing his decision to let the first taped statement play for the jury, Judge Gonzalez noted that "there's no evidence in this courtroom of duress, threats, or intimidation." Tr. 188.[3]

Before the tape was played, Judge Gonzalez requested a transcript of the taped statement be given to the court reporter. However, as ADA Perez explained, "the quality of some portions

3 Petitioner has requested transcriptions of the hearing from his motion to suppress the taped statements and will supplement this petition with those transcripts and related arguments once he receives them. On information and belief, Mr. Whitmore avers that testimony regarding the voluntariness of his taped statements was presented at the suppression hearing in similar fashion to what was presented at his trial. He reserves the right to make the same arguments contained herein against the admission of his statements in the suppression hearing.

of the tape were so poor that their person who does the transcribing did not want to – felt she might be too much in error by guessing at words." Tr. 192. The first taped statement was played in its entirety to the jury and lasted about 30 minutes. Tr. 186, 196.

In his first statement, Mr. Whitmore stated that he and Mr. Donahue went to Mr. Bond's property that day so that Mr. Donahue could ask Mr. Bond for a job. Tr. 201. Mr. Whitmore stated that he stayed in the car the entire time they were at Mr. Bond's property and that Donahue "must have grabbed the man, stabbed him, and got back in the car." Tr. 197. When Bueto asked Whitmore what Donahue had in his hands when he got back to the car, Whitmore stated "[i]t looked to be a knife. I'm not sure. I'm not really sure." Tr. 205. Mr. Whitmore further stated Donahue returned to the car with a wallet that was "rust-colored looking" and was really thick. Tr. 205. Whitmore stated he did not see any blood on Donahue when he returned to the car and that he did not receive any money. Tr. 206. Throughout the first statement, Mr. Whitmore denies seeing any part of Mr. Donahue interacting with Mr. Bond. Tr. 213-214.

The first taped statement is inaudible in portions and after the initial short narrative, involves questions from both Hebert and Bueto. At one point, Mr. Whitmore is asked about the kind of soles he had on his shoes at the time he went to the Bond farm and any particular design they might have had. He told them a zigzag. Tr. 209-10.

After the jury heard the first taped statement, counsel for Whitmore cross-examined ADA Hebert who again stated that the first taped statement was taken before Mr. Brown arrived at the prison. Tr. 219.

C. <u>Mr. Whitmore's Second Taped Statement</u>

Lt. Bueto was called back to the stand to lay the foundation for the second taped statement. Tr. 223. This statement was taken at 10:40 a.m., February 26, 1975, approximately 32 hours after Mr. Whitmore's first statement,. Tr. 224. Bueto admitted the he and Lt. Russell were with Mr. Whitmore for "approximately fifteen or twenty minutes" before the statement was recorded. Tr. 225. He again denied making any "threats or inducements" in exchange for the statement. Tr. 225. Bueto acknowledged Mr. Whitmore was questioned by Sgt. Zuelke, the

department polygraphist, the night before this second taped statement. Tr. 228. An interrogation that was taped, but which had been taped over soon after it was conducted. Tr. 229.

Hebert took the stand again to deny threats or inducements related to the second statement. Trp. 237-239. Sgt. Russell took the stand for the first time and testified that he became involved in the investigation on the 24th or 25th of February 1975 because he "received some information on the case." Tr. 243-244. Russell admitted he had been at the parish prison when Mr. Whitmore's first statement was taken and testified that Ossie Brown had been to the prison "and left ... when I got there." Tr. 247-248. He also stated that after the 2:45 a.m. interview concluded, around 3:16 a.m., Mr. Brown again spoke with Mr. Whitmore to Russell's knowledge with "no one else present." Tr. 251.

Mr. Whitmore's second taped statement was played for jury and lasted 11 minutes. *See* Tr. 254, 258 (showing tape started at 10:40 and concluded at 10:51). In this second statement, Mr. Whitmore states he got out of the car with Donahue at Mr. Bond's pasture. He says Donahue grabbed Mr. Bond, and he "took the screwdriver out of Donahue pocket, and I hit him with it a few times." Tr. 256. He then states that Donahue "told me to go get the jack handle. So he gave me his keys, and I went got the jack handle. Came back. Told me to hit him. So I – gave him some blows over the head. And then lays the jack handle down." Tr. 257. Mr. Whitmore's statement then describes how Donahue "went into his pocket, got the money. So we – I went back to the car. Donahue came back to the car, too. We put the stuff in the trunk, put the money and stuff in the car, and we drove off ... We went to a recreation center at Port Hudson." Tr. 257-258.

After Mr. Whitmore's short statement, Lt. Bueto, ADA Hebert, and Sgt. Russell each questioned him. When asked to describe the screwdriver Mr. Whitmore stated "a plain screwdriver with a yellow handle." Tr. 260. Russell attempts to clarify, "You say, plain. You mean a standard or a Phillips screwdriver? A: Standard. Q: It was not a Phillips screwdriver ... A: No, it wasn't. Q: Is that what you're saying? What color was the handle? A: Yellow." Tr. 260.

Hebert asks if Mr. Whitmore knew whether the jack handle or screwdriver had ever been taken out of the trunk. Mr. Whitmore affirms they were never taken out of the trunk after their

supposed use in Mr. Bond's beating. Tr. 260. Whitmore does posit, however, that because Mr. Donahue got another car that he might have moved them out of that car and put "his tools and jack and everything out of that car and put into his other car." Tr. 260. When Lt. Bueto next tries to get Mr. Whitmore to admit that this new taped statement is "more involved," Mr. Whitmore responds "I didn't understand you." Tr. 261. After the tape was played, Hebert denied that anyone told Mr. Whitmore what to say in that second taped statement, but admits he saw Ossie Brown outside of the room after the first statement concluded, at 3:16 a.m. Tr. 263.

Hebert conceded on cross-examination that the District Attorney's office was recused from trying Mr. Donahue's case because Ossie Brown had taken Donahue's confession and was a witness in Donahue's case. Tr. 266.

In an effort to convince the jury that they could credit Mr. Whitmore's alleged "confessions," the State called District Attorney Ossie Brown. Mr. Brown swore under oath he had not spoken with Mr. Whitmore before Mr. Whitmore gave his first taped statement to Assistant District Attorney Hebert, Lt. Russell, and Lt. Bueto. Tr. 270 ("A taped statement had been taken when I got there. Q: Did you speak to Mr. Whitmore prior to his going into the room with these other three people ...? A: Oh, no sir. I wasn't there. They called me at home to come back out there."). Brown tells a story of talking to Mr. Whitmore "after they had finished taking his statement." Tr. 272. "I merely asked Mr. Whitmore, did you tell them the truth. He said, yes. I said, well, fine, that's all that they want is the truth; and then he said, can I use the telephone. I said, you surely can. He didn't have any money, and I gave him three or four nickels to use the telephone ...." Tr. 272. Brown concluded, "that's the only conversation I ever had with Mr. Whitmore.... and that was all the subject was, a matter of such seconds." Tr. 273.

On cross-examination Mr. Brown stated he did not tell Mr. Whitmore that he would get him off if Mr. Whitmore would implicate Mr. Donahue: "No, sir. I didn't even know Mr. Donahue was involved in the thing until a couple of days later when Mister Donahue tells me and said he and Whitmore had done it." Tr. 275. He further testified that his presence at the parish prison in the pre-dawn hours of the morning "was in response to a request from Mr.

Hebert that I come because Mr. Whitmore had given a statement and relative to the Bond murder, and I had been involved in that case." Tr. 277.

When confronted with Sgt. Russell's testimony that he had been alone in an interview room with Mr. Whitmore after the first taped statement, Mr. Brown stated "Not going to say [Russell's testimony] would be erroneous because I don't know." Tr. 278. Mr. Brown again affirmed he only "asked [Mr. Whitmore] that one question." Tr. 279.

The state's last few witnesses included the East Baton Rouge Parish Sheriff's office polygraphist, Mr. Don Zuelke. He testified that Mr. Whitmore sat for two tests, the first of which lasted "roughly two hours and thirty minutes." Tr. 288. That two and a half hour examination was tape recorded, but the exam was recorded over because the tape was re-used. Tr. 290-291. Zuelke admitted that Mr. Whitmore was not told he was being tape recorded. Tr. 295. He also stated Mr. Whitmore was given a second polygraph the next morning, around 11:20 on the 26th and that his questions during that second test were "based upon the information that had been given to me by the investigating officers." Tr. 291, 292.

D. <u>The Feed Bucket</u>

After the jury heard the two taped statements, the State put on testimony regarding the only piece of physical evidence it offered at Mr. Whitmore's trial, a metal bucket. Zachary Police Department Chief of Police P.V. Browning laid the foundation for the alleged missing bucket by confirming that horse feed was found on the ground the night of Mr. Bond's death. Browning stated it was a large amount of feed and that they "couldn't figure out how it got out" of the barn because "we never did find the bucket or anything how the feed got out there." Tr. 301. He also testified that there were a couple of buckets found inside the barn that night. Tr. 301.

After a defense objection to the bucket and a sidebar in which the prosecutor conceded that Mr. Whitmore "in no way mentioned the bucket" in his statements. Tr. 326, the court allowed the State to present more testimony regarding the bucket because it was found at the

recreation area at Port Hudson and Mr. Whitmore's second taped statement stated he and Mr. Donahue went to Port Hudson after Mr. Bond's.[4] Tr. 331-332.

Zachary Police Department Assistant Chief of Police, John Womack testified that he went with maintenance employees for the City of Zachary to the recreation area in Port Hudson on Ligon Road on February 27, 1975. Tr. 336-337. He further testified that a photograph was taken "at the time that this pail was found. The pail was essentially leaning out, as you can see here, held with a rake." Tr. 337. Mr. Womack had been involved in the investigation of Mr. Bond's murder since the day he was killed. Tr. 333.

The State then called Leon Wales to testify in front of the jury. He testified that he went to the farm the day after Mr. Bond was killed to feed the horses that were out there and he noticed that bucket was missing. Tr. 341. Mr. Wales stated there were two buckets left at the barn, and that the "particular bucket that was missing" had been in use at the barn for five or six months. Tr. 342. He identified the bucket collected by Officer Womack as the missing bucket based on the dents in the bucket. Tr. 342-343. On cross-examination, Mr. Wales stated it was "just an ordinary paint bucket" and that all he knew was that the bucket in the courtroom looked like the bucket that was on the farm. Tr. 344-345.

The Court next heard arguments regarding a possible stipulation on the bucket. In this colloquy, ADA Perez stated that the bucket had been sent to the Louisiana State Police for testing and that "the results of that analysis were inconclusive and that the crime lab could not determine with any degree of positiveness one way or the other whether this bucket ever in fact [had] been on the Bond property because of – apparently because of the condition of the bucket and its exposure to the elements over a long period of time." Tr. 346. The bucket as admitted and when the jury returned the next day, the State rested its case.

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4 The colloquy with the between counsel regarding the bucket at transcript pages 327-331 shows that counsel for Mr. Whitmore did not have possession of the actual taped statements, but instead were working from transcripts. Tr. 327-328. The Court listened to this untranscripted portion of the tape off the record, then returned to the record and stated "If an item was found at the Port Hudson recreation center and an item which other witnesses can describe as having been at the crime scene, it would be of value to the jury in determining whether or not that taped statement was accurate and truthful or not." Tr. 331-331.

IV. WHAT THE JURY HEARD: THE DEFENSE CASE

Kenneth Whitmore took the stand in his own defense. He admitted that he had been at Mr. Bond's farm that day with Mr. Donahue, who had gone to look for work. Tr. 358. He told the jury how he had been employed at Floyd Electric at the time, making one hundred to one hundred and twenty dollars a week and how he had saved up around four or five hundred dollars from that work. Tr. 360. He told the jury he stayed in the car the entire time at the farm, but that Mr. Donahue came back to the car and told Mr. Whitmore that he had robbed and beaten Mr. Bond. Tr. 362.

Mr. Whitmore explained to the jury the first person to talk with him about the Bond murder was Mr. Ossie Brown. Tr. 364. That Ossie Brown came to get him from his cell, Tr. 364, and offered him five years in exchange for his testimony against Mr. Donahue. Tr. 365. And that Ossie Brown told him that Angola was a dangerous place where people get killed and no one sees anything. Tr. 365.

Mr. Whitmore explained that the second taped statement was untrue and that he only said the things he did in that statement because of the promises he was made and because he did not want to go to Angola. Tr. 368. He further explained that when Ossie Brown first asked him what he knew about Mr. Bond's murder, "I told him I didn't know what happened." Tr. 369.

On cross-examination, the State questioned how Mr. Whitmore could have sat in the car and not heard or seen anything if Mr. Donahue had been beating and robbing Mr. Bond. Tr. 370-371. Mr. Whitmore explained simply that he did not see or hear anything while he stayed in the car. Tr. 370-371. When ADA Perez asked about the first time he saw Mr. Brown at the jail, Mr. Whitmore answered, "[w]hen him and another deputy got me out of isolation." Tr. 373. He went on to testify that Ossie Brown told him "he was the only one could help me on that" and that Mr. Brown suggested he turn state's evidence in exchange for leniency. Tr. 375.

Mr. Whitmore explained to the jury that in between the 2:30 a.m. taped statement and the evening's polygraph, he was taken to the Bond farm and asked how things had happened the evening Bond was killed. Tr. 375.

When confronted with whether he "heard Mr. Hebert state on the stand that he called Mr. Brown up after – he was out there. He called Mr. Brown up and had him come in?" Mr.

Whitmore replied, "yeah, I heard what they said, you know... No, it's not that way. I know it's not that way. Q: Mr. Hebert is lying then? A: Yeah, he's lying." Tr. 377. Mr Whitmore continued to rebut the prosecution's attempts to get him to affirm his second taped statement. Tr. 379-380.

Mr. Whitmore denied that Mr. Donahue got out of the car with a tire tool and screwdriver in his hand. Tr. 381. He explained that in his second taped statement he told deputies he received about five hundred dollars from Donahue because "I told them the money I had saved up to get married with. Told them what I had to them." Tr. 381. He again denied he stole anything from Mr. Bond. Tr. 381. He explained, "[t]hey told me not to say what Ossie Brown [said] and they had told me because they say the tape would be no good." Tr. 382. ADA Perez pushed Mr. Whitmore to concede that Mr. Bond's wounds could not have been caused by one person: "You heard the doctor's testimony about the type of wounds Mr. Bond had, that his skull was crushed in with a blunt instrument... A: Yeah. Q: And that he was stabbed with a sharp instrument? A: Yeah. Q: Does that sound like one person was doing that, wielding one of them with each hand? One hand, a tire tool? The other hand, a screwdriver? A: One man can do a lot." Tr. 381.

After Mr. Whitmore's testimony, the State re-called Mr. Womack to the stand. Womack testified about the layout of the barn and the surrounding area and what an individual could purportedly see from different vantage points around the barn. Tr. 390-399. He detailed the amount of physical struggle that appeared to have taken place, describing the marks on the corrugated tin bench near where the horse feed had been spilled as "apparently bloody hands struggled here on this bench that's in this photograph." Tr. 405.

The Court asked Mr. Womack about certain dark spots on the ground in photographs of the scene, Womack denied those spots were blood. Tr. 411. With that the State rested its rebuttal. Tr. 411.

V. THE STATE'S CLOSING ARGUMENT

Perez concluded the State's case by focusing the jury on Mr. Bond's injuries, describing his skull as "smashed" "time after time after time with a tire tool or a jack." Tr. 414. He argued Mr. Bond suffered "defensive wounds on his hand." Tr. 415. He told the jury "[w]e don't have the weapon, despite this intensive investigation of this case, but offered up that they could know

what killed Mr. Bond based on "what Mr. Whitmore told you on that tape what these weapons were. A tire tool or something of the nature of a tire tool. How was it used? It was used to bash in Mr. Bond's skull. A screwdriver, Phillips or standard. How was it used? It was used to stab him, stab him in the arms and the chest and the back countless number of times." Tr. 417.

Perez argued it was unbelievable that Mr. Whitmore would have sat in the car while "this brutal murder" took place "within ten feet from the outside of that door a murder which was not a quick stabbing of a person and the person collapses in quire ... Not one weapon but two or three weapons used.... Do you think Mr. Bond was passively quiet, that no one was saying anything, that they were being quiet so that Kenny Whitmore wouldn't hear them, sitting in the car...?" Tr. 421. He went on to tell the jury "[f]ingerprints of Mr. Whitmore found at the scene would have been very comforting to you in making your decision to have these things. We tried. The police tried. According to Carson Bueto, they interviewed a hundred and twenty-five -- at least hundred and twenty-five people in the area to try to find anyone who had seen anyone go back into the farm and commit this robbery." Tr. 422.

The ADA continued to lament the lack of physical evidence discovered at the scene "[n]ow, you can look at the photographs that were introduced and look at the testimony, and you can see the old corrugated, pretty rusty, oxidized tin around in places, old wood that hadn't had a coat of paint in probably thirty or forty years. And what else? Ground. Nothing on which you could leave fingerprints that would be legible. The crime lab went out. They could not come here with anything to help in this case today. A massive investigation, an unsolved crime for eighteen months until this man confessed." Tr. 422.

The ADA concludes by impugning Mr. Whitmore's assertions that he was coerced into confessing: "Kenny Whitmore's testimony up here was untrue. He – if he was telling the truth, then everyone else is a liar. All the officers who investigated this case, Mr. Hebert from our office, Mr. Brown from our office, all are lying." Tr. 423. Perez concluded shortly after that, asking the jury to convict on both counts, second degree murder and armed robbery. Tr. 424.

VI. THE DEFENSE'S CLOSING ARGUMENT

"The situation of Mr. Whitmore being at Marshall Bond's property on the evening of August 15, 1973, we don't dispute at all. We never have disputed it. We've never tried to hide it." Tr. 424. Mr. Whitmore's defense attorney opened his closing argument with that statement and goes on argue to the jury that Mr. Whitmore's testimony recanting his confession could be credited. He highlights the fact that Ossie Brown has been recused from Mr. Donahue's case because of misconduct and he goes on to take on Mr. Brown's version of events. Tr. 425.

"Now, if anybody believes the District Attorney of East Baton Rouge Parish is going to get out of bed at three o'clock in the morning to ask a man in the parish prison, which is out at Ryan Airport, he's telling the truth-- it's just so unbelievable, it just shocks my conscious." Tr. 426. "Sergeant Russell directly contradicted Mr. Brown. Kenny acknowledges that -- did Mr. Brown ask him if I was telling the truth. Yes, sir, I told him that. Well, the truth wasn't convenient enough." Tr. 427.

"So here we've got a young man with a tenth grade education. Now, he's going to come up with knowledge about Angola. He's going to come up with knowledge about state's evidence. He's going to come up with knowledge about publicity. He's going to come up with a statement like, don't tell anybody about this deal I want to make with you to testify against Mister Donahue because then the confession won't be any good. There is no way in the world that that man would know those four facts. It's absolutely impossible. No senior in law school is going to know those four things, much less a man with a tenth-grade education. It's absolutely impossible. So what do they do? They conduct an interview until at least 3:16 in the morning. We know that for a fact. How long Mr. Brown was with him, we don't know. The next day they take him down to a small isolation room with another officer. Now, Mr. Hebert of the District Attorney's office is not there. We've got Lieutenant Bueto. We've got Sergeant Russell, and we've got Lieutenant Zuelke, who's a polygraph expert; and they put Mr. Whitmore in one room. Lieutenant Bueto and Sergeant Russell in the other room, and Zuelke in the same room, and finally after beating it out of him, Zuelke admitted that Mr. Whitmore didn't know he was being taped. Now, that's the tape that was conveniently erased, and that's another hole in the prosecution's case. I do not believe that in any way, shape, or form, how hard it is to get a

confession or a statement from somebody, if that statement was against his interest, that it would have been erased. That makes no sense. You've got two officers standing in another room, looking through a two-way mirror, watching a man be interrogated about a case, and they're going to erase a statement that would convict him. Think about that. Does that make any sense whatsoever? No. And then what happens? There's a phone call from Mr. Brown, and we get some more statements. Very convenient. Now, one thing that's really important, and think about this -- I'll be the first one to acknowledge this is a heck of a crime, it's a horribly gruesome crime. The problem is this man didn't do it." Tr. 427-428.

Mr. Brantley goes on to argue that the jury could credit Mr. Whitmore's testimony because of his composure and demeanor while being cross-examined. "If anything, if any question, if that man had something to hide in getting on this witness stand, would have been thought out, would have been reserved. He would have been regarded as -- guarded as Mr. Hebert was when Mr. Hebert was on the witness stand." Tr. 429. Mr. Brantley reminds the jury "If you look at all of the facts, it just does not add up." Tr. 430.

In finishing the defense counsel's argument, Mr. Abadie makes the following charge to the jury "you are basically going to try to decide whether or not you believe Mr. Brown and whether or not you believe Mr. Whitmore." Tr. 432. "There is just no other evidence in this case as Mr. Perez has clearly admitted. There is no weapon. There is nothing that was taken. There are not tire tracks. There are no fingerprints. There is nothing. You had to get somebody to come forward in some fashion and say, I did it." Tr. 432-433.

In rebuttal Mr. Perez tells the jury there just no way Ossie Brown is lying, it would simply require too much of a conspiracy between all parties involved, it would require the witnesses to have committed perjury. Tr. 437. "Now, conspiring in such a fashion to violate the civil rights of a person like Kenny Whitmore is not only a crime against the laws of Louisiana but this is also a crime against the laws of the United States, something which could be investigated by the FBI, something, which I'm sure if two citizens like these two citizens knew about, would have been reported to the FBI as violation to the Civil Rights Act, would have been totally investigated by an agency like the FBI. It's a serious crime, a Federal crime, a crime over

which Ossie Brown and Warren Hebert and these little deputies have no control. I haven't seen one FBI agent or agent that came forward and said, yeah, we were -- this was reported to us so we could investigate this to see if all of these people had conspired to violate the civil rights of this man." Tr. 437.

Perez continued on, arguing that it was simply implausible that Ossie Brown and Warren Hebert were lying, and that the jury could credit their testimony over Mr. Whitmore's because Mr. Whitmore had been convicted of robbery. Tr. 443-446.

The jury convicted Mr. Whitmore by a vote of 10-2; he was sentenced to life in prison without the possibility of parole. Ex. L.

VII. WHAT THE JURY DID NOT HEAR

The State's withholding of physical evidence, alternative murder weapons, alternative suspects, crime lab reports and analyses, and information about the victim combined with its failure to follow-up on viable leads, test significant evidence, and run collected fingerprints, resulted in a jury that heard very few of the facts surrounding Mr. Bond's death.

A. Mr. Bond's Troubled Last Few Days and His Fear for His Life

The jury did not hear about Mr. Bond's troubled three days before he was killed. They heard no mention of his failed business dealing with a man who became his sworn enemy and caused him to lose $65,000. They did not hear that he intended a show down with this man, one way or another. Ex. A, p. 49. They were not informed that this man failed to show up for a polygraph test after giving the deputies a completely evasive interview. Ex. A, p. 49-50.

They did not know Mr. Bond had almost cried at the Town Council meeting the night before his death as he gave the invocation. They heard nothing about the strange phone calls Monday, Tuesday, and the day of the murder asking a woman who could see the pasture whether it was raining outside.

The jury did not hear about Mr. Bond's late afternoon visit to his mistress, during which he poured out his heart and talked about his frustrations, his failed business deals, the man who had cost him so much money, his fear for his life and that it would end in his pasture, his carrying of a pistol for protection from such an event.

B. The Physical Evidence: Murder Weapons and Fingerprints

The jury also did not hear that the Sheriff's department had collected over twenty pieces of physical evidence before Mr. Whitmore ever became a suspect. Ex. B, p. 9. They did not know that a 3 ½ foot 1 x 4 with a rusty nail at the end was found with hair samples on it at the scene of the crime. They were unable to question whether that board was capable of causing all of the injuries Mr. Bond suffered, the head and puncture injuries that ADA Perez claimed had to have come from two assailants wielding two different weapons. But, a board with a nail sticking out at the end is capable of causing superficial, half-inch wounds and when turned on its side, it is also capable of causing deep lacerations and fractures to the skull. Mr. Whitmore was never able to present this alternative murder weapon to the jury. He was prevented from contrasting the possibility that this weapon killed Mr. Bond with his coerced statement that Mr. Bond was killed with a tire iron or jack handle that was never recovered.

The jury was also unaware that deputies had collected a rusty automobile bumper jack just on the outskirts of Mr. Bond's farm. They knew nothing of the submission of a bloody coke bottle to the crime lab for analysis (Ex. B, p. 5) or the discovery of an anchor bolt only one foot Northwest of the pecan tree where Mr. Bond's body was found. Ex. B, p. 22.

The jury did not hear that the police had collected a regular yellow-handled screwdriver as evidence. Ex. B, p. 9. A yellow-handled screwdriver recovered by Mr. Carl Bond on February 4, 1975. The jury did not get to wonder whether Mr. Whitmore was fed information by the police in that second statement, that second statement in which he described Donahue stabbing Mr. Bond with "a yellow handled screwdriver approximately eight to nine inches long having a standard blade." Ex. M, p 14.

The jury did not hear that deputies collected eleven pieces of physical evidence from Mr. Donahue's car, all of which were sent to the lab for serology analysis. Ex. B, p. 10. [crime lab reports]. The jury did hear part of Mr. Whitmore's coerced second statement where he allegedly admitted giving Mr. Bond "some blows" with a jack handle. The jury was not allowed to assess the fact that the crime lab collected a jack handle from Mr. Donahue's car, but that the State failed to present it at trial. The state failed to ask Mr. Whitmore if that was indeed the jack handle he allegedly confessed to using. The State failed to discuss the results, if any existed, of

the requested serology analysis on the jack handle. Ex. B, p. 10. Instead, the jury heard over and over again that the State "do[es] not have – and we cannot show you exactly what these weapons were." Tr. 417.

The jury did not hear that Mr. Womack actually collected two buckets at Port Hudson park. Ex. B, p. 11. Two buckets described in almost identical fashion on the crime lab sheet requesting scientific analysis. Ex. B, p. 11. The jury heard Mr. Womack testify that he located one bucket. Tr. 337. The *one* bucket that Mr. Wales testified was missing from Mr. Bond's property and the *one* bucket Mr. Wales confirmed was most likely the one shown to him at trial. Tr. 342. The jury did not hear that the one piece of physical evidence the State offered at Mr. Whitmore's trial was actually one of the *two* buckets collected by Officer Womack and submitted to the crime lab for analysis.

The reason that the jury did not hear about any of these items is because they were never turned over, never even mentioned, to Mr. Whitmore's defense counsel.[5]

And the reason the evidence was not turned over to Mr. Whitmore's defense counsel is that a District Attorney's office investigator, Mr. Leonard Spears, removed the evidence from the State Police crime lab on November 4, 1976, only two months after Mr. Whitmore was appointed counsel. The evidence was never checked back in. Undersigned counsel's requests and search for this evidence turned up only the few fingerprints and photographs remaining in state police custody. *See* Ex. C.

Even these fingerprints however, were not mentioned to the jury. In fact, the State denied the existence of any fingerprint at the scene, telling them opening argument that "[t]here were rough boards around, trees, nothing on which you could expect to find fingerprints, not nice smooth surfaces like you might find in a courtroom...." Tr. 42. But the fingerprints that remain in the state police files did indeed come from smooth surfaces. At least 10 latent prints were

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5 Counsel for Mr. Whitmore has been in contact with the Mr. Joseph P. Brantley, one of Mr. Whitmore's appointed defense counsel. Mr. Brantley did not recall receiving the evidence mentioned in this brief. Counsel for Mr. Whitmore reserves the right and will supplement this application with an affidavit from Mr. Brantley. Mr. Whitmore also submits that it is evident from the trial transcript that the State affirmatively represented certain evidence within its possession did not exist. He also submits that it is clear from the trial that his counsel did not have any of the physical evidence or Sheriff's reports attached to this pleading as Exhibits A-C.

found from examination of the scene and Mr. Bond's car. Ex. C, p. 6. They were pulled from the hood of the car, the fender, the outside of the driver's door glass, and from bottles found inside the car. Ex. C, pp. 8-23. These prints were checked against at least three individuals, one test was negative and it is unclear from the records recovered what the results of the other test were. Ex. C, pp. 1-2, 7.

Last, the jury did not know that on the evening of the investigation the deputies found more than just "some footprints in some dust," as Deputy Bueto testified, they actually found "prints of two different type shoes" in the "soft ground beneath the shed." Ex. A, p. 3. If the jury had known that deputies found only two types of shoes at the scene, they might have discredited the State's theory that both Mr. Whitmore and Mr. Donahue attacked Mr. Bond. Moreover, they might have wondered, if deputies knew that Mr. Whitmore's shoes left a zigzag print (Tr. 209-210), why the State did not present evidence that the zigzag matched at least one of the two kinds of shoe prints found at the scene.

The jury was completely misled regarding the physical evidence that was recovered during the investigation of Mr. Bond's murder. This caused them to render a verdict in a virtual vacuum, a vacuum created by the District Attorney's office when it allowed an investigator to remove the evidence from state police files and when it further failed to disclose this evidence ever existed.

C. Mr. Whitmore Was Home When the Ambulance Went By

In Mr. Whitmore's second taped statement, the jury heard that he and Mr. Donahue went to Port Hudson after they left Mr. Bond's. Tr. 257-258. Mr. Whitmore recanted this statement and testified at trial he went home immediately after they left Mr. Bond's house. Tr. 362-363. The jury did not get to hear that there was a woman who saw Mr. Whitmore standing in his driveway only seconds after the ambulance drove by on its way to Mr. Bond's farm. Affidavit of Aldreaner Hawkins, attached hereto as Exhibit H. Ms. Hawkins was young at the time, but remembers clearly the ambulance going by and "seeing Kenny standing in his driveway." Exhibit H.

This undermines Mr. Whitmore's assertion in his second taped statement that he and Mr. Donahue went to Port Hudson after leaving Mr. Bond's. This corroborates Mr. Whitmore's trial testimony that his second taped statement was coerced and false. The jury did not get to hear Ms. Hawkins's testimony. The evidence is new and could have caused one more juror to credit Mr. Whitmore's testimony.

D. Mr. Whitmore's Head Injury and Time in the Dungeon

In his own defense and in an attempt to explain his statements, Mr. Whitmore took the stand and described how he was coerced into confessing and was fed information by the deputies. What the jury did not hear at the time, in part because Mr. Whitmore had no one to corroborate his story, is that 1-2 days after his arrest an inmate at the parish prison started a fight with him over a blanket. Affidavit of Kenneth Whitmore, attached hereto as Exhibit K, ¶4. During this fight, Mr. Whitmore was kicked in the head 6-7 times, a scar on his face split open and he was bleeding. His head injury resulted in a headache that lasted at least 24 hours and dizziness. Exhibit K, ¶5.

Immediately after this fight, the prison guards escorted him to a place referred to as the dungeon. Exhibit K, ¶6. He was not given medical treatment. Exhibit K, ¶6. The dungeon is a small room, barely larger than 9 feet by 6 feet. Exhibit K, ¶7. Mr. Whitmore was placed there with at least 6 other men. Exhibit K, ¶7. His clothes were taken from him, just as they had been from the other inmates in the dungeon. Exhibit K, ¶7. He was forced to use a hole in the floor as a bathroom. Exhibit K, ¶8. Because there were not proper bathroom facilities, Mr. Whitmore did not eat. Exhibit K, ¶8. There was no light in the dungeon. Exhibit K, ¶7. Mr. Whitmore remained in the dungeon in these deplorable conditions for one and half to two days. Exhibit K, ¶9. He only slept 45 minutes to one hour the whole time he was there. Exhibit K, ¶8.

In the middle of the night, after he had been in the dungeon for one and a half to two days, Ossie Brown and the jail captain came and got Mr. Whitmore from the dungeon. Exhibit K, ¶9. They gave him his clothes and took him down the hall to an interrogation room next to the drunk tank. Exhibit K, ¶9

Ossie Brown spoke with Mr. Whitmore for almost an hour after he was removed from the dungeon. Exhibit K, ¶10. During this time, Mr. Brown told Mr. Whitmore that he needed Mr. Whitmore's help. He said he was the only one who could help Mr. Whitmore with his charges. Exhibit K, ¶11. He asked Mr. Whitmore if he knew Marshall Bond had been killed. Mr. Whitmore replied he thought Mr. Bond had been shot. Exhibit K, ¶11. Mr. Brown again told Mr. Whitmore he was the only one who could help him. Mr. Brown had a piece of paper with him during the conversation. Mr. Whitmore believes it had information Mr. Brown wanted him to say. Exhibit K, ¶11. Brown tried to get Mr. Whitmore to sign the paper. He did not sign. Exhibit K, ¶11.

Mr. Brown asked Mr. Whitmore if he knew what had happened in Zachary that Monday. He gave Mr. Whitmore a nickel and told him to call home and ask his mother. Mr. Whitmore called his mother and she told him Mr. Donahue had been arrested. Exhibit K, ¶15. Mr. Brown also told Mr. Whitmore that Donahue had divulged that he and Whitmore were at Bond's farm the day he was killed. Mr. Whitmore told Mr. Brown he did not know anything about the murder. Exhibit K, ¶12. Mr. Whitmore asked for an attorney numerous times, Mr. Brown told him he didn't need one. Exhibit K, ¶12.

Mr. Brown continued to compel Mr. Whitmore to provide him with helpful information. At one point Mr. Brown told Mr. Whitmore "anything I say you did, you did" and that "my world is three times yours." Exhibit K, ¶13.

Mr. Brown concluded the talk by telling Mr. Whitmore he wanted him to talk to a district attorney and two detectives. Exhibit K, ¶14.

The jury only heard part of Mr. Whitmore's experience at the parish prison. Had they heard about the conditions leading up to Mr. Whitmore's alleged confessions, they might have been more inclined to credit his testimony at trial that the statements were coerced. Moreover, if the jury had known that another parish prisoner, Mr. Ronald Thomas recalled Mr. Whitmore being in the dungeon with him, recalled Mr. Whitmore's head injury, and also experienced the horrible conditions of the dungeon, they might have called into question the State's version of

the voluntariness of Mr. Whitmore's statement. Affidavit of Ronald Thomas, attached hereto as Exhibit D, ¶¶3-13.

The jury did not get the benefit of hearing Mr. Thomas corroborate Mr. Whitmore's claim that he was removed from the dungeon by Ossie Brown for questioning. *See* Ex D ¶14.

E. <u>The District Attorney's Perjured Testimony</u>

The jury clearly heard, time and again, that Mr. Ossie Brown did not talk to Mr. Whitmore before Mr. Whitmore gave his first taped statement. Mr. Brown took the stand and denied it. Tr. 272-273. Mr. Hebert took the stand and affirmed Mr. Brown's statement. Tr. 166.

New evidence, from Mr. Hebert himself, reveals that Ossie Brown did in fact speak with Mr. Whitmore before Mr. Hebert took his first taped statement. Affidavit of Warren Hebert, attached hereto as Exhibit E, ¶4. To Hebert's knowledge, Ossie Brown was the first person to get an incriminating statement from Mr. Whitmore. Ex. E, ¶5.

This new evidence shoes that both Mr. Ossie Brown and Mr. Hebert gave false testimony at Mr. Whitmore's trial. This false testimony lead the jury to believe the State's version of events over Mr. Whitmore's version. This false testimony allowed the jury to believe the one piece of evidence the State had against Mr. Whitmore, his coerced confessions. The impact of this false testimony cannot be overstated. Mr. Whitmore was convicted by a verdict of 10-2. If only one more juror had believed Mr. Whitmore's testimony regarding his first meeting with Mr. Brown, he would not have been convicted.

F. <u>The District Attorney's Affiliation with the Ku Klux Klan</u>

In addition to the new evidence Mr. Whitmore has uncovered and explained above, there remains new evidence addressing the issue of Mr. Ossie Brown's bias and credibility during his prosecution of Mr. Whitmore. Attached to this application as Exhibit F are documents obtained from the National Archives and Records Administration in response to a Freedom of Information Act request for FBI documents related to the Milton Leon Scott murder in Baton Rouge, Louisiana. LSU Manship School of Mass Communications professor James Shelledy obtained these documents in January 2013. Mr. Whitmore's counsel became aware of these documents on May 17, 2014.

The documents state as follows:

> "Files of the New Orleans office [of the FBI] contain the following succinct summary concerning District Attorney Ossie Bluege Brown: Confidential sources have reported he was closely associated with the Ku Klux Klan (KKK) in Baton Rouge area and attended some Klan meetings. He served as attorney for many Klan members and as attorney handling legal matters for the Klan. Brown was reportedly robed speaker at Sixth District Anti-Communist Christian Association (General Knights of the Ku Klux Klan) meeting on February twentythree, sixtyeight attended by forty to forty-five robed KKK members wherein he, Brown, praised the KKK, stated they should not be afraid of the FBI, should not cooperate with the FBI and that they would have no trouble with FBI unless they committed acts of violence."

Affidavit of James E. Shelledy, attached hereto as Exhibit F.

This new evidence shows that Mr. Brown's testimony against and prosecution of Mr. Kenneth Whitmore was motivated by racial animus and a product of a biased investigation.

G. <u>The Racist Environment of East Baton Rouge Parish and Zachary Louisiana</u>

The failures of the State to produce evidence, indeed the State's affirmative removal of evidence from police files, its failure to protect the integrity of its prosecutions and the justice system and its failure to ensure its citizens were not selectively prosecuted based on their race, should be viewed in conjunction with Mr. Brown's association with the Klan and subsequent prosecution of Mr. Whitmore.

Mr. Whitmore attended Zachary High School until the tenth grade. His high-school class was one of the first to integrate in Zachary's public schools. Zachary's schools did not desegregate until fall of 1970, as part of a greater desegregation plan overseen by the federal courts. *See* Bill McMahon, *New School Year Starts in EBR Without Trouble, Morning Advocate*, Baton Rouge, September 1, 1970, at 1 and 6. While the intense violence seen in other communities related to school desegregation did not plague the Zachary schools, integration nonetheless fostered an environment of disagreements, fights, and a general sense of heightened tensions between white and black students.

In the years leading up to the 1973 Marshall Bond homicide, a series of violent events underscored the ongoing racial discord within East Baton Rouge Parish and Zachary, a region that was still struggling to dismantle institutionalized racial segregation and inequality. These racial tensions grew out of two decades of complex and intense civil rights struggles in the Parish. Dating back to 1953 when African-Americans organized the first successful bus boycott

in the United States, social change advocates in the Parish employed multiple tactics over the next twenty years to unravel the systemic racial discrimination pervasive in the region. From lawsuits to sit-ins, the East Baton Rouge African-American community consistently challenged the Parish's public institutions that had legalized Jim Crow segregation. *See e.g.*, The Baton Rouge Bus Boycott, http://www.lib.lsu.edu/special/exhibits/e-exhibits/boycott/.

Parish law enforcement agencies responded to these civil rights demonstrations with violence. In January 1972, a demonstration in Baton Rouge ended in a shoot-out leaving dead two white officers with the East Baton Rouge Sheriff's Office and two black demonstrators. Tom Jory and G. Michael Harmon, *4 Killed in Baton Rouge Riot; Mayor Blames Black Muslims*, THE NASHUA TELEGRAPH, Jan. 11. 1972, at 1.

Newly-elected District Attorney Ossie Brown oversaw the prosecution of 13 of these protestors in an array of litigation that became colloquially known as the "Black Muslim cases" in Baton Rouge. *See e.g. State v. Beavers*, 394 So.2d 1218, 1221 (1981); *See State v. Bell*, 315 So.2d 307 (La.1975), 346 So.2d 1090 (La.1977); *State v. Williams*, 354 So.2d 562 (La.1978); *State v. Eames*, 365 So.2d 1361 (La.1978).

Later that year, EBRSO deputies then violently broke up a peaceful protest at Southern University that left two students—Denver Smith and Leonard Brown—dead. Associated Press, *2 Blacks Slain in Protest at Baton Rouge University,* THE MIAMI NEWS, Nov. 16, 1972, at 1. After an investigation was ordered by then Governor Edwin Edwards, the shooter(s) in the Sheriff's Office were never identified. *Id.*

In Zachary in 1969, Wilford Dunaway – a Zachary police officer – killed George Payne, a young African-American. George Payne was Mr. Whitmore's first cousin. The community raised questions as to whether Dunaway acted with excessive force, but the Parish's grand jury did not indict him. The next year a black bus driver's house was bombed in Zachary. Authorities never arrested or prosecuted the perpetrators, leaving many in Zachary to believe that the Klan had carried out the attack.

Then in 1973, FBI agents killed 21-year-old Baton Rouge black resident, Milton Leon Scott, in an incident where they mistakenly believed he was wanted for deserting the army.

Again questions of excessive force surfaced. A grand jury investigation overseen by District Attorney Ossie Brown was conducted, but the investigation did not produce indictments of the officers.

In the backdrop of this intensifying relationship between the Parish's Black community and law enforcement was a general sense of fear and vulnerability to the ongoing violence and threats of violence from the area's active Klan chapter.

VIII. MR. WHITMORE'S CLAIMS SHOULD BE HEARD ON THE MERITS

No court has reviewed the new evidence in Mr. Whitmore's case or considered the affect this evidence has on the credibility of his conviction. This application is predicated on facts that were previously unknown to him, meaning he is now entitled to consideration on the merits of his constitutional claims. La. C. Cr. P. art 930.8(A)(1).

A. Mr. Whitmore's PCR is Based on Previously Unknown Facts and Cannot Be Procedurally Barred

As detailed above Mr. Whitmore has new evidence in support of his legal claims. Since neither Mr. Whitmore nor his attorneys had previous knowledge of these facts, the statutory time bar for PCR applications does not apply in this case. The Louisiana Criminal Code explains that:

> No application for post-conviction relief . . . shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, *unless* . . . [t]he application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his attorney.

La. C. Cr. P. art. 930.8(A)(1)(emphasis added). It does not matter when an applicant could have discovered the new facts. *See State ex rel. Walker v. State*, 2004-0714 (la. 1/27/06); 920 So. 2d 213 ("Relator's discovery of arguably suppressed evidence allows his untimely filing without regard to his diligence *vel non* in seeking the suppressed material"). As noted above, Mr. Whitmore's new facts were discovered between the period of December 13, 2013 and the filing of this PCR application on July 31, 2014, which is his first filing since the discovery of these facts.

Further, the Louisiana Supreme Court has explicitly stated that a claim based on facts previously unknown to the petitioner or his attorney "remains subject only to the laches-like provisions of La. C. Cr. P. art. 930.8(B)." *Carlin v. Cain*, 97-2390, p. 2 (La. 3/13/98); 706 So. 2d

968, 968. Therefore, in the absence of a showing by the state that its ability to respond has been prejudiced by events beyond its control, Mr. Whitmore's claims qualify as excepted from the two-year time bar in La. C. Cr. P. art. 930.8(B). In this case, the state suffers no prejudice as much of the new evidence in Mr. Whitmore's case has been in the state's possession, and presents no barrier to the state in developing a response to Mr. Whitmore's claims.

In addition to the statutory exception to procedural bars for petitioners whose applications are predicated on new facts, it would also, for reasons outlined by the United States Supreme Court, be improper to procedurally bar a prisoner with a meritorious claim of actual innocence like Mr. Whitmore. *See Schlup v. Delo*, 513 U.S. 298 (1995); *Dretke v. Haley*, 541 U.S. 386 (2004). Mr. Whitmore's application cannot be dismissed for procedural defects, and this court should consider the merits of his claims.

B. <u>The New Evidence</u>

1. East Baton Rouge Sheriff's Office investigation reports describing the crime scene, collected physical evidence, interviews with individuals close to the victim, interviews with individuals familiar with the victim's last few days, and unfollowed investigation leads into viable suspects and information. Ex. A.

2. Louisiana State Police Crime lab reports showing physical evidence collected during the investigation Ex. B.

3. Louisiana State Police Crime lab photographs of the scene of the crime and fingerprints taken from the scene. Ex. C.

4. Ronald G. Thomas' affidavit corroborating the conditions experienced by Mr. Whitmore prior to his confession. Ex. D

5. Warren Hebert's affidavit now affirming Mr. Ossie Brown spoke with Mr. Whitmore before Mr. Hebert took his taped statement and that Mr. Brown was the first person the obtain an incriminating statement from Mr. Whitmore. Ex. E.

6. FBI records showing Ossie Brown's strong affiliation with the Baton Rouge area chapter of the Ku Klux Klan. Ex. F.

7. Ms. Aldreaner Hawkins' affidavit that she saw Mr. Whitmore immediately after the ambulance drove by, heading to the scene of the crime. Ex. G.

8. Mr. Ghoram's affidavit that he was asked to confess that a man named Ralph Ball paid him to kill Mr. Bond. Ex. H.

9. Mr. Roger's affidavit that he was asked if a man named Ralph Ball asked him to kill Mr. Bond. Ex. I.

IX. CLAIMS FOR RELIEF

A. Mr. Whitmore was Convicted in Violation of *Brady v. Maryland*

The State withheld numerous items of evidence from Mr. Whitmore that could have been used to impeach the State's witnesses, corroborate Mr. Whitmore's defense and assertions that his confessions were coerced, to show an alternative theory of Mr. Bond's murder, and to show the crime was committed with different weapons, by a different number of people, and in a different manner than that posited by the State.

"To establish that the state's failure to disclose evidence violates *Brady,* a petitioner must demonstrate that: (1) the prosecution withheld evidence; (2) the evidence is favorable to the accused; and (3) the evidence is material to guilt or punishment." *Crawford v. Cain,* Civ. 04-748, 2006 WL 1968872 (E.D. La. July 11, 2006) (Vance, J.), *aff'd,* 248 F. App'x 500 (5th Cir. 2007) (citing *United States v. Bagley,* 473 U.S. 667, 674 (1985)); *Brady v. Maryland,* 373 U.S. 83 (1963). There is no need for the State to have acted in "bad faith." *Id.*, 373 U.S. at 87. However, where proof that the prosecution acted in bad faith exists, a claimant need only show that the evidence is potentially exculpatory. *Arizona v. Youngblood,* 488 U.S. 51, 57-58 (1988) ("requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, *i.e.,* those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant.").

Evidence is considered to be in the possession of the State if any member of the prosecuting team, including individual law enforcement personnel and investigators, is aware of the evidence; it is legally irrelevant if the attorneys prosecuting the case are themselves unaware

of the favorable evidence. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). Evidence is considered favorable to the defense if it exculpates the defendant or impeaches the State's case or witnesses. *Id.* 514 U.S. at 433; *Giglio v. United States*, 405 U.S. 150, 152-53 (1972);. *Brady* 373 U.S. at 87-88.

"'A *Brady* violation occurs when the government fails to disclose evidence materially favorable to the accused. This Court has held that the *Brady* duty extends to impeachment evidence as well as exculpatory evidence, and *Brady* suppression occurs when the government fails to turn over even evidence that is known only to police investigators and not to the prosecutor. Such evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, although a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal. The reversal of a conviction is required upon a showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.'" *Schwertz v. Cain*, Civ.A. 12-1897, 2012 WL 5956308 (E.D. La. Nov. 13, 2012) *report and recommendation adopted,* Civ.A. 12-1897, 2012 WL 5949516 (E.D. La. Nov. 28, 2012) (quoting *Youngblood v. West Virginia,* 547 U.S. 867, 869–70, 126 S.Ct. 2188, 165 L.Ed.2d 269 (2006) (per curiam)).

1. The withheld physical evidence presented alterative murder weapons

The State's withholding of the physical evidence collected in the case, including possible alternative murder weapons like the 1 x 4 board with a nail sticking out and hair samples on it, and the jack handles collected from near the Bond property and Donahue's car, violated *Brady*.

Mr. Whitmore's recanted confession stated he and Mr. Donahue used a jack handle (or similar part of a car jack) and a screwdriver to beat and stab Mr. Bond. The 1 x 4 board with a nail in the end, recovered from the scene of the crime the night Mr. Bond was murdered and sent to the crime lab for analysis was capable of causing the wounds Mr. Bond suffered.

Mr. Whitmore's rights under *Brady* were violated when the prosecution withheld this evidence, in bad faith, and prevented him from presenting an alternative theory of Mr. Bond's

murder and undermining his alleged confession by showing the factual inconsistencies between the confession and the actual events of the crime.

2. The withheld physical evidence prevented Mr. Whitmore from testing the alleged murder weapon

Deputies collected a jack handle from Mr. Donahue's car. Ex. B, p. 10. The jack handle was sent to the crime lab for serology analysis, but no results appear in the file and it is unclear if this item was ever tested. Ex. B, p. 10. Moreover, the prosecution failed to introduce at trial the weapon it claimed Mr. Whitmore used to kill Mr. Bond and in fact withheld its existence from Mr. Whitmore's defense counsel.

3. The withheld physical evidence prevented Mr. Whitmore from testing the fingerprints found at the scene

The State averred time and again that no prints were even capable of being found at the scene. The evidence that remains in state police custody today shows that at least 10 latent prints were developed from the outside of Mr. Bond's car. A car the prosecution claimed was within close proximity to the attack on Mr. Bond. Tr. 395-400.

4. The withheld physical evidence prevented Mr. Whitmore from impeaching Messrs. Wales, Womack, and Browning testimony regarding the bucket

The only piece of physical evidence introduced by the State was a bucket alleged to have been the bucket used to carry feed at Mr. Bond's farm that was taken by Mr. Whitmore and Mr. Donahue when they fled the scene. Tr. 59, 257. Mr. Womack testified the bucket was found in a park in Port Hudson. But crime lab documents show that Mr. Womack actually recovered two buckets. Ex zb, p. 11. It is clear from the transcript and testimony of Messrs. Womack and Wales that the State hid the existence of the second bucket from Mr. Whitmore's defense team.

If Mr. Whitmore had been aware of this second bucket, he could have used it to impeach the testimony of Messrs. Womack and Wales and further to undermine his second taped statement.

B. The withheld physical evidence and police reports prevented Mr. Whitmore from attacking the State's theory of the case

The State attempted to show that Mr. Whitmore and Mr. Donahue robbed Mr. Bond, a man known only to them in passing, and killed him in order to prevent him identifying them as the perpetrators of the robbery. Tr. 419-420.

Mr. Whitmore acknowledges there is "no per se rule under *Brady* requiring the government to disclose all evidence concerning alternative suspects," and that courts look for a "plausible nexus" between the alternative suspect or theory and the crime. *Crawford*, 2006 WL 1968872, at *18. In distinguishing the case in front of her with other cases, Judge Vance noted in *Crawford* that it was "material" when the prosecution had "evidence available to link the alternative suspect to the crime." *Id.* (collecting cases). Here, there is a "plausible nexus" between the evidence of the alternative theory and suspect and the murder of Mr. Bond.

Mr. Bond's final days show a man who knew that something was wrong, a man who was agitated, a man who worried about people profiting from his death to the point he carried a pistol with him. The State had exclusive control over this information. By the time Mr. Whitmore was arrested, it would have been virtually impossible for him and his counsel to piece together the story surrounding Mr. Bond's last days. The evidence suggested that Mr. Bond's sworn enemy and partner in a business that lost $65,000 had motive to kill him. Moreover, the evidence showed this man evaded law enforcements questions and then simply failed to show for a polygraph examination. Evidence that "supports a viable alternative theory of the crime" and "cast[s] doubt on the prosecution's theory of the case" is material exculpatory evidence under *Brady*. *City of Detroit*, 529 F. Appx. 661, 665-66 (6th Cir. 2013); *see also Williams v. Ryan*, 623 F.3d 1258, 1265 (9th Cir. 2010) ("[N]ew evidence suggesting an alternate perpetrator is classic *Brady* material.") (citation omitted).

C. The withheld evidence prevented Mr. Whitmore from attacking the thoroughness of the State's investigation

The State's continued misconduct and withholding of evidence from Mr. Whitmore's defense team also denied him the opportunity to attack the thoroughness and good faith of the department's investigation. Evidence that provides "opportunities to attack . . . the thoroughness and even the good faith of the investigation" has been squarely recognized as evidence owed to the defense under *Brady*." *Kyles*, 514 U.S. at 445.

The State left viable leads unfollowed. It let physical evidence taken from the scene of the crime remain untested, it left fingerprints unchecked against viable suspects and unchecked

against Mr. Whitmore. The State's investigation simply was not conducted in good faith. As Mr. Whitmore's counsel argued in closing, "the truth wasn't convenient enough." Tr. 427.

D. The withheld evidence prevented Mr. Whitmore from impeaching Messrs. Brown and Hebert

As the new evidence shows, Mr. Hebert and Mr. Brown gave false testimony that Mr. Brown had not met with Mr. Whitmore prior to Mr. Whitmore giving his taped statements. Had the defense known about this meeting, they could have used the information to impeach Mr. Hebert and Mr. Brown's testimony and undermine their credibility.

New evidence also shows that Mr. Brown was closely associated with the Ku Klux Klan, an organization known to incite racial violence and advocate for the oppression of Blacks. Mr. Brown's bias towards blacks, and specifically his bias towards a black man accused of killing a white man, should have been disclosed to defense counsel because it could have been used to show Mr. Brown's bias and interest in seeing a black man like Mr. Whitmore convicted of Mr. Bond's murder. *United States v. Bagley*, 473 U.S. 667, 676, (1985) (failure to disclose evidence that the defense might have used to impeach the Government's witnesses by showing bias or interest violates *Brady*).

Mr. Whitmore's 10-2 conviction rested on the credibility of the State's witness. Tr. 476 ("The Judge is going to tell you that the determination of the credibility of the witnesses, whether or not to believe these witnesses, is solely in your hands; and you can believe them or not believe them. And you are basically going to try to decide whether or not you believe Mr. Brown and whether or not you believe Mr. Whitmore.").

Mr. Whitmore had recanted his confession and claimed he was coerced by the District Attorney into making such a confession. If the jury had found Mr. Brown or Mr. Hebert's testimony to be incredible, the outcome of Mr. Whitmore's trial would have been changed significantly.

E. Mr. Whitmore's Confession was admitted at trial in violation of his Fourteenth Amendment due process rights

Mr. Whitmore's trial judge did not have a complete picture of the coercive and abusive environment in which the petitioner confessed to killing Marshall Bond, calling into question the constitutionality of Mr. Whitmore's interrogation. The due process clause of the Fourteenth

Amendment to the United States Constitution, as well as Article 1 § 2 of the Louisiana Constitution of 1974 both bar the use of involuntary confessions in trial against a criminal defendant. *See Jackson v. Denno*, 378 U.S. 368, 385-386; *In re State in Interest of Garland*, 160 So. 2d 340, 342 (La. App. 4 Cir. 1964).

A voluntary confession is the "product of a rational intellect and a free will." *Mincey v. Arizona*, 437 U.S. 385, 398 (1978). Courts assess the voluntariness of a confession by determining whether the "totality of the circumstances that preceded the confession" deprived the defendant of free will. *See Fikes v. Alabama*, 352 U.S. 191, 197-198 (1957). Best summarized in *Withrow v. Williams*, 507 U.S. 680, 693 (1993), the totality of the circumstances test includes the following factors:

- the crucial element of police coercion. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986);
- the length of the interrogation. *Ashcraft v. Tennessee*, 322 U.S. 143, 153–154 (1944));
- the location of the interrogation. *See Reck v. Pate*, 367 U.S. 433, 441 (1961))
- the continuity of the confession. *Leyra v. Denno*, 347 U.S. 556, 561 (1954);
- the defendant's maturity. *Haley v. Ohio*, 332 U.S. 596, 599–601 (1948);
- the defendant's education. *Clewis v. Texas*, 386 U.S. 707, 712 (1967);
- the defendant's physical condition. *Greenwald v. Wisconsin*, 390 U.S. 519, 520–521 (1968)(per curiam)); and
- the defendant's mental health. *Fikes* at 196.

In addition to the factors articulated in *Winthrow*, confessions are involuntary if the state has deprived the defendant of food, water, and clothing prior to interrogation. *See Brooks v. Florida*, 389 U.S. 413 (1967). In *Brooks*, the United States Supreme Court determined that the petitioner's confession was involuntary and inadmissible because of the shocking prison conditions endured by the defendant just prior to his confession. *Id.* In that case, correctional officers forced Mr. Brooks to strip naked before placing him in a 7 'x 6.5' cell with two other inmates for two weeks. *Id.* at 414. The cell had no bed or toilet with the exception of a hole in one corner. *Id.* To eat, Mr. Brooks was given a restricted daily diet of only 12 ounces of soup and 8 ounces of water. *Id.* The Supreme Court called these conditions "a shocking display of

barbarism," and in turned suppressed Mr. Brooks' confession from his criminal proceeding. *Id.* at 415.

The court should grant Mr. Whitmore's application on the grounds that he did not voluntarily confess to killing Mr. Bond. Until this application, the circumstances under which this court assessed the admissibility of Mr. Whitmore's confession have been confined to the moment that he began speaking with ADA Warren Hebert, Detective Louis Russell, and Lt. Carson Bueto until their interrogation ended. Neither the State nor the defense presented any evidence concerning Mr. Whitmore's existing physical and mental condition when questioning began by District Attorney Ossie Brown.

Mr. Whitmore submits new evidence through a sworn statement from Ronald Thomas that documents the prison conditions experienced by both Mr. Whitmore and Mr. Thomas in the East Baton Rouge Parish prison. Exhibit D.[6] As in *Brooks*, Mr. Whitmore was housed in an exceptionally small room colloquially known as the dungeon. It was approximately 6' x 9' – comparable to the room where Mr. Brooks was held, except that Mr. Whitmore's room housed between six and eight men, while the room in *Brooks*' housed only three. No different than in *Brooks*, the guards forced Mr. Whitmore and Mr. Thomas – as well as all the other inmates housed in the dungeon – to remove their clothes.

Mr. Thomas remembers that there were so many naked men in this small room it was impossible to sit down. Ex. D, ¶7 . The air quality was so poor in this lightless room that inmates took turns standing by the door to access fresh air passing through gaps in the door frame. Ex. D, ¶10 . The room had no beds or toilet facilities, just a hole in the middle of the floor. Ex. D, ¶6 . In turn, while food was served to inmates in the dungeon, both Mr. Thomas and Mr. Whitmore recall that few inmates in the dungeon would eat because eating would eventually make them have to use the bathroom.

Mr. Whitmore's experiences in the dungeon so closely parallel those found to be unconstitutional in *Brooks* that if his case were in front of the United States Supreme Court at the same time, the Court would have found Mr. Whitmore's confessions to be inadmissible.

---

6 Mr. Whitmore also submits his own sworn statement regarding the conditions he experienced prior to being questioned alone by Mr. Brown. Exhibit __.

Further, Mr. Thomas's affidavit is new evidence that prison officials placed Mr. Whitmore directly into the dungeon after a fight that caused a serious head injury. Ex. D, ¶3 . As detailed above, Mr. Whitmore never received medical treatment and recalls that the severity of the beating caused dizziness and headache for at least a day following the incident. Ex. K, ¶6.

By the time Ossie Brown began interrogating Mr. Whitmore about the Bond homicide, Mr. Whitmore had spent roughly two days completely naked in the dungeon, having not eaten or slept. As in *Brooks*, the severity of these conditions created an environment that greatly contributed to Mr. Whitmore providing law enforcement with a false and involuntary confession. 389 U.S. at 414.

New evidence corroborates Mr. Whitmore's description of the conditions in the dungeon and indicates that the interrogation began earlier, with Mr. Ossie Brown, than originally thought. The trial judge, however, knew nothing about the intensity of the deprivations and trauma suffered by Mr. Whitmore in the days leading up his interrogation. The new evidence shows that Mr. Whitmore was vulnerable to providing a false and involuntary confession. His susceptibility, coupled with the length of his interrogation and promises of leniency from the District Attorney, should lead this court to find that Mr. Whitmore's confession was admitted at trial in violation of his Fourteenth Amendment due process rights. Consequently, Mr. Whitmore's PCR application should be granted.

F. The State Engaged in Prosecutorial Misconduct when it Presented Perjured Testimony

New evidence shows that Assistant District Attorney Warren Hebert and the District Attorney Ossie Brown gave false and misleading testimony during Mr. Whitmore's trial. Such misconduct requires his conviction be overturned

A criminal defendant is guaranteed due process protections throughout the entirety of his criminal proceedings by both the United States and Louisiana Constitutions. *See* U.S. Const. amend. XIV, § 1; La. Const. art. 1 § 2. The "deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." *Giglio v. United States*, 405 U.S. 150, 153 (1972). Any conviction obtained through the use of false evidence, known to be such by the state, violates a criminal defendant's Fourteenth

Amendment right to due process. *Napue v. People of State of Ill.*, 360 U.S. 264, 269 (1959). Louisiana adopted the principles articulated in *Napue* when the state Supreme Court expressed that:

> [t]o prove a *Napue* claim, the accused must show that the prosecutor acted in collusion with the witness to facilitate false testimony. When a prosecutor allows a state witness to give false testimony without correction, *a conviction gained as a result of that perjured testimony must be reversed*, if the witness's testimony reasonably could have affected the jury's verdict, even though the testimony may be relevant only to the credibility of the witness.

State v. Broadway, 96-2659, p. 17 (La. 10/19/99); 753 So.2d 801, 814 (emphasis added).

In light of these constitutional requirements, Mr. Whitmore's 1977 conviction must be reversed. The prosecution presented a series of witnesses that told the jury Mr. Whitmore confessed to the killing of Marshall Bond without coercion, threat, or promises of leniency. Tr. 157, 163, 166. Warren Hebert and Ossie Brown also both testified that Ossie Brown was not the first person to interrogate Mr. Whitmore. Ossie Brown additionally testified that he spent only a few minutes with Mr. Whitmore and had little to do with his interrogation. TT. 272-273.

Mr. Whitmore's defense rested on discrediting the State's version of what happened to him from the early morning hours of February 25, 1975 until the evening of February 26, 1975. Through cross-examination of the state's witnesses – namely Warren Hebert and Ossie Brown – Mr. Whitmore's attorneys attempted to explain that it was actually Ossie Brown who first spoke with Mr. Whitmore. They tried to paint a story where the District Attorney spent a significant amount of time interrogating Mr. Whitmore alone, and elicited testimony on cross-examination from state witnesses that discredited Mr. Brown's story. Detective Russell admitted on cross that Ossie Brown was the first person to interrogate Mr. Whitmore. Tr 247-248.

In fact, during closing argument, Mr. Whitmore's attorneys indicated to the jury that this case would turn on whether they believed Mr. Brown or Mr. Whitmore. Tr. 432. The jury returned a 10-2 verdict in favor of the state. Ex. L. As such, Warren Hebert and Ossie Brown's sworn statements during Mr. Whitmore's trial were not simple discrepancies when compared with Mr. Whitmore's version of the events. The state legitimized Mr. Whitmore's false confessions to the jury through the credibility wrongfully given to Warren Hebert and Ossie

Brown because of their status with the District Attorney's office. As such, their testimony was material to Mr. Whitmore's conviction.

Warren Hebert's affidavit shows that both he and Ossie Brown perjured themselves when they provided false testimony in Mr. Whitmore's trial. As employees of the District Attorney's office, both attorneys had every opportunity to correct their statements, making their inaction and misconduct that much more egregious. Due to the importance of their testimony, and the likelihood that the jury would find them credible as attorneys for the District Attorney's office, it is reasonable to conclude that the perjured testimony affected the jury's verdict.

Warren Hebert's affidavit provides sufficient new evidence to show that the state knowingly presented perjured testimony to Mr. Whitmore's jury, which violated his due process rights guaranteed in Fourteenth Amendment of the U.S. Constitution and art. 1 § 2 of the Louisiana Constitution. Thus, under *Napue* and the Louisiana Supreme Court's own jurisprudence, Mr. Whitmore's conviction "must be reversed."

X. THE STATE'S SELECTIVE PROESCUTION OF MR. WHITMORE VIOLATED THE EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND LOUISIANA CONSTITUTIONS

The District Attorney's close association with the East Baton Rouge Parish Ku Klux Klan, combined with the newly discovered sheriff's office reports showing that Mr. Bond's white business partner was not investigated or charged, demonstrates that Mr. Whitmore was selectively prosecuted because of his race. Pursuant to both the United States and Louisiana Constitutions, no person shall be denied equal protection before the law. *See* U.S. CONST. AMEND. XIV, § 1; La. Const. art. 1 § 3.

A prosecutor's discretion is subject to constitutional restraints, and the "decision whether to prosecute may not be based on an unjustifiable standard such as race, religion, or other arbitrary classication." *United States v. Armstrong*, 517 U.S. 456, 464 (1996). A selective-prosecution claim under the equal protection clause provides a legal mechanism for criminal defendants to challenge race-based prosecutorial decisions. *Id.* at 465. To prevail on a selective-prosecution claim, the defendant must demonstrate that the "prosecutorial policy had both a discriminatory effect a discriminatory intent." *U.S. v. Jones*, 159 F.3d 969, 976. Proving

discriminatory effect in a race case requires that the claimant show that similarly situated individuals of a different race were not prosecuted. *Armstrong*, 517 U.S. 464.

With new evidence that the District Attorney was affiliated with the Ku Klux Klan, as well as Mr. Whitmore's experiences with Ossie Brown, petitioner contends that the District Attorney's office selectively prosecuted him because he is black. Near the time of Mr. Bond's death, the Klan publicly conceded in a judicial pleading that they furthered their objectives by "assaulting, threatening, and harassing Negroes who seek to exercise any of their civil rights, and assaulting, threatening and harassing persons who urge that negroes should exercie or be accrorded those rights." *U.S. by Katzenback v. Original Knights of Ku Klux Klan*, 250 F. Supp. 330, 337 (E.D. La. 1965). FBI Documents show that Ossie Brown "was closely associated with the Ku Klux Klan (kkk) in the Baton Rouge area and attended some meetings." *See* Exhibit F. Prior to be elected as the East Baton Rouge District Attorney, Mr. Brown "served as attorney for many Klan members and as attorney handling legal matters for the Klan." *Id.* Considering the Klan's racial animus and the deficient investigation, Mr. Whitmore submits that Mr. Brown's decision to prosecute him for the killing of a prominent white man was racially motivated.

Further, Mr. Whitmore can show that under the direction of Ossie Brown's leadership, the District Attorney's office consistently chose to prosecute similarly situated high-profile black individuals accused of killing white men but did not pursue prosecutions of high-profile white individuals accused of killing black men. For example, in January 1972, a demonstration in Baton Rouge ended in a shoot-out leaving dead two white officers with the East Baton Rouge Sheriff's Office (hereinafter "EBRSO") and three black demonstrators. *See State v. Beavers*, 394 So. 2d 1218, 1221 (La. 1981). Newly elected District Attorney Ossie Brown oversaw the prosecution of 13 black protestors in an array of high-profile litigation which became colloquially known as the "Black Muslim cases" in Baton Rouge. *See State v. Beavers*, 394 So.2d 1218, 1221 (1981); *State v. Bell*, 315 So.2d 307 (La.1975), 346 So.2d 1090 (La.1977); *State v. Williams*, 354 So.2d 562 (La.1978); *State v. Eames*, 365 So.2d 1361 (La.1978). Mr. Brown did not pursue indictments of officers who killed black demonstrators.

Later that year, EBRSO deputies then broke up a peaceful protest at Southern University and left black two students—Denver Smith and Leonard Brown—dead. *See* Alison Shay, Remembering Denver Smith and Leonard Brown, Nov. 16 2012, *available at* https://lcrm.lib.unc.edu/blog/index.php/2012/11/16/remembering-denver-smith-and-leonard-brown. Even after Governor Edwin Edwards ordered an investigation, the shooter(s) in the Sheriff's Office were never identified. *Id.* It is believed that Ossie Brown did not call for or paritipate with an investigation looking into who killed Denver Smith and Leonard Brown.

Then in 1973, white Federal Bureau of Investigation agents killed 21-year-old Baton Rouge black resident, Milton Leon Scott, in an incident where they mistakenly believed he was wanted for deserting the army. *See Muslim is Slain, Morning Advocate, Baton Rouge*, July 19, 1973, at 1 and 10. A grand jury investigation overseen by District Attorney Ossie Brown was conducted, the investigation did not produce indictments of the officers.

The evidence showing Mr. Brown's close affiliation with the East Baton Rouge Klan chapter supports Mr. Whitmore's claim that he was selectively-prosecuted for the murder of Marshall Bond because he was black and because Mr. Brown acted with discriminatory intent in his prosecutorial decisions. This court should reverse Mr. Whitmore's conviction because the State obtained it in violation of his constitutional right to equal protection before the law.

XI. MR. WHITMORE IS FACTUALLY INNOCENT AND HIS CONVICTION VIOLATES DUE PROCESS AND IS A CRUEL AND UNUSUAL PUNISHMENT

As detailed throughout this application, Mr. Whitmore is innocent of murdering an robbing Mr. Bond. The continuing punishment of a prisoner who has proved his innocence is *per se* cruel and unusual and incompatible with the principles of due process. As such, it violates the Eighth and Fourteenth Amendments of the U.S. Constitution. *See Herrera v. Collins*, 506 U.S. 390, 417 (1993) (punishing those who can make a truly persuasive showing of innocence is unconstitutional); *In re Troy Davis*, 130 S. Ct. 1 (2009); *Schlup v. Delo*, 513 U.S. 298 (1995)

Evidence of Mr. Whitmore's innocence that should have been presented to the jury 39 years ago is raised in this application for post-conviction relief. Mr. Whitmore requests that this Court consider his claims for relief and grant him a trial at which the jury will hear all of the evidence.

Mr. Whitmore has spent nearly 40 years wrongfully imprisoned because the state withheld favorable evidence from him and conducted prosecutorial misconduct. The evidence now makes it clear that Mr. Whitmore would not have been convicted if he had received a fair trial. Furthermore, Mr. Whitmore's sentence is also constitutionally excessive, and had the trial judge had an accurate picture of Mr. Whitmore's past would have likely given a lighter sentence. This is a case where a member of society has never before had his case adequately investigated, and as a result, has suffered a wrongful and unconstitutional conviction. This is exactly the kind of case Louisiana state courts should review on the merits and exactly the kind of case in which they should grant relief.

WHEREFORE, for these reasons, Mr. Whitmore requests:

1. That the State be ordered to file a response to the claims contained in this pleading pursuant to La. C. Cr. P. Art. 927(A);

2. That he be granted orders for discovery of exculpatory information in the State's possession;

3. That if the State has any procedural objections that create questions of fact, an evidentiary hearing be held on those objections pursuant to La. C. Cr. P. Art. 930;

4. That if the State responds on the merits and such response creates questions of fact, an evidentiary hearing be held pursuant to La. C. Cr. P. Art. 930;

5. That he be granted leave to amend and supplement his claims for relief as necessary;

6. That he be granted relief from his conviction and sentence pursuant to La. C. Cr. P. Art. 930.3(1); and

7. That he be granted such other relief as equity and justice require.

Respectfully submitted,

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and

Michelle M. Rutherford, Bar No. 34968
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Facsimile: (504) 589-9974
mrutherford@barrassousdin.com

Attorneys for Petitioner Kenneth "Zulu" Whitmore

PLEASE SERVE
Warden N. Burl Cain
Louisiana State Penitentiary
Angola, LA 70712

VERIFICATION AND CERTIFICATION

I, Emily H. Posner, hereby verify that the facts set forth in this petition are true and accurate to the best of my information and belief, and certify that a copy of the foregoing document has been served by mail on the Assistant District Attorney for Section "H" and the Chief of Appeals, East Baton Rouge Parish District Attorney's Office, Baton Rouge, LA, on the 31st day of July, 2014.

_____

Sworn and subscribed to before me:

this 31 day of July, 2014.

_____

NOTARY: _____

No. _____

My commission expires: _____

OFFICIAL SEAL
MICHELLE M. RUTHERFORD
LA BAR NO. 136749
NOTARY PUBLIC, ATTORNEY
ENTIRE STATE OF LOUISIANA
COMMISSIONED FOR LIFE

APPENDIX "A" -- UNIFORM APPLICATION FOR POST-CONVICTION RELIEF

UNIFORM APPLICATION FOR POST-CONVICTION RELIEF

No.

Kenneth Wayne Whitmore
NAME OF PETITIONER

(to be filled in by the clerk)

19th JUDICIAL DISTRICT
19th JUDICIAL DISTRICT

PRISON
NUMBER
#86468

Louisiana State Penitentiary PARISH OF **East Baton Rouge**

PLACE OF CONFINEMENT STATE OF LOUISIANA

vs.

CUSTODIAN
Warden Burl Cain

(Warden, Superintendent, Jailor, or authorized person having custody of petitioner)
Please Serve CUSTODIAN and ___, DISTRICT ATTORNEY, _____ JUDICIAL DISTRICT, STATE OF LOUISIANA.

INSTRUCTIONS--READ CAREFULLY

(1) This petition must be legibly written or typed, signed by the petitioner and sworn to before a notary public or institutional officer authorized to administer an oath. Any false statement of a material fact may serve as the basis for a criminal prosecution. All questions must be answered concisely in the proper space on the form. Additional pages are not permitted except with respect to the facts which you rely upon to support your claims for relief. No citation of authorities or legal arguments are necessary.

(2) Only one judgment may be challenged in a single petition except that convictions on multiple counts of a single indictment or information may be challenged in one petition.

(3) YOU MUST INCLUDE ALL CLAIMS FOR RELIEF AND ALL FACTS SUPPORTING SUCH CLAIMS IN THE PETITION.

(4) When the petition is completed, the original must be mailed to the clerk of the district court in the parish where you were convicted and sentenced.

(5) You must attach official documentation showing your sentence and the crime for which you have been convicted. You may obtain that documentation from the clerk of court of the district court of the parish where you were sentenced or from the institution where you are confined. If that documentation is not attached, you must allege what steps were taken to obtain it.

(6) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION

1. Name and location of court which entered the judgment of conviction challenged

Baton Rouge, Lonisiana
19th Judicial District
Section I

2. Date of judgment of conviction **January 6, 1977**

3. Length of sentence
Count 1: life without the benefit of probation, parole or suspension of sentence;
Count 2: 99 years without the benefit of probation, parole or suspension of sentence

4. Nature of offense involved (all counts)
Count 1 second degree murder in violation of 14:30.1;
Count 2 armed robbery in violation of La. R. S. 14: 64

5. What was your plea? (check one)

(a) Not guilty (X)

(b) Guilty ( )

(c) Not guilty and not guilty by reason of insanity ( )

If you entered a guilty plea to one or more counts and not guilty to other counts, give details

(d) Name and address of the lawyer representing you at your plea (if you had no lawyer, please indicate)

(e) Was the lawyer appointed ( ) or hired ( )? (check one)

6. Kind of trial: (check one)

(a) Jury (X)

(b) Judge only ( )

7. (a) Name and address of the lawyer representing you at your trial:

1. **James Abadie (deceased)**
2. **Joseph P. Brantley**
   6513 Perkins Road
   Baton Rouge, LA 70808-9555

(b) Was the lawyer appointed (X) or hired ( )? (check one)

8. Did you testify at the trial? Yes (X) No ()

9. (a) Give the name and address of the lawyer who represented you at sentencing for the conviction being attacked herein. **Same as in 7**

(b) Was the lawyer appointed (X) or hired ( )? (check one)

10. Did you appeal from the judgment of conviction? Yes (X) No ( )

11. If you did appeal, give the following information:

(a) Citation, docket number, and date of written opinion by the Supreme Court (if known)

***State v. Whitmore*, 353 So. 2d 1286 (La. 1977)**

(b) Name and address of lawyer representing you on appeal:
Same as in 7

(c) Was the lawyer appointed (X) or hired ( )? (check one)

12. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any application for post-conviction relief with respect to this judgment in any state or federal court? Yes (X) No ( )

13. If your answer to 12 is "yes", give the following information:

(a)(1) Name of court **19th Judicial Court**

(2) Nature of proceeding **Post-Conviction Relief Application**

(3) Claims raised

A) Petitioner was denied effective assistance of counsel in that counsel failed to object an issue as to the propriety of the cosing argument prosecution, and reserved for appeallate review.

B) Petitioner was denied of equal protection of the U.S. Constitution, in that the prosecution was allowed to use improper customs in his closing remarks to the jury that prove to be personal opinion, in violation of the Fourteenth Amendment

(4) Did you receive an evidentiary hearing on your application? Yes ( ) No (X)

(5) Was relief granted or denied? **Denied**

(6) Date of disposition **May 13, 1980**

(7) Citation of opinion (if known) _____

(8) Name and address of lawyer representing you [if none, so state]:

Pro-Se Representation

(9) Was the lawyer appointed ( ) or hired ( )? (check one)

(b) As to any second application give the same information:

(1) Name of court **19th JDC**

(2) Nature of proceeding **Post-Conviction Relief Application**

(3) Claims raised

A) Denied effective counsel when counsel failed to object and ask for a mistrial when the trial judge, in questioning a prosecution witness, recapitulated the evidence in violation of La. C. Cr. P. art. 772.

B) Denied Sixth Amendment guarantee to the effective assistance of counsel when counsel failed to object to judge abusing his discretion by allowing written evidence in jury room during deliberation in violation of La. C. Cr. P. art. 793.

C) Denied right to trial by an impartial jury because counsel failed to challenge for cause, one. Miss Fresina, after she expressed the belief that he was guilty.

(4) Did you receive an evidentiary hearing on your application?

Yes ( ) No (X)

(5) Was relief granted or denied? **Denied**

(6) Date of disposition **December 9, 1991**

(7) Citation of opinion (if known) _____

(8) Name and address of lawyer representing you [if none, so state]: **Represented myself pro-se**

(9) Was the lawyer appointed ( ) or hired ( )? (check one)

(c) Have you filed any other applications for post-conviction relief with respect to the challenged conviction? Yes **X**) No ( )

If "yes", set forth the details (as above) on separate paper and attach.
See Attachment

(d) Did you appeal or seek writs of review from the denial of any post-conviction application?

(1) First petition, etc. Yes (**X**) No ( )

(2) Second petition, etc. Yes (**X**) No ( )

(e) If you did not appeal or seek writs from the denial of any post-conviction application, explain briefly why you did not:

(f) Name of the lawyer who represented you on appeal from the denial of any post-conviction application

[if none, so state]:

(1) First petition **Represented myself pro-se**

(2) Second petition **Represented myself pro-se**

CLAIMS FOR
RELIEF

State concisely facts supporting your claim that you are being held unlawfully. If necessary, you may attach extra pages stating additional claims and supporting facts. Do not argue points of law.

The following is a list of those claims, and only those claims, that may provide you with grounds for relief: (1) Your conviction was obtained in violation of the constitution of the United States or the State of Louisiana;

(2) The court exceeded its jurisdiction;

(3) Your conviction or sentence subjected you to double jeopardy; (4) The limitations on prosecution had expired;

(5) The statute creating the offense for which you were convicted and sentenced is unconstitutional;

(6) The conviction or sentence constitute the ex post facto application of law in violation of the Constitution of the United States or the State of Louisiana.

A REMINDER: THE ABOVE LIST CONTAINS ONLY THOSE CLAIMS THAT YOU MAY RAISE FOR RELIEF. YOU MUST SET FORTH ALL OF YOUR COMPLAINTS ABOUT YOUR CONVICTION IN THIS APPLICATION. YOU MAY BE BARRED FROM PRESENTING ADDITIONAL CLAIMS AT A LATER DATE. Remember that you must state the FACTS upon which your complaints about your conviction are based. MERE CONCLUSORY ALLEGATIONS WILL NOT SUFFICE.

REPETITIVE
APPLICATIONS

The above claims may not provide grounds for relief if any of the following applies to you:

(1) Unless required in the interest of justice, any claim for relief which you fully litigated in an appeal shall not be considered.

(2) Any claim of which you had knowledge and inexcusably failed to raise in the proceeding leading to conviction may be denied by the court.

(3) Any claim which you raised in the trial court and inexcusably failed to pursue on appeal may be denied by the court.

(4) A successive application may be dismissed if it fails to raise a new or different claim.

(5) A successive application may be dismissed if it raises a new or different claim that was inexcusably omitted from a prior application.

This application will provide space for you to explain the reasons why you failed to raise your claims in the proceedings leading to conviction, or failed to urge the claim on appeal, or failed to include the claim in a prior application.

CLAIM I

Claim: See filed petition

(a) Supporting FACTS (tell your story briefly without citing cases or law):

(b) List names and addresses of witnesses who could testify in support of your claim. If you cannot do so, explain why:

(c) If you failed to raise this ground in the trial court prior to conviction, on appeal or in a prior application, explain why: _____

CLAIM II

Claim:

(a) Supporting FACTS (tell your story briefly without citing cases or law):

(b) List names and addresses of witnesses who could testify in support of your claim. If you cannot do so, explain why:

(c) If you failed to raise this ground in the trial court prior to conviction, on appeal or in a prior application, explain why: _____

CLAIM III

Claim:

(a) Supporting FACTS (tell your story briefly without citing cases or law):

(b) List names and addresses of witnesses who could testify in support of your claim. If you cannot do so, explain why:

(c) If you failed to raise this ground in the trial court prior to conviction, on appeal or in a prior application, explain why: _____

You may attach additional pages setting forth the required information (above) if additional claims are asserted.

A. Do you have in a state or federal court any petition or appeal now pending as to the judgment challenged?

Yes [ ] No [ ] If "yes", name the court

_____

B. Do you have any future sentence to serve after you complete the sentence imposed by the judgment challenged? Yes [ ] No [ ]

(1) If so, give name and location of court which imposed sentence to be served in the future:

_____

(2) Give date and length of sentence to be served in the future:

_____

(3) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes [ ] No [ ]

C. If a copy of the court order sentencing you to custody is not attached, explain why.

_____

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled.

Kenny Whitmore 86468
Signature of Petitioner

28 July 2014
Day/Month/Year

OFFICIAL SEAL
MICHELLE M. RUTHERFORD
LA BAR NO. 136749
NOTARY PUBLIC, ATTORNEY
ENTIRE STATE OF LOUISIANA
COMMISSIONED FOR LIFE

APPLICATION FOR APPOINTMENT OF COUNSEL

I am unable to employ counsel to represent me in this matter because I have no assets or funds except:

I have secured pro-bono counsel. My attorneys are Emily Posner (Bar No. 35284) and Michelle Rutherford (Bar No. 34968). I will be applying for in forma pauperis status.

_____

Signature of Petitioner

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF West Feliciana

Kenneth Whitmore, being first duly sworn says that he has read the
(Name of Petitioner)

foregoing application for post-conviction relief and swears or affirms that all of the information therein is true and correct. He further swears or affirms that he is unable to employ counsel because he has no assets or funds which could be used to hire an attorney except as listed above. [Delete reference to appointment of counsel if inapplicable.]

Kenny Whitmore 80568
Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this 28th day of July, ~~19~~ 2014

OFFICIAL SEAL
MICHELLE M. RUTHERFORD
LA BAR NO. 136749
NOTARY PUBLIC, ATTORNEY
ENTIRE STATE OF LOUISIANA
COMMISSIONED FOR LIFE

Notary Public or other person authorized to administer oath.

Supplement Uniform Application for Post Conviction Relief
Kenneth Wayne Whitmore

I. 1992 Post Conviction Claim

(a)(1) Name of court **19th Judicial Court**

(2) Nature of proceeding **Post-Conviction Relief Application**

(3) Claims raised

A) Trial judge erroneously informed the jury that all of them had to concur on a verdict.

B) Jury were allowed access to written evidence during its deliberation of defendant's case.

C) Trial judge erroneously defined reasonable doubt to jury.

D) Defendant denied effective assistance of counsel at trial when his trial failed to object to the trial judge (I) informing the jury that all of them had to concur on a verdict; (ii) erroneously informing the jury regarding the what constitutes reasonable doubt and (iii) allowing all the evidence to go into the jury room during deliberation.

(4) Did you receive an evidentiary hearing on your application? Yes ( ) No (X)

(5) Was relief granted or denied? **Denied**

(6) Date of disposition:

(7) Citation of opinion (if known) _____

(8) Name and address of lawyer representing you [if none, so state]:

Pro-se Representation

(9) Was the lawyer appointed ( ) or hired ( )? (check one)

II. 1996 Post Conviction Claim

(1) Name of court: **19th JDC**

(2) Nature of proceeding: **Post-Conviction Relief Application**

(3) Claims raised:

A) Denied substantive due process, resulting in miscarriage of justice, when court reporter failed to accurately record large portions of his voir dire transcript, resulting in Whitmore's failure to determine with any accuracy which potential juror questioned/actually tried him.

B) Trial rendered fundamentally unfair when it was mandated by the trial court that a 10 to 2 verdict had to be rendered for conviction, but a view of available court documents shows that only a 9 to 2 verdict was rendered, but instead of a mistrial, Whitmore was convicted anyway.

C) Whitmore was denied his right to an impartial jury when more than 2/3 of those selected to try him showed some inherent prejudice and should have been challenged or either dismissed for cause.

D) Denied effective assistance of counsel when his state appointed counsel failed to adequately question potential juror when the record clearly shows that at least 7 jurors where ultimately selected to try him were not adequately questioned in accordance with mandates that governs voir dire, especially since the record clearly

shows that these jurors affiliations with the law enforcement officials subjected them to possible hidden bias.

(4) Did you receive an evidentiary hearing on your

application? Yes ( ) No **(X)**

(5) Was relief granted or denied? **Denied**

(6) Date of disposition _____

(7) Citation of opinion (if known) _____

(8) Name and address of lawyer representing you [if none, so state]:
Represented myself pro-se

(9) Was the lawyer appointed ( ) or hired ( )? (check one)

II. 1999 Post Conviction Claim

(1) Name of court **19th JDC**

(2) Nature of proceeding **Post-Conviction Relief Application**

(3) Claims raised

A) Was petitioner denied fundamentally fair trial when the trial judge gave erroneous instructions to jury which convicted him? Furthermore, was his instructions a violation of *Cage v. Louisiana*, *Victor v. Nebraska*, *Humphrey v. Cain*?

B) Was counsel ineffective when he failed to object to unconstitutional instructions on reasonable doubt in violation of *Cage*, *Victor*, and *Humphrey?*

(4) Did you receive an evidentiary hearing on your

application? Yes ( ) No **(X)**

(5) Was relief granted or denied? **Denied**

(6) Date of disposition _____

(7) Citation of opinion (if known) _____

(8) Name and address of lawyer representing you [if none, so state]:
Represented myself pro-se

(9) Was the lawyer appointed ( ) or hired ( )?
(check one)

II. 2013 Post Conviction Claim

(1) Name of court **19th JDC**

(2) Nature of proceeding **Post-Conviction Relief Application**

(3) Claims raised

A) Denied substantive due process, resulting in miscarriage of justice, when court reporter failed to accurately record large portions of his voir dire transcript, resulting in Whitmore's failure to determine with any accuracy which potential juror questioned/actually tried him.

B) Trial rendered fundamentally unfair when it was mandated by the trial court that a 10 to 2 verdict had to be rendered for conviction, but a view of available

court documents shows that only a 9 to 2 verdict was rendered, but instead of a mistrial, Whitmore was convicted anyway.

C) Whitmore was denied his right to an impartial jury when more than 2/3 of those selected to try him showed some inherent prejudice and should have been challenged or either dismissed for cause.

D) Denied effective assistance of counsel when his state appointed counsel failed to adequately question potential juror when the record clearly shows that at least 7 jurors where ultimately selected to try him were not adequately questioned in accordance with mandates that governs voir dire, especially since the record clearly shows that these jurors affiliations with the law enforcement officials subjected them to possible hidden bias.

(4) Did you receive an evidentiary hearing on your

application? Yes ( ) No **(X)**

(5) Was relief granted or denied?

(6) Date of disposition **no ruling by District Conrt**

(7) Citation of opinion (if known) _____

(8) Name and address of lawyer representing you [if none, so state]:
Represented myself pro-se

(9) Was the lawyer appointed ( ) or hired ( )?
(check one)

OFFENSE (x) COMPLAINT ( ) REPORT

SHERIFF'S OFFICE
EAST BATON ROUGE PARISH, LOUISIANA

	(Information)	(For Office Use Only)
	File No. 73-15483	Tran. 001 ____ 003 ____ 005 ✓
ATTEMPT	Yes ____ No xx	0
CRIME(s) OR COMPLAINT	Specify: Murder and Armed Robbery	01 00 09 ✓03 01 01
DATE & TIME OF INCIDENT	Day of Week Wednesday Month August Day 15 Year 1973 Hour 1820	PROCESSED 06-2
LOCATION	Street Number ____ Street Name Rollins Rd., Zachary, La. Zone X	9 8500
VICTIM OR COMPLAINANT	First Initial or Name Marshall Second Initial or Name ____ Last Name Bond Suffix ____ Color W Sex M Age 75 Residence Phone Number 654-4743 Street Number 4424 654-2449 Street Name Lea St., Zachary, La. Business where incident occurred: ____ Business Phone Number ____	E. CUNNINGHAM D. HANNA W.L. EDWARDS N. YDER L. JUDSON J. ROBINSON C. BOND R.W. ROBINSON G. ROBINSON P. LAWSON LANE MEMORIAL HOSP L. JOHNSON D. JOHNSON
CLEARED	Unfounded ____ Adult Arrest ____ Juvenile Arrest ____ Complaint Withdrawn ____	D. ROGERS T. E. RHYMES 2 N. COBB J. DONZE D. PROFIT C. BANKS W.H. STANFIELD M. GHARAM G.D. WINDERS E.M. SCOTT F. McCOY M. TURNER E.J. CHAMPAGNE

PROPERTY STOLEN: ITEM NO. ( ) For stolen property filed in NCIC

Type			Description	Serial No.(s)	Value
001	Currency, Notes, etc.	x	Undetermined Amount of cash.		unknown
002	Jewelry & Precious Metals				
003	Furs				
004	Clothing				
006	Miscellaneous	x	Wallet		

EXHIBIT A

001

OFFICE USE ONLY

PROPERTY RECOVERED: Date Item Cancelled in NCIC _____

Type			Description	Serial No.(s)	Value
001	Currency, Notes, etc.				
002	Jewelry & Precious Metals				
003	Furs				
004	Clothing				
006	Miscellaneous				

INVESTIGATING OFFICER(s)

1. Lt. Carson Bueto 0507
Division Det.
2. Res. Dy. K. Smith
Division 1651

Detailed Report:

Deputies were dispatched to contact Deputy P. B. Browning on Rollins Rd. about two miles North of Zachary, La. Upon arrival, Browning said that Marshall Bond had been foumd near his barn and was bleeding from injuries of the head. Upon examining the area of the barn, Deputies observed a puddle of blood on the ground at the base of a tree..A bloody coke bottle at the edge of the road of the barn and several pieces of paper, note pad, pencils and pocket comb on the ground, just under the roof.

Deputies also observed blood stains on the bench which is covered with galvanized tin. Deputies then talked to James Robinson, CM, 4537 Ave. D. Zachary, La. 654-6617. Robinson said he works at Copolymer Rubber and Chemical Co. and got off work around 1400 hrs.date. He came home and then went to Mr. Bond's Store and talked to him about some work he wanted done in the pasture. Robinson said he works parttime for Mr. Bond at his farm and Bond wanted to trim up a tree which had previously been cut. Bond told Robinson that his truck had stopped on him in his pasture and he wanted him to check on it. Robinson said he arrived at the pasture at about 1600 hrs. and drove his truck to where Bond's truck was in the pasture. He checked on the truck and found it was out of gas. He went about one mile into the pasture and started cutting the tree. Robinson said he didn't have a watch, however, believed it was shortly after six o'clock when he ran out of gas for the saw. He proceeded out of the pastrue and as he approached sight of the barn he saw Bond's car parked near the barn. Bond had told him earlier that he would see him at the farm. He drove to where Bond's car was and heard him breathing hard and saw him laying on the ground near a tree and he was bleeding from the head.

Date of Report 8-15-73 Approved by Capt. P.V. Bonnano/s/
(Commanding Officer)

Date 8-15-73 File No. 73-15483

He said he didn't go any further than about 35 or 40 feet from where Bond was. He then got into his truck and drove to town and told Bond's brother, Carl Bond, what had happened. He returned to the farm with Carl Bond and the Zachary Rescue Unit, at which time Marshall Bond was taken to Lane Memorial Hospital. Robinson said that as far as he knew no one else was on the farm as he didn't see anyone else.

Carl Bond said he returned to the pasture with Robinson where he saw his brother laying on the ground. He went to the hospital with him. He had in his possession a pair of Maroon pants and black belt which he said Marshall Bond had on. He said his wallet was missing. Carl Bond said he normally carries about $500.00 to $1,000.00 in his wallet. The pants and belt were later recovered from Carl Bond and the contents of the pockets keys, knife and loose change were given to Carl Bond.

At about 1932 hrs. Deputies went to Lane Memorial Hospital and upon arrival learned that Marshall Bond had died. Dr. Martin said that Bond had died as a result of a severe blow to the head. Deputies then viewed the body and observed several lacerations on top of the head and several punctures on his chest and left upper arm. The nurse on duty unidentified said she had shaved his head for examination and X-Rays. The lacerations on the head were about 2" to 3" long. The puncture wounds on the chest and arm were with an instrument that caused the would to look like a cross. Deputies returned to the scene where they were joined by Ossie Brown, Buddy Bombet, Lennie Perez and Larry Gibbens of the District Attorney's Office; Sgt. Alton Baxter, LSP, BOI and Deputy Charles Babin, Photographer, EBRSO. Photographs of the scene were made, in particular, the puddle of blood, coke bottle, personal papers, and prints of two different type shoes. The prints were located in the soft ground beneath the shed. Sgt. Baxter located and took as evidence fragments of hair from the galvanized tin on the bench. The coke bottle and victims hat was also taken by Sgt. Baxter as evidence. Upon continuing a search of the crime scene, Deputies located a piece of raw lumber which measured about 1"x4"x4', with a rusty nail in one end. The piece of lumber was found among weeds in a dog yard adjacent to the barn. This was also taken by Baxter, as a closer examination of the piece of lumber revealed what appeared to be fragments of hairs.

Sgt. Baxter examined the car and found fragments of hair on the hood and fenders. The victim's car a 1970, Brown Vinyl over beige Chrysler New Yorker, 72-73 La. Lic 99A449 was taken to LSP Headquarters by Dealers Wrecker to be processed for prints, etc.

More information to follow.

Investigating Officer(s) Lt. Bueto and K. Smith Code

Approved Capt. P.V. Bonnano/s/ Date 8-17-73
(COMMANDING OFFICER)

ORTLIZE PRESS 41371

ADDITIONAL INFORMATION:

Date 8-15-73 File No. 73-15483

At 0755 hrs. Thursday, August 16, 1973, Lt. Allen West, Narcotics Bureau, was walking South inside the fence on Mr. Bond's property bordered by the Rollins Rd. on the West side of the pasture.

As he reached the Southwest corner of this pasture where the Rollins Rd. turns East, he discovered a rusty automobile bumper jack laying on the ground about 18" from the fence. The jack had evidently been there only a short time as the grass under the jack was not dead or discolored.

The jack was found at the point directly between the barn where Mr. Bond had been attacked and a house occupied by the Cunningham's accross the street[Rollins Rd.] from Mr. Bond's pasture.

Lt. West turned this jack over to Deputy Landry, who placed it in his Unit and on Friday, August 17, 1973, the jack was submitted to the La. State Police Crime Lab. to be examined as the possible murder weapon.

To Be further investigated.

CPL/st.

Investigating Officer(s) Landry Code

Approved Lt. G. O'Connor/s/ Date 8-20-73
(COMMANDING OFFICER)

ORTLIEB PRESS (1371)

ADDITIONAL INFORMATION:

Date	8-16-73	File No.	73-15483

Additional information to offense report number 73-15483, dated August 14, 1973. Deputy Broyles and Landry were assigned to assist Lt. Bueto with the Offense that occured in Zachary, La.

Deputies assisted in interviewing some of the subjects from the area Deputies interviewed Ralph William Robinson, CM, 17, Rt.1, Box E-3 Zachary, La. Subject advised that on the day of the offense that at 1000 he got out of bed. He stayed around the house until 1400 hrs., at which time he went ot Mrs. Lawsons'who lives down the road where he fixed a muffler. After fixing the muffler he then went muskydines picking with his brother, Gary Robinson, Pam Lawson and Pam's little brother. He advised that they picked off the Polk Road.

He further advised that at 1600 hrs. he went to Baton Rouge with Larry and David Johnson to pick up some school pictures. He advised that they arrived at Lusks Photo Shop at 1705. He knew the exact time because on their arrival the place was closed and they checked a clock to see what time it was. He advised they knew the girl that worked there, so she let them in and gave them their pictures.

He advised that after picking up the picture they then returned back to Zachary arriving home around 1815 hrs. He advised he was playing ping pong in his back yard when they heard a siren coming. He advised he saw the rescue unit from Zachary go onto Mr. Bond's place and he then advised that he went to the school to play basket ball and on his return home his mother advised hem of Mr. Bond.

SSB/st.

Investigating Officer(s) Broyles and Landry Code

Approved Lt. O'Connor Date 8-20-73
(COMMANDING OFFICER)

OFFICE PRESS 41971

ADDITIONAL INFORMATION:

Date 8-16-73 File No. 73-15483

On this date, Capt. Bonnano assigned a team of Deputies to interview a family of people who live in the immediate area of the offense, carried under this file number. This was for the purpose of ascertaining if they saw any suspicious persons,any unsure movement or heard any talk of the incident that might lead to solving this case and also account for their time and other people known to them of their time in connection with the case.

Sgt. Robertson and Deputy Rip Miller were assigned to talk to Gerry Robinson, CM, 13, d.o.b.4-5-60, of Rt.3, Box E-1 Rollins Rd. Zachary, La. As a result of this interview, this juvenile accounted for his time and whereabouts of he and his relatives and immediate friends to the satisfaction of these Deputies.

Sgt. Robertson/st

Investigating Officer(s) Sgt. W.E. Robertson, Jr. and Dy. Miller Code

Approved Sgt. D. Zuelke (COMMANDING OFFICER) Date 8-17-73

GATLIED PRESS 41571

ADDITIONAL INFORMATION:

Date 8-17-73 File No. 73-15483

On this date, Sgt. Robertson was contacted by Deputy John Womack of Zachary Police Dept. and he advised he had David Rogers, Jr., CM, 20, d.o.b.12-2-52, of Rt. 3, Box E Rollins Rd. phone 654-2150 and was in route to the Courthouse. Rogers was being sought for questioning after it was learned that prior to the incident in question he was in the immediate area. At the Courthouse Rogers was advised of His Rights and freely and volumtarily accepted the opportunity to recieve a Polygraph examination. After preliminary interrogation by Sgt. Robertson and Sgt. Zuelke and Deputy John Womack went to the Polygraph Office with Sgt. Zuelke and Deputy Briggs and the examination was given and Sgt. Zuelke advised Sgt. Robertson that Rogers passed it satisfactorily.

While at the Courthouse, Sgt. Robertson and Deputy Womack interrogated Thomas Earl Rhymes, CM, 23, d.o.b.4-24-50, of Scotland Ave., house numbers unknown, phone 775-1780. He divulged little or nothing and even though he i a former Zachary resident . Deputies satisfied themselves this subject could not be involved as he accounted for his time and whereabouts at the time of the offense.

Sgt. Robertson returned to Zachary and was contacted by Res. Officer R. E. Smith of Zachary Police Dept., and he advised he found out through conversation that Mr. Marshall Bond had or may have had a large check from the sale of cattle. He stated that this date he was at Lane Memorial Hospital when Lonnie Judson, CM, employee of the laundry there, asked him if Mr. Bond had that big check on him.

It was learned that Lonnie's wife, Julia sits with Mr. Bond's mother-in-law, who is confined to the hospital and on the day he was killed he had been there discussing with her the sale of some stock and commented in front of Julia,he recieved a large check for that sale.

Sgt. Robertson contacted Norma Yoer, WF, who works for Alsbrooks and Guilbeau Stockyards and she confirmed he recieved from her a check from from the sale of Six [6] head of cattle for $1787.57. She advised she personally delivered the check to him at his Drug Store the day before he was killed at 1345 hrs. and it was in a mirror front envelope of Albrooks and Guilbeau Stockyard.

It was later confirmed he deposited that check in the Zachary Bank. Later on that date, Sgt. Robertson learned from Deputy John Womack that on the evening of the Offense a colored male was parked on the road near the pasture in a red or orange Mustang. Investigation revealed it was an orange Mustang driven by Wilbert Lee Edwards, CM, 20, d.o.b. 9-14-52, of 3642 Freeman St. Zachary, La. no phone.

Deputy Womack summoned to the Zachary Town Hall and he was questioned by Sgt. Robertson and Deputy Womack and released after these Deputies were satisfied with his explanation for his being there and his time at the location.
To Be further investigated.

Investigating Officer(s) Sgt. Robertson Code

Approved Lt. George O'Connor (COMMANDING OFFICER) Date 8-20-73

ORTLIEB PRESS 61871

ADDITIONAL INFORMATION:

Date 8-18-73 File No. 73-15483

On arriving at Zachary this date, Lt. West, Sgt. Robertson and Deputy P.V. Browning returned to the scene and continued to search for any evidence or further leads from that area. While there Deputy Browning was advised that employees of Mr. Bond's Drugstore called and advised they had records that would reflect the amount of money Mr. Bond was carrying on him at the time of his death. These Officers went to Bond's Drugstore at 4501 Main St. phone 654-2906 and talked with Nancy Cobb, WF, of 4809 Lee St. Zachary, La. phone 654-5374 and Doris Hanna, WF, 4165 Marshall St. Zachary, La. phone 654-5027. They are clerks there and in going thru his tapes and figures of August 14th., they found at 1600 hrs. that date, he had $350.00 in his wallet and placed another $800.00 in his pocket from the cash register and safe. The drugstore clerks showed taped and slips of paper with notations to reflect this. They are holding them for future reference in the safe if needed. This money would be in tens, twenties and fives, as tapes show he placed all the ones back in the register. This would be a total of $1150.00, except for his pocket change he normally carried.

While at the Drugstore, both clerks advised that Mr. Bond was picked up by Mr. Jessie Donze, WM, of 5725 Newell St. phone 654-2014, who is 1st. Vice President of the Bank of Zachary, at 1130 hrs. the date he was killed and returned at 1400 hrs.

Sgr. Robertson and Deputy Browning,thinking they went somewhere on financial business,and may have discussed money with someone or someone was present while they discussed money matters, tried to contact Mr. Donze for leading information he might reveal. Mr. Donze was unable to be contacted at this writing.

Sgt. Robertson returned to the Bond Drugstore at approximately 1630 hrs. to obtain some information from some people and their whereabouts. At this time, Doris Hanna informed this Deputy of an incident of interest. She stated that approximately 1000 hrs., Monday, August 13, 1973, an unknown colored male came in the store and began to fuss and carry on about Mr. Bonds having called his house earlier about a sum of money he owed Mr. Bond. He was very mad according to Doris Hanna and began telling her what to tell Mr. Bond, but she interrupted him and told him Mr. Bond probably wanted to discuss the money with him and to see him about it as Mr. Bond didn't like for his employees to deliver messages to him about money matters.

Doris Hanna stated this CM left the store very mad. She further advised that recently Mr. Bond has been trying to get an address on one Dore Profit, CM, who owes him a balance of $100.00 on a $120.00 loan. She said he was angry about Profit not paying him,to the extent that he was going to turn him in to a collection agency as soon as he obtained his address or whereabouts . Doris Hanna and Nancy Cobb stated neither knew Dore by sight. As they cannot recall having ever seen him.

Doris Hanna described the colored male as being approximately 40 to 45,

Investigating Officer(s)_____ Code_____

Approved_____ Date_____

(COMMANDING OFFICER)

ORTLIEB PRESS 4157

Date 8-18-73 File No. 73-15483

six foot tall about 190 lbs. She could not recall how he was dressed.

Sgt. Robertson contacted Deputy A. W. Monteguedo and learned he did not know where a Dore Profit lived, but he had a brother-in-law, Claude Banks living at 4542 Ave. C. phone 654-4126.

At this writing Deputy Womack and Reserve Deputy Frank Chidister are attempting to locate Dore Profit to acertain if he was the subject that came in the Drugstore as was reported.

Investigating Officer(s) Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 8-21-73
(COMMANDING OFFICER)

CATLICO PRESS 41371

ADDITIONAL INFORMATION:

Date 8-18-73 File No. 73-15483

Sgt. Robertson, Turner, Deputy Chidester and John Womack located Dore Profit, CM, at 2316 Kaufman St. Baton Rouge,La. and he readily admitted owing Mr. Bond $100.00 balance as reported by Mr. Bond's employees. Dore Profit allowed Deputy Womack to take two Polaroid snapshots of him so they could be shown to the Drugstore employees for the purpose of identifying the unknown colored male who came in the store Wednesday morning mad about Mr. Bond having called his residence.

When the photographs were shown,the employees stated he was not the individual, therefore eleminating Dore Profit of being a possible suspect.

Investigating Officer(s) Sgt. Robertson Code

Approved Capt. P. V. Bonnano/s/ (COMMANDING OFFICER) Date

ORTLICB PRESS 41571

ADDITIONAL INFORMATION

Date	8/15/73	File No.	73-15483

MURDER OF MARSHALL BOND:

Sgt. Shortess and Deputy Robison were assigned to assist Lt. Bueto in the above investigation. At approximately 2130 hours 8/15/73, Sgt. Shortess and Deputy Robison and Deputy Womack of the Zachary Police Department contacted Ethel Cunningham, Rouge 3 Rollins Road, who lives directly across from the Bond Farm. Ethel Cunningham could not tell Deputies anything. She said she did not notice any strange people or strange vehicles in the area that day. She stated that she had gotten home from work at approximately 3:30 and had been in her yard all day.

Deputies then talked with Paulette Cunningham, daughter of Ethel Cunningham, and she advised that approximately dusk dark, she had observed a young colored male wearing a white T-shirt and dark pants on a bicycle heading north on Rollins Road.

Above Deputies then proceeded to the W.H. Stanfield residence, also across from the Bond Ranch, which is a dairy, address being Route 1 Box 3-E Rollins Road. Above Deputies talked to W.H. Stanfield, along with his son, A.J. Stanfield. Both subjects advised they did not see or hear anything.

Deputies then learned from Deputy Womack that Thomas Rimes, CM, Age 20, was wanted by Zachary for burglary and that this subject used to live with the Cunninghams and he was known to go on the Bond property from time to time.

Above Deputies, assisted by Deputy Briggs and also Deputy Johnson of Zachary, apprehended the subject Thomas Rimes in Scotlandville later this evening, at which time the subject was transported to the East Baton Rouge Courthouse and placed in Jail on a charge of BURGLARY for Zachary, and was held for questioning.

This report is still under investigation.

Sgt. R.J. Shortess

Investigating Officer(s) Sgt. R.J. Shortess & Deputy Robison Code

Approved [signature] Date 8/23/73

(COMMANDING OFFICER)

OPTILIER PRESS 41571

CONTINUATION SHEET

Date: August 17, 1973 | File No. 73-15483

Additional information to the above file number.

On August 17, 1973, a polygraph examination was administered to David Rogers. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Rogers was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the armed robbery and murder of Mr. Marshall Bond. (For details, see offense report number 73-15483)

The facts concerning this case were provided this polygraphist by Deputy John Womack. Deputy Shelton Briggs brought Rogers to the polygraph suite and remained there during the entire polygraph examination of Rogers.

Before his pre-test interview, Rogers signed two copies of a form stating he was taking the tests voluntarily. One copy of this executed form is enclosed with this report; the other is encorporated as part of our case files.

In the polygraph recordings, there were definite indications of truthfulness when Rogers answered "No" to the following listed questions:

1) "Do you know for sure who murdered Mr. Bond?"

2) "Did you murder Mr. Bond?"

3) "Yesterday, did you see anyone put something in that car trunk?"

4) "Did you see Mr. Bond get murdered?"

It is the opinion of this polygraphist, based upon Rogers' polygraph examination, that he is telling the truth to the above listed questions.

Sgt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke 3093 Code

Approved [signature] (COMMANDING OFFICER) Date 8/23/73

PF.4

Place Taylor Bldg, Suite 412 Date 8/12/93

I, David Rogers, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

Dy. S. Bringas — David Rogers

WITNESSED — SEAL (Signature of person to be examined

TIME 1115

This examination was concluded at 1240 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

Dy. S. Bringas — David Rogers

WITNESSED — SEAL (Signature of person examined)

CONTINUATION SHEET

Date: August 20, 1973 | File No. 73-15483

On August 20, 1973, a polygraph examination was administered to Michael Ghoram. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Ghoram was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the armed robbery and murder of Mr. Marshall Bond. (For details, see offense report number 73-15483) The facts concerning this case were provided this polygraphist by Deputy John Womack. Reserve Deputy Richard Smith brought Ghoram to the polygraph suite and remained there during the entire polygraph test of Ghoram.

Before his pre-test interview, Ghoram signed two copies of a form stating he was taking the tests voluntarily. One copy of this executed form is enclosed with this report; the other is incorporated as part of our case files.

Throughout this person's polygraph tests on August 20, 1973, there were irregular and erratic reactions to the test questions. Because these reactions are of a type which prevent an analysis from being made, the polygraphist could not render an opinion as to whether or not Ghoram was telling the truth. Nothing this polygraphist said or did could alleviate this problem.

Therefore, it was the polygraphist's recommendation that Ghoram be given the opportunity of taking a polygraph re-examination. When asked if he would take a re-examination, Ghoram stated that he would not.

Sgt. D.A. Zuelke,
Polygraphist

w

Investigating Officer(s) Sgt. D.A. Zuelke 3093 Code

Approved [signature] (COMMANDING OFFICER) Date 8/23/73

Place TAYLOR BLDG, SUITE 412 Date 8.20.23

I, MICHAEL G HORAM, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

Richard Smith
WITNESSED

MICHAEL G HORAM
SEAL (Signature of person to be examined

TIME 1:32PM

This examination was concluded at 1530 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

Richard Smith
WITNESSED

MICHAEL G HORAM
SEAL (Signature of person examined)

ADDITIONAL INFORMATION:

Date 8-15-73 File No. 73-15483

Deputy Kermit Smith[Res.], interviewed a Gloria Dean Winders, CF, 14, Rt.3, Box 2, Polk Rd. Zachary, La. phone 654-8968. Subject lives with her aunt at above address. Aunts name is Mrs. Juanita Lawson. Deputy talked with subject about her activities in the afternoon of August 15, 1973,[Deputy Browning was also present during this questionning] Subject stated that after lunch on said date, between the hours of 1200 and 1300, subjects Aunt, Mrs. Juanita Lawson called Ralph Robinson and David Johnsen to come and fix the muffler of her auto. Ralph Robinson and David Johnson arrived at the above address around 1300 hrs. and began working on the automobile. After finishing the work around 1400 hrs. subject, along with Pam Lawson, Sherry Lawson, Felton Lawson, Lionel Lawson, Ralph Robinson and Gary Robinson and David Johnson then went to pick muskydines, who accounted for the arrival of Gary Robinson. Subject said that they picked muskydines directly behind the house. After picking berries for about 30 to 40 minutes, the group returned to the subject's house and ate the muskydines and talked between 1500 and 1600 hrs. Subject stated David Johnson recieved a phone call from his home to come home.

At this time, David Johnson, along with Ralph and Gary Robinson, left the subjects home. This was the last time the subject saw the three for the day. She then began watching television after eating supper, around 1830 hrs. subject stated that she heard and saw the rescue unit heading toward town, but did not see it going to the scene.

Subject said she did not learn of Bond's Death until officers came to the house that night.

Investigating Officer(s) Deputy Kermit Smith Code

Approved Capt. P.V. Bonnano/s/ Date 8-24-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41571

ADDITIONAL INFORMATION:

Date	8-15-73	File No.	73-15483

Checked with Illinois Central Employee Friday night, August 17, 1973, as to whether any trains had traveled the tracks next to Bond's farm. Employee furnished me with times trains ran on the day of August 15, 1973. No trains ran thru Zachary during the time 1640 and 2350 hrs.

Investigating Officer(s) Res. Deputy Kermit Smith Code

Approved Capt. P.V. Bonnano/s/ Date 8-24-73

(COMMANDING OFFICER)

OATLICS PRESS 41571

ADDITIONAL INFORMATION:

Date 8-20-73 File No. 73-15483

Sgt. Robertson contacted Mr. Jessie Donze of the Bank of Zachary and he advised when he picked up Mr. Bond Wednesday morning, he was unusually upset about something,even to the point he cut off short the President of the Bank on the phone, while in conversation and later called him back and apologized.

Mr. Donze further revealed that while in route to look at a piece of property, they stopped at Rt.1, Box S-18, Old Baker Rd, where Mr. Bond knocked on the door several times, got no response and got back in the car even more upset than before, as the occupant, a colored female, owed him some money and had dodged him about it.
With this information, Deputy Womack and Dy. Littlefield picked up Ella Mae Scott, CF, 23, 9-10-49, and she was questioned at length at the Town Hall, admitted owing Mr. Bond $23.00, but did not live with her husband, Burnell Scott, address unknown, and there was no colored males who would go to Mr. Bond's Drugstore and intercede for her about the bill she owed him. Deputies were satisfied with her explanation and she was taken back to her residence.

Sgt. Robertson, Deputies Littlefield and Browning returned to the Drugstore this morning and Mrs. Cobb revealed to Deputies that Mr. Bond had approximately $140,000.00 out and uncollected in small loans to various people from the Zachary area. This is money he lent out from the Drugstore.

Lt.Tycer called SGt. Robertson and explained he had some information that a Matthews Turner, Jr., CM, of Rt. 1, Box 200, Zachary, La. at Port Hudson, La. phone 654-4574, and a Freddie McCoy, CM, known by this office real well were running together and his information was to the effect they were spending big money on autos etc.

Deputies Briggs and Bill Johnson brought Turner to the Town Hall and this information was checked out to the satisfaction of Deputies and he told Deputies he never did run with McCoy. Briggs and Johnson thru investigation found that McCoy lives in Detroit,Michigan and came here three weeks ago and stayed a short time and left, going back to Detroit, where he presently is.

Sgt. Zuelke called Sgt. Robertson and advised him Michael Ghoram's car was in route back to Zachary from having taken the Polygraph Examination, and he was satisfied he had no part in the incident, but was doubtful if he told all the truth completely. Sgt. Zuelke stated he suggested a future examination and Ghoram got very upset and told Sgt. Zuelke he would not go any further with the Polygraph and he could tear it up. When he returned to the Town Hall, Deputies attempted to question him further and he started getting excited, crying and generally upset and suggested that Mr. Zimmerman was the one who was causing him to be questioned and he was going to curse him out.
Sgt. Robertson cautioned him about making these accusations and tried to make him understand this was not the case. Deputies offered to give him a ride home, but he declined and left the Town Hall mad on his own stated

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that if Deputies wanted to talk to him again they would have to arrest and book him and then they would find out nothing. He left of his own accord.

Investigating Officer(s) Sgt. W. E. Robertson Code

Approved Capt. P. V. Bonnano/s/ Date 8-21-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41971

ADDITIONAL INFORMATION:

Date	8-21-73	File No.	73-15483

Deputies learned Mr. Bond had ordered some feed to be delivered to his barn on Tuesday, August 14, 1973, and asked it be delivered to the barn on the 15th. This feed was not delivered and Deputies checked to see if there was any possible connection in the non-delivery and the crime. Sgt. Robertson called Service Feed, 3401 North Acadian Thruway, phone 357-5981, and spoke with Lindsay Laird a salesman and learned Mr. Bond called him the 14th. at 1100 hrs. and ordered two tons of feed and asked it be delivered Wednesday. The feed was to be 60 -- 50 lb bags of Calf Creep Feed and 20-- 50 lb. bags of Horse and Mule Feed. According to Laird the feed is normally delivered by John Coats, CM, of Zachary and he takes it to Mr. Bond's barn on his last trip out on the delivery date, so he can unload it and go on home without returning back to Baton Rouge that date. This feed was not delivered on Wednesday because they were out of Mr. Bond's type of feed. It was not delivered Thursday when it came in because they had learned of Mr. Bond's death. That order of feed was delivered this date on request of Mr. Carl Bond, brother to Mr. Marshall Bond, deceased.

Sgt. Robertson talked with Capt. Bonnano and he advised that he, Chief Rives and Col. Sliman had previously talked with one Earl J. Champagne, CM, and wanted Deputies to double check his movements for that day, as it was establish he failed to go to work in New Orleans that day and he was attempting to borrow money in Zachary that day. Deputies went to Service Acceptance Corp. 4946 Main St. Zachary, La. phone 654-2654, and talked to Mrs. Vera Lee and she advised that around 0945 or 1000 hrs. that Champagne came in and made a request for a $350.00 loan,offering titles to an old Chevrolet and Dodge, stating the money was for auto repairs. She took a partial application on him and showed it to Mr. Vince Garafola and he told her to tell Champagne he would need a strong indorser on his note for him to obtain money.

Champagne mentioned getting Simon Phillips to co-sign his note. Phillips is step-father in-law to Linda Jackson, common-law-wife of Champagne. He was told by Garafola it would have to be someone else, as Phillips would not be acceptable. Mrs. Lee further informed these Deputies she failed to date his application, but she knew it was Wednesday the 15th.

Sgt. Robertson earlier talked to Mr. Joe Dupre, Supervisor of Champagne at GMC Truck Sales and Service, 224 Jefferson Hwy. New Orleans, La. phone 835-4276 and he informed these Deputies that Champagne had,in fact, missed work that date and gave the following attendance at work for the week. Worked 14th., off the 15th. worked the 16th., off the 17th., but came and picked up his check 1630 to 1645 hrs. on the 17th.

According to Mr. Dupre, even though he has missed a lot of work lately, he has been at work steadily since the 17th. He further advised Champagne had a wife and family of approximately eight children living in Hahnsville, La. He had no further information on them or Champagne.

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Deputies then contacted Linda Jackson and she advised the following: On the 15th. Champagne left for work or told her he was going to work. She left the house 0800 hrs. arrived at her mothers 0805, picked up her mother and Isiah Gobram and with her children they all went to Henry Holmes's place in Chaneyville and picked up cans then stopped along the way home and picked up cans. She stayed at her mother's until 2150 or 2155 hrs. when Champagne returned home. Thats the first time she saw him since he left telling her he was going to work. According to her he told her on return that on the way to work his car broke down near Gonzales, La. and she stated he gave her the impression that Jewel Dunn, CM, of 5115 Lennox,phone 654-6261, had towed him back to Baton Rouge, La. and she thought he had been working on the car somewhere that day. She did reveal that she was aware Champagne had another wife and some children in the New Orleans area.

Deputies had prior knowledge of Melvin Higginbothen, CM, of Shaffet Lane, being associated with Champagne that date. Melvin stated he was home watching T.V.[Bonanza] around 1430 or 1645 hrs. when he saw Champagne turn around in his driveway. He asked him for a ride toward town, got in the car and Champagne went to his house, stating he was going to take a bath. Higginbotham waited outside and talked with Jake Scott, CM, who lives across the street from Champagne. Earl didn't take a bath, but stayed about 10 minutes and they went over to Hwy. 19, drove South past the red light, turned around, came back and Melvin got out at Stills Barber Shop, stayed around a few minutes, went to see Willie Tate on Ave. K, drank wine till late and Willie walked half way home with him.

Deputies talked with Isiah Gobram learned as Linda Jackson had stated, he was with them all day picking up cans. Returned about 1700 to 1730 hrs. went with Rowena Phillips,wife of Simon Phillips, to the H & H Club about 1830 hrs. and bought either a pint or a fifth of V.O., went back to Rowena's, stayed half hour , went home. Earl Champagne came to his house about 2030 or 2045 hrs. Lawrence Ghoram went with Ghampagne back to H & H Club, bought a fifth of V.O. and a 6-pack of Schlitz, came back to Gohram's house, drank and Champagne left around 2130 hrs, apparently going home. On both trips to H & H Club the liquor and beer bought was charged to Isiah Gohram.

With the information about Earl Champagne's association with Jewell Dunn on that day, Deputy Bill Johnson brought Dunn to the Town Hall and he was questioned and Deputies learned that Dunn went to Champagne's house around 1630 or 1700 hrs. and Earl was watching T.V.
He went there to get Earl to work on his truck the following day. Earl went with Jewell to a Terry Ursher, CM, on Shaffet Rd., so Dunn could get Ursher to take him to work next date, while Earl worked on the truck. He took Champagne home about 1730 hrs. and has not seen him since. Earl told him he could not work on his truck next date, as he would have to go to work because he missed work this date, the 15th.

To this point Deputies have been unable to talk to Earl Champagne further

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as they cannot catch him back in Zachary to do so. He will be questioned further.
Late this evening, Louis Baker came in and advised these Deputies that on the day of Mr. Bond's Funeral, Charlie Stone, CM, farm attendant, went to the barn to feed the horses and found W. H. Stanfield, who lives at Bowman Carneys Dairy Barn in a trailer, walking around.
Stone has a neighbor named Stewart, who went with Stone because Stone has been afraid to go out to the barn alone. Baker told Deputies he found something out there,since Stanfield had been there, he had not seen before. These Deputies , along with Deputy Monteguedo went out there and Baker showed them a galvanized anchor bolt laying just about one foot Northwest of the larger pecan tree in the lot.
IT IS TO BE NOTED that Deputies had daily searched this area for anything in the case. This was preserved, held in evidence envelope #9742, and taken to LSP Crime Lab by Deputy Briggs for analysis.

With this information, Deputies returned to W.H. Stanfield's residence, Rt. 3, Box 3-E Rollins Rd. and talked with him about his being at the barn prior to, and after Mr. Bond's death. He related that the day of Mr. Bond's murder, his two grandchildren got his son Marvin's fishing equiptment and went to Bond's pasture to fish and stayed only a short while returning around 1515 or 1530 hrs. with some pears and his son A.J. gave them a dollar and told them to go back and get him some pears. Mr. Stanfield returned with the children, but the weather got bad and he made them return to the Dairy Barn with him, they came back with six pears.

Mr. Stanfield told Deputies we should see his son A. J. or Marvin as they had seen two suspicious colored males, one the day of the incident and the other this past Monday the 20th. or Tuesday the 21st. When A. J. Stanfield was asked about this he advised that Marvin had told him about seeing someone . Marvin advised he was at the barn and left at 1800 hrs. that date and on turning the curve at Marshall Bond's pasture entrance, he saw a young colored male walking South on Rollins Rd. acting nervous and looking back. He watched him thru his rear view mirrow and stated he kept on looking back up the road. When asked why he had not reported this he advised he did not think about it. The only thing he could remember about him was he looked young, had on black and white tennis shoes. He did advise that the subject looked like the one that was sitting in the cops car, as he called it, at the pasture the day after the murder. This was David Rogers, CM, and was given the Polygraph Exam and cleared.

In regards to a suspecious subject, he alledged to have seen the Monday or Tuesday after Mr. Bond's death. He stated that at daybreak one of those days, he observed a dressed up colored male walk past the dairy, walking North on Rollins Rd. and appeared to be looking in the ditch for something. According to him, when this colored male rounded the curve going back West on Rollins Rd., a black 1963 Chevrolet sped past the house driven by a colored male in his 30's or 40's stopped and picked this subject up and drove off. When asked to describe the dressed up subject and his clothes, he could not do this, but when

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asked why he could not describe a slow walking person close to him, and how did he know that the speeding vehicle that picked him up was occupied by a 30 or 40 year old colored male, he just shrugged his shoulders and stated he didn't know, but that's what he saw. With this information, Deputies went back to Mary Newbin, CF, who observed Mr. Bond to go to his pasture and observed most of the activity around this area. She could not recall seeing either subject mentioned by Marvin Stanfield.

Deputies went back to the dairy barn and on arriving Marvin Stanfield made the remark " you aint caught them niggers yet", this seems to be the point of note with the Stanfields, they have information when you go see them, but never bother to contact Deputies and volunteer the information they have. They seem to these Deputies to be trying to direct Deputies away from them on the entire matter.

Wilmont Zimmerman told Deputies they should talk to one of his employees about a strange white boy who had been seen in his pasture on several occasions.
Deputies talked to Willie Washington and learned that West of the dairy barn about quarter of a mile, he on several occasions, while driving the cows up, he has seen and unknown white male, twenty, 6ft. 1", long brown shoulder length hair with green army camping pack on his back, walking around the pasture, both prior to and since the incident.
He advised that recently the boy stepped from behind a tree and scared his horse almost throwing him. Zimmerman advised there was an old plantaiton house and several old sheds back there next door to Judge Pope at the dead end of the Pope Rd. Judge Pope is the Justice of the Peace. Deputies went there and with Judge Pope searched the old home and all adjacent buildings to see if anyone had been staying in them. Later in the day, Judge Pope notified Deputies they checked around and learned the boy seen in the pasture turned out to be a grandson of his.

Investigating Officer(s) Sgt. W. E. Robertson Code

Approved Capt. P. V. Bonnano/s/ Date 8-22-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41577

ADDITIONAL INFORMATION TO OFFENSE:

Date 8-15-73 File No. 73-15483

OFFENSE: MURDER
VICTIM: MARSHALL BOND

At approximately 0200 hrs. 8-16-73, Lt. Bueto and Res. Deputy Smith interviewed a Thomas Earl Rhymes, CM, 23, d.o.b.4-24-73, address unknown on Scotland Ave. Rhymes was brought up as a possible suspect, inasmuch as Deputies recieved the information that he had been run off of Mr. Bond's farm before. Rhymes accounted for his whereabouts and type of clothing in question.

On Thursday, 8-16-73, at approximately 0630 hrs., Deputies, along with Chief Rives, Capt. Bonnano, Deputies Broyles, Landry, Sgt. Shortess, and Deputy Robertson, and numerous Auxiliary Police from Zachary made a diligent search of the crime scene and immediate area surrounding the barn, to no avail.

Shortly after Bond's body was removed from the scene, Deputy P.V. Browning requested blood hounds from the Sheriff's Office in Clinton. The dogs picked up a trail from an old abandoned house West of the barn, and in the pasture. The trail led to a gate on the Rollings Rd. West of the barn and ended . The trail went past a small pond just inside the fence and on the Bond property.

At approximately 0800 hrs. on 8-16-73, Marvin Stanfield, WM, 4316 Church St. Zachary, La. 654-6259, said that his son and nephew had been in the pasture on the day in question to pick pears and fish in this particular pond. Deputies then talked to Roger D. Stanfield, WM, 11, and Gary J. Pounders, WM, 12, same address. Both said that they had come in to the above mentioned pasture and fished in the pond and then proceeded to a pear tree in the pasture, just outside the gate where the murder took place. Roger said that he had on tennis shoes which had a suction-cup design on the sole and Gary was barefoot. Both said that they did not cross the gate just West of the barn, nor did they see anything. Roger and Gary said that they left the pasture somewhere between 1500 and 1600 hrs. and proceeded back to the Dairy on Rollings Rd. where their parents are employed. They returned to the pear tree with their Grandpaw, whereupon they again picked pears from this same pear tree, and returned home, again they did not see anything.

During this time Deputies were preparing to pump out the pond in search of the weapon or the victim's wallet. The draining of the pond was completed at approximately 1300 hrs., 8-16-73, to no avail.
At approximately 1730 hrs., Marvin Stanfield returned to Zachary Town Hall with Roger and Gary. Roger and Gary at this time said that they remembered seeing a small, white over yellow car on Rollings Rd. on the West side of Bond's farm. The Stanfields milk and run a dairy on Rollings Rd. for Wilmont Zimmerman and are located on the West side of the Bond farm. Marvin said that his brother had called the car to his attention during milking time and told him that it was a yellow and white Metropolitan. Both boys said that they saw the car parked next to Bond's farm, and nobody was in it. Marvin Stanfield said that he

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did not know the exact time that the car was seen, however, it would have been between 1600 and 1800 hrs. Wednesday, August 15, 1973.

Deputies then talked to A.J. Stanfield, brother of Marvin, WM, Rt.1 Box 3-E-6542131. This is a house trailor located next to the dairy barn. A.J. said that sometime during the hours of 1600 and 1800, on 8-15-73, he looked out of the window of the dairy and saw a white over yellow Metropolitan moving North on Rollings Rd. He could not give a description of the driver. Deputies caused a local to be broadcast on this car, and at approximately 2130 hrs. 8-16-73, located the above car. It was owned and driven by Don B. Holmes, Box 243,Clinton, La. Holmes said that he had bought a Metropolitan from Robert Newport, who at the time lived on Rollings Rd. This was approximately two years ago. He said that he had made several trips on Rollings Rd. looking for the house and had talked to several colored subjects in an attempt to locate Newport. He said that he spotted an old house sitting way back off of the road and decided that this is where Newport must live.
He stated that he crossed the gate and walked about half way between the road and the house and determined that this house was vacated and returned to his car and got back into the car. The house in question is just West of the barn where Mr. Bond was killed, and is the same house where the dogs had picked up a trail.

At approximately 0900 hrs. Deputies talked to David Rogers, CM, 20, d.o.b. 12-2-52, Rt. 3, Box E, Zachary, La. 654-2151, Rollings Rd., which is the residence of his mother. He presently lives at Baker, La. on Spur Lane. He accounted for his whereabouts on 8-15-73, and was later given a Polygraph Test.

At about 10:30 hrs., 8-16-73, Deputies talked to James David Johnson, CM, 16, d.o.b.7-17-57, address Rollings Rd. He was again talked to at 1530 hrs. this date. [This subject is some what illiterate, and cannot tell time.] He attempted to account for his whereabouts and got mixed up on the time. He named several other subjects who were interviewed and who verified his whereabouts.
At approximately 1300 hrs. 8-16-73, Deputies talked to Mrs. L.L. Hanna, WF, 4165 Marshall St. Zachary, La. 654-5027. Mrs. Hanna is a part-time employee of Mr. Bond and is employed at the drugstore. Mrs. Hanna stated that on the day in question, she departed the drugstore at approximately 1400 hrs. and left Mr. Bond alone at the store. Mrs. Hanna said that she had gone back to the store on the morning of 8-16-73, and estimated that he would have had about $1200.00 cash on his person. She said that he normally carried approximately $1,000.00 and took close to $200.00 from the store's register. She said that as far as she could determine, nothing had been disturbed in the store and everything appeared to be normal. She said that Mr. Bond had a habit of leaving the store and would place the padlock in the hasp in the front door unlocked, leaving all of his papers and recipts on his desk as though he were coming back to the store. She said that if he were to leave the store for the day and be gone for an hour or so, that he would leave the store in this manner and would return and reopen the store.

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She stated that upon going to the store on August 16, 1973, that she found the store in this condition.

On 8-16-73, Mr. Carl Bond advised Deputies that he had recieved an anonymous phone call that a car was heard leaving the area of the Trudeau Goudeaux house in Slaughter, La. at about 0400 on this date. Mr. Bond said that he believed his brother had helped this family financially at one time or another. Deputies, along with Deputy Alven Doucet, Sheriff's Office Clinton, contacted Mrs. Goudeaux who lives in Slaughter with her Grandson, Mark Mullins, WM, 16. Mrs. Goudeaux said that her grandson was at home all night and that she had not seen or hear a car leave during the night. Deputies located Mark Mullins at the poolhall on La. 19, in Zachary at about 2200 hrs. on 8-17-73. Mark Mullins said that he was at home all night on the night of 8-15-73. He said that during this lunch hour on this particular day, he went riding on Rollings Rd. and saw Mr. Bond's truck in the pasture. He said that he did not go to the truck nor anywhere on the farm, nor did he see any suspecious persons. He later learned that Mr. Bond had been killed. Mullins said that he did not see, nor did he hear a car leave the area of his house at the above mentioned time.

Mullins went on to say that he considered Marshall Bond as one of his best friends inasmuch as Bond had helped his Grandfather financially, and after his death assisted his Grandmother in having the house payments lowered. Mullins said that if he knew anything about Bond's death he would inform Deputies.

On Saturday, August 18, 1973, Deputy John Womack advised Lt. Bueto that R. E. Amhrein, Jr. had gone to T.&T Liquor Store on La. 19 in Zachary and made a purchase, and doing so he presented a twenty dollar bill and recieved two five dollar bills and some ones as change. On one of the five dollar bills, Ser. # F71707958A, he noticed what appeared to be a spot of blood. Deputies, along with Deputy John Womack, Sgt. Turner and Deputy Chidister, went to the T & T Liquor Store and looked through the cash on hand with negitive results. Deputy Womack has the name of the employees on duty at this time at T.& T. Liquor. Above Deputies then went to the Royal Liquor Store, La. 19 in Zachary, La. and contacted Fred Whitehead, owner, address 5000 Royace Dr. 654-5438. Whitehead agreed to let Deputies look through his cash on hand and in doing so saw what appeared to be blood on the following bills.
One ten dollar bill, Ser. # L00056702B
One dollar bill, Ser. # L83642424C
One dollar bill, Ser. # K36642411B

Whitehead insisted that his night bank deposit of Friday, August 17, 1973 be searched. This was done with negative results. On Monday, August 20, 1973, Lt. Bueto carried the above described money to the State Police Crime Lab, where Paul Cobb checked the bills. Cobb determined the stains on the five and ten dollar bills were blood. The stains on the ones proved negitive, however all the bills were submitted as evidence.

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After the bills were submitted, Lt. Bueto learned from Sgt. Robertson that an employee of T & T Liquor Store informed him that he had cut his finger at the store and that the blood had gotten on a five dollar bill. [See addition by Sgt. Robertson for full details.]

At approximately 0900 hrs. on Thursday, August 16, 1973, Deputy Womack located a bumper jack handle approximately 60 feet east of the pond where Mr. Bond was killed. The jack handle is in Lt. Bueto's possession at this time.

At approximately 1230 hrs. this same date, an unidentified white male assisting with the search of the farm, informed Lt. Bueto that he and Deputy John Womack had discovered a piece of cloth. Bueto and Smith accompanied this person to the extreme East side of the barn farm next to the Illinois Central Railroad, approximately 200 yards from the South fence of the farm. Here they located and will hold a piece of gray cloth, rough cut on two sides and factory or finished edge on the other two sides. The material appears to have come from a pants leg and indicates that it had been taken loose at the seems. It is not known if the cloth is pertinent to this investigation.

When above Deputies first went to the Lane Memorial Hospital, they contacted Dr. Martin and requested that he obtain samples of the victim's blood. This, along with the following were turned over to the State Police Crime Lab, along with the victim's clothing and other items mentioned in this report. The receipt for this evidence will be placed in evidence envelope 9757.

OCB/st.

Investigating Officer(s) Dy. O.C.Bueto Code

Approved Captain P. C. [illegible] (COMMANDING OFFICER) Date 8-15-73

ORTLIEB PRESS 41571

ADDITIONAL INFORMATION:

Date	8-23-73	File No.	73-15483

On this date, Deputies were told of several people who had made suggestions and knew of things and Deputies checked them out as follows:

Deputies were informed they should check on a parole, Joey Kyle Mullens , WM, alledged narcotic addict presently on parole under Mr. Pierce of State Probation and Parole. Pierce was contacted personally and it was found Mullens was in jail, March 19, 1973, released March 20, 1973, to Pierce and is presently in San Francisco, Calif. and there since, July 24, 1973, under San Francisco Probation Authorities.

At 4030 hrs. date, Chief Amkrien asked Deputies to talk with a Mr. Bernie Cassels, WM, 21, of Rt.1, Gloster Miss. Amkrien showed Deputies a letter he recieved from Mr. Cassels this date and same hour Cassels arrived. Deputies learned from Mr. Cassels that a man, Louis Wilkerson, WM, about 50, and thought to be living in the Port Hudson area. He told Deputies that 15 or 20 years ago a Mr. A.B. Corey of Gloster, Miss. and Wilkerson got very drunk together and after Corey passed out Wilkerson alledged to have taken $1200.00 off him. He advised no arrest was ever made due to the lack of evidence, but everyone always knew Wilkerson got the money. Mr. Cassels also showed Deputies some correspondence he had with a General Walker in Dallas, Texas, where he wrote to Walker telling him he had a premonition that Lee Harvey Oswold shot at him. He showed a letter of response from the General thanking him for the suggestion.

Deputy P.V. Browning told Deputies he had information that a Mr. Bo Harvey of Jackson, La. had come to Zachary the Sunday prior to Mr. Bond's death looking for and unknown colored male who owed him some money and had possibley contacted Mr. Bond and they went to see this person and this visit might be of interest in this investigation. Mr. Harvey was called and he told Deputies to be at his house at 1130 hrs. this date, as he had information he would be hesitant to discuss on the phone. Deputies went to Mr. Harveys and he advised he did come to Zachary, but visited Mr. Carl Bond, but did not see Mr. Marshall Bond. Mr. Harvey is a sick man and as this visit turned out he had no information, but just wanted to talk to someone about the crime.

Deputies returned to Zachary and directed their investigation back to the Stanfields because they have been telling Deputies of things they have seen that seem to be directing Deputies away from them. Mr. W. H. Stanfield accompanied Deputies to the Town Hall and was questioned at length about his being in the pasture at different times and at the Bond farm. For his times, there he advised he went there after the crime mostey out of curiosity Deputies then requested Mr. Stanfield take a Polygraph Test and explained their reasons and also the test, he consented to 1030 hrs. next date, advising he had nothing to hide or lie about. Deputies returned Stanfield home and requested Marvin and A.J. Stanfield accompany them to the Town Hall for further questioning and they volunteered. While waiting for them to finish up the evening milking of cows, Sgt. Robertson noticed a piece of black iron pipe about 12 in. long, laying on a grated drain outside the front door of the dairy barn.

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(COMMANDING OFFICER)

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It had what appeared to be dried crusted blood on it. It was preserved and tagged as evidence in envelope #9756 and taken to the Crime Lab. for testing. These tests were made next date and were negative.

Marvin Stanfield was questioned at length about the date of the murder and all his movements that date. He revealed another new developement he hadn't volunteered up to now. According to him, while in the dairy yard putting the last 13 head of cattle in the chute for milking he heard someone hollar, he thought from a long way off. He finished, went home and while watching the last half of the 6 o'clock news, saw the emergency unit go by and he called his father to see if it passed the dairy barn and was told it went into Bond's pasture and according to him, his father suggested someone may have been bitten by a snake.

Marvin Stanfield was asked if he would submit to a Polygraph Examination and he would not be definite about it. When told his father volumteered, he told Deputies he would have to sleep on it and they could ask him next date when his father returned from taking one.

A.J. Stanfield, when questioned, gave the same story as Marvin. When asked about hearing someone holler the evening of the murder, he stated Marvin said something about it to him. When asked to submit for a Polygraph Exam, he was at first hesitant then advised he had nothing to hide and Deputies could make the arrangements with him when his father returned from his examination.

Investigating Officer(s) Sgt. Robertson and Dy. Littlefield Code

Approved Capt. P. V. Bonnano/s/ Date 8-23-73
(COMMANDING OFFICER)

DAYLICO PRESS 41371

ADDITIONAL INFORMATION:

Date 8-24-73 File No. 73-15483

On this date, Deputy Fred Dunaway of Zachary called Sgt. Robertson and said that a Mr. Brooks called him and told him he would like to talk to someone about the Marshall Bond Murder. Deputies went to the home of Rev. J. J. Brooks of 5233 Main St. phone 654-4433, and Rev. Brooks was sick in the bed and it turned out he just wanted to discuss the case in general and advised Deputies he wanted them to know that they should watch all the deliquent juveniles in Zachary, as it was full of bad ones. He mentioned all sorts of possibilities. Rev. Brooks was assured all avenues would be covered in the investigation and thanked him for calling.

Later in the evening, Deputy Browning called Sgt. Robertson and requested he return to Zachary and check out some information. On return, Sgt. Robertson learned Mayor Breaux had been contacted by officials of the Georgia Pacific Paper Co. and was given the following information.

Mr. J.O. Sparks and Mr. John D. Taylor came to the Town Hall and talked with Mayor Breaux and Deputy Browning advising that they had, up until today, a Mr. Warren Sprouse, WM, employed as a Project Engineer, and found he had taken approximately $20,000.00 from the Company, over a period of time. They declined to prosecute according to Browning.

In addition to this Sprouse had attempted to extract $10,000.00 from one of the contracting companies doing business in Georgia Pacific Plant and they dismissed him today. Browning advised Sgt. Robertson that Sprouse either rents or leases a house on West Central Ave. in Zachary, La. from Marshall Bond and its been turned into a Resturant, Creole Kitchen . Browning also advised that he and Marshall Amhrein have had words with Sprouse about serving liquor at the place and he is most sure Mr. Bond had spoken to Sprouse about this in his capacity as town Alderman and the business relationship as well as controversey may have been such that further investigation should be made. Mr. Sparks and Mr. Taylor were not immediately available for Deputies to talk with, but left word they could be contacted Monday if it was necessary and they would be of any assistance they could to Deputies.

This will be followed up by Deputies very closely.
At 1910 hrs. this date, Sgt. Robertson went with Mose Evans of the Baton Rouge City Police Dept. and he explained the following information he recieved in regards to Mr. Bond.

He recieved a call from some elderly colored people who live on the Plank Rd. above Zachary and they asked him to visit them, as they wanted to tell him something. Whoever these people are, they will not see investigators and according to Evans this is because they are scared of the subjects to be mentioned. Evans advised there is a J.C. Holiday, CM, 25, Isiah "Teet" Profit, CM, 34, and Ben Davis, CM, who are supposed to be running together. Holiday lives in Blairstown in East Feliciana Parish, Profit, on Plank Rd, either in East Feliciana or near the Parish Line, and Davis lives in J.P. Heard Quarters in East Feliciana Parish.

Investigating Officer(s)_____ Code_____

Approved_____ Date_____
(COMMANDING OFFICER)

ORTLIEB PRESS 41571

Date 8-24-73 File No. 73-15483

The information is that these three were seen in Zachary three days prior to Bond's death, in a 1962 Pontiac, 4dr., white, bearing 73 La. 56A376, that was recently sold to Holiday by Milton M. Ourso, Jr. of 2727 Iroquois St. Baton Rouge, La. phone 355-8036.
Further, according to Evans information, they have been spending money bragging about working on big ranches in Texas and on the Sunday following Mr. Bond's death, the three went to the home of Florence Heatley, CF, on the Plank Rd. and were seen taking a tan saddle with blue and dark wide blue stripped saddle. They were traveling in a white over red pickup truck and pulling a yellow cattle trailer. Informant believed this saddle and blanket stolen and related that they believed they are involved in the stealing of cattle. They feel like according to Evans they may have been at Bond's barn trying to either steal saddles or calves and Mr. Bond surprised them and it resulted in his death.

The informats told Evans that since Bond's death, the three have ceased running around together, but have been seen by the informant in Zachary on the same days, but seperately. Sgt. Robertson, Deputy Browning and Womack and D. A. Investigator, Gibbens discussed this and Browning advised Florence Heatley used to work for him and he could talk to her. These four officers went to her house and she denied having seen a saddle or known anything about it and only knowing the mentioned participants other than casually and advised they have never been to her house. Deputy Browning didn't talk to Heatley about the Bond case, just about the saddle and her knowing the above three colored males.

These investigators talked with Ourso and learned he sold the car to Allen L. Holiday, CM, Rt.1, 87 Slaughter, La., August 10, 1973, at 1300 hrs. for $215.00 cash and that Holiday works for Zachary Stockyards and runs a cattle truck from Zachary to various points in Texas and back.

When Evans was contacted and told of the response, Deputies got from Florence Heatley. He called his informant back and was advised that the Heatley woman was lying and they saw the saddle taken there at 1500 hrs. Sunday after Bond's death and the three colored males hung out there regularly, and all the information they gave first was correct and Deputies should check closer, further advising they saw Deputies when they went to Heatley's residence. This information will be checked thoroghly.

Investigating Officer(s) Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 73-15483
(COMMANDING OFFICER)

DATLIED PRESS 4(37)

ADDITIONAL INFORMATION:

Date 8-25-73 File No. 73-15483

This morning Sgt. Rushing called Sgt. Robertson advising him that a call came in on the 911 System and one Johnny Wood, CM, 20, of 4766 Osborne Ave. phone 357-0597,advised that he had information about the Bond Murder. Wood was contacted at Adams Used Cars 5722 Scenic Hwy,, where he is a salesman and he related the following:
This morning a resident of Zachary came in and bought a car and when this subject left,his colored male employee, Frank Patin, 60, address unknown, came in and told him this:
"Mr. Wood you remember that 67 Chev. you sold to Freddie Allen the other day, well Freddie and his brother killed Mr. Bond in Zachary." Freddie robbed him and Freddie's Brother shot him. I guess they'll go back to the pen where they came from".
Wood advised that he sold a 1967 Chev. on August 16, 1973, to Freddie Allen of 2483 Brashear for $164.30. He paid that amount with a check from Union Federal Savings & Loan in Scotlandville.

Sgt. Robertson wanted to talk with Patin, but Wood had no address or phone number on him, and advised he would have to be contacted Monday as he was out of town for a Wedding in his family. This too will be further investigated thoroughly.

WER/st

Investigating Officer(s) Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 8-25- 73
(COMMANDING OFFICER)

OWTLICB PRESS 41371

ADDITIONAL INFORMATION:

Date	8-24-73	File No.	73-15483

When Sgt. Robertson returned to Zachary on request of Deputy Browning to go over other points of the investigation, he was met at the Town Hall by Earl J. Champagne, CM, Champagne accounted for all his time the day Mr. Bond met his death, to this Deputy's satisfaction.

For the outstanding time off him not accounted for, it was learned he was visiting a colored female in Scotlandville, unbeknowning to his wife and all the talk about his auto breaking down was an excuse he gave his wife to cover up his tracks that day. This eliminated Earl Champagne as far as this Deputy is concerned.

This morning, August 27, 1973, Lt. Bueto and Sgt. Robertson contacted Johnny Wood at Adams Used Car Lot to check out statements given to him by his employee, Frank Patin, CM, 2610 Cable St. Patin could not be locateed this date, but was found in jail, 8-28-73, where he was arrested on a B.W.I charge. He was questioned by Deputies and learned he heard Emile Scott, CM, of 1814 Curtis St. talking about someone may have killed someone. Further investigation in the day revealed that Patin and Smith were drunk together in Dixie and while sitting on the corner drinking wine, got started talking and both stated they heard a doctor in Zachary got killed and were just talking over who they thought might have done it. Lengthly questioning revealed this to be drunk talk and neither could remember much they really said.

Investigating Officer(s) Sgt. Robertson and Lt. Bueto Code

Approved Capt. P.V. Bonnano/s/ (COMMANDING OFFICER) Date 8-27-73

ORTLIEB PAGED 41971

Date	8-28-73	File No.	73-15483

These Deputies went to the Georgia Pacific Plant and had a lengthy discussion with Georgia Pacific officials into their knowledge of one Warren H. Sprout, WM, who they dismissed from his position on August 27, 1973. Day long investigation into Sprouts local activities revealed he had business transactions with Mr. Bond and Deputies began gathering background on him prior to bringing him in for questioning and possible Polygraph Examination.

On this date, Deputies also went to Northwestern High School and with arrangements made by the Principal these Deputies again questioned Roger Stanfield and Gary Pounders. Only one new development was learned in the interview with them. Both stated seperately that when they went to Bond's pasture to get pears, that while there the horses and cattle became alarmed at something, and were running around hollering and generally stampeding. THeir grandfather, E.H. Stanfield, attributed this to lightening and bad weather.

Both told Deputies that late that evening they were at the dairy barn and heard someone scream and then thought it still might have been the horses acting up.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 8-28=73
(COMMANDING OFFICER)

ORTLIEB PRESS 41371

Date	8-29-73	File No.	73-15483

This day was consumed with getting prior record on Warren H. Sprout from LSP/BOI, information from local F.B.I. office and complete credit check with Bank and Credit Bureau prior to questioning him.

When Deputies returned to Zachary they met with other employees of Georgia Pacific who told Deputies of Sprouts actions, both prior and after Mr. Bond's death and comments made by him. With this information, Deputies contiqued without success in locating him into the night for questioning. Detailed information is being retained by the Deputies that they have accumalated on Sprout to be used if further investigation is required on him.

During this day, Deputies returned to Florence Heatley's with the information they had from Officer Mose Evans and she remembered that three subjects mentioned had indeed brought a saddle to her residence and Deputies established it was a borrowed saddle being beturned and tentatively does not require further investigation

Lt. Bueto and Sgt. Robertson/st.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 8-29-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41571

Date	8-30-73	File No.	73-15483

This morning these Deputies found Warren Sprout and he voluntarily accompanied them to the Courthouse for questioning. He was questioned at length and later in themorning he accepted the opportunity to be given a Polygraph Examination and it was so administered by Sgt. Zuelke and he was absolved of any participation or any knowledge in the Bond death.

His 357 Magnum revolver, bearing ser. # 2K28658, was obtained from him and he was given a receipt for same. This gun was to be taken to the crime lab for Serology Analysis if required. The gun will be returned to Mr. Sprout.
This closes the case as far as Sprout is concerned and other avenues of investigation will be pursued.

To Be Further investigated.

Lt. Bueto, Sgts. Robertson and Zuelke

Investigating Officer(s) Lt. Bueto, Sgts. Robertson and Zuelke Code

Approved Capt. P.V. Bonnano/s/ Date 8-31-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41371

CONTINUATION SHEET

Date: August 30, 1973 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On August 30, 1973, a polygraph examination was administered to Warren Sprout. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Mr. Sprout was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the murder and armed robbery of Mr. Marshall Bond. (For details, see offense report number 73-15483) The facts concerning this case were provided the polygraphist by Lt. C. Bueto and Sgt. R. Robertson. These deputies were present in the testing suite during the entire polygraph examination of Mr. Sprout.

Before his pre-test interview, Mr. Sprout signed two copies of a form stating he was taking the tests voluntarily. One copy of this executed form is enclosed with this report; the other is incorporated as part of our case files.

In the polygraph recordings, there were definite indications of truthfulness when Mr. Sprout answered "No" to the following listed questions:

1) "Do you know for sure who murdered Mr. Bond?"

2) "Did you murder Mr. Bond?"

3) "Did you go to Mr. Bonds' farm the day he was murdered?"

4) "In anyway, did you participate in the Bond murder?"

It is the opinion of this polygraphist, based upon Mr. Sprout's polygraph examination, that he is telling the truth to the above listed questions.

Sgt. D.A. Zuelke,
Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke 3693 Code

Approved [signature] (COMMANDING OFFICER) Date 9/12/73

KENNEDY COPY CORP., INC.

PT57

ice TAYLOR BLDG, SUITE 412 Date 4/20/78

I, [signature], voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

[signature] [signature]
WITNESSED SEAL (Signature of person to be examined

TIME 11:34 AM

This examination was concluded at 1300 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

[signature] [signature]
WITNESSED SEAL (Signature of person examined)

ADDITION:

Date	8-31-73	File No.	73-15483

These Deputies obtained the following information this date:
Lufkin Texas Authorities recently arrested a Juvenile, white female, 13, named Nicol Lightfoot of Farmers Branch, Texas, Curley B. Washington, colored male, age and address unknown and Harvey Lee Douglas, colored male, age and address unknown.

When arrested there subjects were in a car that belonged to one Freddie Lee Hickman, colored male, 20, d.o.b. 1-14-53, who lives on Church St. in Zachary, La. He also gave an address of 126 West Demeira St. Lufkin, Texas. Washington and Douglas were charged for pandering and the female was charged for vice activities, actual booking not known.

Deputies learned Nicol Lightfoot was living in Zachary with Hickman prior to this arrest in Texas. It was further learned that after being arrested Nicol Lightfoot put up a substancial some of maney for bond for all arrested. In view of this information, these Deputies contacted F.B.I. Agent Mike Barron and briefed him on this and he in turn contacted the F.B.I. Office in Dallas, Texas and requested an Investigation to be conducted in Texas to see if these subjects could have been in anyway involved in this case. At this writing these Deputies are awaiting word from Agent Barron on the Dallas Office findings.

Investigating Officer(s) Lt. Buato and Sgt. Robertson Code

Approved Capt. P. V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41571

ADDITION:

Date 9-3-73 File No. 73-15483

In response to an ad placed in the Zachary newspaper by Larry Gibbens of the District Attorney's Office, Sgt. Robertson recieved a call from Mr. Henry Sessums, white male, of 3725 Oak Hills St. Zachary, La. phone 654-4061. He advised Sgt. Robertson that on the day Mr. Bond was killed, he talked with him at Bond's Drugstore between 0930 and 1020 hrs. that date. He related that Mr. Bond was not his normal self that day, very upset over town politics, town work and general business in the town of Zachary.

Mr. Sessums advised that from all his years of knowning Marshall Bond, he never had seen him in the state of mind that he was in that day. Mr. Sessums told Sgt. Robertson that he and Gillie Watson and Mrs. Jerry Boudreaux were all in the store that morning during the above given hours and he suggested contacting Watson and talking with him as he knew that Bond and Watson had mutual business interest and also socialized together.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano /s/ Date 9-3-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41371

ADDITION:

Date	9-3-73	File No.	73-15483

CONFIDENTIAL

Sgt. Robertson called [redacted] and he came to the Town Hall and talked [redacted] with Sgt. Robertson about Marshall Bond. On that particular day [redacted] found Bond in the same state of mind that [redacted] described and that Deputies had learned from most everyone who saw him that day. In talking with [redacted] he asked Sgt. Robertson if he had learned of a possible woman involvement that Marshall Bond may have been in. He further advised that he had business dealing with Bond and socialized with him also and felt he knew well enough to divulge to Deputies some of his extra marital affairs on a confidential basis to Deputies.

He told Deputies of Bonds involvement with one [redacted] This involvement was during a period of [redacted] and was employed at the Zachary Town Hall. She is the wife of [redacted], and they lived in [redacted]. According to [redacted], [redacted] profited well through Bond, both in a property dealing and financially.

[redacted] further informed Deputies that Bond had become totally infatuated with [redacted] to the extent he began to check with others who also gave their attention to her. He told Deputies they should contact a [redacted] and she could tell Deputies of Bonds involvement with [redacted], who was supposed to be her best friend.

For further information of Marshall Bond's marital problems, see all future Confidential Additions.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. RV. Bonnano/s/ (COMMANDING OFFICER) Date 9-24-73

GRTLIEB PRESS 41571

041

ADDITIONAL INFORMATION:

Date 9-4-73 File No. 73-15483

CONFIDENTIAL

After Deputies recieved the information from [redacted], they set up and interviewed [redacted].

[redacted] told Deputies that she acted as the go between in the Bond, [redacted] affair. She further advised she and [redacted] accompanied Mr. Bond to his pasture and met him at his pasture both seperately and together and sometime not. [redacted] told Deputies she knew from [redacted] that Mr. Bond had let her have large amounts of money various times, she did not know if [redacted] was paying him back or not.

[redacted] divulged the fact that jealousy developed between Mr. Bond and one [redacted], who is a Supervisor for Thomas Heard Const. Co., doing work for the Town of Zachary, and that Mr. Bond developed and out right dislike for [redacted] because of [redacted] obvious affections for [redacted].

[redacted] told Deputies that she noticed a marked change in Mr. Bond after he forced all his attentions to [redacted]. According to her last time she saw Mr. Bond alive was in presence of Mrs. Bond at the pasture on August 1, 1973.
[redacted] did tell Deputies that on one occasion while she and Mr. Bond were alone at the pasture he attempted to make love to her, but she advised she put him in his place and he never again bothered her.
[redacted] did say she knew that Mr. Bond and [redacted] had been at his pasture alone on few occasions. [redacted] told Deputies they could talk to [redacted] as she could corroborate the facts she gave Deputies. Deputies had interviewed [redacted] at her place of employment which is also [redacted] place of employment.

[redacted] could add much more then it was, and it was very noticable to her that [redacted] and Mr. Bond were actually having an affair andit was obvious to her that [redacted] was the go between and she advised her against this because she was too young to be involved in such, and [redacted] was too old to be influencing her. [redacted] could offer nothing more than this so further interview was unnecessary.

Later in the day Mr. Carl Bond, brother of the deceased, asked Deputies to his Drugstore to talk with someone. There Deputies talked to [redacted] She was contacted at that place on September 5, 1973, as she could not get there on the 4th. She advised that on Monday, the 13th., someone called and asked if it was raining out there and when told no, they hung up. On Tuesday someone called and when she answered they held the phone a few seconds and hung up. On Wednesday 15th., the day Bond was killed, she got a phone call by someone stating,this is the Weather Bureau, is it raining out there? She told them no and asked why you keep calling me and they hung up. [redacted] wanted Deputies to know this because she lives in sight of Bonds pasture.

Investigating Officer(s) ~~Lt. Bueto and Sgt. Robertson~~ Code

Approved Capt. P. V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIEB PRESS 4/87

ADDITIONAL INFORMATION:

Date 9-6-73 File No. 73-15483

CONFIDENTIAL

On this date, Deputies contacted [redacted] at her home and she informed Deputies she learned of Mr. Bonds death from [redacted], white female, presently employed at the Town Hall. She advised [redacted] told her Mr. Bond may have had a lot of money on him from the previous days sale of cows. [redacted] told [redacted] that [redacted], a Zachary Fireman, suggested she notify both she and [redacted] of Bond's death.

Deputies returned to the Town Hall and talked with [redacted] and she could only advise she knew Mr. Bond was very fond of both [redacted] and [redacted]. She did notice that these two recieved most of Mr. Bond's attention, but did not consider there being an affair, but had heard loose talk to the effect there was one.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P. V. Bonnano/s/ (COMMANDING OFFICER) Date 9-24-73

ORYLIEW PRESS 41271

ADDITIONAL INFORMATION:

Date 9-6-73 File No. 73-23483

CONFIDENTIAL

During the day [redacted] called Deputies from Bond's Drugstore and asked that we come to see her. She explained that a [redacted] had contacted her and was very despondent over Marshall Bond's death, wanted to talk about it and advised [redacted] she saw him the day he was killed and needed to confide in someone she could trust. [redacted] encouraged her to meet with Deputies which she finally agreed to do. Sgt. Robertson called [redacted] and she agreed to see Deputies at her residence.

When Deputies arrived she was very despondent and after a while she began to tell of her affiliations with Marshall Bond. She advised that after seeing the ad in the Zachary paper about, someone seeing Mr. Bond that day to contact authorities, she first tried to be quiet about it, but later decided she had better contact them so if they later found out she had seen him, authorities wouldn't suspicion her as having anything to do with his death.

Between crying spells and around about conversation, she broke down and told Deputies she and Bond had been lovers for several years and Bond saw her quite frequently.
[redacted] advised that on Wednesday, August 15, the day Mr. Bond was killed, her contact began with him between 1030 and 1100 hrs. when he called her by phone and acted very upset, talked about having to do some banking business, his maid would not be at his house that date because she had to check on some member of the family who was in jail. He was very upset according to her about town affairs and his Drugstore business. He assured her he would see her sometime later in the day.

Between 1555 and 1600, Bond arrived at her house in his auto instead of his truck which he normally drove to her house in the past. He sat on the porch and poured his heart out to her. He continued to express his feelings about his business, his town affairs, about hired help on the farm being no good, about failing or failed business dealings he had been involved in, about having been involved with some one in business he did not name, but had a bad reputation and cost him several thousand dollars. He further revealed to her someone had been tampering with his farm vehicle and his truck, put tacks in the road at his farm or pasture roads.

After this conversation, he told her he has for a long time been unhappy at home and if he could call back the years, he was sure that he and [redacted] would have had a much happier life together. Told her that most of his wife's family would profit most by his death. After this, he began to try and leave, getting up and going back to his car in the drive and returning to the porch still very upset and talking at random.

[redacted] told him to be careful as she was afraid someone would hold him up and rob him. He told her no one would bother him at the store in uptown Zachary, but he might get killed in his pasture, but assured her he carried a pistol for protection against this. He left and she never saw him or heard from him again. That night she saw on TV he had been killed.

Reporting Officer(s) Code

Lt. Bueto and Sgt. Robertson

Capt. P.V. Bonnano/s/ Date 9-24-73

(COMMANDING OFFICER)

Date 9-6-73

File No. 73-15483

NOTE:
All of this [redacted] interview will reappear in a future taped interview with [redacted] and also a verbal interview with [redacted], son of [redacted].

cer(s) Lt. Bueto and Sgt. Robertson

Capt. P.V. Bonnano/

ADDITIONAL INFORMATION:

Date	9-7-73	File No.	73-15483

CONFIDENTIAL

The following people were interviewed this date in reference to this case.

[redacted] of Bank of Zachary, who told of Mr. Bond's dealings with one [redacted] and who according to [redacted] was previously in the steel fabricating business of which Bond financed and lost $65,000.00 and since that time was heard to mention he intended a show down with [redacted] as he put it, one way or the other. More information os this will be forthcoming in a taped interview with [redacted], which eventually lead to him taking a Polygraph Test.

[redacted], of Ethel, La. [redacted] and employed of the Town Hall when interviewed certified for Deputies the [redacted], Marshall Bond affair and told in general what Deputies had already heard about it.

[redacted] another Town Hall employee, would only say she, from observing got the impression there was an affair between Bond and [redacted]. She did say that [redacted] was the center of attraction for all men who hung around the Town Hall.

After Deputies learned all of this information about Marshall Bond's life had changed completely after having been involved with [redacted] and that she and her family benefited financially from this association and the fact that this involvement was possibly why [redacted] moved his family to Monore. Deputies deemed it necessary to go to Monore and interview [redacted] and his wife particularily after phone records revealed Bond had carried on regular corespondence with [redacted] since she left Zachary.

In preparation for this trip, Deputies contacted the Ouichata Parish Sheriff's Office and Chief Criminal Investigator, Leamon Goodwin assigned Deputy Investigator Bob Kirby to aid Deputies in this investigation.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ (COMMANDING OFFICER) Date 9-24-73

ORTLIEB PRESS 41571

ADDITIONAL INFORMATION:

Date 9-9-73 File No. 73-15483

CONFIDENTIAL

On this date, Deputies arrived in Monroe, La. and made Deputy Bob Kirby awar of all the facts of the Marshall Bond Murder Case. Deputy Kirby on anticipating Deputies had already obtained information on the [redacted] such as home address, phone number, both home and employment, kind of cars they drove and licence numbers on all of these vehicles.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41371

ADDITIONAL INFORMATION:

Date	9-10-73	File No.	73-15483

CONFIDENTIAL

At 1030 hrs. this date, these three Investigators arrived at the Carver residence, explained our presence there and [redacted] accompanied Deputies to the Ouichata Court House where they interviewed her.

She told Deputies she realized Mr. Bond was quite infatuated with her, did not deny that she profited well financially by this situation. She did deny having any knowledge of how he met his death other that what she read in the papers and what she was told when she retutned to Zachary for the funeral.

For complete details refer to taped interview being held by these Deputies.

After returning [redacted] to her residence, [redacted] accompanied Deputies to the Monroe Sheriff's Office and questioned at length about the Bond Case and for full information, see taped interview held by these Deputies.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIEB PRESS (1971)

ADDITIONAL INFORMATION:

Date	9-11-73	File No.	73-15483

CONFIDENTIAL

On this date Deputies interviewed [redacted], who is employed by the Town of Zachary. He could divulge little more than what has already been learned. He did certify of knowledge of Bonds involvement with women, his continued upset from Monday thru the Wednesday he was killed, which is to the extent noticable by everyone who had contact with him on those days.

For full details of this interview, see taped interview being held by these Deputies.

Deputies called [redacted]. McGraw came to the Town Hall and talked with Deputies. He had mutual business interest with Marahall Bond, but could tell little more that Deputies already had learned. He knew of his personal life, business interest and his of late complete change of attitude towards business, politics, town and personal problems, but could not put his fingers on anyone thing other than maybe it was over his feelings of the Ready Fabricators business having failed. He informed Deputies of Bond saying he intended a show down with [redacted] over his loss of $65,000.00 in the business.

Deputies interviewed [redacted] about Ready Fabricators in as much as the business was on property owned by [redacted]. They could only tell Deputies they knew Marshall Bond and [redacted] were considered bitter enemies as a result of this business venture failure.

The balance of this date was spent with Mr. Carl Bond, who requested a meeting with Deputies. Mr. Bond had now learned of Mr. Marshall Bond's affairs with women and more of his business affairs and went over the entire investigation.

As a result of this background information on Ready Fabricators, Deputies had [redacted], come to the Town Hall where a taped interview was held and because of his complete evasiveness in the interview, Deputies decided to offer the Polygraph Test which he adcepted for Sept.13, 1973.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P. V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41577

ADDITIONAL INFORMATION:

Date	9-13-73	File No.	73-15483

On this date Deputies spent the day trying to learn why [redacted] failed to show up for the Polygraph Test.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41571

ADDITIONAL INFORMATION:

Date 9-17-73 File No. 73-15483

CONFIDENTIAL

Deputies interviewed [redacted] is the Supt. for Thomas Heard Const. Co., doing work for Zachary. He could only tell Deputies that he too was having somewhat of an affair with [redacted] and he noticed Bonds dislike for him because of this. He further revealed that the Tuesday night Council meeting at the Zachary Town Hall, Mr. Bond was very upset and it was noticable to him because he never saw him in this state of mind and when Bond gave the invocation he asked forgivness of sins and nearly cried at this point, but recovered and became antagnostic to every item on the agenda.

Deputies talked with Mayor Jack Breaux and he failed to notice Mr. Bond's reaction during the invocation, but did notice his being upset and antagonism.

While talking with [redacted], he asked Deputies if they would talk with [redacted], one of his Foremen. Deputies did and [redacted] told Deputies on Tuesday, August 15, 1973, between 0800 and 0830 hrs, he passed Bond's pasture and saw Bond talking with a tall white male in a white shirt and tie and two or three colored males standing around by a late model blue auto. To this date, Deputies have been unable to identify any of these individuals. [redacted] told us about. This will be pursued by these Deputies.

Sgt. Robertson was contacted this date by [redacted] again and she told Deputies that her son [redacted] and his wife, [redacted], lived next door to her and had since separated and [redacted] moved back to Jayess, Miss. and [redacted] had told her [redacted] had threatened to call Mrs. Bond and tell her of Mr. Bonds visiting [redacted]. She requested Deputies talk to [redacted] next date, as he was at work this date.

On this day, [redacted] told Deputies they should look in Bond's pick-up for a large tapered club he carried to run the bulls off when they are fighting in the pasture, because if it was missing it might be the murder weapon. Sgt. Robertson and Deputy John Womack found the instrument in the truck that she had referred to, which is a large walking cane.

While looking in the truck, Sgt. Robertson found and old book with some notations on it and a auto licence number, [redacted]. The notations consisted of notes on what Bond told [redacted] to do at the pasture this date, namely, repair grater, clean out molasses dumps, prepare for load of feed due that date. Knowing this and feeling Bond had seen a suspicious car in the area, had copied the licence number down, a registration was obtained and found to be a 1964 Chevrolet belonging to [redacted]
To this date, no location has been obtained on [redacted] or the car. Further investigation will be required and done.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

GRYLIKB PRESS 41871

ADDITIONAL INFORMATION:

Date	9-18-73	File No.	73-15483

CONFIDENTIAL

Deputies contacted [redacted], and he told Deputies that since his wife left home in the night immediately after Deputies had been summoned by his mother to her residence to talk to them about she and Bond's association, he has been suspicious of his wife.

He said that prior to Bond's death, his wife had told him she slipped around his mother's house when Bond was there and listened to their conversations. On the night Bond was killed he came in and to his surprise found his wife sitting with [redacted] and [redacted] was grieving about Bond. He said his wife acted strange, no when they got home he asked her if she may have called the Bond house and told them of Bond seeing his mother and that may may have caused his death. [redacted] told him no, but he still doubted her and more so since she left at the time,and like she did. He related how money hungry and greedy his wife and her father, [redacted] were. He continued on telling how [redacted] would travel all over digging for money,and about how he had robbed graves around the State of Mississippi.

[redacted] stated he could not help but believe that his wife had gotten together with her father and maybe tried to extract money from Marshall Bond by threatening to tell of Bonds affections for his mother, [redacted]. He told of his wife always being in the street with [redacted]'s wife. [redacted] is [redacted]'s brother. [redacted] was generally upset and cried while telling this. Deputies returned to the Town Hall with all of their information to follow-up on next late because of a planned interview with another party this date.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P. V. Bonnano/s/ (COMMANDING OFFICER) Date 9-24-73

DATLIKO PRESS 41571

ADDITIONAL INFORMATION:

Date 9-18-73 File No. 73-15483

CONFIDENTIAL

Deputies contacted [redacted]. She is the Bond's maid. She told in a typed interview of Bond's actions with women on the phone at the residence, particularly a call once recieved by him from an unknown female where he stayed on the phone exeessively and Mrs. Bond coming home and hanging up the phone, which started a family fight. [redacted] told Deputies that Bond did not draw a line with women as he would try to go to bed with negro women as well as white, saying he tried it with her, but failed. She threatened to quit if he did it again and she would tell Mrs. Bond. She told of catching him and a colored female employee, [redacted] having an affair in the Drugstore once and Bond paid her $20.00 to keep her mouth shut.

For full details of this interview, refer to taped details being held by these Deputies.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41371

ADDITIONAL INFORMATION:

Date 9-19-73 File No. 73-15483

CONFIDENTIAL

The morning of this date, Deputies picked up [redacted] and transported him to the Polygraph Suite where Sgt. Zuelke administered the test, which he ruled an indefinite decision on.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIZER PRESS 41371

ADDITIONAL INFORMATION:

Date 9-18-73 File No. 73-15483

CONFIDENTIAL

This evening Deputies deemed it necessary to interview Mrs. Marahall Bond to see if [redacted] had infact called her. Mrs. Bond advised she had not, and she did not know who the mysterious caller was the morning of his death. This call is described in a taped interview with [redacted].

Mrs. Bond knows nothing of the [redacted] interview. Mrs. Bond could shed no light at all on Bond's murder, refused to admit knowing anything of any affair. She was very blank and showed no emotion whatsoever in the interview.

NOTE:
Mistake of date on note taken on 18th. and 19th.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIEB PAEKE 41571

ADDITIONAL INFORMATION:

Date 9-20-73 File No. 73-15483

CONFIDENTIAL

Deputies interviewed [redacted] Employee of Marshall Bond and also [redacted]

Neither could offer any more information than they already have.

Taped interview with both are on file with these Deputies.

Both told the following people had had keys to Bond's farm the day he was killed:

[redacted]

Marshall Bond

[redacted]

Someone with the utilities dept. of Zachary, who maintain Water line running through property.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIEB PRESS 4157)

ADDITIONAL INFORMATION:

Date 9-21-73 File No. 73-15483

CONFIDENTIAL

Deputies after talking to [redacted] about the conversation she described in the taped interview, recalled [redacted] had taken Bond by [redacted]'s residence that morning , felt the call may have been to her so she was picked up and Deputies conducted a taped interview with her, which is being held. Results of this interview revealed to Deputies that was not the mysterious call made as described by [redacted] because the [redacted] woman had no phone in her house.

Late this day, [redacted] called Deputies and explained she had talked with her son [redacted] since Deputy had and she believed that Deputy would be way off base in casting suspicion on [redacted] even though she was a very divious individual. [redacted] told Deputies that even though [redacted] packed a pistol,constantly.

NOTE:

Deputies failed in previous writings to mention this and she and her father had weird means of obtaining money and even though they were very greedy and even though [redacted] threatened to call Mrs. Bond about Bond seeing [redacted], she believed [redacted] was batter from [redacted] having taken their son and left and due to his upset, may have over done himself in telling his feelings to Deputies.

She went on to say that since Gary had talked with Deputies, Diane had called him and agreed to settle their case out of court, and may even reach a reconcilation. Deputies will weigh all of the information obtained in the Norwood interviews during the continuance of this Investigatinn.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

ORTLIEB PRESS (1971)

Date	9-24-73	File No.	73-15483

******* SPECIAL NOTE*******

In regards to the investigation requested by Deputies of the F.B.I. in regards to the subject arrested in Lufkin, Texas. Deputies have yet to hear from that investigation.

Agent Mike Barron advised he would check on this and inform Deputies if these subjects were found to be involved in this case.

For details, see addition of August 31, 1973.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. F.V. Bonnano/s/ Date 9-24-73
(COMMANDING OFFICER)

OATLIES PRESS 41871

CONTINUATION SHEET

Date: Sept. 19, 1973 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On Sept. 19, 1973, a polygraph examination was administered to William M. King. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Mr. King was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the armed robbery and murder of Mr. Marshall Bond.(For details, see offense report 73-15483) The facts concerning this case were provided this polygraphist by Lt. C. Bueto and Deputy R. Robertson. These two deputies were present in the testing suite during the entire polygraph examination of Mr. King.

Before his pre-test interview, Mr. King signed two copies of a form stating he was taking the test voluntarily. One copy of this executed form is enclosed with this report; the other is incorporated as part of our case files.

Throughout this person's polygraph tests on Sept. 19, 1973, there were irregular and erratic reactions to the test questions. Because these reactions are of a type which prevent an analysis from being made, the polygraphist could not render an opinion as to whether or not Mr. King was telling the truth. Nothing the polygraphist said or did could alleviate this problem.

Sgt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke 3093 Code

Approved [signature] (COMMANDING OFFICER) Date 9/24/73

Standard Form Corp. Inc.

pt.57

ce Taylor Bldg, Suite 412 Date 2/10/93

I, W. M. King, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

Lt W E Robertson Jr W. M. King
WITNESSED SEAL (Signature of person to be examined

TIME 1:14 PM

This examination was concluded at 1500 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

Lt W E Robertson Jr W M. King
WITNESSED SEAL (Signature of person examined)

ADDITIONAL INFORMATION:

Date 9-24-73 File No. 73-15483

CONFIDENTIAL

Deputies contacted [redacted], in order to verify [redacted]'s statement about her business with Marshall Bond. [redacted] could only tell Deputies that Bond came to her home several days prior to his death to collect $23.00. [redacted] owed him. He was by himself in his pick-up and came there when he found no one at [redacted] residence and left word to tell [redacted] to contact him. Thats the only time she saw him recently before his death. It's apparent Bond went to no one else's house other than [redacted]'s the morning of the day he was killed.

When Deputies arrived at the Town Hall this date, Deputy Frank Rollins told Deputies that several days before Bond was killed he saw a blue or green Olds. come out of Bond's pasture and thought he recognized the driver as [redacted], who lives in [redacted]. Rollins told Deputies they may want to learn why [redacted] would be in the pasture because he knew [redacted] and Carl Bond were friends, but he should have had no business or personal relationship with Marshall Bond.

In regards to the licence number [redacted], Marshall Bond had jotted down on a book in his truck, Deputies went to [redacted] and talked to [redacted] and she told Deputies her son [redacted] owned the car and he and [redacted] were fishing on Bond's pasture lake and Bond fussed at them for being there, but recognized [redacted] as having given permission to them to fish.

These Deputies with Deputy John Womack went to [redacted] and learned she lived at [redacted] and on the day Bond was killed, [redacted] worked at his Drugstore. She came to Zachary with someone who dropped her off at the red light and brought her children to her house where she kept them while [redacted] worked at the Drugstore.

Deputies picked up [redacted] and interviewed her in a taped interview at the Parish Prison. She denied having ever been intimate with Bond, admitted working three days a week for him at his Drugstore and came to Zachary Monday, August 12, 1973, stayed at her mother's and worked Tuesday, Wednesday and had arranged to work Thursday, but he was killed and she didn't .

For further details refer to taped interview being held by these Deputies.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P. V. Bonnano/s/ Date 10-4-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41971

ADDITION:

Date	9-25-73	File No.	73-15483

CONFIDENTIAL

This morning Deputies were requested by Marshall Ambrein to go see [redacted], who runs the Plains Red and White Super Mkt. as [redacted] had some information about a strange colored male and former resident who was in the Zachary area. [redacted] told Deputies all he knew about the subject was his name was [redacted] and he lived in Zachary thirty years ago, left, was a resident of the State of New Jersey, had returned and was seen in Zachary driving a Winnebago Camper bearing 73'New Jersey Plates, [redacted]. [redacted] directed Deputies to the Fernwood Country Club to talk with the manager, [redacted], as he had seen this camper parked at Marshall Bond's gate on the Rollins Rd.

Deputies contacted Troth who advised Deputies that the camper was parked at the gate of Bond's pasture two or three weeks prior to the killing and had since disappeared, but had recently returned to Zachary.

These Deputies located the Winnebago Camper parked at [redacted], home of [redacted]. When Deputies went there, [redacted] came to the door and Deputies asked to speak with the owner of the camper, she advised to wait she would get him. No one came back to the door for about five minutes. A knock brought a teenage colored female, [redacted] back to the door and she merely stated he ain't here and slammed the door. Deputies knocked on the and insisted on speaking with [redacted] again and after some talking she came back and she and [redacted] began to give Deputies a hard time about his full name, whether or not he was there and demanded a Warrant. Deputies left and called Deputy Martinez who came in a plain unit out of Zachary and he and Deputy Womack set up surveillance on the house while these Deputies tried to obtain more information on the [redacted] subject. After not being able to get anything more other than the subject was [redacted] Deputies decided to pull out of the area and try later to catch [redacted] traveling in the camper.

Deputy Martinez left ahead of these Deputies and when we left, we were flagged down by several people in the immediate area asking if we were looking for the man who owned the camper,as he ran from the area across a large pasture in front of the houses there. With a complete description of the subject, Deputies summoned the aid of the State Police Helicopter, East Feliciana Parish blood hounds, additional men and two motorcycle officers. A search for [redacted] continued until approximately 0230 hrs. September 26, 1973, with no results.
The search was called off and a stake-out placed on the residence and [redacted] was taken custody for questioning as was [redacted]. Both told Deputies he was running because he was 6 to 8 months behing in payments on the Winnebago Camper and thought he would be placed in jail for this. [redacted] was found to be a juvenile and because of her interferring with Deputies and her continued hostility to Deputies, Juvenile Authorities were called and R. B. SMith Juvenile Intake Officer

Investigating Officer(s) _____ Code _____

Approved _____ Date _____
(COMMANDING OFFICER)

ORTLIEB PRESS 41571

Date 9-25-73 File No. 73-15483

ordered her held by Deputies on Criminal Mischief. She was then booked in the Detention Home under file # 73-18361.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano/s/ Date 10-4-73
(COMMANDING OFFICER)

DETLIEG PRESS 4137)

ADDITIONAL INFORMATION:

Date 9-26-73 File No. 73-15483

CONFIDENTIAL

This date these Deputies returned to the Detention Home and attempted to talk with [redacted] to no avail, other than recieving a cussing.

After leaving the Detention Home, Capt. Honore contacted Deputies and advised he had taken [redacted] in custody after recieving a call from relatives where he had gone this morning after all night in an abandoned building.

Deputies questioned him and found out he had run for fear of being put in jail over deliquent payments on the camper. He was given a Polygraph Examination and absolved of being involved in or had knowledge of the Marshall Bond murder case.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P.V. Bonnano /s/ Date 10-4-73
(COMMANDING OFFICER)

ORTLIEB PRESS 41571

CONTINUATION SHEET

Date: Sept. 26, 1973 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On Sept. 26, 1973, a polygraph examination was administered to Alex Brown. This examination was concucted at the polygraph suite, 251 FloridaBlvd., Suite 412. The main issue under consideration was whether or not Mr. Brown was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the murder of Mr. Marshall Bond. (For details, see offense report number 73-15483). The facts concerning this case were provided this polygraphist by LT. Carson Bueto and Sgt. R. Robertson. These deputies were present in the testing suite during the entire polygraph examination of Mr. Brown.

Before his pre-test interview, Mr. Brown signed two copies of a form stating that he was taking the tests voluntarily. One copy of this executed form is enclosed with this report; the other is incorporated as part of our case files.

In the polygraph recordings, there were definite indications of truthfulness when Mr. Brown answered "No" to the following listed questions:

1"Do you know for sure who murdered Mr. Bond?"

2"Did you murder Mr. Bond?"

3"In anyway, did you participate in the Bond murder?"

4"Right now, can you take me to the Bond murder weapon?"

It is the opinion of this polygraphist, based upon Mr. Brown's polygraph examination, that he is telling the truth to the above listed questions.

Sgt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke 3093 Code

Approved [signature] (COMMANDING OFFICER) Date 10/4/73

CRESCENT PRINT SHOP, INC.

PT-57
15743

i .e Taylor Brooks WITE 9/2 Date 9/26/73

I, Aly Brown, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

Lt. O.C. Dent — Aly Brown
WITNESSED — SEAL (Signature of person to be examined

TIME 1500 HRS

This examination was concluded at 1620 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

Lt. O.C. Dent — Aly Brown
WITNESSED — SEAL (Signature of person examined)

ADDITION, CONFIDENTIAL:

Date 9-27-73 File No. 73-15483

THIS REPORT COVERS A PERIOD FROM SEPTEMBER 27, 1973, THRU THURSDAY, OCTOBER 18, 1973. MARSHALL BOND CASE.

On September 27, 1973, these Deputies were summoned to the Bond Drugstore by [redacted], previously mentioned in the Bond Case Reports, informing Deputies that she had broken down a code that Mr. Bond carried in his accounts books in the Drugstore. She felt like this code might be of significance to the case. IT IS TO BE NOTED that Mr. Bond used the word chemistry for his code. A nine letter word and for the tenth letter, or for 0, the letter X. This code is used to mark merchandise with in the Drug Store.

Previously these Deputies had been shown what appeared to be code in the book, and could not decipher same until [redacted] called us this date and showed Deputies how she deciphered the code. For instance, she found in an account book where inquest number 1658 showed the amount of $3.43, she turned to that account and found that account number 1658 was the [redacted] account and there was no amount for $3.43. This account number was showing on the [redacted] account with the store, this being the person who Deputies went to Monore to interview in reference to the Marshall Bond case. The code is as follows: $3.43 amount showed and 1658 the invoice shows is actually, [redacted]'s phone number, [redacted], with a slight descrepency that he made, apparently to hide the coded phone number as follows; [redacted] was written in his file notebook, which is [redacted] and down in the account book, the previous phone number for [redacted] mentioned is as such in accordance with that code. Further Deputies found the code [redacted] which was dated June 19, 1973 on an order page. Deciphering this, showed [redacted]'s phone number in Monroe, Louisiana, [redacted]. Further, under that, it showed the following: [redacted]., which is [redacted] written backwards, where [redacted] lives in Monroe, Louisiana, which is [redacted] the number deleted from this. Also o this account page, it showed where [redacted] had been let have $1200.00 by Mr. Marshall Bond. And in reference to this, Deputies had been to the [redacted] residence and had interviewed both [redacted] in regards to their financial and personal affiliations with Marshall Bond, and tentatively satisfied themselves with their lack of knowledge of who killed Mr. Bond.

In running across this account of [redacted], Deputies could not figure out what she would be into Mr. Bond's $1200.00 for, therefore Mr. Bob Kirby, Investigator for the Ouachita Parish Sheriff's Office was contacted and he is well aware of all the facts in this case and will make and report to Deputies an investigation of why [redacted] would be coded in the Marshall Bond account book where the $1200.00 shows.

Further down the line on this account book for the [redacted], there showed the following code: [redacted], broken down that shows [redacted]. Deputies found that this phone number was actually registered to [redacted] of [redacted]. Deputies learned that [redacted] was a

Investigating Officer(s) _____ Code _____

Approved _____ Date _____
(COMMANDING OFFICER)

ORTLIEB PRESS 4137)

Date 9-27-73 File No. 73-15483

City Policeman, and not being able to understand what deals that Bond may have had with the City Policeman, investigated this code further. Also on this page, it showed [redacted] written backwards. Further investigation revealed after interviewing Officer [redacted] of the Baton Rouge City Police Department, after arrangements had been made through [redacted], that he and his wife were familiar with Marshall Bond, and that his wife was actually [redacted], who was the sister of [redacted] who was having somewhat of an affair with Marshall Bond.

With this information from [redacted], Deputies contacted his wife who works in the East Baton Rouge Parish Registrar of Voters Office and interviewed her, but could come to no conclusion as to why she would appear with her phone number coded in the account books at the Marshall Bond Drug Store. She stated the only affiliation she had with him was attending one fish fry in the town of Zachary, being invited by her sister [redacted], and that she had taken her son and had made one trip to the Bond Pasture to ride horses with the Bond Family and knew nothing further of anything about the code or why she would appear in code on his account book.

Deputies checked further locally into [redacted]'s possible connection with Marshall Bond and only found out that during her stay in Baton Rouge, she was living with one [redacted]; WF, after her parents moved from Zachary, back to Monroe, and that they lived at [redacted]. Further investigation revealed that [redacted] kept company with [redacted], who had formally been handled for Narcotics in the Zachary area, and that [redacted] and [redacted] were also friends of [redacted] and [redacted], subsequently arrested for the burglary of Marshall Bond's Drug Store, where a large amount of narcotics were stolen.

Through the investigation of this, Deputies positively learned about [redacted] and [redacted] having possibly burglarized the drug store and matched their fingerprints with the fingerprints taken at the burglary and they were eventually arrested after a lengthly investigation for the next several days following September 27, and they were arrested under FILE # 73-17811, and for all of that information, SEE THE REPORT UNDER THAT FILE NUMBER.

From October 4 through October 9, Deputies continued the investigation of these two subjects mentioned and arrested under FILE # 73-17811, in an attempt to see if they were at all connected with the Marshall Bond robbery and murder, however Deputies satisfied themselves that they were not, and both subjects' times and places were accounted for at the time of the murder. Deputies spent the next several days digging into the accounts at the Bond Drug Store, trying to learn if any people who handle narcotics and who Deputies learned got them freely from Marshall Bond, may have been responsible for his death, and in doing so, on October 19, Deputies were informed by [redacted] that Mr. Bond had been letting a

Investigating Officer(s) [redacted] WF, [redacted]

Approved _____ Date _____
(COMMANDING OFFICER)

OATLIED PRESS 41371

Date 9/27/73 File No. 73-15483

have narcotics freely, and that she related to Deputies that on August 1, that this person came into the drug store and wanted some Quaalude, and Mr. Bond was not in the drug store and she was refused this. Then she requested to know if maybe she could have some Obedrin LA, and they advised her that they would not let her have either, as these drugs had been placed on the Restricted List and she could not get them. She made the statement that she will come back and see Mr. Bond next date and with that, left.

Apparently from the records, [redacted] returned on August 2, and purchased $14.95 worth of some drug, plus 75¢ tax, which amounted to $15.70 on Account #1788, and the girls in the drug store had not seen her until the Saturday after Mr. Bond's death, when she came in and wanted to pay her bill and made the statement that she was just over at the Dollar Store next door and heard of Mr. Bond's death.

Deputies checked other accounts and found that on July 28, she had purchase $13.35, which was scratched through and written $13.95, then scratched through again and written $14.95 and it is the belief of the two girls in the drug store that from the amount, this was either approximately (50) Quaalude or Obedrin LA tablets. They went on to advise these Deputies that two or three years ago, that this person was "hooked" on Obocell and came in daily for this, and they knew that Mr. Bond had let her have these type things quite often.

They called Deputies' attention to the fact that when Mr. McGovern of the BNDD came in during the month of June, Mr. Bond had (500) of the Obedri LA and Mr. McGovern advised him that he could get a refund if he wanted to ship them back to Beecham Massengill Pharmaceutical Company of Bristol, Tennessee. [redacted] told these Deputies that Mr. Bond packaged up what she thought was the Obedrin LA and it was a rather large package and it was addressed to the above given Company and he placed it on the shelf, however, after a day or so, this disappeared. Then on this month, on October 2, they received a refund check from Beecham Massengill Pharmaceutical, Bristol, Tennessee, for $2.09, which would be for (19) capsules of Obedrin LA. Further advising these Deputies they were not aware of what happened to the balance of the Obedrin LA that he had in stock.

On October 11, these Deputies went to Clinton, Louisiana, where Chief Deputy Carl Bunch arranged for Deputies to interview [redacted], these being [redacted] and her husband, in regards to her narcotic dealings with Marshall Bond. After lengthy questioning of both subjects, Deputies were only able to determine by her conversation that she had received, but only with prescriptions, narcotics from Mr. Marshall Bond, however, according to her husband, it went deeper than that, and that she had received more than she really admitted, and her husband, in short, told Deputies that his wife had become a general user or "narcotics junkie", but at the present time that the Baton Rouge Mental Health Clinic had about got her removed from narcotics through treatment. Deputies did come to pretty much of a conclusion that she nor her near

Investigating Officer(s) _____ Code _____

Approved _____ Date _____
(COMMANDING OFFICER)

ORTLIEB PRESS 4137

Date 9/27/73 File No. 73-15483

invalid husband would have had anything to do with the Marshall Bond murder.

For the next several days,up through Thursday, October 18, 1973, Deputies returned to the Drugstore and continued,with the help of [redacted], the bookeeper,to check all of the records as closely as possible to try to learn if any particular person who was obtaining drugs, or had financial dealings or otherwise, with Marshall Bond could be responsibl for his murder. No valid information was determined from these records to at this date give Deputies a lead to follow-up on.

IT IS TO BE NOTED HERE that these Deputies, not being able to recieve any further informative leads or any other information that could be checked out that may lead to what could be considered a lead in the case, have gone back through their entire written record of this case to see if anything has been overlooked or any person that they have interviewed has been overlooked, however, no determination can be made at this time. This concludes tentatively what Deputies feel like all the valuable information that should be recorded into this case. Deputies will continue through their regular tour of duty to try and develop leads which could require further investigation into the Murder and Robbery of Marshall Bond.

In search of records, Deputies and [redacted] found a carbon and holding it to a light could read it was somewhat of a love letter to [redacted]

Deputy Politz and Deputy Babin had the Louisiana State Police Crime Lab. raise the contents by photo and Deputies hold four large photographs of this writing. Several days after this work was done, the actual letter was found and pieced together.

The photos are too large to place in evidence envelope, but the negatives, carbon paper and actual letter are in Evidence Envelope #9923 and the contents of letter are self explainable.

SHORT SUMMARY:

Through the entire investigation there are particularly two things that these Deputies feel that if it could be found out, it would lead to solving the Marshall Bond Case.
As follows:
Back on the date of the taped interview with [redacted], this tape being held by Lt. Carson Bueto, she describes two telephone calls which he recieved on the morning prior to his death, in which, according to her she felt like from the jest of the conversation, that he was talking to a woman. At the point where he told this person that he was at a certain place a short while before talking to this person on the phone, and that they were not there, and at the closing of his conversation with this unknown person, where he told them, "I'll be there in five minutes, and you had better be there", and with this he left the house.

Investigating Officer(s) _____ Code _____

Approved _____ Date _____
(COMMANDING OFFICER)

OATLIGO PRESS 41571

Date 9-27-73 File No. 73-15483

Another point which Deputies feel from their investigation is,that when he left the Drugstore with the safe unlocked, all of the records out, checks laid up on the desk and not put in the safe, and the cash still in the cash register, these Deputies feel that Mr. Bond recieved some type of call possibly alerting him to come to that pasture immediately for some unknown reason because according to the bookeepers and employees of the Drutstore, it was not his habit to leave the place with money laying around and the safe unlocked and so forth. In discussing this case with [redacted], his bookeeper, Deputies feel sure that this is the truth and that for some unknown reason, possibly a telephone call, he left the Drugstore in this manner, however, at this writing Deputies are unable to piece anything together after an intensive investigation on these two points in order to clear them up.

Sgt. W. E. Robertson, Jr./st.

Investigating Officer(s) Sgt. W. E. Robertson, Jr. Code

Approved Capt. F. C. [illegible] (COMMANDING OFFICER) Date 10-22-73

ORTLIEB PRESS 41371

ADDITIONAL INFORMATION:

Date 10-24-73 File No. 73-15483

CONFIDENTIAL

Lt. Bueto received a call from [redacted]. [redacted], who these Deputies had talked with before concerning this case. She advised she had some information for these Deputies. Upon interviewing [redacted], she informed Deputies that [redacted], and employed where she works and who Deputies have talked to before because she was and associate of the Bonds and rode horses with them, had recently made the statement in front of [redacted], she hoped Deputies didn't drag [redacted] and [redacted] into the Bond case. Due to the fact these names have never been mentioned before in this case.

Deputies wanted to know why such a reference at 2000 hrs. this date, these Deputies picked up [redacted] at [redacted], and took him to the Town Hall in Zachary and talked with him and learned he and his wife and [redacted] were close friends and he had heard [redacted] talk about the Bond case and Deputies talking to her about it, but he had never known or seen Bond personally.

Lengthy interrogation revealed that [redacted] actually had knowledge other than hearsay about this case.

Lt. Bueto/st.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved (COMMANDING OFFICER) Date 10-26-73

OATLIES PRESS 4157)

ADDITIONAL INFORMATION:

Date	10-22 & 10-23	File No.	73-15483

CONFIDENTIAL

On this date the 22nd., Lt. Tycer assigned Sgt. Robertson to assist Deputy Wayne Sanders of Livingston Parish to execute some Warrants he had. While in Zachary on one of his Warrants he began to discuss the Marshall Bond case with this Deputy and we returned to the vicinity of the scene and were looking over the pictures of the scene and of the deceased body displaying the wounds.

While looking at a photo of a peculiar wound on the deceased, Sgt. Robertson related to Deputy Sanders of this wound and the fact of lack of identity as to what type of instrument could have made same. At this point Deputy Sanders informed this Deputy the wound appeared to have been made by a chain saw, and his basis for this was his father had a shop that assisted sometimes with repair work on chain saws and had seen them make such a wound when struck by one.

Sgt. Robertson recalling that [redacted], employee of Bond's was working in the pasture with a chain saw when Mr. Bond was killed and he was the person who found Bond prior to his death. Due to this the saw he was using was obtained from Mr. and Mrs. Louis Baker of Lower Zachary Rd., relative to Mr. Bond and it was retained by these Deputies for measurement comparison of the wounds.

Sgt. Robertson and Marshall Amrhein took the photos and the saw to Dr. James Brown and he studied the wounds against the saw teeth and explained it was highly possible for the peculiar wound on his hand to have been made by a chain saw. This particular saw is a Homelite XL 12, blue and white bearing Ser.# HLLEC1711550.

Lt. Bueto and Sgt. Robertson picked up [redacted] at Copolymer Rubber Co. and questioned him again and he voluntairly accepted the polygraph test, which was administered the night of the 23rd. by Sgt. Zuelke. This test absolved [redacted] of having killed or knew who killed Marshall Bond.

For more information, see test results and accompanying reports by Sgt. Zuelke.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved Capt. P. B. Bonnano/s/ (COMMANDING OFFICER) Date 10-26-73

ORTLIEB PRESS 41371

CONTINUATION SHEET

Date: Jan. 2, 1974 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On January 2, 1974, a polygraph examination was administered to Thomas Haynes. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Haynes was telling the truth when he claimed that he had no guilty knowledge or nor had he participated in the armed robbery and murder of Mr. Marshall Bond. (For details, see offense report number 73-15483). The facts concerning this case were provided this polygraphist by Lt. C. Bueto. This deputy was present in the testing suite during the entire polygraph examination of Haynes.

Before his pre-test interview, Haynes signed two copies of a form stating he was taking the tests voluntarily. One copy of this form is enclosed with this report; the other is incorporated as part of our case files.

In the polygraph recordings, there were definite indicetion of truthfulness when Haynes answered "No" to the following listed questions:

1) "Do you know for sure who murdered Mr. Bond?"

2) "Did you murder Mr. Bond?"

3) "Did you see Mr. Bond get murdered?"

4) "In anyway, did you participate in the Bond Murder?"

It is the opinion of this polygraphist, based upon Haynes' polygraph examination, that he is telling the truth to the above listed questions.

Sgt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke Code

Approved (COMMANDING OFFICER) Date 1/7/74

STANDARD FORM CORP. INC.

PT-57

Place Taylor Bldg Suite 412 Date 1-2-74

I, Thomas Haynes, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

Lt. O. C. Burt — WITNESSED

Thomas Haynes — SEAL (Signature of person to be examined

TIME 1007 PM

This examination was concluded at 0037 1-3-74 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

Lt. O. C. Burt — WITNESSED

Thomas Haynes — SEAL (Signature of person examined)

PT-57

Place TAYLOR BLDG, SUITE 412 Date 1-1-74

I, Charles I Sloan, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

Sgt W E Robertson Jr — WITNESSED

Charles L Sloan — SEAL (Signature of person to be examined

TIME 10:21 AM

This examination was concluded at 12:51 PM on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

Sgt W E Robertson Jr — WITNESSED

Charles L Sloan — SEAL (Signature of person examined)

CONTINUATION SHEET

Date: Jan. 1, 1974 | File No. 73-15483

ADDITIONAL INFORMATION to above number.

On January 1, 1974, a polygraph examination was administered to Charles Lee Slan. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Slan was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the murder and armed robbery of Mr. Marshall Bond. (For details, see offense report number 73-15483.) The facts concerning this case were provided this polygraphist by Lt. C. Bueto and Sgt. R. Robertson. These two deputies were present in the testing suite during the entire polygraph examination of Slan.

Before his pre-test interview, Slan signed two copies of a form stating that he was taking the tests voluntarily. One copy of this executed form is enclosed with this report; the other is incorporated as part of our case files.

In the polygraph recordings, there were definite indications of truthfulness when Slan answered "No" to the following listed questions:

1) "Do you know for sure who murdered Mr. Bond?"

2) "Did you murder Mr. Bond?"

3) "Did you ever own a blue Valiant?"

4) "In anyway did you participate in the Bond Murder?"

It is the opinion of this polygraphist, based upon Slan's polygraph examination, that he is telling the truth to the above listed questions.

Sgt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke #3093 Code

Approved (COMMANDING OFFICER) Date 1/7/74

pt. 5

Place Taylor Bldg, suite 412 Date 1-2-74

I, Oscar Williams Jr., voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

H. O. C. Brent
WITNESSED

Oscar Williams Jr.
SEAL (Signature of person to be examined

TIME 11:27 A.M.

This examination was concluded at 1320 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

H. O. C. Brent
WITNESSED

Oscar Williams Jr.
SEAL (Signature of person examined)

CONTINUATION SHEET

Date: Jan. 2, 1974 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On January 2, 1974, a polygraph examination was administered to Oscar Williams, Jr. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Williams was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the murder and armed robbery of Mr. Marshall Bond. (For details, see offense report 73-15483). The facts concerning this case were provided this polygraphist by Lt. C.Bueto. This deputy was present in the polygraph suite during the entire polygraph examination of Williams.

Before his pre-test interview, Williams signed two copies of a form stating that he was taking the tests voluntarily. One copy of this executed form is enclosed with this report; the other is incorporated as part of our case files.

In the polygraph recordings, there were definite indications of truthfulness when Williams answered "No" to the following listed questions:

1) "Do you know for sure who murdered Mr. Bond?"

2) "Did you murder Mr. Bond?"

3) "Did you see Mr. Bond get murdered?"

4) "In anyway, did you participate in the Bond murder?"

It is the opinion of this polygraphist, based upon Williams' polygraph examination, that he is telling the truth to the above listed questions.

Sgt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke 3085 Code

Approved (COMMANDING OFFICER) Date 1/7/74

SCHERSOT PRINT SHOP, INC.

CONTINUATION SHEET

Date 12/27/73 File No. 73-15483

Sgt. Robertson interviewed David Banks in the Parish Prison after Capt. Tom Harvey informed this Deputy that Banks had information about the Marshall Bond Murder case. According to Banks he heard Leonard Johnson CM talking after he came back from being placed in a line up , that Det. Gill of the City Police told him after he was identified in the line up of having committed and Armed Robbery that he could slide if he would tell him who was involved in the Bond case. Banks stated Johnson was directing his conversation to to Joe Melton CM another prisoner. He told Melton according to Banks that he knew who did the Bond job but Gill crazy if he thought he would tell him. He went on to tell him that Thomas Haynes CM in Jail in Gretna ,La. for Armed Robbery he help Johnson comit, also Billy Green deseased, Charles Slan at large and Oscar Williams CM in Jail here in Baton Rouge had been the ones who killed Bond. With this information Lt. Tycer and Sgt. Robertson went to Gretna and interviewed Haynes and he admitted he drove the car with the other three in it the day Bond was killed.

On 12/31/73 Lt. Tycer returned Haynes to Baton Rouge and he gave Dys a detail account of the Bond crime. He even took Col. Slimap, Lt. Bueto, Sgt. Robertson, Lt. Tycer, Dys Miller and Womack to Zachary and went thru the route and the crime scene with Dys. On return he wanted to talk with the District Attorney. Mr Brown came to the Court House and Haynes made a confession to him and implicated Slan, Williams and the late Billy Green. Williams denied any knowledge or involvement in the crime and was given a Polygraph Test which substuanted he denial. Slan was picked up and he too denied the accusation and was cleared by a Polygraph Test. After this Haynes admitted he made up the whole story so he could get some consideration for the Armed Robbery charge pending against him. He was then given a Polygraph Test and found that he had in fact made up the story.

The Investigation of the Marshall Bond Case will continue

Investigating Officer(s) Sgt. Robertson . Code

Approved (COMMANDING OFFICER) Date 1/8/74

GEORGIA PRINT CORP., INC.

CONTINUATION SHEET

Date: February 6, 1974 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On February 6, 1973, a polygraph examination was administered to Marvin Stansfield. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Mr. Stansfield was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the murder of Mr. Marshall Bond. (For details, see offense report number 73-15483). The facts concering this case were provided this polygraphist by Lt. C.Bueto and Sgt. B.Robinson. These two deputies were present in the polygraph suite during the entire polygraph examination of Mr. Stansfield.

Before his pre-test interview, Mr. Stansfield signed two copies of a form stating he was taking the tests voluntarily. One copy of this executed form is attached to this report; the other is incorporated as part of our case files.

In the polygraph recordings, there were definite indications of truthfulness when Mr. Stansfield answered "No" to the following questions:

1) "Do you know for sure who murdered Mr. Bond?"

2) "Did you murder Mr. Bond?"

3) "Right now, can you take me to the Bond murder weapon?"

4) "In anyway, did you participate in the Bond murder?"

It is this polygraphist's opinion, based upon Mr. Stansfield polygraph examination, that he is telling the truth to the above listed questions.

Sgt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke 3095 Code

Approved (COMMANDING OFFICER) Date 3/8/74

BARNEY FORM SHOP, INC.

pt. 57

P. O. Taylor Bldg, Suite 412 Date 2-20-74

I, Marvin Stanfield, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

Lt. A. C. Burt — WITNESSED

Marvin Stanfield — SEAL (Signature of person to be examined

TIME 1055

This examination was concluded at 1230 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

Lt. A. C. Burt — WITNESSED

Marvin Stanfield — SEAL (Signature of person examined)

CONTINUATION SHEET

Date: January 31, 1974 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On January 31, 1974, a polygraph examination was administered to Mr. William Stansfield. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Mr. Stansfield was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the murder of Mr. Marshall Bond. (For details, see offense report number 73-15483). The facts concerning this case were provided this polygraphist by Lt. C.Bueto and Sgt. W.Robertson. These deputies were present in the polygraph suite during the entire polygraph examination of Mr. Stansfield.

Before his pre-test interview, Mr. Stansfield signed two copies of a form stating he was taking the tests voluntarily. One copy of this executed form is attached to this report; the other is incorporated as part of our case files.

In the polygraph recordings, there were definite indications of truthfulness when Mr. Stansfield answered "No" to the following listed questions:

1) "Do you know for sure who murdered Mr. Bond?"

2) "Did you murder Mr. Bond?"

3) "Right now, can you take me to the Bond murder weapon?"

4) "Did you see Mr. Bond get murdered?"

It is the opinion of this polygraphist, based upon Mr. Stansfield's polygraph examination, that he is telling the truth to the above listed questions.

Sgt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke 3093 Code

Approved (COMMANDING OFFICER) Date 2/8/74

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PT-57

Place TAYLOR BLDG, SUITE 412 Date 1-31-74

I, William H Stanfield, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

G. O. Brent — WITNESSED

William H Stanfield — SEAL (Signature of person to be examined

TIME 103 PM

This examination was concluded at 1515 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

G. O. Brent — WITNESSED

x William H Stanfield — SEAL (Signature of person examined)

CONTINUATION SHEET

Date February 1, 1974 File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On February 1, 1974, a polygraph examination was administered to Mr. A.J. Stansfield. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether Mr. Stansfield was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the murder of Mr. Marshall Bond. (For details, see offense report number 73-15483). The facts concernin this case were provided this polygraphist by Lt. C. Bueto and Sgt. W.Robertson. These two deputies were present in the polygraph suite during the entire polygraph examination of Mr. Stansfield.

Before his pre-test interview, Mr. Stansfield signed two copies of a form stating he was taking the tests voluntarily. One copy of this executed form is attached to this report; the other is incorporated as part of our case files.

Throughout this person's polygraph tests on February 1, 1974, there were irregular and erratic reactions to the test question. Because these reactions are of a type which prevent an analysis from being made, the polygraphist could not render an opinion as to whether or not Mr. Stansfield was telling the truth. Nothing the polygraph said or did could alleviate this problem.

Therefore, it is this polygraphist's recommendation that Mr. Stansfield be given the opportunity of taking a polygraph re-examination.

Sgt. D.A. Zuelke,
Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke 3093 Code

Approved (COMMANDING OFFICER) Date 2/8/74

REGISTRY PRINT SERVICE, INC.

pr. 57

P. TAYLOR BLDG, SUITE 412 Date 2-1-74

I, A.J. Stanfield, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

H. Oca[illegible] A.J. Stanfield
WITNESSED SEAL (Signature of person to be examined

TIME 1409

This examination was concluded at 1320 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

H. O[illegible] A.J. Stanfield
WITNESSED SEAL (Signature of person examined)

CONTINUATION SHEET

Date 1/31/74 File No. 73-15423

ADDITION:

At 1000 hours this date William H. Stansfield WM 63 of Rt. 3, Box 3-E Rollins Rd. Zachary, La. was picked up and brought to the Court House and interrogated by Chief Rives, Col. Sliman, Lt. Bueto and Sgt. Robertson in regards to this case. This subject accepted the Polygraph Test and was taken to the Suite by Lt. Bueto, Sgts. Robertson and Zuelke where Sgt. Zuelke administered the test with negative results.

For furthur information see Polygraph Test Results held by Sgt. Zuelke.

To be furthur investigated:

Investigating Officer(s) Lt. Bueto & Sgt. Robertson Code

Approved [signature] (COMMANDING OFFICER) Date 2/5/74

GREENBERY PRINT & PUBL. INC.

CONTINUATION SHEET

Date 2/1/74 File No. 73-15483

ADDITION:

At. 1000 hours this date ~~XXX~~ A.J. Stansfield WM 35, of 3007 Old Baker Rd. Zachary,La was picked up and brought to the Court House and interrogated By Lt. Bueto and Sgt. Robertson in regards to this case. This subject accepted the Polygraph Test and was teken to the Suite By Lt. Bueto and Sgt. Robertson and Zuelke where Sgt. Zuelke adminstered the test with nagative results.

For furthur information see Polygraph Test results held by Sgt. Zuelke.

To be furthur Inv estigated.

Investigating Officer(s) Lt. Bueto & Sgt. Robertson Code

Approved (COMMANDING OFFICER) Date 2/5/74

STANDARD FORM CORP. INC.

CONTINUATION SHEET

Date 2/6/74 File No. 73-15483

ADDITION:

On this date Lt. Bueto and Sgt. Robertson picked up Marvin Stansfield WM from his residence at the Frank Thompson Dairy at the Plains and transported him to the Court House where he was interrogated in room B-07 by Col. Sliman, Lt. Bueto and Sgt. Robertson. As a result of this interrogation he agreed to accept the Polygraph test which was administered by Sgt. Zuelke with negative results.

TB This case to be furthur Investigated.

Investigating Officer(s) Lt. Bueto and Sgt. Robertson Code

Approved (COMMANDING OFFICER) Date 2/7/74

CONTINUATION SHEET

Date 2/16 thru 2/19/74 File No. 73-15483

Addition: CONFIDENTIAL

Sgt. Robertson was called by Sheriff Amiss and with he, Col. Sliman and Chief Rives [redacted] was interviewed in the Sheriff's Office. He advised that he had been [redacted] aquainted with one [redacted] who lived [redacted] and was released from Angola 12/17/72 after serving time for Accessory After The Fact of Murder and Armed Robbery. He advised these officers that he suspected [redacted] of having killed Marshall Bond as he was in the Zachary area at the time of his death. He advised that he associated with [redacted] and several others around the Port Hudson area and because of [redacted] leaving that area to live in Pontiac Michigan he always thought that he was responsible for Bonds death. Sheriff Amiss requested that Sgt. Robertson check this out immediately.

Sgt. Robertson was advised that a girl named [redacted] who lived just off Hwy 61 in the Port Hudson area should know about [redacted] as she dated him while he was there. Sgt. Robertson contacted some people he knew in that area and found that the girl was actually [redacted] She could not be found at home immediately but Sgt. Robertson was told to go see [redacted] and she could advise the dates [redacted] was in the Zachary area and the date he left.

[redacted] was located 2/18/74 and she advised that on the 3rd of August she and her sons and several cousins who lived in Pontiac Michigan and worked at the Fisher Body Co. left here and went to Pontiac Michigan where she stayed until the 24th of August. She advised that her sons were here on vacation and she returned with them to spend her a vacation with them. She advised that they departed at 1630 hours August 3,1974 and that they were followed by [redacted] and [redacted] and a small son of [redacted] who lives on [redacted]. She Advised that [redacted] lived at [redacted] and was employed at Acme Brick Yard on Hwy 61 At Alsen, La. She advised that her sons have since returned for visits to the Port Hudson area since that time but [redacted] has never returned.

Investigating Officer(s) Sgt. Robertson Code

Approved (COMMANDING OFFICER) Date

CONTINUATION SHEET

Date 2/16 thru 2/19/74 File No.

Sgt. Robertson contacted [redacted] common law wife of [redacted] a cousin of [redacted] at her residence 2/19/74 and she advised she never ever dated [redacted] but did date friend of his [redacted]. She advised that [redacted] came to that area around the middle of July and left around the first of August and returned to Pontiac. She too advised that I could check with [redacted] and he could verify this as [redacted] left with him. Sgt Robertson went to Acme Brick Co 2/19/74 and talked with [redacted] and he advised that he was going to tak his vacation and go to Pontiac and visit the [redacted] boys and the [redacted] who he was raised with. [redacted] advised that he drew his vacation money from Acme Brick on July 30,1974 and left for Pontiac Michigan August 3,1974 along with [redacted] and the [redacted] who he took with hir so the child could see and aunt that he had never seen. [redacted] advised that the Company would have a record of his vacation time which is covered by the working day rule.

The Acme Brick Co showed Sgt. Robertson that [redacted] did in fact draw his money July 30th and had 2 weeks vacation starting the 6th of August, he left work on the evening of Friday August 3rd, had Saturday and Sunday off the 4th and 5th then he did not have to return to work until the 20th of August which he did and the records clearly reflect.

[redacted] was specific in the day she left because she advised she had to wait for her dead husbands Social Security check to arrive so she could have money to make the trip on.

[redacted] could account for his actual time in that the records show that he had two weeks of working days off and that the working time shows that his vacation is from the 6th. thru the 10th and the 13th. thru the 17th. and returning to work Aug. 20th on a Monday. This has to cléminate [redacted] as a suspect in the case as he could not have been here when the offense took place.

The Case to be furthur Investigated

Investigating Officer(s) Sgt. Robertson Code

Approved [signature] (COMMANDING OFFICER) Date 2/20/74

CONTINUATION SHEET

Date 3/19/74 File No. 73-15483

Addition:

On the day Marshall Bond was killed and earlier that morning Doris Manna while on duty at the Bond Drug Store told Deputies that an unknown colored male had come in the store very mad and arrogant about Marshall Bond having called his wife about a bill he owed him. Until this date Deputies had not been successful in locating this subject and not being able to learn his ~~identity~~ identity.

Mrs Nancy Cobb called Sgt. Robertson the night of the 18th. of this year and informed this Deputy that about 1630 hours Mrs Bond and she contacted a Paul Broussard about his deliquent account and about 1700 hours this subject came into the office to pay on the account and proceeded to cause a scene about owing the bill . Finallya twenty dollar payment was accepted from him which was contrary to the amount he agreed to pay. After Paul Broussard left the office they contacted Doris Manna about the subject to see if he was the same one who entered the store on the morning of the date Bond was killed. After describing him to Doris she advised that she was most sure it was him. They asked Sgt. Robertson to contact Lt. Bueto and look back into the case to see if it had anything to do with the Murder and Robbery of Bond

Investigating Officer(s) Lt. Bueto & Sgt. Robertson Code

Approved (COMMANDING OFFICER) Date 3-22-74

BATON ROUGE PRINTING CO., INC.

CONTINUATION SHEET

Date 3/20/74 File No. 73-15483

Addition:

These Deputies went to Paul Broussard's home at 2247 Chamberlain St Baker, La. Phone 775-2129 in and attempt to see him about this case but could not locate anyone there. It was learned that he was employed by the Georgia Pacific Harper Mill in Port Hudson, La.

Deputies contacted Wayne Stonecipher in charge of personnel at the Plant and arranged for and interview with Broussard. Broussard admitted he had gone to Bonds Office to make arrangements to pay a deliquent debt and got in and argument with Mrs Cobb and Mrs Bond on how and what figure he was to pay. When confronted with information about his appearence at Bonds Drug Store on the day he was killed he readily acknowledged he was possible the one who wa in the store that date and just did not relate the date to the day of the killing. He was asked to take a polygraph test in reference to the case and he accepted and asked it be given at the earliest convience.

Investigating Officer(s) Lt. Bueto & Sgt. Robertson Code

Approved (COMMANDING OFFICER) Date 3-22-74

BATON ROUGE PRINTING CO., INC.

CONTINUATION SHEET

Date 3/21/74 File No. 74-15483

Addition:

On this date Paul Broussard came to the Detective Office and met with the above Deputies and Sgt. Zuelke and accepted the Test and it was administered and according to Sgt. Zuelke the test shows that Paul Broussard has no knowledge of who was responsible for Bonds Murder and Robbery.

To Be Furthur Investigated.

Investigating Officer(s) Lt. Bueto & Sgt. Robertson Code

Approved [signature] (COMMANDING OFFICER) Date 8-22-74

BATON ROUGE PRINTING CO., INC.

CONTINUATION SHEET

Date: March 21, 1974 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On March 21, 1974, a polygraph examination was administered to Paul Broussard. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Broussard was telling the truth when he claimed that he had no guilty knowledge of nor had he participated in the murder of Mr. Marshall Bond.(For details see offense report number 73-15483.) The facts concerning this case were provided this polygraphist by Lt. C.Bueto and Sgt. W.Robertson. These two deputies were present in the testing suite during the entire polygraph examination of Broussard.

Before his pre-test interview, Broussard signed two copies of a form stating he was taking the tests voluntarily. One copy of this executed form is attached to this report; the other is incorporated as part of our case files.

In the polygraph recordings, there were definite indications of truthfulness when Broussard answered "No" to the following listed questions:

1) "Do you know for sure who murdered Mr. Bond?"

2) "Did you murder Mr. Bond?"

3) "Were you at Bond's farm that day?"

4) "In anyway, did you participate in the Bond Murder?"

It is the opinion of this polygraphist, based upon Broussard's polygraph examination, that he is telling the truth to the above listed questions.

Sgt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Sgt. D.A. Zuelke 3093 Code

Approved (COMMANDING OFFICER) Date 3-26-74

BATON ROUGE PRINTING CO., INC.

Date	April 29, 1974	File No.	73-15483

ADDITIONAL INFORMATION to the Murder and Armed Robbery of Marshall Bond, August 15, 1973, File #73-15483.

After deputies had finished talking to Mr. Beard and Mrs. Dianne Norwood, April 25, 1974, in regards to this case, they were asked to come to the jail by jail personnel as a subject up there wanted to talk to deputies about the same case. At this time, deputies learned that Eddie Paul, Jr., colored male, 35, of Rt. 1, Box 28, Zachary, Louisiana, the Flanacher Road, no telephone, was in jail on a probation violation hold from East Feliciana Parish and the City had placed a detainer against him and that he wanted to talk to deputies about the killing. These deputies brought Eddie Paul, Jr., to room B-07 and at this time, he advised deputies that he had information from a number of people that Thomas Snowden, colored male, 35, 2645 Washington Avenue, Baton Rouge, Louisiana, telephone 342-4683, and a subject known only as Freddie and then another unknown colored male were seen on the day Marshall Bond was killed coming out of the gate of his pasture and the people that saw him was Mary Lee Robinson, colored female, and several of her children who live just outside the gate near where he used to live when he was resident of Zachary.

With this information, Lt. Bueto and Sgt. Robertson picked up Thomas Snowden and brought him to the courthouse, at which time he was given his rights which he waived and signed a "Your Rights" waiver and talked to us about the Marshall Bond Case and denied any knowledge of it whatsoever and requested to take a polygraph test to show that he didn't. At this time, due to the fact that the polygraphist was not available, Deputy Murphy Painter of the East Ascension Parish Sheriff's Office was in the office with the Psychological Stress Evaluator and he administered the Stress Evaluator Test to Thomas Snowden and it showed very clearly that he had no knowledge whatsoever of the murder and robbery of Marshall Bond. This case is to be further investigated through a future interview with Eddie Paul, Jr.

No further at this time.

WER,Jr.:jt

Investigating Officer(s) Lt. G. C. Bueto and Sgt. W. E. Robertson, Jr. Code

Approved (COMMANDING OFFICER) Date 4-1-74

STROTHER PRINTING

PT. 57

Place TAYLOR BLDG, SUITE 412 Date 3-21-74

I, Paul Broussard, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

Lt. O.C. Best
WITNESSED

Paul Broussard
SEAL (Signature of person to be examined

TIME 2:20 p.m.

This examination was concluded at 1532 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

Lt. O.C. Best
WITNESSED

Paul Broussard
SEAL (Signature of person examined)

Date April 29, 1974 File No. 73-15483

ADDITIONAL INFORMATION to the Murder of Marshall Bond, August 15, 1973, File #73-15483.

On April 22, 1974, early in the morning, Sgt. Robertson received a phone call from Gary Norwood of Zachary, Louisiana, on the Tucker Road, in regards to some information that he became aware of and thought that this deputy should know about. According to him, he has been seeking a divorce from his wife, Dianne Beard Norwood, of Jayess, Mississippi, and has been having Court Hearings in regards to the custody of his son. He stated that he learned that Dianne's father, T. C. Beard, white male, 57, of Jayess, Mississippi, had contacted a Mr. Earl R. Bearden of Rt. 2, Box 15 McComb, Mississippi, Zip Code 39648, Area Code 601, 684-8953, and that Mr. Earl R. Bearden was a friend of his and was a private investigator and Mr. Bearden had been retained by him in order to seek information on his wife's activities while she had returned to her home in the state of Mississippi to aid him in his civil court case in family court in regards to custody of his child.

At 1340 hours, this date, Earl R. Bearden called Sgt. Robertson and Lt. Bueto and told them that he was contacted by a subject who presented himself as John Smith and told him that he wanted him to investigate a murder. He asked him what murder and he told him of a prominent citizen in Zachary, Louisiana, who was a drugist named Marshall Bond. At this time he asked him why didn't he report it to the authorities and he stated that he wanted him to accept the investigation. He went on to tell him that he suspected his former son-in-law, Gary Norwood, and his mother, Mrs. Lilly Norwood, and that he could tell him that he thought that they were directly involved with that murder and armed robbery.

Mr. Bearden also informed this deputy that he had a friend who is Detective O'Brien of the City Police in Baton Rouge, and he called him and told him that he had been contacted by this subject and O'Brien had referred him to these two deputies as he was aware of the fact that Sgt. Robertson and Lt. Bueto were investigating this case.

Mr. Bearden went on in his conversation with Sgt. Robertson and told him that T. C. Beard had in fact told him that Mr. Bond had been beaten to death with a large stick and a fat wallet was taken from him and that he knew that his former son-in-law was seen in the state of Mississippi, spending large amounts of money. Mr. Bearden went on and told this deputy and Lt. Bueto that there was to be a Habaes Corpus Court Hearing in the Baton Rouge Family Court for the week of April 25, 1974, and that if deputies needed to talk to Beard that he was fairly sure that Beard and his daughter, Dianne Norwood, would be in Baton Rouge that date, as would Gary Norwood and his mother. He further informed these deputies that he and a Mr. Leland Carruth, Summit, Mississippi, were both investigating the case for Mr. Norwood and they, very likely themselves, would be there and would come by these deputies' office and explain anything further to them that they needed to know.

Nothing else was heard from the Norwoods or Earl Bearden until April 25, and at this time, deputies learned that in Judge Tom Pugh's Family Court there was in fact a hearing going on concerning the civil suit of Dianne Norwood and Gary Norwood. At this time, deputies went to the court room and brought Mr. T. C. Beard down to Room B-07 advising him of his rights and began to question him in regards to what he knew about the Marshall Bond case. He told deputies that he and his daughter suspicioned Gary Norwood and Mrs. Norwood of having tried to kill Marshall Bond in as much as he knew that Gary was spending large amounts of money in the state of Mississippi to hire private detectives to follow his daughter. And that he, in fact, knew that Gary Norwood and Mrs. Norwood didn't have those kind of funds.

These deputies requested Mr. T. C. Beard remain with them awhile and when the hearing was over, they brought Dianne Norwood to Room B-07 and she reiterated the same story, pretty much, as what

Investigating Officer(s) _____ Code _____ (CONTINUED)

Approved _____ Date _____
(COMMANDING OFFICER)

Date April 29, 1974 File No. 73-15483

her father had told. At this time, deputies asked both of these subjects if they would voluntarily accept a polygraph test in regards to show whether or not they had any actual knowledge of the Marshall Bond case. At this time, Dianne Norwood readily accepted, however, her father was very reluctant to do so. But, in as much as Dianne Norwood accepted and was traveling with her father, he had to wait here at the office while the test was given to her. A check was made and found out that Sgt. Zuelke, the East Baton Rouge Parish Polygraphist, was not available as he was on vacation, and in view of this, Deputy Murphy Painter, Ascension Parish Sheriff's Office, came to this office with his Psychological Stress Evaluator and gave Dianne Norwood a Stress Evaluator Test at which time the test showed that she was merely suspicious of her former husband and his mother and that she actually had no knowledge of who was involved in the killing and the robbery of Marshall Bond. Despite this, Dianne Norwood did reveal that she had seen Mr. Bond out at Mrs. Norwood's house many times and that she had, in fact, spied on them while they were, according to her, having an affair. But that was all that she knew other than she had thought about many times calling Mrs. Bond and tipping her off to the fact that Marshall Bond was seeing Mrs. Norwood and that she was reasonably sure that Mrs. Bond was not knowledgable of this.

After Dianne Norwood, through the test, was absolved of any knowledge of the actual robbery and murder of Marshall Bond, the test was explained to her father, Mr. T. C. Beard and he readily accepted the opportunity to clear himself of actually having any knowledge and at this time, he was administered the test by Dy. Murphy Painter, which clearly showed that he was merely suspicious and had no knowledge whatsoever of who killed and robbed Marshall Bond, and the test showed that both of them had nothing to do with the Marshall Bond case whatsoever.

End of this addition.

WER,Jr.:jt

Investigating Officer(s) Lt. O. C. Bueto and Sgt. W. E. Robertson, Jr. Code

Approved (COMMANDING OFFICER) Date 4-1-74

STAGTHER PRINTING

Date	May 13, 1974	File No.	73-15483

ADDITIONAL INFORMATION to Armed Robbery and Murder of Marshall Bond, File #73-15483.

Sgt. Robertson was contacted by Mrs. Doris Hanna, former employee of Mr. Marshall Bond, and she requested that I see her as she had received some information that might be helpful in the case. She advised that she had a very good friend, Mrs. Georgene Jackson, who, along with her husband, runs the Zachary Texaco Service Station. Mrs. Jackson had told her of a former employee who she suspected of maybe being involved in the Bond case.

According to Mrs. Jackson, her husband employed a Robert Leon Perry, white male, DOB 5/25/74, who at the time was residing at 1346 Nichols Street, Baker, Louisiana. They kept him on the dates of August 21, 22, 23, 24 and 25, and let him go because he did not act right and was of a violent nature. When asked how she arrived at this conclusion, she stated that the second day of employment, her husband hollered out the door to another employee to do something outside while he was waiting on a customer, and Perry spoke up and stated that he hoped that they did not make a practice of hollering at employees as he worked for a man in Texas and he did that to him and he knocked him in the head for it. Mrs. Jackson stated that after that, he was always on the defensive and they had to let him go. As far as she knew, he returned to Gloster, Mississippi, where he was from. She never saw him again until around Christmas time when she and a child were enroute to Gloster to visit her relatives. Just outside Gloster, her child spoke up and told her that she saw Perry doing something to a car along with another subject. She observed them trying to pull something from the car. According to her, she went on to her relatives and mentioned to them that she had seen Perry and was advised that the Sheriff's Office in that County was looking for him and another subject named Gus Murray who had beaten and robbed an elderly man in Gloster, Mississippi. Her relatives called the Sheriff's Office and they were apprehended shortly after being seen.

With this information, Sgt. Robertson went to Woodville, Mississippi, and met with Sheriff H. B. McGraw and he advised that on December 26, 1973, Robert Leon Perry, Jr., and Gus Murray went to a small store that sells beer on the outskirts of Gloster and that Murray stayed in the car and Perry went inside. He (Perry) stayed a few minutes, came out, looked around, then went back in and hit the victim in the head with a long metal object that was never found and robbed him of over $200.00. He then ran out and the man crawled to the door and shot into the car as they fled. Sheriff McGraw advised that Perry had actually been there on two occassions prior to this casing the place. He advised that Perry plead guilty for his part in the crime and is serving three years in Parchman and that Gus Murray was on five years probation. Also, Perry was going to plead not guilty until he learned that Murray was going to testify for the State in the case. He advised that Perry had been in jail both in Mississippi and in Baton Rouge, Louisiana, and had also been in the Mental Hospital in Whitfield, Mississippi, as well as Jackson, Louisiana. He described him as a psychopath and was capable of killing anyone, especially for money. He advised that it might pay to look into Perry as a suspect in the Bond case and that he would try to find Gus Murray and see if he had any knowledge of Perry maybe having said something to him about the Bond case.

NOTE: There is a folder on file in the Sheriff's Detective Division on Perry.

On return to Baton Rouge, Sgt. Robertson called Mrs. Jackson and she did state that while Perry was working for them, he did ask almost every day if anyone had been apprehended in the Bond murder.

WER:Jr.:jt

Investigating Officer(s) Sgt. W. E. Robertson and Lt. O. C. Bueto Code

Approved Lt. George O'Connor (COMMANDING OFFICER) Date May-16-74

STROTHER PRINTING

Date	2/4/75	File No.	73-15483

Follow-up information to above file number.

Deputies were contacted by Captain Bonanno and requested to proceed to the Zachary Pharmacy. Upon arrival, Deputies were advised that certain items had been found that may have been instrumental in the death of Mr. Marshall Bond.

Deputies then interviewed Mr. Carl Bond, 39th Street, Zachary, Louisiana, phone 654-2449, brother of the victim. Mr. Bond gave to Deputies the following details:

Approximately 3 days after the incident, a white male and white female by the name of Cole, Route 3 Box 37 McHost Road, recovered a small steak knife from a ditch. Mr. Bond was advised by the Coles that shortly after the incident they had observed a vehicle with two or more colored males drive down the McHost Road at a high rate of speed and observed one colored male throw something out of the vehicle.

The Coles did not connect the incidences at that time. Approximately two weeks ago, the grass was cut alongside the road and the Coles then recovered a pocket knife and a nut driver. On Thursday, January 3, 1975, Mr. Bond proceeded to that location, and with a metal detector, recovered a 1/2" reinforcement rod and a yellow handled screwdriver.

Photograhps were made of the items in the storeroom of the Zachary Pharmacy by Deputy Charles Babin. Deputies then proceeded to the McHost Road and were advised by Mr. Bond of the location of where the items were found. This location is approximately 4 tenths of a mile north of La. 64 between two rural mailboxes (approximately 115 yards between mailboxes) - mailboxes containing the names of J.B. Cole, Route 3 Box 37 and Carruth, Route 3 Box 36-C. Also being on the east side of the road.

Photographs of the scene were also taken by Deputy Babin. A receipt was given to Mr. Bond for the items. Items are marked as follows and submitted to the Crime Lab for hair, fiber, and blood analysis:

(1) Sabre pocket knife, black handle, three blades
(2) Snap-on nut driver, black handle
(3) Regular screwdriver, yellow handle
(4) Steak knife, white handle
(5) 1/2" reinforcing rod, "L" shaped, approximately 18" on long side and approximately 4" on short side.

Deputies will contact Mr. & Mrs. Cole at a later date and obtain a statement from them.

To be further investigated.

Sgt. C.J. Caffarel/jmt

Investigating Officer(s) Sgt. Caffarel & Dy. Keller Code

Approved s/ Capt. P.V. Bonanno Date 2/5/75
(COMMANDING OFFICER)

STROTHER PRINTING

Date	2/5/75	File No.	73-15483

ADDITIONAL INFORMATION

At approximately 1300 hours this date, 2/5/75, Sgt. Caffarel and Deputy Keller contacted Mr. & Mrs. J.B. Cole at their residence at Route 3 Box 37 McHost Road, Zachary, La., phone 654-5258, in reference to what they had seen on the evening of 8/15/73.

Mr. Cole advised Deputies during August of 1973, his eyesight was extremely poor and only recently has been corrected by surgery and special contact lenses, therefore any information concerning the evening of the 15th would have to be obtained from Mrs. Cole although Mr. Cole was familiar with what had taken place.

Mrs. Cole stated at approximately 1730 hours of 8/15/73, she observed an old model vehicle traveling at a high rate of speed north bound in front of their residence on the McHost Road. The vehicle, which could only be described as being old and gray over a faded maroon color, was occupied by two colored males. Mrs. Cole also stated the auto might have been an old Plymouth or Dodge, however of this she couldn't be sure.

Mrs. Cole further stated as the vehicle passed the front of the residence, she observed the passenger out-stretch his arm as if to be throwing something out, however no objects were actually seen being thrown. The vehicle had drawn Mr. & Mrs. Cole's attention because of the high rate of speed at which it was traveling. Mr. & Mrs. Cole were standing at the front of their residence. They also recalled hearing numerous sirens in the area at approximately the same time the auto passed in front of the residence.

According to Mrs. Cole, less than five minutes after they first observed the vehicle, the vehicle returned heading south on the McHost Road occupied by only one colored male. Mr. & Mrs. Cole stated that approximately two weeks after the 15th, Mr. Cole found a white handled steak knife near the edge of the road in front of the residence. Mr. Cole showed Deputies the approximate location where he found it, this being approximately 50 feet south of his driveway on the east side of the blacktop road approximately 12 to 14 inches from the edge of the blacktop near the upper edge of the ditch bank. Mr. Cole stated he brought this knife to Mr. Carl Bond, thinking it might possibly be connected with the murder of Marshall Bond, however at that time Carl Bond informed him the wounds inflicted on Marshall Bond couldn't have been caused by the steak knife. Mr. Cole then returned the knife to his residence where it has stayed until recently.

Mr. Cole then stated approximately 2 or 3 weeks prior this date, 2/5/75, while walking along the side of the road in front of his residence he observed something shiny that drew his attention. He then found a screwdriver type socket handle and a pocket knife. According to Mr. Cole this is nearly the exact same location where the steak knife had been found. After this discovery, Mr. Cole contacted Mr. Carl Bond who then returned finding the reinforcement rod and the yellow handled screwdriver.

Both Mr. & Mrs. Cole stated they hadn't seen the above described vehicle before the 15th of August 1973, and hadn't seen it since. No description of the occupants

Investigating Officer(s)_____ Code_____

Approved_____ Date_____
(COMMANDING OFFICER)

Date 2/5/75 File No. 73-15483

could be given except that Mrs. Cole believed that both were males and both were indeed black.

Sgt. C.J. Caffarel/jmt

Investigating Officer(s) Sgt. C.J. Caffarel & Dy. Keller Code

Approved /s/ Capt. P.V. Bonanno Date 2/6/75
(COMMANDING OFFICER)

STANDARD PRINTING

Evidence released
11-4-76 pm.

S116217 EBR
Re- Marshall Bond

Murder
Disposition:

Blood in fridge in sec. lab + 15

EXHIBIT
B

001

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7461

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. (If Known)

SP No. 16217

Page: 1 of 1 Pages

Submitting Agency: Sheriff's Office East Baton Rouge Parish
Address: Courthouse Baton Rouge, La
Officer Submitting Evidence: Dy Carson Bueto
Phone: 348-5971
Type Examination Requested: General
Suspect(s) 1: 2: 3:
Victim(s) 1: Marshall Bond 2: 3:
Type Investigation: Murder
Parish: EBR

Itemize and Describe Evidence

1) One (1) plastic bag containing one pair of maroon pants with black belt of victim
2) One (1) yellow plastic bag containing clothing of victim
3) One (1) brown paper bag containing two tubes of blood from victim

Signature of Submitting Officer: H C Bueto Date:

Paul L. Cobb Jr.
(Signature of Criminalist Receiving Evidence)
Date August 16, 1973 Time: 1:30 pm

FOR LABORATORY USE ONLY

EVIDENCE RELEASED TO:
Edward Stern
BY Pam Miller
DATE 11-4-76 10:25 Am

DPS 17-12 (R 2/72)
*Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791–BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. _____ (If Known)

SP No. 16217

Page: 2 of 2 Pages

Submitting Agency: Sheriffs office East Baton Rouge Parish
Address: courthouse Baton Rouge, La 70801
Officer Submitting Evidence: Sgt Boyter
Phone: St Carson Sheriff
Type Examination Requested: Hair comparison + Serology (blood type)
Suspect(s) 1 2 3
Victim(s) 1 Marshal Bond 2 3
Type Investigation: Murder
Parish: EBR

Itemize and Describe Evidence

4) Brown stain hat with hair sample
5) Manila packet containing hair sample from back of barn
6) " " " " " " head of auto
7) 3½' 1x4 board with nail in end and hair samples on it
8) coke bottle (6½ oz) bearing blood stain

Signature of Submitting Officer: Sgt Alton Boyter Jr Date: 8-16-73

Marta O. Finklet
(Signature of Criminalist Receiving Evidence)

Date: 8-16-73 Time: 9:15 a.m.

FOR LABORATORY USE ONLY

EXPERTISE TRANSFERRED
Harold Spear
By: Ron Miller
Date: 11-4-76 10:25 a.m.

DPS 17-12 (R 2/72)

* Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. _____ (If Known)

SP No. 16217

Page: _____ of _____ Pages

Submitting Agency: Sheriff's Office, East Baton Rouge Parish

Officer Submitting Evidence:

Address: Courthouse, Baton Rouge, La. 70801

Phone: 348-5971

Type Examination Requested: General

Suspect(s) 1: 2: 3:

Victim(s) 1: Marshall Bond 2: 3:

Type Investigation: Murder

Parish: East Baton Rouge

Itemize and Describe Evidence

9. One manila envelope enclosing samples removed from fingernails of Marshall Bond

Samples removed by undersigned at Charlet Funeral Home in Zachary 8-16-73 at 12:30 am

Signature of Submitting Officer: _____ Date: _____

Paul L. Cobb Jr.
(Signature of Criminalist Receiving Evidence)

Date August 16, 1973 Time: 12:30 am

FOR LABORATORY USE ONLY

Edward Spencer
Ann Miller
11-4-76 11:25 Am

DPS 17-12 (R 2/72)

*Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7461

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No.: 73-15483 (if Known)

SP No. 16317

Page: 4 of 4 Pages

Submitting Agency: East Baton Rouge Parish Sheriff's Office

Officer Submitting Evidence: C P Landry Jr

Address: PO Box 3277, Baton Rouge, La 70821

Phone: 348 5971, ext 261

Type Examination Requested: Fingerprints, traces of blood or hair

Suspect(s) 1: None 2: — 3: —

Victim(s) 1: Marshall Bond w/m, 75 2: — 3: —

Type Investigation: Murder and Armed Robbery

Parish: E.B.R.

Itemize and Describe Evidence

10. 1- Rusty automobile bumper jack (stand and tire tool not included)

Signature of Submitting Officer: C P Landry Jr. Date: August 17, 1973

Paul K. Cobb Jr
(Signature of Criminalist Receiving Evidence)

Date: 8-17-73 Time: 3:45 p.m.

FOR LABORATORY USE ONLY

EVIDENCE RELEASED TO:
Edward Spear
BY: Ron Miller
DATE: 11-4-76 10:25 AM

DPS 17-12 (R 2/72)

*Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. (If Known)

SP No. 16217

Page: 5 of Pages

Submitting Agency: Sheriff's Office East Baton Rouge Parish
Address: Courthouse, Baton Rouge, La 70801
Officer Submitting Evidence: Lt. Carson Bueto
Phone: 348-5471
Type Examination Requested: Serology
Suspect(s) 1: Clarence Barron Jr. W/m, 23
2:
3:
Victim(s) 1: Marshall Bond, W/m, 75
2:
3:
Type Investigation: Murder
Parish: EBR
Itemize and Describe Evidence

11. One (1) plastic bag containing one (1) pair Bolton slacks, blue + white plaid, owner - Clarence Barron, Jr
12. One (1) white envelope containing one Five dollar bill Serial # F17079958 A
13. One white envelope containing:
A. One (1) Ten dollar bill Serial # L00056702 B
B. One (1) One dollar bill Serial # K36642411 B
C. One (1) One dollar bill Serial # L83642424 C

Signature of Submitting Officer: Lt. C. C. Bueto Date: 8-20-73

Paul L. Cobb Jr.
(Signature of Criminalist Receiving Evidence)
Date: August 20, 1973 Time: 9:00 am

FOR LABORATORY USE ONLY

Exhibit 13 was released to L.P.R. Shortes on 4/22/76 @ 11:45 a.m. by SWB

EVIDENCE RELEASED TO: Harold Jean
BY: Ron Miller
DATE: 11-4-76 10:25 PM

DPS 17-12 (R 2/72)
*Will be returned when SP No. has been affixed and form signed by Criminalist

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LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791–BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No.: 73-15483 (If Known)

SP No. 16217 [redacted]

Page: 6 of Pages

Submitting Agency: East Baton Rouge Parish Sheriff's Office

Officer Submitting Evidence: Sgt. Robinson/Dy. Briggs

Address: E.B.R. Parish Court House 70801

Phone: 348-5971

Type Examination Requested: Serology (Hair Fibers ect.) Clothes fibers, flesh particles

Suspect(s) 1: UN KNOWN 2: 3:

Victim(s) 1: Mr. Marshall Bond 2: 3:

Type Investigation: Murder and Armed Robery

Parish: E.B.R.

Itemize and Describe Evidence

141 One Anchor bolt.

Signature of Submitting Officer: S. Briggs

Date: 8-22-73

Paul L. Cobb Jr.
(Signature of Criminalist Receiving Evidence)

Date: 8-22-73 Time: 1:00 p.m.

FOR LABORATORY USE ONLY

EVIDENCE RELEASED TO:
[illegible]
BY [illegible]
DATE 11-11-76 [illegible]

DPS 17-12 (R 2/72)

*Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No.: 73-15413 (If Known)

SP No. 16217

Page: 7 of Pages

Submitting Agency: East Baton Rouge Parish Sheriff's Office

Officer Submitting Evidence: Sgt W. Williams Jr.

Address: PO Box 3277 70821

Phone: 345 5771

Type Examination Requested: Serology

Suspect(s) 1: 2: 3:

Victim(s) 1: Marshall Bond 2: 3:

Type Investigation: Murder + Armed Robbery

Parish: East Baton Rouge

Identify and Describe Evidence

(15) 1- Piece Black Fabric 12 x 12"

Signature of Submitting Officer: Sgt Williams Jr. Date: 8-24-73

(Signature of Criminalist Receiving Evidence)

Date 8-24-73 Time: 2:45 p.m.

FOR LABORATORY USE ONLY

EVG
Stained jean
Plain white
[illegible]

DPS 1/-12 (R 2/72)

*Will be returned when SP No. has been affixed and form signed by Criminalist

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LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No.: 73-15483 (If Known)

SP No. 16217

Page: 8 of 8 Pages

Submitting Agency: EAST BATON ROUGE PAR. SHERIFFS OFFICE

Officer Submitting Evidence: SGT. CAFFAREL

Address: P.O. BOX 3277, BATON ROUGE, LA. 70821

Phone: 387-5971

Type Examination Requested: BLOOD - HAIR - FIBER ANALYSIS

Suspect(s): 1 UNK. 2 3

Victim(s): 1 MARSHALL BOND 2 3

Type Investigation: HOMICIDE

Parish: EBR

Itemize and Describe Evidence

16 POCKET KNIFE - "SABRE" - BLACK HANDLE - 3-BLADES
17 - SNAP-ON NUT DRIVER - BLACK HANDLE -
18 - REGULAR SCREWDRIVER - YELLOW HANDLE -
19 - STEAK KNIFE - WHITE HANDLE
20 - ½" REINFORCING ROD.

Signature of Submitting Officer: [signature] Date: 2-4-75

[signature]
(Signature of Criminalist Receiving Evidence)

Date: 2/1/75 Time: 12:20 PM

FOR LABORATORY USE ONLY

EVIDENCE RETURNED TO: [signature]
BY: [signature]
DATE: 11-4-75

DPS 17-12 (R 7/72)

*Will be returned when SP No. has been affixed and form signed by Criminalist

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LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1311 - BATON ROUGE, LOUISIANA 70821
(504) 925-7401

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. 75-15483 (If Known)

SP No. 16217

Page: of Pages

Submitting Agency: EBRSO

Officer Submitting Evidence: Sgt E.C. Knight

Address: EBR Parish

Type Examination Requested:

Suspect(s) 1: Sandberg 2: Miller 3:

Victim(s) 1: 2: 3:

Type Investigation: Murder Armed Robbery

Agency: EBR

Describe and Describe Evidence

21 1 inch tool

22 1 piece of cord Brown

23 1 ea torque wrench 3/4" drive

24 1 ea squeeze handle

25 1 ea pair tin snips

26 1 piece stainless steel rod 1"

27 1 [illegible] cap

28 1 ea [illegible] handle

29 1 ea file

30 1 lug wrench (single wing bar with socket on each end).

31 1 A frame jack

Signature of Submitting Officer: Sgt E.C. Knight Date: 2-26-75

Paul K. Lott Jr.
(Signature of Criminalist Receiving Evidence)

Date: 2/26/75 Time:

FOR LABORATORY USE ONLY

EVIDENCE RELEASED TO:
Lennie Spear
BY: Ron Miller
DATE: 11-4-76 10:25 AM

Sheet 4606
Must be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

Submitting Agency File No.
73- 15483
(If Known)

P. O. Box [illegible] Station [illegible] Jackson, Mississippi 39207
(601) [illegible]

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

SP No. 16217

Page: 10 of 10 Pages

Submitting Agency: Jackson P.D.
Address: P.O. Box 310 Jackson
Officer Submitting Evidence: John A. Womack
Phone: 654 8393

Type Examination Requested: Serial examination

Suspect(s): 1 Mots Douglas 2 Kenny Whitmal 3
Victim(s): 1 Marshall Bond 2 3

Type Investigation: Murder Armed Robbery

F.B.R.

Items and Describe Evidence:

1) 1/5 gal. Red Blood in cola [illegible] J. A. [illegible] 10-75
2) 1/2 gal " " " " [illegible]
Dated 9-27-75
3) 1/1 Part of [illegible] [illegible] 8 1/2 [illegible]
4) 1/1 Hand knife
5) 1/1 [illegible] Bottle
6) 1/1 rag
7) 1/1 Red plastic strip app 7in x 3in
8) 1/1 plastic Bag

Signature of Submitting Officer: John A. Womack Date: 9-7-11-75

(Signature of Criminalist Receiving Evidence)

Date: 1 [illegible] 75 Time: 1:05 PM

FOR LABORATORY USE ONLY

EVIDENCE RELEASED TO:
[illegible]
BY Pam Mullo
DATE 11-4-76 10:20 Am.

DPSSP 4665
*Will be returned when SP No. has been entered and have signed for Criminalist

FILE COPY

PARISH East Baton Rouge SP NO. 18817

AGENCY Sheriff TYPE CASE Murder

REF. DATE 8/16/73

EVIDENCE: 15

Used ____ Destroyed ____ Retained in Lab 1-3 14-1

Returned X Date 11-4-76 Introduced in court ____

Card mailed: Yes ____ No ____ Date ____

Card returned: Yes ____ No ____ Date ____

Disposition made by: ____

Baton Rouge, Louisiana

April 21, 1976

I hereby recommend that the following evidence

$12.00 in U.S. currency

held in the case of State of Louisiana vs. Kenny Whitmore and Mister Donahue

be released to Fred Whitehead lawful owner thereof.

Assistant District Attorney, 19th Judicial District

Considering the foregoing.

IT IS ORDERED that the above described property be released to

Fred Whitehead

Judge, 19th Judicial District Court

I acknowledge receipt of the above evidence.

Fred Whitehead

013

STATE OF LOUISIANA
DEPARTMENT OF PUBLIC SAFETY
DIVISION of STATE POLICE
CRIME LABORATORY
P.O. BOX 1791
BATON ROUGE, LOUISIANA 70821
(504) 389-7451

Laboratory No. SP- 16217

SCIENTIFIC ANALYSIS REPORT

East Baton Rouge Parish Sheriff's Office
Courthouse
Baton Rouge, Louisiana 70821

Reference:
Parish: Marshall Road
East Baton Rouge

Requesting Officer:
Agency Submitted: See Green Sheet
Agency File No. See Green Sheet
Date Submitted: 73-15483
See Green Sheet

Evidence received by:
Examination requested: See Green Sheet
Date of examination: Serology
3/21/75

Evidence Examined:
SEE COPIES OF GREEN SHEETS.

May 15, 1975
RESULTS: No significant information was obtained from examination of the exhibits.

Approved: ___/

Shirley Phillips
criminalist

DPSSP 4003 (R 5/74)

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791–BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. _____ (If Known)

SP No. 16217

Page: 1 of 1 Pages

Submitting Agency: Sheriff's Office East Baton Rouge Parish

Officer Submitting Evidence: Dy Carson Bueto

Address: Courthouse Baton Rouge, La.

Phone: 348-5971

Type Examination Requested: General

Suspect(s) 1 | 2 | 3

Victim(s) 1: Marshall Bond | 2 | 3

Type Investigation: Murder

Parish: EBR

Itemize and Describe Evidence

1) One (1) plastic bag containing one pair of maroon pants with black belt of victim
2) One (1) yellow plastic bag containing clothing of victim
3) One (1) brown paper bag containing two tubes of blood from victim

Signature of Submitting Officer: H. C. Bueto Date: _____

Paul L. Cobb Jr.
(Signature of Criminalist Receiving Evidence)

Date: August 16, 1973 Time: 1:30 pm

FOR LABORATORY USE ONLY

OPS 17-12 (R 2/72)

* Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

STATE OF LOUISIANA
DEPARTMENT OF PUBLIC SAFETY
DIVISION of STATE POLICE
CRIME LABORATORY
P.O. BOX 1791
BATON ROUGE, LOUISIANA 70821
(504) 389-7481

Laboratory No.
SP- 16217

SCIENTIFIC ANALYSIS REPORT

To:
East Baton Rouge Parish Sheriff's Office
Courthouse
Baton Rouge, Louisiana 70821

Reference:
Parish: Marshall Bond
East Baton Rouge

Submitting Officer:
Date Submitted: See Green Sheet
Agency File No. See Green Sheet
Time Submitted: 73-15483
See Green Sheet

Evidence received by:
Examination requested: See Green Sheet
Date of examination: Serology
3/21/75

Evidence Examined:
SEE COPIES OF GREEN SHEETS.

May 19, 1975
RESULTS: No significant information was obtained from examination of the exhibits.

Approved: _____

Shirley Phillips
Criminalist

DPSSP 4600 (R 8/74)

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791–BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. (If Known)

SP No. 16217

Page: 1 of 1 Pages

Submitting Agency: Sheriff's Office East Baton Rouge Parish
Address: Courthouse Baton Rouge, La.
Officer Submitting Evidence: Dy Carson Buets
Phone: 348-5971
Type Examination Requested: General
Suspect(s) 1: 2: 3:
Victim(s) 1: Marshall Bond 2: 3:
Type Investigation: Murder
Parish: EBR

Itemize and Describe Evidence

1) One (1) plastic bag containing one pair of maroon pants with black belt of victim
2) One (1) yellow plastic bag containing clothing of victim
3) One (1) brown paper bag containing two tubes of blood from victim

Signature of Submitting Officer: [signature] Date:

Paul L. Cobb Jr.
(Signature of Criminalist Receiving Evidence)
Date August 16, 1973 Time: 1:30 pm

FOR LABORATORY USE ONLY

DPS 17-13 (R 2/72)
* Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

Submitting Agency File No. (If Known)

STATE POLICE CRIME LABORATORY
P. O. BOX 1791–BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

SP No. 16217

Page: 2 of 2 Pages

Submitting Agency: Sheriffs Office East Baton Rouge Parish
Address: Courthouse Baton Rouge, La 70801

Officer Submitting Evidence: Sgt Sapter S.O.I. L.S.P.
Phone: Lt Carson Sutton

Type Examination Requested: Hair Comparison + Serology (Blood Type)

Suspect(s) 1: 2: 3:

Victim(s) 1: Marshal Bond 2: 3:

Type Investigation: Murder

Parish: EBR

Itemize and Describe Evidence

4) Brown straw hat with hair sample
5) manila packet containing hair sample from bank of barn
6) " " " " " " hood of auto
7) 3½' 1x4 board with nail in end and hair sample on it.
8) coke bottle (6½ oz) bearing blood stain

Signature of Submitting Officer: Sgt Sexton Sapter Jr. Date: 8-16-73

M. W. Trimble
(Signature of Criminalist Receiving Evidence)

Date 8-16-73 Time: 9:15 a.m.

FOR LABORATORY USE ONLY

DPS 17-19 (R 8/73)
* Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7461

Submitting Agency File No. (If Known)

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

SP No. 16217

Page: of Pages

Submitting Agency: Sheriff's Office, East Baton Rouge Parish

Officer Submitting Evidence:

Address: Courthouse, Baton Rouge, La. 70801

Phone: 348-5971

Type Examination Requested: General

Suspect(s): 1 2 3

Victim(s): 1 Marshall Bond 2 3

Type Investigation: Murder

Parish: East Baton Rouge

Itemize and Describe Evidence

9. One manila envelope enclosing samples removed from fingernails of Marshall Bond

Samples removed by undersigned at Charlet Funeral Home in Zachary 8-16-73 at 12:30 am

Signature of Submitting Officer: Date:

Paul L. Cobb Jr.
(Signature of Criminalist Receiving Evidence)

Date: August 16, 1973 Time: 12:30 am

FOR LABORATORY USE ONLY

DPS 17-18 (R 8/78)

*Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791–BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. 73-15483 (If Known)

SP No. 16217

Page: 4 of 4 Pages

Submitting Agency: EAST BATON ROUGE PARISH SHERIFF'S OFFICE

Officer Submitting Evidence: C. P. LANDRY, JR.

Address: P.O. BOX 3277, BATON ROUGE, LA. 70821

Phone: 348-5971, ext 261

Type Examination Requested: FINGERPRINTS, TRACES OF BLOOD OR HAIR

Suspect(s) 1: NONE 2: — 3: —

Victim(s) 1: MARSHALL BOND W/M, 75 2: — 3: —

Type Investigation: MURDER AND ARMED ROBBERY

Parish: E.B.R.

Itemize and Describe Evidence

1. 1- RUSTY AUTOMOBILE Bumper JACK (stand and Tire tool not included)

Signature of Submitting Officer: C. P. Landry, Jr. Date: August 17, 1973

Paul R. Cobb Jr.
(Signature of Criminalist Receiving Evidence)

Date: 8-17-73 Time: 3:45 p.m.

FOR LABORATORY USE ONLY

LPS 17-12 (R 3/72)

* Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

Submitting Agency File No. (If Known)

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7451
REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

SP No. 16217

Page: 5 of Pages

Submitting Agency: Sheriff's Office East Baton Rouge Parish

Officer Submitting Evidence: Lt. Carson Bueto

Address: Courthouse Baton Rouge, La 70801

Phone: 348-5971

Type Examination Requested: Serology

Suspect(s): 1 Clarence Barron Jr. C/M, 23 2 3

Victim(s): 1 Mitchell Bond, W/M, 75 2 3

Type Investigation: Murder

Parish: EBR

Itemize and Describe Evidence

11. One (1) plastic bag containing "one (1) pair Rattee slacks, blue + white plaid, owner - Clarence Barron, Jr.
12. One (1) white envelope containing one Five dollar bill Serial # F71707958 A
13. One white envelope containing:
    A. One (1) Ten dollar bill Serial # L00056702 B
    B. One (1) One dollar bill Serial # K36642411 B
    C. One (1) One dollar bill Serial # L83642424 C

Signature of Submitting Officer: [signature] Date: 8-20-73

[signature] (Signature of Criminalist Receiving Evidence)

Date August 20, 1973 Time: 9:00 am

FOR LABORATORY USE ONLY

DPS 17-12 (R 2/72)

* Will be returned when SP No. has been affixed and form signed by Criminalist

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LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7461

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. 73-15483 (If Known)

SP No. 16217

Page: 6 of Pages

Submitting Agency: East Baton Rouge Parish Sheriff's Office

Officer Submitting Evidence: Sgt. Robinson/Dy. Briggs

Address: E.B.R. Parish Court House 70801

Phone: 348-5971

Type Examination Requested: Serology (Hair Fibers ect.' Clothes fibers, flesh particles

Suspect(s) 1: UN KNOWN 2: 3:

Victim(s) 1: Mr. Marshall Bond 2: 3:

Type Investigation: Murder and Armed Robery

Parish: E.B.R.

Itemize and Describe Evidence: 141 One Anchor belt.

Signature of Submitting Officer: S. Briggs

Date: 8-22-73

Paul L. Cobb Jr
(Signature of Criminalist Receiving Evidence)

Date: 8-22-73 Time: 1:00 p.m.

FOR LABORATORY USE ONLY

DPS 17-18 (R 2/72)

* Will be returned when SP No. has been affixed and form signed by Criminalist

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LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. 73-15453 (If Known)

SP No. 16217

Page: 7 of Pages

Submitting Agency: East Baton Rouge Parish Sheriff's Office

Officer Submitting Evidence: Sgt W. Webster Jr.

Address: P.O. Box 3277 70821

Phone: 345-5771

Type Examination Requested: Serology

Suspect(s) 1: 2: 3:

Victim(s) 1: Marshall Bond 2: 3:

Type Investigation: Murder + Armed Robbery

Parish: East Baton Rouge

Identify and Describe Evidence

(15) 1- Piece Black Felt Piece 12" x 12"

Signature of Submitting Officer: Sgt W. Webster Jr. Date: 8-24-73

(Signature of Criminalist Receiving Evidence): Raymond Daniel

Date: 8-24-73 Time: 2:45 p.m.

FOR LABORATORY USE ONLY

DPS 37-12 (R 8/72)

*Will be returned when SP No. has been affixed and form signed by Criminalist

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LOUISIANA DEPARTMENT OF PUBLIC SAFETY

STATE POLICE CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 389-7451

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

Submitting Agency File No. 73-15483 (If Known)

SP No. 16217

Page: 8 of 8 Pages

Submitting Agency: EAST BATON ROUGE PAR. SHERIFF'S OFFICE

Officer Submitting Evidence: SGT. CAFFAREL

Address: P.O. BOX 3277, BATON ROUGE, LA. 70821

Phone: 387-6971

Type Examination Requested: BLOOD - HAIR - FIBER ANALYSIS

Suspect(s) 1: UNK. 2: 3:

Victim(s) 1: MARSHALL BOND 2: 3:

Type Investigation: HOMICIDE

Parish: E.B.R.

Itemize and Describe Evidence:

16 POCKET KNIFE - "SAGRE" - BLACK HANDLE - 3-BLADES
17 - SNAP-ON NUT DRIVER - BLACK HANDLE -
18 - REGULAR SCREWDRIVER - YELLOW HANDLE -
19 - STEAK KNIFE - WHITE HANDLE
20 - 1/2" REINFORCING ROD.

Signature of Submitting Officer: Sgt. C.J. Caffarel Date: 2-4-75

Jerry F. Johnson
(Signature of Criminalist Receiving Evidence)

Date: 2-7-75 Time: 1:20 PM

FOR LABORATORY USE ONLY

DPS 17-12 (R 2/72)

* Will be returned when SP No. has been affixed and form signed by Criminalist

FILE COPY

LOUISIANA DEPARTMENT OF PUBLIC SAFETY

CRIME LABORATORY
P. O. BOX 1791—BATON ROUGE, LOUISIANA 70821
(504) 925-7021

Submitting Agency File No. _____ (If Known)

REQUEST FOR SCIENTIFIC ANALYSIS
(Please Print)

SP No. 16217

Page 1 of _____ Pages

Submitting Agency: LCSO

Officer Submitting Evidence: Sgt K.C. Knight

Address: Crowley

Type Examination Requested: Analysis

Suspect(s): 1 Whitmore 2 Miller 3 Donahoe

Victim(s): 1 2 3

Type Investigation: Armed Robbery

Officer: EBR.

Number and Describe Exhibits:

23 1 Screw tool

24 1 piece of cast iron

25 1 torque wrench 36" long

26 1 pair Handle

27 1 pair tin snips

28 1 piece Stainless steel rod 1"

29 1 electric cord

30 1 wire wrench

31 1 wire wrench (angle iron bar with socket on each end).

32 1 A frame jack

Signature of Submitting Officer: Sgt K.C. Knight Date: 2-26-75

Signature of Criminalist (Submitting Evidence)

Date: 2/26/75 Time: _____

FOR LABORATORY USE ONLY

DPSSP 4605

* Will be returned when SP No. has been entered and form signed by Criminalist

FILE COPY

SP18217

Report

No significant information was obtained from examination of the exhibits.

21 Mar 75

5-6-75

8-21-73
10:00 a.m.

SP-16217

Precipitin test run
on area cut out on paper
time for ring to appear was 45 min
positive for human blood.

Check
Howard L. Scott
SP 69004
against printer on car.

EXHIBIT
C

Checked

1. - Warren Harding Sprout - 511482
8-31-73 A.B. (negative)

8-20-93

Received from L. S. P. B.O.I.
1 - 1990 chrysler New yorker
belonging to Mr Marshal
Bond - 92-93 Lincoln
998449

Dy S.L. Broyles

SP No. [illegible]

[illegible] Office Cost Data Corp. Board
[illegible] Data Corp. Fr 70801

Non Compression - Analysis (Cold Storage)

Recorded Board

CGR

a) Brown stain test with this sample
b) smash packet and temp this sample for bad stains
c) " " " " " bad f out
d) 33° 1.4 bend with mid in and out this sample
e) J
f) cube bath (63 g) temp blood stain

Signature of Operations Officer: [illegible] Date 8-11-73

Notified
Supervisor Name Notified (Initial)

Date 8-16-73 Time 9:15 AM

FOR LABORATORY USE ONLY

WHITE — ORIGINAL
Retain original copy for your office and send signed by Supervisor

WRITING AGENCY'S COPY

8.00 CC 8-15-93

Memorials

Marshal Bond - Jailing, &c

Carter McCarthy assaulted man here yesterday
further man, part of blood found on ground
at base of tree above the town, blood upon tree
found on ringed the second block built just
under eave of roof, of house, two cobs bottle
with blood on it found near tree also
pool of blood was found.

Submitted to mine Sub 8-16-93 8.00 am

1 hat — 1 33 1/4 cent coil in J —
1 cobs bottle with blood in J — 8 packets of his samples

CASE NO. 73 160

RECEIPT FOR PROPERTY RECEIVED BY THE
SAMOAN STATE POLICE
BUREAU OF INVESTIGATION

DATE REC'D.	HOW REC'D.	REC'D. FROM	DESCRIPTION OF ARTICLES
8-14-73			

PROCEEDINGS OF INVESTIGATION

DATE	CHARGE	REF. NO.	REMARKS	DETAILS

PROCEEDS OF SALE	REMITTED	DATE	DETAILS

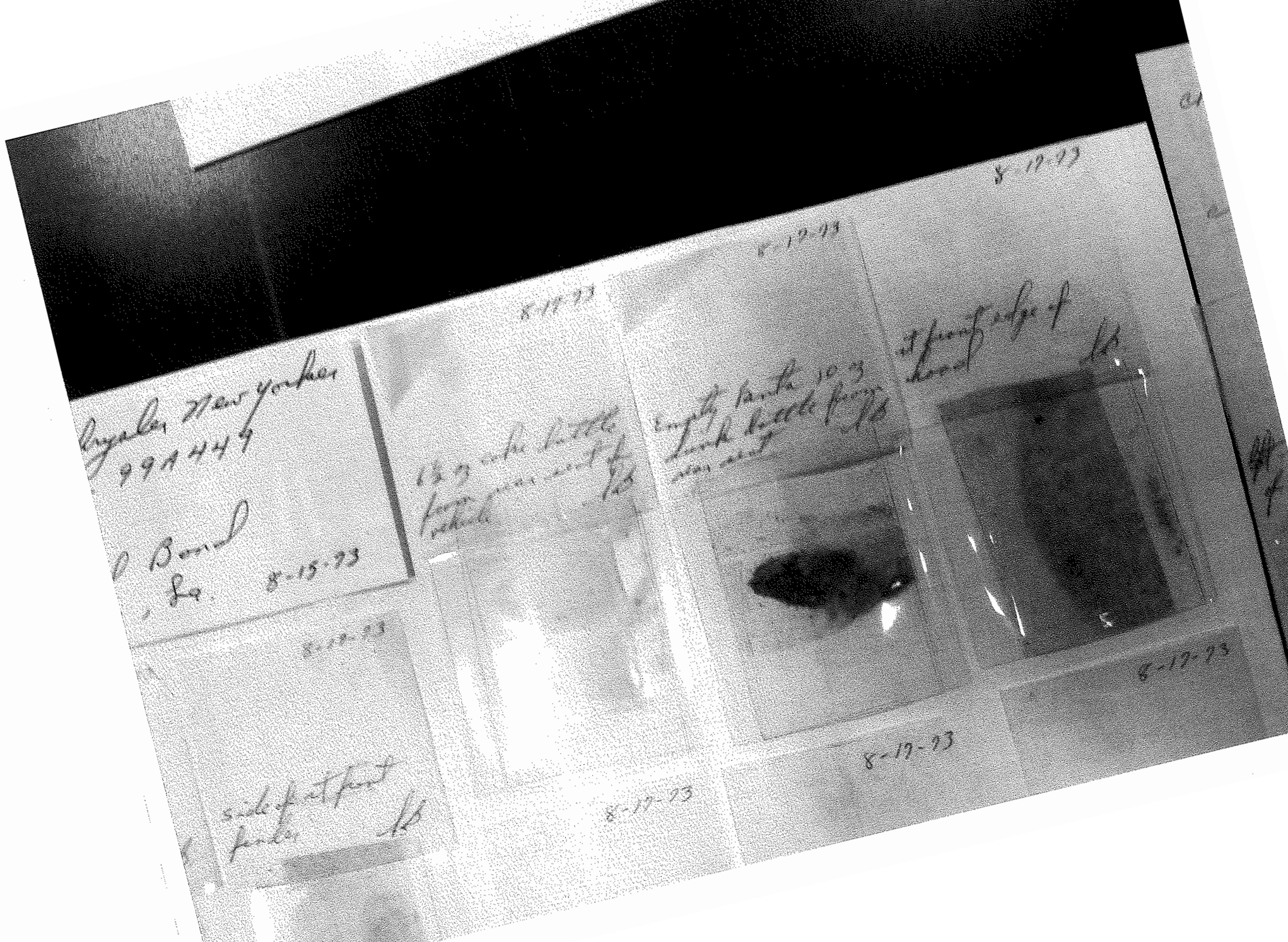
DISPOSAL OF ARTICLES

charles W Raymond 7/11
SO BR # 79594
SP # 68012
check for. Terry Wilkins

State of Louisiana
Department of Public Safety
Division of State Police
P. O. Box 1391
Baton Rouge, La. 70821

Case # 73160
10 Letter LA

1970 Chrysler New Yorker
Marshal Bond
Zachary, La.
8-15-93


8-12-93
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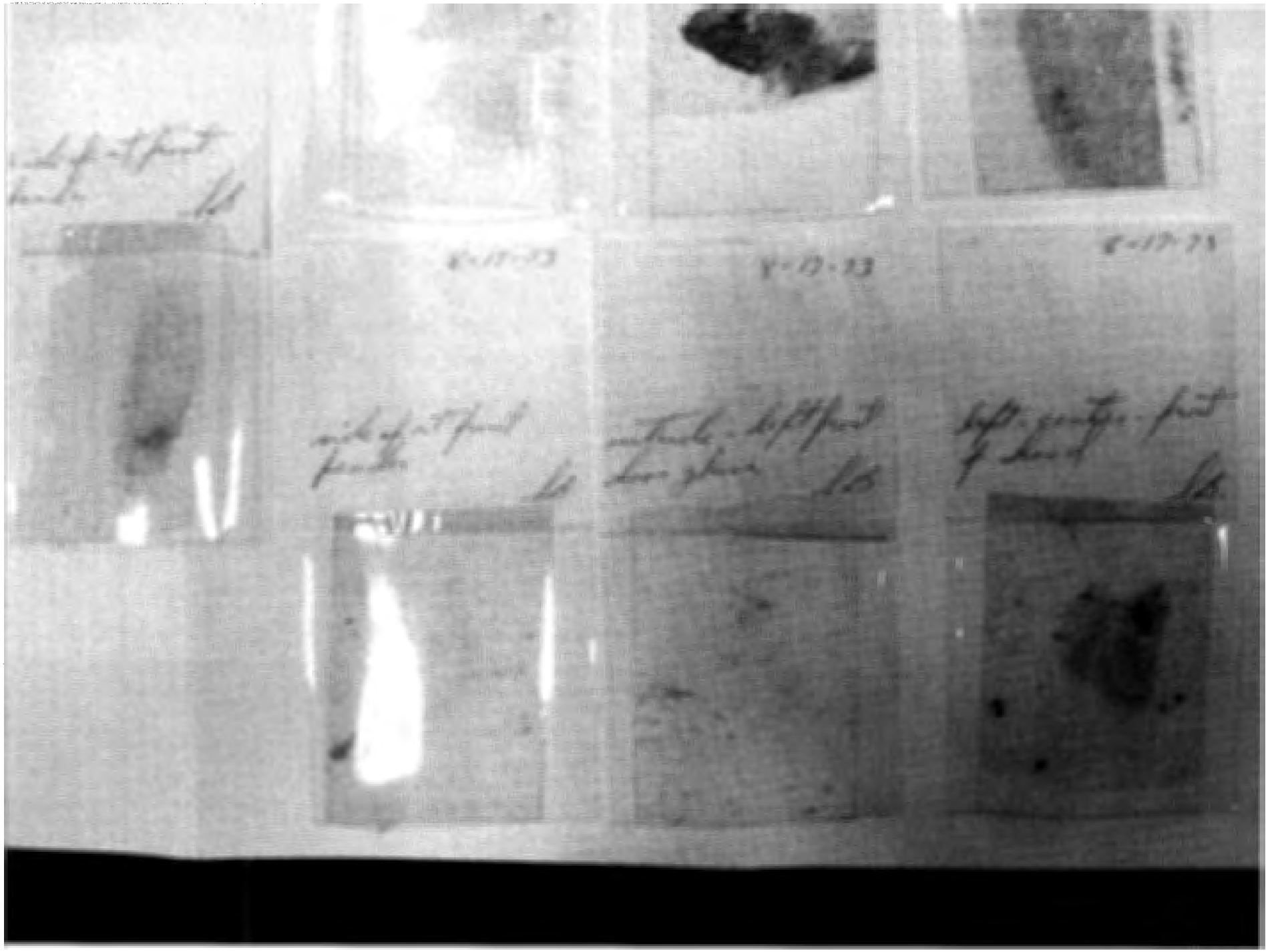
8-15-93



charles W Raymond W/M
30 BR # 29594
30 PF # 68012
chk for Larry Rikkers

8-17-93

left center front
of head. LB.

8-17-93

front center of head
LB

at top of head side

A.B. fend

side of rt front
fender
A.B

6½ oz coke bottle
from rear seat of
vehicle NB

Empt
Lum
rear

8-17-23

6½ oz coke bottle
from rear seat of
vehicle
Empty
8-17-23

ttle Empty Pantra 10 3 it from
t of Lunch bottle from hood
lb was sent lb

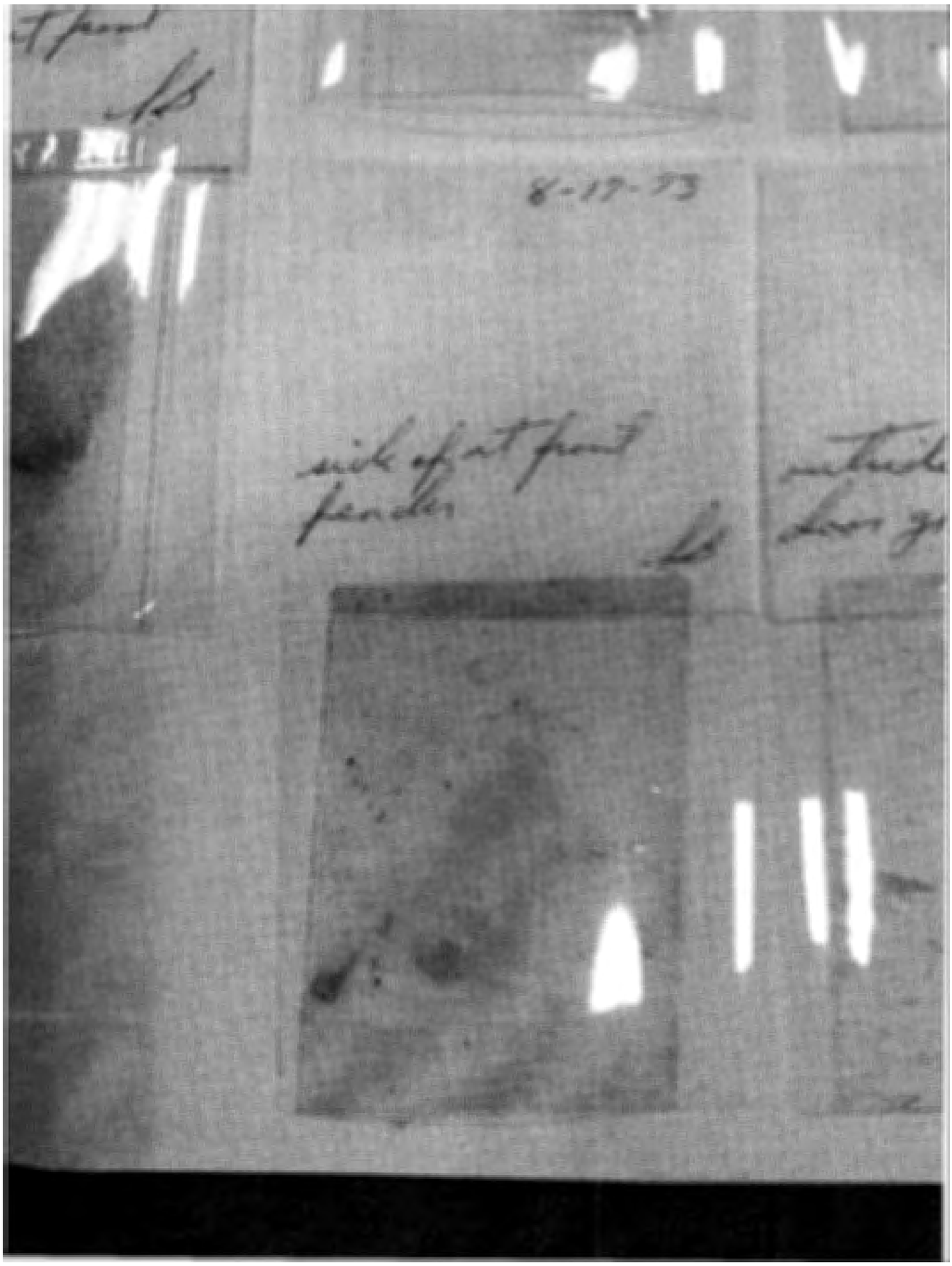
23

8-17-73

23
lbs

at front edge of
hood
lbs.

6-17-73


8-17-73
side of rt front fender
outside door

7-93

8-17-93

t

outside - left front

left - g

lb

door glass

lb

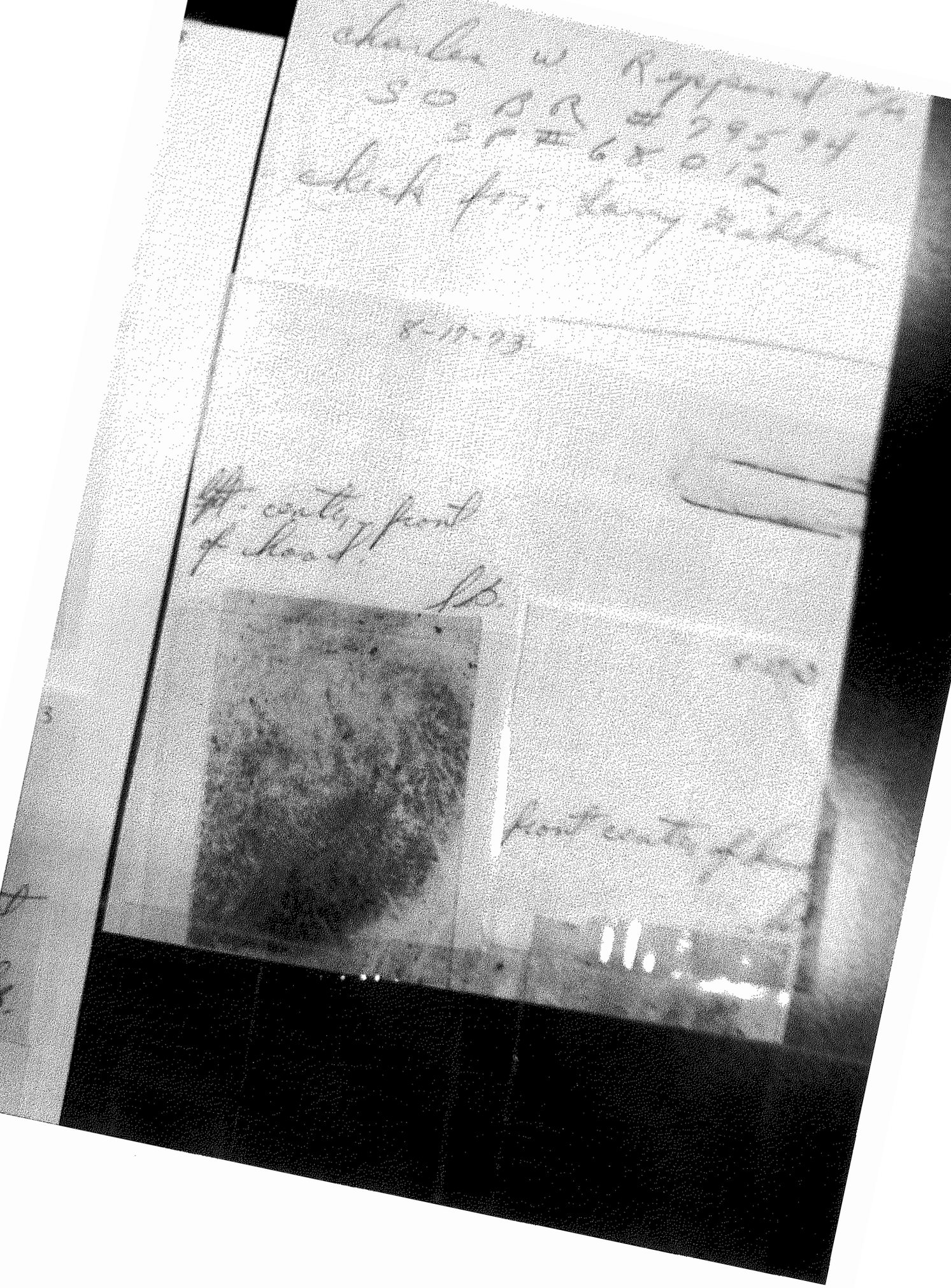
of ho

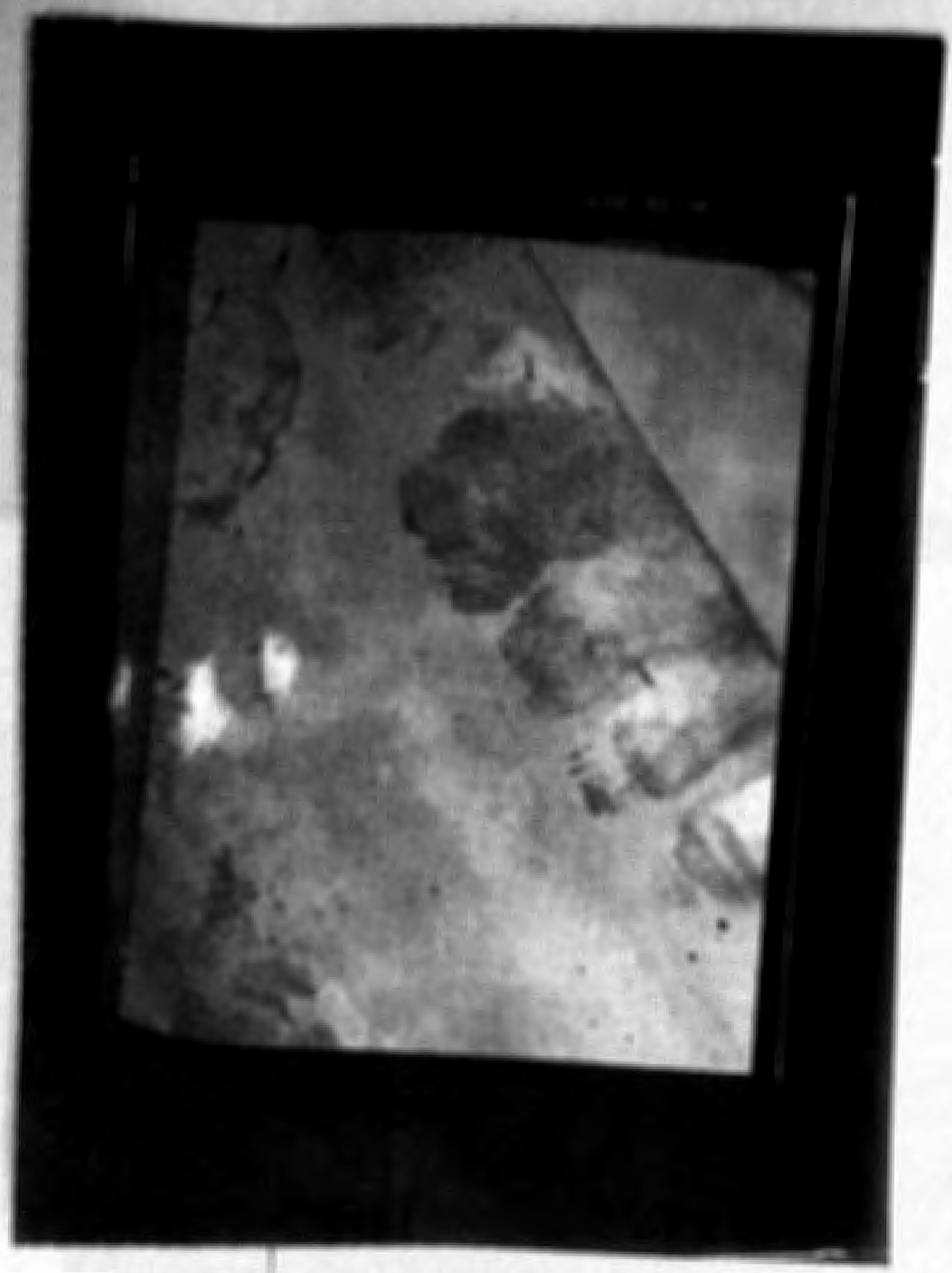
8-17-73

-73

left. center. front
of head

lab.





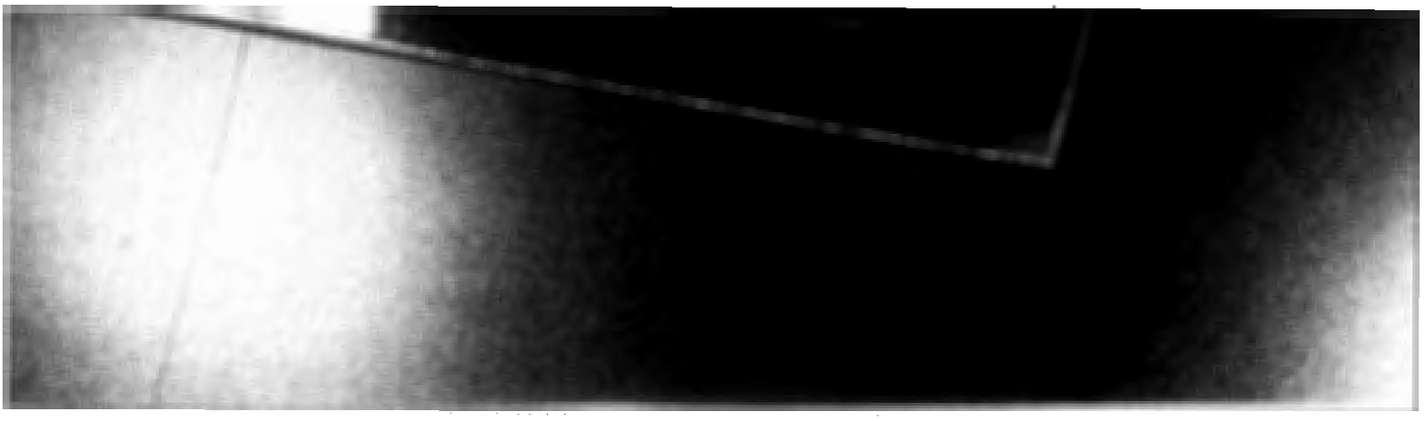
KODAK SAFETY FILM

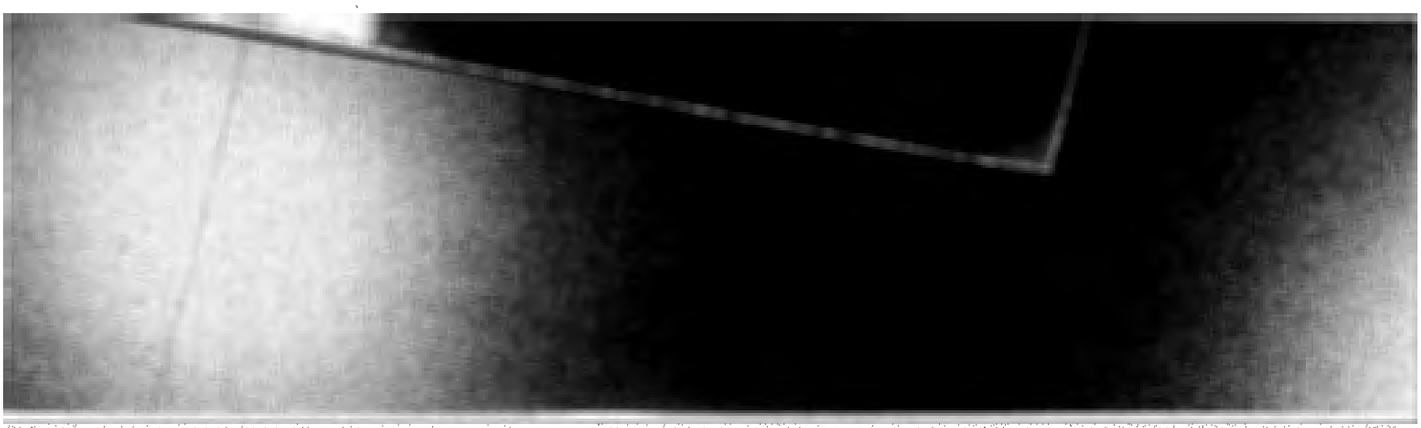
STATE OF LOUISIANA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE POLICE

1 CONTACT EACH

SGT BAXTER

KODAK DESIGN FILM





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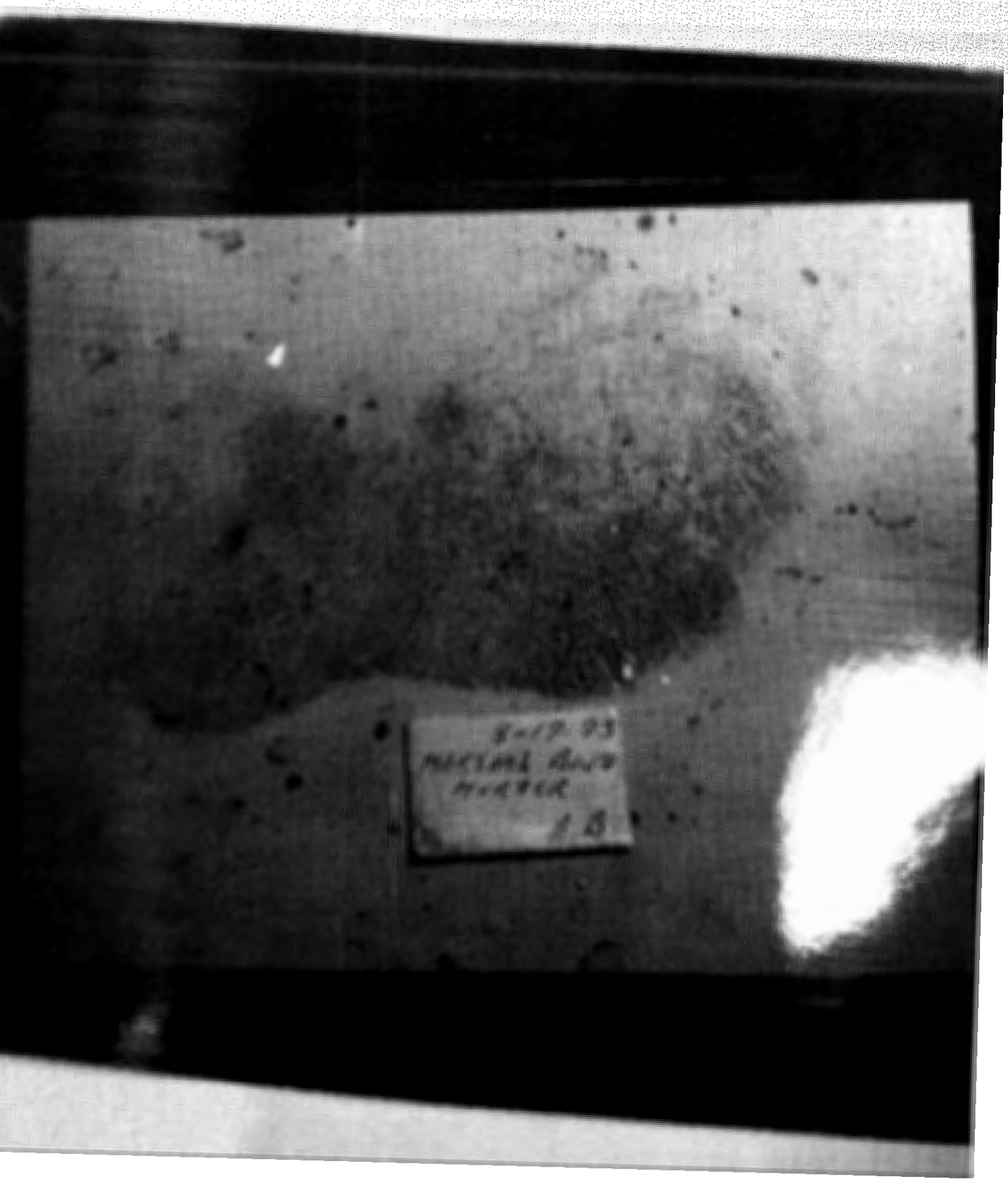
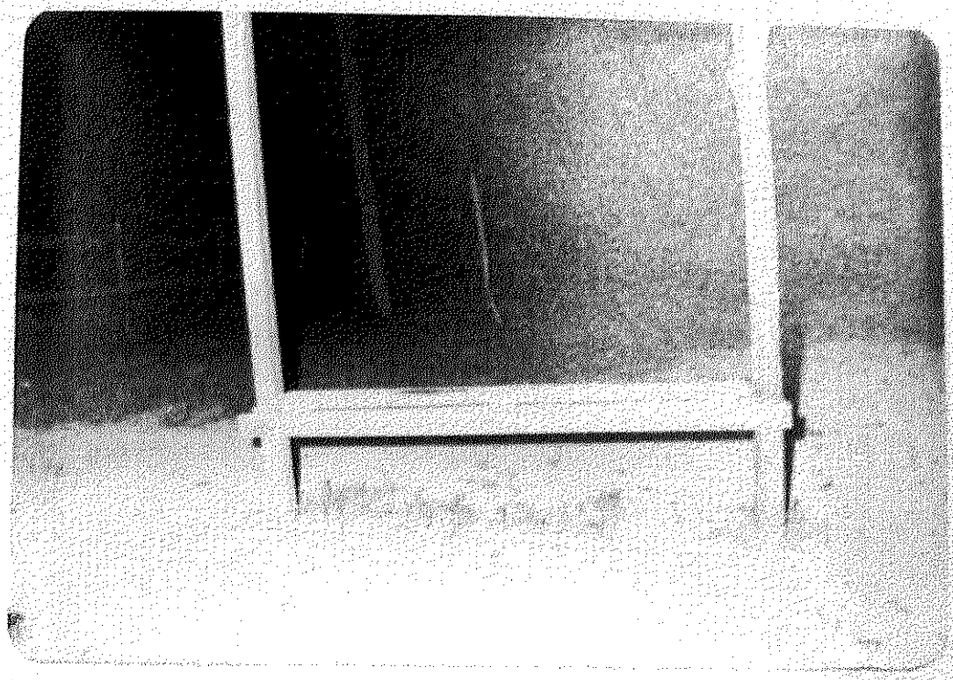
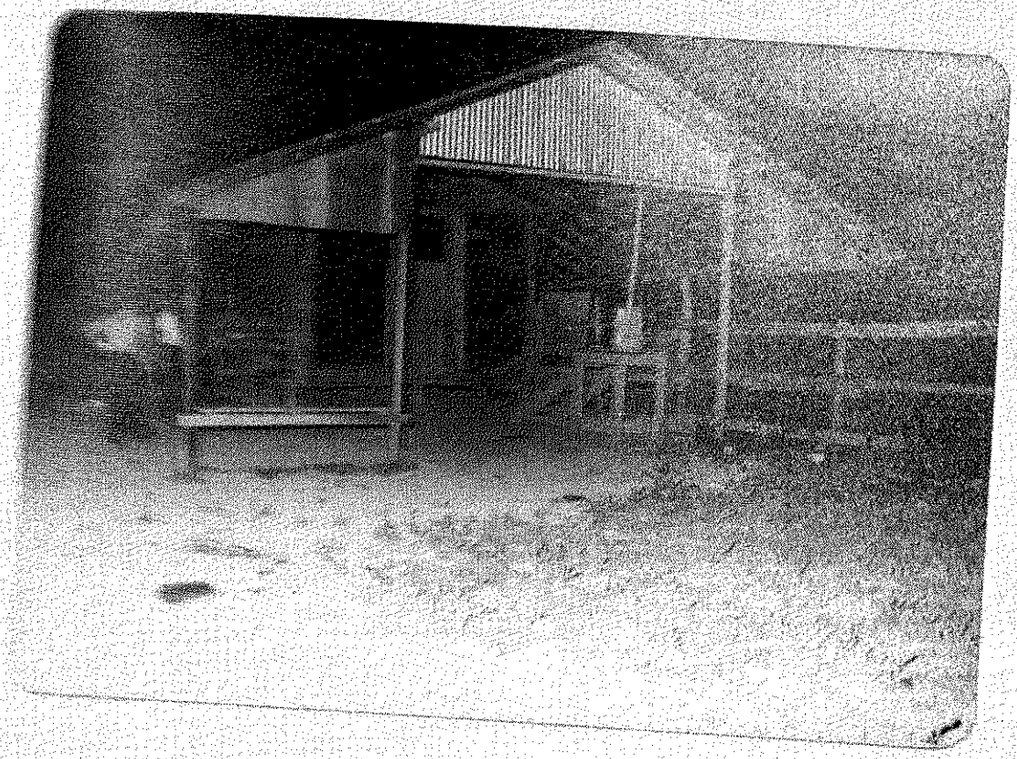
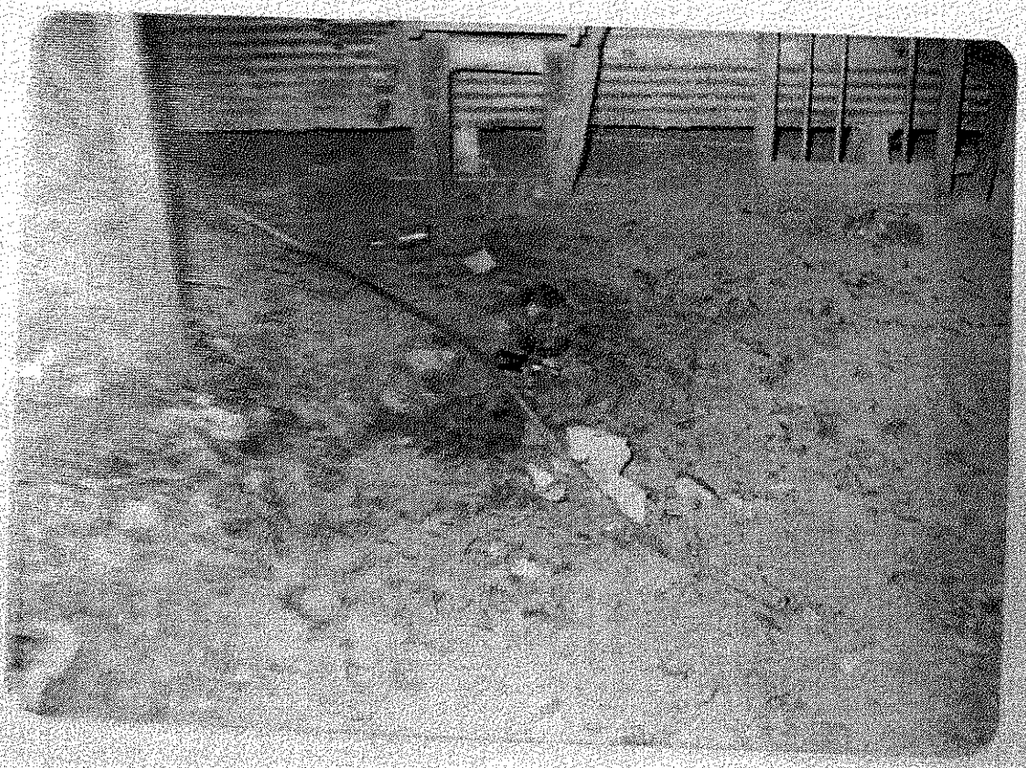
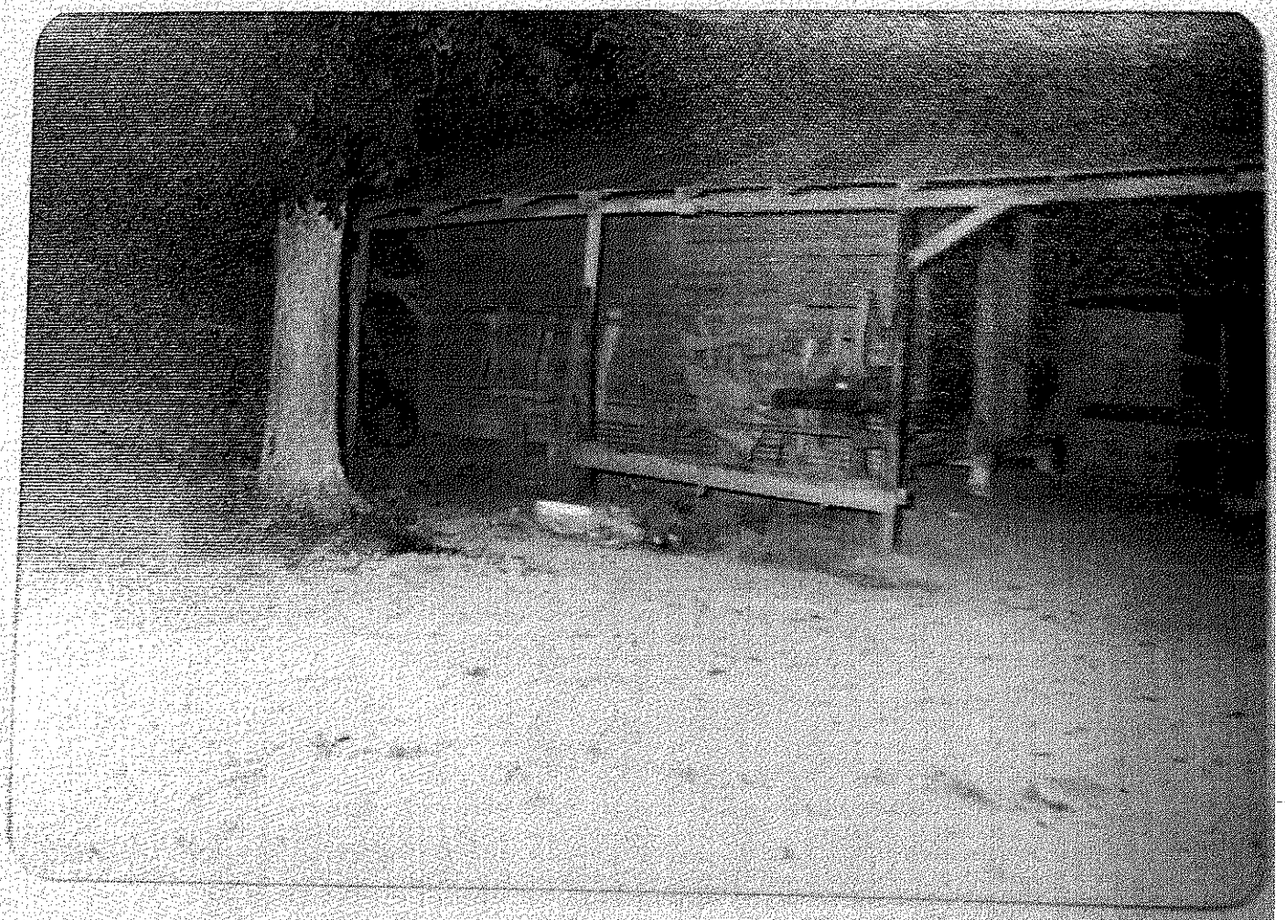
MICLONE Quad
MICROCR
1B

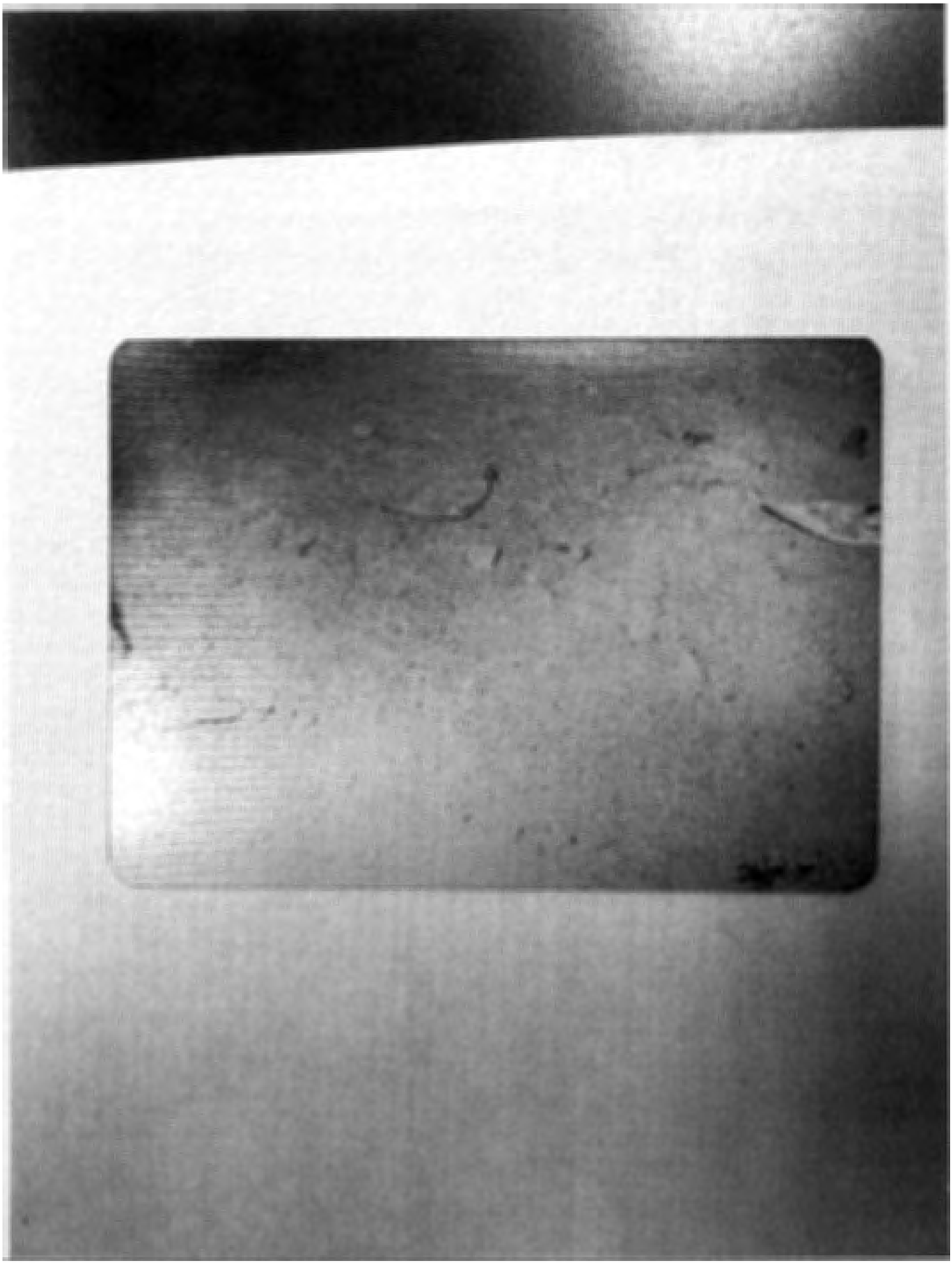

8-17-93
MATERIAL AND
WEATHER
A B











AFFIDAVIT

PARISH OF CATAHOULA

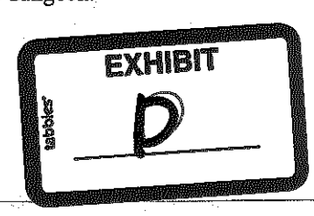
STATE OF LOUISIANA

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the aforesaid Parish and State, personally came and appeared:

Ronald G. Thomas

who, after being duly sworn, did depose and state the following:

1. I am a competent person of the full age of majority and provide this information based on my own personal knowledge.
2. I was an inmate at the East Baton Rouge Parish Prison in February of 1975 and met Kenneth Whitmore while I was there.
3. While I do not recall the exact date, I remember that Kenny got in a fight with another inmate. I could not see the fight because I was already housed in the dungeon, but I could hear the fight happening.
4. The dungeon is where the guards would send inmates for punishment.
5. The guards brought Kenny from the fight directly into the dungeon. Kenny had a head injury when he came to the dungeon. To the best of my knowledge, he did not receive medical attention for his head injury while in the dungeon.
6. The dungeon was a very small room. It did not have any beds. It also did not have a toilet. We were forced to use the bathroom in front of all of the other inmates in the room. The bathroom was just a hole in the middle of the floor.
7. I do not remember exactly how many people were in the room, but I do remember that there were so many men that I was unable to sit down.
8. We were all naked in the dungeon because the guards made us take off all of our clothes.
9. There was no light in the dungeon.
10. We would take turns breathing near the door because the air was fresher there.
11. While in the dungeon, the guards brought us breakfast and dinner, but I did not eat because there was no place to go to the bathroom except for the hole in the middle of the floor.
12. The conditions of the dungeon impacted my physical and mental health. For instance, I lost a lot of weight because I did not eat while I was in the dungeon. It was also very hard to sleep while housed in the dungeon.
13. The dungeon was a very violent place.



14. While Kenneth and I were in the dungeon, a person from the District Attorney's office came to get him.

15. I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 30, 2014

Harrisonburg, Louisiana

By: Ronald G. Thomas
Ronald Thomas

SWORN TO AND SUBSCRIBED before me this 30th day of July, 2014.

Janice C. Little
Notary Public

JANICE C. LITTLE
EX-OFFICIO NOTARY ID # 134937
STATE OF LOUISIANA
CATAHOULA PARISH
My Commission Expires at Death

AFFIDAVIT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the aforesaid Parish and State, personally came and appeared:

Warren Hebert

who, after being duly sworn, did depose and state the following:

1. I am a competent person of the full age of majority and provide this information based on my own personal knowledge.

2. In February 1975, I was employed as an Assistant District Attorney for the Parish of East Baton Rouge.

3. Around that time, I participated in taking recorded statements from Mr. Kenneth Whitmore regarding the Marshall Bond murder.

4. Before I took Mr. Whitmore's recorded statement, Mr. Whitmore spoke with Ossie Brown.

5. To my Knowledge Ossie Brown was the first person to get an incriminating statement from Mr. Whitmore.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 23rd, 2014

Baton Rouge, Louisiana

By: Warren Hebert

SWORN TO AND SUBSCRIBED before me this 23 day of July, 2014.

Emily Posner Notary No. #138634

Notary Public

My Commission is for life.

EXHIBIT E

AFFIDAVIT
STATE OF IDAHO
BONNER COUNTY

Before the undersigned, a duly commissioned officer of the laws of Idaho, on this 22nd day of July, 2014, personally appeared James E. Shelledy, who having been first duly sworn, did depose and say:

1. My name is James E. Shelledy. I was born on November 11, 1942. I am writing this statement about the contents of my May 18, 2012 and October 29, 2012 Freedom of Information Act requests to the Federal Bureau of Investigation.

2. I am a professional in residence on the faculty of the Manship School of Mass Communication at Louisiana State University, and the Director of the school's Unsolved Civil Rights Era Murders Project.

3. On May 18, 2012, I made my original request to the Federal Bureau of Investigation (FBI) under the Freedom of Information Act (FOIA) for any responsive documents related to the death of Milton Leon Scott in Baton Rouge, Louisiana.

4. The FBI indicated that the files in question were stored at the National Archives and Records Administration.

5. Therefore, on October 29, 2012, I directed my second request to the National Archives and Records Administration for responsive FBI documents related to the death of Milton Leon Scott.

6. The National Archives and Records Administration then released 726 pages on January 4, 2013 that were stored under FBI Case File 42-HQ-381166.

7. Within this file are numerous pages that discuss the late Ossie Brown, former District Attorney of East Baton Rouge Parish, including his relationship with the Ku Klux Klan and the Sixth District Anti-Community Association.

8. Upon her request, on May 17, 2014, I emailed to Louisiana licensed attorney Emily Posner a scanned copy of the documents from this FOIA request that were related to Ossie Brown.

9. Attached is a true and correct copy of the documents produced by the FBI that contained information about Ossie Brown that I sent to Ms. Posner.

FURTHER AFFIANT SAYETH NOT.

James E. Shelledy

Affiant's Signature

On this 22 day of July, 2014, before me personally appeared James E. Shelledy, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that he executed it as his free act and deed.

Stephanie Allen

Notary Public
State of Idaho, County of Bonner
My Commission Expires 8/13/2018

STEPHANIE G. ALLEN NOTARY PUBLIC STATE OF IDAHO

EXHIBIT F

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

Asso. Dir.
Asst. Dir.:
Admin.
Comp. Syst.
Ext. Affairs
Files & Com.
Gen. Inv.
Ident.
Inspection
Intell.
Laboratory
Plan. & Eval.
Spec. Inv.
Training
Legal Coun.
Telephone Rm.
Director Sec'y

TO : Mr. Cleveland

DATE: 9/18/73

FROM : J. B. Engelstad

SUBJECT: MILTON LEON SCOTT (DECEASED)
DESERTER MATTER

The purpose of this memorandum is to report results of a meeting held at 5 p.m. on 9/17/73 in the Office of the Assistant Attorney General (AAG) Henry E. Petersen, Criminal Division. The meeting was held at the request of United States Attorney (USA) Douglas M. Gonzales, Middle District of Louisiana, and concerned the action of the East Baton Rouge Parish local grand jury which is hearing testimony regarding this matter, which relates to the 7/18/73 incident wherein Scott was fatally shot by one of two Agents as they were conducting a deserter investigation.

The grand jury has requested that our investigative reports concerning this case be made available and it also, through the local prosecutor, Ossie B. Brown, indicated a desire to have New Orleans Special Agent in Charge Donald W. Moore, Jr., testify as to training afforded Bureau Agents on arrest procedures.

USA Gonzales recommended that SAC Moore be authorized to testify but that he not be restricted in his testimony to training on arrest procedures. He felt it would be in the Government's interest to allow SAC Moore to respond to any questions which the grand jury may have concerning this case and not necessarily restrict his testimony to training. USA Gonzales also recommends that a copy of the investigative reports be made available.

REC-9 42-38166-68

AAG Petersen and USA Gonzales were advised that the Bureau recommended that SAC Moore be allowed to testify as outlined above and that the investigative reports be made available to the grand jury.

22 SEP 25 1973

1 - Mr. Cleveland
1 - Mr. Mintz
1 - Mr. Walsh
1 - Mr. Jenkins
1 - Mr. Gebhardt
1 - Mr. Engelstad
1 - Mr. Connolly

EX-103

CONTINUED - OVER

RC/JBE:mfy (8)

Zulu_001943

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

AUG 13 1973

TELETYPE

NR004 NO PLAIN NITEL

9:59 TO: DIRECTOR, FBI (42-381166)

FROM: SAC, NEW ORLEANS (89-129) (P)

MILTON LEON SCOTT, AKA (DECEASED); WILLIAM B. WOOD, DELBERT W. HAHN, SPECIAL AGENTS OF THE FBI - VICTIMS, AFO, OO: NEW ORLEANS.

(RE NEW ORLEANS TELETPYE 8/7/73.

(ON 8/10/73, USA DOUGLAS M. GONZALES, MDLA, BATON ROUGE, LA., ADVISED HE HAS BEEN IN CONTACT WITH DISTRICT ATTORNEY OSSIE BROWN OF EAST BATON ROUGE PARISH, LA., WHO HAS INFORMED GONZALES THAT THE GRAND JURY WOULD BEGIN TO HEAR TESTIMONY ON 8/16/73 IN THE MATTER INVOLVING THE SHOOTING OF MILTON LEON SCOTT. BROWN HAD ADVISED THAT AGENTS HAHN AND WOOD WOULD NOT BE NEEDED ON 8/16/73 AND THAT BROWN HAD NOT DECIDED WHETHER HE WOULD REQUEST THE AGENTS TO APPEAR BEFORE THE GRAND JURY. BROWN RELATED, HOWEVER, THAT THE GRAND JURY COULD ON ITS OWN DECIDE IF THEY WANTED THE

END PAGE ONE

REC-32 42-381166-249
EX-103
AUG 16 1973

Dir.
Asst. Dir.:
Admin.
Comp. Syst.
Files & Com.
Gen. Inv.
Ident.
Inspection
Intell.
Laboratory
Plan. & Eval.
Spec. Inv.
Training
Legal Coun.
Cong. Serv.
Corr. & Crm. Research
Press Off.
Telephone Rm.
Director Sec'y

UNIFORM CR. REP.

AUG 24 1973

Zulu_001944

AGENTS TO TESTIFY. IN ANY EVENT, THE AGENTS WOULD NOT APPEAR BEFORE THE GRAND JURY PRIOR TO 8/27/73.

LATE ON THE AFTERNOON OF 8/10/73, SUBPOENAES WERE RECEIVED AT THE BATON ROUGE RESIDENT AGENCY ORDERING THE APPEARANCE OF SA'S HAHN AND WOOD TO APPEAR BEFORE THE GRAND JURY ON 8/16/73. MR. GONGALES WAS IMMEDIATELY NOTIFIED AND ON 8/13/73, MR. GONZALES RELATED THAT HE HAS BEEN IN CONTACT WITH DISTRICT ATTORNEY BROWN REGARDING THE RECEIVING OF THESE SUBPOENAES FOR SA'S WOOD AND HAHN. BROWN HAS INFORMED GONZALES THAT THE SUBPOENAES FOR HAHN AND WOOD HAD ERRONEOUSLY BEEN ISSUED AND SERVED, AND THAT USA GONZALES SHOULD INFORM SA'S HAHN AND WOOD TO DISREGARD THESE SUBPOENAES.

BUREAU WILL BE KEPT ADVISED OF FUTURE DEVELOPMENTS IN THIS MATTER.

END MESSAGE

KK

FEDERAL BUREAU O INVESTIGATION
COMMUNICATIONS SECTION

NR016 NO PLAIN

547PM NITEL 11 19 73 PHJ

NOV 19 1973

TO DIRECTOR (42 381166)

TELETYPE

FROM NEW ORLEANS (42 19141) 1PG

MILTON LEON SCOTT AKA SSAN 439 84 4639 FUDE AFO FAG SSA

RE BUREAU O 1 DATED 11 15 73 AND NEW ORLEANS NITEL TO BUREAU 9-27 73

OSSIE C BROWN DISTRICT ATTORNEY EAST BATON ROUGE PARISH TELEPHONICALLY CONTACTED NEW ORLEANS OFFICE TODAY AND ADVISED THAT THE EAST BATON ROUGE PARISH GRAND JURY RETURNED A NO TRUE BILL IN CAPTIONED MATTER ON MURDER MANSLAUGHTER AND NEGLIGENT HOMICIDE CHARGES THE NO TRUE BILL APPLIES TO BOTH SA DELBERT W HAHN AND SA WILLIAM B WOOD THIS TELEPHONE CALL WAS VERIFIED THROUGH ASSISTANT DISTRICT ATTORNEY TONY GRAFFIA EAST BATON ROUGE PARISH BY SA EARL R PETERSEN

END MESSAGE

MAH FBIHQ ACK FOR TWO

CLR AND TU

REC-66 42-381166-78

17 NOV 27 1973

56 DEC 5 1973

September 20, 1973

Director
Federal Bureau of Investigation

Henry E. Petersen
Assistant Attorney General
Criminal Division

HEP:CWB:PRB:km

State Grand Jury investigation at Baton Rouge, Louisiana, regarding the shooting death of Milton Leon Scott by Special Agents of the FBI

On September 17, 1973, representatives of the FBI met with attorneys of the Criminal and Civil Divisions for the purpose of determining the Government's position with respect to the request of a Baton Rouge, Louisiana Grand Jury that FBI reports concerning the captioned matter be provided to the grand jury and that Special Agent in Charge Donald Moore be permitted to testify before that grand jury. At this meeting, United States Attorney Douglas Gonzales, Middle District of Louisiana, advised the grand jury desired to question Special Agent Moore only on the nature and extent of the training given to FBI agents in effecting the apprehension of deserters. Mr. Gonzales expressed the view that the FBI reports sought by the grand jury, along with Mr. Moore's testimony, could strengthen the Government's position that Special Agents Hahn and Wood were properly acting within the scope of their official duties in attempting to apprehend Milton Leon Scott as a military deserter.

It is recommended that under the circumstances of this case, Special Agent Moore be allowed to testify concerning the training given to FBI agents in the techniques of arrests and apprehensions and that he also be permitted to respond to other questions which are directly relevant to the case at hand and which are

matters which he, as a supervisory FBI agent, could be properly expected to have knowledge. Steps will be taken by this Division through the office of United States Attorney Gonzales to insure that District Attorney Ossie Brown is aware of the limitations upon Mr. Moore's authority to testify and that he will not under any circumstances be permitted to testify concerning FBI internal policies or procedures. It is also considered appropriate that Mr. Moore provide a copy of the FBI reports in this matter to the grand jury and that such reports be made a part of the grand jury proceedings so that their confidentiality is protected, along with all other evidence provided to the grand jury, by the jury's rules of secrecy. The Civil Division concurs in this recommendation.

Zulu_001948

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

SEP 13 1973

TELETYPE

Assoc. Dir.
Asst. Dir.:
Admin.
Comp. Syst.
Files & Com.
Gen. Inv.
Ident.
Inspection
Intell.
Laboratory
Plan. & Eval.
Spec. Inv.
Training
Legal Coun.
Cong. Serv.
Corr. & Crm. Research
Press Off.
Telephone Rm.
Director Sec'y

NR005 NO CODE

1:51PM IMMEDIATE 9-13-73 SAH

TO DIRECTOR (42-381166)

FROM NEW ORLEANS (89-129) 4P

MILTON LEON SCOTT, AKA (DECEASED); WILLIAM B. WOOD; DELBERT W. HAHN, SPECIAL AGENTS, FEDERAL BUREAU OF INVESTIGATION - VICTIMS. AFO.

RE NEW ORLEANS TELCALL TO BUREAU INSTANT.

U.S. ATTORNEY DOUGLAS GONZALES, MIDDLE DISTRICT OF LOUISIANA, ADVISED THAT IN ADDITION TO TESTIMONY OF SA DELBERT W. HAHN AND SA WILLIAM B. WOOD, HE KNOWS THE FOLLOWING INDIVIDUALS HAVE APPEARED BEFORE THE GRAND JURY TO DATE, HOWEVER, THIS MAY NOT BE ALL INCLUSIVE:

DR. HYPOLITE LANDRY, CORONER, EAST BATON ROUGE PARISH, LOUISIANA;

IDA MAE TRIPLETT AND HER DAUGHTER, (FNU) TRIPLETT, BOTH NEIGHBORS OF SUBJECT;

REC. 40 42-381166-70

CURTIS D. BUHLER; CHARLES MIXON AND LILTON WAYNE BRADLEY, ALL WHITE MALES, EMPLOYED BY DEPARTMENT OF SANITATION, CITY OF BATON ROUGE;

END PAGE ONE

4 SEP 21 1973

MRS. MILTON SCOTT AND HER MOTHER, (FNU) GRANT;

SGT. JAMES RUSHING, DETECTIVE DIVISION, EAST BATON ROUGE PARISH SHERIFF'S OFFICE.

USA GONZALES HAD ADVISED THAT THE GRAND JURY IS INTERESTED IN A COPY OF THE ENTIRE FBI REPORT IN THIS MATTER.

I RECOMMEND THAT CONSIDERATION BE GIVEN TO MAKING AVAILABLE TO THE GRAND JURY A COPY OF OUR REPORT WHICH MIGHT HELP CLARIFY QUESTIONS THAT THE GRAND JURY MAY HAVE IN THIS CASE. FURTHER, IT WOULD SHOW THAT WE HAD NOTHING TO HIDE AND THAT OUR INVESTIGATION WAS ABOVE BOARD, PROBATIVE AND THOROUGH.

FILES OF THE NEW ORLEANS OFFICE CONTAIN THE FOLLOWING SUCCINCT SUMMARY CONCERNING DISTRICT ATTORNEY OSSIE BLUEGE BROWN:

CONFIDENTIAL SOURCES HAVE REPORTED HE WAS CLOSELY ASSOCIATED WITH THE KU KLUX KLAN (KKK) IN BATON ROUGE AREA AND ATTENDED SOME KLAN MEETINGS. HE SERVED AS ATTORNEY FOR MANY KLAN MEMBERS AND AS ATTORNEY HANDLING LEGAL MATTERS FOR THE KLAN. BROWN WAS

END PAGE TWO

Zulu_001950

REPORTEDLY ROBED SPEAKER AT SIXTH DISTRICT ANTI COMMUNIST CHRISTIAN ASSOCIATION (ORIGINAL KNIGHTS OF THE KU KLUX KLAN) MEETING ON FIBRUARY TWENTYTHREE, SIXTYEIGHT ATTENDED BY FORTY TO FORTY-FIVE ROBED KKK MEMBERS WHERIN HE, BROWN, PRAISED THE KKK, STATED THEY SHOULD NOT BE AFRAID OF THE FBI, SHOULD NOT COOPERATE WITH THE FBI AND THAT THEY WOULD HAVE NO TROUBLE WITH FBI UNLESS THEY COMMITTED ACTS OF VIOLENCE. BROWN REPORTEDLY WAS ASSOCIATE OF CARLOS MARCELLO AND HAD PLAYED CARDS WITH HIM. HE WAS REPORTED TO BE AN ATTORNEY FOR EDWARD GRADY PARTIN, TEAMSTER UNION OFFICIAL IN BATON ROUGE, WHO WAS CONVICTED IN USDC, ATLANTA, GEORGIA IN 1973 ON A FIVE COUNT INDICTMENT CHARGING EXTORTION IN VIOLATION OF TITLE 18, SECTION 1951, USC, AND WAS SENTENCED ON 4-13-73 TO SEVEN YEARS CUSTODY OF ATTORNEY GENERAL.

NEW ORLEANS FILES CONTAIN NO SUBSTANTIVE INFORMATION CONCERNING RICHARD E. CHAFFIN, HOWEVER, IT IS TO BE NOTED THAT CHAFFIN WAS FORMERLY AN ASSISTANT DISTRICT ATTORNEY FOR

END PAGE THREE

ORLEANS PARISH DISTRICT ATTORNEY, JIM GARRISON, WHO IS CURRENTLY UNDER INDICTMENT AND TRIAL IS NO PROGRESS.

BUREAU WILL BE KEPT ADVISED OF DEVELOPMENTS.

END

DKS FBI HQ CLR

SPECIAL INVESTIGATIVE DIVISION 8/14/73

The attached teletype pertains to the incident at Baton Rouge, Louisiana, on 7/18/73 in which two New Orleans Agents fatally shot Milton Leon Scott after Scott attacked the Agents while they were conducting investigation to locate an individual subsequently determined to have assumed Scott's identity.

According to the teletype, U. S. Attorney (USA) at Baton Rouge had been in contact with the District Attorney for East Baton Rouge Parish, Louisiana, who informed the USA that the grand jury would begin hearing testimony on 8/16/73 in the matter involving the shooting of Scott. District Attorney advised Agents would not be needed on 8/16/73 and he had not decided whether to request their appearance before the grand jury. He pointed out that the grand jury could, of its own accord, request Agents to testify but, in any event, they would not need to appear before the grand jury before 8/27/73.

Subpoenaes were received for Agents Hahn and Wood on 8/10/73 and when USA was advised, he contacted the District Attorney who informed him the subpoenaes had been erroneously issued and served and the Agents should disregard them. New Orleans has been instructed to keep Bureau immediately advised of pertinent developments.

1 - Mr. Gebhardt
1 - Mr. Mintz
1 - Mr. Herington

WJG:mfy
(7)

WGC WVC

FD-36 (Rev. 5-22-64)

FBI

Date: 8/2/73

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: Director, FBI (42-381166)

FROM: SAC, New Orleans (42-19141)

RE: MILTON LEON SCOTT, aka.
DESERTER; AFO; FAG; SSA

Enclosed for the Bureau's information is copy of letter addressed to me from Chief Judge HERBERT W. CHRISTENBERRY, U. S. District Court, New Orleans, Louisiana.

Judge CHRISTENBERRY's letter has been acknowledged by me.

ENCLOSURE

2 - Bureau (Encl. 1)
1 - New Orleans
DWM:jam
(3)

REC-4 42-381166-47
EX-112

3 AUG 6 1973

Approved: _____ Sent _____ M Per _____
OCT 1 1973 Special Agent in Charge

ZuRu_001954

CHAMBERS
HERBERT W. CHRISTENBERRY
UNITED STATES DISTRICT JUDGE
NEW ORLEANS, LA. 70130

July 27, 1973

Mr. Donald W. Moore, Jr.
Special Agent in Charge
Federal Bureau of Investigation
701 Loyola Avenue
New Orleans, Louisiana 70150

Dear Mr. Moore:

I am very much dismayed by the attacks being made on the Bureau and its agents by irresponsible individuals growing out of the Scott shooting.

It is my privilege to have been in close communication with agents of the Bureau since 1937 when I became Assistant United States Attorney, and also to have met Mr. Hoover several times. I can say without reservation that the Bureau embodies the finest group of men that I know and it is inconceivable to me that any of your agents would harm anyone unnecessarily. It is obvious that the traducers are motivated by political considerations. While they requested an investigation, without awaiting such, they reached and expressed their own conclusions.

I trust that the Bureau will recognize that these people are merely attempting to make political capital of an incident in which the agents were merely performing their duty.

Sincerely,

Herbert W. Christenberry
UNITED STATES DISTRICT JUDGE

HWC/ls

62-381166-47
ENCLOSURE

No. 59832

SUPREME COURT OF THE STATE OF LOUISIANA

Volume No. I OF II

DUPLICATE

Filed 5/6/82 19

Clerk Supreme Court of Louisiana

DUPLICATE

DUPLICATE

STATE OF LOUISIANA

Plaintiff and APPELLEE

VERSUS

KENNY WAYNE WHITMORE

LAW LIBRARY
LOUISIANA STATE UNIVERSITY

SUPREME COURT OF LOUISIANA
FILED MAY - 5 1977
Deputy Clerk

Defendant and APPELLANT

APPEAL FROM

The NINETEENTH (19th) Judicial District Court for the

Parish of EAST BATON ROUGE, LA.

No. 5-75-8614 HON. DOUGLAS M. GONZALES
Judge

HON. OSSIE BROWN, DISTRICT ATTORNEY BY: Lennie F. Perez, Assistant
District Attorney, Baton Rouge, La. Counsel for PLAINTIFF & APPELLEE

James F. Abadie and Joseph P. Brantley, IV
666 South Foster Dr. 918 Government Street
Baton Rouge, La. 70896 Baton Rouge, La. 70802
Counsel for DEFENDANT & APPELLANT

PORT A1941

DUPLICATE

59832

EXHIBIT G

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MINUTES OF COURT

WEDNESDAY, July 21, 1976

The Nineteenth Judicial District Court, Criminal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614

VS. : Charge: Second Degree Murder & Armed

KENNY WAYNE WHITMORE : Robbery. The Court ex proprio motu ordered

.....: that a notice of arraignment returnable August 5, 1976 at 9:30 a.m. be sent to the accused, his attorney, Mr. James Abadie and the District Attorney.

THURSDAY, August 5, 1976

STATE OF LOUISIANA : No. 5-75-8865 A

VS. : Charge: Armed Robbery - Two Counts.

KENNY WAYNE WHITMORE, et al : These matters came before the Court ex proprio

.....: motu. Present in court: the accused and his counsel, Mr. James Abadie; and Mr. Robert H. Hester, Assistant District Attorney.

The Court ordered Mr. Michael Cavanaugh, previously appointed co-counsel to assist and aid Mr. Abadie in the representation of the accused, relieved as co-counsel in this matter and any other pending matters against the accused. The Court ordered that Mr. Cavanaugh be notified thereof. In lieu thereof, the Court ordered that Mr. Joseph P. Brantley, IV be appointed as co-counsel to aid and assist Mr. Abadie in the representation of the accused inthis matter and any other pending matters against the accused. Mr. Brantley to be notified of the appointment, be sent a certified copy of the bill of information , to be notified of the previously assigned trial date in this matter of August 31, 1976 at 10:00 a.m., and be notified that counsel for the accused has until August 16, 1976 to file pretrial motions.

TUESDAY, August 31, 1976

The Nineteenth Judicial District Court, Criminal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8865A

VS. : Charges: Armed Robbery - Two Counts.

PERRY LEE PAYNE : These matters came on for trial pursuant to
KENNETH WAYNE WHITMORE : previous assignment. Present in court:
.....:

Mr. Donald Phelps, counsel for Perry Lee Payne, and Mr. Michael Cavanaugh co-counsel for Perry Lee Payne; Mr. James Abadie, counsel for Kenneth Wayne Whitmore, and Mr. Joseph P. Brantley, IV, co-counsel for Kenneth Wayne Whitmore; and Mr. Lennie Perez, Assistant District Attorney.

Motion for Continuance previously filed herein and supplemented this date by counsel for Kenneth Wayne Whitmore, Mr. Joseph P. Brantley, IV, was granted by the Court over the objection of the State.

On motion of the Assistant District Attorney, trial in this matter was reassigned for September 27, 1976 at 10:00 a.m.; both counsel and co-counse for each accused was notified in open court; notice to go to both accused in the Parish Jail.

Hearing on pretrial motions was assigned for September 13, 1976 at 3:00 p.m.; both counsel and co-counsel for each accused was notified in open court; notice to go to both accused in the Parish Jail.

SEPTEMBER 16, 1976

The Nineteenth Judicial District Court, Criminal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : Charge: First Degree Murder. This

KENNETH WAYNE WHITMORE : matter came before the Court for hearings
.....: on Motion to Supress Oral and Taped Confessions and Evidence Gained Therefrom, Motion for Severance, Motion for Oyer, and Motion for Bill of Particulars. Present in court: the accused, his counsel, Mr. James Abadie; and Mr. Lennie Perez, Assistant District Attorney.

By consent of counsel the hearing on the Motion to Supress Oral and Taped Confessions and Evidence Gained Therefrom was laid over for hearing on September 22, 1976 at 11:00 a.m.; all parties were notified in open court.

Then the Motion for Severance was next taken up. The Court ruled this matter is moot insofar as the Motion to Sever is concerned by virtue the State's re-indictment of the accused separately from his co-defendant.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : The Motion for Bill of Particulars was

KENNETH WAYNE WHITMORE : next taken up. Counsel for the accused

.....: informed the Court that the defense was satisfied with the State's answer to the bill of particulars previously filed herein, therefore, the Court ruled the State's answers sufficient. The Motion for Oyer was next taken up. Counsel for the accused informed the Court that the defense was satisfied with the State's answer to the Motion for Oyer previously filed herein. Therefore, the Court ruled the State's answer sufficient.

WEDNESDAY, September 22, 1976

The Nineteenth Judicial District Court, Criminal Section 1, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA No. 5-76-8865 A

VS. : Charge: Armed Robbery (Two Counts).

KENNETH WAYNE WHITMORE : This matter came on for hearings on Motion

. . . . . .: to allow Defendant to Appear in Civilian Dress, Motion to Supress Lineup, Motion to Supress Physical Items, Motion to Sever, Motion to Supress Out of Court Identification, Motion for Oyer, Motion for Bill of Particulars and Motion to Supress Confession. Present in court: the accused, his counsel, Mr. James Abadie, co-counsel, Mr. Joseph Brantley, IV; and Mr. Lennie Perez, Assistant District Attorney.

First the Motion for Oyer and Motion for Bill of Particulars was taken up. Counsel for the accused informed the Court and the Assistant District Attorney that he was satisfied with the answers to the motion for Oyer and motion for bill of particulars previously filed herein. Whereupon, the Court ruled the answers good and sufficient.

Next the Motion to Supress out of Court identification was taken up. On motion of counsel for the accused, the Court ordered sequestration of all witness in this matter. Evidence was introduced and the matter laid over for the introduction of additional evidence in limine on the trial date.

Next the Motion to Supress Physical Items Seized was taken up. Evidence was introduced in behalf of the defense, the matter argued by counsel for the state and counsel for the accused, and the matter submitted to the Court. Whereupon the Court, for oral reasons assigned, granted the motion to supress physical items seized to the extent, and the extent only, that the items seized as a result of the waiver (rolls of coins), are supressed.

STATE OF LOUISIANA : No. 5-75-8865 A

VS. : The motion to Sever was next taken up.

KENNETH WAYNE WHITMORE : The Motion to Sever was argued by counsel for

.....: the State and counsel for the accused and submitted to the Court. Whereupon the Court denied the motion to sever. Counsel for accused noted an assignment of error.

Counsel for the accused moved to defer the motion to supress confession in limine at trial, the Court granted the motion.

The accused was remanded to the custody of the Sheriff pending further disposition of this matter.

FRIDAY, October 29, 1976

The Nineteenth Judicial District Court, Criminal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : Charges: Second Degree Murder and Armed

KENNETH WAYNE WHITMORE : Robbery. These matters came on for ruling

. . . . . .: on the Motion to Supress Oral and Taped Confession and Evidence Gained Therefrom on motion of the State and counsel for the accused. Present in court: the accused and his counsel, Mr. James F. Abadie, and his co-counsel, Mr. Joseph P. Brantley, IV; and Mr. Lennie Perez, Assistant District Attorney.

The Motion to Supress Oral and Taped Confession and Evidence Gained Therefrom was submitted to the Court by counsel for the accused and the Assistant District Attorney on evidence heard before Judge Elmo Lear, a copy of which testimony was supplied to this Court. The Court, for oral reasons assigned, denied the motion. Counsel for the accused objected to the Court's ruling and noted an assignment of error.

The accused was remanded to the custory of the Sheriff pending his release on bond or further disposition of this matter.

WEDNESDAY, November 3, 1976

The Nineteenth Judicial District Court, Crimonal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : Charges: Second Degree Murder; Armed

KENNETH WAYNE WHITMORE : Robbery. These matters came on for trial pur-

. . . . . .: suant to previous assignment.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : Present in court: the accused and his counsel,

KENNETH WAYNE WHITMORE : Mr. James Abadie, and his co-counsel, Mr. Joseph

. . . . . : P. Brantley, IV; and Mr. Lennie Perez, Assistant District Attorney.

On joint motion of counsel for the State and the accused, trial in this matter was passed until Wednesday, November 4, 1976 at 8:30 a.m.; notice was handed to the accused and both of his counsel in open court.

The Court instructed the members of the jury venire for the week beginning November 2, 1976 for Section I that they were dismissed until 10:00 a.m., November 4, 1976 at which time they were to report back to this Section of Court.

The accused was remanded to the custody of the Sheriff pending his release on bond or further disposition of this matter.

THURSDAY, November 4, 1976

The Nineteenth Judicial District Court, Criminal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : Charges: Second Degree Murder and Armed

KENNETH WAYNE WHITMORE : Robbery. These matters came on for trial

. . . . . : pursuant to previous assignment. Present in court: the accused and his counsel, Mr. James Abadie, and his co-counsel, Mr. Joseph P. Brantley, IV; and Mr. Lennie Perez, Assistant District Attorney.

On motion of counsel for the accused, Mr. Joseph P. Brantley, IV, the Court ordered the members of the jury venire for the week beginning November 2, 1976 to retire to the hall. Out of the presence of the jury venire, to the Court alone, counsel for the accused filed a written Motion for Continuance. The Court fixed the Motion for Continuance for hearing instanter. Evidence was presented, the matter was argued by counsel and submitted to the Court. The Court, for oral reasons assigned, granted the Motion for Continuance and ordered trial in these matters passed and reassigned for January 3, 1977 at 10:00 a.m.; notice was handed to the accused and both of his counsel in open court.

All witnesses were excused until further notice.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : The accused was remanded to the custody

KENNETH WAYNE WHITMORE : of the Sheriff pending his release on bond or

. . . . . : further disposition of these matters.

The members of the jury venire for Section I for the week beginning November 2, 1976 were returned to the courtroom. The Court thanked the members thereof for having reported during the week and instructed them that they were dismissed for the remainder of the week.

MONDAY, January 3, 1977

The Nineteenth Judicial District Court, Criminal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614 Charge: Second Degree Murder and Armed

VS. : Robbery. This matter came on for trial

KENNETH WAYNE WHITMORE : pursuant to previous assignment. Immediately

. . . . . : prior to scheduled trial, a pre-trial conference was held. Present at conference were: Mr. James Abadie and Mr. Joseph Brantley, IV, counsel for the accused; and Mr. Lennie F. Perez, Assistant District Attorney. At this conference the Court inquired of all parties whether or not there were any motions pending and as yet not disposed of. All attorneys assured the Court that all motions had been disposed of. Attorneys for the defendant and for the State both advised the Court that they were both ready for trial.

The trial of this case was begun. The accused was present in Court, represented by counsel, Mr. James Abadie and Mr. Joseph Brantley, IV. The State was represented by Mr. Lennie F. Perez, Assistant District Attorney.

At 11:50 a.m., upon instructions from the Court, the Clerk produced in open court the list containing the names and the box containing the numbers of the members of the jury venire for Section I for the week beginning Monday, January 3, 1977, from which the following persons were selected, sworn, and empaneled to serve as jurors in this case:

1. Marian C. Stow
2. Glenda W. Colbert
3. Rhonda A. Trahan
4. Susan R. Joffrion
5. Mildred G. Maruschak
6. Kathleen D. Rosso
7. Jim Duplantier
8. John H. Emanuel
9. Rebecca P. Badon
10. Colin D. Fletcher
11. Lenora White

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : At this time the jury venire for Section I

KENNETH WAYNE WHITMORE : having been exhausted, a recess was declared and

. . . . . : a Court bailiff was ordered to go into the hallways and/or street and bring tales jurors into court. This having been accomplished, Court reconvened. The jury was brought into the courtroom; the polling thereof waived by counsel for the accused and for the State. Three persons were brought into the courtroom and gave their names to the bailiff. The said names were placed in the jury box and from the three names the following persons were selected, sworn and empaneled to serve as jurors in this case:

12. Mark Hoychick

Alternate Jurors:

1. Charles McCue
2. Debra Harrison

At 5:35 p.m., Court was adjourned for the night after the Court had instructed the members of the jury that they were free to go their separate ways for the night but that they were not to discuss the case with anyone, nor allow anyone to discuss it with them and that they were not to read, look at, or listen to anything concerning the case in the newspaper, on television or on the radio.

The accused was remanded.

TUESDAY, January 4, 1977

The Nineteenth Judicial District Court, Criminal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : HONORABLE DOUGLAS M. GONZALES ASSUMED THE BENCH

KENNETH WAYNE WHITMORE : AND THE FOLLOWING:

. . . . . : Charge: Second Degree Murder and Armed Robbery. The trial of this case was resumed. The accused was present in Court, represented by counsel, Mr. James Abadie and Mr. Joseph Brantley, IV. The State was represented by Mr. Lennie Perez, Assistant District Attorney. In limine, the Court stated that the second alternate juror, Debra Harrison, had advised the Court that she is not qualified as a juror in that she is not eighteen years of age and the court excused her from jury service. There were no objections by counsel for the State or for the accused, and this trial was proceeded with one alternate juror.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : The defense counsel stated to the Court that the

KENNETH WAYNE WHITMORE : defense elects to proceed with a verdict

. . . . . : requiring a ten out of twelve vote under the provisions of the Louisiana constitution of 1974.

At 10:30 a.m. the jury was brought into the courtroom; the polling thereof waived. The Court read instructions to the jury on the manner in which the case would be tried, during which time, upon instructions by the Court, the Clerk read the bill of indictment and the plea of the accused to the jury. Opening statements were then made by the Assistant District Attorney and by Mr. Joseph Brantley, IV, defense counsel.

The introduction of evidence was begun, and at 1:05 p.m. the Court declared a recess for lunch after instructing the members of the jury that they were not to discuss the case with anyone, nor allow anyone to discuss it with them. court reconvened at 2:05 p.m., the accused being present in Court, represented by counsel. The jury was brought into the courtroom; the polling waived. The introduction of evidence was resumed and continued until 4:50 p.m., at which time Court was adjourned for the night after the Court had instructed the members of the jury that they were free to go their separate ways for the night but that they were not to discuss the case with anyone nor allow anyone to discuss it with them and that they were not to read, look at, or listen to anything concerning the case in the newspaper, on television or on the radio.

The accused was remanded.

WEDNESDAY, January 5, 1977

The Nineteenth Judicial District Court, Criminal Section 1, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : HONORABLE DOUGLAS M. GONZALES ASSUMED THE BENCH

KENNETH WAYNE WHITMORE : AND THE FOLLOWING:

. . . . . : Charge: Second Degree Murder and Armed Robbery. The trial of this case was resumed. The accused was present in court, represented by counsel, Mr. James Abadie and Mr. Joseph Brantley, IV. The State was represented by Mr. Lennie Perez, Assistant District Attorney. The defense counsel filed in open court a written motion to reopen and/or have reconsideration of motion to supress evidence.

STATE OF LOUISIANA : No. 5-75-8614 A

VS. : The matter was argued by counsel and submitted.

KENNETH WAYNE WHITMORE : Whereupon, for oral reasons assigned, the Court

. . . . . : denied the motion. To which ruling of the Court, counsel for the accused noted an assignment of error.

At 11:45 a.m., the jury was brought into the courtroom. Upon the motion of defense counsel, the Court polled the jury by asking each member if he or she had discussed this case with anyone or allowed anyone to discuss it with them and whether or not they had gained any information about this case from the newspaper, television, or on the radio. Each member of the jury replied in the negative to the questions asked by the Court. The introduction of evidence was begun and at 12:35 p.m. a recess was declared for lunch after the Court had instructed the members of the jury that they were not to discuss the case with anyone, nor allow anyone to discuss it with them.

Court reconvened at 1:45 p.m., and the introduction of evidence was continued until 5:12 p.m., at which time Court was adjourned for the night after the Court had instructed the members of the jury that they were not to discuss the case with anyone, now allow anyone to discuss it with them and that they were not to read, look at, or listen to anything concerning the case in the newspaper, on television or on the radio.

The accused was remanded.

THURSDAY, January 6, 1977

The Nineteenth Judicial District Court, Criminal Section 1, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614

VS. : THE HONORABLE DOUGLAS M. GONZALES ASSUMED THE

KENNETH WAYNE WHITMORE : BENCH AND THE FOLLOWING MATTERS:

. . . . . : Charge: Second Degree Murder and Armed Robbery. The trial of this case was resumed. The accused was present in Court, represented by counsel, Mr. James Abadie and Mr. Joseph Brantley, IV. The State was represented by Mr. Lennie Perez, Assistant District Attorney. At 11:35 a.m. the jury was brought into the courtroom; the polling thereof waived by counsel for the accused and for the State. The introduction of evidence was begun and continued until 12:25 p.m., at which time a recess was declared for lunch after the Court had instructed the members of the jury that they were not to discuss the case with anyone, nor allow anyone to discuss it with them.

STATE OF LOUISIANA : No. 5-75-8614

VS. : At 1:42 p.m. Court reconvened. The accused

KENNETH WAYNE WHITMORE : was present in Court, represented by counsel.

. . . . . : The jury was returned to the courtroom; the polling thereof waived by counsel for the accused and for the State. The introduction of evidence was resumed and concluded. The case was argued to the jury by counsel for the accused and for the State, and the Court charged the jury as to the law applicable in the case.

At 4:50 p.m. the twelve jurors retired to deliverate. At this time the Court thanked Mr. Charles McCue, the alternate juror in this case, for se-ving in this case and Mr. McCue was finally discharged.

At 5:15 p.m. the jury returned to the courtroom; the polling thereof waived by counsel for the accused and for the State. The defense counsel waived the presence of the accused at this time. The jury through its foreman requested of and received further instructions from the Court.

At 5:20 p.m., the jury again retired to deliverate. Court reconvened at 6:40 p.m., the accused being present in Court, represented by counsel. The jury was returned to the courtroom; the polling thereof waived; and through its foreman rendered the following verdict: "As to Count I, Guilty; as to Count II, Guilty. (sgd.) Mark Terrance Hoychick, Foreman." Upon instructions from the Court, the Clerk then polled the members of the jury by asking each member, "Mr./Ms. (name), is that your verdict?" Ten of the twelve members of the jury replied in the affirmateive, and two of the twelve members of the jury replied in the negative.

The Court ordered the verdict filed, thanked the members of the jury for serving in this case, and all were finally discharged. The Court ordered a presentence investigation on the accused and deferred sentencing pending receipt of the presentence report.

The accused was remanded to the custody of the Sheriff to await sentencing.

THURSDAY, MARCH 3, 1977

The Nineteenth Judicial District Court, Criminal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614

VS. : THE HONORABLE DOUGLAS M. GONZALES ASSUMED THE

KENNY WAYNE WHITMORE : BENCH AND THE FOLLOWING:

. . . . . : Charges: Second Degree Murder and Armed Robbery. The Court ex proprio motu ordered that this matter be set for

STATE OF LOUISIANA : No. 5-75-8614

VS. : sentencing on March 14, 1977, at 9:30 a.m.;

KENNETH WAYNE WHITMORE : send notice to the accused; his counsel, and

. . . . . : the District Attorney.

MONDAY, March 14, 1977

The Nineteenth Judicial District Court, Criminal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614

VS. : THE HONORABLE DOUGLAS M. GONZALES, JUDGE, ASSUMED

KENNY W. WHITMORE : THE BENCH WHEN THE FOLLOWING MATTER WAS TAKEN UP:

. . . . . : Charges: Second Degree Murder and Armed Robbery. The accused, having previously been tried by jury and found guilty, was present in court, represented by counsel, Mr. James Abadie. The accused was brought before the bar for sentencing. The Defendant stated to the Court his age is twenty-three years. Whereupon, the Court sentenced the accused as to Count I, second degree murder, to be confined to the custody of the Department of Corrections for life. The Court sentenced the accused as to Count II, armed robbery, to be confined to the custory of the Department of Corrections for a period of ninety-nine (99) years. This sentence to be served without benefit of probation, parole, or suspension of sentence. The sentences imposed herein for Count I and Count II are to run consecutively with each other.

The Court advised the accused of his right to appeal from this conviction. Whereupon, counsel for the accused gave oral notice to the Court of his intention to appeal. The Court granted an order of appeal herein to the Honorable State Supreme Court of Louisiana returnable April 4, 1977. The Court granted defense counsel until March 25, 1977, within which to perfect his assignments of error.

The accused was remanded to the custody of the Sheriff.

INDICTMENT

THE NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

KENNY WAYNE WHITMORE

5314 ROLLINS ROAD

ZACHARY, LOUISIANA

NO. 5-75-8614A SEC. I

BILL OF INFORMATION
FILED JULY 21, 1976

Filed 7/21, 19 76
Judy Francisco
Deputy Clerk

Second Degree Murder & Armed Robbery

A TRUE BILL

By: Prescott Murphy
PRESCOTT MURPHY, FOREMAN

On this the 21st day of July, 19 76, the Grand Jury of the Parish of East Baton Rouge, State of Louisiana, charges that on or about the fifteenth (15th) day of August, 19 73, at and in the Parish, District and State aforesaid, Kenny Wayne Whitmore

committed the offense of Second Degree Murder & Armed Robbery

as defined by Louisiana Revised Statute Title 14, Article 30.1 & 64

COUNT 1

in that he committed second degree murder of Marshall Bond,

COUNT 11

He, while armed with a dangerous weapon, robbed Marshall Bond,

contrary to the law of the State of Louisiana and against the peace and dignity of the same.

SO#15483
ATTY: JAMES ABADIE
Co-CNSL apt 8-5-76
Joseph P. Brantley IV

ASSISTANT DISTRICT ATTORNEY
Nineteenth Judicial District of Louisiana
Lennie F. Perez

ORIGINAL

3-30-77 - On motion of Cnsl. for acc. return date for appeal was extended by the Court to 4/23/77

STATE OF LOUISIANA	:	NO. 5-75-8614, SECTION I
	:	19TH JUDICIAL DISTRICT COURT
VERSUS	:	PARISH OF EAST BATON ROUGE
KENNY WAYNE WHITMORE	:	STATE OF LOUISIANA

VERDICT OF THE JURY
FILED JANUARY 6, 1977

We the jury find the defendant, Kenny Wayne Whitmore,

as to Count I guilty - (murder - 2d degree)

as to Count II guilty (armed robbery)

DATE: January 6, 1977

Mark Terrance Heydrick
FOREMAN

FILED
JAN 6 1977
Jo Ann Corella
DEPUTY CLERK

STATE OF LOUISIANA

VERSUS

KENNY WAYNE WHITMORE

NUMBER 5-75-8614 A SECTION I

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

MOTION TO REOPEN AND/OR HAVE RECONSIDERATION OF MOTION TO SUPPRESS EVIDENCE

FILED JANUARY 5, 1977

NOW INTO COURT through undersigned counsel comes Kenny Wayne Whitmore, defendant herein, who with full reservation of any and all rights to further answer, plead, except and/or move by way of response to the indictment filed herein, respectfully moves this Honorable Court to allow the taking of additional evidence and/or complete reconsideration of his prior motion to suppress inculpatory statements previously filed herein on the following grounds to-wit:

1.

By prior motion for bill of particulars, defendant requested that he be advised as to whether the State was in possession of any written or taped inculpatory statements which may have been made by the defendant. In response thereto the State advised defense that they were in possession of two recorded inculpatory statements, the first having been made on February 25, 1975 from 2:45 a.m. until 3:16 a.m., the second having been made on February 26, 1975 from 10:40 a.m. until 10:51 a.m.

2.

Defense has recently learned that in connection with two polygraph examinations given the defendant, additional tape recorded statements containing both inculpatory and exculpatory evidence were made and are in the possession of the State. Said recordings have not been made available to defense despite requests. The tapings were recorded on February 25, 1975 from 7:00 p.m. until 9:30 p.m. and February 26, 1975 from 11:46 a.m. until 12:15 a.m.

FILED

JAN 5 1977

Geo. G. Conella

DEPUTY CLERK

1-5-77: denied.
Def counsel noted error

Defendant now shows that the State's failure to properly respond to the motion for bill of particulars filed on behalf of defendant has denied defendant due process of law in his attempt to have suppressed for use herein certain inculpatory statements previously referred to above. Defendant additionally shows that the actions of the State are in direct violation of the decision in U.S. v. Aguris, 96 S.Ct. 2392 (1976).

WHEREFORE defendant prays that he be allowed to file this additional motion, that such be discharged according to law contradictorily with the District Attorney and that after all delays and due proceedings had, that said motion be maintained.

By Attorneys:

COVERT & BRANTLEY
918 Government Street
Baton Rouge, Louisiana 70802

By: _____
JOSEPH P. BRANTLEY, IV

C E R T I F I C A T E

I hereby certify that a copy of the foregoing motion has been hand delivered to Mr. Lennie Perez, Assistant District Attorney.

Baton Rouge, Louisiana this 5th day of January, 1977.

_____
JOSEPH P. BRANTLEY, IV

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

MOTION FOR EXTENSION OF TIME
FILED MARCH 24, 1977

On motion of James F. Abadie, counsel for Kenneth Wayne Whitmore, and upon suggesting to the court that additional time is needed in which to designate in writing those errors which are to be urged on appeal, respectfully requests that the court grant a ten (10) day extension of time.

BY ATTORNEY:

ROY, KIESEL, PATTERSON,
HUDSON & ABADIE

JAMES F. ABADIE
666 South Foster Drive
Baton Rouge, Louisiana 70896
Telephone: 927-9908

ORDER

Considering the above:

IT IS ORDERED, ADJUDGED AND DECREED that a ~~ten (10)~~ twenty (20) day extension of time be granted herein extending said date in which to designate in writing those errors which are to be urged on appeal to the 25th day of April, 1977.

JUDGE, 19TH JUDICIAL DISTRICT COURT

It is ordered that Return Date of Appeal is hereby extended until the 25th day of April for the Criminal Appeals Section of the Clerk of Courts.

FILED
MAR 24 1977
DY. CLERK OF COURT

S/DOUGLAS M. GONZALES

Lora W Cochran

ROY, KIESEL, PATTERSON, HUDSON & ABADIE
669 South Foster Drive
Post Office Box 66444
Baton Rouge, Louisiana 70896
Telephone (504) 927-9908

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

MOTION FOR EXTENSION OF TIME - FILED APRIL 13, 1977

On motion of James F. Abadie, counsel for Kenneth Wayne Whitmore, and upon suggesting to the court that additional time is needed in which to designate in writing those errors which are to be urged on appeal, respectfully requests that the court grant a ten (10) day extension of time.

BY ATTORNEYS:

ROY, KIESEL, PATTERSON, HUDSON & ABADIE

JAMES F. ABADIE
666 South Foster Drive
P. O. Box 66444
Baton Rouge, Louisiana 70896
Telephone: 927-9908

FILED
APR 13 1977
Dawn Oliver
Clerk

ROY, KIESEL, PATTERSON, HUDSON & ABADIE
666 SOUTH FOSTER DRIVE
POST OFFICE BOX 66444
BATON ROUGE, LOUISIANA 70896
TELEPHONE (504) 927-9908

ORDER

Considering the above:

IT IS ORDERED, ADJUDGED AND DECREED that a ten (10) day extension of time be granted herein extending said date in which to designate in writing those errors which are to be urged on appeal to the 22nd day of April, 1977.

Baton Rouge, La., this 15th day of April, 1977.

JUDGE, 19TH JUDICIAL DISTRICT COURT

NOTICE OF APPEAL

19th JUDICIAL DISTRICT CRIMINAL COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

PARRY M. JOHNSON JR., CLERK

H.M. CANNON

NOTICE OF APPEAL
DATED MARCH 14, 1977

CASE NO: 5-75-8614 A

STATE OF LOUISIANA
VS.

KENNY WAYNE WHITMORE

TO:
KENNETH WAYNE WHITMORE
JAMES F. ABADIE, ATTORNEY
JOSEPH P. BRANTLEY, IV, CO-COUNSEL
DISTRICT ATTORNEY
APPEALS SECTION
JUDICIAL ADMINISTRATOR
JOANN CANELLA, REPORTER

DOUGLAS M. GONZALES I
JUDGE PRESIDING SEC

JOANN CANELLA
COURT REPORTER

JANUARY 3, 1977
TRIAL DATE

JANUARY 6, 1977
VERDICT DATE

MARCH 14, 1977
SENTENCE DATE

COUNSEL FOR THE APPELLANT IS GRANTED UNTIL MARCH 25, 1977 TO DESIGNATE IN WRITING THOSE ERRORS WHICH ARE TO BE URGED ON APPEAL.

NOTICE is hereby given that on MARCH 14, 1977, upon motion of defense counsel in the above numbered and entitled cause, an order of appeal was entered granting an appeal, which appeal is returnable to the Supreme Court of Louisiana on APRIL 4, 1977.

Clerk's Office, Baton Rouge, Louisiana, this 14TH day of MARCH 19 77.

Diana S. White
DEPUTY CLERK OF COURT

21

DISTRIBUTION
CRIMINAL RECORD FILE (Appeals Section)

CRIMINAL FORM #25

GETLIEB PRESS - BATON ROUGE

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 1

ASSIGNMENTS OF ERROR No. 1-15
FILED APRIL 22, 1977

The defendant urges on appeal that the trial court committed error when it failed to grant a mistrial on the courts own motion because of the district attorney adverting to confessions and inculpatory statements in his opening statement when the District Attorney stated he deliberately and knowingly made such comments.

The court's ruling is at page 56,57 and 58 of the transcript of the trial held herein on January 3,4,5 & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED
APR 22 1977
Dawn Oliver
Dy. Clerk of Court

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 2

The defendant urges on appeal that the trial court committed error when it failed in the Motion to Supress to rule that the taped statements were inadmissible because of the failure of the state to advise the defendant of the existence of other taped statements made during lie detector tests which would have had an effect on the evidence produced at the hearings on the Motion to Supress.

The court's ruling is at page _____ of the transcript of by minute entry on the Motions to Supress held herein on January 3,4,5, & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED
APR 22 1977
Dawn Oliver
Dy. Clerk of Court

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 3

The defendant urges on appeal that the trial court committed error when it failed in the Motion to Supress to rule that the tape inculpatory statements were inadmissible because of threats, promises inducements and deceptions made to the defendant.

The court's ruling is at page _____ of the transcript of by minute entry on the Motions to Supress held herein on _____, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED

APR 22 1977

Dawn Oliver

Clerk of Court

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 4

The defendant urges on appeal that the trial court committed error when it failed to advise defendants that there were tapes made of statements given by the defendant during polygraph examination.

The court's ruling is at page 185 of the transcript of the trial held herein on January 3,4,5 & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED
APR 22 1977
Dawn Oliver

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 5

The defendant urges on appeal that the trial court committed error when it failed to recuse the District Attorney because of his involvment in the investigation and his participation in the trial as a witness.

The court's ruling is at page 184, 185 and 253 of the transcript of the Motion to Recuse held herein on January 3,4,5 & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRAMTLEY, IV, Trial Attorney

FILED

APR 22 1977

Dawn Oliver

Dy. Clerk of Court

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 6

The defendant urges on appeal that the trial court committed error when it failed to rehear the Motion to Supress because the Motion to Supress does not cover taped statements.

The court's ruling is at page 153 of the transcript of the trial held herein on January 3, 4, 5 & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED

APR 22 1977

Dawn Olivier

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 7

The defendant urges on appeal that the trial court committed error when it did not require the state to lay a foundation outside the presence of the jury for inculpatory statements to be admitted.

The court's ruling is at page 153 of the transcript of the trial held herein on January 3,4,5, & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of January, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED

APR 22 1977

Dawn Oliver

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 8

The defendant urges on appeal that the trial court committed error when it failed to hear the foundation for inculpatory statements out of the presence of the jury because the Motion to Supress covers only written statements and the statements involved were taped statements.

The court's ruling is at page 150,151 of the transcript of the trial held herein on January 3,4,5, & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED

APR 22 1977

Dawn Oliver
Dy. Clerk of Court

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 9

The defendant urges on appeal that the trial court committed error when it did not exclude inculpatory statements because of the lack of voluntariness as well as promises, inducements, deception and/or threats made by the state to the defendant.

The court's ruling is at page 153 of the transcript of the trial held herein on January 3,4,5 & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH B. BRANTLEY, IV, Trial Attorney

FILED

APR 22 1977

Dawn Oliver

Clerk of Court

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 10

The defendant urges on appeal that the trial court committed error when it allowed a bucket found a considerable period of time after the crime at a location a considerable distance away from the area to be introduced into evidence.

The court's ruling is at page 331 and 348 of the transcript of the trial held herein on January, 3,4,5, & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED

APR 22 1977

Dawn Oliver

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 11

The defendant urges on appeal that the trial court committed error when it allowed the District Attorney to inquire into other crimes without proper foundation.

The court's ruling is at page 385 of the transcript of the trial held herein on January 3, 4, 5 & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of January, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED

APR 22 1977

Dawn Oliver
Deputy Clerk of Court

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 12

The defendant urges on appeal that the trial court committed error when it allowed the District Attorney to inquire into particulars of other crimes.

The court's ruling is at page 385 of the transcript of the trial held herein on January 3,4,5 & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED

APR 22 1977

By Clerk of Court

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 13

The defendant urges on appeal that the trial court committed error when it failed to take necessary steps for the protection of potential witness, Anthony Kemp and the failure of the court to order the witness Kemp to testify.

The court's ruling is at page 353 of the transcript of the trial held herein on January 3,4,5 & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED

APR 22 1977

Dawn Oliver

By Clerk of Court

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 14

The defendant urges on appeal that the trial court committed error when it failed to sustain the objection as to the statements of District Attorney in closing argument as to the sufficiency of the evidence and guilt of the accused.

The court's ruling is at page 415-417 of the transcript of the trial held herein on January 3,4,5 &6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED
APR 22 1977
Dawn Oliver

STATE OF LOUISIANA

VERSUS

KENNETH WAYNE WHITMORE

NUMBER 5-758614 CRIMINAL SECTION III, OR
NUMBER 5-758614A, CRIMINAL SECTION III

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ASSIGNMENT OF ERROR NO. 15

The defendant urges on appeal that the trial court committed error when it failed to rehear the Motion to Supress inculpatory statements after the court learned the state failed to reveal the existence of certain taped statements made during polygraph examination of the defendant.

The court's ruling is at page 153 of the transcript of the trial held herein on January 3,4,5 & 6, 1977.

Wherefore, this Assignment of Error was submitted to the trial judge this 22nd day of April, 1977.

JAMES F. ABADIE, Trial Attorney

JOSEPH P. BRANTLEY, IV, Trial Attorney

FILED
APR 22 1977
Dawn Oliver

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CRIMINAL SECTION I

STATE OF LOUISIANA VERSUS KENNY WAYNE WHITMORE	NUMBER 5-75-8614

JURY TRIAL

Monday, January 3, 1977
Tuesday, January 4, 1977
Wednesday, January 5, 1977
Thursday, January 6, 1977

HONORABLE DOUGLAS M. GONZALES,
JUDGE PRESIDING

APPEARANCES:

LENNIE F. PEREZ, ESQ.	FOR THE STATE
JOSEPH P. BRANTLEY, JR., ESQ.	FOR THE DEFENDANT
JAMES ABADIE, ESQ.	FOR THE DEFENDANT

FILED
FEB 28 1977
Dy. Clerk of Court
19th JUDICIAL DISTRICT COURT
BATON ROUGE, LOUISIANA

Reported by:
Jo Ann Canella

I N D E X

STATE WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
Lucille Whithead Bond	63			
James Robinson	69	76		
Doris Hanna	103	105		
Carl Bond	107	116		
Dr. Hypolite T. Landry, Jr.	118			
Lt. Carson Bueto	125	159	223	228
Warren Hebert	162	168	192 237 252	217 241 265
Sgt. Louis Russell	243	247		
Ossie Brown	269	274		
Don Zuelke	285	294		
P. V. Browning	299			
Leon Wales	313	317	339	344
John Womack	333			
DEFENSE WITNESSES:				
Kenny Whitmore	356	370	387	
REBUTTAL:				
John Womack	389	401	406	409

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State rests - 411
Closing arguments - 412 - 446
Charges - 447

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Wednesday, January 5, 1977 - 174 - 350
Thursday, January 6, 1977 - 351- 466

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MONDAY, JANUARY 3, 1977

(Reporter's note: The following is an excerpt of the voir dire examination in which an objection and assignment of error were noted:)

THE COURT: Ladies and gentlemen of the jury venire, I'm going to read to you the qualifications of petit or trial juror. Then I will also read the exemptions from jury duty. Article 401 of the Code of Criminal Procedure says in order to be qualified to serve as a juror -- I ask you to pay attention -- a person must be a citizen of the United States and of this State, who has resided within this parish in which he is to serve as a juror for at least one year immediately preceding his jury service. He must be at least eighteen years of age, be able to read and write and speak the English language and not be under indictment or incapable -- not be under interdiction or incapable of serving as a juror because of a mental or

a physical infirmity and not be under indictment for a felony, nor have been convicted of a felony for which he has not been pardoned. Pursuant to Article 5, Section 33(b) of the Louisiana Constitution of 1974, the Louisiana Supreme Court has adopted as part of its rule, Rule 25, exemption of jurors. It reads in pertinent parts as follows -- this is those people who are exempt from jury duty. Pay attention. If you fall into one of these categories, you may exercise this exemption. One, public officers in the executive, legislative, or judicial branches of the government of the United States or of the State or any subdivision thereof who are actively engaged in the performance of their official duties; two, members in active service in the armed forces of the United States and members of the National Guard of this State while on active duty; three, members of paid fire or police departments of the State of Louisiana, any subdivision thereof, and any Federal law enforcement officers; members of the following groups when regularly and actively engaged in the

practice of their professions: attorneys at law, ministers of religion, chiropractors, physicians, dentists, pharmacists, and optometrists; all persons who are over seventy years of age; next, persons who have served as a grand or petit juror in criminal cases or as a trial juror in civil cases during a period of two years immediately preceding their selection for jury service. Now, these latter items which I have read are exemptions which you may urge, but you may waive these exemptions. Any person may waive his exemption from jury service, but the exemption is personal to him and is not a ground for challenge. So addressing myself to the entire venire, if for some reason you do not meet the qualifications for jurors as I read under Article 401 or you have an exemption under Rule 25, you may step forward individually, one at a time, approach the bench and state your reasons. If you have a valid reason, the Court will excuse you. If not, you'll be asked to take a seat. Any juror who does not meet the qualifications of Article 401 or

has an exemption it wishes to -- he or she wishes to claim under Rule 25 may state that exemption or disqualification at this time.

(Reporter's note: Judson W. Hayes approaches bench and confers with the Court and returns to his seat.)

ABRAHAM D. BARNES, EDWARD I. DECKER, MARIAN C. STOW, JULIUS C. JOHNSON, GLENDA W. COLBERT, JUDSON W. HAYES, RHONDA A. TRAHAN, KATHERINE SMITH, SUSAN R. JOFFRION, DENISE HEBERT FRESINA, CAROLYN BAJOIE, AND JOSEPH R. PORTER, called on voir dire examination, having been first duly sworn, testified as follows:

THE COURT: Would you read the bill please.

(Reporter's note: The Clerk begins to read the bill of indictment.)

MR. BRANTLEY: Judge, I want to enter an objection to the reading of the bill prior to the time the jurors have been selected and empaneled.

THE COURT: Come forward.

(Reporter's note: Defense counsel confers with the Court.)

THE COURT: Objection's overruled.

(Reporter's note: The Clerk reads the bill of indictment.)

BY THE COURT:

Q Addressing the ladies and gentlemen of the prospective jurors, the charge involved in this case has been read to you. It's taken from Section 31.1 of the Louisiana Code, Criminal Code, and it reads as follows: second degree murder is the killing of a human being when the offender had a specific intent to kill or to inflict great bodily harm or when the offender is charged with the perpetration or attempted perpetration of aggravated arson, aggravated burglary, aggravated kidnapping, aggravated escape, armed robbery, or simple robbery, even though he has no intent to kill. Count two of the indictment charges violation of Article 64 of the Criminal Code which defines armed robbery. Armed robbery is the theft of anything of value from the person of another or which is in the immediate control of another by use of force or intimidation while armed with a dangerous weapon. Whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than five years, no more than ninety-nine years, without benefit of probation, parole, or suspension of sentence. Even though I'm addressing these twelve prospective jurors, I ask all the members of the jury panel who have not been called to pay attention to what has just been read and other statements made both by the Court and by defense and State counsel. Addressing the first juror, Mr. Barnes, would you give us your full name, address, and occupation please, sir.

A (Barnes) Abraham Dennis Barnes.

Q Speak loud enough so the Court Reporter and both counsel can hear you, and that's true for all of the prospective jurors who are under what is called voir dire examination.

A Abraham Dennis Barnes.

Q And where do you live, sir?

A 6740 Homewood Drive.

Q What is your occupation?

A Letter carrier.

Q What is that?

A Mail carrier.

Q Mail carrier. All right, Mr. Decker, is it?

A (Decker) Decker.

Q Would you give us your full name, address, and occupation.

A Edward Decker, 5627 Robertson. I'm a service station operator.

Q Miss Stow, would you give us your full name and occupation.

A (Stow) Marian Curtis Stow, 10438 Classique.

THE COURT: Did y'all get that?

MR. PEREZ: I didn't quite understand it. I was waiting to get the occupation.

Q What is your occupation?

A Housewife.

Q Mr. Johnson, would you give us your name, address, and occupation.

A (Johnson) Julius Daniel Johnson, 1460 Acadian West, unemployed.

Q Is it Miss or Mrs.?

A (Colbert) Miss.

Q Miss Colbert.

A Glenda Ann Colbert, 3519 Wenonah, branch coordinator at Fidelity National Bank.

MR. BRANTLEY: Judge, I'm sorry. I didn't hear Miss Stow's occupation -- oh, I'm sorry, Mr. Johnson's occupation.

A (Johnson) I'm unemployed.

Q Miss Colbert, you work at Fidelity National Bank?

A (Colbert) Yes.

Q Mr. Hayes, give us your name, address, and occupation.

A (Hayes) Judson W. Hayes, 3867 Aletha Drive. I'm a plant contract supervisor for Bell Telephone Company here in Baton Rouge.

Q Miss Trahan, is it? Is it Miss or Mrs.?

A (Trahan) Miss.

Q Miss Trahan, will you give us your name, address and occupation?

A Rhonda Ann Trahan, 550 Lee Drive, Apartment 30, teacher.

Q Miss Smith, would you give us your name, address, and occupation.

A (Smith) Katherine Smith, 1420 Bridge Street, unemployed.

Q Miss Joffrion?

A (Joffrion) Susan Joffrion, 11881 Plank Road, Apartment 24. I'm a housewife.

Q Miss or Mrs.?

A (Fresina) It's Mrs. Denise Hebert Fresina.

Q Give us your address and occupation please.

A 3942 Gourrier, Apartment 135. I'm a secretary at Exxon.

THE CLERK: Could you spell your last name for me please.

A F-R-E-S-I-N-A.

A (Bajoie) My name is Carolyn Bajoie. My address has recently been changed to 1949 Chestnut Street. I'm a cashier.

Q Mr. Porter?

A (Porter) My name is Joseph Richard Porter. My address is also changed to 10530 Florida Boulevard, Apartment 424, and I'm a construction estimator.

Q Addressing the members of this prospective panel and the remaining jury venire members, ask you to listen to these statements by the Court. You may be questioned on them individually at a later time. The defendant's name in the case this morning is Kenneth Wayne -- Kenny Wayne Whitmore. You have heard the charge read to you. He's charged with second degree murder of Marshall Bond in count one, and armed robbery of Marshall Bond in count two. I ask each of you -- now, I'm going to ask the question generally to all of you at one time, but each of you must make an individual response. We must note that response in the record. Do any of you have any knowledge of this case? Have you read about it in the newspapers? Have you heard about it on television or radio, or are you familiar with it by any other means? If your answer is yes, I will have to inquire specifically about how you acquired your information. I require that each of you respond to that question. Have you heard anything about this case, Mr. Barnes?

A (Barnes) No.

Q Mr. Decker?

A (Decker) No.

Q Miss Stow?

A (Stow) I read about it in the newspaper.

Q You read about it in the newspaper. Miss Stow, have you read about it to the extent that the information you received would affect in any way your ability to serve as a juror? Have you made up your mind based on what you've read in the paper?

A No.

Q You'll probably be questioned also by the lawyers. They have the right to go into these matters. Mr. Johnson, have you heard anything about the case?

A (Johnson) I read about it in the paper.

Q In your reading about it, have you done enough so that you've made up your mind, or have you made up your mind about the case? Has it affected you in any way?

A Well, not the case . . .

Q You still have an open mind on the matter?

A Not the case in general, but just the idea of being down here.

Q All right, well, I'm sure you'll be questioned on that point. Miss Johnson, have you heard anything about this case before?

A (Colbert) Colbert. No, sir.

Q How about you, Mr. Hayes?

A (Hayes) Best of my knowledge, I don't even know a thing about the case.

Q Miss Trahan?

A (Trahan) No.

Q Each of you have to respond to the general question I ask. Miss Smith?

A (Smith) No.

Q Miss Joffrion?

A (Joffrion) No.

Q Your name's not Hebert anymore? It's what?

A (Fresina) Fresina.

Q I didn't hear it.

A Fresina.

Q Fresina? Mrs. Fresina, have you read or heard anything about this case before?

A Yes, sir.

Q And where did you learn about the case?

A I lived close to the place and read it in the newspaper.

Q By word of mouth or from reading news media accounts?

A Newspaper and word of mouth.

Q Bajoie?

A (Bajoie) No, I haven't heard anything about it.

Q Mr. Porter?

A (Porter) I read about it, but I don't remember any details.

Q This case will be tried by Mr. Lennie Perez, who may or may not be assisted by other prosecutors.

THE COURT: Mr. Perez, do you have anybody else that will be with your office in this case?

MR. PEREZ: Mr. Gibbens, my investigator, will be assisting me but no other attorney.

Q All right, do any of you jurors, prospective jurors, know Mr. Perez, Mr. Gibbens, or the District Attorney in this matter under whose name this prosecution is being brought, rather who is handling the prosecution? Do you have any

personal connections with Mr. Perez or Mr. Brown or Mr. Gibbens? Do you, sir?

A (Barnes) No.

Q Do you, sir?

A (Decker) No.

Q Do you, ma'am?

A (Stow) No.

Q Do you, sir?

A (Johnson) No.

Q Do you, sir?

A (Porter) No.

Q Any of you?

A (All) No.

THE COURT: Let the record reflect that all the jurors responded negatively.

Q Now, again, a general question to all of you which you must each answer. Do any of you know anyone in law enforcement? Are you connected directly or indirectly with people either in the Sheriff's Office or the City Police Department or any other law enforcement agency? Sir?

A (Barnes) I know a policeman.

Q Other than knowing people.

A Oh, no.

Q You know a policeman by his name?

A By his name.

Q You, sir?

A (Decker) Yes, sir. I got a first cousin on the police force, Robert Elton.

Q All right. You, ma'am?

A (Stow) No.

Q You, sir?

A (Johnson) What's that question there again?

Q I'm asking you if you're directly connected with or do you know, personally know, anyone involved in law enforcement, a deputy sheriff, State policeman, City policeman, Federal law enforcement, any law enforcement of any type where you're directly or indirectly connected with or personal acquaintances with anyone in that field of endeavor?

A I've got a personal friend that's a deputy sheriff.

Q All right, how about you, ma'am? Do you have any connections with anyone in law enforcement?

A (Colbert) Only friends.

Q Mr. Hayes?

A (Hayes) No.

Q Miss Trahan?

A (Trahan) No.

Q Miss Smith?

A (Smith) No.

Q Do you, ma'am?

A (Joffrion) I have a friend.

Q You have a friend that's what?

A A deputy sheriff.

Q All right, how about you, ma'am?

A (Fresina) No.

A (Bajoie) No.

Q Mr. Porter?

A (Porter) I have a brother-in-law that's on the City Police; and of course, I know you.

Q The defendant's name is Kenneth Wayne Whitmore. He is being

represented by Mr. James Abadie and Mr. Joseph P. Brantley, IV, also known as Beaver Brantley. Do any of you have any personal acquaintances, acquaintanceship with the defendant or either of his counsel?

A (All) No.

Q None of you?

THE COURT: Let the record reflect that all the witnesses -- prospective jurors answered no.

Q All right, without saying what type of service it was, I'm going to ask you whether you have ever previously sat on a jury. Just say whether you have or have not. I don't want to know whether it's a civil case, and I do not want to know what the verdict was in that case. Any of you prospective jurors, have you ever sat on a jury of any type? You, sir, you have sat on a jury?

A (Hayes) Yes.

Q Did you -- did you tell me you sat on a jury or you were called on the jury panel but did not serve?

A The first time I served as a juror about four years ago; and then the second time which was a year and a half ago, I was called to serve as a juror but after I came up to the stand, I was taken off the . . .

Q Okay, that's juror Hayes, prospective juror Hayes.

A (Joffrion) If you were called, that's not . . .

Q No. My question was have you served on a jury.

A I was called but didn't serve.

Q I just want to know if you've ever served or sat on a jury

before.

A No.

Q You have not?

A No.

Q The matter before this Court is brought by way of a bill of indictment. The bill of indictment is merely a formal manner of accusing a person of a crime in order to bring him to trial. It's only an accusation. Have to ask each of you jurors if you will treat as only an accusation and not as evidence, the bill of indictment in this case, if you are selected as a juror in this case? Will you so treat it? You, sir?

A (Barnes) Yes.

Q Will all of you treat it in that manner?

A (All) Yes.

Q The law provides that every defendant is presumed innocent until he's proven guilty beyond a reasonable doubt. The law does not require a defendant to prove his innocence. The burden is on the State to prove the defendant guilty beyond a reasonable doubt. I ask each of you whether or not you will apply these principles of law if selected. Will you, sir? Will each of you so apply the law?

A (All) Yes.

Q The function of the jury is to determine the facts. The judge instructs you as to the law which applies to the case. You must accept the law as the judge states it. Will each of you agree to do this? You, sir?

A (All) Yes.

Q If selected, you will base your decision solely on the evidence presented in this courtroom, free from any bias or prejudice. Do all of you agree to serve in that fashion if selected?

A (All) Yes.

Q Now, I ask you to search your mind, the background, anything you can remember and state to the Court if there is any reason whatsoever, based on questions I haven't asked, that you may know of of your own why each of you cannot serve as a fair and impartial juror and afford to both sides, both the State and the defense, in this matter a fair and full hearing. Is there any reason that any of you know why you cannot serve as a fair and impartial juror? Yes, ma'am?

A (Joffrion) I -- something like that, I don't really know if I could. I mean, a charge of second degree murder, I don't know if I could -- I don't think I could.

Q It's a personal conviction with you?

A I mean, I just -- I don't know. I don't know if I could say, guilty or not guilty. I don't think I could say either one.

Q Okay. Well, I'm not going to pass any judgment on your statement until you've been examined by both defense and the prosecution.

THE COURT: The Court will tender the witness to the prosecution for further voir dire examination.

BY MR. PEREZ:

Q Mr. Barnes, how long you've been with the Post Office?

A (Barnes) Eight years.

Q You have any children?

A Yes.

Q And how long have you lived here in Baton Rouge?

A Twenty years.

Q Twenty years.

THE COURT: Mr. Perez, would you speak louder and would you answer louder. I want all of the prospective jurors to listen to the questions. You'll probably be asked the same questions.

Q Does the name, Mister Donahue, mean anything to you? Now, this Mister is a first name. It's not a title. It's actually a first name. Mister Donahue, does that name mean anything to you?

A I, I, I can't think of anything right now.

Q Have you ever lived in the Zachary area?

A No further than Scotlandville.

Q Ma'am, how do you pronounce your last name, Bajoie?

A (Bajoie) Bajoie.

Q You stated that you worked as a cashier?

A Yes.

Q Where do you work?

A Globe Supermarket.

Q Where did you go to school, Miss Bajoie?

A Where did I go?

Q Yes.

A McKinley Senior High.

Q Is -- have you lived in Baton Rouge all your life?

A Yes.

Q Are you married?

A No. I'm single.

Q Mr. Decker, I would think that this trial would probably last three days, anyway, and this is not what we call a lockup jury. In other words, you would be allowed, when the Court concludes its business for the day, under instructions from the Judge not to discuss the case with anyone, etc., you would be allowed to go to your homes and ordered to return at whatever time the Judge decides we will start up the next morning. But it's -- I know for a fact it will be impossible to finish the case in one day, today, and I would think a minimum of three days, that we should be able to finish it, in any case, by the end of the week. I was wondering if there was anything -- I know everyone is going to be inconvenienced who has to serve on the jury -- but is there anything that's really urgent and pressing that would prevent you from keeping your mind on the evidence as it comes out during the next three or four days?

A (Decker) No, I don't believe.

Q Okay, Mr. Barnes, how about you?

A (Barnes) No, not really.

Q Miss Stow?

A (Stow) No.

Q Mr. Johnson?

A (Johnson) It all would, man, like 'cause I'm not working, you know; and I need to be out looking for a job.

Q Okay, Mr. Johnson, you had mentioned earlier that you would prefer not to be here at all.

A Right.

Q Now, could you kind of go into that a little bit deeper? I know a lot of us rather not be here, you know. We've just had a good vacation. We'd all rather be at home. But would you tell me why.

A Like I told you, I'm not working and I need to start looking for a job today.

Q Okay, do you have -- other than that, do you have any objection to being involved in a, in the criminal process; that is, the -- being involved in the whole court process by which a person's guilt or innocence is determined?

A Not really 'cause, like, my mind's not on this. My mind's on getting me a job. Like, I ain't going to be thinking, you know, about what's going on if I don't find a job.

Q You don't think that you could devote your attention to the evidence as it comes out?

A No.

Q Miss Colbert, did -- going back to my original question, is there anything that's really so pressing upon you that you couldn't devote your attention?

A (Colbert) No.

Q Mr. Hayes?

A (Hayes) No.

Q Miss Trahan?

A (Trahan) No.

Q Miss Smith?

A (Smith) No.

Q Miss Joffrion?

A (Joffrion) No.

Q Now, Miss Joffrion, you had also expressed some reservations about your ability to sit in judgment in a case of this magnitude.

A With something -- like I said, something like second degree murder, I just don't think I could do it. I mean, I don't think I could say guilty or not guilty.

Q Is it just the magnitude of the decision, too much? Something

you wouldn't want to take on . . .

A Right.

Q Huh?

A It's just too much. I mean, that's a terrible -- I mean, like, if you said guilty and he wasn't guilty and then if you said innocent and he wasn't innocent . . .

Q Do you feel that it would be impossible for you to render either verdict?

A Probably. For something like this, it would be for me.

BY THE COURT:

Q Why is that, Miss Joffrion? Is that an emotional or religious belief with you or . . .

A No. I mean, I just couldn't say for something . . .

Q You understand at the trial evidence is presented; and you, as a juror, would be called to decide the facts of the case. You don't think you'd be able to do that?

A Okay, say that that had happened and say I said innocent. I'd wonder all the time if he was really guilty; or if I said guilty, I'd wonder if he was really innocent.

Q Well, jury duty is a duty imposed on all citizens. Are you saying that it would be difficult and inconvenient for you and therefore you'd not like to serve?

A Not for nothing like this.

Q Because that's not a valid excuse for not serving simply because it's a tough thing to do. It's tough for all of us. I want to know what is the real basis for your desire not to serve. Are you saying you don't want to serve because it's a tough decision?

A No, because . . .

Q Because that decision faces you and all prospective jurors . . .

A No, because something like -- well, what was it -- second degree murder.

Q I don't understand your answer.

A I mean, I just couldn't do nothing like this with murder.

THE COURT: Any further questions?

BY MR. PEREZ:

Q Miss Fresina, going back to my original question, is there anything so pressing that you could not devote your attention to the trial?

A (Fresina) No.

Q Miss Bajoie?

A (Bajoie) No.

Q Mr. Porter?

A (Porter) If it lasted more than a week, I might have some problems. My mother is critically ill.

MR. PEREZ: That's all the questions I have.

THE COURT: You don't expect this trial to last more than a week, counselor.

MR. BRANTLEY: No, sir.

MR. PEREZ: I don't think so.

THE COURT: I think the jurors are entitled to know that to help them answer your questions.

BY MR. BRANTLEY:

Q Miss Joffrion, you've indicated the nature of the charge, the second degree murder charge, upsets you somewhat and you don't know whether you could bring back a verdict of guilty or not guilty.

A I don't think -- I don't -- I just wouldn't want to be involved with that kind of thing.

Q And it's a personal thing, upsetting thing to you?

A That's right.

Q Now, actually being a juror is not quite as difficult as you might see on TV in watching Perry Mason or something like that 'cause the Judge will charge you as to what the law is. He'll tell you what the law is. Now, whether you agree with the law or disagree with the law, it doesn't really matter because you take the law and you apply it to the facts as he gives it to you. So you're not really -- you're pretty well tied in as to what you can do. And what I'm concerned about more than anything, if you're empaneled as a juror, you can look at the facts, begin the -- the burden of proof rests with the State. It's proof beyond a reasonable doubt, beyond a doubt that a reasonable man would have in exercising of his own affairs. So you'd be pretty well convinced, and that's their burden. That in being convinced and taking the law that the Judge will give you, that Judge Gonzales will give you, applying that to the facts that you could, if you were elected to be a juror and chosen to be a juror, would you bring that back?

A Oh, I would.

Q That's really all I needed to know. Now, Mr. Porter, I believe you mentioned the fact that your mother is critically ill.

A (Porter) Yeah. If it lasted more than a week, I would think about it, but she's not expected to die for some time, but she is critically ill.

Q So it wouldn't operate as any particular . . .

A No.

Q Mr. Decker, is this service station you have, do you own it yourself or is that . . .

A (Decker) I operate it for . . .

Q It's a franchise agreement for one of the major oil companies?

A No. It's Food Town Service Centers.

Q Oh, right across from the General?

A Right.

Q Now, in your operation -- how long have you been there?

A Sixteen years.

Q Have you ever been involved with any type of robbery or attempted robbery?

A Several times.

Q And you feel that because of this it would in any way -- and I want you to really think about this, Mr. Decker -- especially people who have been involved in any type of crime, be it a violent crime or be it a nonviolent crime, do you think that it would in any way influence your feeling in this matter?

A I've been wondering about that myself. I don't think it would influence me.

Q Do you have some doubt? Because this is -- like everybody said, this is a very critical case.

A It might, yes.

Q The charges are armed robbery and murder. So it goes one step further from just the armed robbery. But if you feel that you would have any feeling one way or the other, it's

important that you say, and it's nothing to be embarrassed about it.

A Yeah, right. Well, not being actually in the armed robberies, why I really don't know. If I was involved, you know, if I was there personally when it happened, I might could; but I don't think it would influence me.

Q Now, Miss Stow, I believe you mentioned that you had read something about the case before?

A (Stow) Yes.

Q Do you feel that what you read in the newspaper would in any way influence you as being a prospective juror?

A I don't think so.

Q Miss Fresina -- Mrs. Fresina, I'm sorry, I believe you testified or you stated that you had read about the case and heard word of mouth about the case.

A (Fresina) Yes.

Q Now, in hearing word of mouth, was this, was this from people that you know fairly well?

A I know the victim, I guess.

Q You know Marshall Bond?

A I knew -- I know his wife and . . .

Q How old were you when it happened?

A What year was this? '74?

Q I believe '73.

A Seventeen or eighteen.

Q Did you -- were you fairly close to the family?

A Uh, well, his wife was a teacher at the school where I went to, a guidance counselor.

Q Was she your guidance counselor?

A Well, kind of like the whole school's. There's two.

Q Did it upset you when it happened?

A Yes, sir.

Q Do you feel that knowing the family that you can be completely fair and completely impartial?

A I want to think I could.

Q But do you have doubts in your own mind?

A Uh . . .

Q Now, don't be embarrassed to say something like that, really don't, 'cause it's a hard thing to do. I mean, you're trying to block something out of your mind, and there are many things you'll be told to block out of your mind, but if you don't feel in your own conscience that you can do it, for God's sakes, don't do it. And I'm serious about this because to make this decision is going to be something you're going to live with the rest of your life, and you're human, and nobody expects you to make a decision that you can't honestly in good conscience make because you are going to live with it the rest of your life.

A When it happened, I know it was upsetting to the community. If the man is guilty, I would like to see him pay for it, I guess, or to serve his time; and I would hate to think that if he did do it and I let him get away, you know, 'cause I know Mr. Bond.

Q You feel that you can be completely fair and completely impartial?

A Yes, sir, I think if . . .

BY THE COURT:

Q What was your answer?

A I think I can if the facts are all there and I have a serious doubt.

BY MR. BRANTLEY:

Q Well, Miss Fresina, as -- this is Mr. Whitmore. As Mr. Whitmore stands here -- this may be an unfair question to ask you without some more foundation -- do you feel as he stands here this man is guilty or is he innocent?

A I've never seen him before, and I can't say he's guilty or innocent; but, like I say, knowing what happened and I know the feelings at the time, you know, I guess I feel in a way kind of he did do it.

Q Now, let me ask y'all some general questions. I had asked Mr. Decker originally if he had because he's operating a filling station -- I'm sure that everybody's read in the newspaper and heard on television, radio, one time or another, service stations getting robbed, convenience stores getting robbed, Pak-a-Saks, 7-Elevens, things such as this which seem to be a fairly common occurrence in this day and age. Have any one of y'all, and I ask collectively so I won't have to go down and belabor the point, been involved in a violent crime or had a close member of your family or a close friend that has been involved in a violent crime? If you had, you can just indicate it that you have.

A (Decker) Well, I've also -- my sister-in-law got killed here last year because of a ransom.

Q Do you feel like this would affect you at all, Mr. Decker?

A There again, I don't think so.

Q Now, the next question -- again, I'm going to ask y'all this collectively -- is the fact that we have a defendant who is a black man; and regardless of whether he's black or white or nationality or particular religious beliefs, does anybody here feel like this would affect them? And this is not something to be embarrassed about or something that should

upset you if you feel that you have any misgivings because the defendant's black or if the defendant is white, for that matter. Does anybody feel that this will at all affect their feelings?

A (All) No.

Q Now, the question that I asked Miss Fresina, which in a way was an unfair question, got into how the defendant sits before you. He's charged with a crime. The charge was brought by a grand jury indictment, and it doesn't constitute any evidence of the offense, but still, he's here and you're there. Do you feel the fact that Mr. Whitmore is in this courtroom today, that he either committed this crime or he must have done something 'cause he wouldn't be here? Mr. Barnes?

A (Barnes) No.

Q Miss Smith?

A (Smith) No.

Q Miss Trahan?

A (Trahan) No.

Q Mr. Porter?

A (Porter) No.

Q Miss Colbert?

A (Colbert) No.

Q Mr. Johnson?

A (Johnson) I couldn't really say.

Q Miss Stow?

A (Stow) No.

Q Mr. Hayes?

A (Hayes) No.

Q Now, I asked the question a few minutes ago if anybody would have misgivings because the defendant's a black man and would

hold this against him. Conversely, would you tend to be more sympathetic to him because of that? That is also critically important because what we're here for is to pick a jury, select a jury, that is going to give us a just verdict both ways. Does anybody feel the fact that he is black that you would be more sympathetic to him?

A (All) No.

Q Now, Mr. Porter, do you have other than -- I believe you said you were a construction estimator?

A (Porter) Yes.

Q Are you a member of any organizations or clubs?

A I belong to the Baton Rouge Jaycees and also the American Institute of Architects.

Q Mr. Hayes?

A (Hayes) Only my church affiliation.

Q Miss Colbert?

A (Colbert) Only church.

Q Mr. Johnson?

A (Johnson) No.

Q Mr. Johnson, you had indicated to Mr. Perez that you really would rather be out looking for a job than to be here today.

A Right.

Q That's a pretty honest response. Were you aware that you do get paid for jury duty?

A I knew about, you know, what's happening down here, and the money is not enough, you know, to be worth it.

Q And that's really your only drawback about being here?

A And plus I heard a lot about the case.

Q Now, let me ask you questions about both of those. First of all, your main concern is the fact that you'd rather be -- like to be looking for a job . . .

A Right.

Q And you really don't want to be here.

A Right.

Q Now, other than that, you said that you've heard a lot about the case. Now, in hearing about the case, I mean, do you feel one way or the other that that young man is guilty or do you feel that he's innocent?

A Well, right now, I feel like he's innocent.

Q And you've heard a pretty good bit about the case?

A Right.

Q Would you feel that if Mr. Perez puts on evidence to satisfy you, regardless of what you've heard, that he's guilty and you believe in your own mind that he's guilty and you take the law that Judge Gonzales will give you, do you feel that if you're convinced, you could bring back a verdict of guilty?

A Not really.

Q Under, under any circumstances you couldn't do it?

A No.

Q You know a whole lot about the case?

A I don't know anything about it except what I heard and, you know, read.

Q And what you heard makes you believe this man didn't do it?

A Right.

Q Now, we'll have people testify for both the prosecution and the defense. The way the trial goes, Mr. Perez will make his opening statement and then we can either make an opening statement or waive our opening statement. He'll present his case and then if we elect, we'll present a case. We don't have to do anything but just sit and let the entire burden rest on the State. In putting on the testimony, there

will be testimony of professional people as well as lay people. Now, by professional people, I mean police officers and possibly a doctor; and then by lay people, I mean people just of everyday backgrounds that work, that aren't really involved in the legal aspect or the law enforcement aspect of this case. Now, several of you, I believe -- Mr. Barnes, you indicated that you know a policeman, and I believe Mr. Decker indicated he knew a policeman. Mr. Porter, I believe you indicated you knew a policeman. You also, I believe, know Judge Gonzales?

A (Porter) Yes.

Q Do any of you -- more particularly, just addressing the three of you, first of all -- do any of you believe or feel within yourselves that you would believe a police officer or his testimony over the testimony of, say, a lay witness, a man who's not a police officer? Is there something that makes a policeman more believable, Mr. Barnes?

A (Barnes) No, I don't believe.

Q Mr. Decker?

A (Decker) I don't believe.

Q Would he be more likely to tell the truth than just say a man off the street?

A Yeah.

Q You think so?

A I think so.

Q Miss Stow, how do you feel?

A (Stow) I think he would, too.

Q Mr. Johnson?

A (Johnson) I don't think a police would.

Q Miss Colbert?

A (Colbert) Not necessarily.

Q Mr. Hayes?

A (Hayes) Not really.

Q Miss Trahan?

A (Trahan) No.

Q Miss Smith?

A (Smith) No.

Q Miss Joffrion?

A (Joffrion) No.

Q Miss Fresina?

A (Fresina) No.

Q Mr. Porter?

A (Porter) No.

Q Is it Bajoie?

A (Bajoie) Bajoie. No.

Q Now, at this point in time as we are going through this procedure -- the procedure we're doing right now is called voir dire examination. Probably really no one knows what the words, voir dire, means; but we're asking questions to determine qualification . . .

THE COURT: Voir dire means to speak the truth. That's the purpose of the examination, for the jurors to speak the truth about the questions they will be asked.

Q That will teach me to do that. As Mr. Whitmore sits before you, if you had to vote guilty or not guilty right now this minute, how would you vote? Mr. Barnes?

A (Barnes) I couldn't vote.

Q Well, now, remember we were talking a minute ago about the presumption of innocence . . .

A Oh.

Q That he's presumed innocent until proven guilty. We haven't had any testimony. We're just -- we're here. A bill of indictment has been filed against him. So knowing that, can you accept that presumption, that the man is innocent, each man is innocent until proven guilty?

A Yes.

Q With that knowledge, how would you find Mr. Whitmore at this point in time?

A I would find him not guilty.

Q Miss Trahan?

A (Trahan) Not guilty.

Q What does that mean to you? What does presumption of innocence means to you as an individual?

A As far as this case is concerned?

Q Yes, ma'am.

A Well, in the first place, I couldn't say whether a person is guilty or not guilty until I hear all the facts of the case; and as far as Mr. Whitmore goes, he's innocent now, as far as I'm concerned, until I hear the testimony of both sides.

Q Miss Smith, how do you feel?

A (Smith) Not guilty.

Q Miss Joffrion?

A (Joffrion) Not guilty.

Q Miss Fresina?

A (Fresina) Not guilty.

Q Mr. Hayes?

A (Hayes) It'd have to be proven before I could say.

Q Mr. Porter?

A (Porter) According to the instructions of the Court, I would have to say, not guilty.

Q Miss Bajoie?

A (Bajoie) Not guilty.

Q Mr. Johnson?

A (Johnson) Not guilty.

Q Miss Stow?

A (Stow) Not guilty.

Q Miss Colbert?

A (Colbert) Not guilty.

A (Barnes) Judge, could I ask a question?

THE COURT: Yes.

A I wanted to ask you, suppose it comes out in the trial that -- say, it comes out that I'm aware of the case once it starts?

BY THE COURT:

Q You need to let us know as best you can right now, anything that you know about the case. Now, merely knowing about the case does not preclude you from serving as a juror unless you know so much about it and you're so involved that you cannot be an impartial juror. If you recall the question I asked each of you, whether or not there was anything that would prevent you from serving as an impartial juror.

A Right off, I don't know anything about it. I was just thinking if it came out that I . . .

Q All right, if it came out that you knew, that you did know something about the case, do you think that that would prevent you from serving as an impartial juror?

A I don't believe.

BY MR. BRANTLEY:

Q Now, let me ask each of you one more question. Have any of you possibly ever have a situation, unpleasant confrontation with the police? You may have been stopped for a traffic violation which you feel that you did not commit or you may have been interrogated in a situation where you knew you were perfectly innocent or anything that was unpleasant that had to do with any police authority. Mr. Decker?

A (Decker) No.

Q Miss Stow?

A (Stow) No.

Q Miss Colbert?

A (Colbert) No.

Q Mr. Hayes?

A (Hayes) I've had a traffic ticket, but we all have those. I mean, we all think we're halfway innocent, but I was guilty, I guess.

Q Mr. Porter?

A (Porter) No.

Q Miss Fresina?

A (Fresina) No.

Q Miss Joffrion?

A (Joffrion) No.

Q Miss Smith?

A (Smith) No.

Q Miss Trahan?

A (Trahan) No.

Q How about the others?

A (All) No.

Q Do each of you feel like, if given the case and presented to you, you could render a fair and just verdict?

A (All) Yes.

MR. BRANTLEY: That's all I have.

THE COURT: You have some more questions?

MR. PEREZ: No, I don't think I have anymore questions, but I would like to make a couple of challenges for cause based upon -- I would like to challenge Mr. Johnson for cause based upon his statements, number one, that he could not decide the case, listening to the evidence because . . .

THE COURT: All right, let me interrogate Mr. Johnson.

BY THE COURT:

Q Mr. Johnson, it's apparent that you would rather be doing other things than trying this case. You understand you have an obligation as a citizen . . .

A (Johnson) Right.

Q To serve as a juror, and that obligation requires you to afford both sides in this case, the State, whose duty it is to prosecute, and the defendant who is presumed innocent and who is entitled to a trial by jury -- the constitution and law says that he has a right to a trial by his

contemporaries, by the people in this community. And knowing that, knowing of course that you have other things that interest you, and knowing also that you cannot excuse yourself from jury duty because it is a difficult or inconvenient or unpleasant thing -- I asked you a question earlier and you were asked by both lawyers, whether or not you can be impartial, not take sides with either the State or the defense. Are you telling this Court that you cannot be an impartial juror?

A Well, if I'm here against my will, I think I'd take sides with the defendant.

Q You would do what?

A I say, if I'm here against my will, I'll take sides with the defendant.

Q You mean because you -- simply because you were summoned to be a juror like all the rest of these people in this courtroom, you would not listen to whatever the State had to say and would not be a fair and impartial juror?

A Right.

THE COURT: The Court will excuse Mr. Johnson with the admonition that that is an abominable attitude for any citizen to have. The Court excuses Mr. Johnson for cause. You may be excused, sir.

MR. BRANTLEY: Your Honor, for the protection of the record, we would object to the Court's dismissing Mr. Johnson for cause.

THE COURT: Note the assignment.

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TUESDAY, JANUARY 4, 1977

OPENING STATEMENTS

BY MR. PEREZ:

May it please the Court, Ladies and Gentlemen of the jury, we've now come to that portion of the trial where I will explain to you the nature of the charges against Mr. Whitmore, just exactly what he's charged with having done, and the type of evidence which I intend to bring forth before you to prove to you beyond a reasonable doubt that, in fact, Kenny Whitmore murdered and robbed Marshall Bond. As the Judge explained during the -- I will do this by calling witnesses to the stand. I'll question these witnesses. The defense attorneys will then have an opportunity to question or cross-examine my witnesses. When I feel that I've proved this case beyond a reasonable doubt from the evidence, I'll announce that I rest my case. The defense will then have an opportunity to bring forth any evidence they might have with regard to this matter. You might have noticed from the dates that were read that this is an old case. This offense occurred in 1973, August 15, 1973. Some of you read about it in the newspaper back then. Marshall Bond was an elderly gentleman in his seventies, who lived in Zachary, Louisiana. He lived there most of his life, maybe all of his life, and owned a drugstore there. He was a respected member of the community in Zachary. He and his wife -- his wife was a school teacher. It came out in some of the questioning. He owned some property in the area of Zachary. Among this property was a farm -- oh, I don't know if you'd call it a farm, but it was some pastureland, mostly, out on the Rollins Road near Zachary; and he kept some horses out there, and it was his routine that almost everyday he went out to feed these horses

and to check on them. He also had some other fellows that would go out there and check on them if he didn't have time, but it -- this was just part of his daily routine, that almost everyday he would go out and check on these horses. In order to get to the barn where the horses were fed, you'd have to drive -- go through a gate and drive through just a dirt road, a lane, leading back in a pretty desolate area, away from any houses, a good ways away from any houses, and then you came to a barn where the horses, the feed was kept and things of this nature. Now, Mr. Bond, in addition to being a druggist, was a man who the evidence will show was known in the community at large -- not a secretive thing but openly because he had been there for so long -- he was known to carry fairly large sums of money on his person, just walking around with it in his pocket; large sums of money to me, large sums I think to most people. It would not be at all unusual for Mr. Bond to have had a thousand dollars in cash in his pocket. Quite often he would have more than a thousand dollars in cash, but it would have been unusual for him to have anything less than several hundred dollars. On the date of August 15, 1973, the evidence will show that Mr. Bond was at his drugstore in Zachary in the afternoon, somewhere around four o'clock or so; and he left there with approximately a thousand dollars in his pocket, some money which he had taken from receipts in the drugstore, some money which he had already had. He left by himself to go out to the farm to check on some horses and to check with a gentleman by the name of James Robinson, who was out doing some work for him on the Rollins Road property that day. He drove his car, a tan, I think a Chrysler, out there. He drove and he was checking around the barn when two young men, Kenny Whitmore and a young man by the name of Mister Donahue, who is equally charged with this crime but who is scheduled to be tried next week -- these two young men

appeared, Donahue and Whitmore, in Donahue's car. According to a preconceived plan, they got out of the car, went over to the area where Marshall Bond was, started talking to him initially about a job, about some work. Then Donahue grabbed Marshall Bond, and Kenny Whitmore and Donahue commenced to start beating him, beating him with a tire tool, crushing in his skull, breaking his shoulder. This apparently not satisfying them, they took what was a screwdriver, appeared probably to be a Phillips screwdriver, and repeatedly stabbed the man, stabbed him in his head, in his arms, in his shoulders, in his chest, time after time after time out near this barn. Mr. Bond put up a great deal of struggle. There were things knocked over in the vicinity of the barn. There were papers out of his pocket that were lying all around; and even after the crushing in of his skull and all these repeated wounds, when they took his money and they left, they left him still alive. He was lying in a pool of blood under a tree next to this little barn there. When James Robinson, the worker on the farm who had run out of gas -- was cutting some trees with a power saw and I believe it had run out of gas -- came back in the area of the barn and found Mr. Bond lying there, he, approaching him, heard him moaning, saw him lying in this pool of blood. Didn't go too close. Was kind of frightened. Knew that he couldn't do much. He went back to town immediately and notified Mr. Carl Bond, Mr. Marshall Bond's brother, who called the Zachary emergency unit. They rushed out to the area, picked him up. He was still alive at that time but unconscious. He was taken to the Zachary hospital where he died shortly after. The State will show that because of the horribleness of this crime, a large-scale investigation took place. Deputies were assigned to investigate it. The Crime Lab was sent to the area that night. The District Attorney's Office was called on duty to where the crime was committed that night.

A search was made of the area and almost no, what could be considered as evidence was found. There were rough boards around, trees, nothing on which you could expect or could find fingerprints, not nice smooth surfaces like you might find in a courtroom but just rough boards and unpainted wood that you would find in the area of an old shed or barn. This investigation commenced, and it went for a long period of time, until February of 1975; that is, almost eighteen months there was no solving of this crime. No one was under arrest for this crime when eighteen months later, the Sheriff's Office, Lieutenant Carson Beuto of the Sheriff's Office and Assistant District Attorney Warren Hebert of the District Attorney's Office spoke to Kenny Whitmore in connection with this offense. They spoke to him on two occasions in connection with the murder of Marshall Bond. On February 25, 1975, almost two years ago, they took a statement from Kenny Wayne Whitmore with reference to the killing of Marshall Bond. After advising him of his rights, they -- Kenny Whitmore told these deputies and this assistant district attorney that he was present at the time that Marshall Bond was killed, at the time that he claimed Mister Donahue committed this crime. He stated in a statement, a tape-recorded statement, which we will play to you during the course of this trial, he stated that he had gone to the scene, that he and Mister Donahue had talked about the possibility of comitting this crime. They had talked about Marshall Bond having this money. They had talked about it to a third person, a man by the name of Charles Armwood, a man who has since been killed or committed suicide. Apparently, Mr. Armwood will not be here to testify because he died from a shotgun blast, apparently self-inflicted, after this incident occurred. Now, during this first conversation with the deputies, Mr. Whitmore explained that he was there but that he did not have anything physicially to do with the

killing of Marshall Bond, that it was somewhat of a surprise, this brutal crime committed, and that he did not receive any benefit, he didn't get any of the money off of the robbery of Mr. Bond. One day later they went back to him after checking out some of the information that he had given them and believing that part of it was false, they went back to him again and talked to him again, this time here in the courthouse down in the Sheriff's Office; and after advising him of his rights, a statement was taken, a tape-recorded statement, which we'll play to you. In this statement Kenny Whitmore finally got it off of his chest. Whitmore explained that Donahue was apparently out of work at the time, needed money, conceived this scheme to rob Mr. Bond, that they knew that Mr. Bond carried large sums of money with him, that Donahue knew that Marshall Bond had this daily habit of going out to the farm near Rollins Road, that it was a desolate area and you would not expect to find any witnesses there. It would be a place where you could rob someone in secret. He explained to them that they went out there, drove out there together. They went to see Charles Armwood. He was supposed to go with them. The three of them were supposed to commit this crime. When they went to Armwood's house, Armwood claimed that he had stuck a nail in his foot and that he could not go with them. Armwood apparently had a little bit more conscience, maybe, than Donahue and Whitmore or he just got cold feet. So the two of them, according to the second statement Whitmore gave to the police, the two of them went out to the area of this barn. When they went out there, they saw Mr. Bond's car parked there. They did not see anyone else around. Whitmore stated that they then approached Mr. Bond and Donahue grabbed Mr. Bond, according to this preconceived plan, in a hold which he had learned in the Army. He held Mr. Bond while Whitmore -- and told Whitmore to hit him. Whitmore began hitting

him with the tire tool, striking him about the head, crushing his skull with this tire tool, and both of them then proceed to hit him and stab him with this screwdriver. A struggle ensued. Even though Mr. Bond was in his seventies, he was still a pretty good man. He was not at all a feeble person, and this struggle ensued between them; that he then, in the second statement, admitted to the police that they had gotten some money off of him, that he -- his share of the money was either four hundred or four hundred and twenty-five dollars -- he could not exactly recall -- and that Donahue had gotten what he thought was five hundred dollars. Further stated that they left -- when they left the area of the Rollins Road, the farm on Rollins Road, left Mr. Bond there still barely breathing, lying in his pool of blood, they went to a park in Port Hudson . . .

MR. BRANTLEY: May it please the Court, Your Honor, I hate to object and interrupt Mr. Perez's opening statement, but I ask that the jury be retired. I have an objection I do want to make out of the presence of the jury.

THE COURT: Retire the jury.

(The jury was retired.)

MR. BRANTLEY: In his opening statement, I didn't object immediately because I was so taken back by the situation. I grabbed the Code and I looked at it, and Mr. Perez knows beter than this.

He's tried too many of these cases, and I've tried too many cases with him involving inculpatory statements. 767 clearly says that he cannot in any way advert to a confession or inculpatory statement in his opening statement, which he expressly did.

THE COURT: That's why I called for the Code. Is there an amendment to that article?

MR. BRANTLEY: No, sir, there's not. And he knew full well what he was doing when he did it.

MR. PEREZ: I'm quite aware of the provisions of 767 and 768 and 766, and I would like to explain my position with regard to it.

THE COURT: Please do.

MR. PEREZ: The, historically -- when you look at these articles historically, the old jurisprudence in Louisiana was that the State had to advert in its opening statement -- if it intended to use any type of confession or inculpatory statement, it had to mention it in its opening statement. If after mentioning it in his opening statement, later during the trial it was deemed inadmissible, the

jury was then in the possession of certain evidence or at least certain statements which did not correspond to the evidence and they may have resulted in prejudicing the defendant which causes a mistrial.

THE COURT: 703 was on the books at that time, too, wasn't it.

MR. PEREZ: Okay, at the time . . .

MR. BRANTLEY: Judge . . .

MR. PEREZ: In order to -- excuse me -- in order to prevent this from happening and causing a mistrial and for economy of justice, they initiated 768, the giving of a written notice instead of mentioning it in the opening statement in order to prevent causing a mistrial if the evidence should be deemed inadmissible at the trial. Now, if you notice the provisions, however, of 766 on the scope of the opening statement -- as I have explained to this Court and to counsel on many occasions, we have in this case a crime which was committed and a confession, and it is my obligation to explain to the

jury the nature of the evidence by which I intend to prove this case. The only evidence I have by which I can prove this case, after showing a prima facie case of corpus delicti, is that the defendant confessed to the crime. I fully admit here in open court and have admitted all the while, this is the evidence I have to prove this case, that there was a crime committed and that the defendant confessed to this crime. I have no other evidence other than this one, this bucket which was found as a result of his statement. The two provisions are in conflict on this. If I get up here -- I have nothing to explain to the jury. I have to explain to the jury how I intend to prove the case. There has already been a ruling, two rulings on this confession, that the confession will be admissible on the trial of this matter and this should do away with the problem that 768 envisions, that at the trial of this matter -- at the trial, of course, it could cause a mistrial if it be deemed inadmissible. The second problem is that there is no uneconomy of justice; that should this

confession be deemed inadmissible, there is no case and so there would be no necessity of going any further. So I hardly see how the defendant could be prejudiced. His objection, to me, is premature. At least there is no prejudice to this defendant unless some evidence which I mention in the opening statement is later deemed inadmissible. If that evidence is deemed inadmissible and the jury had been informed of it in the opening statement, I would agree that it would prejudice this defendant and he has some relief coming to him; but at this point and until this evidence is deemed inadmissible, I do not think there's any prejudice to the defendant in this matter even though technically I may have violated the provisions of one of the articles in the Code of Criminal Procedure, an article which did not envision the type of case and the type of evidence that I have to present. I have to show the jury why I have the man on trial. I could have just sat here and remained mute if I didn't talk about having the confession because that's all the

evidence I have.

MR. BRANTLEY: Your Honor, I appreciate Mr. Perez's historical scenario on the evolution of the Code of Criminal Procedure. The fact is, the fact remains that it says the State shall not -- now, I have tried -- this will be my second murder case with Mr. Perez, both of which involved statements that were given. I've tried armed robberies with Mr. Perez and both of which involved statements. He knew full well what he was doing. He knew exactly why he wanted to do it when he got into it. It's exceedingly prejudicial, unbelievably prejudicial to get into that. He knows full well and the Court knows full well that he's got to lay his predicate prior to the time that that statement comes in regardless of any ruling on a motion to suppress. In fact, getting back to the ruling on the motion to suppress, the reconsideration is so blatantly obvious, it escaped everybody's attention and was just pointed out to me a few minutes ago.

MR. ABADIE: Your Honor, the motion to suppress -- the statute

which seems to preclude reconsideration of a matter which has been considered by a motion to suppress prior to trial is apparently directed only at a written statement and does not include any oral or taped statements in the . . .

THE COURT: I'm aware of that. There's been some jurisprudence to the effect that taped statements be given the same effect as a written statement.

MR. ABADIE: Your Honor . .

THE COURT: I'm prepared to hear argument from both sides on that.

MR. ABADIE: I have just checked the headnotes, and I don't like to rely upon headnotes except that apparently somebody is doing the same research that I'm doing, and the three headnotes that I found that said that an oral statement is not subject to the motion to suppress are missing from the racks, so I couldn't get the books themselves. There appear to be at least three statements here in these pocket parts that indicate that the oral statements do not come within the, just within the perimeter of a motion to suppress.

MR. PEREZ: In arguing . . .

MR. ABADIE: In other words . . .

THE COURT: One at a time. Mr. Perez?

MR. PEREZ: I agree I've tried a lot of criminal cases. I've tried some with Mr. -- I have never tried a criminal case where I had a confession that was my only evidence to prove the defendant's guilt. I don't see how any prejudice results to him now. If later the confession is deemed inadmissible, then I think yes, the opening statement retroactively could be deemed prejudicial and the defendant would be entitled to some relief; but I cannot see how at this point the defendant is prejudiced in this matter.

MR. BRANTLEY: I think we have . . .

MR. ABADIE: Your Honor . . .

MR. BRANTLEY: Reversible error. It's that simple.

MR. ABADIE: Your Honor, if the confession is the only evidence the State has, the matter shouldn't have come to trial. It's my understanding that the jury cannot

convict merely on the confession of the accused himself. He's . . .

THE COURT: That's my understanding of the law, also.

MR. ABADIE: You've got to have some other corrobrating evidence; and by his own admission, that's the only thing he's got. Then this case should never have been brought to . . .

MR. BRANTLEY: We've got a built-in reversible error.

THE COURT: Mr. Perez, you're asking me to overrule the legislative statute which says the State shall not, in their opening statement, advert in any way to a confession or inculpatory statement. Now, you argue that you could not make an opening statement without adverting to it. I think you could have said, the evidence will show, and outline all the facts that were in the statement without having made the statement that the defendant was the source of that information.

MR. PEREZ: Your Honor, I still . . .

THE COURT: Let me finish. You say no prejudice arises. I'm not sure about that because that jury

is now looking at evidence as it unfolds, even if it is deemed admissible, that you have told them has been supplied by the defendant himself. There are other, obviously other reasons for 767. I'm going to declare about -- call about a thirty-minute recess to research this issue. Court be at recess.

(A recess was declared. Court reconvened, and trial continued as follows:)

THE COURT: Mr. Brantley, would you restate the basis of your objection.

MR. BRANTLEY: Your Honor, may it please the Court, in Mr. Perez's opening statement to the jury, he made reference to two inculpatory statements or what he attempts to prove to be two inculpatory statements, purporting to be in the nature of confessions or confessed to some involvement in this crime or some knowledge of the crime on the part of the defendant, Mr. Whitmore. The advertence to that is a direct contravention to Article 767 of the Code of Criminal Procedure. I objected based upon the

fact that Mr. Perez is a knowledgeable and experienced, a tested and a trial prosecuting attorney who knows better than that.

THE COURT: Okay, you objected to his mentioning the confession in opening statement. He has admitted that he knowingly and deliberately did that and he admits it's in contravention of Article 767.

MR. BRANTLEY: Yes, sir.

THE COURT: Now, what relief do you seek?

MR. BRANTLEY: We seek relief, not by way of a mistrial, and we do not move for a mistrial.

MR. PEREZ: I'm sorry, I didn't hear that.

THE COURT: I asked him what relief he sought. You had stated in your argument that you admitted that alluding to the confession was in contravention of Article 67 -- 767.

MR. BRANTLEY: I think . . .

THE COURT: I'm asking him what remedy and relief he seeks.

MR. BRANTLEY: In not moving for a mistrial, I think the only relief that we could seek other than a mistrial is an admonition on

the part of the Court to the jury to disregard Mr. Perez's comments with directing specific attention pointed to Article 767 or whatever relief the Court feels is necessary under the circumstances. Again, I reiterate we do not move for a mistrial and we will oppose, for the protection of the record, the granting of a mistrial.

THE COURT: Any comment, Mr. Perez?

MR. PEREZ: Yes, sir. I take it then that the defendant does not move for a mistrial. He has objected. If the Court rules in his favor on this objection, it's a question of relief. He doesn't want the relief of a mistrial. I don't want a mistrial, and I see no authority in the law for the Court to grant a mistrial on this matter on its own motion. I think that the way the case is postured, that we can go ahead with this case and to a successful conclusion. I can only see two possible things happening: number one, the evidence comes in from the witnesses before the jury as I told the jury it would come in. In that case, I think it would be

harmless error. There are numerous cases in the Federal jurisdictions, I think you're probably aware, and older cases in Louisiana where stating that a confession was taken in the opening statement and it later being admitted into evidence made it harmless error. I do not think that they could show any prejudice to this defendant if I merely told the jury what evidence was going to come in and it later came in. Now, that would be the one possibility, is that I was wrong in doing it but it was harmless error. The second possibility is that at some later time in the trial the Court deems this evidence inadmissible. If the Court should deem it inadmissible, we would have another bridge to come to; and at that time, because of the nature of the evidence, I don't think that the defendant would even have to move for a mistrial then because he would be in the position to move for a directed verdict. Would end the case totally since the State has admitted that its case is based upon this confession. I ask the Court not to admonish the jury at this time but to wait until

the issue actually comes into focus at a time when we know whether the evidence is going to correspond to the opening statment or not. I apologize to the Court for bending the rules on this, but I think that the case and the nature of the evidence in this case requires it.

MR. ABADIE: Your Honor . . .

THE COURT: I've heard enough. I'm ready to rule. The remark does not come under the provisions of Article 770 which sets out four categories for a mandatory mistrial. It's not an allusion to race, religion. It's not an allusion to a crime which is not committed and which is not admissible. It is not an adversion to the failure of the defendant to testify, and it's not an adversion to the refusal of a judge to direct a verdict. I do not consider your motion a motion for a mistrial. I do not consider that it comes under Article 770. With regard to whether or not an admonition can cure the error, there are some cases under the provisions of Article 771 calling for an admonition by the Court when a remark or comment is made by the

judge or the district attorney, not within 770, within the hearing of the jury which could be prejudicial. In such cases on motion of the defendant, the Court may grant a mistrial if it is satisfied that an admonition is not sufficient to assure the defendant a fair trial. The comments under Article 767 refer to the comments under Article 769 which outlines the old law as stated by Mr. Perez and states that Article 767 is an entirely new approach to the problem of confessions. It further states, there can be no doubt that any mention of a confession to a jury has some prejudicial effect. I believe that opening statement could have been made alluding to the evidence but without stating the source of this information was from the accused. The Court will admonish the jury to disregard any comments by the assistant district attorney in relation to the confession. Bring the jury back.

(The jury was brought into the courtroom; the polling thereof waived.)

THE COURT: Ladies and

gentlemen of the jury, as the Court told you many times, the opening statement of the prosecution is merely argument. It is not evidence. I further charge you and instruct you at this time to totally and completely disregard any statements made by Mr. Perez in relation to any confession or inculpatory statements that may or may not have been given by the defendant, Mr. Whitmore, and you are at this time to totally remove from your mind if possible the fact that that statement was made and consider that his comments are argument and argument only and not evidence. You may proceed, Mr. Perez.

MR. PEREZ: Thank you.

BY MR. PEREZ:

Ladies and gentlemen of the jury, as we were talking about the evidence in this matter and I was explaining that there were three people involved in the commission, three people initially involved in the conspiracy to commit this crime, the defendant, Kenny Whitmore; another defendant whose trial is next week, Mister Donahue; a person by the name of Charles Armwood, who did not complete the crime with them. He backed out and later killed himself. The State will show that the only physical items of evidence, other than things that were found at the scene -- the scene as I stated had no fingerprints. All rough surfaces. Nothing

left there. The defendants made sure there were no eyewitnesses who were there to identify them as beating and killing Mr. Bond. Only one piece of evidence which was later found which would connect this defendant, physical evidence which would connect this defendant to this crime. There were two buckets, five-gallon buckets that they used on this farm to feed the horses. They would just scoop some feed out of this sack with this five-gallon bucket, and they would carry it over to where the horses are and throw it on a piece of tin or something in order to feed these horses. These buckets always stayed in the vicinity of the barn; and when the officers got there that night, they immediately didn't know that there were two buckets in the barn. They noticed a lot of feed, and we will introduce photographs of the scene to show you that there was a lot of feed, corn, lying on the ground in the area where Mr. Bond was killed. It was later learned that one of the buckets was missing. These two buckets, not identical, but similar when their first appearance -- just two five-gallon buckets that some paint might have come in with the ones that you kind of pry the top off that paint might have come in. These two five-gallon buckets -- one of them was gone. This bucket was found over a year and a half later at a park out on the Pride/Port Hudson Road. This bucket, the evidence will show, had been taken by the defendant, Kenny Whitmore, and Mr. Donahue, that they had thrown the feed out and put in the bucket the murder weapons that had been used, the screwdriver, the tire tool, and apparently a Coke bottle which had been there at the scene. They then had taken this bucket with them out to the Pride/Port Hudson Road, together with the -- the wallet was also thrown in the bucket initially. They had taken them with them out to the Pride/Port Hudson Road. They'd gotten some gasoline and poured it in the bucket and washed the blood off of these articles, and the bucket

was then thrown there, thrown away in this park; and a year and a half later when the police learned that this park was significant in the commission of this crime, they went out to this park and a group of men from Zachary, volunteers, scoured the park and found this bucket. This bucket will be identified by a gentleman who fed horses out of it regularly, everyday for years. He cannot, I don't think, as anyone could, say for absolute scientific certainty that this is the same bucket that he used; but when you use a piece of tool or something for many, many years even though to the average person it might not look -- it might look just like someone else's tool or a bucket might look like someone else's, that you get a familiarity with it and this gentleman will tell you that in his opinion and to the best of his knowledge this is the bucket, this bucket which the police were led to out in this park is the bucket that was taken from the farm. I anticipate that we will take about two days to try this case. I think that we can put on most of the State's witnesses today and tomorrow, that -- I don't know, of course, how many witnesses the defense intends to call, but we will try to move along speedily from here on out and try to keep your interest. I ask you to pay very close attention to all the witnesses who testify, both the State witnesses and the defense witnesses. Thank you.

THE COURT: Any opening statement?

MR. BRANTLEY: Yes, Your Honor.

BY MR. BRANTLEY:

May it please the Court, Mr. Perez, ladies and gentlemen of the jury, I apologize a little bit for the delay this morning, but

I think you'll find it to be very typical of the situation here you'll see in this case. Now, one of the things that Mr. Abadie and I were very concerned with initially selecting a jury was to get a jury that's going to be attentive, that's going to pay attention to what's going on and is committed to take a position and will hold that position 'cause I think it's going to be critically important. I think we've got a good jury. We've got some people who are teachers. We've got a law student. We have some intelligent people that can look at and evaluate the facts. Now, Mr. Perez made a comment in his opening statement I think is going to be really critical, that when he believes that he has proved his case beyond a reasonable doubt, he's going to rest. Well, there's a converse to that. It's when he doesn't have any more evidence. There's nothing else to put on. Now, he talked about a conspiracy between Charles Lockwood, Kenny Whitmore, and a man by the name of Mister Donahue, who's yet to be tried. Mr. Lockwood is dead. You can believe the State is not going to put on Mister Donahue to testify. You will not hear Mister Donahue testify. You may hear me make repeated and continued objections, which I anticipate and I anticipate it from the outset, because Mr. Perez opening to something he knew better than to do. You won't find in any way in our presentation of the defense to try to trick you or mislead you. All we're going to do is have you evaluate the facts and look at the circumstances, and that's going to be it, and we've got people on the jury we feel can do that. So if you hear me object, if you hear me ask or I make objection and have the jury retired, there's a reason for it and a very substantive reason. Just listen, evaluate. Once you form a commitment, hold that commitment, but don't do it until you hear all the evidence; and if you're convinced there was a crime committed, there may have been a crime committed, but because of

the nature of the crime, don't point the finger at that man until you're convinced that man did it. That's the whole point, and that's all I ask you. Thank you.

MR. PEREZ: We call Mrs. Bond.

MR. BRANTLEY: Your Honor, at this time I'd like to request that any witnesses in this matter be sequestered.

(The witnesses in this case were sequestered.)

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LUCILLE WHITEHEAD BOND, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q Would you state your name and address for the record, ma'am.

A Lucille Whitehead Bond, 4424 Lee Street, Zachary.

Q How long have you lived in Zachary, Miss Bond?

A All my life.

Q And what do you do for a living?

A I'm a retired teacher.

Q Where did you teach?

A Baker High School.

Q Were you married, Miss Bond?

A To Marshall Bond.

Q How long were you married?

A Well, when he -- at the time he died?

Q Yes, ma'am.

A Thirty-seven years.

Q At the time that he died, how old was Mr. Bond?

A Seventy-five.

Q And did he live in Zachary?

A Yes.

Q How long did he live there?

A Since 1923, I believe.

Q What was his occupation?

A He was a pharmacist.

Q Did he have a place of business there?

A Yes. Bond Drugstore.

Q Ma'am?

A Bond Drugstore in Zachary.

Q Where was that located in Zachary?

A On Main Street in Zachary.

Q Now, can you tell me if your husband had any particular habits with reference to the amount of money that he carried with him?

A He did carry money from time to time.

Q And when you talk about money -- I mean, all of us carry money. How -- what would you say -- do you know -- were you pretty much aware of, like, the amounts of money generally that he might have on him?

A (Witness does not respond.)

Q What would be a large sum of money for him to carry?

A Oh, around a thousand dollars.

Q Do you know if it was known in the community that he carried money on his person?

MR. BRANTLEY: Judge, I'm going to have to object to what Mrs. Bond may have known in the community unless . . .

THE COURT: Mrs. Bond, you can testify of facts that you know of your own knowledge and not to what someone may have told you.

MR. PEREZ: Your Honor, I think that in this particular point, I'm not, of course, trying to elicit the fact that Mr. Bond carried money from what was, what other people said he carried. I'm trying to elicit if

Mrs. Bond knows that there was a general knowledge of Mr. Bond having large amounts of money with him that was in the community by which other persons might know or might think that Mr. Bond would be an applicable subject for a robbery, and I think that it is very . . .

MR. BRANTLEY: I'm just . . .

THE COURT: Don't argue your case. Just argue the law. Wait a minute, one at a time. I tell you both, when you make objections or argument on evidentiary rules, let's limit the argument to law and not to facts. The Court will overrule the objection. I think she can testify on that subject.

Q Miss Bond, was it well known in the community that Mr. Bond carried money, fairly large amounts of money, with him?

A Yes.

Q I'm going to direct your attention back to the date of August 15, 1973, and ask you if you saw Mr. Bond that day?

A Yes.

Q And do you recall when the last time you saw him was?

A I went into the drugstore in the afternoon to tell him that I was going to church. Church was at six o'clock in Baker. I left in time to go to church, probably about a little after 5:00.

Q Do you know -- do you know where the Rollins Road is?

A Yes.

Q Do y'all have any property on or near the Rollins Road?

A Yes.

Q And what kind of property was this?

A Pastureland.

Q Did it have any structures on it or about how much land was there?

A Three hundred acres.

Q Did you ever go to that property?

A Yes, very often.

Q Do you know if your husband ever went there?

A He went everyday.

Q And did he have any routine with respect to when he would go to that property?

A He would try to go in the morning and again in the afternoon.

Q And what was the, generally the purpose of his going to this pastureland?

A He had cattle and horses that he wanted to check.

Q How far is this place on Rollins -- is it on Rollins Road?

A Yes.

Q How -- is that inside of Zachary or outside of Zachary?

A I think it's in the city limits now.

Q Is that here in East Baton Rouge Parish?

A Yes.

Q Now, do you know if your husband had any intention to go to the farm that evening, the last evening that you saw him?

A Yes. May I continue?

Q Ah, yes, ma'am.

A He was going early and have the horses saddled so that when I got back from church we'd be ready to ride.

Q Y'all were going to ride together that evening?

A Yes.

Q What type of car did your husband drive, ma'am?

A He usually drove a truck. We had a Chrysler, and he went in the Chrysler that afternoon because his truck had run out of gas earlier in the morning.

Q Had you ever participated in feeding any horses out on that land?

A Yes.

Q What was the procedure for feeding horses out there?

A Well, we had a barn with horse feed in it, and we poured the feed into a bucket and then rationed the feed out to the horses, six horses there in the lot.

Q Ma'am, what -- do you specifically recall the date on which your husband died?

A Yes.

Q What was that?

A August 15, 1973.

Q And when did you -- you said you saw him at the drugstore?

A Yes.

Q When did you next see him?

A In the emergency room at Lane Memorial.

Q And was he alive at that time?

A Barely breathing.

Q And what was his apparent condition?

A (Witness does not reply.)

Q Did he have any signs of trauma?

A Yes. His head was battered.

Q Did he die that day?

A Yes.

MR. PEREZ: Thank you.

That's all I have. Will you answer the questions . . .

MR. BRANTLEY: I don't have any questions.

WITNESS EXCUSED

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MR. PEREZ: Call James Robinson.

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JAMES ROBINSON, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q State your name and address.

A James Robinson, 4537 Avenue "D", Zachary, Louisiana.

Q How long have you lived out in Zachary, Mr. Robinson?

A All my days.

Q And in living out in Zachary, did you ever meet Mr. Marshall Bond?

A Yeah.

Q Did you know him pretty well?

A Yeah.

Q How long did you know him?

A Oh, I don't know. I was real small. About since I was about eleven years old, somewhere along in there.

Q How often would you see him?

A Oh, during the time I was working for him, everyday when I was real small, going to school; but during the last past twenty-two years, you know, I probably see him some evening and mostly on Saturdays because I work at the plant.

Q Where do you work?

A Copolymer Rubber and Chemical Company.

Q Did you continue working with Mr. Bond part-time?

A Part-time, yeah.

Q What type of work were you doing?

A Well, working on the farm, you know, mending fence, driving tractor.

Q You know where Rollins Road is?

A Yeah.

Q You know if Mr. Bond had any property out there?

A Yeah.

Q And . . .

A I'm pretty sure he did.

Q He did? You ever been on that property?

A Yeah.

Q How often -- I mean, do you know it well?

A I know it pretty well, yeah. I mostly raised up around all that property.

Q Now, did you have occasion to go to that property on August 15, 1973?

A Yeah.

Q What caused you to go out there that day?

A Well, I came by the drugstore. He sent me out there.

Q What were you going to do when you went out there?

A I was going to out there to limb up some trees or limb up a tree where we had build a fence.

Q What you mean when you say, limb up?

A Well, you know, just the tree had a low-hanging limb. He wanted to ride a horse under there. Cut the low-hanging limbs out. That's what he wanted me to do.

Q And was there anything else you had to do when you were out there?

A No, but he told me before I left to check his truck. It had ran out of gas. He didn't say what had happened. He say it had stopped on him when I met him at the store that evening.

Q About what time was this?

A Oh, I say around about a quarter to 4:00, somewhere along in there. I really don't know.

Q Did you ever see -- did Mr. Bond go out to that same farm very

often?

A Yeah, he -- I know he went out there -- yeah, he most probably went out there everyday.

Q About what time did you go out there that day?

A I'd say around about a quarter to 4:00 or ten minutes to 4:00, somewhere around there.

Q Did you go there by yourself or with someone else?

A Yeah. I was supposed to pick up another boy that works for him, Carl. He stays at the fire station. Go pick him up, and he and I would limb up, you know, cut the trees out the -- limbs out the tree; but he was going on a fire call, and so he told me to take his saw and go on up there and do the best I can and stay up there until he get there because he going to show me another place that he wanted me to fix the fence that I wouldn't know, I wouldn't know where it was. He was going to be up there to show me, but went up there to work on the limb. When I got up there, I didn't stop at the barn. I went on to see about the truck, and I just raised the hood. I thought some wires or something had jumped off, you know. After I got back there and I shook it, I found out it was out of gas. That's about a mile -- that's about a half a mile from the barn and I say, oh, the truck out of gas, I'm going to go on and trim the limb, cut the limbs out of the tree and just about -- I didn't have no watch, time -- I'm going to go on and do the best I can on these limbs and about the time I think finished, I'm going to go get some gas and we'll pull the truck in, and really I don't know how long I stayed up there but it wasn't -- just about -- it wasn't sundown.

Q Okay, now, what were you using to cut these trees?

A A saw, little power saw.

Q Did you limb up the tree?

A Partly, best I could, yeah. The saw run awhile. It quit. I crank it up. It start and I cut. I had a -- I cut a little with that, mostly the saw, you know. It was a thorn tree.

Q Now, when you finished working with that saw, what did you do?

A Well, when I finished, I come on back to get gas, you know, for the truck. I put the saw in the back of the truck. Was heading back off, going back to Zachary to get gas, you know, at this place -- I don't know if you've been there -- they have a "Y". One branches to the right, and it goes into the lot and the other one branch to the left and it keeps on by and come on back to Rollins Road from the farm. That's what I was doing. And they had another little road that leads back into the farm, to the barn. So in going back out, I seen the back of his car. So I just say, I'm going to back up and tell him I'm going for the gas so he won't think I'm going home. That's when I backed up to the back of his car to tell him that I was going to go get the gas to put in the truck. That's when I got out my truck. I had it back his car. Headed to the gate. That's when I seen him lying down by this tree.

Q Mr. Robinson, you say you saw him on the ground.

A Yeah.

Q Where was he on the ground? Where was he, exactly? Were there any objects near him where you could give us . . .

A Nothing but a tree, a pecan tree. I couldn't say. I didn't exactly -- I didn't go in the lot. I didn't go through the iron gate. I got . . .

Q Was this near the barn?

A Yeah, it was pretty close to the barn.

Q I'm going to show you a photograph which I've marked as State 3 for identification and ask you if you can see that tree which you mentioned in this photograph.

A Yeah, this is the tree.

Q What is this other object here, this building?

A This is the barn. That's the feed barn where he keep the feed at.

Q Okay.

THE COURT: I'll remind you that we're making a written record. When a witness refers to a document, make it clear for the record what number exhibit you're referring.

MR. ABADIE: What did the witness identify?

MR. PEREZ: He identified the tree and the barn.

MR. ABADIE: You said the feed barn. You're referring to this large structure?

A Yeah, this large structure.

Q Okay, now, let me show you a document which I've marked as S-6 and ask you if the tree shown in that picture is also the same tree which you saw him lying near.

A Yeah, that be the same tree. That's the same tree as far as I -- this is the same tree.

Q Okay. Now, did you speak to Mr. Bond?

A When I found him?

Q Yeah.

A No.

Q Did he speak to you?

A No.

Q Did he make any sounds, any movements?

A No. I just hear him breathing loud. That's all. Like I say, I didn't get close to him. I didn't even come in the gate.

Q Could you see if he had anything noticeable -- from where you went, could you see anything noticeable about him that was unusual or different, injuries or anything?

A No. Like I said, I just see him lying in blood and his head, you know, his head was bleeding. That's all I could see.

Q What did you do then, Mr. Robinson?

A I jumped back in my truck and ran to his brother and told him he had got hurt, definitely hurt. Say something had happened to him.

Q Who is his brother?

A Mr. Carl Bond.

Q And where did you find him?

A He was at the drugstore. He was at his drugstore.

Q Let's clear this up. Did each one of them have a drugstore in Zachary?

A Yeah.

Q They're brothers?

A Yeah.

Q Did you return out to the farm with Mr. Carl Bond?

A Yeah, I did.

Q Was anyone else with y'all?

A No. Me and him -- the rescue unit, it was coming. I don't,

you know -- I was trailing him out there, and the rescue unit was coming behind us.

Q Y'all went out there. Did you go up to Mr. Bond then?

A That's when I come in the gate after -- when I got there, Mr. Carl had got on the gate, and that's when I come on and went inside the lot. That's the first time I entered the lot that evening.

Q And what was Mr. Bond's appearance when you got in there at that time?

A Nothing. He was just still breathing loud.

Q What did y'all do with him?

A They put him on the rescue -- loaded him on the rescue stretcher. The rescue unit made it there.

Q Did you go with the rescue unit?

A No.

MR. PEREZ: Thank you. That's all the questions I have.

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CROSS-EXAMINATION

BY MR. ABADIE:

Q Mr. Robinson, apparently, we're going to look at some of these pictures that were taken by somebody; and, of course, they have not been identified yet as to who took the picture and things like that; but whenever we look at pictures, frequently you can't look at a picture and get a perspective of what that picture really shows in relation to areas and things, and you apparently know this area fairly good. I'd like for you to draw a diagram for me, and I'd like for you to lay out as best you can the relationship of this property, the roads leading to it, the location of the feed barn, the tress, the fences, and the various other things that we've been talking about. You think you can do that for me?

A Oh, I don't know. I can try. A diagram of the road?

Q Now, why don't we do this. Why don't you put some kind of identification down here across the bottom.

A I'll just use this as the turn here, Rollins Road.

Q Well, why don't we do this, first. Why don't you put down at the bottom, diagram of Marshall Bond property by you and you put a date on it.

THE COURT: Mr. Abadie, why don't you do that for him to save a little time and identify it with a number.

Q Okay, now, what did you tell me the name of the road was it's located on?

A Rollins Road.

Q R-O-L-L-I-N-S?

A Yeah.

Q Okay, now, I've entitled this, diagram of Marshall Bond property on Rollins Road, drawn by James Robinson, 1-4-76 and we'll label that Whitmore 1 for identification. Now, if you will, why don't we go ahead and start with the diagram, Mr. Robinson. Why don't you put the Rollins Road on the diagram.

A (Witness complies.) Well, this would be Rollins Road.

THE COURT: Mr. Robinson, as you testify and write, speak loud enough so the jury and the reporter to hear you if there are some comments you wish to make in connection with the drawing of that diagram.

A This is Rollins Road here, and this is the part that you go into his place right straight through, right on through Rollins Road; and there's a road goes here to the barn. A little road go here on back in the pasture, and there's a road coming out of the pasture coming here goes to the barn, and this road here is the road I come -- when I come in on Rollins Road, there's a barn over there, I came on through here -- I should have started back here -- on through here on to where his truck was, designate where his truck was. I'm drawing too long. Like this is Rollins Road here, and this place goes . . .

Q Why don't we do this, Mr. Robinson. It might take us just a

minute or two of time. Let me give you another sheet of paper. I'll let you start back on the diagram again, okay.

A All right.

THE COURT: Ask the witness to draw a diagram and mark it and identify it. Let him complete the diagram; and if he wishes to testify from it, then we'll get some verbal testimony but let him complete the diagram. I'm sure appellate court could not understand what he was talking about when he was writing on that paper.

MR. ABADIE: Yes, sir. I was going to go back and ask him to somehow identify this drawing.

A Why don't you draw it, and I'll direct you?

Q I can't testify, and I apologize to you for the inconvenience, but this is a serious matter that we're dealing with, and it may take us a little longer than a normal situation might.

BY THE COURT:

Q Mr. Donahue, attempt to make a diagram covering the relevant physical objects that you testified to on the previous testimony, the road, the buildings, the various locations of the items you've testified to.

BY MR. ABADIE:

Q Okay, I have another sheet of paper which I've labeled, diagram of Marshall Bond property on Rollins Road, drawn by James Robinson, 1-4-76. I've labeled that W-1.

(Reporter's note: The witness draws the diagram.)

BY THE COURT:

Q Mr. Robinson, would you identify the lines that you've drawn . . .

A Well, this is Rollins Road.

Q Wait, one at a time. You have a line and you've marked "R. R." Does that mean Rollins Road?

A Yeah.

Q That line ends and there's a dot right there. What does that dot . . .

A That's where it ends and it goes through a gate. Goes through the gate here.

Q Is there a gate there?

A Yeah.

Q Well, write the word, gate, G-A-T-E.

A (Witness complies.) And this is Bond's farm.

Q "B. F." means Bond's farm?

A That's right. You heading on his farm.

Q Speak louder. You've identified the property outline of Bond's farm on that diagram?

A Well, it's not there. You in his property now, and this is where the road go. Right in this corner, that's where the barn was where he showed you on the picture there. The road leads off of this road and goes into the barn, and this road keep on by the barn and go on up to where I was working at,

and there's another road that meets into this one and comes along that would go into the barn, too.

Q Are those dirt roads or paved roads?

A Dirt roads.

Q Okay, identify the barn.

A This is the barn here.

Q All right, well, mark the word, B-A-R-N.

A (Witness complies.)

THE COURT: Mr. Abadie, I think you need to clarify that document. You can take it over.

MR. ABADIE: Thank you.

BY MR. ABADIE:

Q Mr. Robinson, do you have any idea of how large this piece of property is?

A No, I don't.

Q Is there any way you could give us any estimate in terms of acres or feet or . . .

A Oh, I say about two hundred and fifty acres, maybe.

Q Now, with relation to the dot that you have labeled Point "A" . . .

A That's where you enter his property at.

Q All right, is there a fence that runs along the property at this point to show the boundary between Mr. Bond's property and . . .

A Yeah. You got a fences here and fences there after you get inside his property.

BY THE COURT:

Q That line represents the fence?

A That's a fence running -- that's the Rollins Road keep on around.

Q Identify what's fence and what's road, some type of marking.

A (Witness complies.) Well, this is Rollins Road fence, I guess. This is property fence. Property fence there. This is property fence there. You're inside his place. You're inside his place when you get to the property fence. All that in there -- he owns all that in there.

BY MR. ABADIE:

Q Let me ask you, if I might do something, do you know what -- sometimes when you look at a map, you have a line drawn and then you have little cross lines drawn across it. I'm going to put those little cross lines all along what you show me to be the fence enclosing Mr. Bond's property. All right, now, before I do that, let me ask you if this is correct. Is this the fence line?

A Right, those are the fence line, goes down -- that's on the east side of his place.

Q All right.

BY THE COURT:

Q While he's doing that, Mr. Robinson, are there also roads where the fence lines are?

A Well, that's where the Rollins Road continue on arounds, continues on around to old 61.

Q Well, that doesn't tell me much. Where you have Rollins Road intersecting with that fence, does it turn right or left?

A It turns right -- it turns left.

Q Is there a road that goes to the left there?

A No. That's -- I don't know. That's just a fence line. That's when you come in this place and you got a little fence line, and that fence goes back toward the railroad.

Q What I'm getting at, if there's also a road where there's a fence . . .

A It's not a road.

Q Okay.

BY MR. ABADIE:

Q Okay, now, I've put cross marks on the line to show the fence line of the Marshall Bond property. Do I have that fence line shown correctly?

A That's correct.

Q All right, all of the property inside the fence belongs to Mr. Marshall Bond?

A Yeah.

Q The property on the outside does not?

A No. That's a little road where the fence is.

Q All right. Now, we're going to have to let the jury look at this later on. They may not remember exactly what "R. R." means and things like that, so I'm going to label this a little bit better.

A Okay.

Q Now, you've indicated here . . .

A That's Rollins Road.

Q "R. R.", Rollins Road. Now, does Rollins Road come from this point to here and then turn toward this direction?

A Yeah.

Q How far does it go?

A Oh, I don't know. It goes -- I don't know.

Q Does it go all the way past the fence line shown on here?

A No. It detours back and comes on around with the fence. It do just what the fence does.

Q Does it follow the fence line all the way around?

A Yeah. It veers out and goes this way.

BY THE COURT:

Q Counselor is marking that line Rollins Road. Does that correctly represent the relationship of that road and that fence in your recollection?

A Yeah.

BY MR. ABADIE:

Q I've marked Rollins Road in three places, here, here, and here. Does that accurately show . . .

A Yeah, that's where Rollins Road.

Q All right, at Point "A" on this map, is there a road that comes in this direction?

A That's not a road. That's where you enter his place at, and it joins some more property after you pass the gate. It goes straight on down the railroad track.

Q Now, you've indicated . . .

A It's a property line here.

Q Now, you've indicated Point "A" -- now, there is a gate, is that correct?

A Yeah.

Q I'm going to put gate on it. Now . . .

BY THE COURT:

Q What does "C. R." stand for?

A (Witness does not reply.)

BY MR. ABADIE:

Q What does "C. R." stand for?

A I don't know why I put that there for. This is Rollins Road. This is where the road branches off. This is this dirt road going into his place, and it's not that big. It just make a "Y" right there. One go into the barn, and the other one go right off straight through another gate.

MR. ABADIE: All right, I want to apologize to youfor what I'm doing. I know that you can't understand what we're talking about right now, but I think after the diagram is drawn and the witness has labeled it, you'll understand it. I think it's a question of a horse and a cart. We have to do one thing first. Let's get this done, and then you can look at it.

Q All right, now, I'm going to show you these lines that you've drawn here on the map. Are these all dirt roads?

A These are all dirt roads.

Q All right.

THE COURT: Let's mark them dirt roads.

Q I'm going to label these dirt roads and I want you to . . .

THE COURT: Strike out that

"C. R." if it doesn't stand for anything.

Q Is that a dirt road here, also?

A Yeah, that's when you coming into, I believe the lot. That's when you're coming into big lot and you come in there. Well, it's not really big, you know. It's a big lot and then you come into another little small lot where the barn at.

Q This is a dirt road here, also?

A That's a dirt road going on back to the pasture, way on back.

Q Okay. Now, in this area on the Marshall Bond farm, are there any structures other than the feed barn that you're talking about?

A Some old big deserted house. Should be sitting somewhere in here right off from the barn. Was there at that time. I think it's there now. It's a big old two-story house. Ought to be right close around the barn.

Q Okay, now, what size is this feed barn?

A I don't know. I say about -- oh, I say about fifteen by twenty, something like that. I don't know, really don't know. They had a sheds there, you know. They had sheds on it but inside itself, I don't imagine it was fifteen by twenty, I guess, a little larger. I couldn't tell you that.

Q How far is the house from the barn?

A Oh, the house from the barn, the old deserted house, I guess around a hundred foot or better.

Q Is that a one-story house?

A No. That's an old two-story house. It ain't there now.

Q All right, with relation to this diagram, would you show me the approximate location of that house.

A Right from the barn. You come out from the barn and you go

through another little ole gate here, and the house is sitting there, not that close to the road, you know. Like I say, about a hundred feet from the barn.

Q Now, the house that I have drawn here, does that seem to be the right direction from the barn?

A That's right.

Q All right. Now, let's try to label these roads a little bit further, the dirt roads.

A Well, there ain't no label to do it. It wasn't named, you know. I don't know what they was, just a road.

Q Well, just for the purpose of what we have here, I'm going to label one road "A", one road "B", one road "C", one road "D", one road "E", and one road "F", so when we talk about this diagram, we'll know what we're talking about.
Now, would you show me when you first got to the farm that afternoon, the direction you took, the direction you came in, and where you went.

A This direction I came in. Went on this road. This is the barn over here, and I come on this road.

THE COURT: Name it, sir.

A What is that, "B"? That's the road, "B"? Is that what you have there? Came on road "B" on through the gate here what usually be open, down a little lane on to road "F", and then journeyed on back, I imagine about a half a mile from there to where the truck was sitting somewhere right in this corner here. I went to the truck, but then the road kept on about a half a mile on down another road, another pasture road, where I was cutting the limbs there.

Q Okay, you came in the farm at the gate. You drove down

road "A"?

A Yeah, I drove down road "A".

Q Then down road "B"?

A Yeah.

Q And then down road "F"?

A "F", right.

Q And you came to the point where the truck was?

A Came to the point where the truck was.

Q Now, when you drive in on road "A", can you see the feed barn at that point?

A Yeah, you can see it pretty much. You can -- you know, they had a lot of bushes there, but you could see it because when you passed this here little road, you can look up in there and see it, you know.

Q About how far are you at the intersection of roads "A", "B", and "C", about how far are you from the feed barns?

A Oh, I say about -- I says about a -- I guess about a hundred and fifty foot or a hundred foot, I don't know. About a hundred and fifty foot, somewhere around.

Q And at that intersection of roads "A", "B", and "C", you can see the feed barn, you say?

A You could see it at a point when you get to "C"; and after you pass "C", you got a lot of bushes. You can see now right at the point of "C"; but after you journey on by "B", you couldn't see nothing but bushes.

Q Can you see the feed barn at the point where the truck was?

A I believe -- you could, but you a good ways from it. I imagine you could if you paying attention. You could just look probably to see if you just looking for it. Yeah, you could see it, and then again I don't know if you can or not 'cause you got a lot of pecan trees and different things and

you had a board fence, so -- they had a board fence from where I was, looking from, through the barn. Actually, I wasn't paying no attention to the barn. I was looking at the truck.

Q All right, now, I want to go back through the things that you did that afternoon while you were there. You may testify as to some of the things you've already testified to, but I think it would be easier for us to go back over some of them so we can follow things just like they happened . . .

A Uh, huh.

Q Right perspective. Now, tell me what you did when you got to the truck.

A Well, I raised the hood up on the truck 'cause I thought some wires had jumped off the truck, why it being stopped, you know. There wasn't no wires on it. I got in and tried to start the truck. By me trying to start it, I seen that the gas meter didn't move, and I got out and shook it, and it was out of gas. Well, just put the key back in it and went on, cut the bushes off the limb around the tree.

Q Now, put a notation here for truck. Would this be the approximate location of where the truck was?

A Well, it would be somewhere in there. I just couldn't tell you direct where because it was -- you got to go through two more little old catch-in things, like, to get to the truck. The truck was sitting more where the Rollins Road turns like this on this. It was sitting about right in here.

Q All right, we're going to put -- I'm going to put truck down and the jury is going to understand and you're going to understand and I'm going to understand. We're not saying that that shows the exact location or the distance, but we're kind of showing the general direction that you were . . .

A Okay.

Q From the feed barn and the gate at the time, okay?

A All right.

Q All right, now, had you talked to Mr. Bond out at the farm prior to this?

A No, sir. I talked to him at the drugstore that evening.

Q Okay. All right, then go ahead and tell me what you did with the truck.

A I didn't do nothing with the truck 'cause after I couldn't start it, I closed it back up and went on and started cutting limbs.

Q Now, where did you go when you started cutting on the limbs? Did you have your saw with you . . .

A Yeah, I had my saw with me.

Q Where did you go?

A Well, I ran out of space. This is a little old road from the truck on about a half a mile to land elevating down to kind of a little slump, and that's where I was cutting the limbs at. The land elevated. I don't know how far, but you couldn't see nothing but the top of the weeds after I got down in there. It's kind of a little valley, like. I could take you to the tree is the best I could do, you know, and tell you what happened to the truck, you know, what happened -- where I were, but I just couldn't tell you how far it was or measure no distance because I been going up there, so it didn't occur to me to figure out no position how far the truck should have been or how far, you know. So it just didn't make me no difference.

Q I understand.

A I just went on -- after I left the truck, I just went on to the tree, and I would say it was about a half a mile from where

I left the truck from where I was going cut the limb down.

Q All right, and you cut limbs for a while?

A. Oh, I cut limbs for, yeah, for a good while. I must have cut there for about -- like I said, I don't really know what time it was. It was during the summer, and I imagine it was around six o'clock, I guess.

Q Then what did you do?

A Well, I load the saw up and went on to get -- say, well, I'm going to go get some gas for the truck and by that time he ought to be up here, and that's when I headed back out this road; and when I was coming back out, I didn't take this road 'cause this road here would go into the barn. I take -- when I left, I take this road. When I got to this point, I seen his car, the back of his car, parked here. Then I backed up to the back of the car, and that's when I seen when I got out the truck and looked back. Got out the truck and go over there, head to the lot, and I could hear him blowing and I could see him laying in blood; and I say, oh, Lord. I just jump back in my truck and went got his brother.

Q Can you show me on this diagram the point where his car was?

A It was parked right up to the iron gate. There was an iron gate there, and his car was parked behind here, as best I can tell you.

Q Can you show me where the iron gate was in relation to this diagram.

A If this was the barn here, the gate should have been somewhere along in here. It was about twenty-five or thirty feet from there, you know, from actually the barn was. The barn and the gate was on the same level, but the gate kind of went in this way. That would make the gate about, I think make it about thirty feet from where he was laying at.

Q Okay, now, the thing you've got to remember is that you've been out to this property and looked at it, and it's very clear to you where everything is.

A Yeah.

Q But it's not to the jury. That's why I'm making you go through this thing. You show me if there was any fence or any gate around this barn. Draw that on there for me.

A (Witness complies.) This is the barn. The fence come outside the barn, and the gate heads there from over here. That was the gate, and that's where he was laying in this vicinity. The gate made on kind of triangle, like, you know.

THE COURT: Mark an "X" where you saw him laying.

A Well, he was laying somewhere -- the barn, he wasn't too far from the barn.

THE COURT: Put little marks on that fence, so we'll know what that is as opposed to the side of the barn like Mr. Abadie did.

A This is a little old dog yard fence right back of the barn and a gate there and little fence kind of hug the barn.

THE COURT: Write the word, gate, and put an arrow to it.

A (Witness complies.) This is the gate. That was the gate there. That's where the gate was.

Q The gate's right here?

A Yeah. As far as I know, the gate was right in that area.

Q Right here?

A Yeah.

Q The gate and the barn was just -- the gate and the barn was in the same part. You go through the gate and you're in the barn, you know, you're in the lot.

Q Does the fence come out in this direction, too?

A This fence kept on there and met a lot, not that far, but it's a lot in that area. That's what that fence did, and made it that corner post. This is a lot here. That's a lot.

Q The gate is right here?

A Yeah.

THE COURT: Can you finish in five minutes, Mr. Abadie? I'm going to take a break at one o'clock.

MR. ABADIE: I think so.

Q Will you show me on this where Mr. Bond's car was.

A Right at the gate, backed up right up there in front of this fence right there. It wasn't quite that far over. It was about as to this car right there, and that gate comes through that lot. He was parked right there.

Q Is that where the car was located?

A The car was located right there, close up beside this fence right here.

Q Okay, what kind of fence was that?

A Uh, something like a barbed-wire fence, you know, I guess you

would call it. It's not a barbed-wire fence . . .

Q You could see through the fence?

A Yeah, you could see through there. It had bars at the top. You could see through it.

Q Is the gate normally kept closed or open?

A Normally kept closed. Most of the time -- just depends, you know. It was open sometimes, and it was closed sometimes. If he want to get his horses, he close it. If he doesn't, if he wants them to go out, he just leave it open.

Q Okay. Now, what you've described to us is a barn with a fence, kind of chicken-wire fence around it.

A Yeah.

Q Mr. Bond's car was parked on the outside of that fence.

A That's where it was.

Q Right. Now, when you drove up and you first saw Mr. Bond, did you stop at the same point his car was at?

A I backed up right back of his car. I didn't stop at the same point of his car. His car was closed. I backed up to the back and stopped and got out to go tell him I was going to get some gas.

Q About how far from his car was it?

A Oh, I don't know. It was just -- well, I didn't bump his car. I just put it close to it. I didn't back up and bump it. I just parked like you would back up behind a car.

Q Three or four feet?

A Oh, I don't know. I guess you could say that. I couldn't swear to it.

Q Well, I'm not -- my purpose in asking you questions is not to try to trick you.

A No . . .

Q But it is important to me . . .

A I'm telling the truth, as far as I remember . . .

Q Because I think this is a serious matter . . .

THE COURT: One at a time.

Q I think this is a serious matter. I'm not trying to trick you, but I would like to find out the relative location and distances involved, and you're the only one that knows it. Now, if I'm wrong in saying you were three or four feet, now, you tell me. If it was more like twenty-five or thirty feet, tell me . . .

A Well, I could tell you it wasn't no twenty-five or thirty feet, I know. It wasn't that far, but I couldn't tell you if it was three or four feet or not.

Q Okay, somewhere between the two?

A Somewhere.

Q All right.

A Mostly I say about three or four feet if I had to make a guess on it. It was that far.

Q Now, did you get out of your vehicle?

A I got out of my vehicle and walked -- I was walking back to the car. I got back about middle ways to his car. That's when I seen him lying on the ground.

Q Were you on the outside of that fence?

A I was on the outside of the fence.

Q How far was he from you at that point?

A I say he was about as far from here to the jury door or a little further, somewhere along in there, as close as I could get to it. That's about as close as I got to him or maybe a little closer; but if I remember it, I think it

was about that far.

Q Okay. Now, are there any other roads -- if you were coming down road "C" here, are there any other roads that lead to the barn, to the feed barn?

A Road "C" does. It goes over there to the barn, and this one here, you can -- it goes on in the barn. This comes back out and meets up with this road, goes out here, and then it goes on to one particular, one road. This road goes into the barn. If you don't want to go into the barn, they got a gate here. You just keep on out and meet this road again and go on up to where his truck was.

Q All right, now, one other thing that I'd like to do on this diagram. The Judge asked you if you would make a notation as to where you saw Mr. Bond on this diagram. Will you show me where that is. I can't see where you made that notation.

A If this is the barn, he was laying somewhere along in here side the pecan tree, not right up against the tree; but this is the feed barn. He was laying somewhere along in here.

Q Okay. I'm going to make a very, very heavy "X" at that point. Is that the right location?

A Right, that's the right location.

THE COURT: Draw a line and write the word, Marshall Bond.

Q Did you have any problems being able to see Mr. Bond whenever you came up to the fence? Was there anything obstructing your vision?

A No. There was an iron -- there was a gate but it was made out of wire, iron gate. It was just made out of heavy wire.

MR. ABADIE: Your Honor, I'd like to offer, file and produce this into evidence, labeled Whitmore 1.

BY THE COURT:

Q Mr. Robinson, this is just a rough sketch of the features you've identified? You're not an engineer or an architect or a draftsman, are you?

A No.

Q This is just a rough approximation of where these relative roads and structures and fences are, is that correct?

A Yes.

THE COURT: Is that the purpose for which you offer it, Mr. Abadie?

MR. ABADIE: Yes, sir, Your Honor. The purpose of the offering is to show the relative positions, angles, visibilities, etc., of the structures and not necessarily pinpoint the exact dimensions or distances.

THE COURT: No objections from the State?

MR. PEREZ: No objections.

THE COURT: Let the offering be filed.

BY MR. ABADIE:

Q At that point then you went to get Mr. Carl Bond?

A That's right.

Q Was it any particular reason why you decided to go get Mr. Carl Bond first rather than check on Mr. Marshall Bond?

A Well, that's the first thing that came to my mind, to go get him, and that's what I did.

Q Well, you indicated that there was a rescue unit present at the scene. Was that unit there whenever you and Mr. Carl Bond got back?

A I believe me and Mr. Carl got there first. I really don't remember when it got there. About together, you know. Got there, I say together.

Q Did you work for Mr. Bond on a regular basis?

A No.

Q Did you work for him part-time?

A Yeah, part-time, yeah.

Q What kind of agreement did you and Mr. Bond have?

A What you mean?

Q Well . . .

THE COURT: He means financial arrangements.

Q Well, whenever Mr. Bond -- did Mr. Bond have an agreement with you where you would work for him three days a week?

A No. Just whenever I get off of work and feel like coming up there, I would go up there and work; and if I didn't, I just wouldn't go.

Q Where did you do all of your work?

A I work at Copolymer at the rubber plant.

Q I mean your work for Mr. Bond.

A Along in that area, we was planting ryegrass. I mostly drive a tractor different place, out to his father-in-law's, cutting up ground, you know, getting ready to plant ryegrass; but that particular evening it rained, so that's why he told me to go cut the limbs off the tree because that evening before that was out to his father-in-law, disking.

Q Disking?

A Yes.

Q Tell me what else you do for Mr. Bond.

A Well, that's all, mend fence, you know. Mostly tractor work.

Q When you refer to disking, you're referring to driving a tractor . . .

A Driving a tractor, yeah.

Q With a ground breaker behind it?

A There you go.

Q Well, did you do anything else besides drive a tractor for him?

A Oh, like I say, mending fence, maybe. That's about all.

Q Were you ever involved in feeding of livestock for Mr. Bond?

A Not specifically, I wasn't, you know. Maybe sometime in the evening he may go say throw out a few things of calf feed. Not every evening I would do that. I would do it, you know. Sometimes I would do it and sometimes I wouldn't.

MR. ABADIE: That's all the questions we have.

THE COURT: Any redirect?

MR. PEREZ: No.

THE COURT: May this witness be excused?

MR. PEREZ: Yes, sir.

WITNESS EXCUSED

..*.*.*.*.*.*

THE COURT: Court be at recess until two o'clock.

(A recess was declared. The jury was retired. Court reconvened. The jury was returned to the courtroom; the polling thereof waived.)

MR. PEREZ: Your Honor, I have no further evidence to get from Mrs. Bond, and I would like to know if defense counsel has any objection -- I'll release her from her subpoena and ask that she be allowed to come into the courtroom.

MR. BRANTLEY: We have no objection, Your Honor.

THE COURT: Allow her to come back in.

MR. PEREZ: And do they have any objection to releasing Mr. Robinson to go back to home or to work? If we should need him, we can always go back and get him. He's not feeling well, and he's just sitting out in the hallway.

MR. BRANTLEY: We have no objection at this time. We would like to have the Court admonish him

that he's still under subpoena. We have no objection to him leaving at this time. It may become . . .

THE COURT: You want to recall him so we can -- for his convenience let him go for good, I'll allow you to do that on cross unless you have objections.

MR. BRANTLEY: No, sir, we have no objection . . .

THE COURT: You want to recall him on cross to cover anything?

MR. BRANTLEY: We may possibly want to take him as a defense witness.

THE COURT: All right. You're agreeable to letting him go and calling him as your witness later on?

MR. BRANTLEY: Yes, sir.

THE COURT: All right, allow Mr. Robinson to go and Mrs. Bond to return to the courtroom.

(Reporter's note: Mr. Robinson released and instructed that he is still under sequestration.)

MR. BRANTLEY: Your Honor, at this time we would like to request an instanter subpoena for Mr. Don Zuelke with the Sheriff's

Office. We would additionally request an instanter subpoena for Mr. Zuelke's tapes and charts. He was formerly with the Sheriff's Office.

THE COURT: Do you have an address or location on him?

MR. BRANTLEY: I believe he's with an investigating -- Southern Investigating Services. I believe he's under subpoena by the State.

MR. PEREZ: I haven't been in contact with him this week. I've seen him at previous trials or previous hearings. He's been here.

THE COURT: Let a subpoena for Mr. Zuelke issue instanter with the defense to provide -- requesting party to provide address at which he can be served. The Sheriff be ordered to serve the subpoena as soon as we receive the address information as to where the service -- any objection to the subpoena duces tecum? Is that what you're asking?

MR. BRANTLEY: Yes, sir. A subpoena duces tecum to be served on the Sheriff's Office because I

believe the tapes, the charts that were previously the property of Mr. Zuelke while he was employed by the Sheriff's Office are still in their possession . . .

THE COURT: All right, well, you'll have to specify what items you want because I'm sure the Sheriff's Office has a lot of tapes and charts.

MR. BRANTLEY: I don't think we'll need that today. Why don't when we recess or when we have some time available, I'll enumerate exactly . . .

THE COURT: All right, a subpoena will issue upon your providing any . . .

MR. BRANTLEY: Thank you.

MR. PEREZ: Mrs. Hanna.

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DORIS HANNA, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q Would you state your name for the record.

A Doris Hanna.

Q Miss Hanna, where do you -- where did you live in 1973?

A In Zachary.

Q Did you know Mr. Marshall Bond?

A Yes, I did.

Q How long had you known him?

A About twenty years altogether.

Q Do you know what his occupation was?

A Druggist.

Q And were you associated with him in that business at any time?

A Yes. I worked for him. I worked as a clerk for twelve years.

Q Did you work for him at the time of his death?

A Right, I was working.

Q Now, in the particular date of his death, did you see him?

A Yes.

Q And about what time did you see him?

A From 8:30 to 2:00 that afternoon off and on. He was in and out.

Q Was anyone else working at that drugstore that day?

A No.

Q What time did you normally close?

A Around 5:00 -- well, I was there around 5:00, and he usually left around 5:30, sometimes come back and sometimes he didn't.

Q Did you do any bookkeeping in connection with your duties there?

A Yes. There was only one employee at one time at his store, and we did everything, you know.

Q Did he also do some of the bookkeeping with reference to the money?

A Right.

Q Were you aware of his habits on banking deposits, taking money, leaving money in the safe, etc.?

A Yes.

Q Do you know if Mr. Bond ever carried any money on his person?

A Yes, always. Different amounts at different times, you know. Some times of the month when he was going to have checks to be cashed, he'd have more than other times.

Q On this particular date did you determine how much money he had on his person from the store?

A Yes.

Q How much was that?

A Between ten and eleven hundred dollars is what we figured up that he had by a piece of paper he had written down. No one but us would know what it meant, you know, that worked there.

Q And what was the last time that you saw him?

A I left the store at two o'clock.

Q And where was he?

A He was in the store, but he was making preparation to leave. I don't know what time after that he left but . . .

MR. PEREZ: Thank you. That's all the questions. Answer questions of defense counsel.

CROSS-EXAMINATION

BY MR. BRANTLEY:

Q Mrs. Hanna, I believe you testified you didn't know what time Mr. Bond left the drugstore?

A No, I don't.

Q You don't know how much money he had with him when he left, do you?

A Well, afterwards we figured up approximately how much . . .

Q You said you had a piece of paper. Do you . . .

A Yeah . . .

Q Have that with you today?

A Well, the investigators took it. I don't know what they did. It was a prescription pad that he had jotted down how much was in the register and how much in the safe and how much in his purse which was his billfold.

Q You say the investigators took it?

A I assume they did.

Q But you haven't seen it . . .

A Not since then, no, sir; but we check out the register, and he had taken all the money out except the one-dollar bills and change, and we figured up he had approximately ten or eleven hundred dollars on him.

Q You say, we figured up. Was there . . .

A Well, this other girl that worked there, you know. She wasn't working there at the time, but she was up there with us.

Q You don't know where he may have gone when he left the store?

A Well, I didn't know then, but I know, you know, where he went . . .

Q Well, then, that's what I'm . . .

A No, not right then.

Q You don't know where he went?

A No.

Q And you say you gave this piece of paper to the investigators. You don't know what they . . .

A Yeah, they had it.

Q Did with it?

A It was a prescription pad.

MR. BRANTLEY: That's all I have.

MR. PEREZ: Thank you very much, and if you have no objection . . .

THE COURT: Wait a minute, wait. Any further questions?

MR. BRANTLEY: No, sir.

THE COURT: May this witness be excused?

MR. PEREZ: I would like the witness be excused if . . .

THE COURT: You may be excused, ma'am. Thank you.

WITNESS EXCUSED

..*.*.*.*.*.*.

THE COURT: Call your next witness.

MR. PEREZ: Carl Bond.

CARL BOND, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q State your name and address, sir.

A Carl Bond, 4645 Main Street, Zachary, Louisiana.

Q How long have you lived out in Zachary?

A Oh, since '70, since -- it was '67 except three and a half years in the service. 1967 until now.

Q Did you know Mr. Marshall Bond?

A Yes, I did.

Q Was he related to you in any way?

A He was my brother.

Q Older brother?

A Not the oldest. He was older.

Q Okay, what's your occupation, sir?

A I'm a druggist.

Q And what was Mr. Marshall Bond's occupation?

A He was a druggist.

Q Now, on the date of August 15, 1973, -- do you have specific recollection of that date?

A I sure do.

Q Do you recall where you were at say 6:30 in the after -- in the evening of that day?

A 6:30 in the afternoon I was at Lane Memorial Hospital.

Q Did you have occasion to go to the farm on Rollins Road?

A I did.

Q Where were you before you went to that farm?

A I was in my drugstore.

Q Why did you go to the farm?

A James Robinson come in the drugstore and told me that Mr. Bond had been hurt.

Q And what did you do upon receiving this . . .

A I got in the truck and told the girls in the store to call the emergency unit, and I went straight on out there.

Q Where was this that you went?

A I went to his farm.

Q Were you familiar with that farm?

A Yes, I was.

Q And on -- where was it located?

A It's on Rollins Road.

Q And is that in Zachary?

A No. It's, I'd say, two and a half miles out.

Q What did you find when you arrived at the farm?

A When I went to the farm, he was laying down on his back with his arms out stretched.

Q Where was he laying?

A Right next to a pecan tree and about, I'd say, twelve or fifteen feet from his crib, the shed of his crib.

Q I'm going to show you a photograph which is marked as S-1 and I ask you if you recognize what's shown in that photograph.

A Yes, I do.

Q Does this accurately represent what the area looked like on the evening of the 15th? I mean, I understand that this was taken after Mr. Bond left. The structures, etc.

A Yes. Let's see, yeah, here is the pecan tree here. Yeah, that looks like it.

Q S-3, now, do you recognize what's shown in S-3?

A Very well.

Q Does that accurately represent what the area looked like out there that evening?

A Yes.

Q Is -- where Mr. Bond was lying, would that be included in this picture?

A Yes, it would.

Q And could you point to where and describe where with relation to the structure.

A Head was this away right about here with his arms out stretched, and his feet was back towards this board right there.

THE COURT: Mr Perez, neither the appellate court, nor the jury . . .

MR. PEREZ: I'll clear that up in time, Your Honor.

Q Now, I'm going to show you one further photograph which is marked as S-6 and ask you if you recognize what's shown in that photograph.

A Yes, I do.

Q And there is what appears to be a spot or something on the ground there. Do you recognize that . . .

A Yes, I do.

Q Was that there at the time you went out there?

A Well, let me put it this away. I wasn't looking for blood on the ground when I went there. He was so beat up that I told the emergency drivers to get him into the emergency unit at once and call the Sheriff's Office, but you want me to go ahead . . .

Q Okay, sir. You . . .

A When I went back later, I saw this blood right here.

Q Now, that patch of blood that's on the ground, can you tell me where that was in relation to his body.

A Right to his -- right by his head.

Q Now . . .

THE COURT: Would you indicate it. For the record, show where he indicated it.

BY THE COURT:

Q Right by his left ear?

A Right by his left, there.

BY MR. PEREZ:

Q Mr. Bond, when you arrived there, who arrived first?

A I did.

Q Were you there when the rescue unit arrived?

A Yes.

Q Did the rescue unit in fact take him off to the hospital?

A They did.

Q Did you accompany them?

A Yes, I did.

Q Were you in the part of the unit with Mr. Bond?

A Yes, sir, right with him.

Q When you found him, what was his apparent condition? Was he awake?

A No. He was groaning and just laying. Never did move. He was just laying there, groaning.

Q As you accompanied him to the hospital, did he ever regain

consciousness?

A He never did.

Q Do you know if Mr. Bond carried a wallet or purse or anything of this nature, money clip in which he might have carried money?

A Oh, I'd heard that lots, and I'm sure he did.

Q You'd heard what?

A I'd heard that he carried lots of money . . .

MR. BRANTLEY: I'm going to object to what he may have heard, Your Honor.

BY THE COURT:

Q Mr. Bond, if you can testify of your own knowledge that he carried large amounts of money; for instance, if you saw him with it on occasions, you can testify as to that. But as to what others may have told you, you can't testify. If Mr. Bond told you he carried it, I'll let you testify as to that.

A I've never seen it and didn't ask him, but I had heard it. That's all.

THE COURT: Well, I instruct the jury to give whatever weight to that hearsay testimony. It's been objected to, and I sustain the objection to that hearsay testimony and instruct the jury to disregard it.

BY MR. PEREZ:

Q Now, Mr. Bond, in taking your brother to the hospital and -- did you stay with him at the hospital?

A Yes, sir.

Q Did you notice if he had any money on him at that time?

A Only some change is all I saw.

Q How did you come to notice that he had only change on him?

A Well, I saw when they took it out of his pocket.

Q You were there?

A I was there.

Q He had no folding money?

A No folding money at all.

Q Do you remember if he had a purse or a wallet or anything on him at the time?

A While . . .

Q I'm talking about the time that they took the stuff out of his pocket.

MR. BRANTLEY: Judge . . .

A At the hospital . . .

MR. BRANTLEY: I'd like to object to Mr. Perez leading . . .

A No.

MR. BRANTLEY: His witness. I've let him go about as far as I can let him go. He's put as much testimony in his witness's

mouth as he can, and I can understand the nature of the circumstances. I've just got to object to Mr. Perez's testimony.

THE COURT: Mr. Perez, don't lead your witness.

BY THE COURT:

Q Mr. Bond, tell the jury what you recall occurred when you got to the hospital with regard to the items he's asked you about.

BY MR. PEREZ:

Q Were you present when at the hospital?

A I was.

Q And were you present when the objects, personal belongings, were taken . . .

A I was.

Q What did you see taken from him?

A I saw some keys, some keys and some change. He had some papers, a few papers up here in his pocket.

BY THE COURT:

Q Did you see anything else?

A Well, let me say this now. Maybe I -- you asked me if I've seen anything else. When they took his shirt off, I saw something else.

Q What was that?

A Some stabs. I saw five or six stabs in his chest and his -- all across his chest and in his stomach.

Q With regard to his personal belongings, what did you observe at the hospital?

A Well, that's what I observed, were the stabs which looked to me like was a Phillips screwdriver.

BY MR. PEREZ:

Q Now, Mr. Bond, getting back to his personal belongings, do you know -- to whom were these personal belongings turned over to at the hospital?

A I believe Mrs. Bond. Now, I'm not sure on that. I saw them take it out. The doctors were taking his clothes off and they, and they was getting his pockets emptied and everything.

MR. BRANTLEY: Your Honor, if it please the Court, I'd like to retire the jury for a minute or so.

THE COURT: Come forward. Don't retire the jury yet.

(Reporter's note: Counsel for the accused and for the State approach bench and confer with the Court a few moments.)

Q Mr. Bond, I have two photographs I'm going to show you, and right now these photographs are for your viewing only and not for the viewing of the other persons in court, so I'll ask you when you look at them, that you handle them in such a manner that, you know, they're not visible to other areas of the court; and I understand that this might be somewhat upsetting, but there are a couple of questions that I have to ask you with regard to these photographs. These

photographs -- the first one is marked S-8, and the second is marked S-9. Do you recognize the individual who is shown in these photographs?

A I do.

Q And who is that individual?

A Marshall Bond.

Q Do these photographs show the type of wounds that you saw on Mr. Bond that evening?

A They do.

Q I understand that this may not show all the wounds but . . .

A Uh, huh.

Q Okay. Now, these photographs show a person who is -- has a almost total absence of hair on his head.

A Yes.

Q Did Marshall Bond have hair at that time or not?

A No. It was receding.

Q Okay. Do you -- did he have any hair?

A Oh, yes.

Q Do you know if any of his hair was removed at the hospital?

A Shaved off?

Q Yeah.

A Yes.

Q These are pictures of Marshall Bond?

A They are that.

MR. PEREZ: Thank you.

That's all the questions I have.

CROSS-EXAMINATION

BY MR. BRANTLEY:

Q Mr. Bond, if I understood you, you've lived in Zachary since 1967?

A Right, there about.

Q And your -- the nature of your business is also that of pharmacist?

A Right.

Q Were you and your brother fairly close?

A Very close.

Q Did you have occasion to see him everyday?

A I wouldn't say I'd see him everyday, but I'd probably see him going from the bank to his store most everyday. Now, I wouldn't talk to him everyday, but I would probably see him there about everyday.

Q And he'd take money from the store and make the deposits in the bank . . .

A Right.

Q Come back and forth to the store?

A Right.

Q Now, did he also go out to his farm on Rollins Road a pretty good bit?

A Yes, he did.

Q Did you ever go out there with him?

A Oh, once in a great while, but it wouldn't be that often.

Q Did you ever help him trim trees or feed his cattle or his horses?

A No.

Q Were you ever with him when he did that?

A No.

MR. BRANTLEY: That's all I have, Judge.

THE COURT: Any redirect?

MR. PEREZ: No. Thank you very much.

THE COURT: May Mr. Bond be excused?

MR. PEREZ: No. I would like to keep Mr. Bond under subpoena for at least a short while until my next witness testifies.

THE COURT: Remain under sequestration.

MR. PEREZ: Just remain outside, Mr. Bond.

WITNESS EXCUSED

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MR. PEREZ: Doctor Landry.

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DR. HYPOLITE T. LANDRY, JR., called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BRANTLEY: To save some time and for the convenience of the Court and the jury, we'll stipulate to Doctor Landry's qualifications.

THE COURT: You stipulate to his ability to give expert testimony and . . .

MR. BRANTLEY: Yes, sir.

THE COURT: You stipulate also that he's the coroner of East Baton Rouge Parish?

MR. BRANTLEY: Yes, sir.

BY MR. PEREZ:

Q Will you state your name and occupation for the record.

A Hypolite T. Landry, Jr., MD, coroner, East Baton Rouge Parish.

MR. PEREZ: And I understand that the defense stipulates that Doctor Landry is qualified as a medical doctor and able to give testimony in that regard.

THE COURT: Expert opinion

testimony . . .

MR. BRANTLEY: Yes, sir, that's right.

THE COURT: Expert medical opinion.

Q Doctor, did you have occasion to examine Mr. Marshall Bond?

A Yes, sir, I did.

Q And when was this examination?

A At two different times. The first time was at Lane Memorial Hospital on August the 15th, 1973, sometimes after 7:30 p.m. He arrived there at 7:30 and however long it took me to get up there. I don't know the time, but it probably was around 8:00, 8:30 p.m., and then I examined him again. The next day I went back out to the Charlet Funeral Home in Zachary and examined him, which would be the 16th of August, 1973.

Q Okay, Doctor, now, I'm going to show you some photographs and ask you if you recognize what's shown in those photographs and see if they'll assist you in your recollection in testifying about specific, specific questions I'll ask you. I ask that the photographs be held in such a manner that they're not visible to the jury at this time, and I'll first give you an opportunity to look them over and see if you recognize what is shown in those photographs.

A (Witness complies.) Yes, sir, I'm quite familiar with them, and I remember it, of course, quite well, and they also coincide exactly with the sketches that I have in my book. I have two sketches of the top of the head, describing all of the lacerations; and, of course, they coincide exactly

-- the pictures coincide exactly with my printed matter in my book.

Q At the time that you saw, first saw Mr. Bond, was he dead or was he alive?

A He was dead.

Q Now, I'm going to ask you to testify as to the type of wounds that you observed on Mr. Bond, and I'm going to ask you area of body by area of body and if you could describe these type of wounds, I'd appreciate it. Did you examine the top of Mr. Bond's head?

A Yes, sir.

Q And did you find any evidence of trauma or did you find any wounds there?

A Yes, sir. My examination revealed multiple skull fractures with multiple lacerations, which are cuts, in the top of the scalp; and the reason that the skull fractures -- they were very easy to determine because as I put my hands on them, you could actually see them and feel them. They were multiple fractures. They were just like eggshells cracking.

Q That's the skull you're speaking of?

A Yes, sir, this is the skull. And Mr. Bond was bald-headed such as I am, so it was very easy to see all these lacerations and they were very severe and naturally all of them were bleeding.

Q How many lacerations did he have to the top of the head?

A According to my notes, he probably would have had -- on the top of the head, the lacerations would be as follows: there was a three-and-a-quarter-inch laceration -- that's about this long -- on the left side of the head from the front to the rear about this manner; there was a two-and-three-quarter-inch laceration, two and three-fourths inches, about

that long, again on the top of the head, slightly to the side of the other one; there were seven small lacerations front and rear of these. To describe them according to my drawing, there was -- looking from the top of the head down, there'd be one here; there's one here; there was a laceration here; there was the two big ones that I described; there were several more in the middle; and there were several in the back of the head looking from the top. I call them satellite ones, something actually breaks the skin when it hits like a blunt instrument. It causes a tear in several directions rather than in one direction. And so I -- I have ten to twelve blows to the head and one to the mouth.

Q Was there any injury to the mouth?

A Yeah. There was a laceration of the lip.

Q Was there any injury to the eyes?

A They were blackened, yes, sir. Both of them were blue and black and edematous, which means poking out, from blows.

Q Did you have occasion to examine his chest for injuries?

A Yes, sir. There were multiple other wounds that appeared to me to be caused by a -- they were peculiar looking wounds. It looked like were caused by a laceration or like maybe a Phillips screwdriver. The Phillips screwdriver has a point with four little -- rather than a regular screwdriver has one flat point. A Phillips has four small ones, and it comes to a point, and that's what it looked like, and they were . . .

Q How many were there on the chest, in the area of the chest, and where were they?

A Okay, there were two on the anterior chest . . .

Q Which means -- what does that . . .

A That's the front of the chest. There were four on the left

shoulder. There were two on the left forearm. There were four on the left posterior lateral chest, which is back in this area, and there were six small lacerations on the back of the right hand that appeared to be done with this kind of instrument, which of course quite obvious to me in the photographs that I had looked at.

Q Were these wounds, these numerous wounds that you testified about, did they appear to be stab wounds or some other type of wound?

A Some . . .

Q Puncture wounds is what I mean.

A Yeah. Some of them appear to be stab wounds and some appear to be -- the ones on the hand were not caused by this screwdriver type thing. Didn't look like to be the same. The ones on the chest and the arm and the back of -- the front of the chest, the back of the chest, and the upper shoulder at that appeared to have this four little marks. The ones on the back of the hand appeared to be scratches, more of a -- well, not scratches. They were cuts but lacerations not to have been caused by the same instrument that caused those puncture type wounds.

Q Could you determine the depth of any of these puncture type wounds?

A Yes. I determined -- they were not real deep. They would not have been fatal in the -- it was the blows to the head, of course, that killed him. The wounds of the shoulder and the -- they were superficial. When I say superficial, they might have been a half-inch deep but they would not have penetrated the chest or killed him.

Q Could you determine the cause of death of Mr. Bond?

A The cause of death was trauma to the brain from multiple

skull fractures from trauma to the head by the blows to the head.

Q And could you -- at that time did you draw any opinion as to approximate time at which the injuries might have been, would have been inflicted by the nature of the injuries?

A Well, they were not very old, Mr. Perez. I would -- as I said, I don't know what time I got there. Probably about 8:00 or 8:30. They had not been over a couple of hours old. He hadn't been dead but a couple of hours when I saw him, and I was -- he was taken into the emergency room at 7:30, and he was dead on arrival in the emergency room and it had not been, you know, maybe an hour or an hour and a half before that. So when I saw him at 8:00, probably 8:00 or 8:30 -- I would imagine it would have been 8:30 before I got to Lane -- he'd been dead probably two, two and a half hours.

Q Were these injuries that you described to the head, were they -- you normally think injuries of that nature would be fatal, type of injury he had to his skull?

A Certainly that many. I'm sure that maybe some of them would not have been fatal. I've seen people with lacerations of the head that, you know, certainly didn't die. You can certainly have one or two or more; but when you have this many, in particular when the bones are broken this many times, this is what causes death.

Q Did you notice any injury to, which may not have been external, to the shoulder or that area of his skeletal structure?

A Well, I noticed these wounds to the, these puncture wounds to the left shoulder.

MR. PEREZ: That's all the

questions I have.

MR. BRANTLEY: We don't have any questions, Your Honor.

THE COURT: May the witness be excused?

MR. PEREZ: Yes.

WITNESS EXCUSED

..*.*.*.*.*.*

MR. PEREZ: I'd like a momentary recess at this time. I've gone through the first part of my case. I would like to start the second part of it, and I need to, number one, get a witness from across the street; and I'd just like to prepare for it for a few minutes.

THE COURT: How much time do you need?

MR. PEREZ: Ten minutes.

THE COURT: Be at recess until five minutes after 3:00.

(A recess was declared. The jury was retired. Court reconvened. The jury was returned to the courtroom; the polling thereof waived.)

MR. PEREZ: Lt. Carson Bueto.

LT. CARSON BUETO, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q State your name and occupation for the record, sir.

A Carson Bueto, Lieutenant assigned to the detective bureau, East Baton Rouge Parish Sheriff's Office.

Q Lieutenant Bueto, how long you've been with the Sheriff's Office?

A Little over fifteen years.

Q And in the summer of the year 1973, specifically in August of 1973, what division of the Sheriff's Office, what division of the Sheriff's Office were you assigned?

A Detective bureau.

Q Did you have occasion to be involved in the investigation of a crime that happened or appeared to be a crime that happened out on Rollins Road near Zachary?

A Yes, I did.

Q On what date was that that you became involved in this investigation?

A If I recall correctly, it was August 15th.

Q Of what year?

A 1973.

Q And about what time did you become involved in the investigation?

A I arrived at the scene shortly after seven o'clock, if I recall correctly, somewhere around 7:15.

Q And where exactly -- when you mention the scene, where was the scene?

A At the -- what was, I was later advised, the farm of Marshall Bond located on the Rollins Road in Zachary or just on the north side of Zachary.

Q Is that farm here in East Baton Rouge Parish?

A Yes, it is.

Q Now, could you describe to me how you would get to that particular location, say from Zachary?

A You want to travel north on the Rollins Road approximately two miles.

Q And when you arrived at the Bond property, how do you enter upon the property?

A There is a gate in the curve of the road.

Q Would you speak up a little bit, sir.

A There was a gate in the curve of the road. If I recall correctly, the road took a curve to the left and going right straight in, you didn't make the curve. There would be a gate. You'd go through the gate.

Q And you went upon the property that night?

A Yes, I did.

Q How far -- did you see any structures on the property, buildings?

A Once I got into the interior of the farm, I did.

Q About -- how did you get into -- what led you into the interior of the barn?

A I was directed in there by the . . .

Q Was there a road or anything?

A Right. There was somewhat of a gravel road going back into the farm to the barn.

Q Now, you mentioned the barn. About how far was that into the property?

A The way that we had to go on the road, I would say somewhere

around a half a mile. Actually straight to the road from the nearest part of the road to the barn, maybe a quarter of a mile.

Q When you arrived at the barn, did you inspect the area?

A Yes, I did.

Q And tell us -- describe to us any relevant things which you found or observed at this area.

A A spot of blood at the base of a tree that was located fairly close to the barn, some what appeared to be blood on a piece of tin that was covering a -- I call it, refer to it as a bench between two posts beneath the barn and what appeared to be some personal papers and pens and stuff like this laying on the ground and a hat.

Q Okay, where was the hat? Was it in the area of the barn, also?

A Yes, sir.

Q Did you inspect the ground in the area of the barn?

A Yes, sir, I did.

Q What did you find on the ground if anything?

A On the opposite side from where the . . .

Q Speak up a little bit.

A From the opposite side from where the hat and the papers and stuff were, we saw some footprints in some dust. On the same side of the barn where the personal papers were and the hat, we observed a Coke bottle that appeared to have blood on it.

Q Detective Bueto, I'm going to ask you to inspect two photographs, first of all, one which I've labeled as State 10.

A (Witness complies.) This looks like the picture of the barn that I've made reference to.

Q And State 11.

A (Witness complies.) My recollection is this is referring to

papers, pens, and a comb, this is it. The piece of tin I was talking about covered with blood that I refer to as a bench is here.

Q Do you recall if you requested photographers to come to the scene that evening?

A Yes, sir, I did.

Q And were photographs taken that evening?

A Yes, they were.

Q Do these photographs which I've shown you accurately reflect what it looked like that evening before things were unduly disturbed?

A As far as I can recall, they do.

Q Now, what were these items that you say, papers and things of this nature?

A It appeared to be pencils and combs and papers that, like someone would carry in a shirt pocket.

Q Was there anything else on the ground in that area?

A Yes, sir. There was, next to this metal covered bench, there was feed on the ground.

Q What?

A Some feed.

Q What -- when you say feed, what type of feed you mean?

A It was later identified as horse feed.

Q Show you one more photograph which has been labeled S-7, previously. I'd like to ask you if you recognize what's shown in S-7.

A Yes, sir, the hat, the feed, this . . .

Q Now, where is this feed that you're talking about? Would you point to the feed on S-7.

A (Witness complies.) Right here.

Q Okay, what is this article that I pointed to on S-7, the dark

part of the picture?

A The spot of blood that I made reference to.

Q And does this picture accurately reflect what you saw in your investigation that evening?

A Yes, sir, as far as I recall, it does.

MR. PEREZ: I'd like to offer into evidence these three photographs at this time and ask that the jury be able to see them, so they can understand the layout of this area, the articles to which we'll be referring in testimony.

THE COURT: Any objection?

MR. BRANTLEY: No, sir.

THE COURT: Let the offering be filed. Let the evidence be shown to the jury. Let's get a list of what's being introduced at this time.

THE CLERK: S-10, S-11 and S-7.

(Reporter's note: The jury was shown the offered evidence.)

Q Lieutenant Bueto, were you present during the investigation at the scene that night?

A Yes, sir, I was.

Q Do you recall if other than the photographer, any other specialists were called out on the scene?

A Yes, sir. The State Police bureau of identification.

Q I'm sorry, I can't hear you.

A The State Police was asked to assist.

Q What person with the State Police?

A Sergeant Baxter.

Q And do you know if he has a specialty with State Police?

A Yes, sir. He works with the bureau of identifications.

Q Which deals with what?

A With identifying victims or accused, crime scenes, assist on crime scenes, collecting evidence, so forth.

Q Do you know if he's a fingerprint expert?

A I don't have knowledge of that.

Q Do you recall if anyone else was called out to the scene, any other persons of expertise were called out to the scene that night?

A Photographer, the Coroner, the -- and assistants from the D. A.'s office.

Q You know Paul Cobb?

A Yes, sir.

Q Did you see him there that night?

A Right offhand I don't recall if I did or not. I do recall Sergeant Baxter being there.

Q Now, did you participate in the follow-up investigation of this matter?

A Yes.

Q And can you tell me how long the follow-up investigation of this murder lasted?

A Some eighteen months.

MR. BRANTLEY: Judge, I'm going to object to that. Mr. Perez

. . .

THE COURT: On what basis?

MR. BRANTLEY: Referred to it as a murder, and I think -- I object to the form of his question.

THE COURT: On what legal basis?

MR. BRANTLEY: Sir?

THE COURT: On what legal basis? You object to the form of the . . .

MR. BRANTLEY: He's presupposing a fact that has not been proven.

THE COURT: What was your question?

MR. PEREZ: I ask him if he had . . .

THE COURT: How long did the investigation last?

MR. BRANTLEY: The investigation of the murder last.

MR. PEREZ: Your Honor, I think that the Coroner testified about wounds which any person of common sense, because of the number of the wounds and the specific type of wounds, would have to draw the conclusion that they were neither accidentally inflicted nor self-inflicted, which would . . .

MR. BRANTLEY: Your Honor, I'm going to have to object . . .

THE COURT: All right, one at a time . . .

MR. BRANTLEY: He could have asked the Coroner that when he called the Coroner to the stand and he very obviously . . .

MR. PEREZ: If the defense attorney wants to make a question of that, I will be happy to admit the photographs of the person's body and the jury can make their own determination as to whether these wounds appear to be self-inflicted or accidentally inflicted or the result of an attempted murder.

MR. BRANTLEY: Your Honor . . .

THE COURT: Retire the jury.

(The jury was retired.)

THE COURT: Mr. Brantley, I hear lawyers always object to questions based on the fact that the question contains a fact not already in evidence. I never have really understood what the legal basis of that objection is. You're talking about relevancy? You're talking about . . .

MR. BRANTLEY: Well, the fact that Mr. Perez is presupposing a crime was committed without having proof introduced sufficient to establish that crime.

THE COURT: Well, that's what he's trying to prove.

MR. BRANTLEY: That's like asking somebody how many times do you beat your wife before establishing the man ever beats his wife.

THE COURT: Well . . .

MR. BRANTLEY: It presupposes that somebody -- that something's been done or something's happened that has not been done or hasn't happened. Again, I want to request an admonition to the jury. Mr. Perez is fully aware of my feelings about the photographs and, as is the Court, with the -- not just the inherent prejudice of the nature of the photographs but the fact that they don't accurately depict the situation as it existed prior to the time that Mr. Bond had his head shaved. Now, him making a statement like that in front of the jury is highly prejudicial and makes -- it looks like we're hiding

something that we're not hiding, and I think we're entitled to an admonition on that point, and it was done strictly to inflame the jury. I think it's an extremely prejudicial comment on his part, and I'm very surprised he made it.

THE COURT: You have any argument, Mr. Perez?

MR. PEREZ: Your Honor, I handled these photographs in such a manner without even an attempt to introduce one photograph with reference to the body of Mr. Bond and handled them in such a manner that there could be no prejudice to his client in the handling of these photographs. Now, if counsel wants to raise issues that may be raised only because the State has been overly fair in the handling of its evidence, then I want that evidence, all the evidence to go before the jury with respect to the photographs, and I think I'd be entitled to have it.

THE COURT: I have asked Mr. Perez not to show the photographs to the jury until such time as he prepares to introduce them. At that time we'll hear argument as

to whether or not they're unduly prejudicial and inadmissible. If they're relevant and material, if they relate to other evidence, corroborate other evidence, they'll be admitted unless you can show me some law that would prevent them from being admitted.

MR. BRANTLEY: No, sir, that's not . . .

THE COURT: I still have not heard any legal argument under the rules of evidence that prevents him from asking a question about a fact that's not in evidence. He can ask a hypothetical question.

MR. BRANTLEY: I think he can ask a question -- he cannot -- my understanding, Your Honor, he can't ask a hypothetical question of anyone other than an expert witness.

THE COURT: That's not my understanding of the law. He can ask anyone a hypothetical question as long as it is within their knowledge. I'm going to overrule the objection.

MR. BRANTLEY: I have to take issue with the Court on that.

THE COURT: Your objection

is to the question of how long did the investigation last after the murder?

MR. BRANTLEY: No, sir. How long did the investigation of the murder last.

THE COURT: Of the murder last.

MR. BRANTLEY: I think he can properly ask him how long did the investigation last.

THE COURT: Are you saying that his question calls for a conclusion by Mr. Bueto that it was a murder?

MR. BRANTLEY: Well, that and then he's also presupposing a fact that has not been proven.

THE COURT: All right, the Court overrules the objection with the instruction to the jury not to -- to the witness not to give an opinion as to whether or not a murder occurred at this time.

MR. BRANTLEY: We ask for an assignment of errors.

THE COURT: Bring the jury back. Note the assignment.

(The jury was returned to the courtroom; the polling waived.)

Q Lieutenant Bueto, were you involved in the follow-up investigation of this incident?

A Yes, I was.

Q And how long did you work on this particular case?

A Some eighteen months.

Q How long did you work full-time on this case?

A When I started, about three months and then off and on for the balance of the time.

Q I'm sorry, I'm having difficulty hearing . . .

A About three to four months steady at the outset, and then from there on, just off and on as information or something came up on it.

Q And without saying what people told you, did you interview a number of persons who might be witnesses or . . .

A Yes, sir.

Q Seeking to find witnesses?

A Yes, I did.

Q About how many?

A Last count I had was about a hundred and twenty-five.

Q Did you -- were you successful in finding any direct eyewitnesses to this incident, other than the persons who might be involved or persons perpetrating the act and the victim?

A No, sir.

Q You recognize the gentleman who's seated at the end of the counsel table?

A Yes, I do.

Q You know his name?

A Kenny Whitmore.

Q Do you recall when the first occasion was that you ever had occasion to see Mr. Whitmore?

A On the morning of February 25, 1975.

Q And when you personally first saw Mr. Whitmore, where was he?

A At the parish prison.

Q Were you alone at that time?

A No, sir, I wasn't.

Q Who was with you?

A I was assisted by Sergeant Louis Russell and Mr. Warren Hebert of the District Attorney's Office.

Q Did you have occasion to speak to Mr. Whitmore at that time?

A Yes, I did.

THE COURT: Gentlemen, I'm going to make a private admonishment to the witness.

(Reporter's note: The Court speaks privately with the witness.)

MR. BRANTLEY: Judge, since I think the -- Mr. Perez is about to address an issue that I think may be inadmissible, I'd like to ask that the jury be retired.

THE COURT: Retire the jury.

(The jury was retired.)

THE COURT: While the jury is out, I admonished the witness not to mention the fact that the defendant was in jail on other charges as a precaution not to waste trial, not to waste the time of

the Court by causing an inadvertent mistrial. This issue may come up, may be brought up by defense on the question of voluntariness; but at this time if we did not get to that question, it could cause problems, so I cautioned the witness not to mention that.

BY THE COURT:

Q Is that correct, Lieutenant Bueto?

A That's correct.

MR. BRANTLEY: Judge, unless I'm wrong, I think that Mr. Perez is going to get into this point of any statements taken from Mr. Whitmore that night in jail, the first night being February 25th at approximately 2:45 a.m.; and my objection initially is the fact the -- and I have a case directly on point, State versus Neals; I have a copy of it for the Court -- that he has to lay his predicate outside of the jury for the voluntariness and the admissibility of any taped statements or other than a written statement. This is the case.

THE COURT: Mr. Brantley,

what do you say this case stands for?

MR. BRANTLEY: Your Honor, I think Mr. Perez now has to lay foundation to show it's free and voluntary before it's admissible for the jury, and that foundation has got to be laid to the satisfaction of the Court and not in front of the jury.

THE COURT: Well, that is the law. That is Article 451, Title 15, but in this case you cited me, there's no pre-trial motion to suppress as we have had in this case and, therefore, the provisions of Article 703 cannot apply . . .

MR. BRANTLEY: It didn't mention whether there was a pre-trial motion or was not a pre-trial motion, I believe. There was no mention of it either way.

THE COURT: That's right, and I can't presume that there was.

MR. BRANTLEY: Likewise, can the Court presume that there wasn't?

MR. PEREZ: Your Honor . . .

MR. BRANTLEY: There's no mention one way or the other. It

just -- it lays the foundation for . . .

THE COURT: Well, that's my interpretation of this case and what I would have to look at; but regardless of what I would presume or not presume from this case, I know in fact there was a pre-trial motion in this case, a motion to suppress two taped statements and that two judges have already ruled on that motion. I'm not saying that I would agree with those judges, but under the cases the State has cited me -- and you have them and I'd like to have them back so I can put them in the record. I think the plain language of Article 703, a ruling prior to trial on the merits upon a motion to suppress a written confession or a written inculpatory statement is binding at trial on the merits, and the case of State versus Whitsell . . .

MR. BRANTLEY: Your Honor, could I ask for the date the Whitsell decision . . .

THE COURT: 1972.

MR. BRANTLEY: I believe the date of the decision . . .

THE COURT: Says in part -- let me finish.

MR. BRANTLEY: Yes, sir.

THE COURT: Citing Article 703, thus the admissibility of statements having been determined against the defendant at a hearing on a motion to suppress, he is foreclosed from attacking the admissibility of these statements at the time of trial. This case is later cited with approval, State versus Whatley, W-H-A-T-L-E-Y, 1975 case.

MR. ABADIE: Your Honor, I think we might be dealing in the first instance two different situations. One, of course, the District Attorney may be planning on going into oral statements which may not be -- which are not taped; and if so, then I would urge that oral statements are not included within the perimeter of the motion to suppress . . .

THE COURT: I agree.

MR. ABADIE: And that being the case, then the motion to suppress would not bind this Court on this hearing. The second thing we would also urge is if he is now getting to

the taped statements themselves, that the clear language of Article 703 refers to written statements in explicit terms. There are several cases which hold that the motion to suppress applies only to written statements. Let me give you those citations quickly. The case of State versus Daniels, 263 So. 2d 859, such motion may be directed only to written confessions or written inculpatory statements. I have the book here. That's 263, 859.

THE COURT: Mr. Abadie, this simply says that a motion to suppress is not properly considered the merits of an attempt to suppress an oral statement. The motion in this case was filed by the defense, not by the State. Had you sought to suppress only oral statements, the State could have properly argued that you have no right to suppress oral statements at pre-trial. It is my appreciation of the law that the words, written statements, by jurisprudence now covers tape-recorded and video-taped statements. Mr. Perez, do you have any argument on that?

MR. PEREZ: I did not anticipate this argument because I think there is a total line of jurisprudence that I could find if we needed to look it up of which the Court expanded the provisions of Article 703 to include taped-recorded and other type of electronically recorded statements. I think that possibly by some of the latest cases that they may have even expanded 703 now to include oral statements because of the necessity of the State giving the substance of the statement in pre-trial notice, etc., that they may now even be expanded to cover to include oral statements unlike the jurisprudence that was cited. There is an entire line of cases, as Your Honor is so aware of, by which tape-recorded statements are specifically made the motion to suppress; and if you're going to determine an issue pre-trial, the object is to, so you can move the trial speedily along, so that once the issue is determined we don't have to take it up again at the trial and go through the same evidence.

THE COURT: My understanding

of the law, that written statements, as jurisprudence by Court decision expanded, cover those items because they are in effect have the same reliability of a written statement. They're basically unchangeable. They are the statement of the witness as if he had written it in his own hand.

MR. ABADIE: Judge, I'm not aware . . .

THE COURT: Is there any cases that you have which say that that is not the law?

MR. BRANTLEY: I think that's a correct statement, Your Honor, but we have a very unique situation here, the situation being that under one indictment returned against Mr. Whitmore, the Judge later ruled on a motion to suppress. There was a re-indictment, a second indictment altogether, completely separate, which the second motion to suppress was filed and heard by Judge Covington. The case is being tried before Your Honor now. The case that I gave the Court is 1975 decision that recites that the trial judge, not a judge hearing on a preliminary motion, but the trial

judge shall determine the question of whether any statement given was given freely and voluntarily, and that burden rests with the State unlike any other motion or any other foundation that, prior to excluding something, the burden rests with the defense. That burden rests on the State, and it's something that should not be done in front of the jury. Additionally, and -- I've held off doing this because I wanted to have the jury sequestered at the time, Mr. Perez has under counsel table and in view of the jury at this time, two buckets, a piece of wood and some items contained in a box that's labeled, camel, in blue letters. I'd like to have those items removed from the courtroom until such time as the witnesses who will testify as to the relevancy and the foundation of their admissibility do such out of the presence of the jury. I have a case on that which is State versus . . .

THE COURT: Well, I'll take care of that. That's a different issue, and I think the better procedure is not to expose to

the jury any items which the State or the defense plan to introduce. That rule primarily addresses itself to items which may have some prejudicial effect. I don't see what great prejudicial effect these items will have; but out of an abundance of caution and out of what I believe the better practice to be is to hide from the view of the jury all evidentiary documents and items until such time as they're about to be identified . . .

MR. PEREZ: I have no objection to that, Your Honor. The only reason why the items are in here at all is because of the problem of not having a secure area immediately outside the courtroom. You don't like to leave them lying somewhere . . .

THE COURT: I understand. I think this could be put over here . . .

MR. PEREZ: Okay.

THE COURT: Put them in the left-hand corner from the view of the jury. Let's get back to this issue of written statements.

MR. BRANTLEY: Well, Judge, I think the case specifically says

trial judge.

THE COURT: Well, Mr. Brantley, it also is out of the Parish of Franklin, and the Fifth Judicial District probably only has one judge.

MR. BRANTLEY: Well, I'm not aware of that, Judge.

THE COURT: And there's nothing to indicate -- as you say, there's nothing to indicate whether there was a motion to suppress or not, and I would assume, if I'm going to make an assumption, that if there was a motion to suppress, it was probably heard by the same judge that tried the case; and that was not in anyone's mind, not in the Court's mind, when it used the phrase, trial judge.

MR. BRANTLEY: Well, Judge, my position is that I don't think anybody -- I don't think we can presuppose and read between the lines of the decision. The decision reads for itself. It states categorically, the trial judge shall determine the issue of the voluntariness of the confession or any inculpatory statement at the time that it is offered at trial.

THE COURT: Mr. Brantley, that has to be dicta because the assignment of error was that there was no foundation laid on freedom and voluntariness, and the Court sustained the conviction on that assignment of error and any statement . . .

MR. BRANTLEY: No. They later determined -- the Court determined that the confession was freely and voluntarily given.

THE COURT: That's right.

MR. BRANTLEY: They said that this was a determination that must be made by the trial judge prior to any question coming before the jury . . .

THE COURT: Or prior to trial in a suppression herein.

MR. BRANTLEY: I don't believe it says that in the decision.

THE COURT: 703 says that, and Whatley and Whitsell say that.

MR. BRANTLEY: That's a 451 -- isn't that a decision under Article 451 and not under 703?

THE COURT: I may be erroneous on that.

MR. BRANTLEY: I may have misread that. Yes, it's under

Article 451.

THE COURT: So is Whitsell and so is Whatley.

MR. BRANTLEY: I think the most recent decision would be controlling.

THE COURT: I think the one that would be most controlling is the one whose factual circumstances more nearly fit this case, and that is a situation where 703 comes into play. The case you cite me, State versus Neal, is under 451 and it's on-book law that confession, in order to be admissible, must be free and voluntary. Constitution of the United States, constitution of this State, and the statutes of this State require that. That's simply a restatement in State versus Neal that that is the law and a finding by the Court that this particular confession was voluntary when it looked at all the circumstances, and this Court was reviewing what the trial judge had done at trial to determine whether he had properly admitted it. I think the fact circumstances of State versus Neal do not cover as closely the fact circumstances before the Court,

which are more nearly covered in State versus Whitsell and State versus Whatley. That is the ruling of the Court, that I am without authority or power to review again or pass judgment on the admissibility of the two items covered by the motion to suppress. With regard to oral statement, additional oral statements, if he attempts to introduce them, they have not been covered by a motion to suppress and he will have to follow the proper procedure if he intends to introduce any other oral statements. That's the ruling of the Court.

MR. BRANTLEY: We'd like to ask for an assignment of error.

THE COURT: Bring the jury back. While, we're at ease, I would like to see the motion to suppress, the motion filed by the defense. Is it in the record? I haven't had a chance to review it. I read the transcript of the hearing. The motion itself, I have never seen. I'd like to make sure what it says in terms of what was sought to be suppressed. You might have one in your file.

MR. BRANTLEY: I have one in my file.

THE COURT: There are no motions in here. I would like to see the motion. I'm making a ruling under the assumption, based on my reading of the transcript, that the motion was to suppress two tape-recorded statements. I'd like to see what the motion says. Can the parties agree on what the motion said? There was a motion to recuse the District Attorney and a motion to suppress evidence. The motion asked for suppression, also, of oral statements; but I don't find the ruling that covered oral statements, and my decision is as to taped statements. Is there a minute entry on Judge Covington's ruling on the motion to suppress?

MR. PEREZ: Okay, the ruling if you find, October 29, 1976, was the date of the ruling.

THE COURT: See the ruling by Judge Lear is based -- the Court shows that this -- the entry on the back of the bill in the case in question simply says motion denied. The motion called for a suppression of both the oral and taped. The

original ruling by Judge Lear said that the hearing arose on a motion by defendant to suppress oral and taped confessions and evidence gained therefrom -- continuing on -- based on the evidence, this Court is of the opinion that both motions should be denied. By that, it also refers to the motion to recuse the District Attorney. My ruling is that with regard to the taped statements under the provisions of 704, the decision of those judges is binding on this Court at trial. The admissibility of those two taped statements is not before me, and I am without authority to rule on them inadmissible. I said 704. I meant 703. I'm sorry. Let's go. You ask for an assignment of error?

MR. BRANTLEY: Yes, sir.

(The jury was returned to the courtroom; the polling waived.)

BY MR. PEREZ:

Q Lieutenant Bueto, prior to the jury being retired, I was asking if you would examine this article which has been labeled State 12 and see if you recognize it.

A (Witness complies.) Yes, sir, I do.

Q And can you tell me generally what that -- what the function is of that piece of paper.

A It's a form that is used to advise a person of certain rights that he has.

Q Okay, you're talking about advising a person, you're talking about advising a suspect . . .

A A suspect, yes, sir.

Q And on this particular form -- was this form used in connection with this case?

A Yes, it was.

Q And who was advised, if anyone, of their rights by use of that form?

A Kenny Whitmore.

Q And can you tell me where this advising of the rights took place?

A At the parish prison.

Q And what time did it take place?

A At 2:45 a.m. on the morning of February 25, 1975.

Q Okay, that is the early morning hours?

A Yes.

Q Can you tell me if anyone else was present at the time that this form was executed?

A Yes, sir. The form bears my signature, the signature of Sergeant Louis Russell and Warren Hebert.

Q Does it bear the signature of anyone else?

A Kenny Whitmore.

Q Did Kenny Whitmore sign that in your presence?

A Yes, he did.

Q Is it the same individual that's seated at the end of this table?

A Yes, sir.

Q Now, can you tell me how this form is used in connection with the questioning of a suspect.

A The information that the -- the blanks is generally filled, is generally filled in by the investigator what the questioning is pertaining to; and he is either -- the form is either read to him or either he is asked to read it. In all cases the section below, he is asked to read. If he cannot read it, then it is just explained to him.

Q Would you read that form to us please.

A It's entitled, Your Rights. We want to question you about the killing, excuse me, the robbery and killing of Marshall Bond; but before we ask you any questions, we want you to understand your rights. You have the right to remain silent or to answer questions. We inform you that anything you say can be used against you in court. You have the right to talk to a lawyer for advice before you answer any questions if you so desire, and you may have a lawyer with you during questioning. If you want a lawyer but cannot afford one, a lawyer will be provided for you. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time in order to get the advice of a lawyer or for any other reason you might have. Second part is entitled, Consent to Questioning, which states: I have read the statement of my rights shown above. I understand what my rights are. I am willing to answer questions and make a statement. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, and no pressure of any kind has been used against me.

Q Do you recall in this particular instance if Mr. Whitmore read that to himself or whether someone read this to him?

A That I don't recall.

Q Were you present when Mr. Whitmore signed it?

A Yes, I was.

Q Did anyone else sign it?

A Sergeant Louis Russell and Mr. Warren Hebert.

Q Let me show you another document which I have labeled on the botton as S-13, and I would like to ask you to examine that one carefully, please.

A (Witness complies.)

Q Okay, can you tell me what that form -- what the use of that form is?

A The form is used in taking taped statement from a suspect and more or less as a heading to guide the investigator and also a conclusion.

Q Do you recall if this form was used in connection with this case?

A I don't recall if this particular form was. However, my name does appear on it and some information such as dates and stuff that I am familiar with. A form of this type was used.

Q About what time did you see Kenny Whitmore on the morning or the evening, whichever it is, the 24th, the morning of the 25th?

A Yes, sir. It was on the morning of the 26th at approximately 2:45 a.m.

Q And about what time do you recall first seeing him on that date?

A Around about that time or maybe a few minutes before.

Q Who was with you?

A Sergeant Louis Russell and Mr. Warren Hebert.

Q Did you in fact take a tape recording of the conversations with Kenny Whitmore?

A Yes, sir, I did.

Q And about how long were y'all in the presence of Mr. Whitmore prior to getting that recording?

A Right offhand, I don't recall.

Q Can you give me an idea as to hours or minutes, or how long?

A Prior to taking the taped statement from him?

Q Yeah, prior to beginning it.

A I don't recall. If I give you an estimate, I'm sure I would be guessing.

Q About what time did you get out to the jail that night? Do you have any idea?

A I got out to the parish prison somewhere around 11:30 or twelve o'clock that night. As far as I recall, we didn't start talking to him. We had some discussion and some reports to write and so forth.

Q Now, at any time when you were with Mr. Whitmore, was he physically abused in any way?

A No, sir.

Q Was he beaten or not -- not only -- was he pushed around or bullied, mistreated . . .

A No, sir.

Q By either you or anyone in your presence?

A No, sir.

Q Did you or did anyone in your presence make any insinuations even of lenient treatment toward him, deals, threats, promises of reward or promises of harsh treatment, anything of this nature in order to get him to talk to you?

A No, sir.

Q Were you with him fairly continuously from the time he was being interrogated to the time you took the taped statement?

A Pretty much so. I was probably in and out.

Q And the other two persons you state were who?

A Sergeant Russell and Mr. Warren Hebert.

Q Did you know Kenny Whitmore at all prior to going to the jail that night?

A No, sir.

Q Had you ever, to your specific recollection, even having seen him or anything?

A As far as I recall, never had heard his name.

MR. PEREZ: Your Honor, that's all the questions I have in regard to the predicate on this first tape-recorded statement the State intends to play.

THE COURT: Mr. Brantley?

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CROSS-EXAMINATION

BY MR. BRANTLEY:

Q Lieutenant Bueto, were you a lieutenant at the time the statement was made?

A Yes, sir.

Q You're still a lieutenant?

A Yes, sir.

Q You and Sergeant Russell and Mr. Hebert arrived at the jail approximately at 11:30?

A I would estimate around 11:30, midnight.

Q The statement was not taken until 2:45 in the morning?

A Right.

Q Did the three of you walk together to the defendant's cell?

A I don't recall.

Q Do you recall -- when you first saw the defendant, was he asleep or awake?

A He was awake when I first saw him.

Q And this is 2:45 in the morning?

A Yes, sir.

Q Did you have occasion to see Mr. Brown that evening, the District Attorney?

A Yes, sir.

Q Now, was that before or after the statement was given?

A If I recall correctly, it was after.

Q In fact, Mr. Brown spoke to Mr. Whitmore that night, did he not?

A Sir, you'll have to ask Mr. Brown that. I don't know.

Q He was at the jail? You did see Mr. Brown at the jail?

A Yes, sir.

Q You do not recall if it was before or after this statement was

given?

A No, sir.

Q Mr. Brown is the District Attorney in East Baton Rouge Parish?

A Yes.

Q Sergeant Bueto, what are your normal working hours?

A Well, I work shift work.

Q Shift work?

A Yes, sir.

Q What were your normal working hours on the date this statement was taken?

A On the date that the statement was taken?

Q Yes.

A Probably been 8:00 to 4:00, 8:00 in the morning until 4:00 in the evening.

Q So you were not actually on your normal workings hours of the day at the time this statement was taken?

A No, sir.

Q Do you take many statements at the East Baton Rouge Parish Prison?

A Yes, sir, I've taken a few.

Q And you've been with the Sheriff's Department, I believe fifteen years?

A Yes, sir.

Q Do you often see Mr. Brown out at the parish prison at 2:45, three o'clock in the morning?

A No, sir, because I'm not out there at the parish prison that time of the morning.

Q It's fairly unusual that you would be out there at 2:45 in the morning . . .

A Right.

Q Likewise, to your knowledge, it's very unusual to see Mr. Brown, the District Attorney, out there at 2:45 or three o'clock in the morning?

A To my knowledge.

Q Now, again, it's very important the time factor we're involved in. You don't know whether or not Mr. Brown spoke with Mr. Whitmore at all, do you?

A No, sir, I don't.

Q But you did see him there?

A Yes.

Q And in not knowing whether Mr. Brown spoke with Mr. Whitmore, you would not have known whether it was before or after the statement took place?

A No, sir.

Q Did you ever speak to Mr. Brown concerning this investigation?

A Off and on, yes.

Q Mr. Brown ever tell you he talked to Mr. Whitmore about this?

A Not that I recall.

Q Was Mr. Whitmore fairly cooperative with you?

A Yes.

MR. BRANTLEY: That's all I have.

MR. PEREZ: I want to excuse this witness . . .

THE COURT: Beg pardon?

MR. PEREZ: I want to excuse this witness at this point. I want to put on another witness . . .

THE COURT: All right, step down.

WITNESS EXCUSED

..*.*.*.*.*.*

WARREN HEBERT, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q Would you state your name and occupation for the record, please.

A Warren Hebert, Assistant District Attorney.

Q How long have you been an assistant district attorney?

A Been an assistant since January 3, 1975. A special prosecutor before that since February 22, 1974.

Q Mr. Hebert, were you ever involved in the investigation of the death of Marshall Bond?

A Yes, I was.

Q And do you recall when you became involved in that investigation?

A It was about February 25 of '75.

Q Do you recognize the gentleman who's seated at the end of the table?

A That's Kenneth Whitmore.

Q Did you ever have occasion to see Mr. Whitmore in connection with your duties on the investigation?

A Yes. I spoke to him for the first time in the early morning hours of February 25, 1975.

Q Would you look at the document which is labeled S-12, which is in front of you.

A (Witness complies.)

Q Can you recognize that document?

A Yes. The writing up at the top, which is the handwritten portion, is in my handwriting and my signature appears as the first witness. Also, the -- where it says by place, the words, parish prison, that's in my handwriting. The date, 2-25-75, and the time, 2:45 a.m., is in my handwriting.

Q What is the purpose of that form?

A That's a -- the top portion above the double lines enumerates the Miranda rights of a person who is a suspect. It says, we want to question you about, and you fill in what you're questioning the person about. Then you read them the Miranda rights. The bottom portion is in large bold lettering entitled, Consent to Questioning, and it says that a person has read his rights and he's willing to make a statement, doesn't want a lawyer at this time and that no promises, threats or pressure has been used on him to get the statement. It's commonly called a rights waiver.

Q You recognize specifically this document by your handwriting?

A Yes.

Q Was this document used in connection with any statement given by Mr. Whitmore?

A That document was used in connection with the first statement given by Mr. Whitmore.

Q And how was Mr. Whitmore informed of his rights with the use of that document?

A He was -- initially, before he was read his rights, I had orally advised him of his rights.

Q You had?

A I did.

Q And how did -- explain to us how you did that?

A Well, I told him, I said he had a right to remain silent. That

means he didn't have to say anything to us. I told him that I was an assistant district attorney. I was in the presence of Louis Russell. On this rights form, when this was filled out, Carson Bueto was present, but Louis Russell and I spoke to him a few minutes prior to this being filled out without Carson Bueto being present. I advised him that if he gave up his right to remain silent, that anything he said could be used against him in a court of law; that he had a right to have an attorney present during this, any questioning. I said, right now what we're doing is questioning you. Said if you couldn't afford an attorney, the Court will provide one for him free of charge and that if he decided to answer any questions, that he could -- the fact he answered one or two questions didn't mean he had to keep on talking. He could stop at any time. And then we asked him about the Marshall Bond killing.

Q Did you ask him if he understood these rights?

A Yeah, I asked him if he understood them, and he said he did and that he was willing to talk to us.

Q Okay, now, at this point -- how much later was this particular formed filled in?

A Approximately fifteen minutes.

Q Were you present when this form was filled in?

A Yes. As I told you, it's in my handwriting.

Q And how was this particular form used in connection with advising him of his rights?

A This -- after we had talked to him briefly and he said that he was willing to give us a formal taped statement, I then got -- I don't recall if this was my form or it was supplied by Louis. At that time I believe I had some in my briefcase. In any case, I took this form and I filled in the handwriting

portion and I read it to him. I said -- you want me to read it?

Q Yes, please for the record.

A We want to question you about the robbery and killing of Marshall Bond; but before we ask you any questions, we want you to understand your rights. You have the right to remain silent or to answer questions. I asked him did he understand that. He said he did. Said we inform you that anything you say can be used against you in court. Asked him if he understood that. He said he did. I said you have the right to talk to a lawyer for advice before you answer any questions if you so desire, and you may have the lawyer with you during questioning. I asked him if he understood that, and he said he did. Said if you want a lawyer but cannot afford one, a lawyer will be provided for you. I asked him if he understood that, and he said he did. If you decide to answer questions now without a lawyer present, you still have the right to stop answering at any time in order to get the advice of a lawyer or for any other reason you might have. Asked him if he understood that, and he said he did. I then -- was showing him the form, and I said this bottom part is consent to questioning, and I read it. I have read the statement of my rights shown above. I understand what my rights are. I am willing to answer questions and make a statement. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, and no pressure of any kind has been used against me. I asked him if that was correct, was he willing to give us a statement, and he indicated that he was and signed his name where it says, sign; and I put a little "X" there to indicate where he should sign; and it's signed,

Kenny Whitmore; and I witnessed it. Carson Bueto witnessed it, and Louis Russell witnessed it.

Q About how long were you with Mr. Whitmore prior to beginning the tape recording itself?

A Approximately fifteen minutes.

Q And who was there during this time?

A Before the taped statement, myself and Louis Russell.

Q And while you were present, did anyone mistreat Mr. Whitmore in any way physically, bully him around, strike him, make any threatening gestures towards him or anything of this nature?

A No. I advised him of his right. Then we questioned him about the Marshall Bond case and advised him about some information that we had.

Q Did anyone make him any promises of either lenient treatment or harsh treatment or anything of this nature which might have led him to speak to you or which was designed to lead him to speak to you?

A No.

Q Do you know of anyone else who would have made him any promises of this nature?

A No. To my knowledge, this was -- we were the first ones to talk to him with regard to this particular matter.

Q Okay, I'm going to ask you to examine that object which I will mark as State 14 and see if you recognize it.

A (Witness complies.) This appears to be the tape that -- the taped statement that was taken that I just referred to that was taken after the reading of these rights. I note on here the initials of Louis Russell in the red portion on Side 1, the small initials of O. Carson Bueto down here next to the "S. M." and the name, Kenny Whitmore, and the date, 2-25-75,

and on the back side, again the initials of Louis Russell and Carson Bueto and the date.

MR. PEREZ: Your Honor, I move to introduce this article into evidence and play it to the jury.

MR. BRANTLEY: Prior to that time, I'd like an opportunity to cross-examine this witness.

THE COURT: Go ahead.

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CROSS-EXAMINATION

BY MR. BRANTLEY:

Q Mr. Hebert, it's my understanding with the new administration, Mr. Brown's administration, that oftentimes assistant district attorneys take part, an active part in investigations of particular crimes, is that correct?

A Under Mr. Brown's administration, you say, or under the new administration?

Q Mr. Brown's administration.

A That is correct.

Q And was this also part of your function the evening you went to the parish prison?

A Yes, it was.

Q Now, the reason you went to the parish prison, as I understand it, was that some information had been given by an informant to either Lieutenant Bueto, Sergeant Russell, to yourself, indicating Whitmore . . .

A Not to myself.

Q Given to you?

A No, not to me. I received it second or third hand.

Q But there was some information given . . .

A Correct.

Q That Mr. Whitmore might have some knowledge of the incident that took place?

A Well, that he participated in it.

Q There was also indication in that knowledge that there was a Mister Donahue was involved in it?

A That's correct.

Q Was -- now, what are your normal working hours?

A I'm required to be there from 8:30 to 5:00 at the office

unless I have some legitimate reason for being out of the office. However, once a month each section goes on what we call callout. You're on call twenty-four hours a day from noon Friday to noon the following Friday. During this particular occasion, I know that I had worked the following week on a, filling in for I think it was David Miller; and then I think this week was my regular week. So I had two weeks of duty running . . .

Q It's fair to say that 2:45 in the morning is not your normal working hours?

A It's not my office hours, but it's not unusual for me to be out at that time of the morning on callout.

Q Is it unusual for Mr. Brown to be out at 2:45 in the morning?

A It is unusual but not unheard of.

Q Mr. Brown was at the parish prison that night, also?

A He was at the parish prison. He was not at the parish prison when Kenneth Whitmore was taken out of his cell and brought to the interview room. He arrived while Louis Russell and I were in the interview room with Kenneth Whitmore, and I stepped out of the interview room and spoke with him, and then went back in and took the taped statement.

Q Mr. Brown arrived because of the call from you advising him?

A Right.

Q It was after the taped statement that Mr. Brown spoke with Mr. Whitmore?

A I don't recall Mr. Brown speaking to Mr. Whitmore.

Q At that time or at a later time?

A I don't recall him speaking to Mr. Whitmore at all.

Q In your presence?

A He never spoke to Mr. Whitmore in my presence.

Q When you left the -- after the interview with Mr. Whitmore,

what did you do after the interview was concluded?

A Aside from drinking some coffee -- no work was accomplished. Went home.

Q Did you drink the coffee at the parish prison?

A Yeah. You're familiar with the, what they call the central.

Q Was Mr. Brown present when you had the coffee?

A Oh, yeah.

Q Did he stay there the whole time?

A He was there. We left -- I'm pretty sure we left about the same time.

Q Are you sure that you left at the same time?

A I cannot state with one hundred percent certainty that we left at the same time, but I'm pretty sure that we left at the same time. We were not in the same automobile but . . .

Q Now, in drinking coffee was Lieutenant Bueto drinking coffee with you, also?

A We were all drinking coffee the whole time.

Q 2:45 in the morning, I can understand. Mr. Brown as the District Attorney has complete authority as to whether to prosecute a case or not to prosecute a case, is that not true?

A That's what the law says.

Q And he can make that decision. He can tell a defendant, we're not going to prosecute you, or he can tell a defendant, we are going to prosecute you. He has that absolute authority, that absolute right.

A The law, as you're well aware, states the District Attorney has the sole authority to say who, when, and how a person shall be prosecuted.

Q Is there a term you're familiar with in prosecutory language of the criminal justice system known as state's evidence?

A Yeah. You see it more on TV than you do in the D. A.'s office.

Q The term, state's evidence, means that if one defendant will testify against another defendant, that he turns state's evidence.

A Turns state's evidence, right.

Q And he normally will do that because of a promise of leniency or we won't try and get you on a particular charge or for any number of reasons.

Q That's -- if you're talking about an accomplice, that's generally the reason that they will turn state's evidence because you have offered to give them something.

Q And as an assistant district attorney, do you have the authority to do that without Mr. Brown's advice and consent?

A I have the -- I've got to make a distinction here -- I've got the authority, you might say, but if I did it without Mr. Brown's permission, I would probably lose my job because it would be disobeying internal office rules.

Q In this situation you, of course, did not make any inducements such as that?

A No, sir.

MR. BRANTLEY: That's all.

BY THE COURT:

Q Mr. Hebert, you said Mr. Brown came to the parish prison at your call?

A I either called him or instructed someone to call him. I had an investigator out there with me who had not participated in the questioning.

Q Who was that?

A I believe it was Jim Rainwater.

Q Where did you locate Mr. Brown?

A At his home.

Q Did you talk with him directly on the phone?

A I don't recall if I called -- I'm sure I did, yes.

Q Did you awaken him?

A No, I don't know. I assume that I did when I called him.

Q How much time after you called him before he arrived at the parish prison?

A It was the length of time that we were questioning, Louis Russell and I were questioning Kenneth Whitmore prior to taking the taped statement. So I'd say approximately fifteen minutes or so.

Q At the time you called Mr. Brown did you know what Mr. Whitmore was going to say?

A No, I did not.

Q So when Mr. Brown arrived, you had a conversation with him?

A Yes, I did.

Q That's after you had taken the statement from Mr. Whitmore?

A After I had taken an oral statement from him but not . . .

Q Not the taped statement.

A I did talk to him after the taped statement, also. The first conversation was before the taped statement.

THE COURT: Any other questions, gentlemen?

MR. PEREZ: I don't have any other questions.

MR. BRANTLEY: No, sir.

THE COURT: Can I excuse this witness?

MR. PEREZ: I would like to offer this particular item into evidence at this time and ask to play it for the jury, although I have to say that it lasts I think about forty minutes.

A It's one and a half sides.

MR. PEREZ: It's a thirty-minute tape on each side. It lasts forty, forty-five minutes. We're so close to five o'clock. Perhaps we could break and play the tape first thing in the morning.

MR. BRANTLEY: Judge, we have no objection to that.

WITNESS EXCUSED

..*.*.*.*.*.*

THE COURT: Court be at recess until ten o'clock tomorrow morning.

(Court adjourned until Wednesday, January 5, 1977.)

WEDNESDAY, JANUARY 5, 1977

THE COURT: All right, gentlemen, are their any argument, motions, filings that need to be taken up before we bring the jury back in?

MR. BRANTLEY: Your Honor, if it please the Court, and I'll give Mr. Perez a copy of a motion that I would like to file -- my understanding, the Clerk has it at this time -- to reopen and/or have reconsideration of the motion to suppress evidence. The basis of the motion is the fact that -- and I think this has been a critical issue throughout the trial -- that we have initially filed a motion for a bill of particulars. In that motion for bill of particulars we specifically requested any and all tape-recorded statements, written statements, inculpatory or exculpatory evidence that would be in the possession of the State. In response to the motion for bill of particulars, the State advised defense that they were in possession of two tape-recorded statements, statements having been taken February 25, 1976,

'75, excuse me, between 12:45 a.m. and 3:16 a.m., second statement having been taken February 26, 1975, between 10:40 a.m. and 10:51 a.m. Pursuant to a request for subpoena duces tecum directed to the Sheriff of East Baton Rouge Parish, records of a polygraph examination were produced for the first time this morning. The polygraph examination records consisting of charts which, of course, would be inadmissible under Frey versus United States. But also tape recordings of certain questions and answers that were asked and elicited of the defendant, Kenneth Whitmore, and which constitute tape-recorded statements that had not been previously made available to the defense. We feel that the absence of the availability of these statements is in direct contravention of the State's failure -- the State's requirement to make discovery specifically requested in the motion for bill of particulars and, further, is in violation of Agurs versus the United States, which was decided July 24 of 1976 by the United States Supreme Court. We feel that based upon this, we're entitled to a

reopening of the motion to suppress and/or a mistrial on the grounds that the State has failed to make the appropriate discovery pursuant to our, again, specific request. I can't just reiterate that. And also that this evidence has just come to light.

THE COURT: What's the position of the State?

MR. PEREZ: Your Honor, the State was not aware at the time that the motion was filed that there were any tape recordings of the defendant's voice other than the onces which we agreed to furnish to the defense. When the matter came to light -- and a matter of fact, the matter of any further tape recording came to light, not through knowledge, my knowledge, but through knowledge of Mr. Brantley when he subpoenaed such a tape, which shows that he actually knew of the existence of the tape before I did. When he subpoenaed such a tape, I investigated the matter and found that there was a very brief, approximately a five-minute tape recording of the defendant's voice that took place during the polygraph

examination. Now, this tape recording took place after the confession was made in this case, after the second confession was made, and could have no bearing on the admissibility of the second confession because it just -- how could it retroactively have some bearing on what he had said earlier. Besides that, as Your Honor knows, we've had an in camera hearing this morning in your office, at which time you listened to that tape recording and defense counsel listened to that tape recording, that all of the information on that tape recording directly implicated the defendant in this robbery and murder. In his own voice he admitted striking Mr. Bond with the tire tool. He admitted participating in the robbery, and that he and Mister Donahue were there and robbed and murdered the man. And I could hardly see how it could have assisted him in any way in his preparation of the case. Now, I would like to point out that as early as -- at least the motion to suppress which was back in 1975, if you look at the questioning, defense counsel was

quite aware that there had been polygraph examinations. And from this fact, mere fact of having had polygraph examination, he could have known just as well as I could have known that there might have been a tape recording, and he did not specifically ask for it. This is -- it's just asking for discovery. There's no evidence which is exculpatory in the tape recording, and he's not entitled -- he was not originally entitled to that discovery and, in addition, the State was in good faith in its answer.

MR. BRANTLEY: Your Honor, if it please the Court, of course, I think the State, if it did not have it, I have no reason to disbelieve Mr. Perez in any way, shape, or form. I don't believe he had actual knowledge of the existence of these tapes, but I think the State must be presumed to know what evidence they have in their possession. It's -- we do not have the availability of the first tape of the first polygraph because it's been erased. I feel that there's no question that had the first polygraph taped been inculpatory, it

never would have been erased or been taped over by the statement of another defendant.

THE COURT: Mr. Brantley, let me ask you this. You and I heard this tape a moment ago. What if anything, exists on that tape that would have been material and could have been used by you or to a defense counsel in the original motion to suppress?

MR. BRANTLEY: Judge, on the tape that we heard, little or nothing. I think that goes without saying because Your Honor has heard it, also, but I think, also, if -- there was another tape. The first polygraph that was taken, that was inconclusive, that would have aided us, if not in the trial of the matter, in hearing on the motion to suppress. There would have been additional evidence that would have come out that was not disclosed to us, and I don't think intentionally not disclosed, and I would not give the Court that implication.

THE COURT: Have you made it clear, Mr. Perez, what's happened to the original tape? I know you did in my . . .

MR. PEREZ: Right.

THE COURT: Chambers. I'd like to have it on the record.

MR. PEREZ: I've investigated this matter, and as I claimed to Your Honor and defense counsel, this case against this particular defendant began when the police authorities received some information from a confidential informant. The police then took that informant and polygraphed him to determine the reliability of his information before they proceeded with the investigation against Mr. Whitmore. The polygraph of this informant is on the front half of the tape recording which was subpoenaed this morning. When they began the first polygraph of Mr. Whitmore, the tape was flipped over and his polygraph began on the back half of that tape. When it was inconclusive, it is the policy of the Sheriff's Office to only keep tape recordings that people show definite lying. When they -- when the first polygraph was inconclusive and they agreed to re-polygraph him the next morning, they re-polygraphed him over the same tape that had been

used on his first polygraph, thus erasing the first polygraph and putting the second polygraph over it. After polygraphing Mr. Whitmore the second time, Mister Donahue was confronted with the information, etc., and Mister Donahue, the codefendant in this matter, agreed to take a polygraph. I think the next day Mister Donahue was taken to the polygraph suite and given a polygraph. Again, the same tape was used to tape-record the Donahue polygraph as had been used to tape-record the Whitmore polygraph, going over the Whitmore polygraph and erasing the Whitmore polygraph. However, the Whitmore polygraph was longer than the Donahue polygraph, and the tail end, the last ten minutes or so, of the Whitmore polygraph was not erased because the Donahue polygraph did not last that long. That was the portion which was in existence at the time that the request for bill of particulars was made. That was the portion that was played to Your Honor and defense counsel this morning, and that is the portion which contained absolutely no exculpatory material at all.

THE COURT: Is it the intention of the State to introduce into evidence that short portion of that tape that we heard this morning?

MR. PEREZ: No, sir. It was never the -- as it was never our intention as can be seen by my opening statement and by the 768 notice which I gave to defense counsel. We never intended -- we were not aware of its existence. I personally was not aware of its existence, though I could have been because I was aware that he had been polygraphed; and if I would have searched my memory at the time, I guess I would have known that they recorded this because I've been present at one polygraph before, but it just did not come to mind, and the information that was given at the first polygraph was essentially the same as the information on the first tape recording which the State intends to play before the jury. The information which was given at the second polygraph is essentially the same as the information which will be played in the second tape

recording which the State intends to play before the jury. And I think all the records of our office of which I'm aware, I think it's very clear that there is some exculpatory information on this first tape that the State means to introduce. And he states -- the defendant in that tape states that he was present, that he did not participate actively, that he did not get any money out of it, that he did not even seen the crime committed in this first tape. All this exculpatory information that might have been on the polygraph is contained in this first tape, and we are going to play that before the jury, and we're going to play the second tape where the defendant gave the police a much different story.

MR. BRANTLEY: Judge, I think that adds to the substance of my argument. Mr. Perez acknowledges that the tape that was erased did contain exculpatory evidence. Now, when we asked are there any other tapes, are there any tapes, in that bill of particulars, then he's under a duty to at least tell us, yes,

there's a tape, a partial tape, or there's a tape that's been erased that did contain exculpatory evidence. We're not talking about something he's under a duty to do under Agurs without being asked but specific questions that were posed to the District Attorney's Office pursuant to our bill of particulars.

THE COURT: The Court's ready to rule. With regard to the motion to reopen or have reconsideration of the motion to suppress, the Court has already ruled that the decision of Judge Covington in denying the original motion to suppress is binding on this Court at trial, and I do not have the authority to reopen or go into the question of the admissibility of the two tape-recorded statements. I also find that at that motion to suppress there was no consideration of this particular five minutes of the polygraph test and therefore that motion does not cover in any way the taped statements taken in connection with the polygraph; and if you wish to move to suppress that statement,

the Court will allow you to do so.

MR. BRANTLEY: We so do.

THE COURT: However, the Court further finds that the State had the duty to disclose this third tape and with due diligence could have found that it existed. However, the Court also finds, and I think counsel admits, that the prosecution was absolutely in good faith in its answers to response to the bill of particulars. Further find that the tape statement that I heard this morning is in no way exculpatory, could not have possibly aided the defense, and it does not meet the test of United States versus Agurs, particularly as described and interpreted by the Louisiana Supreme Court in State versus Bennett, I think December 13, of this year, which requires the omitted information to reach a level that it would have denied the defendant a fair trial. I have listened to it in chambers, and I find that it would not have denied the defendant a fair trial in any way, that it's exculpatory in any way, and would not have aided in the defense.

MR. BRANTLEY: Your Honor, we'd ask for an assignment of errors. Your Honor, we'd like to make one additional objection prior to bringing the jury in. Yesterday afternoon at close of trial, Mr. Perez is going to offer and play to the jury the tape-recorded statement made of Mr. Whitmore, 2:45 a.m. to 3:16 a.m. February 25, 1975; and prior to doing that, he was allowed to lay his foundation in front of the jury, being the testimony of Lieutenant Bueto and the testimony of Warren Hebert of the District Attorney's Office. There was a third party present at that time who was Sergeant Russell with the Sheriff's Office, who has not testified; and, first of all, we object to the laying of the foundation in front of the jury which was previously ruled on; and, secondly, we feel very strongly that . . .

THE COURT: You don't object to laying a foundation. You object to the adequacy of the foundation.

MR. BRANTLEY: The adequacy of the foundation and the laying of the foundation in front of

the jury, not just in front of the, to the Court's satisfaction. I think the Court has already ruled on that, but I want to make sure that the record is clear as to our position and that if the Court does intend to proceed with the playing of the tape with the absent testimony of Sergeant Russell, who was present during the interrogation, then we would object to that, also, and ask that that objection be . . .

THE COURT: What is the basis of your objection to the foundation? That it is not adequate?

MR. BRANTLEY: That it's not sufficient with the absence of a material State witness, and I think there is a presumption that if the State fails to call a material witness, that there is -- the testimony of that witness would be unfavorable.

THE COURT: No, that's not the presumption. The presumption is that it would not have aided him. Mr. Perez, you have any argument on that?

MR. PEREZ: Well, I think

that I've put on two credible witnesses who were present during the entire time and to go into every possibility -- I just have to prove this thing before the jury to -- I have proven it beyond a reasonable doubt. This is uncontradicted testimony of two credible witnesses as to what happened, and I don't see any need to string out witness after witness, after witness, after witness on this matter.

THE COURT: The question of admissibility has been determined. There's no evidence presented in this courtroom of duress, threats or intimidation. Had there been such in evidence, such evidence, it may be incumbent upon the State to overcome that by calling all the parties present at the time; but there is no evidence at this time of any duress, intimidation, or any threats. I have already ruled that the decision of Judge Covington is binding on the admissibility of the tape-recorded statement. Bring the jury back in. How long is the tape?

MR. PEREZ: This first tape

is about forty-five minutes. I have to get Mr. Hebert on the stand.

(The jurors were brought into the courtroom.)

MR. PEREZ: Your Honor, I have the tape ready to play. Mr. Hebert was on the stand and had identified the tape. I can proceed. He's on his way over here right now to testify. I have no more testimony before the beginning of the playing of the tape, and I'd like to request to -- he's already identified it -- to begin playing it at this time.

MR. BRANTLEY: Your Honor, to my knowledge, the jury has not been polled, and the defense . . .

MR. PEREZ: I'll waive polling.

THE COURT: I see no reason not to go ahead. Technically, I don't think you can put the tape in without some witness to being present.

MR. PEREZ: Well, he'll be here in just a moment.

THE COURT: Do you object to going forward without Mr. Hebert?

MR. BRANTLEY: No, sir, I really don't. What I had indicated

was that the jury had not been polled.

MR. PEREZ: State waives polling.

MR. BRANTLEY: The defense does not waive polling. We'd like the jury polled and questioned as to whether they have had opportunity to either discuss this matter with any members of family or close friends, relatives, any party, and/or read anything about it in the newspaper or hear anything about it by way of television or radio.

THE COURT: You have any particular reason for making such a request?

MR. BRANTLEY: No, sir, but I think I do have the right to request that.

THE COURT: Ladies and gentlemen of the jury, you've heard the request of defense counsel. I ask all of you jointly to respond individually whether or not you have had any outside information about this case through the news media, through friends, through any other sources.

(Reporter's note: Each juror was asked the question

individually, and each answered the question negatively.)

MR. BRANTLEY: Thank you.

THE COURT: Let the record reflect that all the jurors responded negatively.

MR. PEREZ: I'd like to recall Mr. Hebert.

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WARREN HEBERT, called to the stand as a witness on behalf of the State, having been previously duly sworn, testified as follows:

REDIRECT EXAMINATION

THE COURT: Mr. Perez and Mr. Brantley, if there is a transcript of this tape, I'm going to order it given to the court reporter so that she can use it to assist her in transcribing.

MR. PEREZ: Your Honor, it's my understanding that there is no transcript of the tape. Now, counsel may have one that he may have made.

THE COURT: If either party has one, I'm ordering . . .

MR. PEREZ: I do not have one in my possession. My understanding was that the, as the jury will see, that the quality of the tape, at least on the player that was available from the Sheriff's Office, the quality of some portions of the tape were so poor that their person who does the transcribing did not want to -- felt she might be too much in error by guessing at words, and she did not want to

transcribe it.

THE COURT: That's why I'm ordering a copy of it if either of you have it. I know the difficulty in trying to transcribe these matters and the amount of time it takes. Rather than place that burden on the reporter now, if someone has already gone through it, she can listen to it to herself, along with me, and we can come up with our best estimate of what the tape says. Do you have . . .

MR. BRANTLEY: Yes, sir. It was transcribed by Mr. Abadie's secretary. It's not -- as Mr. Perez said, the tape seemingly was inaudible in certain portions.

THE COURT: The Court and its reporter will do its best to accurately transcribe this tape for appellate record purposes.

MR. BRANTLEY: This is the only copy I have. You can make a copy. I'd like to follow along.

THE COURT: Keep it, but give me a copy when you've -- make a copy available to Miss Canella after the proceedings.

BY MR. PEREZ:

Q Mr. Hebert, you realize you're still under oath?

A Yeah.

MR. PEREZ: Your Honor, I'd like to move at this time to introduce into evidence the State 13, the tape . . .

THE CLERK: 14.

MR. PEREZ: 14, the tape recording and request permission to play it to the jury.

MR. BRANTLEY: Your Honor, we further enter our objection as previously entered . . .

THE COURT: Objection's overruled. Let the item be offered, introduced, and filed into evidence. You're allowed to play it at this time. Ladies and gentlemen of the jury, if at any time you cannot hear this tape, raise your hand and we'll stop and play it over. We don't have facilities they have in some courtrooms where people can listen with individual headsets.

MR. PEREZ: I request that there be as little movement as possible in and out of the courtroom to distract the jury from listening to the tape because it is

difficult to understand in parts.

(Reporter's note: S-14 was played to the jury as follows:)

"SERGEANT RUSSELL: '75, the time is 0245 hours, location is the East Baton Rouge Parish prison. The following tape recording is being made in the presence of Kenny Whitmore, Lieutenant Carson Bueto, Sergeant Louis Russell, and Mr. Warren Hebert of the District Attorney's Office. The purpose of this interview is to question Kenny Whitmore in regard to the armed robbery and murder which occurred on August 15, 1973, between 4:00 and 6:00 p.m. However, before any questions are asked or statements made, it is necessary, Kenny, that you be advised of certain constitutional rights and that you fully understand those rights. They are: number one, you have the right to remain silent or to answer questions; number two, we inform you that anything you say can be used against you in court; number three, you have the right to talk to a lawyer for advice before you answer any questions if you so desire and

you may have the lawyer with you during questioning; number four, if you want a lawyer but cannot afford one, a lawyer will be provided for you; number five, if you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time in order to get the advice of a lawyer or for any other reason you may have.

BY MR. RUSSELL:

Q Now, do you understand your rights?

A I do.

Q A little louder so I can hear you.

A I understand them.

Q If you would, this is a copy of your rights and the consent to questioning. If you understand your rights, please sign here.

(Reporter's note: There was silence on the tape at this time.)

Q Kenny, will you please state your name, age, and address please.

A My name is Kenny Whitmore. Age twenty, 5314 Rollins Road, Zachary.

Q In your own words, Kenny, tell us what happened and be as detailed and thorough as possible. We will not ask you any questions until you have completed your statement,

okay? Go ahead. Okay, go ahead, Kenny.

A Now, the day before that, me and Charles Armwood had talked. Donahue had talked to both of us about it. We didn't -- we didn't really tell him we was going to go along with him. We told him that if he could do it, we'd be with him. I was working at the time for Floyd Electric. He say going to be that next day. I don't know what day it was, so I went to work that day and got off around 4:30. We was working on -- inaudible. It was me, my cousin, Jerry Stewart, and Curtis, stay right in the curve on Rollins Road. So about -- we get off from work at 4:30. We made it to Zachary at about 5:15 by the time we came by my house. We went over by Charles Armwood. Asked Charles was he going to go. He said, no. Asked me was I going to go. I said, no. So he asked me what I think we ought to do, and I told him I didn't know, and Charles asked me. I told him I didn't know. So we went on around, and so he say he know what time the man come in and everything. So he must have been doing some kind of business. I really don't know. So we drove on back there, and we drove on back there. So we parked behind the car. So he got out and went and went around to the barn. And he must have grabbed the man, stabbed him, and got back into the car. I told him to take me home and drop me off at home. I don't know where he went then. So I went home because I had just got off from work. I was going in the yard, he came picked me up, see. So he dropped me back off at home. I took a bath and went over to the park. Me and Charles Armwood got to talking about it. So I told Charles that he had did it, and so me and Charles,

Red, Willie Moore, all of us, we went for a ride. When we got back, dogs and everything was down in Zachary. So Donahue, he had got -- look like he had got kind of panic. I didn't say nothing. I just told him to let me out the car. So all of us got out the car. We stood up on the tracks. Then I didn't see him anymore. Me and Charles Armwood talked about it the next day. Asked me did Donahue really do it. I told him -- I told him yeah.

BY MR. HEBERT:

Q Who is Red that you referred to?

A That's Jerry Stewart.

Q Did you tell them?

A No. They don't -- still don't know nothing about it. Nobody but me and Charles Armwood knew it.

BY LIEUTENANT BUETO:

Q How does Charles know about it?

A 'Cause Charles, he explained it -- came and explained it to me and Charles.

Q Do you remember what day of the week it was?

A No, I don't.

Q You know about what time it was?

A I say we get off from work at 4:30. It take about a half hour to make it to Zachary. Normally -- had to be around 5:15 or 5:30 'cause I had just got home.

Q Now, you said you worked for Floyd Electric?

A Yes, Floyd Electric.

Q So you drove from Floyd Electric straight to Zachary?

A No, Curtis, Curtis . . .

Q Curley did?

A The man I work with, you know.

Q Y'all -- both of you drove straight to Zachary?

A Like, I was in the car with him and my cousin, Jerry Stewart.

Q And then Curley let you out of the car?

A He let me out of the car.

Q Where at?

A Right on the corner by my grandmother's house.

Q Where is that at?

A Right on the corner Rollins Roads and Avenue "A".

Q Avenue "A"? And how long did you stay at home?

A Well, I stayed at home -- see, I was going in the yard. Donahue came and we went by Charles house. Charles said he wasn't going to go. I told him I wasn't going either.

Q Donahue came by your house?

A Yeah.

Q What kind of car was Donahue driving?

A A white and black car.

Q What make?

A I think it's a police car. It was . . .

Q Do you know what kind it is, Ford, Chevrolet, Plymouth?

A Ford.

Q A Ford?

A Uh, huh.

Q You know what model it is, what year?

A '68 or -- inaudible.

Q All right, after Donahue picked you up, where did y'all go?

A We went to Charles house.

Q Over to Charles Armwood? Where did Charles live?

A Avenue "C".

Q On Avenue "C"?

A Yeah.

Q Did y'all stay there very long?

A No, we didn't because Donahue said he had to go.

Q All right, where did y'all go then?

A So we drove around to the road. He went on back off in the field. I stayed in the car.

Q Now, you're talking about the road. What roads?

A The road that leads back to the field.

Q Mr. Bond's field?

A Uh, huh.

Q All right, how did y'all get back in the field?

A Well, he drive back in his car.

Q About how far back in there?

A About a half a mile.

Q All right, once you got back in there, from your memory, tell me what you saw back there.

A Donahue got out the car. There was another car parked back there.

Q What kind of car was that?

A It was a brown car. I don't remember what kind. It was a brown car.

Q Was it a small car?

A It was a big car.

Q A big car? Now, where did y'all park in respect to that car?

A We was -- I believe he must have known everything about it. He come up right up on the side of the car, little bit behind the car.

Q To the left side or the right side of it?

A To the right side. I'm not really sure.

Q All right, then what happened?

A So he got out and he say he was going to ask the man about a job. So I'm still sitting.

Q You and Charles were still in the car?

A Not Charles. Charles didn't go.

Q When y'all went to Charles's house, Charles didn't get in the car with y'all?

A No. He said he couldn't go.

Q It was just you and Donahue?

A Yeah.

Q Okay . . .

A I told him at first, I said I wasn't going to go. I said, look, man, I ain't got nothing to do with this. So I just, I just went on him with him just to see was he going to do it 'cause I didn't really believe him.

Q All right, so y'all -- so Donahue parked his car to the right and then kind of in back of that brown car?

A Yes.

Q All right, and Donahue got out of the car?

A Yeah.

Q And what did you do?

A Sat there in the car.

Q You stayed in the car?

A Stayed in the car.

Q Where did Donahue go?

A In front of the car to a barn, like. So that's where -- I guess that's where he was.

Q Did you see anybody else around the barn?

A No, I didn't.

Q At any time did you see anybody else around the barn?

A I -- I was too scared to even look.

Q What were you doing?

A I was in the car.

Q You wasn't watching to see what Donahue was going to do?

A That wasn't my business.

Q What is Donahue's full name as you know him?

A Mister Donahue.

Q Mister? That -- Mister is his given name? Has he got a nickname?

A Not as I know of.

Q So Donahue got out of the car and you stayed in the car.

A Yeah.

Q And Donahue walked toward the barn. You didn't see anybody else?

A I didn't see anybody else.

Q What -- when is the next time that you saw Donahue?

A After this?

Q Yeah.

A It was about three days or four days . . .

Q No. I'm talking about the same day. You saw him walk toward the barn.

A Oh, yeah, uh, huh.

Q Did you keep him in sight the whole time?

A I didn't really keep him in sight the whole time.

Q In other words, he kind of, he kind of disappeared a little bit?

A Well, see, just the car. It was about from here to the desk by the telephone or something.

Q Do you remember the barn?

A Yeah, I do.

Q Could you draw me a picture of it?

A Well, it was something like a house, man. I couldn't draw it.

Q Well, look, let's take the back of this piece of paper right here and you draw me where y'all were parked, where the brown car was and where the barn was. As you draw it out, tell me what you're drawing.

A Like, this here is the side of the barn. This here must be the front of it right here.

Q Uh, huh.

A The car was parked, let's see, somewhere in there. That was the brown car.

Q Uh, huh.

A That was the car was . . .

Q Okay. Now, what was in -- this, this longest line here represents the brown car?

A Yeah.

Q All right, what was in front of that brown car?

A Nothing else but a pass and everything going on.

Q Was there another barn here or a tractor or a fence or anything?

A Can't remember.

Q Okay. How far from this brown car was it to the barn?

A It was about -- I couldn't really say.

Q Had you ever been on that, been on that place before?

A No, not that far, no.

Q Huh?

A Not that far.

Q You never had been over to where y'all were on this particular day?

A No, I hadn't.

Q All right, from the time that Donahue got out of this

car, when was the last time you saw him as he was walking away?

A As he was walking away from here?

Q No. When you was walking away from the car.

A When he went -- he got out the car. So he was walked right on around to it.

Q And you kind of lost sight of him for a few minutes?

A Yeah, for a few minutes.

Q All right, how long was he gone before you saw him reappear?

A About five, six or seven minutes.

Q Okay, when he came back, was he walking or running?

A He was walking. He was walking.

Q And did he walk right straight back to your car, back to the car where you were?

A Back to the car.

Q And he got back in behind the steering wheel . . .

A Yeah.

Q To drive?

A To drive.

Q What did he say when he got back in the car?

A He didn't say nothing but I got the money. Said take me home.

Q All right, you said he had -- he got the money. How much money did he get?

A I don't know how much he got. I didn't -- I never recall him say anything.

Q Well, how much did he give you?

A He didn't give me anything.

Q He didn't give you any money?

A No. I didn't want nothing to do with it.

BY MR. HEBERT:

Q What about -- did he have some kind of weapon? What did he do with the weapon?

A I don't know.

BY LIEUTENANT BUETO:

Q What did he have in his hands when he came back?

A It looked to be a knife. I'm not sure. I'm not really sure.

Q Okay, now, you say he did have some money on him when he come back to the car?

A Yeah, he had a wallet.

Q He had a wallet?

A Uh, huh.

Q What kind of looking wallet was it?

A Rust-colored looking.

Q Kind of rust-colored? Was it fairly -- was it look like a new wallet or an old wallet?

A I don't remember that.

Q Does it -- you remember if it was a real thick wallet like you have a bunch of papers or was just a . . .

A Yeah, it was a real thick wallet, like.

Q Huh? It wasn't just a thin one like I carry? You know, mine is real thin. All right, when he got back to the car, he told you that he had the money. What did y'all do then?

A I said take me home.

Q You told him to take you home?

A Yeah, uh, huh.

Q And what did he do?

A He took me home.

Q Right straight back to your house?

A Straight back to my house.

Q All right, now, while you were parked here and he walked over towards this barn, you never did see anybody else?

A Not as I remember. He -- the way he was talking, like, he did have somebody else, but I can't say that because I didn't see nobody else.

Q Did you see -- did you see the old man back there?

A Yeah, I did see him when he was peeping around the corner when the car drove up.

Q You saw the old man peep around the corner?

A Yeah.

Q Do you remember how he was dressed?

A No, I -- long time.

Q But that's the only time that you saw the old man was when he kind of peeped around the corner to see who was coming in?

A Uh, huh.

Q All right, when Donahue got back to the car where you were waiting, did Donahue have any blood on him?

A I, I didn't really pay any attention.

BY MR. HEBERT:

Q Did you notice any blood on his shirt?

A No, I didn't.

BY LIEUTENANT BUETO:

Q All right, now, getting back to the money and the wallet, did you see the money?

A No, I didn't. I saw some -- I don't know what it was. I saw a little money. I can't say I, what sort of money

it was or nothing.

Q Well, did he have a few dollars with -- few dollars on him?

A Just a few dollars.

Q Do you know about how many dollars?

A No, I don't.

Q Did he take the money out of the wallet or he had it already out of the wallet?

A It was in the wallet. Some of it was in his hand.

Q Did he make any statements about the money?

A Later he had told me about a five-dollar bill.

BY SERGEANT RUSSELL:

Q Later he told you about a five-dollar bill? What was so odd about a five-dollar bill that he would tell you about?

A He said it was an old . . .

BY LIEUTENANT BUETO:

Q What do you mean, old? It was just well worn or made a long time ago?

A It was a long time ago.

Q What was the discussion about the five-dollar bill?

A Said he was going to keep it. Inaudible -- because he had just gotten out the Army. He said he was planning on going back over -- I forgotten where he was stationed at. Anyway, he said he was planning on going back there this summer.

Q What was he going to keep the five-dollar bill for?

A He said he was going to sell it.

Q Why did he think it was worth more than five dollars?

A (No reply.)

Q Do you recall what he told you about the five-dollar bill?

A Well, he just tell me about it but just once, and I ain't -- I didn't ask him no more about nothing, about anything.

Q Was this the same day that y'all went out to the barn?

A No, it wasn't the same day. Inaudible -- fourth day after I hadn't been seeing him.

Q This was about four days later that he told you about the five-dollar bill?

A Uh, huh.

Q Well, now, of the money that he took out of the wallet, how much did he give to you?

A He didn't give anything to me. I had a job. I was working at Floyd Electric.

Q All right, what happened to the wallet?

A I don't know. I mean, like, he put me out. I don't know which way he went or nothing. I know he drove off.

Q Where was the wallet the last time you saw it?

A In the car on the seat.

MR. HEBERT:

Q What about the knife? What did he do with the knife?

A I don't know. He put something under by his seat. I don't know. I don't know.

BY LIEUTENANT BUETO:

Q Did you see him take anything out of the car when he got out and started walking toward that barn?

A No, I didn't.

Q How was he dressed that day?

A I can't remember.

Q What kind of shoes you normally wear when you on the streets?

A Shoes.

Q Huh?

A High-top shoes.

Q You ever wear tennis shoes?

A Every now and then. Not often.

Q What kind of tennis shoes you wear mostly?

A Basketball shoes.

Q The high-top shoes?

A They low-quarters.

Q Low-quarters? What kind of sole have they got on them?

A Rubber.

Q Huh?

A Rubber sole.

Q Do you -- any particular design that you like?

A (No reply.)

Q Now you . . .

A Zigzag.

Q That pen didn't draw too good. Could you try it again. Is it that big a zigzag or smaller or what?

A See, it was a long time ago.

Q Well, you don't have any tennis shoes now?

A Yeah, I have some now.

Q Are they the same kind that you had a year and a half ago?

SERGEANT RUSSELL: Let me interrupt and turn this tape over.

LIEUTENANT BUETO: Okay."

(Reporter's note: The tape was turned on its other side, and continued as follows:)

"BY LIEUTENANT BUETO:

Q You say you don't have a pair of tennis shoes similar to this, now?

A It's similar but they have stars on the bottom.

Q They have stars on them?

A Like -- inaudible.

Q A year and a half ago, did you have a pair with a star on them?

A No . . .

Q All it was was just that kind of zigzag design on them?

A Yeah.

Q How about Donahue? What kind of shoes does he wear when he's on the street?

A I didn't see them. I didn't pay too much attention to his feet.

Q Have you ever seen him wear tennis shoes?

A I say all I've seen him with is boots -- inaudible -- combat boots. They have some with similar the same bottom -- inaudible.

Q Is that what they call them Vietnam boots?

A Yeah.

Q Got that green canvas-looking material on them?

A Yeah.

Q You can't recall what day of the week this was?

A No, I can't.

Q Whether -- from your memory, does it seem like it was in the first part of the week or the middle or toward the end, or maybe -- let's maybe try to associate it close to maybe payday. How often was you getting paid at Floyd Electric?

A Every week.

Q On what day would you get paid?

A On Friday.

Q You get paid every Friday?

A Yes, sir.

Q All right, basing it on a Friday now, can you judge as to whether it was before payday or just after payday?

A It was before payday.

Q About how many days from your recollection do you think it would be?

A About three or two, something like that.

Q Two or three days before payday?

A Yes.

Q You always got paid on a Friday?

A Yes.

Q Now, how -- now, run it by me again as to how Charles Armwood knew about this.

A He, he -- he the one explained it to me and Charles. Said he was going to do it -- inaudible. Said he knows a lot about it. See, he say he know how you -- inaudible -- people, you know, from the Army. They taught him that in the Army.

Q Taught him what in the Army?

A He knew all kind of defense and stuff.

Q What, how to grab somebody and hold them? Did he . . .

A How you grab them when you hold them with one hand.

Q Did he tell you how to hold somebody?

A No, uh, uh.

Q Huh? He never did show you any of his holds?

A He always -- like, I used to see him on the street doing all this karate type stuff, you know.

Q Did he ever put any holds on you?

A No, he didn't.

Q Did he explain -- did he tell you what kind of hold he was going to use on this old man?

A No, he didn't. It wasn't but three of us knows about it, me, him, and Charles.

Q And where is Charles at now?

A Charles, he dead now.

BY MR. HEBERT:

Q When you -- when Donahue was talking to you and Charles about this the day before, what did he tell y'all he was going to do?

A He say he was going to go around there, and he was going to knock him off or something.

Q And do what?

A Get some money. The way it was started, it was more on him 'cause I don't, I don't even know nothing about doing -- inaudible. That's just the way it started.

BY LIEUTENANT BUETO:

Q Well, when he started talking about going over there and doing this thing, did you know who -- did you know the old man he was talking about?

A Yeah, I knew who he was talking about. He made it clear.

Q Who was he referring to?

A Bond.

Q Do you know what's Bond's first name?

A No, I don't.

Q What kind of -- what did the, this old man, Bond, do up there? Was he in business or anything?

A Yeah, he owned a drugstore.

Q And you knew Mr. Bond from the drugstore?

A Yeah. Most everybody knew his store.

Q Well, now, I realize that we're talking about a year and a half ago, but maybe by now that you're talking about and refreshing your memory some what you recall, let's go back to where, where we had this car parked back here. Do you -- can you recall anything now that you saw Donahue doing over by this barn?

A Nothing but going. That's all.

Q All you saw him was walking by there, and the only time that you recall seeing Mr. Bond was when he peeped his head around the corner?

A Yeah -- inaudible. We wasn't as far as that -- inaudible -- to the car. Inaudible -- car was -- inaudible.

BY MR. HEBERT:

Q You saw him when he grabbed Mr. Bond?

A No, I didn't.

BY LIEUTENANT BUETO:

Q Did you see him when he hit him?

A No, I didn't.

Q Did you see him when he stabbed him?

A Nope, I didn't.

Q Did you see him when he took his wallet from him?

A I saw him when he brought it back to the car.

Q You still don't recall how Mr. Bond was dressed on that day?

A No, I don't.

BY SERGEANT RUSSELL:

Q When y'all -- when you and Donahue left the area of that barn where you were parked next to that brown car, did you hear any tractors or trucks or anything else running anywhere close around there?

A Well -- inaudible -- because he had a lot of people working with him.

Q Did you know any of them?

A No, I didn't -- inaudible.

Q But as y'all were -- as y'all were going in the, back in there, I believe you said you had to travel about a mile, I mean a half a mile back up in there. Did you see anybody in the field working?

A Not as I recall.

Q All right, how about on the way out?

A No, I didn't.

Q All right, after you got back home that day, what did you do?

A Like I say, I had just got off from work, so I went and got the mud and stuff off. Came back over to the park -- inaudible -- I told Charles.

BY LIEUTENANT BUETO:

Q But you told Charles the next day?

A No, uh. Me and Charles, we met the same -- me and Charles, Willie Moore -- inaudible.

Q Did you hear any commotion going on that afternoon after you got back home?

A Yeah, I did after we had got back home.

Q What did you hear?

A It was late that evening.

BY SERGEANT RUSSELL:

Q What kind of commotion did you hear after Donahue dropped you off back at your house?

A Oh, no, I didn't hear anything then.

Q Huh?

A I didn't hear anything then, not till me and Red and all us came back from riding. Had a lot of laws up there, police. When we came back, we had heard he had been shot. I didn't really know. When people say he had been stabbed, still didn't know. I didn't want to discuss -- I didn't -- I ain't even want to talk about it to nobody.

Q Well, when you saw Donahue about four days later, did he tell you what he had done?

A No, he didn't.

SERGEANT RUSSELL: Mr. Hebert, do you have any further questions? Lieutenant Bueto?

LIEUTENANT BUETO: No, I don't at this time.

SERGEANT RUSSELL: Okay, this recording will now be concluded, the date being February 25, 1975. The time is 0316."

(Reporter's note: The tape was concluded, and the trial was continued as follows:)

Q Mr. Hebert, you've listened to this recording?

A Yes.

Q Is this recording an accurate representation of the conversation that took place between the hours mentioned on the tape?

A Yes, it is.

Q Whose voice was it that began and ended the recording?

A That was Louis Russell. Most of the intermediate was Carson Bueto.

Q And the person who was answering the questions, is he here in the courtroom today?

A That's Kenneth Whitmore seated at the far end of the counsel table.

Q Prior to making, having this conversation with him, did anyone prompt him on what to say and what not to say or things of this nature?

A No.

MR. PEREZ: That's all the questions I have of this witness on this tape.

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11-4-76 Cont

ACC + CASE

ACC remanded.

1-3-77: acc. p. in ct., rep by counsel, Joseph Brantley & James Abadie for trial. Jury trial began.

1-4-77: Jury trial continued

1-5-77: Jury trial continued. Mot. to reopen and/or have reconsideration of mot. to suppress evidence denied. Def. notice assignment of error

1-6-77: Jury trial continued. Acc. found guilty on both counts. Ct. ordered an updated presentence investigation on accused & dfy. sentencing pending receipt of PSI report. Acc. remanded.

3-3-77: Ct. on propio motu, ordered this matter set for sentencing on 3-14-77; notify accd.

3-14-77: acc. p. in ct., rep. by counsel, J. Abadie for sentencing. Count I - S/Dept. of Corrections for life. Count II - S/Dept. of Corrections for 99 yrs. w/o prob., parole, or suspension of sentence. These sentences to run consecutively with each other. Age is 23. Ct. advised acc. of right to appeal. Order of appeal granted returnable 4-4-77 to Supreme Ct. Def. counsel has until 3-25-77 to perfect error. Acc. remanded.

10-29-76 came on for hearing on mo to suppress oral & taped confessions & evidence. Thereupon, the ADA & DC submitted the issue to the Ct on evidence heard by J. Jean, a copy of the transcript being furnished to the Ct. The Ct, for oral reasons assigned, denied the mo. DC noted an assn of error to the ruling. Acc remanded.

11-2-76 due to illness of the Ct, trial passed & reason for 11-3-76 at 10 AM. Acc + Case

11-3-76 on mo of ADA & DC, trial was passed & reason for 11-4-76 at 8:30 AM. Acc + Case (to discuss plea bargain). Jury venire ordered to return at 10 AM 11-4-76.

11-4-76 DC filed a mo for continuance. The Ct ordered members of jury venire to return to hallway. The matter was argued & submitted to the Ct. The Ct for oral reasons assigned, granted the mo & ordered trial reset for 1-3-77 at 10 AM

8-31-76 came on on mo of ADA. on mo of ADA, trial reassigned for 11-2-76 at 10 AM. notify Acc in Parish Jail. Both Case + Counsel. Cancel trial date of 9-27-76

9-16-76: The Hearing on the Motion to Suppress Oral & Taped Confessions & Evidence Caused Thereupon was laid over for hearing on 9-22-76 at 11:00 a.m; the Motion to Sever was ruled moot by virtue of the State's re-indictment of the accused separately from his co-defendant. As to the Mot of particulars, counsel informed the Court that the defense was satisfied with the State's answer to said motion.

9-22-76: Motion to Suppress Oral & Taped Confessions further deferred in order for trial. (See corrected minute entry on 11-5-76)

1-76: Send n/a set 8-5-76 at 9:30 a.m; notify acc. & attorney D.A.

8-5-76 The Ct confirmed Mr. Abadie's appt under Bt 5-75-8614A which appt was made under Bt 5-75-8614. Copy of order to both cts. The Ct ordered Mr. Michael Cavanaugh appted Co-Counsel hereby relieved of the appointment & the Ct appointed in lieu thereof Mr. Joseph Brantley III to assist & aid Mr. Abadie in all matters pending on this Acc; notify Mr. Brantley of the appointment & send him a cert copy of appt. Trial assn for 9-27-76 at 10 AM - Acc + Counsel, Mr. Abadie (W). notify Mr. Brantley. DC granted until 9-5-76 to file pretrial motions. Mr. Abadie (W) notify Mr. Brantley & notify Mr. Cavanaugh that he has been relieved of his appointment as Co-Counsel in all pending matters of this Acc.

STATE OF LOUISIANA	:	NO. 5-75-8614, SECTION I
	:	19TH JUDICIAL DISTRICT COURT
VERSUS	:	PARISH OF EAST BATON ROUGE
KENNY WAYNE WHITMORE	:	STATE OF LOUISIANA

. . . . . .

LIST OF RESPONSIVE VERDICTS

AS TO COUNT I (Second Degree Murder):

Guilty

Guilty of Manslaughter

Not Guilty

AS TO COUNT II (Armed Robbery):

Guilty

Guilty of Simple Robbery

Not Guilty

No. 59832

SUPREME COURT OF THE STATE OF LOUISIANA

Volume No. II OF II

Filed 59632 DUPLICATE 19

Clerk Supreme Court of Louisiana

DUPLICATE

STATE OF LOUISIANA

SUPREME COURT OF LOUISIANA
FILED
MAY - 5 1977

DUPLICATE

Plaintiff and APPELLEE

VERSUS

KENNY WAYNE WHITMORE

Defendant and APPELLANT

APPEAL FROM

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The NINETEENTH (19th) Judicial District Court for the

Parish of EAST BATON ROUGE, LA.

No. 5-75-8614 HON. DOUGLAS M. GONZALES Judge

HON. OSSIE BROWN, DISTRICT ATTORNEY BY: Lennie F. Perez, Assistant District Attorney, Baton Rouge, La. Counsel for PLAINTIFF & APPELLEE

James F. Abadie and Joseph P. Brantley, IV

666 South Foster Dr. 918 Government Street

Baton Rouge, La. 70896 Baton Rouge, La. 70802

Counsel for DEFENDANT & APPELLANT

PORT A1941

DUPLICATE 59832

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RECROSS-EXAMINATION

BY MR. BRANTLEY:

Q Mr. Hebert, let me review a little bit more of what led up to the taking of this tape. As I understand the situation, you arrived at the parish prison approximately midnight or a little after midnight.

A No. It was later than that. To be honest, I have no independent recollection of the time that the statement was taken. I do know that the time that was noted on the sheet at that time was the then current time. So . . .

Q That was 2:45 in the morning.

A Right.

Q Did you arrive . . .

A So I arrived there about probably a half hour to an hour prior to that.

Q And during this half hour or hour, were you with Sergeant Russell and Lieutenant Bueto?

A Yes.

Q Did you discuss the nature of the questions that you were going to ask Mr. Whitmore?

A In a vague sort of way. I mean, not specific questions. We discussed the subject matter.

Q Did you then discuss the matter with Mr. Whitmore?

A I discussed it more with Louis Russell than Carson Bueto.

Q All right, then . . .

A And then Louis Russell -- let's see, we sent for Kenneth Whitmore off the line and had him brought into an interview room. Louis Russell and I went in and talked to him.

Q Now, would you describe this interview room for me.

A It's -- they call it the attorneys' interview room.

Q It's a cubical about six feet by six feet?

A Six or eight feet, yeah. There's a table in it, and there is generally one or two chairs on each side of the table, and some sort of makeshift ashtray on the table, usually aluminum cup or something, usually not a real ashtray, although I have seen it only on occasion, and there is usually a wastepaper basket.

Q Would it be fair to say the room is approximately as wide as the area that the recording equipment is in?

A This?

Q Yes.

A No, no, it's wider than that. You couldn't get a table in that and four people inside that, or three people.

Q And there's a wiremesh fence in there, also?

A No, no.

Q We're thinking about different . . .

A You're thinking about something else. You've been out there where there's -- you go to visit somebody when you're the attorney?

A Yes.

Q Right next to central?

A They give me a different room than they give you.

Q That's the room I used to go when I was a public defender.

Q Now, what time . . .

A It's about from this wall to, I guess the beginning of that counsel table in width, and approximately the same distance in length. It's pretty much a square.

Q Now, approximately how long were y'all in talking to Kenny before you took the statement?

A Before we took the taped statement, as I told you yesterday, we spoke to him for approximately fifteen minutes.

Q And during that fifteen minutes, did you discuss the case with him?

A Yeah. That's what we were there for.

Q And was he cooperative?

A Yes, he was.

Q Did he seem to understand why you were there, what you wanted to elicit from him?

A I explained -- we explained to him -- after I had advised him of his rights, we explained to him that we had received some information and we told him essentially what it was, and that we wanted to talk to him about the robbery and killing of Marshall Bond.

Q And he agreed at that time, after being advised of his rights, that he would cooperate with you and would answer your questions?

A Yes. He never used the word, cooperate, but he was cooperative.

Q And from hearing the tape, it doesn't seem that he really hesitated on many of those questions, did he?

A No, he didn't. His . . .

Q This was before . . .

A He had a tendency on occasions to nod or to speak in a low voice sometimes, but he was not hesitant about answering any of the questions.

Q And this was before Mr. Brown arrived at the parish prison?

A Correct.

Q Now, during the course of the interview -- now, we'll probably paraphrase much of this -- you asked him if he was with Mister Donahue when Mister Donahue went to Mr. Bond's property on Rollins Road.

A The questions are asked. I did not hear myself ask any

questions on that tape but . . .

Q You heard the questions asked and you heard the responses?

A Right.

Q But you were in the room . . .

A Right.

Q Hearing it in the room would be a little bit more audible than it would be on the tape.

A Yeah.

Q You heard the question asked or a series of questions asked of Mr. Whitmore to the effect that he was with Mister Donahue at the time that Mister Donahue went to the Marshall Bond property?

A Right.

Q And he was also asked did he get out of the car.

A Yeah, I guess so. I mean, I don't remember exactly. That's why we taped it because . . .

Q And he responds to that question, does he not, no, he did not . . .

A He did not get out of the car. On his statement he said he did not get out of the car.

Q And Mister Donahue got out of the car?

A Yes.

Q And he didn't see Mister Donahue, but Mister Donahue later came back and had a wallet or had some money.

A Right. He mentions seeing Mr. Bond peep around the corner of the barn. That was the only time he'd seen Mr. Bond.

Q And he saw Mr. Bond from his position seated . . .

A In the car.

Q In the car?

A Right.

Q When Mister Donahue got back to the car, he had the wallet, he

had some money in it. The question was asked, how much did he give you.

A Said he didn't get any.

Q Now, he described the color of Mr. Bond's automobile, the color of the vehicle that he was in, the color of the wallet. He was fairly detailed in his answers or explanations to you, was he not?

A He was fairly detailed but he, you know, he claimed not to have seen what took place during the actual beating of Mr. Bond and robbery of Mr. Bond.

Q Now, at this time I believe he had told you that he was working for Floyd Electric?

A I forget the name of it. I could recognize it if I heard it again. It's an electric place on Florida Boulevard. I think it's Floyd's Electric or Florida Electric.

Q He was employed at that establishment . . .

A That's what he said.

Q During the period of time? Did you verify that?

A I didn't personally. I'm sure that one of the -- somebody checked on it. I think it did turn out to be true. He was working there around that time. I'm not positive.

Q Now, based upon the information that was received by, from the interview with Mr. Whitmore, was Marshall -- was Mister Donahue subsequently arrested?

A Mister Donahue was already in jail.

Q Did y'all advise Mr. Whitmore of that fact?

A Mr. Whitmore knew that Mister Donahue was in jail.

Q How did Mr. Whitmore know? Well, strike that.

MR. BRANTLEY: That's all I have.

THE COURT: You have any further questions?

MR. PEREZ: No, not on this matter. I'm going to have him when I lay a foundation on another tape.

WITNESS EXCUSED

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THE COURT: Recess court until 1:30.

(A recess was declared for lunch. The jury was retired. Court reconvened. The jury was returned to the courtroom; the polling waived.)

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LT. CARSON BUETO, called to the stand as a witness on behalf of the State, having been previously duly sworn, testified as follows:

REDIRECT EXAMINATION

BY MR. PEREZ:

Q State your name for the record, so the record will reflect who's on the stand.

A Lt. Carson Bueto.

Q And Lieutenant Bueto, you understand you're still under oath in this case?

A Yes, sir.

Q Lieutenant Bueto, you earlier testified about the taking of a tape-recorded statement from the defendant, Kenny Whitmore, in the early morning hours of the 24th of February, 1975. Did you have occasion to speak to Mr. Whitmore with the tape recorder going at any subsequent time?

A Yes, I did.

Q I would like you to examine this document which I have labeled it as State 15.

A (Witness complies.)

Q Can you tell me what type of document that is, what the form is?

A Yes, sir. It's a Your Rights form.

Q Can you speak up a little bit.

A Your Rights form.

Q What is the use of that document?

A To advise a suspect of certain rights that he has.

Q In connection with questioning?

A Questioning, yes.

Q Do you recognize this particular document?

A Yes, sir, I do.

Q And was that document used in connection with this case?

A Yes, sir.

Q Can you tell me at what time this interrogation took place?

A The time is noted at the bottom of it on February 26 . . .

Q Can you speak up. I'm having some difficulty hearing you.

A The time is noted at the bottom of the form as dated February 26, 1975, 10:40 a.m.

Q 10:40 a.m.?

A Yes, sir.

Q At the time that that document was executed, can you tell me who was present?

A Sergeant Louis Russell, myself, and Mr. Warren Hebert, and Kenny Whitmore.

Q These were the same persons present when the first tape-recorded statement was taken?

A That's correct.

Q Do you recall what was done with that document in connection with the questioning of Mr. Whitmore?

A After it was signed?

Q No. I'm talking about before it was signed.

A It was either read to him or either he was asked to read the document.

Q Do you recall which of the two?

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

Q Where was this reading taking place or . . .

A Here in the courthouse in Room B07 which is located in the basement.

Q You say the basement. What offices does the basement house?

A Part of the Sheriff's Office. This is one of the interview

rooms.

Q Part of the Sheriff's Office?

A Yes.

Q Do you recall how long Mr. Whitmore was in your presence before the second tape-recorded statement took place?

A If I recall correctly, approximately fifteen or twenty minutes.

Q Who else was present?

A Sergeant Russell for sure.

Q Now, during this time, did you make any threats or inducements to Mr. Whitmore to get him to tell you more about the Marshall Bond killing?

A No.

Q Did you request that he explain more about the statement that he had earlier given you?

A Yes, sir.

Q Did anyone make him any promises or anything of this nature?

A Not that I know of.

Q Did anyone mistreat physically or deny him any normal courtesies like if he needed to go to the bathroom or anything of this nature?

A Not as far as I know.

Q Were you present?

A Sir?

Q Were you present during the time that you were preparing to take the second statement?

A Yes, sir.

Q So if you were present, you would know if someone did it?

A Right.

Q Do you recognize your writing at all on that form?

A Yes, sir. My writing is in the blank space at the top and

my signature appears as one of the witnesses at the bottom.

Q Prior to your witnessing -- what were you witnessing when you signed there?

A The -- Kenny Whitmore signing the Consent to Questioning.

Q Did he sign the Consent to Questioning?

A Yes, he did.

Q Did he agree to be questioned?

A Yes, he did.

Q Did he agree to be questioned after these rights were explained to him or him given a chance to read those rights?

A Yes, sir, he did.

Q And what are the rights on that form for the record.

A I'll read it as stated on the form. You have the right to remain silent or to answer questions. Would you like for me to start from the first of it?

Q Yeah.

MR. BRANTLEY: Judge, I think we can save time. I'm sure the form speaks for itself; and if the jury desires to see it at some time, they can observe it; but just for the sake of saving some time, I think the form speaks for itself.

THE COURT: You want to introduce the form?

MR. PEREZ: I will introduce the form. Yes, sir, I move to introduce it.

MR. BRANTLEY: We don't have any objection, Your Honor.

THE COURT: Offer it and let it be introduced and file into evidence.

Q Lieutenant Bueto, I want to show you an object which purports to be a cassette marked S-16 and ask you to examine it.

A (Witness complies.)

Q Does it bear any type of labeling information?

A Yes, sir, it does. Would you like for me to read it to you? It bears, second taped statement of Kenny Whitmore, 2-26-75. In the upper left corner of the label, bears my initials, "O. C. B." and the date, 2-26-75. In the lower right-hand corner appears the initials, "L. H. R."

Q Who is "L. H. R."?

A Sergeant Louis Russell.

Q Lieutenant, is this particular cassette the one used during the conversation, the second conversation you had with Mr. Whitmore?

A Yes, it is.

MR. PEREZ: That's all the questions I have of this witness on the predicate.

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RECROSS-EXAMINATION

BY MR. BRANTLEY:

Q Lieutenant Bueto, the second cassette was made at 10:40 a.m. It started at 10:40 a.m. on the morning of February 26, 1975.

A Yes, sir.

Q And approximately fifteen minutes before that, you and Sergeant Russell were with Mr. Whitmore?

A Yes.

Q And you and Sergeant Russell talked with Mr. Whitmore alone in this interview room which you described as B07 in the basement of the courthouse?

A Yes.

Q Other than you and Sergeant Russell, there was no other party present at this time, other than Kenny Whitmore?

A Not as far as I recall.

Q Just the three of y'all?

A Yes, sir.

Q And I believe you testified that, to your knowledge or that you know of, no party made any promises or threats or any inducements to Mr. Whitmore to give the second statement.

A That's correct.

Q Now, the first statement that I believe was given was given the day before, February 25, 1975, at 2:45 in the morning. Is that correct?

A Yes, sir.

Q Now, actually this was not the second statement given, was it?

A Second taped statement.

Q Do you recall an interview with Lieutenant Zuelke at approximately 7:00 p.m. on the night of February 25 of 1975, where Lieutenant Zuelke interviewed Mr. Whitmore?

A Yes, sir.

Q Were you present at that time?

A Yes, sir.

Q That interview and the questions that were asked by Lieutenant Zuelke were also recorded, were they not?

A As far as I know, they were.

Q So that was the second taped interview. Is that tape available for us today?

A Yes.

Q Actually the tape is not available, is it? The tape has been taped over where we can't hear the results of that interview.

A Yes, that's correct.

Q Now, during the period of time from the end of the first interview, 3:16 in the morning on February 25, 1976 -- Mr. Brown came in. Right after that interview, you saw Ossie Brown of the District Attorney's Office?

A Now, which interview you're referring to?

Q The first one . . .

A The first one.

Q Given at the parish prison, February 25 at 2:45 in the morning till 3:16 . . .

A Yes, sir.

Q After that interview you saw Ossie Brown?

A Yes.

Q You don't know whether Mr. Brown talked with Mr. Whitmore or not?

A No, sir, not for sure.

Q Do you think that he talked with him?

A I don't know.

Q Now, after the interview with Mr. Whitmore was concluded, I believe at 3:16, the tape that we've already heard, what did

you do immediately after that interview?

A Immediately after, I . . .

Q Did you accompany Mr. Whitmore back to his cell?

A No, sir.

Q Where did Mr. Whitmore go immediately after the interview?

A As far as I knew -- as far as I can recall, he was put back in his cell but not by me.

Q Was that after he spoke with Mr. Brown?

A This I don't know.

Q All right, now, after you finished the interview, where -- did you remain at the parish prison for any period of time to have coffee or do anything?

A For a short while.

Q Who were you with during that period of time?

A In the presence of Sergeant Russell and some of the other deputies at the prison.

Q Was Warren Hebert also would have been there?

A I believe he was.

Q Were y'all discussing the taking of the taped statement that you'd taken from Mr. Whitmore?

A Discussing that, the facts of the case, and the particulars of the case.

Q But you remember specifically discussing this with a group of people and Mr. Brown was not one of the people present? He wasn't there? It was possibly you, Lieutenant Russell, Sergeant Russell, maybe Warren Hebert; but Mr. Brown wasn't present at this time?

A I can't recall that.

Q To the best of your knowledge, be that knowledge information that you personally know or be that knowledge of information that you may have received, did Mr. Brown have any

conversations with Kenny Whitmore?

A I had heard that he had.

Q Now, this interview -- and again, I apologize to the jury but it's critical -- concluded at 3:16 a.m. the morning of February 25 of 1976. The second taped interview, which we don't have the advantage of because it's been taped over, took place from 7:00 to 9:00 p.m., 7:00 to 9:30 p.m. that following evening with Lieutenant Zuelke; and you were present at that time, were you not?

A Yes, sir.

Q That was actually conducted in a small room in the Taylor Building, was it not?

A Yes.

Q Actually, there's not just one small room but two very small rooms side by side?

A That's correct.

Q And there's a two-way mirror between the two rooms so that you can actually see into that room but the man, the defendant, Mr. Whitmore, can't see out, is that correct?

A That's correct.

Q So he doesn't know you're on the other side, or you really have no way of knowing . . .

A I wouldn't have no way of knowing.

Q And in the room where you are there's a tape recorder, is that correct?

A Yes, sir.

Q And while Lieutenant Zuelke is interviewing and talking to Mr. Whitmore, that tape recorder is going, is that correct?

A As far as I recall, it was.

Q That's the tape that's been taped over and we don't have available to us?

A Yes.

Q That's the second taped conversation. Now, do you also recall that while Mr. Whitmore or just after Mr. Whitmore gave this conversation or gave the statement to Lieutenant Zuelke that he received a phone call from Mr. Brown?

A That Mr. Whitmore received a call from Mr. Brown?

Q There was a call placed to Mr. Brown. It was either placed by Mr. Brown to Mr. Whitmore or it was placed to Mr. Brown and Mr. Whitmore was asked to get on the phone. Do you recall that?

A No, sir.

Q Were you present the entire time Lieutenant Zuelke was talking to Mr. Whitmore?

A I was in the office in the Taylor Building.

Q Now, at the first interview, this one that was conducted February 25th, Mr. Whitmore did not have any counsel whatsoever, is that correct?

A No, sir, neither did he request any.

Q And the second interview that he -- with Lieutenant Zuelke he did not have a counsel?

A No.

Q Now, following the second interview, the one that we don't have the advantage of the tape, there was an additional tape made, and that was the one we're discussing. It was made on February 26th at ten o'clock in the morning.

A Yes, sir, about 10:30, 10:40.

Q Fifteen minutes before that, there were two people in the room other than Mr. Whitmore?

A Yes, sir.

Q Yourself and Lieutenant Russell, Sergeant Russell, I'm sorry.

A Yes.

Q Mr. Hebert was not present at that time?

A No. I believe that was during the time we sent for him.

Q So he didn't actually get there. So he wouldn't have knowledge of what was said in that room just before the interview, that fifteen-minute period just before the interview started.

A Well, I don't recall just exactly what time he got in there.

Q Lieutenant Russell would have knowledge because he was in that room?

A Yes, sir.

MR. BRANTLEY: That's all.

MR. PEREZ: Thank you.

WITNESS EXCUSED

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MR. PEREZ: Call Mr. Hebert.

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WARREN HEBERT, called to the stand as a witness on behalf of the State, having been previously duly sworn, testified as follows:

MR. BRANTLEY: Your Honor, if it please the Court, I'd like to ask that the jury be retired. It's my understanding that Mr. Perez is going to question Mr. Hebert concerning the incidents that happened immediately prior to the taking of the second tape and because Sergeant Bueto has testified Mr. Hebert was present -- Sergeant Russell was the only one present, I would like to make objection but have it out of the presence of the jury.

THE COURT: Retire the jury.

(The jury was retired.)

THE COURT: You were about to make an objection to the testimony?

MR. BRANTLEY: Yes, sir. You see, if Mr. Hebert's testimony is going to be offered to lay the foundation of the admission of this tape, Lieutenant Bueto just testified the only two people present for the period of time preceding the giving

of the tape were he and Sergeant Russell. I think Sergeant Russell would be the appropriate person for the State to put on. I'm sure Mr. Perez has reason for not wanting to put on Sergeant Russell, but I think -- and, of course, knowing the expertise and background of Mr. Hebert, might try and qualify him either as having been present or in a manner that would be adverse to Mr. Whitmore's interest at this time.

THE COURT: Well, I would agree it might be better for the State to put on Mr. Russell, but I don't have any authority to order the State to produce any evidence or not produce any evidence. The State can stand up and rest without producing any evidence whatsoever. I have no control over the evidence or the order in which they produce it. Now, if Mr. Russell does not appear, it's a matter for you to argue to the jury, that his testimony would not have aided the State. That presumption is in the law, and you can argue that to the jury. As far as -- if you're suggesting that I can tell the prosecution to produce

a certain set of witnesses in a certain order, I do not have that power. Bring the jury back. Wait, tell him to hold the jury. You've requested a witness from the jail?

MR. BRANTLEY: Yes, sir.

THE COURT: Who is he and -- I just want to be sure that there's some reason for his . . .

MR. BRANTLEY: Well, if we get to the defense's case today, we're bringing him in assuming that we might possibly get to the defense's case today.

THE COURT: What's the name . . .

MR. ABADIE: We've got to decide whether or not it will be tomorrow or today, and it has been our expectation, judging from the speed Mr. Perez is moving at, that we'll probably get to the defense portion of the case this afternoon.

THE COURT: What's the witness's name?

MR. ABADIE: Anthony Kemp.

THE COURT: Kemp?

MR. ABADIE: Kemp.

THE COURT: All right, you can order him to -- is he in jail clothes? You want him dressed

in street clothes, I presume? Have him sent out and dressed and brought to court. Any other witnesses from the jail we need from either side, gentlemen?

MR. ABADIE: Well, possibly one other, but he's upstairs.

THE COURT: Already here. Okay, let's go.

(The jury was returned to the courtroom; the polling waived.)

REDIRECT EXAMINATION

BY MR. PEREZ:

Q Would you state your name for the record.

A Warren Hebert.

Q Mr. Hebert, you understand that you're still under oath?

A Yes.

Q Mr. Hebert, earlier you had been on the stand when a tape recording of an interview was played before the jury. Did you subsequently become involved in taking any further statement from Mr. Whitmore?

A Yes, I did.

Q And when was that?

A That was the next day, Wednesday, February 26th.

Q I'd like you to look at the article which was marked as State 15 and ask you if you recognize it.

A (Witness complies.) Yes, I can identify it by virtue of my signature being on there.

Q And was that particular rights form that's been introduced

used in connection with warning Mr. Whitmore of his rights?

A Yes, it was.

Q And what time did this occur?

A According to the time noted on there which was filled out at the time that this was read to him it was 10:40 a.m.

Q Okay, do you recall the circumstances under which you became involved in this particular interview?

A I was called -- I couldn't tell you exactly who called me, but somebody from the Sheriff's Office called me and told me to come on over to the basement of the Sheriff's Office.

Q Who was there when you arrived?

A It was Kenneth Whitmore and Louis Russell and Carson Bueto.

Q In what room were they?

A The room is referred to as B07, although I never noted a number over the door. It's in the basement of this building.

Q That part of the Sheriff's Office is accessible to the rest of the Sheriff's Office?

A Right. It's directly behind the radio room.

Q Was Mr. Whitmore advised of his Miranda rights in your presence?

A These Miranda rights were read to him in my presence.

Q Do you recall who read them?

A Not going to state positively. The tape is the best evidence of it. I think it was Louis Russell. I would recognize the voice if I hear it. I cannot state positively from my own recollection.

Q Now, Mr. Hebert, did -- prior to or during the giving of this second taped statement, did either you or anyone you know of make any inducements to Mr. Whitmore to get him to talk to y'all again?

A No.

Q Were any threats made to him?

A No threats were made to him, no, sir.

Q Was he mistreated in any way?

A No, he was not.

Q I ask you to examine this article which is marked as State 16.

A (Witness complies.) This appears to be the tape recording that was taken on the morning of February 26, 1975. I note the initials of Louis Russell and Carson Bueto on the front side thereof. This statement was considerably shorter and was contained entirely on the front side of the tape.

Q Did you have any discussion with Mr. Whitmore with reference to whether anyone else had made any threats or inducements to him before y'all began this tape to make sure that he knew what he was doing and that it was being done voluntarily?

A I can't recall any specific conversation. I can relate to you the atmosphere. It was an atmosphere of . . .

MR. BRANTLEY: Judge, I'm going to object. That's not responsive to the question.

THE COURT: What was the question?

MR. BRANTLEY: He asked . . .

MR. PEREZ: I asked him . . .

MR. BRANTLEY: Inducements, not atmosphere.

A Well, I was . . .

THE COURT: Wait a minute.

Just repeat the question.

MR. PEREZ: Okay, I'll . .

Q What were the persons doing and how were they acting towards each other in the room at the time this statement was taking place?

A Everybody was sitting down, waiting for me. There was nothing going on.

Q Okay, now, how about after the -- you arrived and you were in the presence of other persons, what was the -- how were they acting toward each other?

A It was friendly in the sense that -- not close friends, but it was friendly, not unfriendly.

Q Did Mr. Whitmore make any complaints about inducements or threats at all?

A No, he did not. There was -- am I allowed to volunteer anything?

THE COURT: No. Just answer questions.

A All right.

Q One of the failings of being a lawyer as a witness.

MR. PEREZ: I'd like to offer into evidence this particular tape and ask that it be played for the jury.

THE COURT: Any objection?

MR. BRANTLEY: Yes, sir. I'd like to . . .

RECROSS-EXAMINATION

BY MR. BRANTLEY:

Q Mr. Hebert, when you arrived, had the interview with Mr. Whitmore already begun?

A No, it had not. The tape of -- when the tape was begun, I was present in the room.

Q When you arrived, the three people in the room were Lieutenant Bueto, Sergeant Russell, and Mr. Whitmore, is that correct?

A That's correct.

Q And you have no knowledge of what may have transpired in that room prior to your arrival?

A Other than . . .

Q You had no personal knowledge of what may have transpired in that room prior to your arrival?

A I could not see through the walls. All I know is what they told me.

Q And your initials don't appear on that tape?

A No, I didn't put my initials on the tape.

Q You put your initials on the other tape, though?

A No, I did not put my initials on the other tape. You can examine it if you want to.

Q This was the second statement that you were present at that Mr. Whitmore gave?

A That's correct.

Q You were not present when any other statement or any other interview Mr. Whitmore may have given?

A No.

MR. BRANTLEY: That's all I have.

MR. PEREZ: I resubmit my offer.

THE COURT: Any objections?

MR. BRANTLEY: Yes, sir. I object to the offering. I feel with Lieutenant Russell standing in the hall, the State has made an obvious . . .

THE COURT: No. Let's not argue any facts, now. You're going to object to the introduction of a . . .

MR. BRANTLEY: I object to . . .

THE COURT: Piece of evidence . . .

MR. BRANTLEY: And ask that Lieutenant Russell, Sergeant Russell testify.

MR. PEREZ: I'll put on Sergeant Russell. Call Sergeant Russell.

WITNESS EXCUSED

..*.*.*.*.*.*

THE COURT: I admonish both of you, both sides, when you make an objection, you argue the law and not the facts of the case. I don't want to take this jury out everytime we argue law.

SGT. LOUIS RUSSELL, called to the stand as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q State your name and occupation for the record.

A Louis Russell, East Baton Rouge Parish Sheriff's Office.

Q How long have you been with the Sheriff's Office?

A Fourteen years.

Q Sergeant Russell, did you ever become involved in the investigation of the Marshall Bond case?

A Yes.

Q And do you know on which date this offense occurred?

A The date of the occurrence?

Q Yes.

A If I'm not mistaken, it was the 15th of August of '73.

Q Were you involved in the investigation at that time?

A Not at all.

Q And throughout the next eighteen months were you involved in the investigation at all?

A No.

Q At what point did you become involved in this investigation? On what date, say?

A It was the 25th, 24th, 25th of February of '75.

Q You were not one of the investigating officers on the case?

A I was not.

Q You had no firsthand knowledge of the facts and the previous . . .

MR. BRANTLEY: Objection. He's leading his witness.

THE COURT: Objection overruled. I will permit leading questions in all areas except essential matters . . .

MR. BRANTLEY: Judge . . .

THE COURT: For both sides.

MR. BRANTLEY: We ask for an assignment of error.

THE COURT: That will always be my rule, that leading questions are permissible until we get to critical parts.

MR. BRANTLEY: We ask for an assignment.

THE COURT: Proceed.

Q Sergeant Russell, why did you become involved in the investigation only eighteen months after the offense?

A I received some information on the case.

Q You were not the investigation officer, but you did receive the information?

A Yes.

Q Had you not personally received the information, would you have been an investigating officer in this case at all?

A I doubt it seriously.

Q Now, did you become involved in the questioning of Kenny Whitmore?

A Yes, sir, I did.

Q We earlier listened to a tape recording which had been,

according to the tape, was taken in the early morning hours of February 25, 1975. Do you know if your voice appeared on that tape recording?

A Possibly did, sir. I think I read the format, advised him of the rights on that tape.

Q You were present at that first statement?

A Yes, sir.

Q Did you subsequently take a second tape-recorded statement from Mr. Whitmore?

A Yes, sir, I did.

Q Want you to look in front of you at a document which is labeled State 15, I mean, the tape labeled State 15. Examine it and see if you recognize it.

A (Witness complies.) Yes, sir.

Q And what is that document?

A This is the rights form, Consent to Questioning form.

Q And does your signature appear on that document?

A Yes.

Q In what capacity did you sign that?

A As a witness to the rights and the signature of Kenny Whitmore.

Q Do you recognize Kenny Whitmore?

A Yes, sir.

Q Where is he?

A He's sitting there.

Q Now, was Kenny Whitmore advised of his rights with the use of that particular form?

A Yes, sir.

Q With regard to this second interview you had with Mr. Whitmore, where did it take place?

A In the basement of the courthouse here, Room B07.

Q And who was -- who was present? Who initially was present with Mr. Whitmore? Do you recall who picked him up from his cell? I take it he was in jail . . .

A I came -- I went up to the fourth floor to the jail and brought him downstairs on the elevator.

Q Now, at any time either before that -- between the time you picked him up that morning and either before that tape started or after that tape started, did either you or anyone that you know of make any threats, promises, inducements to Mr. Whitmore to get him to talk to you?

A None whatsoever.

Q Was that form used to advise him of his rights?

A Yes, sir.

Q Do you recall who else was present during that particular interview?

A Yes, sir. Lieutenant Bueto and Mr. Hebert from the D. A.'s office.

Q Would you examine the document, the article which is marked as State 16.

A (Witness complies.)

Q Do you recognize it?

A Yes, sir.

Q What is it?

A That's the second taped statement of Kenny Whitmore, dated 2-26-75. These are my initials on the corner.

MR. PEREZ: That's all the questions I have.

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CROSS-EXAMINATION

BY MR. BRANTLEY:

Q Sergeant Russell, approximately how long have you been with the Sheriff's Office?

A Fourteen years.

Q And approximately how long you've been a sergeant?

A Three, four, I don't know.

Q Were you a sergeant during the period of time the statements were taken from Kenny Whitmore?

A Yes, sir.

Q And would I be correct in assuming that you had training in police investigative techniques, obtaining statements, advising defendants of certain rights?

A Yes, sir.

Q You've been to schools in this regard in taking police training?

A Yes, sir.

Q Now, as I understand it, the first statement was taken from Mr. Whitmore the evening of February 25 of 1976, approximately 2:45 a.m.?

A Yes, sir.

Q Was that your normal working hours on that date?

A No, it wasn't.

Q Now, I believe you also were present at the parish prison with Mr. Hebert with the District Attorney's Office, as well as Lieutenant Bueto of the Sheriff's Office?

A Yes, sir.

Q Now, when you arrived at the parish prison, Ossie Brown, the District Attorney, had already been there, had he not?

A I was told he had been there and left, yes, sir, when I got

there.

Q And then you conducted your interview with Mr. Whitmore?

A Yes, sir.

Q Now, during the interview with Mr. Whitmore, was he cooperative with you?

A Yes, sir.

Q And did he seem to understand the questions you were asking and respond to those questions to the best of his ability, to your knowledge?

A Yes, sir.

Q Now, I believe he admitted during the interview that he was present with Mister Donahue, he had driven with Mister Donahue to the property that was owned by Marshall Bond?

A Yes.

Q And that he said that Mister Donahue got out of the car, whereas he remained in the car?

A That's correct.

Q And that he didn't really see what happened, but then Donahue came back to the car and had a wallet. He described it, I believe as a rust-colored wallet. Is that correct?

A Yes, sir.

Q And that Donahue had some money and that Whitmore didn't take any of the money, none of the money was given to him? Is that correct?

A Yes, sir.

Q Now, the interview, from the testimony, was concluded approximately 3:16 in the morning. Now, this second tape that Mr. Perez is referring to, that actually was not the second tape that was made of Mr. Whitmore, was it? There was another tape that was made, was there not?

A Not of this nature. Not to me, sir. This is the second tape.

Q Do you recall being present -- by present, I mean in a room in the Taylor Building on what's now Riverside Mall; it used to be Main Street -- at 7:00 p.m. on the evening of February 25th with you, Lieutenant Bueto, and Lieutenant Zuelke?

A Yes.

Q And the room that I'm speaking of is actually two rooms, are they not . . .

A Yes, sir.

Q One room which is an interview room where Lieutenant Zuelke conducts an interview in . . .

A Yes, sir.

Q And it's separated by a partition and I believe a two-way mirror, so you can see in and Mr. Whitmore couldn't see you. Is that correct?

A Yes, sir.

Q And in the room where you're in, there's a tape recorder.

A Yes.

Q And that interview with Lieutenant Zuelke was taped, was it not?

A Yes, it was.

Q We don't have that tape available here today, do we?

A I don't have it, sir.

BY THE COURT:

Q Sergeant Russell, did you hear what was being taped at that time?

A Partial, sir. I didn't stay in the room for the entire interview.

Q Was any material differences between that taped statement by Lieutenant Russell . . .

MR. BRANTLEY: Judge, I'm going to have to object to the Court asking questions. I apologize to the Court . . .

THE COURT: On what basis? The Court can ask questions and clarify testimony.

MR. BRANTLEY: Well, I'm going to have to object and ask for an assignment to protect . . .

THE COURT: I just want to ask him . . .

Q Did you hear the tape, the second tape?

A Not the tape, sir. I didn't hear the . . .

Q Hear what went on?

A Partially, sir, 'cause I didn't remain in the adjoining room for any real length of period of time, sir.

Q How much of it did you hear, most of it or part of it?

A I'd say maybe thirty minutes total.

Q Well, that doesn't tell me whether it was most of it or part of it.

A Partial.

Q So you don't know whether that -- what's on the tape that we don't have available?

A No, sir.

THE COURT: All right, proceed.

BY MR. BRANTLEY:

Q Now, this interview that was conducted by Lieutenant Zuelke, this was volunteered to by Mr. Whitmore? He consented to this interview and the interrogation?

A Yes, sir.

Q Now, let's back up a second. Let's go back to the parish prison the night before at 3:16 in the morning when this interview was over. Did you again see Mr. Brown of the District Attorney's Office after the interview was over?

A Yes, I did, sir.

Q In fact, after the interview was over, you, Lieutenant Bueto, and Warren Hebert went to have some coffee . . .

A Yes, sir.

Q At the little control room in the center of the parish prison? And while y'all were having coffee, Mr. Brown spoke with Mr. Whitmore?

A That's correct, sir.

Q And he spoke with him in an interview room?

A Yes, sir.

Q And there was nobody else present in that interview room but Mr. Brown and Mr. Whitmore?

A To my knowledge, there was no one else present.

MR. BRANTLEY: That's all I have.

MR. PEREZ: Thank you. That's all I have.

WITNESS EXCUSED

..*.*.*.*.*.*

MR. PEREZ: I'd like to

recall Mr. Hebert.

WARREN HEBERT, called to the stand as a witness on behalf of the State, having been previously duly sworn, testified as follows:

REDIRECT EXAMINATION

BY MR. PEREZ:

Q State your name for the record.

A Warren Hebert.

MR. BRANTLEY: Judge, I want to object to the recalling of Mr. Hebert.

THE COURT: On what basis?

MR. BRANTLEY: He's been on the stand previously. I don't know for what reason Mr. -- I'll withdraw the objection.

MR. PEREZ: Your Honor, at this time I would like to move to introduce State 16 and have that tape played to the jury.

THE COURT: Any objection?

MR. BRANTLEY: Yes, sir. We object for the reasons previously annunciated and ask that those be made general. They've previously been dictated into the record. And ask for an assignment of errors.

THE COURT: Objection is overruled, and the question of admissibility has already been determined. Proceed.

(Reporter's note: S-16 was played to the jury as follows:)

"SERGEANT RUSSELL: Testing one, two, three, four. February 26, 1975. The time is 10:40 a.m. Location, East Baton Rouge Parish courthouse, Room B07. The following tape recording is being taken in the presence of Kenny Whitmore, Lt. Carson Bueto, Sgt. Louis Russell and Mr. Warren Hebert. The purpose of this interview is to question Kenny Whitmore in regards to the murder and armed robbery of Marshall Bond which occurred on August 15, 1973, between 4:00 and 6:00 p.m. However, before answering any questions or statements made, it is necessary, Kenny Whitmore, that you be advised of your constitutional rights.

BY SERGEANT RUSSELL:

Q First of all, Kenny, I want you to state your age. How old are you?

A Twenty.

Q How high did you go in school? What was the last class you finished?

A Eleventh grade.

Q You finished the eleventh?

A I went to the eleventh grade.

Q You did not complete the eleventh grade, is that correct?

A Right.

Q Okay, I'd like to explain your constitutional rights to you. They are: number one, you have the right to remain silent or to answer questions; number two, we inform you that anything you say can be used against you in court; number three, you have the right to talk to a lawyer for advice before you answer any questions if you so desire and you may have the lawyer with you doing questioning; number four, if you have a lawyer -- correct, I'm sorry, if you want a lawyer but cannot afford one, a lawyer will be provided for you; number five, if you decide to answer any questions now without a lawyer present, you will still have the right to stop answering at any time in order to get the advice of a lawyer or for any other reason. Do you understand your rights?

A Yeah, I understand.

Q No threats or promises have been made to you, is that correct?

A No.

Q Nobody has threatened you in any way?

A No.

Q You haven't been abused in any way? No one has promised you anything, is that correct?

A Correct.

Q Okay. Kenny, would you please state your full name and

address.

A My name is Kenny Whitmore. Age twenty. Address, 5314 Rollins Road.

Q Okay, Kenny, you understand your rights thoroughly?

A Yes, sir, I understand.

Q Okay. Here is your rights form. If you understand your rights and there are no questions, would you sign here please.

(Reporter's note: There was silence on the tape.)

SERGEANT RUSSELL: Now, I'll sign it as a witness. Lieutenant Bueto, if you would, would you witness this. Okay, Mr. Hebert.

BY MR. HEBERT:

Q You see, this right here is those same rights that Lieutenant Russell just read to you off of a different form. You understand that?

A Okay.

Q You also understand that this right here, this says that, says you read the statement of the rights shown above? Of course, you haven't actually read them, but they have been read to you, is that right? Speak up.

A Yes, sir.

Q Okay, it says you understand your rights, you're willing to go ahead and make a statement, is that right?

A Right.

Q Okay, and that you don't want to have a lawyer with you at this time, you understand and know what you're doing and as he said, no promises or threats have been made to

you and nobody has used any pressure on you. Is that right?

A Right.

MR. HEBERT: Go ahead, Lieutenant Russell.

BY SERGEANT RUSSELL:

Q Now, Kenny, if you would, in your own words tell us what happened and be as detailed and thorough as possible. We will not ask you any questions or interrupt you until you finish your statement. Okay?

A Okay.

Q Go ahead.

A Start from the time we went in?

Q Start from the beginning.

A Well, we drove -- well, we drove up there, and Donahue got out the car. Then I got out. We walked up there. So we started talking to the man about a job. Said he didn't have any work at the present. Told us if he get some, he going to check with us. Like, he was talking like he knowed Donahue or something. So and then he turned around, and Donahue grabbed him. I snatched the screwdriver out of Donahue pocket, and I hit him with it a few times.

Q Go ahead. Continue.

A Then, then Donahue told me to go get the jack handle. So he gave me his keys, and I went got the jack handle. Came back. Told me to hit him. So I -- I give him some blows over the head. And then lays the jack handle down. Donahue went into his pocket, got the money. So we -- I

went back to the car. Donahue came back to the car, too. We put the stuff in the trunk, put the money and stuff in the car, and we drove off; but we didn't go straight home. We went to a recreation center at Port Hudson. Then he said his -- said he was going to mess around. I told him to take me home. I told him I ain't feel like messing around, take me home. So he said something was wrong with his carburetor. So he started messing with his car. So after he got through doing that, he took me home.

BY LIEUTENANT BUETO:

Q All right, Kenny, you said that you and Donahue -- would you give me Donahue's full name.

A Mister Donahue.

Q That's spelled M-I-S-T-E-R?

A Yeah.

Q And where does he live?

A He told me he was living with his mother-in-law in Port Hudson.

Q What is her name?

A I don't know her name. I knew his wife's name, Janice.

Q All right, before you and Mr. Donahue went to that farm, had you and Donahue discussed going over there?

A Yes. It was three of us.

Q Who was the -- who was the three?

A Me, Donahue, and Charles Armwood.

Q And where is Charles Armwood at?

A He's dead now.

Q All right, how long before y'all went to the, over there did y'all discuss it?

A It was the day.

Q The day before?

A Uh, huh.

Q What was the discussion?

A Donahue said he knew when Mr. Bond come back in the field, around 5:00 something. He say he have money 'cause at the present I was working at Floyd Electric. Donahue said he knowed just about -- he knowed what time he come and everything.

Q And Donahue said that he knew that Mr. Bond had some money?

A Yeah. He say he knew he keep money in his pocket.

Q Did he say how much?

A No, he didn't say how much.

Q Did he say where he kept it in his . . .

A No, he didn't.

Q All right, what was the further discussion on it? Was there a time set and a day set to go over there?

A Well, he say around 5:00 something. So, well -- I didn't get off from work until 4:30. So we got to Zachary around 5:15 or something. So we went over there to wait for Charles Armwood -- inaudible. Charles said he couldn't go because he stuck a nail in his feet. So Donahue told me, come on and let's go. So I went on around.

Q All right . . .

MR. HEBERT: Let me ask him.

BY MR. HEBERT:

Q Do you know how much y'all got?

A I got around four and a half or four twenty-five, and Donahue got around five hundred.

Q Okay, you got about four hundred or four hundred and twenty-five dollars? Now, what kind of car were y'all in?

A '69 Ford, four-door. It was a police car, you know.

Q Black and white?

A Black and white.

Q And whose car was it?

A It was Donahue's car.

Q Now, did y'all take a wallet from him?

A Donahue got the wallet and the money and stuff out of his pocket.

Q You know what happened to the wallet?

A No, I . . .

Q In other words, did it end up with you or did it end up with Donahue?

A It end up with Donahue.

Q What about this jack handle? Did y'all leave that out there?

A No, we didn't.

Q What happened to the jack handle?

A Put in the car.

BY SERGEANT RUSSELL:

Q Where in the car, Kenny?

A The trunk.

Q What happened to the screwdriver?

A We put that in the car, too.

Q Now, describe the screwdriver to me if you can.

A It was a plain screwdriver with a yellow handle.

Q You say, plain. You mean a standard or a Phillips screwdriver?

A Standard.

Q It was not a Phillips screwdriver . . .

A No, it wasn't.

Q Is what you're saying? What color was the handle?

A Yellow.

Q About how long was it?

A It was about . . .

Q About eight inches, nine inches, is that what you indicated?

A Right.

Q Do you have any idea where the jack handle is or the screwdriver at this time?

A Inaudible -- in the trunk -- inaudible.

BY MR. HEBERT:

Q As far as you know, they may -- they never were taken out the trunk after this?

A Yeah, I know it.

Q So they may still be in the trunk of the car?

A Well, I doubt it seriously because he got another car, and I know naturally he would take his tools and jack and everything out of that car and put into his other car.

BY SERGEANT RUSSELL:

Q Do you think they could be in the car he has now?

A Yeah, sir.

Q What kind of car is that?

A I don't know the model, but it's a little Nova, a rust -- rusted blue.

Q What kind of blue?

A It's faded blue, like.

Q Is it an old car? How old -- about how old?

A Probably '62 or something.

BY LIEUTENANT BUETO:

Q All right, Kenny, on the morning of February 25 of 1975, you were advised of your rights, at which time you gave us a statement. At that time you gave us a taped statement as to the approximate date and the time that y'all went out there, is that correct?

A Correct.

Q And on this statement, this statement is more involved, is that correct?

A I didn't understand you.

BY MR. HEBERT:

Q What he's trying to say is is this that you just told us here now the truth?

A Yeah, that is the truth.

BY SERGEANT RUSSELL:

Q Kenny, why, when we took the first statement, didn't you go into more detail and tell us more about it than you did?

A I was afraid to.

Q Because of your involvement in it, in this case?

A Yes.

BY MR. HEBERT:

Q You decided now you were going to go ahead and get it off your chest?

A Yes, sir, 'cause I feel like I had to do it one day, anyway.

MR. HEBERT: You have any more questions, Lieutenant Bueto?

LIEUTENANT BUETO: No, thank you.

SERGEANT RUSSELL: This recording will now be concluded, the date being February 26, 1975. The time is 10:51."

(Reporter's note: The tape was concluded, and the trial was continued as follows:)

Q Mr. Hebert . . .

MR. PEREZ: Your Honor, I had offered this introduced into evidence. I understand it will be introduced . . .

MR. BRANTLEY: Same objection.

THE COURT: I've already ordered it admitted and have it marked and filed.

Q Mr. Hebert, you just had occasion to listen to this tape recording which has been marked as State 16. Does that appear to be an accurate representation or recording of the interview which you attended that morning?

A It is.

Q And did anyone tell Kenny Whitmore, to your knowledge, what to say on that tape?

A No.

Q Now, you were present and you observed what was going on during this interview, is that correct?

A That's correct.

Q How long have you been with the District Attorney's Office?

A Be three years February 22nd.

Q What did you do before you went with the District Attorney's Office?

A I was with the Public Defender's Office from January 9, 1973, until February 21, 1974.

Q So you've been involved in defending cases just as well as prosecuting them?

A Yes, I have.

Q Have you held any other positions before you went with the Public Defender's Office?

A I was an instructor at Southern University . . .

MR. BRANTLEY: Judge, I'm going to object . . .

THE COURT: What's the relevancy of that?

MR. PEREZ: I was just giving some background on the witness.

THE COURT: That has

nothing to do with whether he can tell whether that's the tape or not. Overruled -- or rather sustained. Go on. I sustain his objection on that.

MR. PEREZ: All right.

THE COURT: Unless you're attempting to qualify him as some type of expert.

MR. PEREZ: No. I just wanted to give some background of Mr. Hebert. That's all the questions I have. Thank you.

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RECROSS-EXAMINATION

BY MR. BRANTLEY:

Q Mr. Hebert, let me take you back just a minute to the first interview that took place out at the parish prison. I believe you testified that subsequent to that interview about 3:16 in the morning, Mr. Brown was there? You saw Mr. Brown?

A What is this about 3:16?

Q In the morning, the time the first interview was completed.

A I don't think I ever testified that anything happened at 3:16.

Q Well, the first interview that was conducted was the morning of February 25 of 1975 . . .

A Correct.

Q Started at approximately 2:45 a.m.

A That's -- I have to go by what's on the sheets. As I -- I know it was early in the morning. The time that was recorded on the sheet was done at the time the statement was taken and the rights were read. So that I know it was . . .

Q So the tape started at 2:45 a.m. if the sheet says that?

A That would be the time that we would have had on our watch at that time.

Q And assuming the sheet said it was concluded at 3:16 a.m., that would probably be correct?

A That's correct.

Q And it was at 3:16 a.m., I believe -- well, assuming that's what on the sheet -- that you saw Mr. Brown?

A I did see him when I exited that room. That's correct.

Q Did you see Mr. Brown take Mr. Whitmore into the interview room and talk to him?

A No, I did not.

Q To your knowledge, did he do this?

A Of my own knowledge?

Q Yes.

A Not of my own knowledge, not of anything that I saw with my own eyes, no, sir.

Q If Sergeant Russell were to testify that he observed Mr. Brown take Mr. Whitmore into that room and talk to him by himself, you would have no reason to refute that?

A I cannot confirm or refute what happened. As I told you yesterday, the first time that I testified, immediately after taking that statement and coming out, and advising Mr. Brown that we had taken the taped statement, I went into that little area right behind central where they have a coffeepot and was drinking coffee.

Q Isn't it a fact because of Mr. Brown's behavior with a witness in the Mister Donahue case that your office has been recused from that case?

A Absolutely has nothing to do with Mr. Brown's behavior. He was -- the office was recused by virtue of the fact that he is a witness; and when the D. A. is accused, all of his assistants are recused. This is a holding of the Louisiana Supreme Court.

Q And that was because Mister Donahue gave a confession to Mr. Brown?

A That is the reason that this office was recused in the case of State versus Mister Donahue.

Q And it was decided by the Louisiana Supreme Court?

A Correct.

MR. BRANTLEY: That's all I have.

MR. PEREZ: Thank you, Mr. Hebert. That's all I have.

WITNESS EXCUSED

..*.*.*.*.*.*

MR. PEREZ: Call Mr. Brown. Could we take a break for about five minutes? It's going to take him about five minutes to get over here.

THE COURT: Yes. Court be at recess until three o'clock.

(A recess was taken. The jury was retired. Court reconvened. The jury was returned to the courtroom; the polling waived.)

THE COURT: Before we proceed, ladies and gentlemen of the jury, at the beginning of the trial during the voir dire examination, I asked all of you whether or not you knew any members of the District Attorney's staff. During the preceding hearing, a member of that staff walked in, Mr. Walter Monsour, and sat at counsel table. Did any of you recognize this man and if you do, do you know him to such a degree that it would affect your ability to be fair and impartial jurors? You may not have

even noticed him. I'm just being cautious. All right, all the jurors answered negatively. Proceed.

MR. PEREZ: I'd like to call Mr. Ossie Brown.

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OSSIE BROWN, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q State your name and occupation.

A Ossie Brown, District Attorney.

Q Were you aware of the investigation of a case in which Mr. Marshall Bond of Zachary was killed?

A Yes, sir.

Q Now, do you recognize the gentleman who's seated at the end of this table?

A Yes, I do.

Q Did your office have jurisdiction over the prosecution of this crime as being committed in this parish?

A Yes, sir.

Q Do you know the name of the gentleman at the end of the table?

A Mr. Kenneth Whitmore.

Q Have you ever seen Mr. Whitmore before, or when was the first time you saw Mr. Whitmore?

A To my knowledge, would have been in the morning -- I'm talking about nighttime -- but morning of the 24th or 25th of February, 1975.

Q At this time were you aware that Mr. Whitmore was under suspicion in being involved in this case?

A In the Bond case?

Q Yes.

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

Q On the 24th or the 25th? Did you see him on the morning of the 25th?

A I saw him during the morning night, yes, sir. After -- when I saw him, I was apprised of the fact that he had involved himself and a man by the name of Donahue in this incident.

Q Where was this?

A In the parish prison at Ryan field.

Q And what led you to go to the parish prison that morning?

A I was called by either Mr. Warren Hebert -- it was Mr. Warren Hebert from our office, to come to parish prison somewhere around 1:00, 1:30, somewhere after midnight. I was home in bed at the time.

Q After you arrived, what did you do? When I mean arrived, I mean arrived at the jail at Ryan Airport.

A Well, when I arrived, at that time they were in the process -- apparently 'cause I didn't see them -- in the room where they were talking to Mr. Whitmore, and some time after that -- I can't be specific as to time -- they came out, Mr. Hebert, Lieutenant Bueto, and Mr. Russell, and at that time advised me that . . .

MR. BRANTLEY: Objection. Hearsay.

Q Do you know at this time whether they had talked to the defendant, Whitmore, prior to coming out the room and talking to you?

A Yes. They had left the room where he was, come out to tell me.

Q Did they have any type of tape recording with them at this time when they came out?

A Yes, sir. A taped statement had been taken when I got there.

Q Did you speak to Mr. Whitmore prior to his going into the

room with these other three people prior to the interview by Mr. Hebert, Mr. Russell, and Mr. Bueto?

A Oh, no, sir. I wasn't there. They called me at home to come back out there.

Q When you say, come back out there, what does that mean?

A Come back to parish prison. I had been there earlier that afternoon and that evening, but I went -- I had gone home, and they called me to come to parish prison. I had been involved originally back in August 1973 in this particular case when it occurred, so they called me to come back up . . .

Q I want to take you back to the original investigation for a moment. Were you present out at the farm on Rollins Road on August 15, 1973?

A Yes, sir, I was.

Q And do you recall if any specialists in the field of criminal investigation were called to the scene there?

A Yes, sir. Uh, while I was there, we contacted the State Police and made contact through them with Mr. Paul Cobb, who is in charge of the crime lab. Mr. Cobb lives in Amite, and they had to reach him through Amite. I do not recall whether Mr. Cobb was the one who came to the scene because I didn't stay all of the time at the scene.

Q Paul Cobb is the head of the Louisiana State Police crime lab?

A Yes, sir, he's head of the crime lab.

Q Do you know Sergeant Alton Baxter?

A Yes, sir. He's in charge of fingerprints, and he was there. I remember seeing him there.

Q What was his function?

A To lift fingerprints at the scene and to do general criminal investigation.

Q Now, getting back to what happened at the prison, did you have

any conversation with this defendant that night, the morning of August -- of February 25, 1975, at the prison?

A The only conversation I had with him was -- after they had finished taking his statement, I went to the door, and Mr. Whitmore was seated in the room where they had taken his statement, and at that time I believe Mr. Hebert -- can't be positive -- Mr. Hebert and Mr. Bueto and possibly Russell were there, and I merely -- they had told me what had taken place. I merely asked Mr. Whitmore, did you tell them the truth. He said, yes. I said, well, fine, that's all that they want is the truth; and then he said, can I use the telephone. I said, you surely can. He didn't have any money, and I gave him three or four nickels to use the telephone, and I had to ask the deputy at the jail since he was their prisoner if he could use the telephone. They authorized him to use the telephone. Went around to the side there, and he made his calls, and I went back into the reception area or the receiving area there at the parish prison. And the deputy who had authorized it -- several deputies. I couldn't tell you, but he was in uniform. He stood there at the door which looks out into the hallway down the hallway where the telephone is. Then I walked back because Mr. Whitmore used the phone several minutes, and I walked back and said something about the number was out of order or something, and he lost . . .

Q Who said this?

A Mr. Whitmore and he needed another nickel, and I gave him additional money.

Q Like what money would . . .

A About fifteen, twenty, twenty-five cents. It was nickels for him to use the phone, and I went -- came on back and was, I

think drinking coffee or just sit talking there. Someone else in a moment -- to me, I want to think it was Mr. Russell or Lieuteant Bueto -- asked where was Whitmore, and the other deputy said he's . . .

MR. BRANTLEY: Objection.

A Well, Mr. Whitmore was on the telephone at the time and after that I left. I don't know. I just came on back home.

Q Did you have any subsequent conversations with Mr. Whitmore?

A That's the only conversation I ever had with Mr. Whitmore.

Q Did you ever speak to him about the facts of this case or his involvement in this case other than asking him if he had told the truth?

A I merely asked had he told the truth, and he said, yes; and I said, well, I said, that's all they want is the truth. That's all I've ever -- the only time I talked to Mr. Whitmore and that was all the subject was, a matter of such seconds.

Q Did you make any details or promises or anything of this nature to Mr. Whitmore?

A No, sir.

MR. PEREZ: That's all the questions I have. Answer counsel's questions.

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CROSS-EXAMINATION

BY MR. BRANTLEY:

Q Mr. Brown, you are, of course, the District Attorney for East Baton Rouge Parish?

A Yes.

Q And as District Attorney, you have sole and exclusive authority to -- the right to prosecute or not prosecute individuals, is that also correct?

A Yes, sir, that's under the law.

Q Now, on the morning of February 26th, I believe, 1975 . . .

A Monday night -- I'm trying to forget -- Monday night and Tuesday morning during the, you know, during that midnight and 1:00 a.m. Be Monday night or Tuesday morning.

Q You went to the parish prison pursuant to a telephone call from Mr. Hebert?

A Yes, sir.

Q And while at the parish prison, you observed Mr. Whitmore immediately subsequent to the interview that was conducted by Lieutenant Bueto, Sergeant Russell and Mr. Hebert?

A It was some minutes after I got there, sir. It could have been fifteen minutes. Could have been twenty minutes. I don't know, but after I got there, they had come out of the room, and then I walked over there, yes, sir.

Q And you merely asked Mr. Whitmore if he had told them the truth?

A Yes, sir.

Q And that was the only question you asked him?

A And I made the statement, I said, well, that's all they want is the truth; and at that very moment he said, can I use the telephone. I said, yes, sir. He said, I don't have any

money, and it could have been ten cents I gave him or fifteen cents. I don't recall, but I gave him the money to use the telephone, and then he lost some of that money in the telephone. It sometimes -- it's a pay phone, and it keeps the money, and I gave him another nickel or two.

Q And you didn't tell him -- it's your testimony that you did not tell him that if he cooperated, if he gave you some statements that would implicate Mister Donahue, that you could get him off, you could help him out?

A No, sir. I didn't even know Mister Donahue was involved in the thing until a couple of days later when Mister Donahue tells me and said he and Whitmore had done it.

Q Now, when you say Mister Donahue tells you -- is it not a fact that Mister Donahue has given you, gave you personally a confession in this matter and for that reason your office has been precluded from prosecuting Mister Donahue? That's being handled now by the Attorney General?

A Yes, sir. On Wednesday, two days later, the Sheriff's Office deputies sent for me at the request of Mister Donahue. Mister Donahue wanted to talk to me. Of course, I had no idea he wanted to give me a confession, and I talk to anybody who wants to see me. I think I have that duty to do that, and he asked to see me. I went in and that's when he told me about him and Mr. Whitmore.

Q Now, would you tell the -- being the District Attorney and, not only being the District Attorney, but being very knowledgeable of criminal law after many years of expertise, where are the two State penal institutions located in Louisiana?

A You have three, actually. You have Angola, DeQuincy, St. Gabriel.

Q Now, St. Gabriel, of course, is for women.

A Yes, sir. They have some men there now, and you also have those State penal institutions but the law -- the State permits these people to serve in any of those facilities except in DeQuincy, which is for first offenders.

Q And in your experience with the criminal process, have you also heard a term called state's evidence?

A Oh, yes, sir, I've heard of that.

Q And what is -- well, state's evidence very briefly would mean that if a person would testify in favor of the State and some deal or some inducement may have been given to him to turn state's evidence to testify for the State against a particular defendant.

A I have -- when I was practicing law, I had people to turn state's evidence in hopes that I would get a lighter sentence for my client, and I have in fact been able in advance to get a commitment the man would not be given the maximum sentence. It depends on whether an individual wishes to cooperate and testify. It's up to him.

Q Now, Mr. Hebert of your office -- do you consider Mr. Hebert to be a fairly competent individual?

A One of the best in the State, yes, sir.

Q Very well trained in the law?

A Yes, sir. Mr. Hebert was with the Public Defender's Office for quite some time, and then I hired Mr. Hebert from the Public Defender's Office to be an assistant district attorney. I think he's very capable.

Q And you had no reason to want to do a follow-up -- when you feel Mr. Hebert being as competent and as well trained as he is has done a job from an investigation, you don't normally feel the necessity to follow up behind him, do you?

A No, sir. I feel that all the assistants are capable. I think as the District Attorney I have a duty to always observe cases and check cases, and I try to do that since I've been District Attorney.

Q So you would have no reason to go out to parish prison at 3:16 in the morning or one o'clock in the morning to check up on Mr. Hebert?

A Oh, no, sir. I -- my going to the parish prison was not to check on Mr. Hebert but was in response to a request from Mr. Hebert that I come because Mr. Whitmore had given a statement and relative to the Bond murder, and I had been involved in that case.

Q It's your testimony that as District Attorney of East Baton Rouge Parish, you got out of bed at one o'clock in the morning or 3:16 in the morning and went to the East Baton Rouge Parish prison merely to ask Mr. Whitmore if he was telling the truth?

A Oh, no. They asked me to come. I didn't know what -- I didn't know what was going to be the situation when I got there. Merely said that he had made a statement involving him and someone else in the Bond case, and naturally, sir, I went. That's not the first time. I go -- since I've been District Attorney, sir, I've been out all over this parish all hours of the night, seven days a week. It's been a policy since we've been District Attorney. I've gone to the jail. I've gone to the hospital. I've gone many, many places in this parish all hours of the night being District Attorney.

Q Now, sir, are you acquainted with Sergeant Russell of the Sheriff's Office?

A Yes, sir.

Q To your knowledge, is Sergeant -- did he participate in this investigation?

A Yes, sir.

Q Did you see him on the evening of the -- the evening that you were at the parish prison?

A That morning?

Q Yes, that morning.

A Yes, sir.

Q To your knowledge, is Sergeant Russell, from your dealings with Sergeant Russell, is he a very competent police officer?

A Yes, sir. Yes, sir.

Q Fairly consciencious?

A Yes, sir, my -- this is the -- I guess the first time that I really and the only case I've ever been involved with Sergeant Russell, but in my opinion, he's been a good officer.

Q You have no -- and your feeling is that he conducts himself honorably?

A Yes, sir.

Q And you don't know of any reason Mr. Russell or Sergeant Russell would have to mislead this jury or mislead this Court?

A No, sir, not to my knowledge. I don't think he would intentionally, no, sir.

Q If Sergeant Russell were to testify that he personally observed you and Mr. Whitmore go into that room by yourselves, alone, that would be erroneous?

A Not going to say it would be erroneous because I don't know -- as I am telling you, I can't tell you who all was there in that reception area. I can't tell you the name of the man, for example, I asked permission from -- and I know most of the deputies -- I asked permission from to let Mr. Whitmore use the telephone because so many people were

there that night and so many deputies and people, it'd be hard to say -- I couldn't tell you at any given time if all of these -- and I tried to qualify my statement a moment ago by saying that I believe that all of them were there when -- because they had just stepped out of the room, and I walked over to them. If I were to measure from the jury's chair, the juror's chair seated here, not more than -- if that were the door entrance to the room where the interrogation was taking place, not more than three to four feet from there was I when I walked to them and was advised what had taken place. We immediately walked back to the door, and I opened the door and talked to Mr. Whitmore and asked him that one question. I'm not saying -- I presume that all three of them were there with me at the time. I could not on the stand, under oath, say that they were there all the time. I could not, but I'm trying to recall to the best of my ability.

Q No, sir. I understand, but what my question was was, from that stand, Lieutenant Russell testified -- Sergeant Russell testified that he observed you and Mr. Whitmore go into that room by yourselves and that you talked with Mr. Whitmore. What I'm asking is, is that testimony in error?

A The testimony would be in error because all I did with Mr. Whitmore was, as I said, with those -- which I felt all three of them were there, Mr. Hebert, Lieutenant Bueto, and Mr. Russell. I stepped in only enough to ask that question and which was at the most, as I said -- could have been twenty, thirty seconds . . .

Q You know of any reason that Sergeant Russell, called by the State, would have to make a statement like that? Why would he make a statement like that?

A I don't know, sir. I can only testify, Mr. Brantley, to the best that I can recall, sir, from, you know, what I did and what I recall. Now, what someone else testified to, sir, I can't vouch for that. I can only go by what I tried to do.

MR. BRANTLEY: That's all I have, Your Honor.

MR. PEREZ: Thank you. That's all I have.

WITNESS EXCUSED

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MR. PEREZ: I'd like to call Mr. Zuelke.

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DON ZUELKE, called to the stand as a witness on behalf of the State, having been first duly sworn, testified as follows:

MR. BRANTLEY: Your Honor, if it please the Court, prior to Lieutenant Zuelke testifying, I would like to retire the jury just to make an objection for the record, not to his testimony because I fully want to hear what Lieutenant Zuelke has to say, but for possibly restrictive nature of the testimony before -- we're going to have to cross the bridge at one time. I think we can cross it prior to the time that Lieutenant Zuelke testifies.

THE COURT: Retire the jury.

(The jury was retired.)

MR. BRANTLEY: What I would like to have qualified before we get into it, and I think it will save us some time and certainly some objections, is Mr. Perez eliciting any information -- I have not gone in -- of course, my questions to the other officers have been directed towards the investigation conducted by Mr. Zuelke; and I'm sure,

and probably without objection, they'll get into the fact that Mr. Zuelke is a polygraph expert and not getting into any results of any tests that he's given. I have not, and I pretermitted specifically any reference to any tape or any taped statement that was made subsequent to the second tape that was offered, I believe in State 16, and before -- what I'm wondering is -- and the reason I'm doing this is if Mr. Perez asks him about both interviews, needless to say, I'm going to object to it because I don't feel like -- 'cause I don't feel like I've opened the door. I think I've opened the door to the first interview. I want to cross that bridge before we come to it.

THE COURT: Mr. Brantley, he's being called as a State's witness, and the State can open the door to any material, relevant, legitimate testimony.

MR. BRANTLEY: Yet, Your Honor, I . . .

THE COURT: Let me finish. I can't tell the State not to ask him any questions about the second

interview.

MR. BRANTLEY: Well . . .

THE COURT: Fourth interview, really. Now, you raised the point early this morning on that issue, and you've heard that tape, and I've listened to it in camera, and I have ruled that there's nothing prejudicial in that tape.

MR. BRANTLEY: Well, Judge, my feeling is basically this, that I haven't asked any questions concerning that second tape for the purposes of a record in front of this jury. Now, we were advised that there were two tapes. I opened the door to that third tape. I admit that, and I acknowledge it. I think that they're going to be precluded from going into that tape if Mr. Perez wants to or from any other evidence that's contained specifically within their answer to the bill of particulars, and I have a case right on point that just came out.

THE COURT: Now, Mr. Perez has stated he does not intend to introduce that five-minute portion that we heard this morning, which

was the recorded portion of the second polygraph. Now, I take he meant his word and unless there's any attempt to introduce it, at that time we'll cross that bridge. Let me get into the record what I told you not on the record, in chambers. I do not want either side mentioning the polygraph or the results of the polygraph. I'm not going to let anybody build error into this trial if I can help it, and I caution you and the prosecution to ask about results of the polygraph examination.

MR. BRANTLEY: Now, am I to understand the results . . .

THE COURT: The results of a polygraph examination.

MR. BRANTLEY: Can we ask about questions that were asked during the examination?

THE COURT: You intend to ask that on cross-examination? As long as you don't attempt to get before this jury -- I don't think you can waive the results of a polygraph.

MR. BRANTLEY: I agree with the Court after that recent decision.

THE COURT: And if you, by

your own questions, get into the fact that he is a polygraphist and you ask him questions, without him giving an opinion to the jury about the results of that test, we may not have crossed the line about the results. I'll allow you to do that, but I'm not going to allow you to let this witness on direct or cross testify to the results of the polygraph or his opinion to whether the witness was telling the truth in that tape. That's for the jury to decide, not for Mr. Zuelke.

MR. BRANTLEY: Yes, sir. I understand.

THE COURT: Proceed.

(The jury was returned to the courtroom; the polling waived.)

DIRECT EXAMINATION

BY MR. PEREZ:

Q Would you state your name for the record, sir.

A Don Zuelke.

Q And where do you presently work?

A Presently work for Southern Research Company.

Q Which is what kind of company?

A An investigative and security company.

Q Were you ever employed by the East Baton Rouge Parish Sheriff's Office?

A Yes, I was.

Q How long were you with them?

A Eight years.

Q And during the latter years of your time with the Sheriff's Office, did you ever have any specialty or special field of expertise?

A Yes, I did.

Q What was that?

A I was trained as a polygraphist.

Q What is a polygraphist?

A A polygraph operator.

Q And what is a polygraph?

A Commonly known as a lie detector.

Q Did you ever become involved in the investigation of the Marshall Bond case?

A Yes, I did.

Q Do you recognize the gentleman who's seated at the end of the table?

A Yes, I do.

Q Was your involvement in this investigation in any capacity other than as a polygraphist?

A No.

Q When you were with the Sheriff's Office -- where is the Sheriff's Office located, basically?

A In the East Baton Rouge Parish courthouse.

Q Where was your office?

A The polygraph office was in the Taylor Building, which is located at 251 Florida Boulevard, Suite 412.

Q Would you describe that office, too, please.

A It's a three-room suite, a reception office, a testing room which is utilized for nothing but testing, and an observation

room.

Q When you mean an observation room . . .

A This is an area that the investigators can observe the test as it's being conducted.

Q Now, let me direct your attention to the afternoon or evening of February 25, 1975, and ask you if you had occasion to see Mr. Kenny Whitmore?

A Yes, I did.

Q And what time?

A Seven o'clock.

Q Where was this?

A Seven o'clock p.m. on the 25th.

Q Where?

A At the Taylor Building.

Q Okay, and in what capacity were you acting at that time?

A I was going to conduct a polygraph examination on Mr. Whitmore.

Q Did you in fact conduct such an examination?

A Yes, I did.

Q And when that examination was conducted, who was in the room?

A Only myself and the person being tested; in this case, Mr. Whitmore.

Q Is there anyone who is -- any way that other persons can either see or hear what is happening?

A Yes. The investigators can view the test being conducted from the observation room.

Q Is there any recording made of the test -- I'm talking about not, not -- recording of the voices of the persons during which the test is conducted.

A Yes, there is.

Q How -- where is this recorder and how does it work?

A The recorder is in the observation room, and there is a microphone in the testing room, and the voices from within the testing room are recorded.

Q Did you make a recording of the conversations that you had with Mr. Whitmore during this test?

A Yes, I did.

Q How long did this procedure -- how long were you in Mr. Whitmore's presence, do you know?

A Roughly two hours and twenty minutes, two hours and thirty minutes.

Q Is this an unusual time for it to take to run a polygraph examination?

A No.

Q And what do you do during this time?

A The majority of that time is spent explaining to the person being tested the operation of the polygraph, how the polygraph works and the questions that will be asked on the test.

Q Do you run through, during this time, control procedures to see if the person is a suitable subject for polygraph, etc.?

A Yes, we do.

Q Now, during this particular interview, did you ever interrogate in the normal investigative sense, this defendant?

A No.

Q How many questions would you have asked him with specific reference to this case?

A Five.

Q Is this normal that five questions are asked with reference to a case?

A Five relative questions are always asked on a specific examination.

Q And how many times might you have gone through these

questions to get different charts of his reaction?

A I would have asked him those questions on two separate tests, possibly three. When I say test, I'm referring to the questions being asked in one series.

Q When you concluded this examination, about what time was it?

A Approximately 9:30.

Q Now, I've got to explain that the results of this examination are not admissible and ask you not to testify as to that.

THE COURT: Gentlemen, come forward. Mr. Zuelke, come over here.

(Reporter's note: A brief conference was held at the bench.)

THE COURT: Ladies and gentlemen of the jury, the decision to believe or not believe any witnesses or any evidence is exclusively within the province of the jury. Polygraph examinations are not admissible in evidence for either side in this case. Proceed.

Q Now, I ask you to answer my questions very specifically and responsively and not to run on to unsolicited information. Now, about what time did that interview conclude?

A Approximately 9:30.

Q At 9:30 or shortly thereafter, did you expect to see Mr. Whitmore again?

A Yes.

Q At what time?

A The next day.

Q Any time . . .

A Tentatively scheduled for the next morning.

Q Now, when -- did you take this first interview or first test that you had with Mr. Whitmore, what type of tape recording is made of that?

A A reel-to-reel recorder is utilized on a tape.

Q Now, did you see Mr. Whitmore the next day?

A Yes, I did.

Q Did you have another test with him the next day?

A Yes, I did.

Q Was that recorded?

A Yes, it was.

Q And what type of recording was made of that particular test?

A The same type as taken previously.

Q And which tape was used of this second test?

A The same tape.

Q When you say, the same tape, was this the opposite side or a continuation?

A No, no, no. The test was taped on that same area of the tape that had been used the night before.

Q And what did this do to the first test?

A It naturally recorded over the tape that had been taken the night before.

Q Did you subsequently give a polygraph to another individual with reference to this case?

A Yes, I did.

Q And when would that have been?

A The afternoon of the 26th, approximately four hours after Mr. Whitmore's second examination.

Q And was that interview tape recorded?

A Yes, it was.

Q And what tape was used for this interview?

A The same tape, the same area of the tape that had been used on the other two occasions.

Q Now, did you have an occasion to examine this tape last night?

A Yes, I did.

Q And do you know if any portion of the second interview that you had still exists, the tape of any portion?

A There was a very brief portion of that tape still recorded. It actually, the last minute or so of that second examination.

Q And why was this still in existence and the beginning not?

A The third time that that tape was used, the interview involved which was recorded, just a minute or so less than the interview with Mr. Whitmore that had been recorded.

Q Now, the use of this tape on occasion more than one time, is this in accordance with the normal policy that you had or the Sheriff's Office had, or was this an exceptional type of thing?

A No, no. This was a common procedure that I utilized.

Q What time was this second interview you had with Mr. Whitmore?

A 11:20, 11:21, I think, to be exact.

Q On what date?

A The 26th.

Q Now, prior to your interview with -- your first interview with Mr. Whitmore, were you aware of whether Mr. Whitmore had given a tape-recorded statement to investigating officers on the case?

A Yes, I was.

Q And were you made aware of the contents of that statement?

A Yes, I was.

Q Did you use this information to formulate the questions in asking Mr. Whitmore?

A Exactly.

Q And the information which was given in this interview, was it consistent with the information that . . .

THE COURT: Don't lead your witness, Mr. Perez.

Q Was the information consistent what you had learned before?

A Yes, it was.

Q Before conducting the second interview, were you aware that there had been a second tape-recorded statement made by the defendant?

A Yes, I was.

Q Did you use this information . . .

MR. BRANTLEY: Judge, I'm going to object . . .

THE COURT: Don't lead, Mr. Perez. Ask him what he did.

Q What did you do with this information?

A I formulated my questions for this second test based upon the information that had been given to me by the investigating officers.

Q Was the information supplied with Mr. Whitmore consistent with that?

MR. BRANTLEY: Objection,

Your Honor. I think . . .

THE COURT: Sustained.

MR. BRANTLEY: Goes to the heart of it.

THE COURT: Rephrase the question.

MR. PEREZ: That's all the questions I have.

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CROSS-EXAMINATION

BY MR. BRANTLEY:

Q Mr. or Lieutenant Zuelke, Mr. Zuelke, now, when you're trained to conduct these tests -- you do have some training and background?

A Yes.

Q Approximately how long were you trained . . .

A I attended the national training center of lie detection in New York. It was a six weeks course involving two hundred and fifty-seven hours of classroom instruction.

Q So you studied approximately six weeks to administer this test?

A That's right.

Q Now, in administering the test, you have, I believe Mr. Perez pointed out, you have what are called control questions?

A That is correct.

Q Now, let me stop and back up. This room that we got the tape recorder in and we have the investigators in, the individual that's being tested does not know that tape recorder is going, does he? He's not aware that he's being recorded, does he or is he?

A Yeah.

Q He is aware that he's being recorded? Mr. Whitmore was aware that he was on tape?

A Yes.

Q You specifically advised Mr. Whitmore that he was being tape-recorded?

A He wasn't advised in those words.

Q Now, actually the advising of him was couched in other words? The advising is by a form that you have him sign?

A That's correct.

Q And that form has words couched in it, electronic recording device?

A That's right.

Q But you don't tell him you're tape-recording him, do you?

A No, I did not.

Q Now, actually this interview that you do, the polygraph examination, lasts two hours and twenty minutes, the one that was recorded and the tape has now been erased -- you actually do a pretest interview before that, don't you?

A The pretest interview is included within that two hours.

Q Where you ask him facts and circumstances about the case?

A That's right. Pretest interview makes up the majority of the examination; in this case, roughly two hours.

Q In fact, Mr. Whitmore was not reluctant to take this test, was he, nor was he reluctant to take the second test?

A No.

Q He cooperated with you?

A Yes, he did.

Q Now, did you determine Mr. Whitmore's educational background?

A I'm sure I did. However, I don't remember what Mr. Whitmore had stated at that time.

Q If I were to advise you he has a tenth-grade education, do you feel that would be consistent with the information that you elicited from him?

A I don't remember what he stated at that time.

Q Now, would you explain to me what a control question is.

A A control question is a question which is asked in addition to the relative questions pertaining to the specific issue, and the reaction to the control question is compared to the reaction to the relative question.

Q So actually what it is in essence is it's a question to confuse the person that you're testing?

A No, not at all.

Q I mean, you know the response you're going to get to the control question, don't you?

A I know the response I'm going to get to all the questions.

Q It would be -- for instance, you would -- if I were to ask you, are you Santa Claus . . .

A Uh, huh.

Q I know the answer to that is going to be no and that you're going to respond no.

A Right.

Q So it sets up a guideline, is that what it is more or less?

A Basically.

Q Now, in studying to be a polygraphist -- you've heard of the book, Truth and Deception . . .

A Yes, I have.

Q Written by, I believe John Reed?

A Correct.

Q Is Mr. Reed a fairly good authority in that . . .

A Yes, he is.

Q One of the foremost in the country?

A Yes, he is.

Q Or the foremost in the country?

A I don't know about that.

Q Now, in -- also in conducting these tests, you have what are called verification tests?

A Yes, we do.

Q Now, verification tests is a psychological stimulation to the person you're testing, is it not?

A Yes, it is.

Q It's to make him believe the test works?

A To make sure the instrument is correctly working, yes.

Q Now, you have -- I believe you use a number to do one verification test.

A That is correct.

Q And a card to do another verification.

A That is the same test that you're referring to.

Q Now, in the . . .

A The cards are numbered.

Q Tell the -- correct me if I'm wrong -- you have say, what, five or six cards or ten cards . . .

A Seven.

Q And you tell the person to pick a card?

A Uh, huh.

Q And you're going to run down the list, the number of the cards, card number one, card number two, card number three, and you tell him to tell you no.

A That's right.

Q But you know what that card is in advance, don't you?

A Yes.

Q You don't obtain that information from the charts, do you?

A Yes, I do.

Q No. You actually do know, before you even get to the charts, what that card is, don't you?

A I do, but I also use the results of that test.

Q But you don't need the results of the test, do you?

A Yes.

Q To know what the card is, you need the results of the test?

A Not to know what the card is but to see the reaction on that test.

Q But the man is intentionally deceived, is he not, into

believing that you have read it on the charts and not already know it?

A I don't consider it deception.

Q But you already know it?

A Yes, I know it.

MR. BRANTLEY: That's all I have.

MR. PEREZ: Thank you.

WITNESS EXCUSED

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P. V. BROWNING, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q State your name and occupation.

A P. V. Browning. I'm chief of police of Zachary.

Q All right, how long have you been with the Zachary Police Department?

A Since 1965.

Q And Chief Browning, did you become involved in the investigation of the killing of Marshall Bond?

A I did, yes.

Q Did you know Marshall Bond?

A Yes, I did.

Q How long had you known him?

A Oh, thirty-five years.

Q Did you have occasion to go to the area of Mr. Bond's property on Rollins Road on the evening of August 15, 1973?

A Yes, sir, I did.

Q And about what time did you arrive?

A I arrived out there between 5:30 and a quarter to 6:00, along in that time.

Q Did you have occasion to inspect that area out there?

A I did, yes.

Q Chief Browning, had you ever been to that property before?

A Yes, sir, I have.

Q On one or more occasions?

A Oh, on several different occasions.

Q What type of property is that?

A It's pastureland with a barn on it, regular farm property.

Q I'm going to show you a photograph which I've marked as State 17. I want you to examine that and see if you recognize what's shown in that photograph.

A (Witness complies.) Yes, sir, I do.

Q Does it appear -- do you see what appears to be a yellow substance on the ground in that photograph?

A Yes, sir, I do.

Q Did you see that, the actual substance that was on the ground that night?

A Yes, I did.

Q Does this appear to be a photograph that was taken on the evening of the 15th of August?

A It does.

Q Does it accurately represent what the area looked like?

A It does.

Q Were you -- did you examine that yellow substance to see . . .

A Yes, sir, I did.

Q What it was? What was it?

A It was feed, horse feed, regular sweet feed, horse feed.

Q Could you locate any other horse feed in that area?

A The only other horse feed was in the barn itself. We got to looking around for where this come from and . . .

Q I'll show you another photograph, a black and white photograph, and ask you if you recognize the structure that's pictured there.

A Yes, sir, I do.

Q What is that structure?

A That structure of the barn, the inside of the barn, a front view of it as to where the investigation was made of the barn and whatnot, the contents around it.

Q Okay, and can you see in that structure where -- is there any large quantity of feed in that area?

A It was a sack of feed.

Q Where would it have been?

A It would have been inside.

Q Is there a door on the barn in that picture?

A Yes, sir, it is.

Q And where would it have been in relation to that door?

A It would have been inside to the right, sitting back inside the barn, yes.

Q Did you make any investigation to, in an attempt to determine why this feed was on the ground and where this feed had come from?

A Yes, sir, we did and couldn't figure out how it got out of there, but we never did find the bucket or anything how the feed got out there. So that's the reason we . . .

Q Did you notice if there were any buckets on the farm that night?

A There was buckets inside.

Q Where's that?

A Inside the barn. It was a couple of buckets inside the barn, yes, sir.

Q Were there any buckets outside where the feed was?

A No, sir, there wasn't.

Q Did you make queries of individuals who knew the farm with reference to . . .

MR. BRANTLEY: I'm going to object. He's leading the witness.

MR. PEREZ: Just asking him if he made . . .

MR. BRANTLEY: I've asked . . .

MR. PEREZ: If he asked questions about it. I'm not asking what they said.

THE COURT: He's not suggesting the answer. He can ask him if he asked any questions.

Q Did you ask any questions of the people who were familiar with that area about the bucket?

A Yes, sir, I did.

MR. PEREZ: That's all the questions I have.

MR. BRANTLEY: We have no questions.

WITNESS EXCUSED

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MR. PEREZ: Call Mr. John Womack.

MR. BRANTLEY: Judge, I'd like to ask that the jury be retired.

THE COURT: Retire the jury.

(The jury was retired.)

MR. BRANTLEY: Judge, my appreciation of the situation, Mr. Perez is now going to attempt to lay

a foundation for the introduction of the bucket that's seated over here. The Court has previously ruled, prior to the introduction and the proper foundation has been laid, Mr. Perez should not display any evidence of anything that's purported to be offered into evidence in front of the jury until it's admissible. I think if he's going to lay his foundation, the foundation has to be laid out of the presence of the jury.

MR. PEREZ: Your Honor, that is, to me, utterly ridiculous. There are quite -- there are objects which I have had in trials and which everyone has in a trial which may require five or six witnesses to testify as to their relevance before they're introduced. This would require that we have one trial outside of the presence of this jury in order to determine the admissibility of the evidence even such innocuous items as a bucket which if it's determined it has no relevance, will certainly not prejudice the defendant; then have another trial in the presence of the jury with these items. I'm going to

merely ask this man where he found the bucket, and then I'm going to put on another witness to testify where the bucket came from. We've had evidence from the defendant's statement on the tape where he went when they left. He stated on that second tape that they did not go directly home. He said that they took a ride, on that tape, out to the park, the recreation area at Port Hudson when they left there. I have evidence that something which was -- a bucket like this which was used to hold corn was emptied on ground, and the bucket was missing, and I intend to show that that same bucket was found where this man says that they went after this crime was committed.

THE COURT: With regard to the issue of showing evidence before the jury, I have said the better practice is that such evidence not be shown to the jury because in the event it is ruled inadmissible, it could cause a mistrial. I have also said that that rule applies to prejudicial items such as a weapon, a bloody shirt, bloody pictures. I don't find this particular bucket to

be prejudicial . . .

MR. BRANTLEY: Well, if according to what . . .

THE COURT: But the better practice is not to bring it into the courtroom. That is not the problem that I see; and while the jury is out, I'd like Mr. Perez to tell me what evidence we have introduced at this trial that a bucket was missing.

MR. BRANTLEY: There's been no evidence that a bucket was missing, none.

MR. PEREZ: Your Honor, I have . . .

MR. BRANTLEY: None in the statement.

THE COURT: Wait.

MR. PEREZ: No, it is not in his statement. I have evidence introduced that Mr. Bond had gone out to that area to feed his cattle or feed his horses. The purpose of his going out there was to feed them. I have evidence . . .

MR. BRANTLEY: There's no evidence of that.

THE COURT: Let him finish, Mr. Brantley.

MR. PEREZ: That a bucket

-- and I will put on evidence through my next witness -- that this was the standard procedure by which they fed horses at the farm, was that they used a bucket, a five-gallon bucket, and carried some feed out and threw it on some tin. I have evidence that when Mr. Bond was found bleeding under that tree, very close to him was a good deal of feed lying on the ground, which would normally have been carried in a bucket of this nature. I have evidence from the defendant's own mouth that when he left that farm, he went to Port Hudson. I now intend to put on evidence that this bucket was found where he went to, the recreation area in Port Hudson, and that this is the same bucket that was on the farm that day.

THE COURT: Now, we have evidence that there was feed on the ground, and we have evidence, I think through Mrs. Bond and Mr. Robinson, that that's the way that horses and cattle were normally fed.

MR. BRANTLEY: No, sir. I don't believe that Mr. Robinson had any knowledge of that.

MR. PEREZ: And I also -- I cannot put my entire case on with one witness. My next witness will testify that he fed horses daily on that farm for years and that he fed them, that was the way they were fed, and they were fed with this bucket, and that that bucket was missing after the day of this crime, but I cannot put them both, both of my witnesses on at the same time. I have to put this man on to show where the bucket came from in order to get the chain of custody and make it any sense to the jury.

MR. BRANTLEY: Judge, there's . . .

THE COURT: The issue as to whether or not this bucket, if it is introduced, was on the farm at any one time and whether or not it's the same bucket that was out there a year and a half before is going to be one for the jury to decide. The issue of chain of custody is also not one of admissibility but one for the jury to determine whether or not this is the bucket that was there or this is some other bucket.

MR. BRANTLEY: Well, I'm sorry, Your Honor. Is it the Court's position that the relevancy of this piece of evidence, the bucket, is for the jury's determination or the Court's determination?

THE COURT: For me to decide if it's relevant, he has said he's going to connect it, up its relevance with his next witness.

MR. BRANTLEY: And assuming that he does not show its relevance, then . . .

THE COURT: Then I have to decide whether that's unduly prejudicial.

MR. BRANTLEY: Or whether it's admissible if it's not . . .

THE COURT: Well, I assume if I decide it's not admissible, then I have to decide whether it's unduly prejudicial, the mere showing of it.

MR. BRANTLEY: But also wouldn't the chain of custody be for the Court's determination and not . . .

THE COURT: No, sir. The issue of chain of custody is a jury question, not an admissibility

question.

MR. BRANTLEY: We'll take error.

MR. ABADIE: Your Honor, it appears to me that the proper procedure might be to show that a bucket is missing or was missing from this particular area before you say that you found the bucket. Now, if Mr. Perez has a witness who can actually say and testify that the bucket was missing and clearly establish that point, then maybe that witness should testify first, and then Mr. Womack can testify later.

THE COURT: That may be the case if you or I were trying it, but we're not trying it, nor do I have the authority to tell him in what order to bring his witnesses. He can present the witnesses in the order that he thinks best.

MR. ABADIE: Well, Your Honor, our position would be an objection to the fact that a bucket is being introduced which at this time has no relevance whatsoever to the matter; and if there's not a subsequent witness who testifies to show that there is relevance, the

testimony is already going to be presented to the jury, and there's not going to be anything we can do about it except possibly give an admonition.

THE COURT: I'd agree with you that at this time the relevance of that bucket is remote, and I will reserve ruling on the prejudicial effect that they have bringing the bucket into the courtroom until a later time, subject to the State's ability to connect its relevancy. If they do not, then we'll have to cross that . . .

MR. PEREZ: Your Honor, I'd like to -- perhaps I could question this witness out of the presence of the jury for the limited purpose to establish some basis for his testimony . . .

THE COURT: Well, that's what Mr. Brantley suggested.

MR. BRANTLEY: Judge, I have a case I think is pretty much on point with them producing any evidence before a witness, before its admissibility.

MR. PEREZ: You couldn't try a case in that nature, Judge. You just cannot try a case without

having -- asking your witness if you can identify an item or what relevance it has.

MR. BRANTLEY: Well, the purpose is to prevent them from parading a bunch of inadmissible evidence to a witness and then not be able to get it into evidence. You've already flashed it in front of the jury. You've got it in the jury's mind. Now, the fact that they don't get to touch it and see it does not erase it from their minds.

THE COURT: Prejudice comes if it's not admissible, and prejudice comes from the nature of the evidence shown. I'll read you a case on it.

MR. PEREZ: I'm going to -- I'd like to excuse Mr. Womack and call another witness. I'll put the other witness on first, and then I think it will save that problem, although I would prefer doing it otherwise.

THE COURT: And the Court notes that the case you cite, Mr. Brantley, the evidence that was shown to the jury was subsequently not introduced; and I have said if we get to that point, we're going to have

a problem.

MR. BRANTLEY: Right. Well, there was a -- but it was not introduced, and the defense counsel did not object in the beginning. He later asked for an admonition, they said, and then he came back and said it was reversible error, and they said, time out; it's too late to ask for a reversible error; you should have objected in the beginning.

THE COURT: Well, the record notes that you have objected. The record also notes my previous admonition in the early stages of this trial, and I restate my position that in the event there's no relevance to this particular bucket, and it's not introduced into evidence, then we'll have to make a ruling at that time.

MR. PEREZ: I suggest that this witness take the stand and be questioned very limited outside the presence of the jury and overcome that problem.

THE COURT: Proceed. That's a request of the defendant if you wish to change that.

MR. BRANTLEY: No, sir.

LEON WALES, called to the stand as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q Would you state your name and where you live.

A Leon Wales, Zachary.

Q Mr. Wales, do you know Mr. Marshall Bond?

A Yes.

Q Were you familiar with his property off Rollins Road?

A Yes.

Q How were you familiar with that property?

A Well, I helped him up there. Been up there twenty years.

Q Did you have any animals on that property?

A Yes.

Q What kind?

A Had a horse.

Q About how long?

A Oh, I say twenty years.

Q Same horse?

A Well, different, you know, not the same one.

Q Were you accustomed to -- did you personally go out there and feed that horse?

A Yes.

Q How often?

A Went once a day.

Q What was the procedure that you used out there for feeding horses?

A Used buckets to feed them. Put the feed in and take it out

and pour it on a piece of tin or something.

Q Do you know -- were you ever up there when Mr. Marshall Bond was on that property?

A Yes, sir.

Q Were you up there when he was feeding animals, horses?

A Yes.

Q What procedure did he use to feed those animals?

A He used a bucket to put the feed in and pour it out.

Q Now, were you there the day Mr. Marshall Bond was killed?

A I was there earlier that day.

Q Were you there -- when was the next time after Mr. Bond was killed that you went on the property?

A The next day.

Q At that time did you have occasion to look around?

A Yes.

Q Did you have occasion to notice if anything was different or anything was missing?

A Yes.

Q What was that?

A A bucket.

Q What kind of a bucket?

A It was a five-gallon bucket with -- a pail, you know, a wood handling.

Q And you noticed this when?

A The next day.

Q Now, I'm going to show you an item -- let's see, we're on 19. Ask -- pick that up and look at it close.

A (Witness complies.)

MR. PEREZ: Loan me a tag.

I've marked that as State 19.

Q Now, sir, do you think you've ever seen this item before?

A I've used one like that.

Q Now, you used the word, like that. I'd like you to be more specific.

A I've used one exactly like that.

Q Okay, again, you're going to have to be -- is this the one you used or is it just a bucket of similar nature?

A That's the one we used.

Q How -- can you tell us how you can tell if this was the bucket or if some other bucket were the bucket?

A Well, the way it's bent, you know, shaped.

Q How long would you have used this particular bucket?

A Oh, I say five or six months.

Q And how often?

A Used it once a day.

Q What's that?

A Once a day.

Q When would you -- do you recall -- how many buckets did y'all have there at the time Mr. Bond was killed?

A Three, I believe.

Q What's that?

A Three.

Q Okay, now, you stated that the day after you looked around and missed one.

A Yes.

Q Can you tell me if this -- if this bucket was on the farm after Mr. Bond was killed or not?

A No, sir.

Q Is this the bucket that was missing?

A Yes, sir.

MR. PEREZ: Okay, that's all. I'd like for you to answer Mr. Brantley's questions.

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CROSS-EXAMINATION

BY MR. BRANTLEY:

Q Mr. Wales?

A Yes.

Q Mr. Wales, you've talked to Mr. Perez about this case, haven't you?

A No, sir.

Q You haven't?

A No, sir.

Q You never talked to him before? Did you talk to any representative of the District Attorney's Office?

A No, sir.

Q You never talked to an investigator?

A Right.

Q They never told you what they were going to ask you?

A No, sir.

Q You don't really know that that's the same bucket, do you? It just looks like . . .

A Looks like the bucket.

Q You don't know for sure that's the same bucket?

A No.

MR. BRANTLEY: That's all I have.

BY THE COURT:

Q What is there about the particular bucket in front of you that makes you believe it could be the one that was on Mr. Bond's farm?

A (Witness does not respond.)

Q You said something about the way it was bent. What . . .

A Yes, bent.

Q Did you mean by that?

A See, in places.

Q You mean that particular knot, that deep notch on the rim, is that what you mean?

A Well, the whole bucket bent.

Q Are they all bent like that or you remember one on the farm that was bent like that?

A Well, some of them have bents on them where you dump out feed.

Q Well, my question is, all of them bent or are there some particular bends in this bucket that makes you remember it?

A Not all of them are bent.

Q Are there some particular bends . . .

A Yes.

Q In this bucket that makes you remember it?

A Yes.

Q Would you point to those, which ones you're talking about.

A (Witness complies.) Right down there.

THE COURT: Let the record reflect the witness is pointing to the large dents in the side of the lower part of the bucket. Any further questions, gentlemen?

BY MR. ABADIE:

Q On the buckets that were missing -- the buckets that were still there, did you compare them to see whether or not they had the same dents?

A Yes, sir. Not the same but they have bents on them.

Q Your bucket have holes in it?

A No, sir.

Q Doesn't this bucket have holes in it?

A Yes, it holes and rust in it.

Q Doesn't it have quite a few holes in it?

A Yes.

Q It might not be the same bucket?

A Like I say, it looks like the bucket.

Q Is the outside of this bucket any different from the time that you last saw it?

A No, sir, other than it's rustier.

MR. BRANTLEY: Your Honor, we don't have any . . .

THE COURT: Let me see State No. 10, photo of the barn. Give me all of the photographs.

BY THE COURT:

Q Mr. Wales, I show you State Exhibit No. 7 and I call your attention to the right-hand middle section of this photograph and ask you if you can identify the substance on that ground in that photograph.

A Yes, sir. That's horse feed.

Q You're familiar with that horse feed?

A Yes.

Q Where is the source of this horse feed? Is it kept in bags inside the barn?

A In bags inside the barn.

Q The bags near this edge of this, so that if you took it out

it would spill right here or are the bags further inside the barn?

A The bags are further back inside the barn.

THE COURT: That's all the questions I have.

MR. ABADIE: Let me ask him, if you don't mind . . .

THE COURT: Proceed if no objection . . .

BY MR. ABADIE:

Q The point, with reference to this picture we're looking at, whenever you would load a pail with feed, would you bring the feed sack out to where you would load it on this bench or would you . . .

A No.

Q Load it back in the back?

A Back in the barn.

MR. PEREZ: I'd like to excuse this gentleman and call Mr. Womack. We might as well put it on, the whole thing.

THE COURT: Yes.

WITNESS EXCUSED

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MR. PEREZ: I want to -- I think that it will save us any

problem now that we've gone this far -- Mr. Womack's testimony would be very brief. We can get a ruling on it . . .

THE COURT: I'm prepared to rule. You gentlemen can argue. I presume you're going to object to the relevancy of . . .

MR. BRANTLEY: Oh, My God, yes.

THE COURT: All right, give me argument, and I'll hear Mr. Perez's argument.

MR. BRANTLEY: Judge, there's absolutely no foundation whatsoever. Mr. Wales testified he didn't know whether that's the same bucket . . .

THE COURT: It's not a question of foundation, Mr. Brantley. It's a question of relevance.

MR. BRANTLEY: Well, he has to lay the foundation for the relevancy. He has to show that it's in some way related to this case.

THE COURT: Foundations apply to certain types of evidence. Evidence such as this must be relevant. He has to show that in some way by circumstantial evidence that this may have been the bucket

that was out there. That's the argument I want to hear.

MR. BRANTLEY: I don't think he has to show it may have been the bucket, Your Honor. I think he has to show it's the bucket.

THE COURT: No. That's what the jury has to decide. I have to decide whether or not there's sufficient evidence in the record to allow this to be introduced for the purpose of a jury deciding whether or not this may have been the bucket. Now, I'll listen to any argument you have on the absence of that evidence.

MR. ABADIE: Your Honor, I think you've got to take the relevancy theory, and I think you've got to temper that with your prejudicial effect and some of the other effects. I don't think you can isolate the relevance. I don't think relevance is guided by one cardinal principle. Something may be slightly relevant and admissible into evidence because it has no prejudicial effect or other effects as something else may be more relevant but may have more side

effects, and in that case this item might be excluded. In this particular case, we have a man who says that he's got a bucket, that he thinks the bucket looks somewhat like it, although the bucket that he saw didn't have holes, and then we've got maybe twenty people come into a particular location between the time the man last saw it and the time that he next saw it. We have no indication that the thing has really been taken, and we have a slight relevancy besides that. So what I am saying is that the side effects of possibly letting this in has to be balanced with the slight relevancy that you have. Even though it may have a slight relevancy, I think it should be ruled inadmissible because of the side effects.

THE COURT: Well, Mr. Perez, do you have any on it?

MR. PEREZ: Sir, I don't see how this bucket could be prejudicial in any way. The jury is supposed to have some common sense. That's why we picked them to decide the case; and if the bucket doesn't have anything to do with the

case, if the evidence shows that the bucket doesn't have anything to do with the case, I'm sure they will not give it any weight. I can see that certain particular type of items like the pictures which I did not try and introduce, bloody weapons, bloody clothes, might have some effect upon the passions of the jury and cause them to maybe be somewhat illogical in their determination, but this is an unemotional, coldly dirty bucket up here. I cannot see how the jury . . .

THE COURT: The issue is no longer the emotional impact. The case Mr. Brantley cited and my ruling is about guns and clothing. In this particular case, there were guns and clothing which were shown to the jury and not admitted. It does not fall into that category.

MR. BRANTLEY: No, sir. I understand that.

THE COURT: The only issue is whether or not there is any relevance to this bucket, what evidence has been presented which would remotely tie this bucket to this case.

MR. BRANTLEY: My

appreciation of the law in Louisiana . . .

THE COURT: Mr. Brantley, I'm requesting argument from Mr. Perez.

MR. PEREZ: Yes, sir. Now, of course, we did not take Mr. Womack's testimony. As I explained to the Court, my theory of the case all along has been that Mr. Bond went out to this farm, that he went out there everyday to feed horses, that he went out to the farm that day. We know that he was attacked while he was on the farm that day. He was left there in that position. Next to him was feed which normally he would have been carrying in a bucket when he fed horses. Normally, he would have been carrying it in this bucket. The feed was on the ground which meant the bucket was absent. Mr. Wales said that he looked in the barn the next day and one of the feed buckets was missing. It wasn't determined missing that afternoon. That's true, but it was noticed there that afternoon that the presence of the feed, which came from the bucket, was on the ground. The bucket, if

Mr. Womack would get on the stand, was looked for to no avail for some time until after the statements of the defendant in this case. After that time and the defendant stated on his second tape-recorded statement that when they left -- he did not mention the bucket. I will agree that the defendant in no way mentioned the bucket. It is in neither of his statements, but he stated after they left the farm, they did not go home. They went to a recreation area in Port Hudson. I intend to show that after this statement was given to the police, the police went to the recreation area in Port Hudson, searched it, and found this bucket. Subsequently, this bucket was identified by Mr. Wales as being the bucket or looking just like the bucket or whatever the identification of Mr. Wales was made of.

THE COURT: What was the reason the police went to the Port Hudson area?

MR. PEREZ: The reason was the statements of both of the defendants, that they had gone to the

-- that they had gone to the area to the park at Port Hudson immediately after leaving the scene of the crime.

THE COURT: That statement is in the tape?

MR. BRANTLEY: I think he just hit the head on the head, the statement of both of the defendants.

MR. PEREZ: True.

MR. BRANTLEY: That came from Mr. Donahue. That is no place in this statement.

MR. PEREZ: If he -- are you saying that it's not in this statement . . .

MR. BRANTLEY: Absolutely.

MR. PEREZ: That he went to Port Hudson and Pride recreation area?

MR. BRANTLEY: Absolutely not.

MR. PEREZ: You have the second tape?

MR. BRANTLEY: I have both tapes transcribed.

MR. PEREZ: Okay. Well, I think now we've come to the resolution of the problem because if it's on the tape that . . .

MR. BRANTLEY: It's not on the tape at all.

MR. PEREZ: It is.

MR. BRANTLEY: I've read it once, I've read it fifty times.

MR. ABADIE: I'm not sure what it says. There may be something on the tape that's not on that transcription, but I'd like to hear it because I don't remember the thing about the Port Hudson.

MR. BRANTLEY: I think it came from Mister Donahue; and if it came from Mister Donahue, he certainly can't use that as the basis . . .

MR. PEREZ: I'm sorry, it did not. I listened to it today. It's not -- I agree it's not on his transcription. It just shows you that his transcription is not correct.

MR. BRANTLEY: Law in Louisiana, in order to admit evidence into a trial, you can do it one of two ways, by showing a chain of custody or by showing that there's a visual identification of that evidence and that the evidence obviously -- the evidence is obviously relative to the -- relevant

to the case.

THE COURT: The chain of custody has absolutely nothing to do with this evidence except from the time a police officer got it until it was brought into this courtroom . . .

MR. BRANTLEY: I agree with that.

THE COURT: To show that it had not been substituted by some improper police conduct between the discovery of a bucket and the presentation in court.

MR. BRANTLEY: I have . . .

THE COURT: That issue has not even been attacked.

MR. BRANTLEY: I agree with that . . .

THE COURT: The chain of custody has nothing to do with an item which a witness can identify as being a particular item. Now, chain of custody has a lot to do with blood samples, any samples taken from a person's body where they're indistinguishable, and they have to be maintained in custody so you can tell whose blood is whose. There's no way a witness can take the stand and say this blood is

Mr. Brantley's blood unless there's a chain of custody. That's the purpose for a chain . . .

MR. BRANTLEY: Yes, sir, but I was trying to annunciate the two ways, my appreciation of the law, the two ways evidence can be admitted. Then, or secondly, the visual identification. Let's assume the man visually identifies the bucket. It still doesn't . . .

THE COURT: That's what we have here.

MR. BRANTLEY: The bucket relative to this case.

THE COURT: The witness has said that this bucket looks like the one that was out there, and he said there were three, and there was one missing. Any item missing from a crime scene I think would be relevant evidence. The only problem is is how you connect the missing item with this defendant. Now, I need an answer to that question.

MR. PEREZ: I suggest, Your Honor, we listen to the last two or three minutes of that tape where this defendant stated they left there and went to the recreation -- you don't have to read that

because they've left it out of your transcript -- they went to the recreation area at Port Hudson . . .

THE COURT: See if you can find it. I presume, gentlemen, that the witness that was on the stand at the time we interrupted is going to testify that he found this bucket . . .

MR. PEREZ: Right. That's true.

THE COURT: At that time you will seek to introduce it?

MR. PEREZ: Right.

MR. BRANTLEY: I'll stipulate to that, Judge. That'll save us some time . . .

MR. PEREZ: All right . . .

MR. BRANTLEY: Assuming it's on the tape.

THE COURT: Let's see what the tape says.

(Reporter's note: S-16 was replayed at this time.)

THE COURT: Back on the record. If an item was found at the Port Hudson recreation center and an item which other witnesses can describe as having been at the crime scene, it would be of value to the jury in determining whether or

not that taped statement was accurate and truthful or not. Now, subject to the ability of the State to show that this item in front of us was found at that scene, we will proceed to taking additional testimony.

MR. PEREZ: Thank you.

THE COURT: Bring the jury in.

(The jury was returned to the courtroom; the polling waived.)

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JOHN WOMACK, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q Would you state your . . .

MR. PEREZ: I don't know if he's been sworn in in the presence of the jury.

THE COURT: Make sure he is.

Q Have you been sworn in the presence of the jury?

A I was.

Q Would you state your name and occupation, sir.

A John Womack, assistant chief of police from Zachary Police Department.

Q Mr. Womack, were you involved in an investigation of the killing of Mr. Bond?

A Yes, I was.

Q And when did your participation in this investigation begin?

A Some -- I arrived on the scene between the time Mr. Bond was removed and before word had reached back to the scene of his death. That would be shortly after six o'clock. I was summoned immediately from my home upon receipt of our office of the information.

Q Did you notice any substance on the ground in the area where Mr. Bond was found?

A Yes, sir, I did.

Q What was that substance?

A What appeared to be a factory mixture of feed commonly bought for, used for horse feed.

Q Okay, did you conduct any investigation to determine where this feed had come from and why it was on the ground?

A Not at this time other than the photographs, etc., were made of all of this at the scene; and, of course, like I say, at this particular time it was pretty much . . .

Q Did you subsequently conduct an investigation as to this feed?

A Yes, sir, I did.

Q Now, did you begin looking for any particular type of items and . . .

A Yes, sir.

Q When?

A We were looking for any of a number of items, but in particular in reference to the feed, we were looking for a five-gallon bucket or a pail as described to be a five-gallon paint pail.

Q And where did you look for this item?

A The incident occurred on a Wednesday afternoon approximately six o'clock. The area immediate to it was searched that night as soon as photographs, etc., were taken; and then daylight the next day, a broader search made.

Q Who was the search made by?

A At this time it was made by myself and other officers from our department, and then still not having produced anything we felt was significant, on Saturday following this Wednesday we had a large number of people that were for the most part volunteer people that were there that used some horses to pretty well cover the complete Bond property at that time in

search of this and any other possibly related items.

Q Did you find the five-gallon for which you were looking?

A No, sir, we did not.

Q Did you find any items or items which . . .

MR. BRANTLEY: I object. He's leading his witness. He can ask him what he found.

THE COURT: What did he find. Don't suggest . . .

MR. PEREZ: It might take a week if they searched that three hundred acres. I don't know what they found.

Q What did you find?

A Well, there were any of a number of items that, like I say, at the particular time of our -- of this time not knowing positively what type of weapon was used in the wounds that Mr. Bond received, we virtually were looking for anything that would have inflicted that type of wound, in addition to the pail that was considered missing at the time.

Q Was there a pond on this property?

A Yes, sir, there was.

Q About how big?

A Oh, I'd say roughly the size of this courtroom if it were full, somewhat less than that if the water level had . . .

Q Did you look in this pond?

A Yes, sir. The pond -- I don't know whether this was done on Thursday or Friday. I would have to check records. But one of the two days, this pond was pumbed with fire equipment

and some other -- it was pumbed completely dry.

Q Did you find anything significant?

A No, sir.

Q I'm going to direct your attention to a day, February 27, 1975, and ask you -- are you familiar with the recreation area in Port Hudson?

A Yes, sir, I am.

Q Where is this recreation center?

A It's located on Ligon Road. Now, we say Port Hudson. What a map may define as Port Hudson would be a very old community out on what was then the Mississippi River back previous. I believe this was 1900. And this is Port Hudson proper. Now, in essence, people considering themselves from Zachary or being from Port Hudson -- if we ask, for example, somebody that we deal with regularly that lives essentially from the Flanacher Road on westward toward the river, these people would identify themselves as living in Port Hudson. This park itself, though, like I say, may not be shown in the map of Port Hudson, generally it would be considered -- people say that they live -- the communities would be Port Hudson, Plains, and Zachary, and generally people would consider themselves from Port Hudson.

Q On February 27, 1975, or shortly before then, were you directed to go to the recreation area in Port Hudson and look for anything?

A Yes, sir, I was. Actually on February 26th after the dark hours, and we just rode there, more or less surveyed what I knew was there with another officer as far as surveyed the terrain and so forth as to what was going to be necessary to conduct such a search to find the items that were reported to have been deposited there.

Q Now, did you return on the 27th of February?

A Yes, I did.

Q Were you alone or were you with other persons?

A No, I was not. I carried with me at this time approximately shortly after nine o'clock -- we had some eight or ten people who were generally employed by the City of Zachary for different types of maintenance work.

Q Show you an item I've previously marked as State Exhibit 19 and ask you to examine it please.

A (Witness complies.) Yes, sir. This is one of the items that we found in the Ligon Road park in a somewhat grown up area. Has the initials and the date on it that I placed there with a corner of a pocketknife at the time it was located.

Q How can you identify that particular item?

A As is customary in marking any type of physical item that we recover that may have some bearing on a crime, we take -- if it's something metal like this, I generally use a pocketknife if it's available -- and I usually have one -- and simply make my initials in it and the date. Of course, we would be working on several cases on that particular date. I would put some reference to the case. However, this has only the date of 2-27-75 and the initials, "J. A. W."

Q Okay, I'm going to show you an item, a photograph, labeled as State Exhibit 20 and ask you if you recognize that.

A Yes, sir, I do.

Q What does that photograph represent?

A This is a photograph that was made at the time that this pail was found. The pail was essentially leaning out, as you can see here, held with a rake to give a better photographing of the identifying marks on the pail, and it was done at the time that the pail was found.

Q Where was this photograph taken?

A This photograph was made at the Ligon Road park.

Q When you went to the park, were you looking for a bucket?

A Yes, we were. This and possibly some other items.

MR. PEREZ: Thank you. That's all we have.

MR. BRANTLEY: We don't have any questions, Your Honor.

WITNESS EXCUSED

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MR. PEREZ: Mr. Wales.

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LEON WALES, called to the stand as a witness on behalf of the State, having been first duly sworn, testified as follows:

REDIRECT EXAMINATION

BY MR. PEREZ:

Q Would you state your name for the record, sir.

A Leon Wales.

Q Mr. Wales, this gentleman right here might have a decision to make and he's going to have to hear you, so would you speak up so he can hear you.

A Yes.

Q What's your name?

A Leon Wales.

Q And where are you from, Mr. Wales?

A Zachary.

Q Mr. Wales, do you know Mr. Marshall Bond?

A Yes.

Q About how long have you known him?

A About twenty years.

Q Are you familiar with the property that Mr. Bond had out on the Rollins Road?

A Yes.

Q And have you ever been on that property?

A Yes.

Q How many times?

A Usually once a day.

Q What's that?

A I usually went once a day.

Q For how long?

A Oh, for twenty years.

Q What was the purpose of your going out to the property everyday?

A I had a horse up there, and I fed everyday.

Q Did Mr. Bond, to your knowledge, ever go out to that property?

A Yes.

Q How often did he go out there?

A He usually went once, sometimes twice a day.

Q Were you ever out there at the same time Mr. Bond was out there?

A Yes.

Q Let me ask you, how did you -- you say you have a horse. What did you go there to do in connection with your horse?

A Feed him.

Q Where was the feed kept?

A Kept in a crib right there in the lot.

Q When you say a crib, I'll show you a photograph that's right in front of you which has been marked as State Exhibit 18.

A Yes.

Q Look at it please.

A (Witness complies.)

Q You recognize that structure that's shown there?

A Yes.

Q What's that?

A That's the barn where he kept his feed.

Q Where was the feed specifically kept?

A Kept just inside the barn door.

Q And in what type of container was it kept?

A In a bag.

Q Now, where specifically or usually were the horses fed?

A They were fed right there in that lot.

Q And how did you transport the feed from the bag to the lot?

A Pour it into a bucket and take it and pour it out on a piece of tin.

Q Why did you pour it on a piece of tin?

A Just to keep from putting it on the dirt, I guess.

Q Now, how long did you feed the horses out there?

A Twenty years I been up there.

Q Now, you said you were present when Mr. Bond also fed his horses?

A Yes.

Q What method did he use in transporting the feed?

A He used the bucket to pour it out of the bag into the bucket.

Q At the time that this incident happened to Mr. Bond, how many buckets did y'all have out at the farm?

A Three.

Q How many?

A Three.

Q Did you happen to go out to the farm sometime after Mr. Bond was killed?

A The next day I went.

Q And what was the purpose of your going out there the next day?

A Went to feed my horse, look about his horses there.

Q Did you look around?

A Yes.

Q Did you notice that anything was missing?

A A bucket was missing.

Q How many buckets did y'all have left?

A Two.

Q This particular bucket that was missing, how long had y'all had it there?

A Oh, we had it five or six months.

Q And when you get a bucket, how do you use that feed, that feed -- use that bucket to feed something?

A We take it in the bucket and pour it out.

Q Mr. Bond have any cattle?

A Yes.

Q And how do you get cattle to come to you when you want to feed them?

A Well, you get a bucket with some feed in it and call them.

Q Look at that item which is in front of you and I think it's marked as State Exhibit 19. I want you to look at it very closely.

A (Witness complies.) Yes.

Q Mr. Wales, you think you've ever seen that item before?

A I saw one exactly like it.

Q Where was that?

A Up at the barn.

Q Where is that?

A The barn.

Q The one that you saw exactly like it, was it at the barn after Mr. Bond was killed?

A No.

Q It was missing?

A Yes.

Q This thing is pretty dented up. Was the one that you saw have dents of this nature or not?

A Yes.

Q What's that?

A It had dents in it.

Q How do you get dents in a feed bucket?

A Well, probably had it in his truck, throwed something on it

or hit it on something, maybe to knock the feed out.

Q Can you tell me whether this is or is not the bucket or with what degree can you identify this bucket as being the bucket?

A Well, it's shaped the same.

Q What's that?

A The shape it's in, the bents.

Q Now, you see the bucket. Would you look through the inside of it, kind of hold it up and look at it.

A (Witness complies.) Yes.

Q Do you observe anything about the bottom of the bucket?

A Yes. It's rusting. Has holes in it.

Q Did the one that you had at the farm had holes in the bottom and have rust on it?

A No, sir.

Q Have you ever left a bucket out in the open like this for eighteen months?

A No, sir.

MR. PEREZ: That's all the questions I have.

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RECROSS-EXAMINATION

BY MR. BRANTLEY:

Q Mr. Wales, you and Mr. Bond had three buckets up there you used . . .

A Yes.

Q To feed horses and cattle?

A Yes.

Q Mr. Bond also had a feeder on the back of his truck?

A No, sir.

Q He didn't have any feeder on the back of his truck to feed his calves?

A Oh, you meaning hauling the feed?

Q Yes.

A Yes.

Q And where did the bucket come from, the bucket that looked like this bucket? Was it just a paint bucket, an ordinary paint bucket?

A Yes, just an ordinary paint bucket.

Q When you feed your horses in the afternoon -- you feed them in the morning, also?

A Just in the afternoon.

Q When you feed them in the afternoon, would you lock the buckets up?

A Yes.

Q They were locked up in the crib with the feed?

A Yes.

Q Did you have a key to that lock?

A Yes.

Q And Mr. Bond had a key to that lock?

A Yes.

Q All you know is the bucket looked like this bucket?

A Yes.

MR. BRANTLEY: That's all.

MR. PEREZ: Thank you, Mr. Wales.

THE COURT: No more questions?

MR. PEREZ: No.

THE COURT: You may step down.

WITNESS EXCUSED

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MR. PEREZ: We have a possible stipulation with respect to this bucket. I think perhaps if Mr. Brantley and I can step out for a moment, we can word this thing.

THE COURT: I'd like to get it worded correctly before we present it to the jury. The Court will be at ease for a few minutes. Don't retire the jury.

MR. PEREZ: We're on the record? Your Honor, defense counsel and I have agreed, in order to save time for the Court and for the jury, to a stipulation on the testimony

of Mr. Churchman from the Louisiana State Police crime lab. It is agreed and stipulated by the defense and by the State that this particular bucket, which has been labeled as State Exhibit 19, was submitted for analysis to the Louisiana State Police crime lab after its recovery at the recreation area, that the results of that analysis were inconclusive and that the crime lab could not determine with any degree of positiveness one way or the other whether this bucket ever in fact been on the Bond property because of -- apparently because of the condition of the bucket and its exposure to the elements over a long period of time.

MR. BRANTLEY: That's fine, Your Honor.

THE COURT: Any further evidence, Mr. Perez?

MR. PEREZ: Yes, sir. I -- if you bear with me, the only further evidence I have is I would like to go through or possibly introduce some items which I've identified and I have not offered to introduce until this morning. Your Honor, I have a number of offerings

at this point, and I have consulted with counsel, and it's my understanding that there will be no defense objection to these offerings.

MR. BRANTLEY: Your Honor, with the exception of the bucket, and we've already announced our reasons for objection.

MR. PEREZ: I don't know how you'd like to do it. I'll go over them one by one and see if there is any objection, and then perhaps you can mark them.

THE COURT: No. Let's don't go -- just read the number of the exhibits and introduce them all at one time.

MR. PEREZ: State 1, photograph.

MR. BRANTLEY: No objection.

MR. PEREZ: State 2, a photograph.

MR. BRANTLEY: No objection.

MR. PEREZ: State 3, a photograph.

MR. BRANTLEY: No objection.

MR. PEREZ: State 4, a

photograph.

MR. BRANTLEY: No objection.

MR. PEREZ: State 5, a photograph.

MR. BRANTLEY: No objection.

MR. PEREZ: State 6, a photograph.

MR. BRANTLEY: No objection.

MR. PEREZ: State 12, which is Your Rights form which matches the first tape.

MR. BRANTLEY: No objection.

MR. PEREZ: State 17, a photograph.

MR. BRANTLEY: No objection.

MR. PEREZ: State 18, a photograph.

MR. BRANTLEY: No objection.

MR. PEREZ: State 19, the bucket.

MR. BRANTLEY: Objection.

THE COURT: Objection overruled.

MR. PEREZ: And State 20, the picture of the bucket.

MR. BRANTLEY: For the same

reason, we object to that, Your Honor.

THE COURT: Overruled. Is that it, gentlemen?

MR. PEREZ: Yes, sir. That's all the offerings, and the State rests its case in chief.

THE COURT: All right, I'd like to excuse the jury at this time. Ladies and gentlemen of the jury, we'll be back at ten o'clock tomorrow morning. Hopefully we can start on time without further delay. We'll excuse the presence of the defendant at this time. I ask counsel to remain in the court for the purpose of clarifying the record on one issue.

MR. BRANTLEY: Yes, sir.

THE COURT: Ladies and gentlemen of the jury, before you leave the courtroom, let me again remind you not to discuss this case with your fellow jurors, your family, anyone else. Do not read, listen to or hear anything about this case from the news media or any other source. Thank you.

(The jury was excused until January 6, 1977.)

THE COURT: Let's go back on the record. Outside of the

presence of the jury, we -- the Court listened to the tape, the second tape -- what has been referred to as the second taped confession -- for the purposes of determining whether or not there was any statement in that tape referring to the defendant going to the Pride/ Port Hudson area. Rather than attempting to re-transcribe everything that was played on that tape -- we played it more than one time -- the Court will simply state for the record that the Court did hear the Pride/Port Hudson area mentioned by the defendant in the tape and took that into its consideration in ruling as relevant and admissible, the bucket which is State Exhibit 19. Any objection to that entry . . .

MR. BRANTLEY: No, sir.

THE COURT: The Court's adjourned until ten o'clock tomorrow morning.

(Court adjourned until Thursday, January 6, 1977.)

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THURSDAY, JANUARY 6, 1977

THE COURT: Let's go on the record. When the Court made the notes to the record about what was heard in the listening of that tape, the defendant was not present. He was not present at his own request, and I'm going to ask whether any objection to his not being present at that time. If there is, I'll redo it in his presence.

MR. BRANTLEY: No, sir, we have no objection whatsoever.

THE COURT: I've talked to Major Cutrer -- go on the record -- and defense has requested that the Court issue an order that one of the witnesses about to be called be separated from another witness; and assuming that the testimony of Mr. Kemp is adverse to the interest of Mister Donahue, the Court will issue an order to that effect.

MR. BRANTLEY: Thank you, sir.

THE COURT: I've been assured by the Sheriff that they will comply and that they would have to do that anyway to protect -- to follow their duty to protect the

prisoners.

(Reporter's note: A recess was declared, and the defense requested an in-camera session of the Court concerning a defense witness, Anthony Kemp. The in-camera session was not recorded, but the following was dictated into the record in chambers:)

MR. BRANTLEY: Mr. Kemp has knowledge of the commission of the offense and is a very material witness to the defense. In fact, other than the other defendant, Mister Donahue, and the defendant, he is the only witness that can be produced by the defense. Mr. Kemp is very reluctant to testify because he's in jail right now, awaiting sentencing on armed robbery charge; and he feels if he testifies what he knows about Mister Donahue's involvement in this crime, that he will be physically harmed because he has to return to parish prison and ultimately to Angola. Mr. Abadie has requested that the Judge consider Mr. Kemp's feelings why he feels the way he feels in order to determine whether to issue an order to the

Sheriff directing that the witness, Mr. Kemp, be separated from Mister Donahue to such an extent there would be no possibility he could be harmed.

THE COURT: I have already, while you were out of court, stated for the record I would issue the order that Mr. Kemp be separated from Mister Donahue, and A. B. Cutrer of the Sheriff's Office has assured me that the Sheriff will comply with that order. On that point that you raised about his reluctance and all those other problems, those are jury issues.

MR. PEREZ: I have encountered this problem a lot more times than has Mr. Brantley, I'm sure. The only difficulty I found or find is getting an order of this nature enforced over a long period of time. I think Mr. Kemp, having been convicted of armed robbery, should expect, should his conviction be affirmed and my knowledge of Judge Covington's sentencing procedures, would be sentenced to a minimum of twenty years in the State penitentiary. Mister Donahue has been convicted of armed robbery and with his

background, etc., he'll get more than twenty years in the penitentiary. I don't care whether Mr. Kemp testifies or not testifies. I don't know if the Court order -- how long that Court order will be complied with when people get moved around from jail to jail and area to area.

(Reporter's note: The in-camera session was concluded, and Court reconvened.)

THE COURT: Any reason why we can't call the jury back?

MR. BRANTLEY: No, sir.

MR. PEREZ: No.

THE COURT: Gentlemen, while the jury is out, I'm going to make a note in the record that at the request of defense counsel, the Court did have an in-camera interview with a prospective witness named Anthony Kemp, and there's also some in-camera minutes that are in the record, and nothing will be said about it at this time unless it becomes relevant later on.

MR. BRANTLEY: Thank you.

(The jury was brought into the courtroom; the polling waived.)

MR. BRANTLEY: Your Honor,

since the State has rested, we would at this time call Mr. Whitmore to the stand.

THE COURT: Mr. Whitmore, come around and be sworn.

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KENNY WHITMORE, called to the stand on his own behalf, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRANTLEY:

Q Kenny, would you give the Court, the ladies and gentlemen of the jury, your name and address.

A Kenny Whitmore, 5314 Rollins Road, Zachary.

Q And Mr. Whitmore, how old are you?

A Twenty-two.

Q Back in August of 1973, August 15 of 1973, you recall where you were during that day?

A In the day I was at work.

Q Where did you work then?

A Worked at Floyd Electric Company.

Q How long had you been working there?

A I can't recall how long I been working there.

Q What type of salary did you make?

A Well, it was -- anywhere from eighty-five to a hundred a week.

Q Were you dating anybody back then?

A Yes, I was.

Q Were you married?

A No. I was engaged, though.

Q When were you to be married?

A End of that year.

Q Now, what time did you normally get off work when you were working at Floyd Electric?

A Four o'clock or 4:30.

Q Did you get off of work at 4:00 or 4:30 that day?

A No. About four o'clock or 4:30. It was during . . .

Q Where was this company -- where is this electric company located?

A Down on Florida Boulevard.

Q And how far is that from your home?

A It's a good ways.

Q How did you get from your job to your house?

A I had a ride staying up the street from me. We working at the same place.

Q Do you remember the name of the man that you rode home with?

A All we call him is Curtis.

Q Was his name Charles Lockwood?

A No.

Q Did you work with Charles Lockwood?

A Not as I remember.

Q Now, you know Mister Donahue?

A Yes, I know him.

Q Y'all live in the same neighborhood?

A We live in the same neighborhood.

Q Now, when you went home that day, was it -- was it Mister Donahue that took you home?

A Well, it was like no one take me home. Like, when I get off from work, I usually get off on the corner by my grandmother's house.

Q That was your grandfather or your grandmother?

A Grandmother.

Q Now, do you recall seeing Mister Donahue on that day?

A Yeah, I saw him that day.

Q When did you first see him?

A That's when I was going home.

Q Did he ask you anything?

A Yeah, he asked me something.

Q Did you get in the car with him?

A Yeah, when he asked me to come round by Charles house, the reason I did.

Q Now, Charles who?

A Charles Armwood.

Q Did you go by Charles's house?

A Yes, I did.

Q Did you talk to Charles?

A No. He and Donahue was talking.

Q Now, when you and Mister Donahue left Charles Armwood's house, did you know where you were going?

A Yeah. He told me he want to get a job.

Q Was he working at the time?

A Donahue?

Q Right.

A No, he wasn't.

Q How long have you known Mister Donahue?

A I had knowed him, but he had left and went off to the service. I knowed him after he came back.

Q What year did he get back in?

A '72 or '73.

Q Since he had been back, did you know of him ever having a job?

A No, not around here.

Q How old is Mister Donahue?

A Right now?

Q Back then, back in '73?

A About twenty-three or somewhere around there.

Q What size man is he? How big of a man is he?

A Pretty big size, you know.

Q How big a man are you, Kenny?

A Not that big. I weigh around one thirty, one thirty-five.

Q Now, when Mister Donahue picked you up and you went to Charles Lockwood's house, did you and Mister Donahue alone leave Charles Lockwood's house or was anybody else with you?

A We was by ourselves.

Q And he told you that he wanted to get a job?

A Yeah, he did.

Q Where did he -- where did y'all go then?

A We came back across the tracks. Told me he was going to ask Mr. Bond did he have a, did he have anything for him to do.

Q Did you know who Mr. Bond was?

A Yes, I did.

Q What did Mr. Bond do in Zachary?

A He owned a store.

Q A drugstore?

A And a ranch.

Q Did you live in Zachary?

A Yes.

Q Did you know what Mr. Bond looked like and would you know him if you saw him?

A Yeah, I know him.

Q So when Mister Donahue said he wanted to go see Mr. Bond about getting a job, you knew who he was talking about?

A Yeah.

Q Now, when you say went across the tracks, what tracks are those?

A Went across Avenue "A".

Q And you go out Avenue "A" to Rollins Road?

A Yes.

Q And then you go down Rollins Road to Mr. Bond's property?

A You make a right at the corner of Avenue "A".

Q What type of car were you in that day?

A It was a white and black Ford.

Q Was it an old police car?

A Yes.

Q Who owned the car?

A Donahue.

Q Who was driving the car?

A Donahue was driving.

Q Now, about what time did you get out to Mr. Bond's property?

A When I got off from work, we got to Zachary about 5:15 or 5:30, somewhere. So it had to be between 5:30, somewhere around there.

Q Let me stop and back up for a second. You said that you were working at Floyd Electric and you would make a hundred, a hundred and twenty dollars a week.

A Uh, huh.

Q Did you have any savings accounts or anything like that?

A Yeah, I was saving my money, yeah.

Q How much money did you have in your savings account?

A Four something. It was around four hundred, close to five hundred dollars.

Q Now, when you and Mister Donahue got out to Mr. Bond's property on Rollins Road, what happened next?

A Well, he got out the car.

Q He was driving the car?

A Yes, he was.

Q What did he say he was going to do?

A Well, he told me, he told me he was going get a job.

Q Did you get out of the car?

A No, I didn't.

Q Any reason you didn't get out of the car?

A I was working. I didn't need -- I knowed if he would have asked Mr. Bond for a job, he probably would have gave him one if he had anything for him to do because he usually do.

Q Now, where did Mister Donahue go after he got out of the car?

A He got out the car and he went through this gate where the barn was.

Q Did you see another -- was there another car out there?

A Yes, there was.

Q What color was that car?

A Brown or beige looking.

Q Did y'all park near that car?

A Yes, we did.

Q Did you see Mr. Bond out there?

A I saw him once.

Q Where was he when you saw him?

A He came from around the barn.

Q Now, when -- you saw Mister Donahue walk towards the barn?

A Yes, I did.

Q What did you see next?

A I didn't -- after I saw him go around the barn, I didn't see him anymore.

Q How long was he behind that barn?

A I couldn't say how long it was.

Q Did you have the radio on or anything like that?

A All I do was sitting there.

Q Did he come back?

A Yeah, he came back.

Q Did he have anything with him when he came back?

A Yeah, he had something with him.

Q What did he have with him?

A He had first look like a knife and he had a wallet.

Q What color was the wallet, Kenny?

A Brown or rust brown.

Q Did you see any money?

A Not right then, I didn't; but when he throwed it on the seat, I did.

Q Did you take any of that money?

A No, I didn't.

Q Did he give you any money?

A He wanted to give me some, but I didn't want it.

Q Did he tell you what he'd done?

A Yeah, he told me what he had done.

Q What did he tell you he did?

A Told me he had robbed Mr. Bond.

Q Did you tell you he hurt Mr. Bond?

A Say he had beat him.

Q Did you know what he was going to do when he went out there?

A Told me he was going look for a job. That's what he told me at first, coming down the street.

Q Did you need a job then?

A No, I didn't.

Q Did you have any idea what he did or was going to do when he went out to that property?

A No, I didn't.

Q Are you sure?

A I'm sure.

Q Would you have gone with him if you had known that?

A If I'd knowed he was going to kill somebody, no, I wouldn't go with him.

Q Now, what happened when he told you what he had done?

A I just told him to take me home, take me home.

Q Why did you tell him that?

A I ain't want to be with him.

Q Did you tell anybody about this?

A Not right then. I wanted to tell my mother, but I didn't.

Q Why didn't you tell her?

A Donahue had told me don't tell anybody what happened, you know.

Q Now, Kenny, how well do you know Mister Donahue? You've known him before he went in the service, and you knew him when he got back, is that right?

A Yeah. I didn't know that well before he went but knowed him when he came back.

Q You used to go out with him? Was he kind of a running mate?

A Wasn't no running mate.

Q Did you know what other people in the neighborhood thought of him?

A No, I didn't.

Q Now, you never actually did tell anybody about this, did you?

A Well, that evening after I left home.

Q You remember who that was?

A Yes, I do.

Q Now, let me bring you up to date. Let's go back to February 25 of 1975, year before last. I think you were in the parish prison. You remember that? You were out there?

A Yeah, I do.

Q You remember seeing Lieutenant Bueto, the tall man, the big man with the blonde hair that testified?

A Yes.

Q And Sergeant Russell, the man about my size, a little thinner than I am?

A Yes.

Q And Mr. Hebert from the District Attorney's Office, who had the moustache?

A Yeah.

Q Did you see those three men?

A Yes, uh, huh.

Q Do you recall what time it was that you first saw them?

A It was real late. I don't know what -- I believe it was in the morning, I know.

Q Did they wake you up to come get you?

A Yes, they did.

Q What . . .

A It wasn't them who came got me.

Q Now, who came and got you?

A It was Ossie Brown and another deputy work at the prison.

Q Now, you say Ossie, Brown. Was that Ossie Brown that you saw testify yesterday, the District Attorney?

A Yeah, that's him.

Q Did he talk to you?

A Yes, he talked to me.

Q Now, that was before Lieutenant Russell and Mr. Hebert talked to you?

A Yes, it was.

Q Now, when you talked to Lieutenant Bueto -- it's Lieutenant Bueto and Sergeant Russell and Mr. Hebert, did you give them a statement in a room out there at parish prison?

A Yeah, I gave them one.

Q And that was the statement, the first statement we heard recorded yesterday?

A Yes, it was.

Q Did you tell them the truth?

A Yeah, I told them the truth.

Q Now, after you finished giving that statement, was it late at night?

A Yeah, it was late.

Q Did you see Mr. Brown again?

A Yes, I did.

Q Did you talk to Mr. Brown?

A Yes.

Q Did Mr. Brown ask you about anything pertaining to this, about this Bond murder?

A Well, he asked me did I tell them the truth. I told him, yeah.

Q Did he ask to talk to you some more?

A He talked. He talked about state's evidence. I told him I didn't know what that was.

Q Did he tell you he'd talked to Mister Donahue?

A He told me he was in jail when he first had talked to me that night.

Q Did he say he could help you out if you helped him out?

A Yes, he told -- explained that when he says about state's evidence. I didn't know what he was talking about.

Q Did he say anything about publicity? He didn't want bad publicity?

A Well, after he told me, he explained to me about what state's evidence was, he told me if I was to testify against Donahue, that he would give me five years. Then he told me about Angola and all that.

Q What did he tell you about Angola?

A Said he had recently been up there, you know, and said somebody had got killed and all the people around and nobody saw who did it. He say, you know, someone seen who did it, and they not going to say it.

Q How long did Mr. Bond talk to you -- Mr. Brown talked to you?

A How long did he talk to me?

Q Yes.

A Can't say how long it was. Say about fifteen, twenty minutes, something like that.

Q You're positive about that?

A Yeah, I'm positive.

Q And that was in that little room up in the parish prison?

A Yeah, it was.

Q Now, do you remember the next day seeing Lieutenant Bueto, Sergeant Russell and Mr. Hebert again?

A I can't say Mr. Hebert, but I saw Lieutenant Russell and them. It was a big dude.

Q Did they come, did they come -- the big dude being Lieutenant Bueto?

A Yeah, uh, huh.

Q Did they come get you and take you downtown to a building down on Third Street?

A The dude, they say they was taking me to be re-booked on the charge.

Q And did they take you down to a room where they got a machine and they put a bunch of wires on you?

A Not then, no.

Q Did they ever do that?

A Late that evening.

Q I'm sorry, Kenny, I can't hear you.

A It was late that evening when they did that.

Q It was that evening?

A Yeah.

Q Well, you remember Lieutenant Zuelke that testified yesterday? You remember seeing him?

A Yes, I do.

Q Was he there?

A At that room? Yeah, he was there.

Q Now, when they put you in that room, did you have anybody with you, a lawyer or a brother, father, anybody that could talk to you or tell you anything?

A No. It just a man who was giving the test, that's all.

Q Did you ask them for anybody or did you cooperate with them?

A Well, first, first, I did then. Told them I ain't want it, you know.

Q Did he ask you a bunch of questions about this?

A He asked me was I telling the truth. I told him, yeah. And then he got some cards and asked me what color and all that it was and all that stuff.

Q Now, when you were over there taking that test, after that test was over, did you have a phone call from anybody?

A Yes. Lieutenant went over there and I told them I ain't want it, you know. So then he talked to Lieutenant Russell, and Lieutenant Russell called me out and told me somebody was on the phone wanted to talk to me.

Q Who was that on the phone?

A Said it was Ossie Brown.

Q Did it sound like Ossie Brown?

A It sounded like him.

Q What did he tell you on the phone?

A Told me do I remember what he told me, you know, if I wouldn't do that, where I was going.

Q Did he tell you what to say?

A Yeah, he told me. He told me something to say.

Q Now, the next morning at about 10:40 in the morning, did you see these three people again, Sergeant Russell, Lieutenant Bueto, and Mr. Hebert of the District Attorney's Office? Did

you see them again in a little bitty room they call B07 downstairs in the building?

A Yeah, I saw them there.

Q Did they ask you to give them another statement?

A Yeah. Lieutenant Russell, he the one came got me, and I told him I ain't -- I told him ain't didn't want to go with him. Told me I had to go.

Q Now, you remember that -- you remember that second statement that you gave him? You heard it played yesterday?

A Yes.

Q Now, that second statement is a lot different than the first statement, isn't it?

A Yes, it was.

Q The second statement you said that you got out of the car, that you were with Mister Donahue, that you hit Mr. Bond, that you helped Donahue out. You told them that, didn't you?

A That's not what I did, but that's what they had told me to say.

Q Why did you tell them that?

A Because of the promises and I didn't want to go to no Angola.

Q They told you about a man getting his throat slit up at Angola?

A Yes, they did.

Q What's the truth, Kenny? Did you have anything to do with it?

A No, I didn't.

Q Did you know what he was going to do?

A No, I didn't.

Q Now, Kenny, you been in trouble once before, haven't you?

A Yes, I've been in trouble once before.

Q You don't deny that, do you?

A No.

Q That was a robbery?

A Yes, it was.

Q Did you have anything to do with Mr. Bond's murder?

A No, I didn't. The night Mr. Brown asked me about it, he told me -- he asked me about it. I just told him -- I told him I didn't know what happened.

MR. BRANTLEY: That's all.

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CROSS-EXAMINATION

BY MR. PEREZ:

Q Kenny, tell me what happened when you and Mister Donahue got to the farm.

A Donahue got out of the car and he . . .

Q Where did y'all park the car?

A It was by that brown car.

Q Then what happened?

A Got out the car, you know. He just went around the building. I saw Mr. Bond when he came from around the barn, like, and looked to see who it was, you know.

Q Go ahead.

A And Donahue stayed around there for a while, you know. Afterwards, he came back.

Q Who came back?

A Donahue.

Q Mr. Bond didn't come back?

A No. He never did come all the way out there where we was, you know.

Q You ever heard anybody yelling and screaming or anything like that?

A No, not yelling and screaming.

Q Kenny, you mean that Mr. Bond was beaten with a tire tool on the head and stabbed maybe thirty times with a screwdriver or a knife and you never heard any noise of that going on?

A No, I didn't.

Q Wasn't any further than from here to the back of the courtroom from you? You didn't hear anything?

A No, I didn't.

Q That pecan tree where that big pool of blood is in those

pictures, you couldn't see the base of that pecan tree from that car? Look at this picture.

A (Witness complies.)

Q See that pool of blood at the bottom of that pecan tree? Could you see that pecan tree from where your car was parked?

A Not as I recall, no.

Q Here's Mr. Bond's hat lying on the ground and all his papers are lying on the ground near that blood. Could you see . . .

MR. BRANTLEY: Judge, I'm going to object to that.

Q That from where your car was parked?

MR. BRANTLEY: There's been no testimony that that's Mr. Bond's hat, that's his papers or anything else.

THE COURT: He's on cross-examination. If it wasn't his hat, he can testify . . .

Q Did you see that hat and those papers from where your car was parked?

A No, I couldn't.

Q You didn't hear anything out there?

A No, I didn't.

Q You didn't see anything?

A No.

Q You told the truth in that first statement, Kenny?

A Yes, I told the truth.

Q You told them in that first statement -- did you listen to it?

A Yes, I hear the tape.

Q Didn't you say in that first statement that you and Donahue and Charles Armwood had talked about this the day before, about going out there and doing this?

A Not to my knowledge, I didn't.

Q You deny saying in that first statement that y'all had talked about going out there the day before?

A Not to my knowledge, we didn't.

Q You deny that that first statement contains that, then, that you went out there the day before?

MR. PEREZ: You have a transcript of that first tape?

Q You didn't know anything about this before y'all went out there?

A No. All I know he was going get a job.

Q Y'all hadn't talked to Charles Armwood about committing this robbery?

A Talked to Charles about going with him.

Q Going with him for what?

A I guess to get a job. Charles Armwood . . .

Q Y'all talked to him the day before?

A No, I didn't.

Q Did you say in that first statement you talked to him the day before?

A Not as I know of.

Q Who told you what to say in that second statement, Kenny?

A Lieutenant Russell, he was telling me something what to say.

Q And who else?

A Well, Brown, he told me if I didn't go along with them, what will happen, you know. So I just went along with him.

Q Now, when did you see Mr. Brown at the jail? When was the first time that you saw Mr. Brown at the jail?

A When him and another deputy got me out of isolation.

Q They got you out of your cell? Mr. Brown walked back there to get you out of your cell?

A Like, this is the interview room right here; and right in the next side, that's where isolation at.

Q This is before any of the other deputies were around there?

A Other deputy?

Q Yeah, the deputies. You see those people who came in here and testified that you made that tape recording? Were they there when Mr. Brown talked to you?

A No, not when he first talked to me, they weren't.

Q But he was there before those deputies arrived?

A Yes, he was.

Q About what time was this at night, late?

A Yeah, it was real late.

Q How long after Mr. Brown talked to you, did the deputies come in there?

A It wasn't that long.

Q Well, I mean, two hours, five minutes, what?

A About five minutes, somewhere around that.

Q So in other words, Mr. Brown walked in, then the other people came in and started taking the statement? Is that right? As soon as Mr. Brown left the room, a couple of minutes later the other people came in and started taking that statement?

A He told me -- he told me he had some people that I want to

talk to them.

Q Uh, huh.

A Told me his assistant or something. Told me to talk to them, you know. I talked to them. I told him I'm going to tell them the same thing.

Q What did Mr. Brown tell you to say?

A Told them -- I told them what I had, what had happened.

Q He told you to tell them the truth?

A Yeah, he told me to tell them the truth.

Q And you told them the story, is that right?

A I told them what happened.

Q That was that first tape?

A Yes, it was.

Q Now, when did you talk to Mr. Brown again?

A It was after they left out the room.

Q Where? On the phone?

A No. Right in the room.

Q Okay, what did he tell you then?

A Asked me did I tell the deputies the truth. Told him, yeah,

Q Okay. Did y'all talk about anything else?

A Yeah, we did.

Q What's that?

A Like, he told me he was the only one could help me on that.

Q Okay. Did he tell you anything about the facts of the case?

A No, he didn't. He told me I could get life in prison at Angola.

Q Uh, huh. That's -- so you talked to him about that. He left then, right?

A Not right then. He said a lot, you know.

Q Well, tell me what he said. That's what I'm interested in.

A Then he started telling me about state's evidence and stuff.

Q Uh, huh.

A So I told him . . .

Q What did he say about how Mr. Bond was killed and that kind of stuff, anything?

A He say he was killed.

Q Okay, then they put you back in your cell?

A No. They brought me out and put me in the drunk tank.

Q Okay, did Mr. Brown talk to you again?

A No, not again.

Q Huh?

A Not again until they tell me a phone call. That's all -- no. I saw him -- I saw him again.

Q Where was that?

A That was that Tuesday they brought me to Zachary out in the field.

Q Uh, huh. What happened out in the field?

A We just back there, and lot of police were back there, you know. So it must have been Mrs. Bond's car. They asked me did I know that car. I told them, yeah. They asked me did I know who it was. I say it looked like Mr. Bond and them car. So that's when they told her to stop it at the gate.

Q Uh, huh. Go ahead.

A So that's when Lieutenant Bueto, he grabbed me by my neck, you know, and he asked . . .

Q What did he grab you by the neck for?

A He asked me something about, did Donahue have Mr. Bond like this.

Q Now, when did this -- when did they take you out to the field? Isn't it a fact they took you out to the field after you gave that second tape-recorded statement and after you went back and talked to Lieutenant Zuelke over at his office?

A No. That was that same morning. We had -- it was that Tuesday.

Q Okay, let's try to get these time things straight. Now, you talked to the deputies on that first tape early in the morning of the 25th, which was a Tuesday, two o'clock in the morning, okay? Then you talked to Lieutenant Zuelke that evening, which was about seven o'clock in the evening . . .

A Late that evening.

Q The same day?

A Yeah.

Q Then you talked to deputies again about 10:30 of the next morning, which would have been Wednesday morning, down in the basement of the Sheriff's Office, isn't that right?

A That was after we had came back from this room across the street.

Q Then you went across -- you went over -- right. That Tuesday night, you went across over to the Taylor Building where Mr. Zuelke was?

A Yes.

Q And Wednesday morning you talked to the deputies about 10:30 in the morning, and you gave that second statement and that right after y'all took -- they took that second statement, you went back over to Lieutenant Zuelke's office and talked to Lieutenant Zuelke again?

A No.

Q And then when you left Lieutenant Zuelke's office, y'all went out to the, to Zachary for you to show them exactly what happened. Now, isn't that the truth?

A No. That would have been that Wednesday. This happened on that Tuesday.

Q Are you saying that y'all went out to the field before you

gave them that second statement?

A Yes, I did.

Q And before you talked to Lieutenant Zuelke the second time?

A Yeah. All that happened before I talked to them.

Q Now, you say that Ossie Brown came and got you in your cell, that he was the first one of everybody to talk to you about this case, is that right?

A Yes, he was because he explained to me who he was. I didn't know who he was. He explained to me who he was.

Q This was before any of the deputies or anyone else talked to you about the case?

A Yes, it was.

Q You heard Mr. Hebert state on the stand that he called Mr. Brown up after -- he was out there. He called Mr. Brown up and had him come in?

A Yeah, I heard what they said, you know.

Q Well, that's not that way?

A No, it's not that way. I know it's not that way.

Q Mr. Hebert is lying then?

A Yeah, he's lying.

Q Okay, you remember now, right at the beginning of that first tape, they advised you of your rights and they asked you your name; and you stated your name. They told you in your own words -- this was Lieutenant Russell was telling you in your own words, Kenny, go ahead and tell us about the case and we're not going to question you until you're finished telling us what happened. And you stated -- the first word you stated on that tape, other than you understood your rights, you stated . . .

MR. BRANTLEY: Judge, I'm

going to object. He's asking if he stated something, not to testify what he stated. Ask him if he stated it. If he's going to try to impeach him by his statement that he has, I think he ought to do in a proper fashion. Mr. Perez knows better than that.

THE COURT: The proper fashion is to call his attention to the statement and ask him if he made it.

Q Do you recall stating, the day before that me and Charles Armwood had a talk; Donahue had talked with Armwood about it; he told me because he wanted to know who I was with; we told him that if he would do it, that we would be with him; I was working at the time with Rodney; that way they had it figured I would be at work; so I went off to work that day and got off around 4:30; we were working -- place is apparently inaudible -- it was when we was leaving about 5:15 by the time we came by my house and we went by Charles Armwood's house; asked Charles if he was going to go; he said he would; he asked if I was going to go and I said no; so he asked me what I think we ought to do about it; I said I didn't know; Charles asked and said I didn't know; so we went all around until we could see and how and know what time the man comes in. Now, did y'all talk about what y'all were going to do the day before? Do you deny making this statement on the tape?

MR. BRANTLEY: I object. Your Honor, that's -- he's asking two questions.

Q Do you deny making that statement?

THE COURT: All right, he's asking does he deny making that statement.

BY THE COURT:

Q Do you understand the question, Mr. Whitmore? He's asking you whether or not you made that statement on that tape.

A I don't remember making no statement like that.

BY MR. PEREZ:

Q You don't remember making that statement?

A Not exact statement like that I don't.

Q You deny saying in the beginning of that tape that y'all had talked about doing it, the three of y'all, the day before?

A Yes, I do.

Q What day of the year was this? It was August 15, 1973, wasn't it?

A Yeah, that's when it was.

Q About five o'clock in the evening, 5:30? Wasn't it when y'all went out there, somewhere around 5:30?

A Or after, somewhere after.

Q 5:30 on August 15th, the sun is still up pretty good, isn't it? Doesn't get dark until maybe 8:30 or so at that time of the year, does it?

A Yes.

Q You were sitting there in that car. The car was stopped. You had your windows rolled down, didn't you?

A Yeah, I did.

Q And that man, Mr. Bond, was killed not from here to the back of the courtroom from where you were and you were sitting in the car there with your windows rolled down and you say you didn't see a thing and you didn't hear a thing?

A Yes, that's what I said.

Q What was between you and where Mr. Bond was killed there?

A The fence and the barn.

Q You were between -- the barn was between you and where Mr. Bond was killed?

A The car I was sitting in, the car and that fence was right in front of the car.

Q What kind of fence is that?

A I can't recall. I knew it was a fence.

Q Is it a ten-foot high wooden fence or was it a barbed-wire fence? A barbed-wire fence wouldn't get in your way too much, you know.

A It was a wire fence.

Q A wire fence?

A Yeah.

Q Couldn't see through that wire fence but a man screaming out there being beaten and stabbed to death, could you?

A No. My attention wasn't on -- my attention wasn't on him going asking the man about a job. I was watching where we was parked there. I saw some animals. I saw horses and stuff, cows. I just looking at that. I wasn't paying no attention to what might, somebody might holler or something. I wasn't paying no attention to that, no.

Q Did Donahue go out there with both a tire tool and a

screwdriver in his hand?

A I ain't seen him get out the car with no tire tool and screwdriver in his hand.

Q You heard the doctor's testimony about the type of wounds Mr. Bond had, that his skull was crushed in with a blunt instrument . . .

A Yeah.

Q And that he was stabbed with a sharp instrument?

A Yeah.

Q Does that sound like one person was doing that, wielding one of them with each hand? One hand, a tire tool? The other hand, a screwdriver?

A One man can do a lot.

Q How much money did Donahue told you he'd gotten?

A He never did tell me what he got.

Q Never did tell you, huh? How much money did you say on that second tape that y'all got? Did you listen to it?

A I don't know. That wasn't the statement -- that wasn't -- I might have said it, but it wasn't my own words, and what happened. I know what happened, you know.

Q Now, you said on that second tape that you got about four fifty and Donahue got about five hundred, didn't you?

A Yeah. They says that because I told them the money I had saved up to get married with. Told them what I had to them.

Q Just coincidence that the other people say Mr. Bond had about a thousand dollars on him, and you say y'all stole about a thousand dollars, isn't that right?

A No, I ain't say we stole nothing.

Q You say you were lying on that second tape?

A Yeah.

Q What?

A Yeah, that's what I said. That's what I'm saying now. They told me not to say what Ossie Brown and they had told me because they say the tape would be no good.

Q You were lying on the second tape?

A Yes, I was lying on it.

Q Who told you what to say on the second tape?

A Lieutenant Russell.

Q You didn't know what to say beforehand?

A I know -- I knowed what had happened. I know what to say what had happened. I take a polygraph now if they want to see what I knew -- did I know what happened. I take one right now. I know what happened.

Q You took one then, too, right after the second statement?

A No, that was before because I told Lieutenant Russell I didn't want to go and he told me I had to go.

Q You deny that immediately, within twenty or thirty minutes after giving that second tape that you went over to Lieutenant Zuelke's office and was interviewed by Lieutenant Zuelke?

A After giving that second statement?

Q After the second statement.

A No. I went over there first, that morning because that night they told me, say it was getting late. I told them I was sleepy, I didn't want to say anything else.

Q Didn't you hear the witnesses testifying about the times . . .

A I heard the witnesses testify. I know what happened, man. I know what they did. I know what they said.

Q Lieutenant Zuelke said he interviewed you that day after eleven o'clock, and the first statement was taken at 10:30. Lieutenant Zuelke is lying on you, too, then?

A Yeah.

MR. BRANTLEY: Judge, I'm going to object to that.

Q Is that . . .

MR. BRANTLEY: That's argumentative. We'll stipulate that he took a test at Lieutenant Zuelke's office after the second statement. He's confusing Mr. Whitmore. I think it's unfair.

MR. PEREZ: The laws of this State . . .

MR. BRANTLEY: It's argumentative, Judge.

MR. PEREZ: The Supreme Court has recently ruled within the last few months that either side can point out inconsistencies in the witness's testimony by contrasting it with other witnesses' testimony and by asking if the other person is lying.

MR. BRANTLEY: I couldn't agree more, but the question's argumentative, and Mr. Perez is hitting Kenny with fifteen questions at one time. If he's going to proceed in orderly fashion, I think he ought to ask him one question, let him think about it, let him

answer it. We have four interviews inside a twenty-four-hour period, thirty-six-hour period, excuse me.

THE COURT: You can ask questions one at a time. I think the question is a proper one. Proceed, Mr. Perez. Objection overruled.

Q Did you go over to Lieutenant Zuelke's office in the Taylor Building after you gave that second tape?

A I believe it was before.

Q You didn't know why Donahue was going out to that farm?

A No, I didn't. He told me he was going get a job.

Q Donahue ever explain to you why he would bring you along as a witness to a murder if you weren't involved in it?

A He never explained to me -- I ain't never want to talk to him about it.

Q Does that make sense that a person would bring a witness to a murder along to witness a crime if that person wasn't involved?

MR. BRANTLEY: I object, again. That's argumentative.

THE COURT: It is argumentive.

Q Kenny, have you ever been convicted of anything?

MR. BRANTLEY: I'm going to object, again, Judge. He's

admitted he's been convicted of a robbery.

MR. PEREZ: I don't think he did. He admitted that he had been in some trouble, but he never admitted that, what he was convicted of and the fact that he was convicted.

THE COURT: Go ahead and ask the question.

Q Kenny, have you -- on September 30, 1976, here in this very same courtroom, is it not a fact that you were convicted of the armed robbery of Mrs. Matthews out in Zachary?

THE COURT: Before you answer . . .

MR. BRANTLEY: I'm going to object . . .

THE COURT: Mr. Whitmore, you can answer to the nature of the offense but not to any details if in fact you have been convicted of a previouse offense. Go ahead and ask the question.

Q Were you convicted of the armed robbery of Mrs. Matthews?

A Yes, I was.

Q Were you also convicted of the armed robbery of Bill Messer?

A I don't know a Blanford Melton.

Q Who?

A I don't know Blanford Melton.

Q You know where Bill's shoe store is?

A Yes, I do.

Q Do you know the man that owns it?

A Yes, I do.

Q Were you convicted of the armed robbery of that man?

A Of that store, yeah.

MR. PEREZ: That's all I have.

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REDIRECT EXAMINATION

BY MR. BRANTLEY:

Q Kenny, let's get back to the day that you and Charles Longwood and Mister Donahue were talking. You remember having a conversation with Mister Donahue and Charles Longwood?

A I remember having a conversation with Charles Armwood that day, not -- before we went over there.

Q Okay, now, was Mr. Longwood working, Charles working?

A No, I don't think he was.

Q What was the conversation about between you and Charles and Mister Donahue?

A Well, Donahue asked him was he still going to get a job. He said, no, I can't go, man; I got a nail in my foot, stuck a nail in my foot.

Q Was Charles originally going to go over there with him?

A Yeah, he wanted to.

Q Why was Charles going to go with him?

A I guess 'cause Charles wasn't working. They the ones needed a job. I didn't.

MR. BRANTLEY: That's all we have.

THE COURT: Any further questions?

MR. PEREZ: No, I don't have any further.

WITNESS EXCUSED

..*.*.*.*.*.*

MR. BRANTLEY: Your Honor, the defense will rest.

THE COURT: All right, Court be at recess until 1:30.

(A recess was declared for lunch. The jury was retired. Court reconvened. The jury was returned to the courtroom; the polling waived.)

THE COURT: Proceed, Mr. Perez.

MR. PEREZ: I'd like to recall Deputy Womack.

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R E B U T T A L

JOHN WOMACK, called in rebuttal, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEREZ:

Q State your name for the record, sir.

A John Womack, assistant chief of police in Zachary Police Department.

Q Mr. Womack, you realize that you've testified earlier in this and you're still under oath?

A Yes, sir.

Q Mr. Womack, did you have occasion to go out to the Bond property on Rollins Road after Mr. Bond was found?

A Yes, sir, I did.

Q Did you spend very much time out there, inspecting the area?

A I spent from shortly after 6:00 when I got there and was probably the last party to leave as far as just making inspection sometime beyond midnight, and then it was just security personnel left there after that until we returned at daylight, and then was there for the next several days off and on.

Q Do you think you know the layout of the area, the enclosure where that crib or barn is located?

A Very well.

Q Do you recall seeing where Mr. Marshall Bond's car was parked when you arrived?

A Yes, sir, I do.

Q During the break, did we attempt to examine the photographs

we had available and find that there was a photograph actually showing the car?

A Yes, sir, we did.

Q Did you find one actually showing the car?

A Not as such, no.

Q I'll show you a photograph which has been introduced into evidence as State Exhibit 5. I'd like you to examine that photograph very carefully.

A (Witness complies.) Yes, sir.

Q With relation to this photograph, where would Mr. Bond's car have been parked?

A As the photograph is shown here, the automobile would have been facing the opening to the gate. The automobile would have been facing the photographer that took this picture and from the relationship of the car, would have been facing west just to the right of the gate. In other words, facing . . .

Q What's this object in the photograph?

A This is part of the gate, and the gate opening to the fence. The petition's off the barn area here. It's two gates there. It's this gate which . . .

Q This is a gate?

A This is a gate.

Q If you were sitting in Mr. Bond's car, where would that gate be to you, in relation to you. If you were sitting in that car in the driver's seat, can you tell me where that gate would be and how far it would be from you?

A To my left and in line with the fence approximately twenty feet in front of the car.

Q Would you point out -- say, if you're sitting in Mr. Bond's car with reference to this courtroom, where would that gate

in this picture be?

A From this position, probably the gate opening would be about from where Mr. Gibbens is to about where Mr. Skidmore is.

Q Now . . .

THE COURT: Mr. Gibbens and Mr. Skidmore, stand up so the jury can understand . . .

BY THE COURT:

Q You're saying if you were sitting, seated in the car as it was at that time and the seat you're in now was that seat, that would be the distance?

MR. BRANTLEY: Judge, I want to enter the same objection to the Court commenting on the testimony of the . . .

THE COURT: The Court can ask questions to clarify and make sure what . . .

A The . . .

MR. BRANTLEY: We ask for an assignment of error.

A Yes, sir, if -- now, I'm saying the driver's seat. Perhaps from the front of the car from here to the rail would be the fence line that continued on to the right and then, like

I say, from about where Mr. Gibbens is to about where Mr. Skidmore is.

BY MR. PEREZ:

Q From where Mr. Bond's car -- let me ask you, there are some articles -- ask you if you recognize what these articles are, that kind of yellowish spot on the ground and direct your attention to the jury.

A All right. This is the feed that . . .

MR. BRANTLEY: Judge, I'm going to object to all this. Officer Womack or Deputy Womack has already testified to this before, and this is rebuttal, I would assume.

MR. PEREZ: This is direct rebuttal of Mr. Whitmore's statement that . . .

MR. BRANTLEY: He . . .

MR. PEREZ: He was seated right out there and saw none of this go on.

MR. BRANTLEY: Mr. Womack has . . .

THE COURT: Don't argue the facts. The objection is overruled.

MR. BRANTLEY: We ask for an assignment.

A The yellow substance on the ground is the feed.

Q Okay. Right here is the feed?

A Right.

Q From where Mr. Bond's car was parked, could you see the area where that feed was on the ground or would there be anything blocking your view?

A The only obstruction that you would have would be this tree which would only obstruct part of this view. You could see the entire area along this bench and on either side of this thing, but this would be the only obstruction there.

Q This particular pecan tree?

A Yes, sir.

Q Did you find any articles of paper or things on the ground in that area?

A Yes, sir. The articles of paper that we located were on both sides of the bench that's shown here, and the articles and evidence was strung along the bench itself.

Q What is this spot on the ground there?

A This is a puddle of blood.

Q Was that in view from where Mr. Bond's car was parked?

MR. BRANTLEY: Judge, I'm going to object to that, again. He hasn't laid any foundation for that.

THE COURT: He can't give a conclusion. I don't believe I understand the question either. Rephrase . . .

Q From where Mr. Bond's car was parked, could you see the area where that dark spot is on the picture?

MR. BRANTLEY: I'm going to object to that, again.

THE COURT: Did he see that area . . .

MR. PEREZ: Right. Did he -- could he see that area that night.

THE COURT: I'll let him answer that question.

Q Could you see that area?

A You could see the area. I don't know that you could actually see the puddle itself, but you could see the area and certain area above it, yes, sir.

Q There's a gate, which indicates to me that there is a fence. What type of fence was that, sir?

A It's originally barbed wire. It had a certain amount of net wire or hog wire, whatever you want to call it. It's an open fence.

Q Wire fence?

A Yes, sir.

Q Did it obstruct your view in looking forward, to any large extent?

A No, sir.

Q From where Mr. Bond's car was parked, could you see the entire side of the barn that is shown in that picture?

MR. BRANTLEY: Objection. He's got to rephrase that question, Judge. He -- Mr. Perez knows better . . .

THE COURT: Rephrase your question.

Q If you were looking at the -- if you were standing where Mr. Bond -- did you stand where Mr. Bond's car was parked?

A I did.

Q Did you ever look in the direction of that barn?

A I did.

Q And what, if anything, of that picture could you see?

A I could see the entire side of the barn.

Q Now, I'm going to ask you if you examined the area around which Mr. Bond's car was parked.

A Yes, sir, I did.

Q Putting yourself in the position of his, where his car was, and facing toward that barn, what would have been to your right?

A Approximately, from his vehicle to the right -- which would have been a northerly direction -- you would have a fence some thirty feet perhaps from the car that would come across to this fence that is in front of the car.

Q Did you walk in that area between his car and the fence?

A We walked in all of it, yes, sir.

Q Was there any portion of that area between his car and the fence where you could not see that barn?

A No, sir.

Q What's that?

A No, sir.

Q Now, I'm going to ask you if you walked to the left, if you were at Mr. Bond's car facing the way his car was facing, what would be to the left of the car?

A To the left was an open area generally used as a road, as

access that actually went through the gate and some twenty feet perhaps and then began a dog yard, what was at that time a very grown-up area, starting with the dog yard and . . .

Q Was there anything else in the area of the dog yard?

A Going easterly from the dog yard, which is immediately east of the barn -- you know, it's the barn, the dog yard, and there was a lot of equipment stored, two tractors. There was a couple of disks, a house, and some other pieces of equipment.

Q Did you walk in the area -- did you examine the area to the left of his car?

A Yes, sir, we did.

Q And from the area to the left of his car, did you ever look in the area towards this side of the barn?

A Yes, sir.

Q Could you see that side of the barn?

A Yes, sir.

Q Was there any area to the left of his car where a car could park that could not see that area of the barn?

MR. BRANTLEY: Objection. That's calling for a speculation on the part of the witness. He can't testify to what somebody could or could not have seen.

MR. PEREZ: He can testify as to what was out there, the position of these fences, of the tractors, of things of this nature which he can draw a reasonable conclusion on

whether a car could park there.

MR. BRANTLEY: He cannot draw any conclusion. He can testify to what he observed.

MR. PEREZ: A lay witness can draw a reasonable conclusion of facts, a logical conclusion from facts which he has put into the record and . . .

MR. BRANTLEY: The substance of the question, Your Honor . . .

THE COURT: What's the basis of your objection?

MR. BRANTLEY: The fact that he can't testify to what somebody else may have been able to see or may have been able to do. He can testify what he saw and what he observed, and that's all.

THE COURT: You asked him if he put himself in that position?

MR. PEREZ: No. I asked him if he did. I asked him if he did go in those positions and what he could see because I don't think we can draw any inference that one person -- that he can see around corners, that Mr. Whitmore can see around corners. I think it's logical that . . .

MR. ABADIE: Your Honor, Mr. Perez is testifying . . .

THE COURT: He can testify as to what he saw and what he did.

Q Did you go over to the left of where that car would have been parked?

A Yes, sir, I did. To the left with reference to the vehicle?

Q Right.

A Yes.

Q And how far would you have had to go to the left before you could no longer see that side of the barn?

A You'd have had to gone end of the dog yard.

Q Was this dog yard an open dog yard or not?

A No, sir. It was closed.

Q Closed in what way?

A It was completely fenced. It was a gate.

Q Big enough gate for a car to pull in or not?

A No, sir.

Q Did you examine the area on the other side of this barn; that is, from what direction would you be looking in taking this picture?

A More or less just slightly to the left of center of picture, you'd be going due east.

Q Did you examine the area on this side of the barn?

A Speaking south of the barn?

Q Yes.

A Yes, sir, we did.

Q Is that area accessible by a roadway?

A No, sir, it's not.

Q And is it fenced or not fenced?

A It's fenced from the barn, yes, sir.

Q Is it -- is there any road, roadway off to that side?

A The only way a vehicle would have been able to have gotten there would been to gone through the lot where this picture was made and come back around.

Q Now, if you put yourself -- did you put yourself, ever stand in the back of Mr. Bond's car?

A Yes, sir.

Q From the back of Mr. Bond's car, could you see where that dark puddle is in that picture?

A You could not see the ground area, the puddle itself, but you could see above it, yes, sir.

Q Okay. Well, take that pecan tree there. Could you see that pecan, that base of that -- the trunk of that pecan tree?

A Oh, yes, sir.

Q Could you tell me how far in feet distances and in relation to this courtroom, the back of Mr. Bond's car would have been to the base of that pecan tree?

A Not more than ten feet beyond the doors, the door there with exit sign on it.

MR. BRANTLEY: Excuse me, I'm sorry. I didn't understand . . .

A I said not more than . . .

MR. BRANTLEY: Not more than ten feet beyond . . .

A I said not more than ten feet beyond the door with the exit

sign.

Q And were there any obscurements of vision between that and the area of that tree?

A Not of total vision, no, sir. You might have the wire fence, would be all.

Q Do you know where Mr. Whitmore lived?

A Yes, sir, I do.

Q How far did he live from this property, the Bond property?

A The . . .

MR. BRANTLEY: Judge, I fail to see the relevance of that or how that's rebuttal in any form.

MR. PEREZ: I'll withdraw the question. That's all the questions I have.

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CROSS-EXAMINATION

BY MR. BRANTLEY:

Q Sergeant Womack, how long have you been with the police force?

A Since November of 1969.

Q What type of training do you have as a police officer?

A I have completed the three-month Law Enforcement Institute at LSU and several other shorter schools.

Q You take any type of magazines or periodicals on police investigation procedures?

A Yes, sir, I do.

Q Do you read those . . .

A Yes, sir, I do.

Q And try to stay fairly current?

A I do, sir.

Q And when you're investigating a crime -- let me stop for a second. You knew Marshall Bond, I believe.

A Yes, I did.

Q Very well?

A We were well acquainted, yes, sir.

Q Were you friends?

A Sure.

Q Pretty close friends?

A In a respect of Mr. Bond being a city councilman, and I being one of the younger police officers and spoke frequently businesswise and otherwise.

Q Did you go out to this property often?

A This is the -- I had probably never been on the property previous to this more than three times and that's where it would have been to just serve papers . . .

Q Were you out there the day they took Kenny Whitmore back out to the property?

A No, sir.

Q You weren't?

A No, sir.

Q Were you aware that they did take him out to the property?

A Yes, sir.

Q You're aware that Ossie Brown was there, too?

A Not at all, sir. I don't believe I was.

Q Now, getting back to the articles you may read in keeping up with police procedure, do these articles in these magazines go into how to investigate crimes and things such as this?

A Sure.

Q And what you look for in a crime area? When you feel that a crime has been committed, what things you will look for in determining how the crime was committed, where it was committed, what means it was committed by?

A Most of these publications have subjects on that, yes, sir.

Q And I believe, in your former testimony, you testified there was a pond on the area and you felt that or someone felt that there may be some evidence in the pond, necessary to drain the pond, but you didn't find anything in the pond.

A I won't say that we felt it necessary. We felt it would be advisable to do so at the time.

Q How many murders or cases of aggravated battery where somebody is beaten up badly have you investigated?

A Probably at the time of this one, ten, maybe twelve.

Q Of course, as I understand it, when Mr. Carl Bond and Mr. Robinson came back to the scene, Mr. Bond was still alive.

A I've been told that, yes, sir.

Q You weren't there?

A No, sir.

Q And also I believe when Mr. Robinson testified, he drove up behind Mr. Bond's car, he didn't go through the gate but he observed Mr. Bond and he could hear him breathing and he was alive at that time.

A I did not hear Mr. Robinson's testimony.

Q Did you ever question Mr. Robinson about that or talk to him since he had knowledge of the accident, the injury, the crime?

A I have talked with Mr. Robinson several times but actually the party, the investigator that actually related this information, I don't believe was myself, sir. I don't recall it.

Q But in any event, you're fairly sure that the time Mr. Carl Bond and Mr. Robinson got back to Mr. Bond, he was alive, he was breathing heavily?

A To the best of my understanding.

Q And then passed away on the way to the hospital or at the hospital?

A When I arrived on the scene, Mr. Bond, neither Mr. Bond was there. The investigators were there, and it was said that he was on his way to the hospital. I passed the rescue unit, and we received word of his death after I was there on the scene but that's, you know, as to when he died, I was not there.

Q Now, this puddle of blood that we're talking about -- I don't think there's a whole lot of doubt about it. It was blood underneath that pecan tree. You personally observed that?

A I did.

Q And you examined that area and you photographed the area?

A I did not photograph them, no, sir, but I was there when the photographs were made.

Q But those photographs, they do fairly represent what the situation was . . .

A Yes, sir, they do.

Q No question about that.

A Right.

Q And in your investigative experiences, you usually will photograph or take pictures of or note particular things that you feel are important in the crime area . . .

A That's right.

Q Would that be a fair statement? You didn't take a picture of Mr. Bond's car, did you?

A I did not. At the particular time that I saw the vehicle there until a few minutes later, I was not aware that it was Mr. Bond's car.

Q You didn't know if the vehicle had been moved or driven or anything, do you?

A No, sir, I don't.

Q In fact, wouldn't it be true to say that in many cases where somebody is injured that the point where they're injured may not be the point they actually collapse or fall down, that they may attempt to get to help and move from one point to another?

A Well, restate -- you're talking about a hypothetical case or you're talking . . .

Q From your experience as a police officer.

A Certainly.

Q So Mr. Bond actually could have been injured on the other side of the barn and wander out and fall in the position that he was in, attempting to get to help or get to assistance, from your experience?

A Not from my experience, no, sir.

Q But you just said it was . . .

A I said it was possible, but my experience also tells me that all of the information, all of the items from his personal belongings that was on the body, on the person of Mr. Bond or believed to have been on his person and the struggle marks where the, apparently bloody hands struggled here on this bench that's in this photograph -- all of the signs of any physical struggle were within the distance from me to Mr. Perez.

Q That was the basic area of the investigation because of what you observed there?

A Right.

MR. BRANTLEY: That's all I have.

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REDIRECT EXAMINATION

BY MR. PEREZ:

Q Where is this bench that you spoke of on cross-examination?

A Immediately south of where this puddle of blood is located.

Q Is the bench in this photograph?

A Sure.

Q Where?

A Right here.

Q Did you examine that bench?

A Yes, sir.

Q Did it have anything -- without drawing a conclusion, did you see anything on that bench?

A Yes, sir, I did.

Q What was that?

A What appeared to be blood stains and appeared to been made by a hand rubbing across it or grasping across it.

Q Do you recall looking on the ground on the barn side of that bench?

A Yes, sir.

Q Was there anything on the ground?

A Part of the belongings that we believed at the time to have come from Mr. Bond's pocket, shirt pocket, where -- as I recall, between the bench and the building.

Q I'm going to show you a photograph which I will have to mark as S-21. Ask you if you recognize what this is.

A This is some papers and ballpoint pen and items that were located as they were between the bench and the building.

Q This area of that photograph, in that photograph, is this the . . .

THE COURT: Now, this photograph, you mean S-21?

MR. PEREZ: S-21.

Q I'd like for you to relate S-21 to S-18 and show where this is -- if in fact that is in that picture and where it would be located.

A Okay, the -- right -- using the corner of this photograph, it would be the item that you see right here, this bench, is going to be the bench that's located right here, and you would be standing behind the bench more in the direction of away from the photographer of this, facing to a point back here, shooting the ground, the area between there.

Q And what are these articles that are shown around there?

A They're articles of paper that we believe to have come from Mr. Bond's shirt pocket . . .

Q And the other items?

A The ballpoint pen and a comb.

Q Were there any spots of any substance on the ground in that area?

A Yes, sir. It was blood in that area, also, or what appeared to be blood.

Q Did you search the area closely on -- okay, I want you to look at S-1 and ask you if you searched this area on this side of the barn.

A Yes, sir, we did.

Q Did you find any signs of blood or any signs of a struggle in any of those areas of the barn?

A No, sir, we did not.

Q Did you look carefully?

A Yes, sir, we did.

MR. PEREZ: That's all the questions.

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RECROSS-EXAMINATION

BY MR. BRANTLEY:

Q Sergeant Womack, how many people investigated this crime from the time that it happened? Would I be correct in assuming that you weren't alone?

A No, sir, I was not alone.

Q Can you give me the names of each individual that was out there helping conduct this investigation?

A I don't have the names of each individual that was there. There was quite a number of people there that actually entered in the participation of the searching this out.

Q You certainly couldn't testify as to what each one of those individuals found, could you?

A Certainly not. I can testify to what I see and what I relate seeing from the photographs.

MR. BRANTLEY: That's all I have.

MR. PEREZ: That's all.

THE COURT: May this witness be excused?

MR. PEREZ: Yes, sir. As a matter of fact, the -- I'd like to offer into evidence the photographs which were marked.

THE COURT: S-21.

MR. PEREZ: S-21.

MR. BRANTLEY: We have no objection, Your Honor.

THE COURT: Let the

offering be filed.

Q Sergeant Womack, you've described this feed, I believe, as being a mixture of some type of mixture feed. How would you describe that? I'm not familiar with that.

A My familiarity comes from it being I buy a large quantity of it continually, and it's a ready-made feed. It can come from any of several feed mills and sold to different . . .

Q What would be some of the feed mills it could come from?

A There's any number. I don't know the people that these people deal with . . .

Q Who do you . . .

A However this particular lot came from, it's commercial . . .

Q Who do you deal with?

A Sir?

Q Who do you deal with?

A Who do I deal with?

Q Yes.

A I've dealt with the local Purina dealer. I've dealt with the Tri-Parish Co-op in Slaughter, Gros Hardware and Seed in Zachary, any number of others. Deal regularly at this time . . .

Q This photograph that's marked as S-6, which shows the feed on the ground, does it not?

A Yes, sir, it does.

Q It also shows quite a few feed sacks right next to the feed.

A Right.

MR. BRANTLEY: That's all I have. Just a couple of more questions.

Q Sergeant Womack, show you what Mr. Perez has marked as S-18. It shows two gentlemen by the barn, and I'm going to point to a black spot relative to the right side of the picture and ask you, was that blood?

A Not with my experience, no, sir.

Q Did you look at that closely?

A Yes.

Q Did you examine it closely?

A I did.

Q This spot also right here to the left of the center of the . . .

A To say I examined it closely, I examined it closely to determine what I took it for, yes, sir.

Q And that wasn't blood either?

A No, sir.

MR. BRANTLEY: That's all we have.

WITNESS EXCUSED

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MR. PEREZ: State rests in rebuttal.

THE COURT: Proceed.

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CLOSING ARGUMENTS

BY MR. PEREZ:

May it please the Court, Mr. Brantley, Mr. Abadie, ladies and gentlmen of the jury, now it comes to that part of the case where the evidence is, on which you have to decide Mr. Whitmore's guilt or innocence, is all in. You will hear no more witnesses. You will be allowed to take some of these exhibits which legally the Judge can let you have -- not all of them, some of them you will be allowed to take with you back in the jury room when you go to deliberate, and I know you will want to examine some of these pictures more carefully because you did not get a chance to examine them during the testimony. Basically, everything that you have, all the facts, are before you right now. What I'm doing as I'm beginning what we call closing arguments, and I'm going to explain to you what I think the evidence proved and give you some of the explanations on what I think the law is in this case. When I'm finished, Mr. Brantley will, or Mr. Abadie or both -- I don't know -- will get up here, and they'll argue the defense's case. When they're finished, I will come back to you, believe it or not, and argue a very limited rebuttal on what they had to say. When all that argument is over -- and I wouldn't think it would take more than an hour or so -- the Judge will give you instructions on what the law is in this case. Now, you have to draw a distinction from this case from the facts and the arguments and the law. The facts, you are to decide from what came out on this witness stand and what was admitted into evidence. The argument is merely the attorneys' opinion, whether it's my opinion or Mr. Brantley's opinion, our view of the evidence. Now, you can accept or reject this as you see fit. If you think something I say doesn't make any sense, throw it out. You think what I say

makes sense from the evidence you've heard, you can accept it. The same thing for Mr. Brantley and Mr. Abadie. What the Judge gives you is somewhat different character. He tells you what the law is in the case, and you are bound to accept that whether you like it or don't like it, whether you agree with it or don't agree with it; and I don't think you'll have any trouble accepting any of these principles of law. They've been put into our laws over a long period of time, and they're, I think basically fair to both the State and the defendant; but you are bound to accept the law as the Judge tells you. Now, when I came before you in the beginning of this trial after the selection of the jury, I explained somewhat the nature of the case that we have here. This is a two-count charge. The first count charged is murder in the second degree of Mr. Marshall Bond on August 15, 1973. What are the elements of murder? The elements of murder are basically the killing of a human being, the intentional killing of a human. If you find that Mr. Whitmore, intentionally with the intent to either kill or inflict great bodily harm, did in fact kill Marshall Bond, then he would be guilty of second degree murder. The second charge before you is the charge of armed robbery. Now, armed robbery . . .

MR. BRANTLEY: Judge, I'm going to object to Mr. Perez giving a statement of the law which is erroneous as to what murder is. I think his statement is erroneous. He used the word intentional.

THE COURT: Ladies and gentlemen of the jury, the statement by the lawyers and argument is merely

their conjecture of what the law may or may not be. The Court will charge you as to the law at the proper time in the Court's instruction to the jury. Proceed, Mr. Perez.

And the words second degree murder, second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. This is verbatim from the law itself. It is -- the questions are: was a human being killed and did the person or persons who killed him have an intent to either kill him or to inflict great bodily harm, to hurt him seriously. The second charge, of course, arises out of the same facts as does the first charge. It charges that Kenny Whitmore on August 15, 1973, did commit armed robbery of Marshall Bond. Armed robbery is defined in our law as being the theft of anything of value from the person of another or which is in the immediate control of another by use of force or intimidation while armed with a dangerous weapon. Before I get into arguing Kenneth Whitmore's guilt on the issue of identity, I want to clear up some of the factual legal aspects that this is a case of murder and this is a case of armed robbery. Armed robbery is the killing of a human being -- and Marshall Bond was very much a human being -- when the offender had a specific intent to kill or to inflict great bodily harm. Did the person who killed him have an intent to kill him? Did the person who stood there, the persons who stood there and smashed this man's skull time after time after time with a tire tool or a jack, stabbed him with a screwdriver time after time after time -- wounds that it took Doctor Landry fifteen or twenty minutes in a cold, dispassionate way to just explain, try to explain each wound, and he was grouping them. Well,

he had six blows to the head. His head was cracked like an eggshell. He had several blows to a hand, apparently trying to ward off these other blows, marks to his hands. Stab marks to his chest. Stab marks to his back. Stab marks to his arms. Did the person who inflicted these wounds, the persons who inflicted these wounds have an intent to hurt him, or did they not? Is this an accidental death? There's no problem with this case being a case of murder. Now, was there an armed robbery? Armed robbery is a theft. We know that, from the State's testimony, that Mr. Marshall Bond was a man who very often carried large sums of -- large sums to me -- of money on him. Not very unusual for him to have up to a thousand dollars or more in his pocket. We know, from the testimony of his clerk and bookkeeper, checking the books and notes that he had made, that he had, she estimated, from a thousand to eleven hundred dollars on his person when he left the store that day. He left the store. His wife had seen him, I think that evening almost at five o'clock. By six o'clock or so, James Robinson found him bleeding and dying out in the field; and when Mr. Carl Bond was called out there, he had no money other than change in his pocket, none. Kenny Whitmore in his own voice from the tape recording, the second tape recording I played for you, admitted that they took almost a thousand dollars. Said, I got four fifty or four twenty-five, and Donahue got around five hundred. That's a theft from the person of another, by force or intimidation. I don't think there's been a case of more force involved in an armed robbery in this parish in years, brutal, vicious force. Taken from his pocket, a thousand dollars.

MR. ABADIE: Your Honor, I'd like to enter an objection, although I hate to interrupt

counsel, as to the district attorney giving his opinion as to the sufficiency of the evidence, and I'd like . . .

THE COURT: I've already instructed the jury in regard to the argument of all counsel, that it is merely their opinion as to what the law or the facts show, and the jury is to decide for itself what the evidence is and accept the law that I give them.

MR. ABADIE: Well, Your Honor, I think it's important to point out that it's my understanding of the law that the District Attorney cannot comment on what he considers to be the sufficiency of the evidence.

MR. PEREZ: I disagree. I think I cannot comment on my personal opinion as to the guilt of the defendant, but I can comment on the evidence. That's the very nature of closing argument to comment on the evidence.

MR. ABADIE: Your Honor, I think it's a question of semantics, commenting on the sufficiency of the evidence . . .

THE COURT: If counsel

makes a remark that the Court believes is outside the bounds of the law, the Court will interrupt counsel on his own.

MR. ABADIE: I beg your pardon?

THE COURT: If counsel makes a remark which I believe is outside the bounds of propriety, the Court will interrupt counsel on its own and instruct the jury to disregard the remark. I do not do that in this case.

As I was reading to you, the definition of armed robbery, is the taking of, theft of, something of value from the person of another by force or intimidation while armed with a dangerous weapon. Dangerous weapon is defined in Article 2 of our Criminal Code, and I quote, dangerous weapon includes any gas, liquid, or other substance or instrumentality, which in a manner used is calculated or likely to produce death or great bodily harm. We don't have the weapon despite this intensive investigation of this case. We do not have -- and we cannot show you exactly what these weapons were. We know only, from the type of wounds Mr. Bond received, what could -- and from what Mr. Whitmore told you on that tape what these weapons were. A tire tool or something of the nature of a tire tool. How was it used? It was used to bash in Mr. Bond's skull. A screwdriver, Phillips or standard. How was it used? It was used to stab him, stab him in the arms and the chest and the back countless number of times. Are these articles which come in within this term? Any

instrumentality which is calculated to produce great bodily harm. How could you produce any more bodily harm to a person with an instrumentality than the wounds that Doctor Landry got up here and testified about? So we have indeed in this case a murder in the second degree and an armed robbery. Then comes the question of the guilt of this particular defendant as to these two crimes. Here I'd like to read one further article of our law to you which deals with parties to crimes. Quite often, by the very nature of criminal activity, it requires more than one person to commit a crime. You may have certain types of crimes that just by their nature require four or five persons to carry out the scheme, and the law anticipates this. The law realizes, and this happening, makes all persons involved in the scheme, guilty of the crime itself. It calls them principals to the crime, and it distinguishes them from accessories after the fact; that is, persons who come in after the crime was committed and had no knowledge of the crime itself until after it was committed. All persons concerned in the commission of a crime -- I'm reading to you directly from the article on principals -- all persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission or directly or indirectly counsel or procure another to commit the crime are principals. Ladies and gentlemen, if you find, from the facts which have been put before you in this case, that Kenny Whitmore aided Mister Donahue in committing this crime, counseled with Mister Donahue in committing this crime, actively involved himself in the commission of this crime through the striking of blows upon Mr. Bond and removing the money from him -- it doesn't make any difference under the law which one reached into his pocket and took the money. If they were both actively engaged in the commission of the crime, it does not make any

difference which one, Mister Donahue or Kenny Whitmore, was wielding the fatal weapon. If both of them were out there, if both of them striking him and stabbing him, the State does not have to prove which one of these blows killed him and which one of these defendants were wielding the weapon which caused the fatal blow. Both of them, according to the evidence, got together. They went out there. They had full knowledge of what they had to do. You think they knew they didn't have to kill this man when they went out there? You heard his testimony when he was on the stand. Where do you live? I live in Rollins Road. This farm is on Rollins Road. He lives in the small community of Zachary.

MR. BRANTLEY: I object to that. That's not his testimony.

MR. PEREZ: There's testimony of Mr. Whitmore that he lived on Rollins Road . . .

THE COURT: Gentlemen, don't argue back and forth between yourselves as to what the testimony is. The jury will decide what they heard and what they did not hear. Proceed.

You heard the testimony of Mr. Whitmore as to his address both on the stand and in the taped interviews and the testimony as to where this farm is located, both of them being out in the Zachary area. Can you believe that persons would go out and commit a robbery of someone in a small town like this? You people know how large Zachary is. In a small town like this that they could go out and rob Mr. Bond in full daylight like this with -- no one said

he had any -- he didn't even say he had any mask on or any disguise or anything of this nature. That they could go out there and think that they could rob Mr. Bond and tell him to give them the money and that they wouldn't get caught. Do you think that Kenny Whitmore was to leave any witnesses behind when he went out there? Do you think they could afford not to kill Mr. Bond once they decided to rob him? In a small community like that -- I don't know how many people are in Zachary, but everyone almost knows everyone else. Armed robbery is an exceptionally serious crime. Kenny Whitmore, of all people, must have known what the penalty for armed robbery was. You don't engage in that kind of activity without knowing something about it. That they could have gone out there and say, well, we're just going to take his money and we won't hurt him and we're going to leave a man who's on the city council of Zachary as an eyewitness to us robbing him when we live right out in the same area he does. You don't do those sort of things. You want to rob somebody -- if he wanted to rob someone and leave them unharmed, he could have gone to South Baton Rouge and picked a person out of a store or off the street and robbed them and gone back to Zachary, and then no one would have known who he was, and left them unharmed. But when he went out to that farm out on the Rollins Road near his house, they went out there, not only to rob, they went out there to kill. I would take it -- which version of the story is true? That's what it boils down to, which version of Kenny Whitmore's own story is true. Did he sit in that car, passively, unknowingly, not knowing what was happening; or was he actively engaged in the commission of this robbery and murder? He testifies that he pulls up near Mr. Bond's car. It's in the summer, August 15th. You, from your own experience, could relate what the weather, the heat might be like. He testified he had his windows rolled down. I

think it would have been unlikely anyone would sit in a car 5:30 in the afternoon with daylight saving time in August with the windows rolled up. He testified under questioning by his own lawyer, he did not have the radio on in the car and he sat there, according to his version of the facts, while this brutal murder took place within from this witness stand, within ten feet from the outside of that door; a murder which was not a quick stabbing of a person and the person collapses in quiet; a murder which included blow after blow after blows, a struggle with papers and pens and hats and blood found on the ground, found on the bench, the feed knocked over and found on the ground. Not one weapon used but two or three weapons used. A man's skull crushed in and stabbed and stabbed and stabbed. It would have been very little need to stab Mr. Bond and beat him so severely if he was not actively struggling during this time. Do you think Mr. Bond was passively quiet, that no one was saying anything, that they were being quiet so that Kenny Whitmore wouldn't hear them, sitting in the car from here to ten feet of the outside of that door? Can you believe that from where you're sitting to ten feet on the outside of that door in an open field with no, nothing obscuring you but a wire fence, that this type of crime could be committed and you wouldn't know anything about it? He testifies that his first statement to the police was the truth, and then he testifies that he knew nothing about this case about Mr. Bond before they went out there that day, but you heard the other tape, the first tape where Kenny Whitmore said they had talked about it the day before, that the man who's now dead -- Charles Armwood's now dead -- they had talked about it that day and discussed it. Donahue wanted to know if he would be with him on it, that he said he would, that he said he would go, that they went back that day and went back to Charles Armwood's house to get him to go out

there and be in on it with them, and that Armwood chickened out, didn't go. That was on that first tape, the tape which he says to be true. This case went unsolved for a long period of time, August 15, 1973, until the police interrogated Kenny Whitmore February 25, 1975. I wish that I could have been able to bring before you, witnesses to this crime, people who could have seen it and pointed out Kenny Whitmore as being the robber. Fingerprints of Mr. Whitmore found at the scene would have been very comforting to you in making your decision to have these things. We tried. The police tried. According to Carson Bueto, they interviewed a hundred and twenty-five -- at least a hundred and twenty-five poeple in the area to try to find anyone who had seen anyone go back into the farm and commit this robbery. Mr. Brown testified they called out that night, the very evening of the killing. They called out the State Police, not the local police, but the State Police bureau of identification, fingerprint experts, to check this area for fingerprints. Now, you can look at the photographs that were introduced and look at the testimony, and you can see the old corrugated, pretty rusty, oxidized tin around in places, old wood that hadn't had a coat of paint in probably thirty or forty years. And what else? Ground. Nothing on which you could leave fingerprints that would be legible. The crime lab went out. They could not come here with anything to help in this case today. A massive investigation, an unsolved crime for eighteen months until this man confessed. Fortunately, for you you don't have to take people's word on what Kenny Whitmore said. You heard it in his own words what he said. You heard it in his own words on the first tape and on the second tape. Now, he didn't come across with everything he knew on the first tape. He was confronted, as the officers told you, he was confronted with the fact that they knew he had done it. And all I

ask you to do is to relate this with the experiences you've had with people. Just like a teacher with kids. You might know they do something. You confront them with it, and they may not immediately tell you everything that's involved with it. They're willing to tell enough. Yes, they feel they're caught, and they're willing to tell enough to get them off the hook for the moment to tell what happened but not their own personal involvement in it, and then only after you confront them again with your not believing them after they've given you that first story, will you maybe get the, a lot more of the truth out of them. So I don't find it unusual -- I don't think you should find it unusual at all that at that first time that Kenny Whitmore did not just spill out everything because I don't think that it's human nature to just go ahead and spill out everything. I'm sure Kenny Whitmore, when these officers had him at the jail and started confronting him with this, when he had gotten away with this crime, this horrible murder for eighteen months, and started confronting him with it, I can imagine his pulse running. I can imagine his heart sinking, that, oh, My Lord, I've been caught. And he gave them a story. He gave them a story enough to get them off of his back, to maybe put it on somebody else. Told that guy, whatever you know is wrong. I know about it, but this is all I know. I was there, but I wasn't involved. But later when they came back to him and he realized that they didn't believe and he realized -- and I hope y'all caught the last words that were on that second tape. He said, well, I might as well get it off my chest because I had to sooner or later. Kenny Whitmore's testimony up here was untrue. He -- if he was telling the truth, then everyone else is a lier. All the officers who investigated this case, Mr. Hebert from our office, Mr. Brown from our office, all are lying. And to what purpose? To conspire against Kenny Whitmore, a person who

every individual almost who testified up here said that they had never seen this man before in his life. It's Kenny Whitmore against the world in this trial. You heard it in his own voice that he killed Mr. Bond. He said that he stabbed him with the screwdriver. He said that Donahue was holding him in a hold while he stabbed him. He said that Donahue sent him to the car to get the tire tool and that he came back, and I think his words on the tape, yeah, I hit him a few licks in the head, in his own words on this tape. That was as close to the truth as you'll ever have in this case. I don't think that after listening to those tapes and to the testimony of witnesses and to the incredible testimony of Mr. Whitmore, that he could have sat there throughout this whole experience and not known anything that was happening; that you can have any reasonable doubt of the fact he's guilty of count one, of second degree murder, and count two, armed robbery. Thank you.

BY MR. BRANTLEY:

Your Honor, may it please the Court, members of the jury, this will be the last opportunity that I have to speak with you; and I, in many respects, agree with what Mr. Perez says and many respects I disagree with what he says. The situation of Mr. Whitmore being at Marshall Bond's property on the evening of August 15, 1973, we don't dispute at all. We never have disputed it. We've never tried to hide it. We've never tried to say he wasn't the one, he wasn't there. He got on the stand. He readily acknowledged it. The remainder of Mr. Perez's interpretation of the facts, I think are in dispute, and I want to go through them one by one, and think this is exactly what I'm talking about. Initially -- now, let's go back to that afternoon. On the tape, and he acknowledged it, the day before he, Charles Longwood and

Mister Donahue had talked about going over to Marshall Bond's property. You've listened to the tape. You've heard the tape. It didn't say anything about robbing him. Very simply, Kenny had a job. He had a job at Floyd Electric. Longwood didn't have a job. Donahue didn't have a job. They wanted -- they were going to go out. They were going to see about getting a job. It's a simple thing. It's that simple, but it's nothing in the tape at all incriminating about that, and that's exactly what happened. They go to Longwood's house, and Longwood's stuck a nail in his foot. He can't go. Kenny rides out there with Mister Donahue. Donahue gets out the car. He obviously commits the crime. The man is coming up for trial next week to be handled by the Attorney General's Office, not by the District Attorney's Office, because of the misconduct of Mr. Brown.

MR. PEREZ: I'm going to object to that, Your Honor. I think that it's a statement which is totally incorrect because, as Mr. Hebert explained, it was because Mr. Brown took a confession and is a witness in this case that we are, are not on that case and not because of any misconduct. I do not think that solving a murder of this nature can be caused misconduct on the part of anyone.

THE COURT: Mr. Perez, you've already had your argument.

So he gets back . . .

THE COURT: Mr. Brantley, limit your comments to the case.

MR. BRANTLEY: Yes, sir.

He gets back in the car. Kenny acknowledges that he sees the money. Does he take any of the money? No. It's offered to him. He doesn't take it. He doesn't tell anybody nothing. Why didn't he tell anybody? He was afraid of Donahue, and I don't blame him. So a year and a half later, what happens? This is where the facts get really interesting, really critical. The evening of February 25 of 1975, 2:45 a.m., who goes to the parish prison? Three officers who were not on duty, Warren Hebert of the District Attorney's Office, Lieutenant Bueto, Lieutenant Russell. They conduct an interview with Kenny Whitmore. Is he cooperative? Yes. Does he tell them what happened? Yes. Does he give them a statement? Yes. Now, Kenny says something just a little bit different. He says before that time somebody else came out there, Mr. Brown, the District Attorney's Office, and talked to him, and that Brown talked to him after the interview was taken. Now, Mr. Brown denies that. He denies talking to him before, and he also said he talked to him after just to see if he was telling the truth and to give him a nickel to use the phone. Now, if anybody believes the District Attorney of East Baton Rouge Parish is going to get out of bed at three o'clock in the morning to ask a man in the parish prison, which is out at Ryan Airport, he's telling the truth -- it's just so unbelievable, it just shocks my conscious. But then look at Sergeant Russell. Russell gets on the stand and he says, yes, Mr. Brown was there earlier but he left; and then he specifically remembers Mr. Brown coming back, and he specifically remembers Mr. Brown taking Kenny Whitmore into an investigation room, just he and Mr. Brown, while the rest of them

went to the central cage and drank coffee. Mr. Brown denied that, but he had no reason when I asked him, is Sergeant Russell a good officer, yes. Does he conduct a good investigation? Yes. Do you have any reason to doubt his truth? Yes -- no, none whatsoever. Sergeant Russell directly contradicted Mr. Brown. Kenny acknowledges that -- did Mr. Brown ask him if I was telling the truth. Yes, sir, I told him that. Well, the truth wasn't convenient enough. So here we've got a young man with a tenth-grade education. Now, he's going to come up with knowledge about Angola. He's going to come up with knowledge about state's evidence. He's going to come up with knowledge about publicity. He's going to come up with a statement like, don't tell anybody about this deal I want to make with you to testify against Mister Donahue because then the confession won't be any good. There is no way in the world that that man would know those four facts. It's absolutely impossible. No senior in law school is going to know those four things, much less a man with a tenth-grade education. It's absolutely impossible. So what do they do? They conduct an interview until at least 3:16 in the morning. We know that for a fact. How long Mr. Brown was with him, we don't know. The next day they take him down to a small isolation room with another officer. Now, Mr. Hebert of the District Attorney's office is not there. We've got Lieutenant Bueto. We've got Sergeant Russell, and we've got Lieutenant Zuelke, who's a polygraph expert; and they put Mr. Whitmore in one room. Lieutenant Bueto and Sergeant Russell in the other room, and Zuelke in the same room, and finally after beating it out of him, Zuelke admitted that Mr. Whitmore didn't know he was being taped. Now, that's the tape that was conveniently erased, and that's another hole in the prosecution's case. I do not believe that in any way, shape, or form, how hard it is to get a confession or a

statement from somebody, if that statement was against his interest, that it would have been erased. That makes no sense. You've got two officers standing in another room, looking through a two-way mirror, watching a man be interrogated about a case, and they're going to erase a statement that would convict him. Think about that. Does that make any sense whatsoever? No. And then what happens? There's a phone call from Mr. Brown, and we get some more statements. Very convenient. Now, one thing that's really important, and think about this -- I'll be the first one to acknowledge this is a heck of a crime, it's a horribly gruesome crime. The problem is this man didn't do it. Mr. Emanuel, you mentioned it, he either did something or he was in the wrong place at the wrong time, when we were conducting voir dire examination. Boy, did you hit the nail on the head. That's why you were accepted as a juror. The one thing, the one thing that's really critical -- after they've had a chance to tell him how it happened, isn't this how it happened, taking him back out to the scene, show him around, convince him, yeah, we got a deal; you can testify against Mister Donahue and everything is going to be fine. Well, it didn't work out that way. Well, if that second tape is so correct, there were two people that testified about the stab wounds. Mr. Bond's brother said they looked like they were made with a Phillips screwdriver. The Coroner, they look like they were made with a Phillips screwdriver. Why? Because they were definitive wounds with the four prongs. That second tape, how was it done, Kenny; it was done with a screwdriver; was that a Phillips screwdriver or a regular screwdriver -- no, they didn't even ask him about a regular screwdriver. Was it a Phillips screwdriver -- the words were in his mouth; all he had to say was yes -- no, regular screwdriver; you're sure it was a regular screwdriver. He was saying exactly what they told him to say

verbatim. Then they take down and take another statement which we don't have the benefit of. It just doesn't add up. He gets up here. He takes the stand. Now, Miss Maruschak, both you and Miss Trahan are teachers and being teachers, you've had children I'm sure that you can tell the demeanor of people, and it's really true. You can watch them and study them. You can tell whether they're telling the truth. You see videotapes of people with no words whatsoever, how they squirm and how they move, how they sit, how they respond. You've had police officers. Lieutenant Bueto, fifteen years on the police force. Sergeant Russell, thirteen or fourteen years. Warren Hebert of the District Attorney's Office, he's an attorney, he's an investigator, he's prosecuting attorney, he's taught law school. Mr. Hebert -- Mr. Brown -- think about each one of those men's demeanor, and then look at Kenny Whitmore's demeanor. Look how he responded to the cross-examination of Mr. Perez. Think about that a minute. Did he hesitate? Did he flash back? Did he respond and was it a natural response? Was it something that was thought out? The man is charged with second degree murder and armed robbery. If anything, if any question, if that man had something to hide in getting on this witness stand, would have been thought out, would have been reserved. He would have been regarded as -- guarded as Mr. Hebert was when Mr. Hebert was on the witness stand. And believe me, one attorney questioning another attorney is like trying to pull teeth or like Mr. Zuelke when I was asking Mr. Zuelke, is it not a fact that you were recording Mr. Whitmore's testimony in the other room, yes. Did he know you were recording it? Yes. Did you tell him you had a tape recorder? He was advised we were recording it. Did you tell him you had a tape recorder? He was advised we were recording it. Did you tell -- didn't you -- isn't it true you had a form that says electronic recording

device? Anybody want to tell me what that is? I know because I've seen them done before. You think he knew? If you look at all of the facts, it just does not add up. It is not only not beyond a reasonable doubt, that man did not participate in this crime. There was a crime committed. Sure there was a crime committed. There was a murder committed. There's no question there was a murder committed, but he didn't do it. The simple thing -- if he was making this up and Mr. Perez talking about he didn't hear anything, he didn't see anything, how are you not going to hear something -- if he wanted to lie about it, and Mr. Perez pointed this out, afternoon, August, hot, you're going to have the windows down. Kenny, did you have the windows down? Yeah, the windows were down. He didn't deny that. If he wanted to lie about it, conveniently roll up the window, turn on the airconditioner, turn on the radio, have it blowing in your face. You can't hear anything. You listening to the radio. He could easily have said that if he was lying. That's a snap. That's no big lie compared to everything else Mr. Perez would have you believe. Think about it. It just does not add up. Why do they have to go to the trouble? Why does the District Attorney have to get out of bed at three o'clock in the morning to ask a man if he's telling the truth? Uh, uh. Why do they conveniently lose a tape, or it's erased? Well, that's procedure. We erase tapes with confessions on them? Uh, uh. Think about it. Just think about every single fact and what the District Attorney has proven. They haven't proven anything, not in regards to this man, absolutely nothing at all. Mr. Perez would make you believe it, but sit down and just add them up. When you get back in the jury room, write them down. What does it -- the Judge will charge you as to what the law is, and Mr. Hoychick's lucky because he's in law school, and he has some experience and some knowledge of the

operation of the criminal justice system. And you take it and you look at what each element of the crime is and what Mr. Perez has proved, and you'll find he's proved absolutely nothing. Mr. Bond is dead, yes. Mr. Bond was murdered. There's no question he was murdered, but he wasn't murdered by that man, and the whole tenor of the State's case from the beginning to end has proved nothing. You think they would have had to march the District Attorney in here to testify before you? Uh, uh. Just add it up. That's all I ask. There's no way in the world there can be any doubt, much less proof beyond a reasonable doubt, that this man did that, committed it, participated in it, aided, abetted or what. It just does not add up. Think about it yourself. You're an intelligent jury. You've got a lot of experience behind you, and just add up the facts. That's all I ask you, and it just doesn't make sense. Thank you.

MR. ABADIE: Your Honor, it's been my experience that it's customary in cases of this type with some of the other judges, when you have this magnitude involved, to allow both counsel . . .

THE COURT: I'll allow both counsel. Mr. Perez . . .

MR. PEREZ: I have no objection.

THE COURT: 216 and 243. I'll give you equal time for both of you together.

BY MR. ABADIE:

I think Mr. Brantley covered most of the things I would consider significant, very well. I want to take just a minute of your time, and I want to cover one or two things which I think really come down to the whole thrust of this case. Mr. Perez told you that if you believe Mr. Whitmore, that you in effect are saying that every other witness in this trial was lying. That's not true. We don't dispute basically what many of the witnesses testified to. We don't dispute there was a death. We don't dispute Chief Womack being out doing investigations. We don't dispute Mr. Robinson coming to this farm, seeing Mr. Bond. We don't dispute Carl Bond coming back. We're not disputing those things. Mr. Perez also said that you were saying that these people were lying. I'd like to phrase it another way. The Judge is going to tell you that the determination of the credibility of the witnesses, whether or not to believe these witnesses, is solely in your hands; and you can believe them or not believe them. And you are basically going to try to decide whether or not you believe Mr. Brown and whether or not you believe Mr. Whitmore. Those are the two that you are going to have to consider. The circumstances of this case are that you have a prominent individual named Marshall Bond, who's a city councilman in the City of Zachary, and he has this unfortunate incident which I will admit is brutal and for eighteen months there is no clue, no hint, no possible way to say that the District Attorney's Office of this parish has made one step of progress toward solving this crime. This looks bad. Mr. Brown wasn't happy about that. All of a sudden, something comes up. The only conceivable way that everybody can get off of the hook is to get somebody to admit that they did it. There is just no other evidence in this case as Mr. Perez has clearly admitted. There is no weapon. There is nothing that

was taken. There are not tire tracks. There are no fingerprints. There is nothing. You had to get somebody to come forward in some fashion and say, I did it. Now, Mr. Brown went out to the jail in a very unusual situation that you heard the deputies, too. Most unusual for Mr. Brown to go out to the jail at that hour. And we have evidence that he closed himself up with Mr. Whitmore and that he did not close himself up with Mr. Whitmore. Mr. Brown, of course, said that he did not go into a room and speak with Mr. Whitmore. Mr. Whitmore said that Mr. Brown took him into a room, made promises, statements that were intended to show the power of Mr. Brown and indicate to this man over here who is not nearly as polished, nearly as knowledgeable, nearly as forceful as Mr. Brown and indicate to this man the power that he had and what he could do to him, send him to Angola for the rest of his life. Not only that, but he said that he had been to Angola two or three days before and he had seen somebody get their throat cut. Clear statements in an attempt to influence this individual into doing something. Mr. Brown denied that he was in that room. I heard Louis Russell. You heard Louis Russell, who Mr. Brown says is a good deputy, say that Mr. Brown went into that room with Mr. Whitmore. Now, I'm going to let you judge the credibility of what was going on. Now, you also heard Mr. Whitmore indicate, as I've already gone over, that Mr. Brown made numerous statements to him about what he could do, that he could do this, state's evidence; and, of course, there was another situation involved with Mr. Whitmore; and Mr. Brown promised him he was going to take care of everything, get him no more than five years, not send him to Angola or DeQuincy. And you also saw the job that Mr. Perez did. I think he did a very good job. He's an able prosecutor. You saw him bring Chief Womack back after we finished our case and put Chief Womack on the stand to rebut certain evidence that we had put

on. The State is entitled to come back, after we finish our case, and to present evidence which would rebut the things that we put forward. We spent a tremendous amount of time with Womack, going over the physical layout. It's something significant about that rebuttal. Mr. Brown did not come back. He was not called back to this stand to deny one single statement that was made by Mr. Whitmore that promises, inducements, threats, or other conversation that took place between Mr. Whitmore and Mr. Brown. Now, you know the significance of this case. You know the significance that Mr. Brown holds this case. I've already indicated it to you, that he was under the gun, he couldn't do anything, he couldn't solve the case. Do you think that Mr. Brown would not come back to this stand, would not consider this case important enough to spend five to ten minutes to come back to say, I did not do that, I did not do it, I did not do it? I ask that you attach significance to his failure to return. His office is right across the street. It takes three or four minutes. This Court, Mr. Perez, and you, in a case of this magnitude, would be happy to accommodate Mr. Brown. We would certainly stop this trial for two or three minutes and let them go get him. In fact, we stopped it whenever he first came in to testify so that he can come in. We understand that he's a busy man. Why didn't he come back to deny those statements that were made when the law clearly gives the State the right to rebut the evidence that we put on? After this session Mr. Brown talked with Mr. Whitmore, Mr. Whitmore is taken to the farm on Rollins Road. Now, certain things that Mr. Whitmore went into and several other people went into that happened out there -- one of the deputies grabs Mr. Whitmore and says, is this the way he was held, is this the way he was hit. You heard Mr. Whitmore testify that this deputy told him to say this and Mr. Brown told him to say this, this deputy told him to

say this. These men wanted to solve a crime that they could solve in no other fashion. They had received a truthful statement from Mr. Whitmore. That statement would not solve a crime. It would not get them off the hook, so they followed through. They took him to the location. They told him what happened. They told him what was used, and then they came back, and they gave him another statement. Now, one thing that I consider most significant about the second statement is the length of the second statement as compared to the first statement. Now, the first statement was -- the transcript of that first statement is seven or eight pages. The transcript of that second statement is slightly over two pages. Supposedly this second confession was the one that went into all of the actual details of what actually happened, a blow by blow description, sort of speak. The first confession didn't go into that. Mr. Whitmore wasn't there. He didn't see it. He didn't know. Now, I'm going to ask you, in a case of this magnitude where you're depending upon a confession, if you have someone who was actually present at the scene and who was actually telling you what they saw and what they know, are you going to have a confession that is two pages long, that just says, this happened, boom, no more, when the first confession that you took had enough questions by the deputies to go into enough detail to take seven pages? I tell you why that second confession is only slightly over two pages of transcript. Mr. Whitmore was coached and told what to say. There is a certain amount of information that you feed into someone as to the circumstances that that person does not really know what he's saying. In fact, some of the information was erroneous. They apparently indicated to him to say that it was a regular screwdriver and of course, we know from the Coroner's report, Doctor Landry, very knowledgeable individual -- he's been investigating these things for years -- he clearly said it was a Phillips

screwdriver Well, the deputies made a mistake. You are going to have to decide whether or not you believe Mr. Brown. You're going to have to decide from watching Mr. Whitmore, watching his responses particularly on cross-examination when the District Attorney gets an individual who is obviously not as intelligent as Mr. Perez, not as experienced as Mr. Perez, not as eloquent as Mr. Perez. When this individual is being bombarded with question after question after question and this man is sitting up here charged with second degree murder, you're going to have to judge from his responses that that individual gave and whether or not those responses were made up or whether or not those responses were true. I think that it's unfortunate that this thing happened to Mr. Bond. I think it's unfortunate as to the factual circumstances that were involved in the investigation. I think it would be extremely unfortunate if you were to say that you were convinced beyond any reasonable doubt that this man is guilty of these charges. Thank you.

R E B U T T A L

BY MR. PEREZ:

Ladies and gentlemen, as I anticipated, and I think there could have been no other argument made by the defense, other than that Mr. Brown and Mr. Hebert and all the deputies had conspired together to send this man to jail for the rest of his life. This is what they're saying. They're saying that these individuals -- not one, not Ossie Brown alone -- Warren Hebert, an attorney, an ex-professor at Southern Law School, ex-Public Defender, and several deputies, Lieutenant Zuelke, no longer with the Sheriff's Office and no longer has any interest at all in this case, Sergeant Russell, Lieutenant Bueto, Deputy Womack, Chief

Browning, all of them together conspired to send an innocent man to prison for the rest of his life, and a person that none of them knew. No one knew this man. Oh, a couple of them knew where he lived. He's out from Zachary. No one knew this man. They all got together and they conspired to do this. Not only did they conspire to do this, but they all got together and they came up on the stand, and they committed perjury. Now, conspiring in such a fashion to violate the civil rights of a person like Kenny Whitmore is not only a crime against the laws of Louisiana but this is also a crime against the laws of the United States, something which could be investigated by the FBI, something which I'm sure if two citizens like these two citizens knew about, would have been reported to the FBI as violation to the Civil Rights Act, would have been totally investigated by an agency like the FBI. It's a serious crime, a Federal crime, a crime over which Ossie Brown and Warren Hebert and these little deputies have no control. I haven't seen one FBI agent or agent that came forward and said, yeah, we were -- this was reported to us so we could investigate this to see if all of these people had conspired to violate the civil rights of this man. That's all it would have taken, a report to the FBI saying, this is a serious violation of the Federal law; you had better get on it; all of the authorities in Baton Rouge, the police, the District Attorney's Office has gotten together and they're trying to send a man to jail for the rest of his life. Well, I'd like to know where the investigation is. If they knew this had happened, who did they report this to or did they wait until the date of a trial, two years after this, and come up in argument after the trial is over? They begin to say, well, this is what happened, this is what happened. Well, I think they had an obligation not now but when they first learned of this, when they first began to represent Mr. Whitmore two years ago, to

investigate this, to get serious people like the FBI to investigate this. I call upon your experience in matters like this. All of you can think back on cases that come to light by the public, that if there's a conspiracy to violate a person's rights of this magnitude, do you think this would or would not be investigated by the Federal government if it were reported? We not only do not have any results that say that this happened, we do not even have any report that was made to them. Now, whose story makes sense in this matter? Nothing was said about Kenny Whitmore sitting out there, as Deputy Womack said, in full view of that entire side of the barn. Not one place where a car could park was not in full view of where this murder took place. Can you believe that Kenny Whitmore could, as he said on the stand, sit there during a brutal murder in which someone must have obviously returned to the car to get the tire tool, stabbing a man with a screwdriver, beating him with a tire tool, a struggle taking place over the whole area and in full view of a car from here to outside of that door, and Kenny Whitmore says he did not see it? Can you believe something like this? Let's get back to this involvement of the police authorities conspiring against this man. Why would they wait eighteen months to pick Kenny Whitmore of all people to conspire against? You know, eighteen months -- I understand that there is pressure to solve cases, that there should be because crimes of this nature should be solved and the people who commit them should be punished. And, yes, there is a certain amount of pressure on law enforcement authorities. You read in the paper about the Leslie case and these things. They keep asking, you know, why this is not solved. Eighteen months later is old news. You couldn't get a newspaper to have printed a story on this in February of 1975 for anything. You don't hear eighteen months later about unsolved crimes. Six weeks later it might still be big

news. There might be some pressure on the people to solve it six months later, but after eighteen months there's no publicity. It's one of very many unsolved crimes in the files of the Sheriff's Office, in the files of the Police Department. Why would they wait eighteen months and why would they pick this man to try to put the blame on when he did not do it? Look at what, what defense counsel says they have. Eighteen months later they find -- there's no witnesses to this case. Eighteen months later they finally have someone who gives them a statement that he was present and knows who committed the murder. If in fact they wanted to pin it on someone, they then have the witness that they wanted. They have the eyewitness to the crime that they had been seeking for eighteen months. If they were not out to search for the truth, they could have left it at that. Here is the eyewitness to testify against Mister Donahue that Mister Donahue committed this murder. If the pressure was so great on them to get off the hook to solving this case, they were off the hook. They had found this man who was their eyewitness and he could testify, yes, Mister Donahue committed this murder and give them whatever other information he could to back it up. That would get them off the hook. Why should they then go further? They know who the guilty man is. According to defense argument, the District Attorney and the police then know who the guilty man is. They have been told by Mr. Whitmore who the guilty man is. They're off the hook. They can put the right man in jail where he belongs. Where is this pressure, this pressure to get -- that can cause all these men to end up in prison? They've got the right man. They've got the witness, but, no, they're not satisfied. They shouldn't be satisfied because Kenny Whitmore was lying in that first statement. If two people commit a murder, you should not be satisfied to put one of them in the penitentiary because they both

belong there. Yeah, we could have taken his statement. It would have been convenient for us to take his statement as being the truth and let him get up on the stand and cop out against Mister Donahue and tell what was, in effect, a half lie, a half truth, and send Donahue to the penitentiary. That would have been very convenient, but we would have had a murderer, a confessed murderer, running loose on the streets of Baton Rouge. The pressure to solve cases is not the pressure of publicity but of getting people like Kenny Whitmore, murderers off of the street. They took his statement. They took him over to the polygraph office. He was not interrogated. Lieutenant Zuelke says, no, he was not interrogated by me; he was polygraphed by me but he was not interrogated as such. He says, yeah, as a routine I recorded what took place, and he further said that he knew that there was a tape recording of the interview which took place right before they brought him there; and he said, the man told me the same thing. He said, the substance of what he told me was the same he had said on the tape. Now, counsel says, oh, man, if they've got a tape of what the man said, they should have saved it. Well, he knew, Lieutenant Zuelke knew they already had a tape of this same thing. He had just told them the same thing a little while earlier on tape. They would have had merely a second tape of a polygraph, and a polygraph is generally inadmissible in court. Now, if they took him to the polygraph office and this is a -- then they take another statement from him. The next morning they go and get him. They talk to him again. They take another statement from him, the one that you heard, and they take him back to the polygraph office. Again, Lieutenant Zuelke says, no, I did not interrogate him; I merely tested him. Now, if the police, if the District Attorney was so interested in foisting off on you and on the public, a lie, why would they have to take this man to a polygraph office? What

would be their advantage in taking this man over to a polygraph office if they just told him to lie? So for the life of me, I cannot understand why they would have taken him over there and said, I want you to lie about this on this tape; and then take him over there and put him on the machine to see if he's telling the truth. That's ridiculous. The same people that he says told him what to say took him over there to see whether he was lying or telling the truth. Why was the second tape shorter than the first tape? The first tape, they were -- that was the first time they had ever talked to this man. They were gathering general information, trying to find out what he knew. On the second tape, they had already had the advantage of talking to him, of sorting out what was the truth and what was a lie, of knowing more about his participation. How long does it take you to say on a tape, yes, we talked about it the day before; we went over to Charles Armwood's house; he said he stuck a nail in his foot and he chickened out; we went out there; Donahue grabbed Mr. Bond; I started stabbing him with a screwdriver; Donahue told him to go back to the trunk and get the tire tool; I hit him some licks in the head with the tire tool; we took his money; we split it up and we left and we went out to the recreation area at Pride/ Port Hudson? How long does it take? The tape, I think lasted eleven minutes. Does it take you any more than eleven minutes to say that you committed a murder and a robbery? And you have to understand -- I think that maybe the benefit of having one of the gentlemen who is somewhat experienced in the criminal law on the jury might help you. That there are rules of evidence. You've seen us arguing back and forth, back and forth about certain rules and what comes into evidence and what does not come into evidence; and the police know if too much gets on a tape recording that might not be relevant to this case, then the tape recording might not be

admissible at all because there's too much irrelevant evidence within the tape recording. So you end up getting nothing. You thought you had a lot and you have nothing because you couldn't -- you cannot chop a tape recording up and play part of it. You've got to play it all or none. And if there are things on it which do not belong in the trial, then none of it comes in. Then you would have the word of a police officer as to what he told you, and you would have to say, well, I wonder if Sergeant Russell remembers whether he said it this way or that way. You don't have that problem. They were very brief on that tape. They covered all of the relevant portions of this crime. Counsel had talked about some of these things that Mr. Whitmore said about state's evidence and publicity about a case and said, well, how would he know about these things; how would a person with Mr. Whitmore's limited background and intelligence know to come up before you and say, he told me about state's evidence. He only has a tenth-grade education. Ladies and gentlemen, how much of an education in the criminal law do you think you get out in that parish prison with four or five hundred other inmates for two years? How much do you think the jail-house lawyers that they have out there by the dozens who are sitting in the cell with you can tell you about what to say and what not to say when you get on the stand. I don't personally believe that either one of these attorneys here -- both of whom I know well -- would tell Mr. Whitmore to say this and don't say that when you get on the stand. Say state's evidence, use this word, sounds good. But I've been around these courtrooms too long and too many trials to know that the same stuff keeps popping up over and over and over 'cause it all comes out of the same jail out there and the same inmates out there with more experience in these court proceedings than others who keep telling them and telling them and telling them.

And, of course, each jury is different. So each jury doesn't hear this time after time, and they say, well, this surely sounds unique, how could this fellow possibly know this. Well, he has a lot of jail-house lawyers out there to tell him. They want to know why Ossie Brown was out there at 2:45 in the morning just to ask the man if he's telling the truth. This was a big case. They said it was a big case, and I admit it was a big case. It was a horrible murder, and I don't know -- I don't know if any of you that know Ossie Brown or know how he runs his office or anything; but as they explained, as Mr. Hebert explained, we have people, not investigators, not police officers, but attorneys from our office that are called out. On every major case we have attorneys out there on the scene to try to help the police, to direct them in the right direction so when we get a case to go to court, it will make some sense and it will follow all the legal guidelines. Well, Mr. Brown went out there. Why did he go? Because Warren Hebert, who was there before Mr. Brown, told him, we're solving the Marshall Bond murder; Kenny Whitmore is admitting to committing the Marshall Bond murder. Yeah, that would get him out of bed. I will agree that will get Ossie Brown out of bed at 2:30 in the morning to go out there.

MR. BRANTLEY: Judge, I want to object again. That is in direct . . .

THE COURT: The jury will determine what evidence it heard and what evidence it did not hear. Counsel's argument is merely argument.

They're trying to say that Ossie Brown went out there first, locked himself in a cell with this man, told him what to say, then left and had them call all the police out there, then he snuck home so they could call him back out there and it would like he had never been there before. Said that Louis Russell testified, yeah, Ossie Brown went into that room with him alone, and I'd like to just point out what they're asking Louis Russell to say or asking Ossie Brown to say. Here's an incident that took place on February 25, 1975. This is a -- people go out to the jail and there were a bunch of people there, apparently. There were several deputies and people that work at the jail and assistant district attorneys and the prisoner, and they're moving around. You don't sit down. You -- just like people walking out in the hallway. They're moving around. They're drinking coffee. They're doing this. And then they ask Louis Russell on the stand two years later, well, do you remember when you walked this way, who walked the other way; do you remember if you were looking in that door when Ossie Brown was looking in that door. You don't -- I can't see how you could remember these sort of things with total accuracy two years later. Ossie Brown may well have walked into that room with Kenny Whitmore after he made this statement. I don't deny that he walked in there. Kenny Whitmore says he walked in there and told him, did you tell them the truth. Nobody said Ossie Brown was in the room, except Kenny Whitmore, said he was in the room with him at any time before he gave this statement. They wanted to know why I didn't call Ossie Brown back to the stand or any of the -- I could have tried this whole case, according to what they have -- they said the man gets up on the stand and says, I didn't do it. Then the State is supposed to start back over again and prove everything that he did it. What could Ossie Brown say if he got on the stand after

Whitmore testified more than before he testified? The first time Mr. Brown was on the stand, he said he did not make any promises to the man. He said he told them when he talked to him and when he didn't talk to him. They asked him, did you tell him what to say. I asked him, did you tell him what to say. He said, I did not tell him what to say. I don't think Kenny Whitmore's testimony in light of looking at it under scrutiny bears calling any of these people back to the stand. They had already told you. They could do no more than just go over and reiterate what they had told you once before. What we have here, we have the testimony of the police officers from Zachary, we have the testimony from the deputies from our Sheriff's Office, we have the testimony of Assistant District Attorney Warren Hebert, the testimony of District Attorney Ossie Brown. All of those persons' testimony and the tape which is crucial because you can hear the man's voice on the tape and you're going to have to determine from what you heard and the reaction between him and the other persons what was going on at that time. You have all of their testimony. And against what? Against a man who's got his, practically his neck in a noose who would say anything to save his skin, a man who was convicted of two armed robberies. Is that whose word you would take, an armed robber's word? No, he's not guilty of this crime because he was guilty of another armed robbery or two other armed robberies, but I think you'd have to look at him in a different light as to his testimony when he takes the stand to tell who you're dealing with and who you're listening to. Is this the man whose word we're going to take who says, well, I told them that and you heard it but it's a lie? Ladies and gentlemen, all of the elements of these crimes have been proved. Sometimes we get so balled up in a courtroom on little things, it's like not being able to see the forest for the trees. Sometimes you have to get yourself

and try and step back a little bit in a case and look at it from a distance. You might take a minute when you get into the jury room, away from this discussion where we start talking about nit-picking little things and look at from -- look at it like somebody who might not even be in the courtroom but hears about the evidence would look at it. We've got a person who is a confessed, brutal murderer sitting at this end of the table. Look at it if you were looking at it from a citizen's point of view, reading in the newspaper. Can you believe that you could read in the newspaper that a man confessed to a murder in his own voice in two tape recordings, was played before the jury, two tape recordings that a man confessed to a murder and the jury would come back and find him not guilty and turn a man like this back on the streets? I don't think so. Thank you.

THE COURT: Retire the jury. Then we'll be at recess.

(The jury was retired.)

THE COURT: Gentlemen, let's go back on the record. I've already asked you if there was any special charges. You've given me none in writing. I intend to give the general charge as required by the articles in the Code. I showed you the list of responsive verdicts I've prepared. Is there any objection to the list?

MR. PEREZ: No. I agree with the list.

MR. BRANTLEY: That's fine,

Your Honor.

THE COURT: I intend to read all the statutes relevant to either of the responsive verdicts along with statutes on criminal intent, lesser included offense, principals, statutes on homicide, manslaughter, armed robbery, simple robbery, and theft, confessions, stipulations, circumstantial and direct evidence, dangerous weapons, impeachment under 15:495 and confessions under 451. Now, I'll give you an opportunity to object to the charge or any additions at the end of the charge. Bring the jury back.

(The jury was returned to the courtroom; the polling thereof waived.)

C H A R G E S

BY THE COURT:

Ladies and gentlemen of the jury, I'm sure this function that you are about to undertake is a new one for all of you, and it's also new to me, the function I'm about to perform; and I ask you to pay attention and in order to be sure that I correctly state the law, I'm going to read most of it to you. You have heard the testimony in this case. You have also heard the closing arguments of counsel. It is now my duty to charge you as

to the law that you must apply in this case. If, during the course of my giving this charge, you gain the impression from some inadvertent emphasis on my part that one of these charges is more important than the other, I do not mean to give such impression. Each element of the law that I give you is as important as the other. In other words, this is a body of the law that you will apply in determining this case. I do not intend to emphasize or de-emphasize any portion of this charge, nor are you to be concerned with any impression which you may have gained from me as to what my opinion of the facts is. My opinion of the facts, if I have one, is of no concern. I do find the facts. I merely give the law. You must find the facts. So you are not to guess as how I might feel about this case because how I feel about it is of no concern and is of no importance whatsoever. In deciding this case, you are to perform your duty as jurors without bias or prejudice to either of the parties involved. The law does not permit the jurors to be governed by sympathy, prejudice, or public opinion. The accused and the public expect that you will carefully and impartially consider all the evidence and follow the law as stated by the Court in reaching a just verdict regardless of the consequences to either party involved. You, as jurors, are the sole judges of the facts in this case, but you are dutybound to follow the law as I give it to you in this charge. It may well be that some of you might not think that the law ought to be as I say it is, but it is not within your province to make the law, nor is it within my province to change the law. It is only within my province to tell you what the law is insofar as this case is concerned, and you are dutybound under your sworn oath to apply the law to the facts as you find them from your deliberations. The law provides that you, the jury, alone shall determine the credibility, that is, the believability of the witnesses and the

weight, that is, the importance of the evidence that has been offered in this case. On this score, you are the sole judges. As a matter of fact, under Louisiana law, the judge is not permitted to comment on the facts nor upon the testimony which you have heard from the witness chair. Neither may the judge comment upon the credibility of the witnesses. You alone must decide what has been proven and what has not been proven. You alone must decide what weight you will give to the testimony of the various witnesses. If you believe any witness as willingfully or deliberately lying or testified falsely to any material fact for the purpose of deceiving you, you are justified in disregarding the entire testimony of such witness as proving nothing, as being unworthy of belief. Under the law, you have the right to accept as the truth or reject as false, all or part of the testimony of any witness accordingly as you may be impressed or not impressed with his or her veracity or truthfulness. You have been chosen as jurors to try the issues in this case which were presented by bill of indictment. A bill of indictment, as I told you earlier, is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused and it does not create any presumption or permit any inference of guilt. The bill of indictment in this case has been denied by the accused by his plea of not guilty. A person accused of a crime is persumed by law to be innocent until each and every element of the crime necessary to constitute his guilt is proven beyond a reasonable doubt. Thus, defendant, although accused by way of bill of indictment, begins a trial with no evidence against him. The law permits nothing but legal evidence to be considered in support of any charge against an accused. So the presumption of innocence alone is sufficient to acquit the defendant unless you, the jurors, are satisfied beyond a reasonable doubt that the State has proven

a defendant's guilt from all the evidence in the case.. A reasonable doubt is a doubt based upon reason and common sense arising from the state of the evidence. A reasonable doubt is not a mere possible doubt. It would be an actual or substantial doubt. It is such a doubt that a reasonable man would seriously entertain. It is a serious doubt for which you could give a good reason. A reasonable doubt is one founded upon a real, tangible, substantial basis, not upon mere caprice, fancy, or conjecture. Proof beyond a reasonable doubt is such as you would be willing to rely and act upon in the promotion of your own affairs. An accused is never to be convicted on mere suspicion or conjecture. A reasonable doubt may arise, not only from the evidence produced, but from the lack of evidence. Since the burden is always upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, the defendant has the right to rely upon the failure of the prosecution to establish such proof. Stated otherwise, it is not necessary for the defendant to establish his innocence. He may rely, if he wishes, upon the failure of the prosecution to establish beyond a reasonable doubt his guilt. A defendant may also rely upon the evidence brought out on cross-examination of the witnesses of the prosecution. The law does not impose upon the defendant an obligation to produce any witnesses or any evidence at all. A reasonable donbt exists in any case where, after careful and impartial consideration of all the evidence, you the jurors do not feel to a moral certainty that the defendant is guilty of the charge. In law there are two methods by which facts can be established: by a direct evidence and by circumstantial evidence. Direct evidence is evidence of material facts relating directly and without inference to the questions at issue or facts to be proved. Circumstantial evidence is the evidence of material

facts which may be inferred from the existence of other material facts relating to the questions at issue or to facts to be proved. Circumstantial evidence is legal and competent and must be considered by the jury together with direct evidence, if any, which may have been adduced at the trial. The jury should draw inferences only from facts which have been proved beyond any reasonable doubt. When the evidence in a case consists of both circumstantial evidence and direct evidence, you must not convict unless you are satisfied beyond a reasonable doubt of the defendant's guilt. When the evidence in a case consists exclusively of circumstantial evidence, the rule is that, assuming every fact to be proved that the evidence tends to prove, in order to convict it must eliminate every reasonable explanation of innocence. I want to impress upon you that the opening statements and closing arguments of counsel for both the State and the accused are not evidence in this case. The evidence in this case consists of the sworn testimony of the witnesses who have testified from this chair, from stipulations and from those physical items exhibited to the jury panel. It is on this evidence that you must decide this case. You must consider all the sworn testimony and the stipulations which you have heard and you may draw reasonable inferences from this testimony. In other words, you're not required to rely upon the statements of the witnesses. You may draw inferences from the testimony so long as the inferences are reasonable. An inference is merely something that you conclude to be logical and reasonable from all the facts which have been proven. It is the application of common sense to the testimony which has been introduced. Certain testimony may bring with it certain inferences which common sense leads you to believe you must necessarily follow. You're entitled to draw these inferences from other facts which you have found to be proven. Any

questions to which objection may have been sustained must be entirely disregarded by you. If I sustain an objection, you are not to speculate as what the evidence would have been had I overruled the objection. The question of sustaining or overruling an objection is purely a legal matter that addresses itself to the Court, and it is a matter of concern between Court and counsel and not between counsel and the jury. You are to pay no attention to an objection as to whether it was sustained or overruled. As previously stated, the jurors are the sole judges of the credibility of the witnesses and the weight you wish to give to their testimony. You must carefully examine the testimony that has been given in this case, the circumstances under which each witness has testified and everything in evidence which tends to indicate whether a witness is worthy of belief. You must consider each witness's intelligence, his motive in giving his testimony, his demeanor while on the witness stand, any relationship which the witness may bear to either side of the case, the manner in which the witness may be affected by the verdict and the extent, if at all, to which the witness is either supported or contradicted by other evidence in the case. The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised and no inference of any kind may be drawn from his failure to testify. However, a defendant may, if he so chooses, to take the witness stand. A defendant who wishes to testify is a competent witness, and his testimony is to be judged and weighed by you in the same manner as that of any other witness. Ladies and gentlemen, you are charged in the language of Article 8 of the Louisiana Criminal Code, that criminal conduct consists of, one, an act or failure to act that produces criminal consequences and which is combined with criminal intent. You are further charged in the language of

Article 23 of the Louisiana Criminal Code that parties to crimes are classified as follows: principals and accessories after the fact. Article 23 of the Louisiana Criminal Code defines principals as all persons concerned in the commission of a crime, whether present or absent and whether they directly commit the act constituting the offense, aid and abet in its commission or directly or indirectly counsel or procure another to commit the act are principals. Principals are of two kinds, those who are actual perpetrators of the crime and those whose presence or absence -- those who are present or absent but who directly aid or abet in its commission or directly or indirectly counsel or procure another to commit the crime. Thus, one who by an act tending to facilitate the execution of the crime and acts with the knowledge and intent to aid his accomplice in his unlawful design is also a principal in the eye of the law and is equally guilty with the actual perpetrator of the offense. In other words, what one does through another's agency is to be regarded as done by himself, and one who procures the commission of a crime is a principal. To constitute a man a principal, he must actually counsel, assist, encourage, aid and abet his accomplice in the perpetration of the crime. Count one of the indictment here charges second degree murder. I'm going to read you the legal definition as contained in the Criminal Code of the pertinent statutes. Article 29 of the Code of Criminal Procedure defines homicide as follows: homicide is the killing of a human being by the act, procurement, or culpable omission of another. Criminal homicide is of four grades, first degree murder, second degree murder, manslaughter, and negligent homicide. The defendant in this case has been charged with the crime of second degree murder in count one. Article 30.1 reads in part as follows -- I'll read all of 30.1. Second degree murder is the killing of a human being when the

offender has a specific intent to kill or to inflict great bodily harm or when the offender is engaged in the perpetration or attempted perpetration of aggravated arson, aggravated burglary, aggravated kidnapping, aggravated escape, armed robbery, simple robbery, even though he has no intent to kill. Whoever commits the crime of second degree murder shall be imprisoned at hard labor for life and shall not be eligible for parole, probation, or suspension of sentence for a period of twenty years. Article 5 of the Criminal Code provides as follows: whoever commits an offense which includes all the elements of lesser offenses may be prosecuted for and convicted of either the greater offense or one of the lesser and included offenses. In such case where the offender is prosecuted for the greater offense, he may be convicted of any one of the lesser and included offenses. The law also provides that the Court shall instruct you that whenever there are lesser and included offenses to the charge, the jury cannot convict the accused of any degree of the crime charged unless it is convinced beyond a reasonable doubt that the accused has been proven guilty of that particular degree of the offense. There is one lesser and included offense in the crime of second degree murder and that is manslaughter. Now, manslaughter being a lesser included offense, I'll read the legal definition of manslaughter contained in Article 31 of the Criminal Code. Manslaughter is a homicide which would be murder under Article 30 or 30.1, but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled or that an average person's blood would have cooled at the time the offense was committed or, two, a homicide committed without any intent to cause death or great

bodily harm. Manslaughter also covers when the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Articles 30 and 30.1 or in any intentional misdemeanor directly affecting the person or when the offender is resisting lawful arrest by means or in a manner not inherently dangerous and the circumstances are such that the killing would not have been murder under Articles 30 or 30.1. There are three responsive verdicts that you may render in this case as to count one. First, guilty, which means you have been convinced beyond a reasonable doubt by the evidence that the accused has been proven guilty of second degree murder. Second, guilty of manslaughter, which means that you have a -- that you have a reasonable doubt as to whether or not the accused has been proven guilty of second degree murder but you do not have a reasonable doubt that he is guilty of manslaughter, and the third verdict is not guilty, which would mean that you have a reasonable doubt that he's been proven guilty of second degree murder or manslaughter. Article 10 of the Criminal Code gives a legal definition of criminal intent. Criminal intent may be specific or general. Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. General criminal intent is present whenever there is specific intent and also where the circumstances indicate that the offender, in the ordinary course of human experience, must have averted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. In this case second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. Therefore, specific criminal intent is an essential element of the crime charged which must be proven to your satisfaction and

beyond a reasonable doubt; but since intent is not an objective thing, it is a subjective thing within the mind, you may infer from the circumstances surrounding the transaction. In count two of the indictment, the defendant in this case is charged with armed robbery. Article 64 of the Louisiana Criminal Code defines armed robbery as follows: the theft of anything of value from the person of another or which is in the immediate control of another by the use of force or intimidation while armed with a dangerous weapon. Thus, you will note that to constitute the offense, the State must prove beyond a reasonable doubt the following elements: a theft, one; two, anything of value; three, from the person of another or which is in the immediate control of another; four, by the use of force or intimidation; and five, while armed with a dangerous weapon. Article 67 of the Louisiana Criminal Code defines theft as follows: the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential. In the language of Revised Statute 15:445, I instruct you that, though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. Louisiana Criminal Code Article 2, Subsection 2, states that anything of value must be given the broadest possible construction, including any conceivable thing of the slightest value, movable or immovable, public or private, including transportation, telephone, telegraph services or any other service available for hire. It must be considered in the broad, public sense of the phrase and not necessarily as synonymous with the traditional legal term of property. The taking or misappropriation of the thing of

value from the other must be by force or intimidation; that is to say by violence or putting in fear. Where force or violence is relied upon as constituting the offense, there must be violence to the person. That force must be something more than the mere force involved in taking the thing of value without resistence, but the degree of force is immaterial if the violence used is a means by which the property is taken. If in the taking any resistence is overcome, the offense is complete. The force or violence must proceed or accompany the taking if it is to be used. After the taking is not sufficient. Where the taking -- where the thing of value is taken by means of intimidation or putting in fear, the offense is complete if the thing being taken. By placing the prosecution witness in fear of some personal harm, it is not necessary that the actual or threatened violence from which fear results is to be procured -- is to be procured from the thing of value. Let me read that again. It is not necessary that the actual or threatened violence for which fear results be to procure the thing of value. It is enough that the thing of value be parted with the assailant -- with to the assailant as a result of such fear, but the parting with the thing of value must be the consequence of the fear. In order to constitute the offense, the thing of value need not be taken from the person of the victim. It is sufficient if it be taken from his immediate control. In other words, the thing taken need not be taken in actual contact with the person or the one from whom it is taken. If the thing taken is taken away from the owner, yet is under his immediate control; for instance, in his house or in his apartment, the offense would be complete if the other elements of the crime are present. Robbery is of two types, simple or aggravated; that is, it is an aggravated form of theft. Theft, with the added elements of the taking from the person or the immediate control or

the immediate presence of another by force or intimidation. In order, therefore, that the crime of robbery be complete, it is necessary, as in theft, that the accused should have taken a thing of value from the victim. The taking must have been with the intention to depriving the other permanently of the thing of value and with the intention of appropriating it to the taker's own use. In plain words, it must be taken by the accused with the intention of stealing it. The thing of value must have some value, but the greater or lesser value is immaterial. Unlike theft, the punishment for this crime is not dependent upon the value of the thing taken. It must be proved that the thing taken belonged to another and not to the accused, for no one can steal from himself. The taking of the thing, as in theft, must be against the owner's will. The term, dangerous weapon, is defined in Article 2, Subsection 3 of the Criminal Code to include any gas, liquid or other substance or instrumentality, which in the manner used is calculated or likely to produce death or great bodily harm. The test is not whether the weapon is inherently dangerous but whether it is dangerous in the manner used. Whether the weapon used is dangerous within the meaning of the law is a question for the jury to determine upon properly considering the character of such weapon and by whom and upon whom used and in what manner used. Thus, it has been held that an iron bolt, a rod, or a pin, an ax, a pocketknife or a razor, a large piece of timber, brick or such objects might each be a dangerous weapon depending upon the manner used and whether it is used -- the object might be calculated or likely to produce death or great bodily harm. Since simple robbery is one of the responsive verdicts of the charge in this case in count two and a lesser and included offense within the purview of Article 5, which I read to you in connection with count one, I will now read to you Article 65 of the Criminal Code which defines the

crime of simple robbery. Simple robbery is the theft of anything of value from the person of another or which is in the immediate control of another by use of force or intimidation but not armed with a dangerous weapon. You have heard in this case a stipulation. A stipulation is an agreement between the parties as to what the evidence would have been had that witness testified. With reference to a confession or inculpatory statement, it must be the free and voluntary statement of the person in question and the jury should determine from the evidence and the circumstances surrounding said statement whether it was or was not the free and voluntary act of the defendant. The burden is on the State to prove to your satisfaction and beyond a reasonable doubt that the statement was the free and voluntary act of the defendant; and if the free and voluntary character of said statement is not established beyond that degree of proof, then it is your duty to disregard that statement entirely. As to a confession, the law is that when such a statement has been admitted in evidence, it is for the jury to determine the weight and the effect of such statement. The jury should consider said statement together with all other evidence in the case and in determining the weight and effect of said statement and the bearing that it may have or may not have on the issues involved in this case, the jury should take into consideration all of the circumstances under which the statement was made. If the confession is disregarded, it becomes your duty as jurors to consider all the other evidence in the case without reference to the confession; and if all the other evidence in the case establishes to your satisfaction and beyond a reasonable doubt, the guilt of the defendant, then you should return a verdict of guilty; but, if after considering the other evidence in the case, you have a reasonable doubt, then you should give the defendant the benefit of that doubt and acquit him.

If you find from the evidence that the statement in question was made in response to questions and while the person was under arrest or in close confinement, those facts and circumstances should be considered by the jury in weighing and determining what affect should be given said statement, but the law is that such circumstances are not of themselves -- do not of themselves render such statement involuntary and of no value in evidence. It is the function of the trial judge to pass upon the admissibility of evidence and not the function of the jury to do so. You may disregard the alleged statement by the defendant if you are satisfied beyond a reasonable doubt that it was a free -- if you are not satisfied beyond a reasonable doubt that it was a free and voluntary act; but in regard to all other types of evidence, it is the function of the jury to consider all of the evidence in the case that has been offered, both by the State and the defense, and to give the evidence such credence and such weight that you think it is entitled to and to draw from it such conclusions as you deem logical and reasonable. Revised Statute 15:495 concerning impeachment reads as follows: evidence of conviction of crime but not of arrest, indictment or prosecution is admissible for the purpose of impeaching the credibility of the witness; but before evidence of such former conviction can be adduced from any other source than the witness whose credibility is to be impeached, he must have been questioned on cross-examination as to such conviction and have failed distinctly to admit same; and no witness, whether he be defendant or not, can be asked on cross-examination whether or not he has ever been indicted or arrested and can only be questioned as to conviction as provided herein. If, after having heard all the evidence in this case and giving such weight as you think it deserves, you believe that the State has proved the defendant's guilt to your

satisfaction and beyond a reasonable doubt in accordance with the bill of indictment which has been read to you and the codal articles which I have just read to you, then it is your sworn duty as jurors to being in a verdict of guilty as to each count. If, on the other hand, you are not convinced beyond a reasonable doubt that the State has proven the guilt of the accused as charged under the bill of indictment but convinced beyond a reasonable doubt the State has proven the guilt of the accused to a lesser included offense, then it is your sworn duty as jurors to being a verdict of guilty to said lesser included offense. There's one in each count. On the other hand, after having consider all the evidence, you believe the State has failed to prove any of the essential elements of the crime charged against the accused or any of the lesser included offenses in accordance with the count in the bill of indictment to your satisfaction and beyond a reasonable doubt, then it is your sworn duty as jurors to bring in a verdict of not guilty. The verdict which you return in this case must represent the considered judgment of each individual juror. In order to render any responsive verdict under this charge in either count, it is necessary that ten of you agree. It is your duty as jurors to consult with one another and deliberate until you have reached a verdict, if you can do so without violating your own individual judgments. Each of you must decide the question of guilt or innocence for yourself, but you are to do so only by an impartial consideration of the evidence that you have heard on the witness stand. In the course of your deliberations, do not hesitate to reexamine your views, change your opinions if you are convinced it is erroneous; but no one is being asked to give up an honest conviction or an honest belief he or she may have as to the guilt or innocence of the defendant. You are not to surrender your honest conviction as to the weight or the effect of

the evidence solely because of the opinions of your fellow jurors or merely for the purpose of reaching a verdict. Upon retiring to the jury room, you will select from among you one to serve as the foreman. I have prepared and will present to you a list to take to the jury room. This is a list of responsive verdicts. It reads: as to count one, second degree murder, guilty; guilty of manslaughter; not guilty. As to count two, armed robbery, it reads, guilty; guilty of simple robbery; not guilty. The law requires that I prepare a list of these responsive verdicts. I have prepared this list and will give it to you. After you have reached a verdict, the foreman will write on the back of the list of responsive verdicts, beneath the word, verdict, he will sign his name and beneath his name he will sign the word, foreman. Beneath that he will sign the date. I have provided a form which reads, we the jury find the defendant -- I have his name; I have the count and a blank. The foreman will fill in in count one the verdict of the jury in that first blank. Count two, the foreman will fill in the verdict of the jury in the second blank. The foreman will then date it, sign his name, and the word, foreman. After you have reached a verdict, you will knock on the door and the bailiff will summon the rest of us to court. We'll reconvene court to receive the verdict of the jury. Prior to this time, I have admonished you not to discuss the case. It is now your duty to do exactly that, discuss the case and to reach a verdict. You will now retire and deliberate with a view towards reaching a verdict, all except for Mr. McCue.

(The jury retired to deliberate.)

THE COURT: May we excuse Mr. McCue at this time?

(Reporter's note: Mr. Charles McCue, alternate juror, was excused at this time.)

THE COURT: Gentlemen, were there any objections to the charge or any additional charges you wish to give me?

MR. PEREZ: No objections.

MR. BRANTLEY: We have no objection, Your Honor.

THE COURT: Court be at recess.

(A recess was declared, and at 5:15 p.m. Court reconvened, the jury having requested further instructions from the Court.)

MR. BRANTLEY: Your Honor, it's my understanding the jury has requested certain . . .

THE COURT: Are we on the record?

THE CLERK: Yes, sir.

MR. BRANTLEY: And that the defendant is not present. We would like to waive the defendant's presence when the jury is brought back into the room for the purpose of giving them some or whatever evidence they're entitled to take back in. We do waive his presence at this time.

THE COURT: Any objection?

MR. PEREZ: No objection.

THE COURT: Bring the jury back in.

(The jury was brought into the courtroom; the polling waived.)

THE COURT: Are you the foreman, sir? As spokesman of the jury, I understand you have a question relative to some physical evidence which you wish?

THE FOREMAN: Yes, sir, we do.

THE COURT: What is it you desire?

THE FOREMAN: We would like to have the transcript of the tapes that were taken, first and second tapes that were introduced into evidence and also the photographs of the Marshall Bond farm, so that we as a jury might get the perspective in exactly where the Bond car was and where the defendant's car was in relation to where the incident took place.

THE COURT: With regard to anything that would amount to testimony, you'll recall in my opening remarks to the jury, I said you could not take notes and with regard to

anything that was said, that would constitute testimony, you have to rely on your memory. In fact, Article 793 says a juror must rely upon his memory in reaching a verdict. He shall not be permitted to refer to notes or have access to any written evidence. Testimony shall not be repeated to the jury. Upon the request of a juror and in the discretion of the Court, the jury may take with it or have sent to it, any object or document received in evidence when a physical examination thereof is required to enable the jury to arrive at a verdict. I will permit the jury to take with it all of the photographs and drawings and the forms that were introduced into evidence. That is all I will permit the jury to have. Any other questions?

THE FOREMAN: I don't believe we have any.

(The jury retired to deliberate.)

* * * * * * * *

I hereby certify that the above is a true and correct transcript of the proceedings in this matter, to the best of my ability and understanding.

Baton Rouge, Louisiana, this 28th day of February, 1977.

Jo Ann Canella,
Reporter

C E R T I F I C A T E

STATE OF LOUISIANA : 19th Judicial District Court

PARISH OF EAST BATON ROUGE : . . . Clerk's Office . . . .

. . . . . .

I, Dawn Oliver, Deputy Clerk of the aforesaid Court, do hereby ceritfy that the foregoing Five Hundred and Two (502) pages (comprising volumes I and II) contain a true, correct and complete transcript of all pleadings and documents filed, evidence adduced, and proceedings had in said Court; all exhibits to remain in the Office of the Clerk of Court; in the cause wherein State of Louisiana is the plaintiff and Kenny Wayne Whitmore is the defendant, said cuase being No. 5-75-8614 on the docket of the Nineteenth Judicial District Court;

IN FAITH WHEREOF, witness my official signature and seal, at the City of Baton Rouge, Louisiana this 29th day of April 1977.

Dawn Oliver

DEPUTY CLERK OF COURT

AFFIDAVIT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the aforesaid Parish and State, personally came and appeared:

Aldreaner ~~**Aldrenia**~~ **Hawkins**

who, after being duly sworn, did depose and state the following:

1. I am a competent person of the full age of majority and provide this information based on my own personal knowledge.

2. On August 15, 1973 I was 13 years old and I lived at 4250 Shaffett Lane in Zachary, Louisiana 70791.

3. Around sundown on the day Marshall Bond was killed, I remember hearing the ambulance sirens.

4. When I heard the sirens, I came outside of my house. The ambulance had just passed.

5. When I was outside of my house I saw Kenny Whitmore standing in his driveway.

NOTARY PUBLIC
OFFICIAL SEAL
MICHELLE M. RUTHERFORD
LA BAR NO. 136749
NOTARY PUBLIC - ATTORNEY
ENTIRE STATE OF LOUISIANA
COMMISSIONED FOR LIFE

EXHIBIT
H

6. I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 14, 2014

Baton Rouge, Louisiana

By: _____

~~Aldrenia~~ Hawkins

Aldreaner

6834 Homewood Dr

Baton Rouge, LA 70811

SWORN TO AND SUBSCRIBED before me this 14 day of June, 2014.

_____

Notary Public

Michelle Rutherford

My commission is for Life

Notary ID# 136749

OFFICIAL SEAL
MICHELLE M. RUTHERFORD
LA BAR NO. 136749
NOTARY PUBLIC, ATTORNEY
ENTIRE STATE OF LOUISIANA
COMMISSIONED FOR LIFE

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AFFIDAVIT

PARISH OF EAST BATON ROUGE **STATE OF LOUISIANA**

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the aforesaid Parish and State, personally came and appeared:

Michael Ghoram

who, after being duly sworn, did depose and state the following:

1. I am a competent person of the full age of majority and provide this information based on my own personal knowledge.
2. Within the week after Marshall Bond was killed, I was confronted by law enforcement detectives.
3. At the time, I was staying with Ms. Carrie Franklin at her house in Baton Rouge. The detectives came to Ms. Franklin's house and took me to downtown Baton Rouge for questioning and a lie detector test.
4. These officers pressured me to say that a man named Ralph Ball paid me to murder Marshall Bond. I did not then and do not now know anyone named Ralph Ball.
5. When I took the lie detector test, one detective kept kicking me on my leg as I was answering questions. I believe he was trying to get me to say something I did not know.
6. I took two polygraph examinations that night.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 23, 2014
Baton Rouge, Louisiana

By: Michael Ghoram

Michael Ghoram

SWORN TO AND SUBSCRIBED before me this 23rd day of July, 2014.

Notary Public

Emily H. Posner, LA Notary ID#138634
My commission is for life

EXHIBIT
I

AFFIDAVIT

PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the aforesaid Parish and State, personally came and appeared:

David Rogers

who, after being duly sworn, did depose and state the following:

1. I am a competent person of the full age of majority and provide this information based on my own personal knowledge.
2. A few days after Marshall Bond was killed, I was humping hay at Mack O'Brian's field in Zachary, Louisiana. Detectives came to the field and asked that I go with them for questioning.
3. My boss said it was ok for me to go with the officers, so I went in one of their vehicles to downtown Baton Rouge.
4. While downtown I was questioned and given a polygraph test.
5. After the polygraph test, the officers asked me if Ralph Ball paid me to kill Marshall Bond. I did not then and do not know now anyone named Ralph Ball.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 23, 2014
Baton Rouge, Louisiana

By: David Rogers
David Rogers

SWORN TO AND SUBSCRIBED
before me this 23rd day of July, 2014.

Notary Public

Emily H. Posner, LA Notary ID#138634
My commission is for life

EXHIBIT
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STATE of LOUISIANA

EAST FELICIANA PARISH

Affidavit of Kenneth Wayne Whitmore

1. I am a competent person of the full ages of majority & provide this information based on my own personal knowledge.

2. I was arrested February 19, 1975 and placed in the East Baton Rouge Parish Downtown jail.

3. That Friday, February 21, 1975 I was transferred to the prison by the airport.

4. About 1-2 days after being at the airport prison, another inmate started a fight with me over a blanket.

5. During this fight I was kicked in the head 6-7 times. A scar on my face split back open, and I was bleeding. I had a headache for at least 24 hours after the fight & was dizzy.

6. The prison guards escorted me to what people called the dungeon, immediately after the fight. I was not given treatment for my injuries.

There was no light in the dungeon. My clothes were taken from me and I was placed

OFFICIAL SEAL
ELLE M. RUTHERFORD
LA BAR NO. 13624
PARISH PUBLIC ATTORNEY
STATE OF LOUISIANA
COMMISSIONED FOR LIFE

EXHIBIT
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7. (continued) in the dungeon with 6-8 other inmates. They also had no clothes. There was a hole in the floor for the bathroom. The room was about 9 feet by 6 feet - not much bigger than my current solitary confinement cell.

8. Because there was no bathroom, we did not eat. I was in the dungeon for 1 and a half to two days. The entire time I was there I only slept about 45 minutes to one hour.

9. In the middle of the night, about 1 and a half to two days after being put in the dungeon, Ossie Brown, the jail Captain came to get me. I was given my clothes and taken down the hall to the interrogation room, next door to the drunk tank.

10. Ossie Brown talked to me in that room for almost an hour. I remember a Captain Hughes standing near the door.

11. Ossie Brown told me he needed me to help him, that he knew I was not involved with the robberies for which I had been arrested. He told me he was the only one who could help me. He asked me if I knew Marshall Bond. When he asked me if I knew he had been killed I told Ossie Brown I heard Mr. Bond had

NOTARY PUBLIC
OFFICIAL SEAL
MICHELLE M. RUTHERFORD
LA BAR NO. 13574
NOTARY PUBLIC - ATTORNEY
ENTIRE STATE OF LOUISIANA
COMMISSIONED FOR LIFE

11. (continued) been shot. Ossie Brown continued to tell me he was the only one who could help me. He had a piece of paper on the table during our conversation. I believe it contained the information he wanted me to say. He wanted me to sign this paper. I did not.

12. Ossie Brown told me that Mr. Donahue had told him that me and Donahue had visited Mr Bond the day he was killed. I told Ossie Brown many times I did not know anything about Marshall Bond's death. I asked many times for a lawyer. Ossie Brown told me I did not need a lawyer.

13. Ossie Brown told me "anything I say you did, you did." and that his word was three times mine. Ossie Brown told me that if I helped him, he would help me.

14. After we talked, Ossie Brown told me he wanted me to talk with another District Attorney, Warren Hebert, and two detectives.

During our conversation, Ossie Brown had me call my mother. He gave me either a nickel or a quarter to call home. Ossie Brown told me to ask her. My mother told me Mr. Donahue had been arrested along with Mr. Kemp & Perry Scott.

[What had happened in Zachary on Monday]

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OFFICIAL SEAL
STEPHEN HEBERT
NOTARY PUBLIC
ATTORNEY
LOUISIANA
LIFE

16. When I was in the Taylor Building at night or in the afternoon, sometime before I took a polygraph test, I was asked what size shoe I wore by a plain clothes detective. I told him I wore a 7½ or 8.

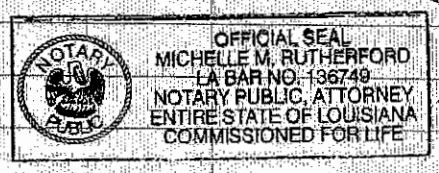
Before me, the undersigned Notary public came and appeared

X Kenn Whitmore 86468

Kenneth Whitmore 86468

who, after being duly sworn, did depose and state the above.

SWORN TO AND SUBSCRIBED before me this 28th day of July 2014.



STATE OF LOUISIANA : No. 5-75-8614

VS. : At 1:42 p.m. Court reconvened. The accused

KENNETH WAYNE WHITMORE : was present in Court, represented by counsel.

. . . . . : The jury was returned to the courtroom; the polling thereof waived by counsel for the accused and for the State. The introduction of evidence was resumed and concluded. The case was argued to the jury by counsel for the accused and for the State, and the Court charged the jury as to the law applicable in the case.

At 4:50 p.m. the twelve jurors retired to deliverate. At this time the Court thanked Mr. Charles McCue, the alternate juror in this case, for se-ving in this case and Mr. McCue was finally discharged.

At 5:15 p.m. the jury returned to the courtroom; the polling thereof waived by counsel for the accused and for the State. The defense counsel waived the presence of the accused at this time. The jury through its foreman requested of and received further instructions from the Court.

At 5:20 p.m., the jury again retired to deliverate. Court reconvened at 6:40 p.m., the accused being present in Court, represented by counsel. The jury was returned to the courtroom; the polling thereof waived; and through its foreman rendered the following verdict: "As to Count I, Guilty; as to Count II, Guilty. (sgd.) Mark Terrance Hoychick, Foreman." Upon instructions from the Court, the Clerk then polled the members of the jury by asking each member, "Mr./Ms. (name), is that your verdict?" Ten of the twelve members of the jury replied in the affirmateive, and two of the twelve members of the jury replied in the negative.

The Court ordered the verdict filed, thanked the members of the jury for serving in this case, and all were finally discharged. The Court ordered a presentence investigation on the accused and deferred sentencing pending receipt of the presentence report.

The accused was remanded to the custody of the Sheriff to await sentencing.

THURSDAY, MARCH 3, 1977

The Nineteenth Judicial District Court, Criminal Section I, Honorable John S. Covington, Judge presiding, was opened pursuant to adjournment.

STATE OF LOUISIANA : No. 5-75-8614

VS. : THE HONORABLE DOUGLAS M. GONZALES ASSUMED THE

KENNY WAYNE WHITMORE : BENCH AND THE FOLLOWING:

. . . . . : Charges: Second Degree Murder and Armed

EXHIBIT
tabbies
L

ARREST REPORT

SHERIFF'S OFFICE

EAST BATON ROUGE PARISH, LOUISIANA

	(Information)	(For Office Use Only)
	File No. 73-15483	Tran. 002 004
ATTEMPT	Yes ____ No ____	0
CHARGE(s)	Specify: Murder & Armed Robbery	01 00 09 03 01 01
DATE & TIME	Day of Week Wednesday Month February Day 26 Year 1976 Hour 1910	07-2
LOCATION	Street Number EBR Parish Courthouse Street Name Zone	171 3836 B
ACCUSED	First Initial or Name Kenny Second Initial or Name Wayne Last Name Whitmore Suffix First Name Kenny	
ALIAS	First Initial or Name Second Initial or Name Last Name Suffix First Name	
RESIDENCE	Number & Street 5314 Rollins Road City & State Zachary, Louisiana	
JACKET NO.	(To be filled in by R. & I. Division)	
DATE OF BIRTH	Month October Day 14 Year 1954	
PLACE OF BIRTH	City & State New Orleans, Louisiana	
DESCRIPTION	Age 20 Race C Sex M	20 2 1
F.P.C.	(To be filled in by R. & I. Division)	1

ORTLICB PRESS 7171

EXHIBIT M

001

NUMERICAL IDENTIFIERS	Social Security No. [redacted] Driver's License No. La. 2411765 Selective Service No. Other, Specify:	
TYPE OF ARREST	(To be filled in by R. & I. Division)	
INVESTIGATING OFFICER(s)	1. Lt. Carson Bueto (0507) Division Detective 2. Sgt. Louis Russell (2380) Division Detective Chief P.V. Browning (0469) Zachary, P.D	

Detailed Report:

Whitmore was arrested on above charge after he was advised of his rights and signed a Your Rights Form. Whitmore gave a complete taped statement, detailing his participation in the murder and armed robbery of Marshall Bond, WM, on August 15, 1973.

More details to follow.

SEE ARREST OF MISTER DONAHUE, CM, same file number.

SEE OFFENSE REPORT, FILE # 73-15483, dated August 15, 1973.

Lt. O.C. Bueto/jmt

Date of Report 2/26/75 Approved by /s/ Lt. R.M. Carr
(Commanding Officer)

FOR OFFICE USE ONLY

Received by ____ Typed by ____	Type ____ F.P. Jacket ____ Juv. Div. ____
Stamped by ____ Corrected by ____	Det. Div. ____ D. A.'s Office ____
Checked by ____ Distributed by ____	Auto Theft ____ Coroner ____
Coded by ____ Filed by ____	City Court ____ Other ____, Specify: ____

ARREST REPORT

SHERIFF'S OFFICE

EAST BATON ROUGE PARISH, LOUISIANA

	(Information)	(For Office Use Only)
	File No. 73-15483	Tran. 002 004
ATTEMPT	Yes ____ No ____	0
CHARGE(s)	Specify: Murder & Armed Robbery	01 00 09
		03 01 01
DATE & TIME	Day of Week Wednesday	
	Month February	
	Day 26	
	Year 1975	
	Hour 1910	07-2
LOCATION	Street Number EBR Parish Courthouse	171
	Street Name	3856
	Zone	B
ACCUSED	First Initial or Name Mister	
	Second Initial or Name	
	Last Name Donahue	
	Suffix	
	First Name Mister	
ALIAS	First Initial or Name Boochie-Donut	
	Second Initial or Name	
	Last Name	
	Suffix	
	First Name	
RESIDENCE	Number & Street Route 1 Box 161	
	City & State Zachary, Louisiana (Barnett Cut-off Road)	
JACKET NO.	(To be filled in by R. & I. Division)	
DATE OF BIRTH	Month August	
	Day 28	
	Year 1952	
PLACE OF BIRTH	City & State New Orleans, Louisiana	
DESCRIPTION	Age 22 Race C Sex M	22 2 1
F.P.C.	(To be filled in by R. & I. Division)	1

OATLIER PRESS 7171

NUMERICAL IDENTIFIERS	Social Security No. [redacted]	
	Driver's License No.	
	Selective Service No.	
	Other, Specify:	
TYPE OF ARREST	(To be filled in by R. & I. Division)	
INVESTIGATING OFFICER(s)	1. Lt. Carson Bueto (0507)	
	Division Detective	
	2. Sgt. Louis Russell (2380)	
	Division Detective	
	~~Chief P.V. Browning (0469)~~ Zachary P.D.	

Detailed Report:

Subject was advised of his rights. He said he understood his rights, however refused to sign a Your Rights Form.

Donahue, during questioning, made several statements concerning his envolvement in the murder and armed robbery of Marhsall Bond on August 15, 1973.

SEE ARREST OF KENNY WHITMORE, same file number.

SEE OFFENSE REPORT, dated August 15, 1973, SAME FILE NUMBER.

Full details to follow.

Lt. O.C. BUeto/jmt

Date of Report 2/26/75 Approved by /s/ Lt. R.M. CArr
(Commanding Officer)

FOR OFFICE USE ONLY

Received by ____ Typed by ____	Type ____ F.P. Jacket ____ Juv. Div. ____
Stamped by ____ Corrected by ____	Det. Div. ____ D. A.'s Office ____
Checked by ____ Distributed by ____	Auto Theft ____ Coroner ____
Coded by ____ Filed by ____	City Court ____ Other ____, Specify: ____

PT-E7

Place TAYLOR BLDG, SUITE 412 Date 2-25-75

I, Henry Whitmore, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

L. A. C. Burt
WITNESSED

Henry Whitmore
SEAL (Signature of person to be examined

TIME 7-00 P.M

This examination was concluded at 2130 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

L. A. C. Burt
WITNESSED

Henry Whitmore
SEAL (Signature of person examined)

CONTINUATION SHEET

Date: February 25, 1975 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On February 25, 1975, a polygraph examination was administered to Kenneth W. Whitmore. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Whitmore was telling the truth when he claimed that he and Mister Donahue had Robbed Marshall Bond and that Mister Donahue had been the one who actually beat Marshall Bond to death. (For details, see offense and arrest report number 73-15483) The facts concerning this case were provided this polygraphist by Lt. C.Bueto and Sgt. L.Russell.

Before his pre-test interview, Whitmore signed two copies of a form stating he was taking the tests voluntarily. One copy of this executed form is attached to this report; the other is incorporated as part of our case files.

Throughout this person's polygraph tests on February 25, 1975, there were irregular and erratic reactions to the test questions. Because these reactions are of a type which prevent an analysis from being made, this polygraphist could not render an opinion as to whether or not Whitmore was telling the truth. Nothing this polygraphist said or did could alleviate this problem.

Therefore, it was this polygraphist's recommendation that Whitmore be given the opportunity of taking a polygraph re-examination.

Lt. D.A. Zuelke.

Polygraphist

Investigating Officer(s) Lt. D.A. Zuelke 3032 Code

Approved (COMMANDING OFFICER) Date 2-28-75

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CONTINUATION SHEET

Date: February 26, 1975 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On February 26, 1975, Kenneth W. Whitmore voluntarily came to the polygraph suite for his polygraph re-examination. Prior to his arrival, Whitmore admitted to Sgt. L.Russell that he had lied in his original statement in regards to his participation in the murder of Marshall Bond. Whitemore further stated that he and Donahue robbed Marshall Bond, However, he had been the one who actually killed Marshall Bond by beating him with a tire tool and stabbing him with a screw driver. (For details, see offense report and arrest report number 73-15483)

Again Whitmore signed two copies of a form stating he was taking the examination voluntarily. One copy of this form is attached to this report; the other is incorporated as part of our case files.

In the polygraph recordings, there were definite indications of truthfulness when Whitmore answered "Yes" to the following listed questions.

1) "Did you and Mister Donahue robb Mr. Bond?"

2) "Did you beat Mr. Bond with a Jack Handle?"

3) "Did you and Mister Donahue steal Mr. Bond's wallet?"

4) "Did you stabb Mr. Bond with a screw driver?"

It is the opinion of this polygraphist that Whitmore is telling the truth to the above listed questions.

Lt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Lt. D.A. Zuelke 5093 Code

Approved [signature] (COMMANDING OFFICER) Date 2-28-75

BATON ROUGE PRINTING CO., INC.

PT. 57 REEXAM

Place TAYLOR BLDG, SUITE 412 Date 8-26-75

I, Henry Whitmore, voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

Roger V. Browning
WITNESSED

Henry Whitmore
SEAL (Signature of person to be examined

TIME 11:41 AM

This examination was concluded at 1215 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

Roger V. Browning
WITNESSED

Henry Whitmore
SEAL (Signature of person examined)

PT-57

Place TAYLOR BLDG, SUITE 412 Date 2-26-75

I, [illegible] voluntarily -- without threats, duress coercion, force, promises of immunity or reward -- agree and stipulate to take a polygraph (truth-verification) examination.

I fully realize that: I am not required to take this examination, I may remain silent the entire time I am here, anything I may say can be used against me in any court of law, I may first consult with an attorney or anyone I wish to before either signing this form or taking the examination, I may have an attorney present, if I cannot afford an attorney and desire one an attorney will be appointed for me prior to any questioning, and I have the opportunity to exercise all these rights at any time I wish to during the entire time I am here. Nevertheless, I consent to the use of electronic hearing and recording devices, and I voluntarily request and authorize the East Baton Rouge Parish Sheriff's Office to now proceed with the actual examination.

I do hereby authorize the East Baton Rouge Parish Sheriff's Office to disclose both orally and in writing the examination results and opinions to the appropriate governmental agency or agencies.

I represent that not only am I in good mental and physical condition but that I know of no mental or physical ailment which might be impaired by the examination.

[illegible] [illegible]

WITNESSED SEAL (Signature of person to be examined

TIME 3:20 PM

This examination was concluded at 1734 on the above date. During the entire time I was well-treated, submitted myself freely to the examination knowing that I could stop any time I so desired.

[illegible] [illegible]

WITNESSED SEAL (Signature of person examined)

CONTINUATION SHEET

Date: February 26, 1975 | File No. 73-15483

ADDITIONAL INFORMATION to above file number.

On February 26, 1975, a polygraph examination was administered to Mister Donahue. This examination was conducted at the polygraph suite, 251 Florida Blvd., Suite 412. The main issue under consideration was whether or not Donahue was telling the truth when he claimed that he had no guilty knowledge of nor did he participate in the robbery and Murder of Marshall Bond.(For details, see offense and arrest report number 73-15483) The facts concerning this case were provided this polygraphist by Lt. C.Bueto and Sgt. L.Russell. These two deputies were present in the polygraph suite during the entire polygraph examination of Donahue.

Before his pre-test interview, Donahue signed two copies of a form stating he was taking the tests voluntarily. One copy of this executed form is attached to this report; the other is incorporated as part of our case files.

In the polygraph recordings there were significant emotional disturbances, which are usually indicative of deception, when Donahue answered "No" to the following listed questions:

1) "Do you know for sure who murdered Mr. Bond?"

2) "Did you murder Mr. Bond?"

3) "Did you robb Mr. Bond?"

4) "In anyway, did participate in murdering Mr. Bond?"

It is the opinion of this polygraphist, based upon Donahue's polygraph examination, that he is not telling the entire truth to the avove listed questions.

Lt. D.A. Zuelke,

Polygraphist

Investigating Officer(s) Lt. D.A. Zuelke 3093 Code

Approved [signature] (COMMANDING OFFICER) Date 2-28-75

BATON ROUGE PRINTING CO., INC.

Date 2/28/75 File No. '73- 15433

SEE ARRESTS - Kenny Wayne Whitmore 2/26/75
Mister Donahue 2/26/75

ADDITION TO MURDER AND ARMED ROBBERY - Marshall Bond, victim.

Sgt. P. Turner transported several items picked up by Dy. John Womack and Richard Smith of Zachary, La. at the Ligon Rd. Park. These included a paint bucket, jack insert (upright), a 10 oz. coke bottle, and some linens. There were also some slips of paper, one of which appeared to be adding machine tape.

Sgt. Turner and Dy. Womack took sample tapes from two multiple key adding machines, one a Burroughs in the custody of Nancy Cobb, and a Sears which is in the custody of Mrs. Marshall Bond. These items were brought to the EBR Courthouse and turned over to Lt. Bueto.

PDT:mjs

Sgt. Turner and Dy. John Womack and Chief of Police Pryor Browning of Zachary also interviewed Edward Stewart Jr., BM, DOB 8/20/51, address General Delivery Ave. Z, Zachary, La. since his name had been mentioned by Kenneth Whitmore. However Stewart denied any knowledge of Whitmore and Donahue having committed the murder of Marshall Bond.

PDT:mjs

Investigating Officer(s) Sgt. P. D. Turner Code

Approved /s/ Capt. P. V. Bonanno Date 3/3/75
(COMMANDING OFFICER)

STROTHER PRINTING

Date February 26, 1975 File No. 73-15483

ADDITIONAL INFORMATION to arrest record of Kenny Whitmore and Mister Donahue dated February 26, 1975, File #73-15483.

On February 24, 1975, Sgt. Louis Russell received information from a confidential source to the effect that the above accused were involved in the murder and armed robbery of Marshall Bond which occurred on August 15, 1973. The confidential source advised Sgt. Russell that Whitmore had told him that he and Donahue had committed the murder and armed robbery of Marshall Bond. Further advising Sgt. Russell that Whitmore described certain events inasmuch as he said that Donahue had used a hold on Mr. Bond that he had learned in the service. Once he placed this hold on Mr. Bond, Mr. Bond was then beaten and robbed.

At approximately 0245 hours, February 25, 1975, Lt. Bueto and Sgt. Russell interviewed Kenny Whitmore in the presence of Warren Hebert of the District Attorney's Office. This interview was conducted at the Parish Prison in one of the interview rooms. At this time, a taped statement was taken from Kenny Whitmore after he was advised of his rights and signed a "your rights" form. During this interview, Kenny Whitmore advised above investigators that he had been with Donahue, on August 15, 1973, and had accompanied him to the scene where Mr. Bond was killed and robbed in Zachary. Whitmore said that he and Donahue had gone to the Bond farm in Donahue's black/white 1969 Ford and that Donahue was driving. As they approached the barn located at the farm, he observed a large brown automobile. He stated that they had parked to the rear and somewhat to the right of this automobile. After parking the car, both of them got out of the car and walked over to to the barn where Mr. Bond was. Whitmore stated that he heard Donahue discussing employment with Mr. Bond and when Mr. Bond turned to go walk back towards the barn, he observed Donahue grab Mr. Bond from the rear and start stabbing him with some sort of a metal object. He stated that he did not know what the object was. During the time Donahue was holding Mr. Bond, Donahue gave Whitmore the keys to the Ford car and asked him to go and get the jack handle from it. Whitmore stated that he returned to the car, removed the jack handle from the trunk and returned to where Donahue was with Mr. Bond. Whitmore stated that as he approached the two of them, Mr. Bond was

Investigating Officer(s) Sgt. L. H. Russell and Lt. O. C. Bueto Code (CONTINUED)

Approved (COMMANDING OFFICER) Date

STROTHER PRINTING

laying on the ground on his right side with his head away from the barn and his feet pointing towards the barn. At this time, Whitmore took the jack handle and struck Mr. Bond once and he stated that he believed that he had hit his left shoulder. After this, Donahue then took the jack handle and started striking Mr. Bond about the head. Whitmore stated that when Donahue started doing this, he backed off eight to ten feet from where Mr. Bond was laying and watched Donahue remove the wallet and money from the pants pocket of Mr. Bond. After this, he and Donahue proceeded back to the automobile and turned around and left the scene. Whitmore further stated that he had gone back to the car before Donahue got to the car and had placed the jack handle back in the trunk and was on the passenger side of the car sitting down when Donahue returned to the car. Donahue took Whitmore back home and the last time that he saw Mr. Bond's wallet, it was laying on the front seat of the automobile. Whitmore stated that while driving from the farm, Donahue gave him a small roll of money which he estimated to be thirty to forty dollars in the denominations of $1's, $5's, and $10's.

At approximately 1400 hours, February 25, 1975, Whitmore agreed to and accompanied Lt. Bueto, Sgt. Russell and Chief of Police Browning to the Barnett Cut-off Road where he viewed and identified a black/white 1969 Ford as being the same vehicle used on the day in question. Search warrant was obtained for this vehicle and a search was conducted by deputies of this office. For details concerning the search warrant, see addition to this report concerning this search warrant.

At approximately 1540 hours, February 25, 1975, Whitmore agreed to and accompanied Lt. Bueto, Sgt. Russell and Chief Browning to the Bond farm where the murder and armed robbery took place. Whitmore reenacted the crime inasmuch as he showed deputies where he and Donahue had parked the car and where Mr. Bond was in regards to the barn. He showed deputies how Donahue had grabbed Mr. Bond and again explained his going back to the automobile and removing the jack handle from the trunk of the car. He also showed above investigators the position Mr. Bond was lying in when he struck Mr. Bond with the jack handle. He showed investigators the position he had taken during the time Mister Donahue was hitting Mr. Bond and removing the money and wallet from his

Investigating Officer(s) Sgt. L. H. Russell and Lt. O. C. Bueto Code (CONTINUED)

Approved _____ Date _____
(COMMANDING OFFICER)

STROTHER PRINTING

pants pocket. He again emphasized the fact that once Donahue quit hitting Mr. Bond with the jack handle, Donahue laid the jack handle on the ground and he had picked up the jack handle and returned to the automobile and put it back into the trunk. During the time Whitmore and above investigators were at the farm, Whitmore again emphasized the fact that he had only received approximately forty dollars from the robbery. He stated, again, that his forty dollars was in a small roll of mostly $1's, $5's, and $10's. He said that he often buys liquor from T & T Liquor and Royal Liquor Stores on La. 19 just north of Zachary, however, doesn't recall if he spent any of the forty dollars at either place during the following days.

IT SHOULD BE NOTED THAT Whitmore was interviewed in reference the spending of the money at Royal Liquor and T & T Liquor Stores because of the fact that several days after Mr. Bond was murdered, Lt. Bueto had received several pieces of currancy from these two liquor stores which contained what appeared to be blood on the bills. These bills were later placed in evidence and turned over to the State Police Crime Lab for examination. After leaving the scene of the crime, Whitmore agreed to take a polygraph test which was given by Lt. Zuelke. For details concerning the polygraph test, see addition to this report by Lt. Zuelke.

At approximately 1040 hours, on February 26, 1975, Whitmore was again interviewed and again advised of his rights at which time he signed another "your rights" form. This interview was also recorded and in which he said his first statement was false as to his participation in the crime. He stated that he was afraid to give the full details when he was first questioned. His second statement was to the effect that he had taken more part in the crime inasmuch as he had hit Bond more than once with the jack handle. He also changed his statement about the money and corrected it by saying that he had received approximately four hundred and fifty dollars and that Donahue had received approximately five hundred dollars. He stated that the stabbing instrument used by Donahue was a yellow handled screwdriver approximately eight to nine inches long having a standard blade. During the questioning of Whitmore at this time, he stated that he believed that the jack handle was removed from the 1969 black/white Ford and put in a faded blue 1964

Chevrolet. He stated that he also believed that this particular screwdriver was also in this 1964 Chevrolet. At this time, a search warrant was obtained for the search of the 1964 Chevrolet. For information concerning this search, see addition to follow.

He said that he and Donahue did not go straight home, that they had driven to a park at Port Hudson and then returned home. After this statement, Whitmore agreed to taking another polygraph test. For results of this test, see addition to this report by Lt. Zuelke.

At approximately 1340 hours, February 26, 1975, Sgt. Russell and Lt. Bueto interviewed Mister Donahue. Before he was questioned, he was advised of his rights, however, he refused to sign a "your rights" form. He further denied any knowledge of the crime and made the statement that someone was trying to frame him. After a brief questioning period, he agreed to take a polygraph test. For the results of this test, see addition to this report by Lt. Zuelke.

After the polygraph test, he was again advised of his rights and refused to sign. Donahue started off by denying any participation in the crime, however, during the questioning period, he made the following statements to Lt. Bueto and Sgt. Russell. He stated that the wallet in question was brown or black and that his share of the money was five hundred dollars. He stated that he drove the car and upon leaving the Bond farm, drove to the Park at Port Hudson. When asked about the wallet, he stated that he had thrown a wallet in a trash barrel at this park. Later in the presence of Lt. Bueto and Lt. Zuelke, Donahue said that he had kept his part of the money in a can which he had placed in a drain. He did not explain or describe the drain. He stated that he would take out twenty to thirty dollars at a time thus preventing any suspicion on his part.

Deputies at this office were asked to go to the park at Park Hudson and conduct a search. However, due to the darkness, nothing was recovered.

On the morning of February 27, 1975, Zachary Police Department Chief Browning instructed his men to conduct a daytime search of the park. During this search, certain physical evidence was recovered. For information concerning this search and the recovery of this evidence,

Investigating Officer(s) Sgt. L. H. Russell and Lt. O. C. Bueto Code (CONTINUED)

Approved _____ Date _____

(COMMANDING OFFICER)

STROTHER PRINTING

Date February 26, 1975 File No. 73-15483

see addition to this report by Assistant Chief of Police, John Womack.

Taped statements and "your rights" forms were placed in Evidence Envelope #11901.

OCB:jt

Investigating Officer(s) Sgt. L. H. Russell and Lt. O. C. Bueto Code

Approved [signature] Date 3-11-75

(COMMANDING OFFICER)

STROTHER PRINTING

Date	2-27-75	File No.	73-15483

SUPPLEMENTAL TO MARSHALL BOND HOMICIDE:

SEE ATTACHED DRAWING OF LIGON ROAD PARK:

Acting upon information received from Ossie Brown, District Attorney, last date, Deputy Womack conducted a systematic search of an area of Ligon Road Park, described to Mr. Brown by Mister Donahue. Before this search was conducted, Deputy Womack explained to Mr. Gene Young, director of BREC, that possible evidence from the Marshall Bond Homicide was believed to be located at the Ligon Road Park. Mr. Young gave deputy permission to do whatever was necessary to obtain such evidence.

Deputy Womack got a work crew from the City of Zachary, supervised by City employee, Larry Rankin, and started in the most southwest corner of the overgrown fence row, going in a easterly direction between the park and the gravel portion of the old Ligon Road. The grounds were carefully weeded and scraped clean, hoping to find some of the items removed from Marshall Bond's person or property at the time of his death. As each recovered item was located, Deputy Womack examined it and preserved such items. One item, a five gallon pail similiar to one used to contain paint was located. Photographs were made of this item showing its location. In the immediate area of this item, deputy also obtained a couple of pieces of badly weathered paper, possibly adding machine tape, similiar to that believed to be contained in Marshall Bond's billfold; also, a dark brown plastic item believed to be a centerfold of a billfold. Deputy Womack contacted subject Charlie Stone, BM, who resides at 2525 Church Street, Zachary, telephone # 654-2069 at approximately 1:20 PM, date, and showed him the pail. Charlie Stone examined it and said, "that there were some pails like that on the Bond farm."

At approximately 5:00 PM, date, Deputy Womack showed the pail to Mr. & Mrs. Louie Baker, Rt. #2, Lower Zachary Road, Zachary, Louisiana, who stated that they did not recognize the pail but that they would probably not know it. They stated that Mr. Leon

Investigating Officer(s) J. A. Womack Code #3115

Approved P. V. Browning - Chief of Police - Zachary, La. Date

(COMMANDING OFFICER)

Date 2-27-75 File No. 75-15483

SUPPLEMENTAL TO MARSHALL BOND HOMICIDE: Page #2

Wales, Jr. would be more familiar with the pail as he used it daily, feeding a horse that he kept on the Bond farm.

Deputy contacted Leon Wales, Jr. at 4279 Roberts Street, Zachary, telephone # 654-5093, at approximately 5:00 PM, date, and showed Mr. Wales the pail. Mr. Wales looked at it and said, "that was the pail," referring to the pail believed missing from the barn on the Bond property.

The above described items were turned over to Sgt. Pete Turner, EBRSO, at the Zachary Police Department by Deputy Womack.

The above described photographs were taken by Deputy Richard E. Smith, Zachary Police Department.

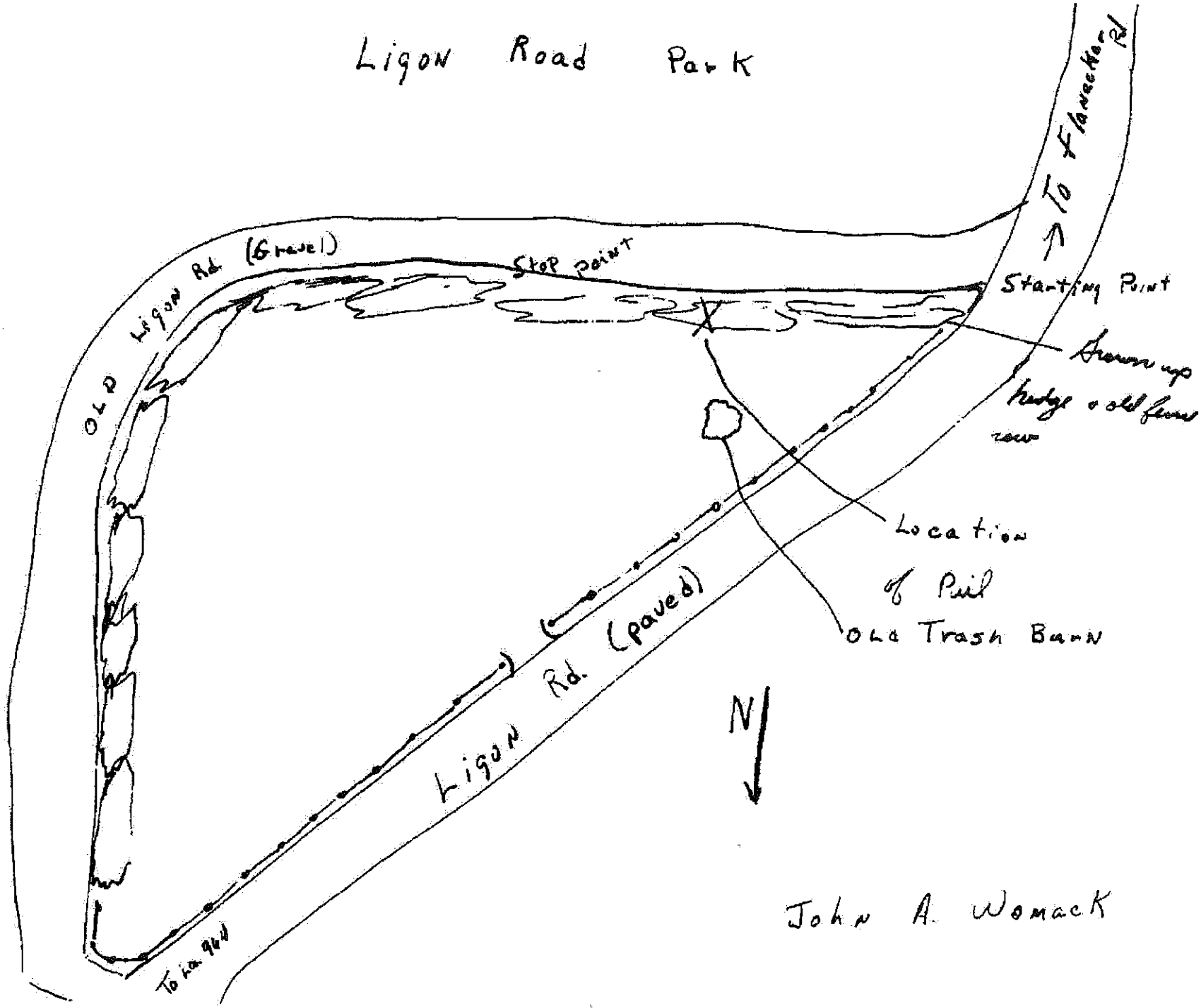
Investigating Officer(s) _____ Code _____

Approved P. V. Browning - Chief of Police, Zachary, La. Date _____

(COMMANDING OFFICER)

STROTHER PRINTING

Ligon Road Park



John A. Womack