

1 next Monday morning we're not going to be meeting in trial.  
2 The Court has a docket call here, but we will take up the  
3 trial at 1 p.m. So we're going to adjourn until that time.  
4 Now, you will recall, I hope, our conversation yesterday  
5 afternoon concerning the admonition. I do want you to take  
6 it seriously as I said. I'm going to read it to you again.  
7 You and each of you are admonished by the Court that it is  
8 your duty not to converse with or suffer yourselves to be  
9 addressed by any person on the subject of this trial nor to  
10 listen to any conversations on the subject. Nor to read or  
11 listen to any news accounts thereon, and it is your duty not  
12 to form or express any opinion thereon until the case is  
13 finally submitted to you. With that, we are adjourned until  
14 1 o'clock on November 6.

(3:24 p.m. adjournment --  
accordingly.)

\*\*\*\*\*

(At 1 p.m on November 6, 1989 with counsel for the  
parties present and the defendant present and the jury IN  
the jury box, the following proceedings were had:)

THE COURT: Gentlemen, are we ready?

MR. SMITH: The State is, Your Honor.

MR. REDMAN: Defense is, Your Honor.

THE COURT: Mr. Smith?

MR. SMITH: We call James Dean to the stand.

JAMES DEAN

~~Called as a witness on behalf of the~~  
plaintiff, having been first duly sworn,  
testified as follows:

40-241  
IN THE DISTRICT COURT OF JEFFERSON COUNTY, NEBRASKA

THE STATE OF NEBRASKA, )

Plaintiff, )

vs. )

JOSEPH EDGAR WHITE, )

Defendant. )

Case No. 9316

Volume V.

BILL OF EXCEPTIONS

Proceedings, testimony

and exhibits

(Pages 846 to 1062 (incl.))

Proceedings had before the HONORABLE WILLIAM. B. RIST, JUDGE,  
on November 3, 1989, November 6, 1989, November 7, 1989 and November 8,  
1989 in Fairbury, Nebraska.

A P P E A R A N C E S

For the Plaintiff:

Mr. Richard Smith  
County Attorney  
Gage County Courthouse  
Beatrice, NE 68310

Mr. Jerry Shelton  
Deputy County Attorney  
Gage County Courthouse  
Beatrice, NE 68310

For the Defendant:

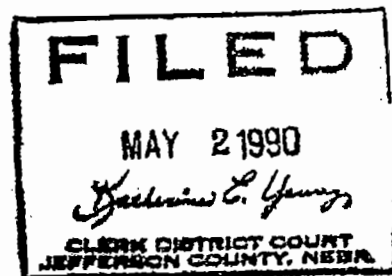
Mr. Toney Redman  
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REPORTER: Kris Keating

SUPREME COURT OF NEBRASKA  
FILED

OCT 5 1990



CROSS-EXAMINATION

1  
2 BY MR. STOLER:

3 Q Have you been following these trial proceedings?

4 A Oh, not real close.

5 Q Do you have access to television or newspapers while  
6 you are in custody?

7 A All except for about the last three, four days.

8 Q You've had television and newspapers except for the last  
9 three or four days?

10 A Yes.

11 Q Have you had occasion to talk with anybody in the jail  
12 complex about this case, sir?

13 A The last time I talked to somebody was yesterday  
14 afternoon, and it was Richard Smith.

15 Q Okay. And that was yesterday afternoon?

16 A Yes.

17 Q And you are represented by counsel in these proceedings,  
18 are you not, sir?

19 A Yes, I am.

20 Q Have you had occasion to discuss the matter with counsel  
21 recently?

22 A Yesterday I had talked to him, too, my attorney and  
23 Richard Smith.

24 Q You talked to them together?

25 A Yes, I did.

Q Did you talk to your attorney separately, sir?

A Yes, I did.

Q When was the time prior to that that you talked to your

1 attorney?

2 A. Approximately a week.

3 Q. Do you know Deb Shelden?

4 A. Yes, I do.

5 Q. How do you know Deb Shelden?

6 A. ~~I met her through some friends and stuff. I just know~~  
her. She's --

7 Q. Have you known her for a period of time?

8 A. Yes.

9 Q. You would recognize her by sight?

10 A. Oh, yes.

11 Q. Have you had occasion to see her recently?

12 A. ~~The last time I seen her was two days prior to my arrest.~~

13 Q. You haven't seen her since then?

14 A. Just pictures of her on T.V. and in the paper.

15 Q. She's been kept in the Gage County Jail, isn't she?

16 A. Yes, she is. That is where she is kept.

17 Q. Do you have occasion to see her?

18 A. No.

19 Q. You haven't seen her at all?

20 A. No.

21 Q. Are you aware that she testified in this trial, sir?

22 A. I knew she was supposed to.

23 Q. Do you know that she did?

24 A. I don't know if she did or not.

25 Q. You said you saw Deb Shelden's picture on television.

Did you also see Joseph White's picture on television?

A. Yes, I did.

1 Q. When was it you first saw it on television, sir?

2 A. Back in March.

3 Q. March of what year?

4 A. 1989.

5 Q. It was prior to your arrest on this matter?

6 A. Yes, it was.

7 Q. And did you see it in the newspaper also?

8 A. I don't recall seeing it in there.

9 Q. But you do remember seeing it on television?

10 A. Yes, I do.

11 Q. When you were first arrested and first talked to by  
12 the police, by law enforcement, you told them that you had  
13 seen Joe White's picture on television, didn't you?

14 A. Yeah, I did.

15 Q. Did they tell you they had Mr. White in their jail?

16 A. I knew they had him in jail.

17 Q. Now, the time in March you're making reference to was  
18 prior to your arrest; is that right?

19 A. Yes, it was.

20 Q. And you do remember -- I think you were just questioned  
21 by the prosecutor about identifying Mr. White.

22 A. Yes.

23 Q. Do you recall at a deposition that you were asked if  
24 you could identify him?

25 A. Yes.

Q. Do you recall what response you gave at that time?

A. Yes, I do. And --

Q. What did you say?

1 A. I said that I didn't know if I could identify him for  
2 sure or not in so many words.

3 Q. Didn't you tell him you wouldn't know him if you saw him?

4 A. I said I probably wouldn't know.

5 Q. Mr. Dean, let's see if this will refresh your  
6 recollection. Let's ask you these questions with your  
7 responses and ask you if you remember doing that in your  
8 deposition. It was taken on July 17, 1989.

9 MR. SMITH: Objection, Your Honor. I think he's  
10 going to ask the witness about his memory of the incident and  
11 then try to refresh his recollection.

12 THE COURT: Well, let's see where it goes.

13 Q. (By Mr. Stoler) Do you recall this question,  
14 "Okay. You told us you don't think you could identify him?

15 A. I wouldn't know him if I seen him."

16 Q. Do you recall giving that response to that question, sir?

17 A. I recall it.

18 Q. But you're telling us now you do recall what he looks  
19 like; is that right, sir?

20 A. Yes.

21 Q. July of this year you can't remember. Now you can. Is  
22 that a fair statement?

23 A. I haven't -- I haven't seen him in person for three  
24 years so --

25 Q. At the time your deposition was taken, were you asked  
that question that you had seen his picture on T.V.?

A. Yes, but pictures look different on T.V. It changes  
things.

- 1 Q What did it change?
- 2 A It just makes things look different.
- 3 Q Do you recall being asked to give a description of this
- 4 man? Did you give a description of him?
- 5 A Yeah, I do believe I did.
- 6 Q What do you recall as far as the description that you
- 7 gave at that time?
- 8 A Oh, approximately he -- I told them he was approxiamately
- 9 6'1, black hair.
- 10 Q Do you recall anything else in that regard?
- 11 A I don't know, sir.
- 12 Q Do you recall telling -- telling us at the one
- 13 deposition that he had brown hair?
- 14 A I could have.
- 15 Q Your recollection now is he has black hair?
- 16 A He's got dark-colored hair.
- 17 Q Is that by seeing him in the courtroom today?
- 18 A He's got dark-colored hair.
- 19 Q As far as how tall he was, do you remmeber saying just
- 20 a little taller than you are?
- 21 A Yes, I do.
- 22 Q How tall are you, sir?
- 23 A I'm 5'9.
- 24 Q And you're estimating his height his height now to be
- 25 6'1?
- 26 A Well, that's a little taller than I am.
- 27 Q Do you recall giving a description about a mustache or
- 28 beard, anything like that, sir?

1 A. I don't recall if I -- If he had one back then. I  
2 think he did.

3 Q. Do you think that he did?

4 A. Yes.

5 Q. Do you recall that at your deposition you didn't recall  
6 him having a mustache or beard?

7 A. Like I say, I don't recall.

8 Q. So the description you gave back in July of this year  
9 would not be as good a description as you're giving now;  
10 is that correct?

11 A. That's correct.

12 Q. Is your memory better now than it was back in July, sir?

13 A. Yes.

14 Q. You've had more dreams about the incident, more  
15 remembrances about it?

16 A. No. I've thought about it and I was wide awake when  
17 I was thinking about it. That's how I come up with what I've  
18 got.

19 Q. You were asked by the prosecutor if you could  
20 differentiate between you dreams and reality. What does  
21 differentiate mean?

22 A. Differentiate means tell the difference.

23 Q. And you told the prosecutor that you could do that?

24 A. Oh, pretty much, yes.

25 Q. You were asked about Clifford Shelden. Do you remember  
being asked about that?

A. Yes, I do.

Q. And you're telling us you have no remembrances



1 that Clifford Shelden was present; is that right?

2 A. That's right.

3 Q Do you recall having a discussion with your attorney  
4 back in August of this year in which you said to him that you  
5 had a flash of memory and you remember seeing Clifford Shelden  
6 standing in the doorway?

7 A. I remember that clearly.

8 Q Do you remember telling that to your attorney?

9 A. Yes, I do.

10 Q This was in August of this year?

11 A. Yeah, I think.

12 Q That came to you from a dream or from reality, sir?

13 A. That came to me from a dream.

14 Q Is that what you told your attorney at that time?

15 A. Yes, it is.

16 Q That you had a flash of memory that Clifford Shelden  
17 was there?

18 A. Not that he was there, that he was in a doorway.

19 Q Did you make reference to the incident involving  
20 [REDACTED] when you told your attorney that?

21 A. I said something to the effect that I thought maybe he  
22 might have been there.

23 Q And that came to you in August of this year; is that  
24 right?

25 A. I think so. I'm not for sure, not exactly.

Q Since that flash of memory have you had any other  
flashes of memory, sir, about this incident about Helen  
Wilson's death?

1 A. Not in a dream, no.

2 Q. What else have you remembered, sir?

3 A. I've remembered quite a bit.

4 Q. Since August what have you remembered, sir?

5 A. A few things that changed from the time I gave my  
6 deposition.

7 Q. Such as?

8 A. ~~Such as the four conversations, the incident with~~  
~~Kathy Gonzalez entering the door as I was coming back.~~

9 Q. Mr. Dean, why is it that you keep remembering these  
10 things differently each time such as the four conversations?

11 A. Because it's been a long time and it's hard to remember  
12 things like that.

13 Q. Did you ever discuss this with anybody?

14 A. Other than the law enforcement and my attorney, no.

15 Q. Let's talk about those four conversations that you've  
16 told the jury about. Is today the first time that you've made  
17 those statements about having four conversations with the  
18 person you know as Lobo about the robbery?

19 A. No, it's not.

20 Q. When was the first time, sir?

21 A. Oh, I'm not for sure of the date. ~~It was approximately~~  
~~a month ago.~~

22 Q. Sometime in October?

23 A. Sometime around there. Like I said I'm not sure of the  
24 date.

25 Q. At the time of your deposition which was taken of you in  
July, you were asked those specific questions about

1 conversations with the person you know as Lobo; is that  
2 correct?

3 A. Yes.

4 Q. At that time you indicate you hadn't any conversations  
5 with him?

6 A. Because I wasn't for sure on them and I was told by my  
7 attorney before I said anything to be absolutely sure.

8 Q. And now you're absolutely sure; is that correct, sir?

9 A. Yes.

10 Q. About everything you've testified to today?

11 A. Yes.

12 Q. And your recollection is there was at least four separate  
13 conversations that you talkēd to Lobo with, the person you  
14 know as Lobo about a rōbbery; is that correct?

15 A. Yes.

16 Q. And one of the statements said a name was used; is that  
17 right?

18 A. Yes.

19 Q. And that name was Wilson; is that right?

20 A. Yes.

21 Q. And your saying that was said by the person you know as  
22 Lobo?

23 A. Yes.

24 Q. Didn't you tell law enforcement that that name had been  
25 mentioned by JoAnn Taylor?

A. It had been mentioned by her sometime prior to the  
incident, yes.

Q. When was that, sir?

1 A. Oh, the same night.

2 Q. And you recall giving a statement about going into the  
3 apartment and talking about a robbery?

4 A. Yes, I do.

5 Q. What do you recall on that regard, sir?

6 A. I recalled a little different than I recall it now. I  
7 recalled it as it was Taylor and Winslow that went into the  
bathroom with me the night of the incident.

8 Q. And you did not put Mr. White in there, did you?

9 A. Not at that time, no.

10 Q. The person you know as Lobo?

11 A. Right.

12 Q. But now you remember him being present also?

13 A. The other three wasn't present. It was myself, White,  
and Darren Munsternan.

14 Q. And you remember also talks about sexual assault; is  
15 that right?

16 A. Oh, there was some mentionings of it, yes.

17 Q. Was that mentioned by Darren Munstermann or was that  
18 mentioned by Lobo?

19 A. That was mentioned by Lobo.

20 Q. Was it mentioned by JoAnn Taylor?

21 A. No.

22 Q. Now, you're telling us she wasn't there?

23 A. She wasn't in that bathroom that night.

24 Q. You would agree with me that you had said prior to this  
25 date that she had been in that bathroom and she was doing the  
talking; is that right?

1 A. Yes.

2 Q. You hadn't put Joseph White in that bathroom at all?

3 A. Not at that time, no.

4 Q. This was after your plea?

5 A. Yes.

6 Q. This was after you had been advised by counsel and been  
7 represented by counsel?

8 A. Yes.

9 Q. It was after you had at least -- Well, how many times  
10 have you talked to law enforcement up to the time that you  
11 told them about the conversation in the bathroom with JoAnn  
12 Taylor?

13 A. I couldn't give you a direct answer to that.

14 Q. Now, Mr. Dean, would you -- I've been supplied  
15 statements that you made that are dating -- starting in  
16 April 29th in 1989. Excuse me, April 16, 1989 that you've  
17 told us about.

18 A. Yes.

19 Q. That was the first time you talked to law enforcement?

20 A. Regarding this, yes.

21 Q. This was after your arrest?

22 A. Yes.

23 Q. You said you didn't have any knowledge of it?

24 A. That's correct.

25 Q. Then you talked to -- you made a statement to Paul  
Jacobsen on April 29 of 1989; is that correct?

A. Yes.

Q. And then you talked to a Dr. Price on the 2nd of May

1 of 1989; is that correct?

2 A. Yeah, somewhere in that area.

3 Q. And you made a statement on the 7th of May of 1989.  
4 Would that be accurate?

5 A. Right, around there somewhere.

6 Q. Then the 10th of May of 1989 do you remember making a  
7 statement at that time, sir?

8 A. Somewhere around there, that area.

9 Q. Each time you talked to law enforcement, do you remember  
10 a little bit more, sir?

11 A. Yes, I did.

12 Q. And did you remember these things after you had  
13 conversations with law enforcement and talked with your  
14 attorney and the county attorney?

15 A. I had discussions with my attorney prior to talking to  
16 them, yes.

17 Q. When did you first mention the name of Thomas Winslow?

18 A. The -- I couldn't give you an exact date.

19 Q. Wasn't that name brought to you by your attorney, sir?

20 A. We talked about him.

21 Q. As far as Mr. Winslow being present, do you remember  
22 your attorney telling you that?

23 A. My attorney never said anything to me about who did  
24 what or even who said what.

25 Q. Have you ever made a statement contrary to that, sir?

26 A. What do you mean by contrary.

27 Q. Different from what you've said now?

28 A. I might have.

1 Q Do you recall you saying at your deposition that it was  
2 your attorney that brought up Thomas Winslow. You didn't  
3 even know Winslow was involved?

4 A He brought up the name Winslow, but he never said  
5 anything else.

6 Q Do you recall being asked this question and giving this  
7 response at your deposition. For the benefit of counsel I am  
8 on page 31.

9 "He didn't tell you Winslow was a suspect?

10 A He brought him up but I had no idea that Thomas Winslow  
11 was involved in this at that point."

12 Q Do you recall being asked that question and giving that  
13 response?

14 A I do believe I did.

15 Q Now, I've asked you about a statement you've made to  
16 Dr. Price. Do you know who he is?

17 A Yes, I do.

18 Q Who is he?

19 A He is the psychologist at the Gage County Jail.

20 Q Does he work for the police department, do you know?

21 A I think he does. I'm not sure.

22 Q My records reflect you talk'd to him on the 2nd of May  
23 of 1989. Do you have any dispute with that, sir?

24 A I couldn't tell you what date.

25 Q Would you agree with me it was in the first part of May  
of 1989?

A It could have been, yes.

Q It was prior to the time that you went into the judge

1 to plead for this case?

2 A. It was prior to that, yeah.

3 Q. At the time you talked to Dr. Price, had you indicated  
4 any of your own involvement or any involvement at all in this  
5 incident, sir?

6 A. I hadn't.

7 Q. How many times have you talked to Dr. Price since that  
8 first time, the first part of May of 1989?

9 A. Oh, I think maybe twice, three times maybe at the most.

10 Q. About this incident?

11 A. A little bit about this and about other things.

12 Q. I believe you've also -- You were also questioned by  
13 the prosecutor that you were shown the crime scene of the  
14 video; is that correct?

15 A. Yes.

16 Q. You were shown that before you mentioned you were  
17 involved in this; is that right?

18 A. No.

19 Q. What is accurate in that regard, sir?

20 A. I had said that I was there and that's all I recalled.

21 Q. And after seeing the video tapè you told them more stuff;  
22 is that right?

23 A. I told them what I knew.

24 Q. You're telling us now that you're memory gets better as  
25 time goes by?

A. As you think about things, yes.

Q. And you remember more?

A. Yes.



1 Q This is all back to an incident that happened in  
2 February of 1985; is that right?

3 A Yes, sir.

4 Q We had talked about your making a statement after the  
5 plea agreement on the 17th of May. Did you make statements  
6 after that to law enforcement?

7 A Yes, I did.

8 Q Did you make one on the 24th of May of 1989?

9 A I could have.

10 Q And on the 7th of June of 1989?

11 A I could have.

12 Q And on the 23rd of June, 1989?

13 A Like I said I'm not good with dates. I could have.

14 Q And again prior to your deposition on the 16th of  
15 July of 1989?

16 A Yes, I remember that one.

17 Q You remember that statement. You remember having your  
18 deposition taken on the 17th (sic) of July of 1989?

19 A Yes.

20 Q Did you give any statements after that time, sir?

21 A I don't believe I have. I might have.

22 Q Each time you talked with law enforcement you told them  
23 a little bit more, didn't you, sir?

24 A Yes, I did.

25 Q You told them things a little bit different each time,  
didn't you, sir?

A In some things, yes.

Q And you were questioned today on direct examination by

Mr. Smith you said that people had stopped over at your house to pick you up and you said who was there and you said you were out driving around for an hour, hour and a half; is that right?

A. I told him who was, who stopped to pick me up and then, yes, I said about an hour, hour and a half.

Q. Is that your recollection at this time, sir?

A. Yes, it is.

Q. Have you ever made a statement contrary to that about how long you were driving around, sir?

A. I don't think I have.

Q. Do you recall what you had said previously?

A. We drove around for a while. I don't know how long I had said previously.

Q. Do you recall indicating at least three to four hours you were out driving around, sir?

A. I could have said that.

Q. Are you able to recall at this time how long you were out driving around?

A. Approximately an hour, hour and a half.

Q. And you were questioned by the prosecutor about the seating arrangement of how people were sitting in the car; is that right?

A. Yes.

Q. Now, Mr. Dean, you had been told by law enforcement about the arrangement in the car; is that right?

A. Yes, I had.

Q. As a matter of fact, it was Deputy Searcey who told you

1 who was seated where in the car when he first talked to  
2 you on the 16th of April, 1989?

3 A. Yes, he was.

4 Q. He talked to you for about two and a half hours in  
5 April 1989 after the arrest, didn't he sir?

6 A. Something like that.

7 Q. As a matter of fact, at one point in time he got mad  
8 at you and walked out of the room, didn't he?

9 A. They were playing bad cop, good cop.

10 Q. They were talking to you about this incident for two  
11 and a half hours?

12 A. Yes.

13 Q. Telling you who was there?

14 A. They wasn't telling me who was there.

15 Q. They were telling you a seating arrangement, weren't  
16 they?

17 A. ~~They had told me where I was seated.~~

18 Q. That was the first time you were ever talked to by law  
19 enforcement?

20 A. That was the first time.

21 Q. You told us you talked about Deb Shelden. You told us  
22 how you knew her. You talked to her prior to your arrest,  
23 hadn't you sir?

24 A. Yes.

25 Q. Where was that at?

A. That was at the Lincoln Welfare Office.

Q. At Lincoln, Nebraska?

A. Lincoln, Nebraska.

1 Q Do you recall what conversation was had, sir?

2 A Yes, I do.

3 Q What do you recall?

4 A It was -- We said hi to each other. It was regarding  
5 this case. Nothing to do with who was doing what and what was  
6 going on. It was just -- She told me that they was looking  
7 for somebody else, blood, and they had my name regarding this  
8 case.

8 Q And at that point in time you were already aware that  
9 Joe White had been arrested, weren't you?

10 A Yes, I was.

11 Q And you were aware that JoAnn Taylor had been arrested,  
12 weren't you?

13 A Yes.

14 Q You had seen their pictures on television, hadn't you?

15 A Yes.

16 Q And you knew about their arrest prior to that conver-  
17 sation with Deb Shelden, didn't you?

18 A Yes.

19 Q How about Thomas Winslow, you knew about him at that  
20 time, didn't you?

21 A I knew about Thomas Winslow's arrest through some  
22 friends of mine that a friend of mine that I used to live  
23 with down in Beatrice.

24 Q And all of this knowledge was prior to the time of your  
25 arrest, prior to the conversation with Deb Shelden prior to  
when Deputy Searcey explained to you where people were  
seated in the car. Is that all accurate?

1 A. I didn't know about Thomas Winslow's arrest until  
2 after I had a talk with Deb Shelden.

3 Q. Is that between the 12th or the 13th of April and your  
4 arrest on the 16th of April?

5 A. 15th of April.

6 Q. 15th of April.

7 A. Yes, it was in between there.

8 Q. So again when you were first talked to by law enforcement  
9 you knew those people's identities through television, through  
10 talking to Debra Shelden and talking to other people; is  
11 that right?

12 A. No, it's not.

13 Q. Mr. Dean, you're testifying today that you had described  
14 how the car was driving around and how the car was parked?

15 A. Yes.

16 Q. Then you indicated to the jury that the car was parked  
17 sticking out a little bit in the alley. Do you remember saying  
18 that?

19 A. Yes, I do.

20 Q. When did that come to your attention, sir?

21 A. Oh, when I had -- Just thinking about it.

22 Q. Did you ever talk to law enforcement about that -- where  
23 the car was parked?

24 A. Yes, I had.

25 Q. Who was that you talked to in law enforcement?

26 A. I talked to Mr. Jerry DeWitt, my attorney, and  
27 Richard Smith.

28 Q. That is all prior to today, wasn't it?

29 A. Yes, it was.

1 Q Prior to coming in and saying that about the car sticking  
2 out in the alley; is that correct?

3 A Yes, it was.

4 Q You told us that you were inside of the apartment but  
5 then you left for a period of time; is that right?

6 A Yes.

7 Q And can you estimate for us how long you were gone?

8 A I can give you a rough estimate. I'd say at the most  
9 five minutes.

10 Q Do you ever recall indicating that you had gone out to  
11 turn off some lights and pulled some furnace wires?

12 A I never indicated that at all.

13 Q Were you ever asked about it, sir?

14 A I was asked about it.

15 Q You don't recollect that you had done that?

16 A I don't recollect saying it.

17 Q Do you remember that happening?

18 A ~~I remember the lights being off.~~

19 Q Mr. Dean, who's Mark Goodson?

20 A He is a kid that just -- used to hang around myself,  
21 Lobo, and Sheldon and Taylor and Winslow.

22 Q Do you have occasion to talk to Mark Goodson after the  
23 incident involving [REDACTED] and prior to your arrest?

24 A I did in the first part of '86.

25 Q Wasn't it Mark Goodson that told you the name, Joe White?

A I don't know, I never heard him called Joe White.

Q Do you recall ever making a contrary statement at your  
deposition, a different statement at your deposition about it?

1 A. I've heard him called Lobo, you know nicknames.

2 Q. Do you recall being asked this question and giving this  
3 response, page 120 of the deposition:

4 "Who told you his name of Joseph White and when were you told  
5 his name of Joseph White?

6 A. Mark Goodson was the one who told me.

7 Q. Before or after murder?

8 A. I think Smith. I think it was after."

9 Q. Do you recall any of those responses to those questions?

10 A. I could have.

11 Q. Do you recall that being an accurate statement?

12 A. Could be. I don't remember.

13 Q. You were giving as your reason for going back to the  
14 apartment that they were going to blame you; is that right?

15 A. Yes.

16 Q. Did you try to stop this thing from happening, sir?

17 A. No, I didn't.

18 Q. And you didn't even bother to tell law enforcement even  
19 after you were arrested, did you?

20 A. Well, no, I didn't.

21 Q. Until you had a plea agreement that's depicted in  
22 Exhibit No. 36.

23 A. I was threatened with my life and that is why I never  
24 said anything.

25 Q. When was that threat made sir?

A. That was made in the car on the way to the truck stop.

Q. On the way to the truck stop?

A. Yes.

1 Q You said that a threat was made to you and someone  
2 else?

3 A Yes, it was.

4 Q Who was the other person?

5 A It was Deb Sheldon.

6 Q Who made that threat?

7 A Joseph White.

8 Q The person you know as Lobo?

9 A Yes.

10 Q That was the threat that prevented you from doing  
11 anything except making a plea agreement in the first part of  
12 May 1989; is that right?

13 A Yes.

14 Q Now, was this threat made at the truck stop or on the way  
15 to the truck stop?

16 A On the way to the truck stop.

17 Q But you're telling us you went back in because you  
18 didn't want the blame at that time; is that right?

19 A Yes.

20 Q That was before any threat had ever been made; wasn't  
21 it?

22 A Yes.

23 Q That's what led you to go back in the apartment?

24 A Yes.

25 Q So it wasn't because of the threat, was it?

A Yes, it was.

Q You're telling us today that Deb Sheldon had gotten into  
an argument and was put out of the car; is that right?



1 A. Yes. She asked to get out of the car and she got  
2 out of the car.

3 Q. Where was it they let her out of the car?

4 A. It was on Seventh Street. I can't give you an address.  
5 It was just on Seventh Street. It was past Lincoln Street.

6 Q. How close proximity to the apartment of [REDACTED]  
7 was this?

8 A. Oh, shit probably ten blocks.

9 Q. Soon after you had all left from the area of the parking  
10 lot is when she was left off?

11 A. Yes.

12 Q. You're sure the threat happened before that time; is  
13 that right?

14 A. It happened during the heated discussion between Deb  
15 Shelden and Joseph White.

16 Q. Had you ever told anybody in law enforcement or anybody  
17 before you came about this leaving Deb Shelden off?

18 A. I guess I have.

19 Q. Who was that sir?

20 A. I told you Burdette Searcey, Jerry DeWitt, my attorney,  
21 and Richard Smith.

22 Q. When was that, sir?

23 A. Shit, it's been a while back. I can't remember how  
24 far back.

25 Q. Now, today you testified about a Kathy. I think you  
used the name Kathy Knehans; is that right?

A. Yes.

Q. That's how you know her as?

1 A. I knew her at that time as Kathy was all.

2 Q. Now, I'm asking what your best recollection  
3 is now. When did you remember first seeing Kathy Knehans  
4 that night?

5 A. That night? As to tell you exactly, when we were  
6 leaving.

7 Q. That's the first time you remember seeing her?

8 A. No. I had seen her earlier, but that was the first  
9 time I actually knew who she was.

10 Q. My question is had you seen her earlier that night  
11 other than as you testified to leaving the apartment?

12 A. Yes, I had.

13 Q. Where was that at, sir?

14 A. She was on the back porch of the apartment building.  
15 She was entering the apartment. She was bent over the doorway  
16 as I know as the bedroom and she was in the bathroom.

17 Q. As you were leaving the apartment?

18 A. Yes.

19 Q. Those are the times you remember seeing Kathy, the  
20 person you know as Kathy Knehans inside or that night; is  
21 that right?

22 A. Yes.

23 Q. When was it you first told law enforcement about Kathy  
24 Knehans being involved?

25 A. I think it was sometime during May.

Q. Sometime during what, sir?

A. May or I think I said I'm not for sure.

Q. In the first statement you had made to law enforcement,

1 you hadn't mentioned her at all; is that right?

2 A. That's right.

3 Q. At the time that you were in custody and making these  
4 statements to law enforcement, were you also aware that  
5 she was arrested?

6 A. I didn't know she had been arrested until it was in the  
7 paper.

8 Q. Was it prior to your ever making mention of her name?

9 A. No. It was after.

10 Q. And had her name ever been suggested to you by anybody in  
11 law enforcement prior to you talking about it?

12 A. I don't know.

13 Q. They were telling you a lot of things and asking you  
14 a lot of questions throughout the period of time you made  
15 statements.

16 A. Everybody asked me a bunch of questions.

17 Q. And they brought up new names and new individuals?

18 A. Not bring up new names and new individuals, no.

19 Q. I believe you told the attorney at your deposition that  
20 you'd some problems with your memory in the past?

21 A. Yes.

22 Q. As a matter of fact you had problems with your memory  
23 ever since grade school. Is that a fair statement?

24 A. With names, yes.

25 Q. And events?

26 A. Oh, here and there things that wasn't important.

27 Q. And you have trouble with memory in details and people  
28 being involved?

1 A. I still have some details that I don't recall.

2 Q. Do you recall being asked that at your deposition if  
3 you can remember incidents what came from the dreams and  
4 what came from the video? You said you can't differentiate  
or tell the difference?

5 A. I remember saying that and also I clarified it at the  
6 end of my deposition as to what had happened.

7 Q. I'm going to ask you a question about Clifford Shelden.  
8 We talked about him before. Do you recall telling me at the  
9 deposition that his name was mentioned that night by .

10 JoAnn Taylor?

11 A. Well, yeah, I do.

12 Q. What do you recall in that regard? What do you recall  
13 as far as that night goes?

14 A. Clifford Shelden was over at my house that night.

15 Q. The night that you were picked up to go out?

16 A. Uh-huh.

17 Q. So he was present? Was Kathy Bartak present also?

18 A. She was in the living room, yes.

19 Q. Where was Cliff at?

20 A. He was also in the living room.

21 Q. And did he participate in any of the discussions with  
22 Lobo or JoAnn Taylor or whoever you had discussions with about  
a robbery?

23 A. Nope.

24 Q. He wasn't in the bathroom when any of the discussions  
were going on?

25 A. No.

1 Q But you remember him being there as sure as you are  
2 about the other things you have told the ladies and  
3 gentlemen of the jury today?

4 A Yes.

5 Q Would it surprise you if I told you that Clifford Shelden  
6 was in the hospital that night, so he couldn't have been  
7 in that apartment that night?

8 A It would surprise me a little bit. I remember him  
9 being in the hospital but I couldn't remember what area he was  
10 in.

11 Q You remember him being in the apartment?

12 A He was.

13 Q In the apartment that night you were picked up by  
14 the four people that you told us about. All right. He was  
15 present; right?

16 A No, he was not. The night before that or even the  
17 night before that.

18 Q Now you're not sure when?

19 A I'm not sure. I don't see what that's got to do with it.

20 Q Mr. Dean, you told you that you remember at least at the  
21 deposition you told us you remembered that JoAnn Taylor  
22 had mentioned Cliff Shelden's name; is that right?

23 A She could have. There was a lot of people we talked  
24 about.

25 Q Well, I'm asking about what you recall that night  
at the apartment, not your apartment, but the apartment of  
[REDACTED] about the mentioning of Cliff Shelden.

A There was never a name mentioned at the apartment.

James Dean - Cross

1 Q Do you remember any mention being made by JoAnn Taylor  
2 he couldn't make it tonight when you were inside the apartment  
3 of [REDACTED]?

4 A. Something like that.

5 Q. Do you remember her saying that?

6 A. I remember her saying something to that effect.

7 Q. And do you know who she was making reference to at  
8 that time?

9 A. No, I did not.

10 Q. Do you know at this time?

11 A. I still don't know.

12 Q. Mr. Dean, have you tried to the best of your knowledge  
13 to remember everything about that night?

14 A. I have, yes.

15 Q. Have you tried to answer the questions that law  
16 enforcement asked of you about the incident?

17 A. To the best of my remembrance, yes.

18 Q. Every time you remembered something new, you'd go and  
19 tell your attorney?

20 A. I would discuss it with my attorney.

21 Q. Are you still doing it at this time?

22 A. Yes.

23 Q. Since you've testified today has anything else come to  
24 your mind, sir?

25 A. No.

26 Q. About the incident?

27 A. No.

28 MR. STOLER: I don't believe I have any more

1 questions.

2 THE COURT: Any redirect?

3 REDIRECT EXAMINATION

4 BY MR. SMITH:

5 Q Mr. Dean, on cross-examination, counsel read you a  
6 portion that came from page 121 of your deposition regarding  
7 questioning of your knowledge of Mark Goodson and his possible  
8 statement regarding the name, Joseph White. Would it be  
9 correct, also, to say that further on down that page you  
10 indicated that no one had called Joseph White by that name  
in your presence prior to your arrest?

11 A Yeah.

12 Q But someone once called him Joe but never Joseph and not  
13 using the last name; is that correct?

14 A That's correct.

15 Q Now, Mr. Dean, you've indicated you saw a video tape of  
16 the crime scene prior to your plea; is that correct?

17 A Yes, I did.

18 Q Did you then make a -- Did you make a verbal statement  
19 after you saw the video?

20 A Yes, I did.

21 Q And did you tell about your involvement at that time?

22 A I told what I could recall of everything.

23 Q All right. But that wasn't tape recorded at that time,  
24 was it?

25 A No, it was not.

Q It was tape recorded later after you plead; is that  
correct?

1 A. Yes.

2 Q. Did you tell about Mr. White's involvement in that  
3 verbal statement?

4 A. Yes, I did.

5 Q. Prior to the plea?

6 A. Yes, I did.

7 Q. And who was present when you had this verbal statement?

8 A. The people I can recall was myself, Richard Schmeling,  
9 yourself and I do believe it was either Jerry DeWitt or  
10 or Jerry Lamkin or one of the people from the sheriff's  
11 department.

12 Q. There was someone there from the sheriff's department?

13 A. Right.

14 Q. You've indicated Richard Schmeling. Who is Richard  
15 Schmeling?

16 A. He is my attorney.

17 MR. SMITH: I have no more questions.

18 THE COURT: You may step down, sir. You are  
19 subject to recall and you're not to discuss your testimony.  
20 We'll take a recess at this time.

21 (Whereupon, a recess was taken  
22 from 2:40 to 3 p.m.)

23 (At 2:40 p.m. with counsel for the parties present  
24 and the defendant and jury NOT present, the following  
25 proceedings were had in chambers.)

THE COURT: All right. Gentlemen, the defense  
has indicated to me -- Oh, let the record reflect that we are  
proceeding in chambers out of the presence of the jury with



DIRECT EXAMINATION

BY MR. SMITH:

Q Will you state your name for the record, please.

A James Leroy Dean.

Q What is your date of birth?

A 4-15-64.

Q Where are you presently living?

A 411 North 22nd, Lincoln, Nebraska. I'm in the Gage County Jail.

Q What are you in the Gage County Jail for?

A For aiding and abetting second degree murder.

Q Of whom?

A [REDACTED]

MR. SMITH: May I approach the reporter, Your Honor?

THE COURT: You may.

(Whereupon, Exhibit  
No. 36 was marked for  
identification.)

Q (By Mr. Smith) Mr. Dean, handing you what's been marked for purposes of identification is Exhibit No. 36. Can you tell me what that is, if you know?

A Yes. It is a copy of my plea agreement.

Q Mr. Dean, I notice on that -- Is that a copy or an original?

A That is an original.

Q I notice there is some signatures on the bottom of that agreement; is that correct?

A Yes, sir.

Q Is your signature on the bottom of that?

1 A. Yes, it is.

2 Q. Mr. Dean, did you enter into that agreement as written  
3 on that exhibit prior to entering your plea in the [REDACTED]  
4 [REDACTED] matter?

5 A. Yes, I did.

6 Q. Mr. Dean, can you remember back for me to February 5,  
7 1985?

8 A. Yes, I can.

9 Q. What's your first recollection of that day?

10 A. We went over to this lady's house. At that time I  
11 didn't know what her name was.

12 Q. All right. What time of day is that that you're  
13 remembering?

14 A. Approximately eight, nine o'clock.

15 Q. Would that be in the morning or the evening?

16 A. That's in the evening.

17 Q. Is there anything else that you remember prior to that  
18 time that day?

19 A. Some people stopped over my house and picked me up.

20 Q. All right. Approximately what time was that?

21 A. Approximately six, seven, eight o'clock, maybe.

22 Q. Would that also be in the evening?

23 A. Yes, it would.

24 Q. And you have indicated at your house. Where was your  
25 house then?

26 A. It was on Ella Street.

27 Q. Were you living there alone?

28 A. No, I was not. I was living with a girl named

1 Kathy Bartak.

2 Q Was this an house or an apartment?

3 A It was an apartment.

4 Q Was it -- How many floors in the apartment?

5 A Two.

6 Q Which floor did you live on?

7 A I lived on the upstairs floor.

8 Q Now, you've indicated someone picked you up; is that  
9 correct?

10 A Yes.

11 Q Who picked you up?

12 A JoAnn Taylor, Tom Winslow -- Excuse me -- Deb Shelden  
13 and Joseph White, Lobo as I knew him.

14 Q This last individual you knew as Lobo; is that correct?

15 A Yes.

16 Q Now, tell me about how did they come to the door to  
17 pick you up or what happened?

18 A They come over and knocked on the door and they stayed  
19 around for a little while and then we left.

20 Q Now, how many individuals left in the car?

21 A There was five of us.

22 Q And can you tell me the five that were in the car?

23 A Yes, I could.

24 Q Please tell me.

25 A Tom Winslow, JoAnn Taylor, Lobo, myself, and Deb  
Shelden.

Q And what type of car was this?

A It was a 1972 Oldsmobile, two-door.

1 Q All right. Do you remember the color?

2 A Green and tan.

3 Q All right. Which part was green, which part was tan.

4 A The roof was a tan vinyl top and the bottom half was  
5 green.

6 Q Now, you've indicated it was a two-door; is that  
7 correct?

8 A Yes.

9 Q Do you remember the sitting arrangement in the car?

10 A Yes, I do.

11 Q Where were you seated?

12 A I was seated in the back seat on the right-hand side  
13 of the car.

14 Q Would that be the driver or passenger, please?

15 A Passenger.

16 Q Who was driving the car?

17 A Tom Winslow.

18 Q Where was everyone else sitting?

19 A JoAnn Taylor was in between the driver seat and the  
20 passenger seat. White was sitting in -- Lobo was sitting  
21 in the passenger seat and Sheldon was sitting on the driver's  
22 side in the rear.

23 Q Now, did you have a window where you were seated that you  
24 could look out from in the rear?

25 A Yes.

Q Was it a large window or a small window?

A It was a smaller window.

Q Now, what time did -- All right. They came to pick you

1 up. What time did they come to pick you up?

2 A. Oh, around, like I said, six, seven o'clock.

3 Q. Now, Mr. Dean, what -- where did you go after you got in  
4 the vehicle?

5 A. We went riding around Beatrice, Nebraska.

6 Q. For how long?

7 A. Oh, I don't know. Quite a while. Hour, hour and a half.

8 Q. Then what happened?

9 A. Then we come back around, went down Ella Street and drove  
10 past the -- where the apartment building is. You could see the  
apartment building from the street.

11 MR. SMITH: May I approach the exhibits, Your  
12 Honor?

13 THE COURT: Yes.

14 Q. (By Mr. Smith) Mr. Dean, do you have a recollection  
15 of -- You've indicated an apartment building. Do you have a  
recollection what that looked like?

16 A. Yes, I do.

17 Q. Handing you Exhibit No. 6. Can you tell me what that  
18 is, if you know?

19 A. Yes. That is the building where Helen Wilson lived.

20 Q. Do you know on February 5, was that the building where  
[REDACTED] was living?

21 A. I didn't know at that time, no.

22 Q. Now, you've indicated some route of travel around that  
23 building. Would you please describe that for me again?

24 A. Yes. We come up Ella Street which is a one-way going  
25 west. Turned on Sixth Street, turned in the alley and parked

1 in the back, kind of with the car sticking out a little bit.

2 Q All right. What happened then?

3 A Then we all got out of the car and went into the  
4 apartment building.

5 Q Do you remember who got out which side of the car?

6 A Yes, I do.

7 Q Whom?

8 A Everybody except for Winslow got out the right-hand side  
9 which would be right-hand side. Winslow got out the driver's  
10 side.

11 Q What happened after that?

12 A We proceeded to go in the building. Turned to our left  
13 when we went in, up the stairs and down to Apartment 4.

14 MR. SMITH: May I approach the exhibits, Your  
15 Honor?

16 THE COURT: Yes.

17 Q (By Mr. Smith) Mr. Dean, handing you Exhibit No. 7.  
18 Can you tell me what that is, if you know?

19 A Yes, I can. It is the door to -- It is the door that  
20 we -- we entered the night of February 5, [REDACTED]'s  
21 apartment.

22 Q Mr. Dean, how was entry gained to [REDACTED]'s apart-  
23 ment?

24 A Well, there was a knock on the door. [REDACTED] came  
25 to the door. She said, "Hello". Boom. Joseph -- Lobo and  
JoAnn Taylor pushed their way in and then everybody just  
kind of followed.

Q Did you then enter?

1 A. Yes, I did.

2 Q. Who else entered outside of the two you previously  
3 testified to and yourself?

4 A. Tom Winslow and Deb Sheldon.

5 Q. What did you observe upon entering the apartment?

6 A. Just these two went in the -- There was three people  
7 around Mrs. [REDACTED] and I didn't see what happened, but I  
8 heard a slap.

9 Q. What was the next thing you saw?

10 A. Next thing I saw was Tom Winslow, JoAnn Taylor, and  
11 Joseph White take Mrs. [REDACTED] into the bedroom, forced  
12 Mrs. [REDACTED] into the bedroom.

13 Q. All right. Now, you've indicated there was a bedroom.  
14 Are there any other rooms that you remember about the  
15 apartment?

16 A. The kitchen, the bathroom, the living room.

17 Q. Where are they in relationship to when you walked in?

18 A. When you walk in, they were to the left as you're coming  
19 into the living-room area.

20 Q. All right. What was to the left?

21 A. These three people around Mrs. [REDACTED].

22 Q. All right. What did you enter into -- You've indicated  
23 you came in. What was that room that you came into?

24 A. It was the living room. There's a little hallway, like,  
25 as you come in the door.

Q. What was the next thing that happened?

A. There was a struggle in the bedroom, and I left previous  
to this for a few minutes.

1 Q All right. Where did you go?

2 A I went outside.

3 Q How did you get outside?

4 A I went back out the apartment door as in the exhibit,  
5 walked west -- east down the hall and went down the stairs  
6 and out the east door.

6 Q Where did you go?

7 A Just outside and I started to leave. And then something  
8 stopped me, and I come back in.

9 Q Why didn't you leave?

10 A I don't know. I was afraid they were going to blame this  
11 whole thing on me.

12 Q Blame what whole thing on you?

13 A This whole incident, this robbery/murder.

14 Q Did you have discussions prior to this time regarding  
15 this matter?

15 A Yes, I did.

16 Q Who did you have those discussions with?

17 A ~~Lobo and Darren Munsterman.~~

18 Q And where did you -- those discussions take place?

19 A Oh, one of them took place in the kitchen of my girl-  
20 friend's apartment. The other one took place downtown.

21 Q All right. Mr. Dean, you've indicated -- Were there  
22 several conversations?

22 A Yes, there was.

23 Q All right. Let's do one at a time. The first conver-  
24 sation took place where?

25 A Took place in the living room at the apartment where I



1 was staying. My girlfriend's apartment.

2 Q When did that take place?

3 A ~~Approximately a week prior to the incident.~~

4 A And who was present?

5 A ~~It was myself and Lobo.~~

6 Q What was the topic of the conversation?

7 A The topic of the conversation is -- ~~It was about a robbery and just taking some money.~~

8 Q Were any names mentioned?

9 A ~~There was one name mentioned which was Mrs. [REDACTED]~~  
10 ~~name, and the other name was never mentioned. Just some~~  
11 ~~lady in Adams.~~

12 Q Adams being where?

13 A Adams, Nebraska.

14 Q All right. Mr. Dean, you've indicated there was another conversation. Where was that?

15 A It was downtown. We was just walking around downtown.

16 Q When was that?

17 A Oh, day or two after the first one.

18 Q And who was present?

19 A ~~Myself, Lobo, and Darren Munsternan.~~

20 Q What was the topic of that conversation?

21 A Oh, just general conversation about who was going to do what.

22 Q What do you mean, "who was going to do what"?

23 A Well, if we were going to go in here and beat somebody  
24 up or what we was going to do or whose job was to do what,  
25 basically.

1 Q What -- Did Mr. White participate in that conversation?

2 A Yes, he did.

3 Q What did he say regarding that conversation or in that  
4 conversation?

5 A He just talked about a, you know, the taking -- the  
6 money he needed, money -- Him and JoAnn wanted to get out of  
7 town, and that is about the extent of it.

8 Q Were there any other conversations?

9 A There was two more after that.

10 Q All right. Where was the third conversation?

11 A I can't tell you. I don't recall.

12 Q All right. Do you remember its proximity in time to  
13 February 5?

14 A Yes. It was maybe two days, three days.

15 Q Who was in the conversation?

16 A ~~Myself and Lobo.~~

17 Q What was the topic of that conversation?

18 A Oh, there again, we just generally talked about whose  
19 job was to do what. The -- A threat came to mine and  
20 Sheldon's lives.

21 Q All right. Now, explain that to me, please.

22 A Okay. He said if we told anybody prior to this or after  
23 this that they would make sure that we never talk again.

24 Q All right. Now, you've indicated that you described  
25 jobs. What does that mean? What were you talking about?

A Who was going to do what, which rooms we were going  
to search, where we was going to be.

Q And did anyone else's name come up at that time?

1 A. There was one other name mentioned, and he just said  
2 the word, "Kathy".

3 Q. What did he say about that?

4 A. She was our way to get in or something to that effect.

5 Q. All right. Now, you've indicated there was a fourth  
6 conversation; is that correct?

7 A. Yes, I did.

8 Q. Where did that take place?

9 A. That took place in the bathroom at my apartment and my  
10 girlfriend's apartment.

11 Q. When was that?

12 A. Oh, a day prior to the incident.

13 Q. Who was there?

14 A. ~~Myself, Darren Munsternan and Lobo.~~

15 Q. What was the topic of conversation?

16 A. Oh, just there, again, general conversation. ~~We talked~~  
17 ~~about the robbery/sexual assault.~~

18 Q. You talked about a sexual assault?

19 A. Yes, we did.

20 Q. What came up about the sexual assault? Who said it?

21 A. Lobo said it and it just -- He said, ~~"I've been thinking~~  
22 ~~about a sexual assault", but he had been talking like that in~~  
23 ~~the past.~~

24 Q. All right. Mr Dean, you're outside now. What did you  
25 do after you were outside?

MR. STOLER: Objection, Your Honor, as to what  
point in time this is.

THE COURT: I take it you better get your time

1 frame set.

2 Q (By Mr. Smith) Mr. Dean, you've previously testified  
3 after originally entering Apartment No. 4, you left; is  
4 that correct?

5 A Yes, I did.

6 Q All right. You've indicated you went outside; is that  
7 correct?

8 A Yes.

9 Q All right. What's the next thing that happened?

10 A I reentered the apartment, went back up the stairs and  
11 as I come up the stairs and turned into the hallway, a body  
12 went into the door, a person.

13 Q What did you do?

14 A I continued on west down the hall and reentered the  
15 apartment.

16 Q What did you observe next?

17 A I observed a person bending over in the door, a door-  
18 way. I didn't know what room it was at that time.

19 Q Where was this doorway in relationship to the living-  
20 room area?

21 A Up -- When you come in you enter the living-room area.  
22 It was off to the right.

23 Q What was this person doing in the doorway?

24 A Bending over.

25 Q Did you see anything else around the person?

26 A I seen feet with slippers on them.

27 Q What was happening? What happened next?

28 A Well, a foot come up. The person that was holding the

1 feet, hands come up and hit her in the face. I didn't know  
2 who it was at that time and that was -- Then she left, come  
3 back by me with her hand in front of her face and turned her  
4 head.

Q All right. Did you get a look at that person as that  
5 person walked by you?

6 A. Not a good look, no.

7 Q. Did you get a look at that person's build?

8 A. Yes, I did.

9 Q. Would you describe it for me.

10 A. It was approximately 5'3, 5'4 and weighed approximately  
11 230, 300 pounds. I don't know. I don't know the weight.

12 Q. It was a big person?

13 A. It was a big person.

14 Q. What's the next thing that happened, Mr. Dean?

15 A. Okay. I wasn't looking, but I seen Deb Sheldon enter  
16 the room. And I turned to look to see what was going on  
17 behind me, and I heard this thud and this crack, and it  
18 sounded like a bone breaking. It sounded like when I broke  
19 my ankle.

20 Q. All right. Which did you hear first? The thud or the  
21 crack?

22 A. I heard the crack first.

23 Q. What's the next thing that happenend, Mr. Dean?

24 A. Then they -- these people brought Mrs. [REDACTED] back out  
25 into the living room.

Q. All right. You've indicated these people. Who are  
these people?

1 A. Lobo, JoAnn Taylor and Thomas Winslow.

2 Q. Who was doing what?

3 A. Tom Winslow was still controlling the neck area. Taylor  
4 had ahold of the hands. White had the feet. Lobo had the  
5 feet.

6 Q. What's the next thing that happened?

7 A. Okay. Then I blanked for a few minutes and tried to  
8 think what to do. I turned and when I turned back around,  
9 Mr. White was laying on top of Mrs. Wilson.

10 Q. All right. You've indicated you blanked out. What do  
11 you mean, Mr. Dean?

12 A. I just froze. I didn't know what to do. I wasn't  
13 watching, wasn't paying no attention to what was going on.

14 Q. All right. Did you pass out? Did you lose conscious-  
15 ness?

16 A. No, I did not.

17 Q. Now, you've indicated -- What was the next thing that  
18 you saw after this blanking out?

19 A. Okay. I turned back towards Mrs. [REDACTED] and I seen  
20 White laying on top of the body.

21 Q. What's happening?

22 A. He's going up and down and talking about how great the  
23 pussy was, how tight it was, how nice it was to be doing  
24 that.

25 Q. What was JoAnn doing at that time?

A. She was holding the hands and had her elbow over the  
face area.

Q. What was Thomas Winslow doing at that time?

1 A. He was holding the feet.

2 Q. Where was Debra Sheldon?

3 A. She was approximately four, five feet to me, kind of to  
4 my right.

5 Q. Mr. Dean, can you describe any of the furniture that  
6 was in that living room?

7 A. There was a stool laying there and a couch, and I can't  
8 describe colors or what.

9 Q. All right. Mr. Dean, which direction was the head of  
10 Mrs. [REDACTED] in regards to that couch?

11 A. I think it was right up by the couch, right in front of  
12 the couch.

13 Q. And where were her feet?

14 A. Her feet were approximately four to five feet from me  
15 where I was standing.

16 Q. Where would that be in relationship to this doorway  
17 you previously described?

18 A. The doorway is kind of off to beside me. I'd say, maybe,  
19 eight foot, maybe, if even that.

20 Q. All right. Mr. Dean, you've described that you heard  
21 some sounds at that time or someone was speaking; is that  
22 correct?

23 A. Yes, I did.

24 Q. Mr. Dean, you described an individual that you've  
25 called Lobo; is that right?

26 A. Yes.

27 Q. How -- Had you ever met that individual before?

28 A. Yes. Approximately a couple of months prior to this

1 incident.

2 Q And you've also testified that you talked to him  
3 about the incident; is that correct?

4 A Yes.

5 Q Where did you meet him a couple months prior to this  
6 incident?

7 A At another apartment me and my girlfriend had rented  
8 on Ella Street.

9 Q How many times do you think you'd seen this Lobo between  
10 your first meeting him and the conversations that you had  
11 with him regarding this?

12 A Exact number, I couldn't tell you. It was lots of  
13 times.

14 Q Would it be everyday or every other day?

15 A Most of the time everyday. He lived upstairs from where  
16 we lived. I also at one point worked with him.

17 Q You worked with him?

18 A Yes, I did.

19 Q Where was that at?

20 A At Estate's Construction.

21 Q Mr. Dean, you've indicated that Mr. White was saying  
22 things. Was there anyone else talking at that time?

23 A Yes, there was. There was Thomas Winslow and Kathy,  
24 this Kathy girl.

25 Q Do you remember any other sounds at that time?

A Oh, there was quite a few sounds going on.

~~Q What types of sounds, that you remember?~~

A There was a real hard banging noise coming from the



1 defendant, White.

2 Q What was Mrs. [REDACTED] doing at this time?

3 A She was still trying to struggle as much as she could to  
4 get away.

5 Q And what was Mr. Winslow doing at this time?

6 A He was holding the feet.

7 Q How was he holding them?

8 A Just holding them.

9 Q Were they together or apart?

10 A They were apart.

11 Q What was the next thing that happened?

12 A Okay. We -- The conversation between Kathy and Winslow  
13 went on for approximately five or ten seconds, and then  
14 Thomas Winslow and Joseph White switched places and  
15 Mr. White was holding the feet.

16 Q What was Mr. Winslow doing?

17 A He was going up and down on the body?

18 Q Were -- Can you describe your view of Mr. Winslow --  
19 Excuse me. Let's go back. Can you describe your view of  
20 Mr. White when you observed him going up and down on the body?

21 A Yes. I was looking at his back side.

22 Q Was it bare?

23 A Yes, it was.

24 Q All right. Can you describe what you observed when  
25 Mr. Winslow was doing this?

A Yes. I seen his back side as well, and it was bare.

Q What was JoAnn Taylor doing?

A She was holding the hands and licking the upper area

1 of the body of Mrs. [REDACTED].

2 Q What was the next thing that happened?

3 A Then after all that took place, everybody got up away  
4 from the body, which was White, Taylor and Winslow. And we  
5 just kind of -- I just kind of stood there. Mr. White went  
6 into the kitchen. Taylor went into the bedroom.

7 Q Was anyone talking at this time?

8 A They were just general conversations. Basically about  
9 money, where to find it. That's about all that was said.

10 Q What's the next thing that happened?

11 A Then we just -- I heard this tear. I didn't know what  
12 it was, and then there was coffee made. Taylor made some  
13 coffee. She came out of the bedroom and patted her pocket  
14 and went into the kitchen and made some coffee.

15 Q Did you drink coffee?

16 A No, I did not.

17 Q Do you know who did?

18 A I seen one person with a coffee cup and that was  
19 Mr. White.

20 Q What's the next thing that happened?

21 A Then we all got ready to leave and me and Sheldon  
22 was the first two out the door. And as I was going out the  
23 door, I caught a glimpse of -- Kathy Gonzalez had a brown  
24 rag, kind of up to her face area.

25 Q Where did you catch this glimpse? Where was she?

A She was in the bathroom.

26 Q What's the next thing that happened?

27 A We left and went -- Me and Sheldon -- I didn't see

1 who exited after Debra and I. But me and Sheldon exited  
2 first. We went down the hall west or east, down the stairs  
3 and out the door.

4 Q. Was there lighting in the hallway at that time?

5 A. No.

6 Q. What's the next thing that happened?

7 A. Well, we -- Me and Sheldon went and got in the car. It  
8 took approximately anywhere from ten minutes to half an hour  
9 for everybody else to reach the car.

10 Q. Who reached the car next?

11 A. Taylor reached the car next.

12 Q. All right. How long did it take her to reach the car?

13 A. Oh, approximately five minutes, somewhere in that area.

14 Q. Was that after you had arrived at the car?

15 A. That was after I arrived.

16 Q. All right. Who was the next person that arrived?

17 A. Lobo.

18 Q. All right. How long was it after Taylor had gotten  
19 there before he arrived?

20 A. It was 15 minutes, maybe.

21 Q. Then who was the next one?

22 A. After White was Winslow.

23 Q. Mr. Dean, you've testified regarding an individual by  
24 the name of Lobo.

25 A. Yes.

Q. I'd ask you to look very carefully throughout this  
courtroom and tell me if you see an individual that you know  
as Lobo.

1 A. Okay. Right there. Sitting --

2 MR. STOLER: Objection, Your Honor. The question  
3 is to look around the courtroom. That's all he was asked  
4 to do.

5 Q. (By Mr. Smith) Would you point that individual out?

6 MR. STOLER: Your Honor, may I ask some foundation-  
7 al questions at this point?

8 THE COURT: Not at this point.

9 A. Yes, I could. He's sitting at the brown table.

10 Q. (By Mr. Smith) All right. There are four individuals  
11 sitting at that table. Which individual do you mean?

12 A. He is on my right. Looking at it from my angle, the  
13 right far end of the table.

14 Q. Does he have glasses or not?

15 A. Yes, he does.

16 Q. Mr. White -- Excuse me. Mr. Dean, what's the next thing  
17 that happened?

18 A. We proceeded to leave. Backed out from where the deal  
19 was, went down the alley and went down Seventh Street.

20 Q. Were there any noises or discussions in the car at that  
21 time?

22 A. Oh, there was general conversation about how nice it was  
23 to do it. They would do it again. It was fun. If they had  
24 the opportunity, they would do it again.

25 Q. Who's saying that?

A. That was the conversation between JoAnn Taylor and Lobo.

Q. What happened next?

A. Then we proceeded down Seventh Street. An argument

1 got ~~conflicted~~ between Lobo and Debra Shelden. We stopped  
2 the car. Deb Shelden got out. We proceeded on out to  
3 Marshall's Truck Stop.

4 Q What did you do out there?

5 A We had breakfast.

6 Q Who had breakfast?

7 A I know I did. And as far as I know, everybody else did  
8 as well that was with us.

9 Q Who was there?

10 A Lobo, JoAnn Taylor, and Tom Winslow.

11 Q What happend after that?

12 A They took me to my house. We proceeded back down the  
13 highway -- Highway 77 which was Sixth Street, turned on  
14 Lincoln Street, went down to 13th Street, turned down  
15 13th Street to Ella.

16 Q And then they what? Dropped you off?

17 A They dropped me off at my apartment.

18 Q Did you talk with anybody about this that night?

19 A No, I did not.

20 Q Did you tell anybody about this incident prior to your  
21 arrest?

22 A No, I sure didn't.

23 Q When were you arrested?

24 A I was arrested on 4-15-89.

25 Q Where were you arrested?

A I was arrested at the Hy-Vee parking lot, in Lincoln,  
Nebraska.

Q Were you living with anyone at that time?

1 A. Yes, I am.

2 Q. Who was that?

3 A. Kathy Bartak and four kids.

4 Q. Had you told her about this incident?

5 A. No, I have not.

6 Q. Mr. Dean, when you were first arrested, were you  
questioned by officers regarding this incident?

7 A. The 16th of April.

8 Q. And did you admit this incident to them at that time?

9 A. No, sir, I didn't.

10 MR. SMITH: May I approach the bench, Your Honor,  
11 for a minute?

12 (At this point, counsel for the  
13 parties approached the bench  
and an off-the-record dis-  
cussion was had, in low tones,  
between Court and Counsel.)

14 MR. SMITH: Your Honor, at this time could we have  
15 a short recess, please?

16 THE COURT: All right. We'll take a short recess  
17 at this time. If you'll retire to the jury room, please.

18 (Whereupon, a recess was taken  
from 1:40 to 1:45 p.m.)

19 (At 1:45 p.m. with counsel for both parties present  
20 and the defendant present and the jury IN the jury box, the  
21 following proceedings were had:)

22 MR. SMITH: Your Honor, we failed to do so  
23 earlier, we would offer Exhibit No. 36.

24 THE COURT: ~~Any objection?~~

25 MR. STOLER: No objection.

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THE COURT: 36 is received.

MR. SMITH: We would also request that the record reflect that the witness has identified the defendant.

THE COURT: No, he hasn't.

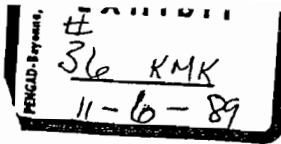
(Exhibit No. 36 is hereby made a part of this bill of exceptions and may be found herein immediately following.)

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EXHIBIT NO. 36





PLEA AGREEMENT

☒ Richard T. Smith

Defense Counsel Richard Schmeling

☐ Jerry L. Shelton

CASE: State of Nebraska v. James Dean

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AGREEMENT:

1. ~~The defendant has agreed to waive his preliminary hearing rights in this action.~~
2. The State has agreed to file an amended Information charging aid and abetting for the Second Degree Murder of [REDACTED] and defendant will plead guilty to said amended Information.
3. The defendant has agreed, if necessary, to waive his preliminary hearing rights on this amended Information, to waive his 24-hour notice and service of the amended Information.
4. The defendant agrees to testify truthfully in any and all cases and give total cooperation to the State of Nebraska regarding the homicide of [REDACTED]
5. The defendant and the State will stipulate and agree that the defendant should not be sentenced in this matter until all homicide cases have been tried in the [REDACTED] matter.
6. The State will make no recommendation regarding sentencing if the defendant complies with all of the above.

Richard T. Smith  
Counsel for State

Richard T. Schmeling  
Counsel for Defense

James Dean  
James Dean, Defendant

1 Q (By Mr. Smith) Mr. Dean, you previously pointed to  
2 an individual in the courtroom as Lobo; is that correct?

3 A Yes, I did.

4 Q Now, Mr. Dean, is Lobo the individual that you testified  
5 to as what his happenings were regarding this incident?

6 A Yes, he is.

7 Q And he was the individual that raped Mrs. [REDACTED]?

8 A Yes.

9 Q Do you know this man now by any other name?

10 A I know him now as -- as Joseph White. Back in March, I  
11 seen a picture of him on TV, and they identified him as  
12 Joseph White.

13 Q But is he the same man that was in that apartment on  
14 February 5, 1985?

15 A Yes, he was.

16 MR. SMITH: Let the record reflect, Your Honor, that  
17 he has identified the defendant.

18 THE COURT: No, he hasn't.

19 Q (By Mr. Smith) Mr. Dean, once again, would you point  
20 this individual out that you know as Joseph White?

21 A Yes, I will.

22 Q Would you describe what he's wearing?

23 A He's wearing a black suit -- black coat, a white shirt,  
24 and a purple tie.

25 MR. SMITH: Let the record reflect, Your Honor, he  
has identified the defendant.

THE COURT: Any objection?

MR. STOLER: No objection.

1 THE COURT: Let the record reflect the witness has  
2 identified the defendant.

3 Q (By Mr. Smith) Mr. Dean, you previously used a name  
4 Lobo in your testimony; is that correct?

5 A Yes, I did.

6 Q You described an individual that you had conversations  
7 with by the name of Lobo; is that correct?

8 A Yes.

9 Q And you've told us about those conversations; is that  
10 right?

11 A Yes, I have.

12 Q Is that the same individual that you've described now or  
13 pointed out as Joseph White?

14 A No. He looks a little different.

15 Q What's the difference?

16 A His hair's cut and he's wearing a suit and glasses.

17 Q But is it the same individual?

18 A Yes, it is.

19 Q You've described actions of Lobo in the apartment of  
20 [REDACTED] on February 5, 1985; is that correct?

21 A Yes.

22 Q Is that the same individual that is seated at the table  
23 to my right that performed those actions?

24 MR. STOLER: Your Honor, objection. That's been  
25 asked and answered.

THE COURT: Sustained.

24 Q (By Mr. Smith) Mr. Dean, how much education do you  
25 have?

1 A. I went through the ninth -- I completed the ninth grade,  
2 and I am now taking my GED.

3 Q. Mr. Dean, you previously indicated that you did not tell  
4 officers of your involvement when you were first arrested;  
5 is that correct?

6 A. Yes.

7 Q. Did you at some date tell officers of your involvement  
8 in this crime?

9 A. Yes, I did.

10 Q. Do you know approximately when that was?

11 A. Early part of May.

12 Q. Of what year?

13 A. 1989.

14 Q. Who did you tell that to?

15 A. I told that to -- I discussed it with my attorney. I  
16 told it to Burdette Searcey, and I do believe it was the  
17 sheriff.

18 Q. Mr. Dean, did you remember all this incident the first  
19 time you talked to the sheriff?

20 A. No, I didn't.

21 Q. What parts of the incident?

22 A. I remembered being there at the time.

23 Q. How many times did you talk to law enforcement  
24 individuals at the beginning of May of this year?

25 A. Oh, once. Then towards the middle I talked to them  
again.

Q. Mr. Dean, do you remember the day you plead to this  
crime?

1 A. Yes, I do.

2 Q. What was the date?

3 A. It was May 17.

4 Q. Of 1989?

5 A. Of 1989.

6 Q. Mr. Dean, did you have any conversations with law  
7 enforcement on that date?

8 A. Yes, I did.

9 Q. Do you remember when they were?

10 A. Well, it was in the afternoon.

11 Q. Was it when you -- When did you enter your plea?

12 A. I entered my plea at approximately four o'clock.

13 Q. In the afternoon?

14 A. In the afternoon.

15 Q. Had you talked to law enforcement prior to the time of  
16 entering your plea?

17 A. I hadn't told them nothing other than I was there.

18 Q. Have you ever seen a crime scene video of the scene?

19 A. Yes.

20 Q. When did you see that?

21 A. In the afternoon of May 17.

22 Q. Was that before or after you entered your plea?

23 A. That was before.

24 Q. Do you remember who was present when you saw that video?

25 A. My lawyer, my attorney, yourself, and I think Jerry  
DeWitt and Burdette Searcey.

Q. Who's Jerry DeWitt?

A. He's the sheriff in Gage County.

1 Q Who's Burdette Searcey?

2 A He's a deputy of Gage County.

3 Q Where did you see the video?

4 A I saw it in Jerry DeWitt's office at the Gage County  
5 Jail.

6 Q What happened when you saw this video?

7 MR. STOLER: Objection, Your Honor, as to the  
8 relevancy.

9 THE COURT: Well, I can't sustain that objection,  
10 but I caution you, we're not into conversations until the  
11 defendant is shown there.

12 Q (By Mr. Smith) Were you also present in the office?

13 A Yes, I was.

14 Q You've indicated you looked at the VCR tape.

15 A Yes, I did.

16 Q What happened?

17 MR. STOLER: Objection, again as to relevancy.

18 THE COURT: I'm going to overrule with the  
19 caveat I've previously given.

20 A I broke down and cried. I seen the video. I didn't even  
21 see it all. I seen the part where Mrs. [REDACTED] was laying on  
22 the floor.

23 Q (By Mr. Smith) Did you give a statement then?

24 A Not until after I entered my plea.

25 Q But did you talk then?

A Yes, I did.

Q Did you have remeberances at that time?

A Yes, I did.

1 Q Were you awake at the time you were having those  
2 remembrances?

3 A Yes, I was.

4 Q What were those remembrances?

5 A All about the incident, nightmares of it.

6 Q All right. All about it. Tell me what you're talking  
7 about. What part of the incident?

8 A The violent nature, the sexual assault, just mainly that  
9 part.

10 Q Did you describe who was there?

11 A Yes, I did.

12 Q Who did you say was there?

13 A Joseph White, JoAnn Taylor, and Deb Shelden and Kathy  
14 Gonzalez or Kathy Knehans.

15 Q Do you know Kathy Gonzalez as Kathy Knehans?

16 A Yes, I do.

17 Q Was there anyone else there?

18 A Myself and Mrs. Wilson.

19 Q Mr. Dean, had you a -- dreamt any of those matters prior  
20 to the time that you'd seen that video?

21 A No, sir.

22 Q Did you dream about them afterwards?

23 A Yes, I did.

24 Q Mr. Dean, are you sure you were in that apartment on  
25 February 5, 1985?

A Yes, I am.

Q Are you sure that the defendant, Joseph White, was in  
that apartment on February 5, 1985?

1 A. Yes, I am.

2 Q. Are you sure you saw him on top of Mrs. [REDACTED] on  
3 February 5, 1985?

4 A. Yes, I am.

5 Q. How far away from him were you when you saw this?

6 A. Three to four feet.

7 Q. Mr. Dean, do you remember you were deposed regarding this  
8 matter?

9 A. Yes, I do.

10 Q. Do you remember in that deposition you've indicated you  
11 had some -- you may have some problems with the identification  
12 of Mr. White?

13 A. Yes, I did.

14 Q. What were your problems at that time?

15 MR. STOLER: Your Honor, I'm going to interpose an  
16 objection as to the scope of examination.

17 THE COURT: Overruled.

18 Q. (By Mr. Smith) What were your problems at that time?

19 A. I just -- If he looked any different, different color  
20 hair, you know, wearing different clothes, I might have a  
21 problem identifying him.

22 Q. Do you have a problem with identifying him here today?

23 A. No, I don't.

24 Q. Mr. Dean, do you know who Clifford Sheldon is?

25 A. Yes, I do.

Q. Was Clifford Sheldon in Apartment No. 4 on February 5,  
1985?

A. No, he was not.



1 Q Have you ever said previous to this that he was there?

2 A Nope.

3 Q Have you dreamt about Clifford Shelden?

4 A Yes, I have.

5 Q Could you place where that dream was or where it was  
6 supposed to be?

7 A Nope.

8 Q Mr. Dean, can you differentiate between your dreams  
9 and reality?

10 A Pretty much.

11 Q What can you differentiate?

12 A Oh, just there's some things you can't talk about and  
13 place.

14 Q Is everything that you told the jury today, do you  
15 remember that from your memory?

16 A Yes.

17 Q You remember Joseph White being there from your  
18 memory?

19 A Yes.

20 Q You remember yourself being there from your memory?

21 A Yes.

22 Q You remember all the other people being there, -- JoAnn  
23 Taylor, Tom Winslow, Kathy Gonzalez -- from your memory?

24 A Yes.

25 MR. SMITH: I have no further questions.

THE COURT: Mr. Stoler?

MR. STOLER: Thank you, Your Honor.