

COUNTY COURT : NASSAU COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK, :

CPM

-against-

Ind. #61029

JOHN KOGUT,

Defendant.

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262 Old Country Road
Mineola, New York
May 13, 1986

B E F O R E :

HON. JOHN F. O'SHAUGHNESSY,
County Court Judge.

A P P E A R A N C E S :

HON. DENIS DILLON
Nassau County District Attorney
BY: FRED KLEIN, ESQ., of Counsel
Assistant District Attorney,
for the People.

F. JAMES WOODS, ESQ.,
for the Defendant.

JERRI KREVOFF, CSR, RPR
Official Court Reporter

-JURY TRIAL-

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2 A Detective Martino.

3 Q Now, did you have a conversation with the
4 defendant, once Detective Martino was in the room?

5 A Yes, I did.

6 Q Can you describe that for the jury, please.

7 A I told Mr. Kogut that I had spoken to Detective
8 Gruber. And Detective Gruber felt that he wasn't telling the
9 truth; and that he was involved in the murder of Theresa
10 Fusco. I told him I wanted him to tell me the truth; at
11 which point, he said he would tell me.

12 He told me that he was riding with John Restivo in
13 his van, and they were westbound on Merrick Road. He said
14 they saw the young girl walking, and they stopped the van to
15 talk to her.

16 He said he felt that Restivo, he thought Restivo
17 knew her, through her older sister. There was some mention
18 about her getting fired.

19 At this point, I showed him a picture, a Polaroid
20 picture of [REDACTED]. I asked him if that was the girl,
21 that night. He said yes. I asked him to initial it and date
22 it; which he did.

23 I then asked him if he could describe for me, her
24 clothing that night. He told me that she had a, what he
25 thought was a red and white headband on. He thought she had,

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2 he believed that she had, a blue denim jacket; possibly, a
3 dark top with jeans, dark jeans and white hightop sneakers.

4 He said he got into the back of the van. The girl
5 was in the front. And Restivo drove him home to Oakland
6 Avenue, where he was staying with his friend, Brian
7 Skellington. And that was all he remembered.

8 Q Did you -- you mentioned showing him a photograph.
9 Let me show you what is in evidence as People's Exhibit 1.
10 Do you recognize that, Detective Volpe?

11 A Yes, I do.

12 Q What do you recognize that to be?

13 A This is the photograph, a Polaroid photograph, of
14 [REDACTED]; the same photograph I showed him that night.

15 Q Does that contain the defendant's initials?

16 A Yes, it does; on the back.

17 Q When had you shown him that photograph;
18 approximately what time?

19 A I would say around eleven o'clock, on the 25th.

20 Q Did he put the date on that, as well?

21 A Yes.

22 Q What date did he put on it?

23 A He put on it, March 26th.

24 Q Did he put that on at the time he put his initials
25 on?

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2 A Yes.

3 Q That's the time you showed it to him?

4 A Approximately 11:00 p.m.

5 Q Can you describe what happened after he told you
6 that Restivo dropped him off at home; and that was all he
7 knew?

8 A Well, I told him I felt he was lying. I told him I
9 just wanted him to tell me the truth.

10 At this point, he got into another version; another
11 story, he told me. It started the same way: that they were
12 driving westbound on Merrick Road, him and Restivo. They saw
13 the girl. He indicated that they were high on booze and coke.
14 They were toasted, as he described it.

15 He said Restivo stopped and talked to the girl, and
16 he believed that he knew the girl from his brother, meaning
17 Restivo's brother.

18 She subsequently gets into the van, and they drive
19 off. And he falls asleep. He indicates to me that she's in
20 the front, and he falls asleep in the back of the van.
21 Subsequently, he wakes up to screams; he hears screams. He
22 jumped out of the van, and he realizes that he's in a
23 cemetery.

24 At this point, he sees Restivo out of the van, on
25 the blanket, on top of the girl. He described it as a light

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2 blue blanket. And he is on top of her; she's nude from the
3 waist down. Her blouse is torn, and her bra is pulled down.
4 Restivo was choking her with a length of cloth or clothing.

5 As he approached, she stopped screaming, and he
6 realized she was dead. Restivo requested that they bury the
7 body, and he agreed. And they buried the body in a shallow
8 grave in the cemetery.

9 He said he left and he went to Lisa Price's house.
10 I asked him if he ever went back to move the body, or change
11 the location of the body. His reply to that was that Restivo
12 must have, because he didn't go back.

13 Q Now, approximately what time was it that you --
14 that he had finished relaying this information to you?

15 A This was about twenty-five minutes after midnight.
16 We're into the 26th, in the early morning hours.

17 Q Can you describe what happened at that point?

18 A At my request, I wanted to go back to the Homicide
19 Office, from 219. I did make that request to Martino and Mr.
20 Kogut. And we did so. We went back to the Homicide Office.
21 I asked Detective Martino to escort Mr. Kogut into the
22 interview room. And I had a conversation with Detective
23 Dempsey, at this time.

24 Q Where was this conversation?

25 A This was in the main room in the Homicide Office.

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2 Q How far is that from the interview room?

3 A Maybe fifteen or twenty feet.

4 Q Now, after you had the conversation with Detective
5 Dempsey -- well, what did you tell Detective Dempsey?

6 A I gave Detective Dempsey a broad overview of the
7 two versions that I had so far received from Mr. Kogut,
8 relative to the incident or the details of the incident. He
9 reassured me that he had reviewed some papers with regard to
10 the investigation; at which point, I asked Dempsey to come in
11 with me for an interview. I now relieved Detective Martino.
12 It was just Detective Dempsey and myself.

13 Q Where did you go?

14 A Into the Homicide interview room.

15 Q Mr. Kogut was in there at the time?

16 A Yes, he was. Martino had brought him in.

17 Q Was there anybody else there, besides you,
18 Detective Dempsey and the defendant?

19 A In the main Homicide room?

20 Q In the interview room.

21 A No. Just Detective Dempsey and myself. Martino
22 was waiting at the door, the entrance to the interview room.

23 Q This is when you went in?

24 A Right.

25 Q Can you describe what the interview room looked

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2 like, on the 25th of March, or the 26th of March?

3 A It has one desk in it. It's approximately seven or
4 eight by seven or eight. It's almost a square room. It has
5 three chairs; one behind the desk, and two chairs alongside
6 the desk. There's one file cabinet in the room. And it has
7 a window and a glass door.

8 Q Can you describe what happened after you and
9 Detective Dempsey then went into the interview room.

10 MR. WOODS: May we have a time, please.

11 Q Sure. What time was it?

12 A This was approximately twenty to one, now, on the
13 26th, in the a.m. Detective Dempsey and I had entered the
14 room. I once again told Mr. Kogut that I felt he was lying;
15 his story was not consistent. I told him not to be afraid to
16 tell the truth.

17 At this point, he started to tell us another
18 version. He told us he would tell us what happened.

19 Q What did he say at this point?

20 A Once again, he told us that he was with John
21 Restivo in his van. He said they were driving westbound on
22 Merrick Road. And similar to the second story, they stopped,
23 talked to the girl. This time, he felt, that he thought
24 Restivo knew the girl through his younger brother. There was
25 mention made that she had gotten fired.

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2 She subsequently gets into the van, and he goes to
3 the back of the van. As he had previously described to us,
4 he fell asleep, and he wakes up to screams. He comes out of
5 the van and he sees, on the blanket, John Restivo with a
6 length of cloth or clothing. He said it may have even been a
7 shirt choking the girl.

8 She stops screaming and he felt she was dead. As
9 he walked up to Restivo, he said Restivo looked up to him and
10 told him, "You're in this with me." He said, "You have to
11 help me get rid of the body." He agreed. He said they
12 wrapped her in a blanket.

13 He said Restivo had taken her jewelry and her
14 clothing. They wrapped her in a blanket, and put her in the
15 van, and drove out of the cemetery in the van. They went to
16 the dead-end street across from the cemetery, by the railroad
17 tracks, and they pulled the van up with the back doors facing
18 the railroad tracks on this dead-end street. They opened a
19 side door, and they took her out the side door. He said
20 Restivo had her head and he had her feet.

21 They walked her in, until they came to the
22 clearing. At this clearing, they unrolled the girl's body
23 out of the blanket. She was face down. He said they
24 covered her with leaves, and these wooden pallets that were
25 back there.

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2 I asked him if that area had any significance to
3 him. He said it was a hang-out, at one time, for the local
4 kids. I asked him if he was familiar with the term, the fort.
5 He said he was.

6 Q Did he describe what that meant, the fort?

7 A Just the fact that the kid hung out there. It was
8 a reasonably isolated location between Rockland Avenue and
9 Park Place. He said he left, and he went to Oakland. He
10 went home to Oakland.

11 Q Oakland, meaning what?

12 A Oakland Avenue, where he was staying with
13 Skellington.

14 Q Now, what happened after he had told you this
15 information?

16 A I told him again, I didn't believe him. At this
17 point, he asked me if he could have a pack of cigarettes. I
18 said, okay. I asked him if he wanted some coffee. He did.
19 As a matter of fact, Detective Dempsey wanted coffee.

20 I left and I went downstairs on the first floor of
21 police headquarters, and got him a pack of cigarettes. I
22 came back up, and I made some coffee. I brought the coffee
23 and cigarettes in.

24 At that point, Detective Dempsey and Mr. Kogut were
25 in a conversation. So I had asked them to please update me

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2 on what they had discussed. They were talking about some
3 background on Kogut. Kogut had indicated that he was born
4 and raised -- born in Far Rockaway --

5 MR. WOODS: Objection. Is this Mr. Kogut's
6 words? I don't understand whether this is Mr.
7 Kogut's words, or Detective Dempsey's words.

8 THE WITNESS: Detective Dempsey, at the point
9 I returned, updated me on what their discussion
10 was. He brought me up to date, that they had
11 discussed that he was from Far Rockaway --

12 MR. WOODS: Well, I object.

13 THE COURT: Sustained. Don't tell us what
14 Detective Dempsey told you.

15 Q Where was the defendant when this was going on?

16 A He was sitting in the room.

17 Q This was right in front of him?

18 A Right in front of him.

19 Q What did Detective Dempsey tell you?

20 MR. WOODS: Objection.

21 THE COURT: Sustained.

22 Q Did Mr. Kogut say anything, at this point?

23 A There was a point, at a point in time, when Mr.
24 Kogut continued his story, and indicated that at one time, he
25 was in the city. He was working in the city, as a male

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2 prostitute --

3 MR. WOODS: Objection, as to what he indicated.
4 If there are specific words, he has to testify to
5 them.

6 MR. KLEIN: Judge, he's saying.

7 THE COURT: Yes. Indicated, I take it, is
8 another way for you to say what he said?

9 THE WITNESS: That's correct.

10 Q Go ahead.

11 A He said to me that he was a male prostitute in New
12 York City. And that he actually had a pimp. And that at
13 times, he would be assigned to go to --

14 MR. WOODS: Objection. May we approach?

15 THE COURT: These are the defendant's words?

16 MR. WOODS: Yes.

17 THE COURT: Come up.

18 (Whereupon the following side bar conference
19 took place outside the hearing of the jury:)

20 MR. WOODS: He's now, from pedigree
21 information, elucidating -- he's bringing out
22 uncharged crimes. He's indicating he was a male
23 prostitute, and he had a pimp.

24 MR. KLEIN: This is a discussion they're
25 having with him, while interrogating him about a

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homicide.

THE COURT: There's a possibility with respect to that.

MR. WOODS: Your Honor, I -- in the pedigree information they took, they fully discussed his criminal record. That doesn't make it admissible.

THE COURT: I agree with Mr. Woods. Objection sustained.

MR. KLEIN: How is he going to handle it, when he asked him what they were talking about for an hour? They talked about other things. That's not fair. This all came out at the hearing; every bit of it.

THE COURT: I know. There are things admissible at the hearing, that aren't admissible here.

MR. KLEIN: This is what the defendant told them --

THE COURT: There's a way of doing that, without necessarily going into the substance of the conversation. Mr. Woods now -- how long did he say this took?

MR. KLEIN: About ten or fifteen minutes.

THE COURT: You continued to discuss matters.

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2 And that's it. Do you have a problem with that?

3 MR. KLEIN: No.

4 (Whereupon the following took place back
5 within the hearing of the jury:)

6 BY MR. KLEIN: (Continuing)

7 Q Now, Detective Volpe, how long did this discussion
8 with Mr. Kogut, concerning his background, take?

9 A Fifteen or twenty minutes.

10 Q And can you describe what if anything you or
11 Detective Dempsey said to him, after he explained about his
12 background to you.

13 A Yes. At this point, once again, I told him that
14 the statement he made, or the -- relating the story to me, as
15 he had given it to me, was inconsistent with our
16 investigation; also to include his interview with Detective
17 Gruber. I told him, again, I felt he was lying. And I
18 wanted him to tell me the truth.

19 At this point, he said he would tell us, and he
20 started with another version of, or account of that evening.

21 At this point, he said that Dennis Halsted was with
22 them. There was himself, John Restivo and Dennis Halsted.
23 They were in Restivo's van. He indicated that Restivo was
24 driving, Halsted was sitting up front in the right front
25 passenger seat. He was in the back seat.

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2 He said that he thought they may have done a moving
 3 job in Hempstead, but he wasn't sure. I asked him if he
 4 could bring it in a little closer for me, relative to the
 5 date of the incident. I was aware of his birthday. I asked
 6 him if it was, in fact, before or after his birthday. I
 7 asked him to use that as a barometer, to try and remember
 8 when this happened.

9 He said he remembered it was a week or two before
 10 his birthday. He said they were coming up Ocean Avenue, onto
 11 Merrick Road, and it was pre-planned. They wanted to party
 12 with somebody. A description for drinking beer and smoking
 13 marijuana that he told me. When they got to Merrick Road,
 14 they made a left turn. They were westbound on Merrick Road.

15 At this point, they see the girl walking. And they
 16 pull up and stop. Halsted jumps out of the van, and Kogut
 17 opens the side door of the van. Halsted forces the girl into
 18 the bed of the van. Kogut said he closed the door, and they
 19 took off.

20 At this point, the girl was struggling, and Halsted
 21 hit her a number of times. And Kogut, at that point, said
 22 that he jumped on top of her. He was holding her upper body
 23 down. He said he knew they were going into the cemetery.

24 At this time, he knew that Dennis Halsted, in his
 25 words, was fucking her. He said, by the time they got into

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2 the van (sic.), he had also fucked her, as he put it.

3 And eventually, they were in the cemetery. And
4 John Restivo had stopped the van, and he came back and he,
5 too, also, attacked the girl. He said that, at that point,
6 they made a decision that they had to kill her. And with a
7 length of chain, he said that John Restivo had strangled her
8 in the van.

9 He indicated to me that Halsted took the jewelry,
10 and Restivo took her clothing and put it in a plastic garbage
11 bag.

12 They left the cemetery, and went to a dead-end
13 street that he described, across from the cemetery. They
14 pulled the van in, in the same manner. They opened the side
15 door of the van. And at this time, Restivo had her head and
16 Halsted had her feet. He was walking behind them. He said
17 they walked in. It was a heavy brush area. It took them
18 some time to get in there.

19 When they came to the clearing, he said they rolled
20 her out of the blanket. She was face down, and they put some
21 leaves on her. Then they put the pallets over her.

22 He said the other two left, and he went and left,
23 and went Oakland Avenue again, where he was staying.

24 Q Can you describe what happened -- well, do you
25 recall approximately what time this was, when he finished

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2 this version?

3 A This was about two-thirty.

4 Q Detective Dempsey was still in the room?

5 A Detective Dempsey and myself.

6 Q Now, what happened after he told you that?

7 A Once again, I told him that his story was too
8 inconsistent with the investigation. We had medical evidence.
9 We had this interview with Gruber, and it was just
10 inconsistent with the story he was telling me. He said he
11 would tell us what happened that evening.

12 This time, he went to tell me the story. He
13 started it with himself and Restivo. I asked him if Halsted
14 was there. He said no, he wasn't. He said they were
15 westbound on Merrick Road. And they saw the girl.

16 They stopped to talk to the girl. He said Restivo
17 knew the girl from his younger brother, meaning Restivo's
18 younger brother, Joe. He said they had gotten fired. He
19 said they were high on booze or coke, or marijuana. She got
20 into the van voluntarily. She was sitting up front; he was
21 in the back. They were driving around, and he invited her to
22 smoke a joint.

23 Then he said, the next thing he did, was, as he
24 described it to me, he made a move on her; he grabbed her.
25 There was a struggle. He hurt her. He forced her into the

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back of the van; at which time, he raped her.

Now, they were in the cemetery. After ^{he} /raped her, he said John Restivo had strangled her with a length of cord. He said he took her jewelry and Restivo took her clothing and put it in a plastic bag.

Then they left the cemetery, and he went again to the dead-end, where the railroad tracks are, across from the cemetery. He said, at this point, they took her out the side of the van. Restivo walked her in. He was walking backwards. He was holding her head. Kogut was holding her feet.

They got to the clearing where the pallets were. He said they rolled her out. She was face down. They were kicking the leaves on her. Then they put the pallets on her.

It was at this point, he said he got scared, and he told them that he was leaving. At that point, I challenged him. I asked him, you told them; who were you telling. I said, were you telling [redacted] and John Restivo. You're telling me it was you, Restivo and [redacted] body. Who is them; who are them. I said, I caught you again in a lie.

At that point, he got very emotional and started to cry. I gave him a few minutes to compose himself. He had a cigarette. I told him that, "You're still lying to me. I just caught you in a lie. Along with all the other variations of stories you've given me, are you going to now

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2 tell me the truth."

3 At that point, he had composed himself, about ten
4 or fifteen minutes, and told me he would tell me the truth.

5 Q Did he then tell you what he claimed happened on
6 the 10th of November?

7 A Yes.

8 Q Could you describe for us what he told you.

9 A He told me that he remembers it was back in
10 November. And he remembers about a week or two before his
11 birthday. He said he was with two guys. He was with John
12 Restivo and Dennis Halsted.

13 He said John Restivo, he worked for John Restivo,
14 and Dennis Halsted was a guy from Lynbrook, who also worked
15 for Restivo. He said they were coming possibly from a moving
16 job in Hempstead.

17 He said they were in John's van, and that John was
18 driving. Dennis was sitting in the passenger seat. And he
19 was sitting in the back, on a cushioned seat that's behind
20 the passenger seat. He said they were drinking, they were
21 high from booze and pot.

22 He said they were coming up from Ocean Avenue,
23 where Restivo kept his trucks down in East Rockaway. When
24 they got to Merrick Road, they made a left turn to westbound.
25 He indicated to me that the cemetery was on his right side,

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2 as was the girl that they now see walking. She was walking
3 towards MacDonald's, which is past the cemetery.

4 He said they stopped the van to talk to her. And
5 although he couldn't hear her words or their words, he
6 indicated that he thought one of them knew her, by the
7 conversation. He moved up into the seat to see if he could
8 hear it. But he couldn't. He did indicate that just prior
9 to them stopping, that Dennis and John were discussing that,
10 "Well, let's see if she wants to party" -- when they had seen
11 the girl -- "Let's see if she wants to party;" meaning drink
12 beer and smoke pot.

13 At this point, they invited her in, not to party,
14 but actually for a ride home. He opened the side door, at
15 which point he said he saw the girl. He described her to me
16 at fifteen to sixteen years old, dark hair, medium long hair.
17 She was wearing a blue denim jacket. He thought maybe a dark
18 top and dark pants. And that she had on white hightop
19 sneakers.

20 The girl got into the van, and they drove away, and
21 she took up a position, a kneeling position in between Mr.
22 Restivo and Mr. Halsted, as they were driving. He said while
23 John was driving, Dennis said to the girl, he said, "Do you
24 want to party. Forget about being fired. Do you want to do
25 the right thing." Mr. Kogut told me to do the right thing,

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2 on the streets, means to get laid.

3 At that point, the girl got furious. She said,
4 "Stop the fucking van, let me out." Halsted -- Kogut told me
5 Halsted jumped out of the seat and grabbed her. She was
6 fighting. She was screaming. He had a good grip on her.

7 Kogut says he now moves up in his seat, up forward
8 in his seat, at which point the girl slaps him, and hit him
9 right in the face. He said he freaked out, when she hit him,
10 and he punched her with a left. He hit her with the left
11 hand on the right side of her face. She kind of fell from
12 Halsted's grip.

13 He said he hit her twice, with a left and a right,
14 and she fell from Halsted's grip. He said he jumped on top
15 of her. She was still fighting, kicking and punching.

16 At that point, he says Halsted was taking her pants
17 and underpants off. He was taking her shirt and blouse off,
18 and her bra. He told her to shut up and calm down.

19 At this point, he realized, in his words, that
20 Halsted had his penis inside of her, and they were entering
21 the cemetery, and Halsted was, in fact, fucking her.

22 They got into the cemetery, and he said she wasn't
23 fighting as much. She was almost unconscious. She was
24 fainting.

25 He said, at this point, the van was stopped, and

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2 Restivo yelled back to them, "Let me get my piece" -- or
3 excuse me -- "Let me get a piece."

4 Halsted now was sitting up getting dressed.

5 Restivo was now fucking the girl, as he put it. He said he
6 got out the side door of the van, and he laid a blanket out
7 in the cemetery.

8 Subsequently, Restivo and Halsted brought the girl
9 out to him, and they laid her down on the blanket. She was
10 unconscious and face-up. He observed, or he noticed, that
11 she had jewelry on. And he said, one particular item looked
12 like, it appeared to be a heart on a chain. He said there
13 were other charms, but he doesn't recall what they were like.
14 It looked like a portion of it was broken off. He said he
15 ripped that off her neck.

16 He said he now looked back and Restivo was getting
17 dressed in the van. Halsted was taking the remainder of her
18 jewelry and rings off. Kogut told me she started to come to,
19 now. She was dazed; but she was coming to. She was crying,
20 and he said her words were, "I got to tell. I got to tell."

21 It was at this point, that they made a decision
22 that they had to kill her. They were afraid she would tell
23 on them. By now, she was conscious. And she was becoming
24 frantic.

25 Kogut said he got on top of her and put his knees

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on her shoulder, and he covered her mouth, because she was screaming. Restivo and Halsted were behind him. And he said they told him to do what you got to do. They threw him a length of rope, a long length of rope.

He said, but just prior to that, Halsted stood over the girl and told her, Halsted told her, "You have to die." While he was holding her, they were back by the van, as I said. He told me that he took this rope. It was like a hard nylon rope. He wrapped it around her neck twice. And he said he twisted it like a corkscrew. He held it until [redacted] s body went limp, and she wasn't moving. He knew she was dead.

At that point, he rolled her up in that same blanket that she was lying on. He put her over his shoulder and took her to the van. He said he threw the rope into the van. Then he threw the girl's body into the bed of the van. They left, they left from the cemetery.

He says they decided they had to get rid of the body. While they were leaving the cemetery, he said he didn't remember what he had done with the rope. But that he had taken her clothing and her pocketbook -- and he described it as a maroon or black pocketbook with a strap on it. He put it all in a plastic bag, and put it behind the driver's seat. He told Restivo to get rid of it. Restivo told him,

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2 he said he would take care of it.

3 They drove to this dead-end street across from the
4 cemetery, and parked the van, as he had previously described.
5 They backed it up so that the back doors were facing the
6 railroad tracks. They got out the side door. They walked,
7 the girl's body still wrapped in the blanket, into this
8 brush, heavy brush area. Restivo was at the girl's head;
9 Halsted was at her feet, and he was behind them. He followed
10 them in, until they got to the clearing.

11 He said they rolled her body out of the blanket.
12 She ended up face down; at which time, they kicked leaves on
13 the body. He indicated that he said he suggested to them,
14 "We should cover her with these wooden pallets;" which they
15 did.

16 After they covered her, he said Restivo and Halsted
17 left the same way in. He went back out onto the avenue, in
18 the opposite direction. He said, as he was leaving, he
19 threw some jewelry down by the railroad tracks, as he
20 described it.

21 He left, went out onto the avenue, up to Sunrise
22 Highway. The route he took home, was Sunrise Highway to
23 Union Avenue, to Oakland Avenue. He said he went in the
24 front door. It was open, and he went to sleep.

25 Q Now, how did he tell you this, Detective Volpe?

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1 Was it all like that; or did you ask him specific questions,
2 and he give you answers?
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4 A It was in a question and answer-type of atmosphere.

5 Q Now, what -- about what time was it now, that he
6 finished telling you about that evening?

7 A It was about 6:00 a.m. in the morning.

8 Q What if anything did you do at this point?

9 A At this point, I told Mr. Kogut that, now that we
10 felt this was accurate, I wanted to take a written statement
11 from him.

12 Q What did he say?

13 A He said okay.

14 Q What did you do?

15 A At that point, we went over the details, as I just
16 described. We went over the details of this last statement
17 he made, oral statement he made to me, in a question and
18 answer again. I reduced it to writing in a statement form, a
19 seven-page statement.

20 Q Where was this done? In what area of the Homicide
21 Squad?

22 A In the Homicide interview room; same room.

23 Q Was it still you and Detective Dempsey there?

24 A That's correct.

25 MR. KLEIN: May I have this marked for

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2

identification?

3

(Whereupon People's Exhibit 29 was marked for
Identification, only)

5

MR. KLEIN: Please show that to the witness.

6

Q Detective, do you recognize that exhibit?

7

A Yes, I do.

8

Q What do you recognize that to be?

9

A This is the original of the statement that I took
from John Kogut on the morning of the 26th, March 26, 1985;
seven pages.

11

12

Q Approximately what time of the morning were you
finished with that statement?

13

14

A Approximately ten to nine in the morning.

15

Q Can you describe what happened after you finished
writing the seven pages.

16

17

A When I completed the statement, I gave it to Mr.
Kogut, along with some instructions, that as he -- the first
thing I told him was that I wanted him to read aloud, the
first page. And I told him that during -- while he was
reading the different pages, he would find some corrections
that I had made, and initialed. And that once he reviewed
them, as he read the statement, I asked him to do the same:
to initial the corrections I had made.

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Q Did he read the first page out loud?

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A Yes, he did. He read it right to the bottom.

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Q Did he read it correctly?

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A Yes, he did.

5

Q What happened after he read that?

6

A I instructed him to read the rest of the statement to himself. He did that.

8

Q After he finished the seven pages, what did you do?

9

A I asked him to sign each of the pages; and the last page, to sign his name, address, and the town he lives in.

10

11

Q Did you ask him anything about the statement, after he finished --

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A (Interposing) I asked him if it was the truth.

14

Q What did he say?

15

A He said it was the truth.

16

MR. KLEIN: I offer that into evidence.

17

MR. WOODS: No objection.

18

THE COURT: Twenty-nine in evidence.

19

(Whereupon People's Exhibit 29, previously marked for Identification, only, was now received and marked in Evidence)

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MR. KLEIN: I would ask for permission to read that to the jury.

23

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THE COURT: Yes.

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MR. KLEIN: This is a statement of John Kogut.

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"My name is John Kogut. I am twenty-one years of age, being born on 11-29-63. I live with my girlfriend, Lisa Price, and her father, at 161 Traymore Blvd., Island Park. I am currently employed by Frank Pertini Landscaping, 2988 Bayview Court, Oceanside. Phone, R04-7483.

"I have been told by the detective that I have the right to remain silent, and that any statements I make may be used against me in Court. I have been told that I have the right to talk with a lawyer before answering any questions, or to have a lawyer present at any time. Further, I have been advised that if I cannot afford to hire a lawyer, one will be furnished me, and I have the right to keep silent until I have had the chance to talk with a lawyer. I understand my rights and make the following statement freely and voluntarily:

"I am willing to give this statement without talking with a lawyer or having one present. I would like to say that sometime back in November, 1984, about a week or two before my birthday, I was with these two guys. One was John Restivo, who I worked for, and the other was Dennis Halsted, a guy from Lynbrook I know, who also worked for Restivo.

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2 "On this night, it was between 8:00 p.m. and
3 10:00 p.m., I was with John Restivo and Dennis
4 Halsted in John's van. It's a blue Ford step van,
5 with a side door that opens. This door is located
6 back from the right front passenger door. I seem
7 to remember that we were coming from a moving job,
8 possibly Hempstead. And we were drinking beer and
9 smoking pot. John was driving, Dennis was in the
10 right front passenger seat. And I was sitting on a
11 cushion seat right behind the passenger seat. We
12 were coming from East Rockaway, where John keeps
13 his trucks, up Ocean Avenue.

14 "At the intersection of Merrick Road, John
15 turned left. We were heading west on Merrick Road,
16 and the cemetery was on our right side.

17 "At this point, there's a girl walking on
18 Merrick Road by the cemetery, and heading toward
19 MacDonald's. John pulls up and stops alongside her.
20 John and Dennis were saying, 'Let's see if she
21 wants to party,' meaning maybe smoke or have some
22 beers.

23 "I felt that one of them knew her by the way
24 they were talking. But I can't remember her or
25 their exact words. When I heard this conversation,

87 1

2 I moved up in the seat to see the girl, and hear
3 what's happening. Either John or Dennis invited
4 her in, not to party, but for a ride home.

5 "I then opened the side door and I see this
6 girl. She was about fifteen or sixteen years old,
7 dark hair, medium long. She had on a blue denim
8 dungaree jacket, I think a dark top, dark pants and
9 white top sneakers.

10 "She knelt down in between Dennis and John. I
11 was sitting behind her. Dennis, as John's driving
12 around, says to the girl, 'You want to party.
13 Forget about getting fired. Do you want to do the
14 right thing.' Do the right thing on the street,
15 means to get laid.

16 "With that, she said, 'Stop the fucking van.
17 Let me out.'

18 "Dennis then jumped out of his seat and
19 grabbed her. The girl started screaming, 'Leave me
20 alone, let me out.' She was fighting Dennis, but
21 he was too big for her, and had a good grip on her.

22 "As I moved up to where she and Dennis were,
23 she turned on me and smacked me in the face. With
24 this, I freaked out. I got crazy and I punched her
25 with my left fist. I hit her on the right side of

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2

her face. She falls out of Dennis' grip, to the floor of the van.

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4

"I would like to say that I hit her with a left and a right, before she fell from Dennis' grip. I jumped on her upper body, and she was trying to throw punches and kicks.

5

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7

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"At this point, Dennis started taking off her pants and underpants, and I was taking her jacket, shirt and bra. Either telling her to shut up, calm down. And I realized that Dennis had put his penis inside of her. While Dennis fucked her, I held her upper body down.

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"At this point, she wasn't fighting too much. By this time, I mean after Dennis fucked her, we were already in the cemetery.

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16

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"John had stopped the van, and yelled back to me and Dennis, 'Let me get a piece.' I looked down at her and she was almost unconscious. I mean she was fainting.

18

19

20

21

"Dennis pulled his pants up, and was sitting in a seat by the passenger seat. John was now fucking her while she was unconscious, and I got out the side door, and I took the blanket out, that was in the van. I spread it out on the ground.

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This blanket was quilted with a different colored border.

"Dennis and John then carried her out of the van and laid her face up on the blanket. I remembered that she had some jewelry on. I recall seeing a gold colored chain with what looked like a double heart on it, with a piece broken off of it. I think there were other charms on the chain, but I don't remember what they looked like.

"I then ripped the heart and chain off, and I put it in my pocket. John was in the van, pulling his pants up, and putting his shoes on, and Dennis was taking the rest of her jewelry and rings off.

"Now she starts to regain consciousness. She was a little dazed, but she was saying, 'I got to tell, I got to tell.' And she was crying.

"She was still laying on the blanket with no clothes on. Dennis, John and I decided she had to be killed. We were afraid she would tell on us. She started to come to, and she was getting frantic.

"I got on top of her, put my knees on her shoulders, and covered her mouth. My back was to John and Dennis, and one of them threw me a rope.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 740

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One of them said, 'Do what you got to do.'

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"But just before the rope was thrown to me, Dennis, while standing over her, told her, 'You have to die.' They both went back to the van.

6

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"I took the rope which was a hard nylon type. I wrapped it double around her neck, and then I twisted it like a corkscrew. I twisted it for a few minutes, until her body went limp, and I felt she was dead.

11

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13

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"I rolled her body up in the quilt, and I threw her over my shoulder and into the van. I threw the rope into the van, and then I dropped the body into the floor of the van.

15

16

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"I got into the van, closed the door, and John took off out of the cemetery. Dennis was sitting up front.

18

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21

"As we were leaving the cemetery, we discussed that we had to get rid of the body. While we were driving and talking, I was putting her clothing into a plastic garbage bag.

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"In addition to her clothing, I took her pocketbook and put it into the bag. It was maroon or black with a strap. I don't remember what I did with the rope. And I left the plastic bag with her

91 1

2 clothing in it, behind the driver's seat.

3 "I told John he had better get rid of the
4 clothing, and he said he would take care of it.

5 "We then went down the street, across from the
6 cemetery, that dead-end by the railroad tracks. I
7 don't remember who picked out the street, but it
8 was dark there.

9 "John and Dennis took her body out the side
10 door, and still wrapped in the quilt, they walked
11 into the wooded area along the tracks, and I was
12 behind them. It was very dark and very heavy
13 brush.

14 "John was carrying her by her head, and
15 walking backwards, and Dennis had her feet. It
16 seemed like five or ten minutes to walk in, before
17 we got to an opening. At this opening, we saw some
18 wooden pallets.

19 "When they put her down, they both pulled the
20 blanket, and she rolled out. She ended up face
21 down.

22 "We all started kicking leaves on her, and I
23 suggested we cover her with the pallets, which we
24 did.

25 "At this point, I told Dennis and John I was

2 leaving. As I started out from where her body was,
3 I threw the jewelry I had, by the tracks. I walked
4 along the tracks, until I came to a street.

5 "I turned right, and I was on Sunrise Highway.
6 I walked down Sunrise, to Union Avenue. I crossed
7 over Sunrise on Union, to Oakland.

8 "At this time, I was living with my friend,
9 Brian Skellington, at 66 Oakland Avenue, Lynbrook.
10 The front door was open. I went in and went to
11 sleep.

12 "I am presently at the Homicide Squad. I have
13 given this statement to Detective Volpe, who has
14 written it for me. I have read it, and it is the
15 truth."

16 BY MR. KLEIN: (Continuing)

17 Q Now, Detective Volpe, can you describe what
18 happened after the written statement was completed.

19 A The statement was completed at about, as I said,
20 ten to nine. About nine-thirty, or just prior to that, I had
21 made a breakfast order. I ordered bacon and egg on a roll,
22 for myself and Mr. Kogut and Detective Dempsey. And we got
23 that about nine-thirty.

24 During that time, I had told Mr. Kogut that I would
25 like for him to go with some detectives to the location of

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2 the cemetery, and where the girl's body was found. He said
3 he would.

4 Q Did there come a time when he did leave the
5 Homicide Squad?

6 A Yes. At about 10:45 in the morning, Kogut left
7 with Detectives Sirianni and Waltman, and Sergeant Campbell
8 from the Homicide Squad. They were going out to the location
9 and the area of the cemetery and the railroad tracks.

10 Q Were you present in the Homicide Squad when they
11 left?

12 A Yes, I was.

13 Q Did you see them return?

14 A Yes. They returned about twenty minutes after
15 twelve in the afternoon.

16 Q What happened then?

17 A A short time later, Detective Dempsey and myself --
18 excuse me. I had then also told Mr. Kogut that we would like
19 to do a videotape, to go over the details of the events of
20 that night again, with the District Attorney. He said okay.

21 At about 12:35, after they had come back from the
22 tour, myself and Dempsey took Kogut to the District
23 Attorney's Office.

24 Q Can you describe how you did that?

25 A We took him in a Homicide Squad police car. We

1
2 drove to the front of the courthouse building -- excuse me --
3 to the back of the courthouse building, 262 --

4 Q (Interposing) Is that this very building?

5 A This very building, the rear door, that faces --

6 Q (Interposing) When you say, the rear door, what
7 door are you referring to?

8 A That faces the Supreme Court.

9 Q Where did you park?

10 A We parked right on the sidewalk, right in front of
11 the steps of the court.

12 Q At approximately what time was this?

13 A About 12:35, 12:40.

14 Q After you parked the car there, what did you do?

15 A We took Mr. Kogut in the doors, and up a flight of
16 steps to the District Attorney's Office.

17 Q Which doors did you take him through?

18 A The same doors, the doors located on the south side
19 of the building, 262; this building.

20 Q And you walked into the lobby area of the building?

21 A Yes.

22 Q Where did you go from there?

23 A From the lobby, up the steps to the second floor.

24 And into the corridor that leads into the District Attorney's
25 Office. And subsequently, to ADA McCarty and Littman's

2 office.

3 Q Were there other people around when you were
4 bringing the defendant up there?

5 A Yes.

6 Q Did the defendant say anything, while you were
7 bringing him into the District Attorney's Office?

8 A No.

9 Q Now, can you describe what happened in the District
10 Attorney's Office?

11 A At that point, in ADA Littman and McCarty's office,
12 preparations were made for a videotape to be conducted with
13 ADA Peck, and monitored by ADA McCarty.

14 Q When you say monitored, what do you mean?

15 A He controlled the machine, the videotape machine.

16 Q The machine was in one of the offices?

17 A It was just outside the doorway of Littman and
18 McCarty's office.

19 Q You're referring, now, to the VCR?

20 A The VCR; yes.

21 Q Where was the camera?

22 A The camera was in the office.

23 Q Can you describe who was in the office while the
24 interview was being videotaped.

25 A ADA George Peck was conducting the interview. He

2 was sitting next to Mr. Kogut. And I was sitting behind the
3 camera, at ADA McCarty's desk.

4 Q Was the desk between you and the camera?

5 A Yes.

6 Q And you were present for the entire interview that
7 was videotaped?

8 A Yes, I was.

9 Q You said ADA McCarty was controlling the camera?

10 A Yes, he was.

11 Q Now, at any time while that interview was conducted
12 by Mr. Peck, was the camera turned off during the interview?

13 A No, it wasn't.

14 Q Now, can you describe what happened after Mr. Peck
15 finished interviewing the defendant?

16 A Detective Dempsey and I took Mr. Kogut back to the
17 Homicide office. We got back about one-thirty in the
18 afternoon.

19 Q And what was done at police headquarters, at that
20 time?

21 A Subsequently, forms were prepared, and Mr. Kogut,
22 about two-thirty in the afternoon, was taken to the Records
23 Bureau, an identification bureau where he was fingerprinted
24 and photographed.

25 Q Were you present for that?

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2 A Yes, I was.

3 Q After he was photographed, where was he taken?

4 A He was taken to the detention desk officer, at
5 which time he was asked a number of questions, via a
6 departmental form 79.

7 Q By the way, after the videotaped interview, where
8 did you go from the District Attorney's Office?

9 A The same route: out of the District Attorney's
10 Office, back to the police car, and back to the Homicide
11 office.

12 Q And were there people around the office and the
13 building, at that time?

14 A Yes.

15 Q Did Mr. Kogut say anything, at that point?

16 A No.

17 Q Now, were you present when he was photographed,
18 when he got back to police headquarters?

19 A Yes, I was.

20 MR. KLEIN: I would ask that these two
21 photographs be marked for identification.

22 (Whereupon People's Exhibits 30 and 31 were
23 marked for Identification, only)

24 MR. KLEIN: Show those to Detective Volpe.

25 Q Do you recognize Exhibits 30 and 31 for

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2 Identification?

3 A Yes, I do.

4 Q What do you recognize those to be?

5 A These were the photographs taken, the afternoon of
6 the 26th, at the Records Bureau, of Mr. Kogut. One is a
7 front shot, and one is a left profile shot.8 Q This is after you had returned from the District
9 Attorney's Office?

10 A That's correct.

11 Q Do you know approximately what time the photographs
12 were taken?

13 A About two-thirty, 2:35.

14 Q Is that a fair and accurate representation of the
15 way the defendant looked at the time the photographs were
16 taken?

17 A Yes, sir; it is.

18 MR. KLEIN: I offer those into evidence.

19 MR. WOODS: No objection.

20 THE COURT: 30 and 31 in evidence.

21 (Whereupon People's Exhibits 30 and 31,
22 previously marked for Identification, only, were
23 now received and marked in Evidence)24 MR. KLEIN: May I have this document marked
25 for identification?

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2 THE COURT: Yes.

3 (Whereupon People's Exhibit 32 was marked for
4 Identification, only)

5 MR. KLEIN: Please show that to Detective
6 Volpe.

7 Q Detective, do you recognize that document?

8 A Yes, I do.

9 Q What do you recognize that to be?

10 A This is the original form 79 that was prepared the
11 morning -- the afternoon of the 26th of March.

12 Q Were you present when that was prepared?

13 A Yes, I was.

14 Q Can you describe what happened with respect to
15 that?

16 A At this time, the desk officer at the detention,
17 asked Mr. Kogut a series of questions; to which he replied.
18 He checked it off, according to his reply; at which time Mr.
19 Kogut signed the form.

20 Q Were you present for that?

21 A Yes, I was.

22 Q Does that accurately reflect the questions he was
23 asked, and the answers he gave?

24 A Yes, it does.

25 MR. KLEIN: I offer that into evidence.

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MR. WOODS: No objection.

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(Whereupon People's Exhibit 32, previously
marked for Identification, only, was now received
and marked in Evidence)

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Q Now, after the form 79 was prepared, where did you

go with the defendant?

8

9

A He was then taken to Arraignment Court, District

Court.

10

11

Q He was brought to Court?

A He was brought to Court?

12

Q In front of a Judge.

13

A Yes.

14

Q Were you present for that?

15

A Yes, sir.

16

17

Q Is that the last contact you had with Mr. Kogut on

that day?

18

A Yes; about 3:00 p.m., 3:15 p.m. that day.

19

20

Q Now, during the time that you were with the

defendant on the 25th and 26th of March, had he ever refused

21

to speak to you?

22

A No.

23

Q Had he ever asked to leave?

24

MR. WOODS: Objection.

25

THE COURT: What?

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2 MR. WOODS: Objection. He's leading the
3 witness.

4 THE COURT: Rephrase the question.

5 Q What if anything did he say to you about leaving
6 the police station?

7 A He never asked me to leave.

8 Q What if anything did he ask you about speaking to
9 anybody?

10 A He never asked to speak to anyone.

11 Q What about an attorney?

12 A He never asked for an attorney.

13 MR. KLEIN: I have no further questions.

14 THE COURT: Gentlemen, would you come up,
15 please.

16 (Whereupon there was a discussion off the
17 record)

18 THE COURT: I'm going to recess for lunch, at
19 this time, ladies and gentlemen. We'll rejoin at
20 two o'clock.

21 Do not discuss the case among yourselves, or
22 with anyone else; or permit anyone else to discuss
23 it with you.

24 Please keep an open mind. We'll see you at
25 two o'clock.

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(Whereupon there was a luncheon recess)

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A F T E R N O O N S E S S I O N

2
3 THE CLERK: People vs. John Kogut. Indictment
4 #61029.

5 Are the People ready?

6 MR. KLEIN: The People are ready.

7 THE CLERK: Is the defendant ready?

8 MR. WOODS: The defendant is ready.

9 THE CLERK: The jury is present.

10 THE COURT: Recall Detective Volpe.

11 THE CLERK: Detective, you're reminded, sir,
12 you're still under oath

13 CROSS-EXAMINATION
14 BY MR. WOODS:

15 Q Good afternoon, Detective Volpe.

16 A Good afternoon, sir.

17 Q Now, as I understand it, your first familiarity
18 with the [REDACTED], actually came on the afternoon of
19 December 5, 1984, when you were called to a scene in
20 Lynbrook; is that right?

21 A That's right.

22 Q When you were first called to Lynbrook, was there
23 anyone with you?

24 A Yes. I believe Detective Alger was in the Homicide
25 Squad with me, on my way to the scene.

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2 Q Do you recall what time you got there?

3 A At 5:30 p.m.

4 Q Any by that time, some Homicide detectives were
5 already present; were they not?

6 A That's correct.

7 Q Was Sergeant Campbell there?

8 A Sergeant Campbell was present.

9 Q Do you recall who else was present?

10 A From Homicide?

11 Q Yes.

12 A Lieutenant Spillane was present; Detective Sharkey
13 was present; Detective Sirianni was present. I believe that
14 was it -- excuse me. Detective Daly and Alger. I said
15 Alger, I believe. Daly.

16 Q Now, when you arrived, it was dark; wasn't it?

17 A That's correct; yes.

18 Q Was there any artificial lighting there when you
19 arrived?

20 A They were just bringing some -- our Emergency
21 Services Bureau was just bringing some light trucks in, some
22 units in, to light up the wooded area.

23 Q And the photograph that you identified, People's 11
24 in Evidence, is what you saw when you arrived?

25 A Yes.

2 Q Was that taken after the lights were set up?

3 A I believe it was taken before the lights were set
4 up.

5 Q Did you see that photograph taken?

6 A No, I didn't.

7 Q Approximately how long did you remain at that
8 scene?

9 A We set a command post up, which we terminated at
10 about two o'clock in the morning. That command post would
11 have been on Rockland Avenue.

12 Q Was that a command post you set up, or is that the
13 one Lynbrook Police Department originally set up?

14 A No. It's a command post that's set up by the
15 Homicide Squad.

16 Q That's separate and distinct from any the Lynbrook
17 police may have done?

18 A Correct.

19 Q Now, in addition to yourself, the other Homicide
20 detectives you've described, there were Lynbrook police
21 officers at the scene; were there not?

22 A Yes.

23 Q There were Nassau County uniformed police officers
24 at the scene?

25 A No.

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2 Q I'm sorry. Crime Scene Unit was present at the
3 scene?

4 A Yes. Members of the Crime Scene Unit were there.

5 Q Were they dressed in fatigue-type uniforms?

6 A Jumpsuit-type of a uniform.

7 Q Do you know who was present from Crime Search?

8 A I believe Officer Caputo was assigned to the crime
9 scene investigation.

10 Q Was he alone, or did he have someone with him?

11 A There was another officer with him. I don't recall
12 who it was.

13 Q And they took the photographs at the scene; did
14 they not?

15 A Yes, they did.

16 Q Did they also conduct a search of the scene, and
17 take certain item that they found at the scene for evidence?

18 A At our direction. We do that together: Crime
19 Scene and the Homicide Unit.

20 Q The physical custody of the evidence, was that
21 taken by Homicide or Crime Scene?

22 A It was taken by Crime Scene.

23 Q And did that include basically going over the area
24 and picking up anything you saw in the area?

25 A Yes, it did.

2 Q And among the things seen in the area, was there a
3 blue blanket?

4 A Yes, there was.

5 Q Can you describe that blanket for us.

6 A It was blue with a -- it appeared to have, I
7 believe, a lighter border, lighter colored border.

8 Q Was it quilted?

9 A No. I don't believe so.

10 Q Do you recall seeing that at the scene, before it
11 was moved?

12 A Yes, I did.

13 Q Can you locate where it was, in relation to the
14 path?

15 A It was just north of the path, and almost a
16 straight line north of where the girl's body was. It was
17 about ten feet north of the path.

18 Q Just so that I understand. North of the path would
19 be further away from the tracks; is that right?

20 A Yes; it would be. It would be on the other side of
21 the path.

22 Q In effect, downhill?

23 A No. It's a level plane there.

24 Q Now, did you have occasion, after leaving the
25 command post -- I think you said around 3:00 a.m.?

1
2 A A little after two.

3 Q A little after 2:00 a.m., to review an autopsy in
4 this case?

5 A No. I didn't. The autopsy was conducted with the
6 assistance of Detective Waltman of the Homicide Squad.

7 Q He was physically present at the autopsy?

8 A Yes, he was.

9 Q Well, was there an autopsy report prepared?

10 A There was. But it wasn't until much later.

11 Q Do you recall when for the first time you saw that
12 autopsy report? If you saw it.

13 A I believe I saw it into January of '85.

14 Q Early January?

15 A Middle of January, possibly.

16 Q Now, did you ever have occasion, after leaving that
17 command post, sometime after two on December 6, 1984, to
18 return to that area with regard to this investigation?

19 A Yes, I did.

20 Q When for the first time did you return?

21 A Right into the scene where the body was found?

22 Q Yes. In that wooded area.

23 A We were isolated from the scene for a few days,
24 because we had snow, and late in the 5th, into the 6th. So
25 it wasn't really physically possible to get into the scene.

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2 It wasn't until the 11th that we went back in.

3 Q Is that the day you went back in with Detective
4 Allen?

5 A That's the first day we went back in.

6 Q Well, who went back in with you on the 11th?

7 A Detective Allen, Detective Sirianni, Detective
8 Alger and myself.

9 Q Now, the snow you're talking about, that began to
10 fall in the early morning hours of December 6th?

11 A Well, it was in the 5th, in the evening of the 5th,
12 into the 6th.

13 Q Now, when you were placed in charge of this
14 investigation, immediately on your arrival, did you know this
15 was your case, or was it assigned to you another time?

16 A A short period of time after we arrived on the
17 scene, Lieutenant Spillane advised me that it would be my
18 investigation.

19 Q Would it have been within an hour of your arrival
20 at the scene?

21 A An hour or two.

22 Q From that point on, is it fair to say that you were
23 kept abreast of any developments in this case, by other
24 members of the department?

25 A That were assisting in the investigation; yes.

109 1

2 Q Did you receive various reports from the Scientific
3 Investigation Bureau, and other bureaus of the police
4 department, with regard to anything concerning this case?

5 A During the course of the investigation; yes.

6 Q And on March 21, 1985, you had, by that point,
7 received an autopsy report; is that correct?

8 A Yes, it is.

9 Q In addition, you received several Scientific
10 Investigation reports, with regard to any material that may
11 have been found, any pictures that may have been taken?

12 A Yes.

13 Q In addition, you had received reports from other
14 detectives who may have interviewed various people, including
15 the mother of [REDACTED]?

16 A Yes.

17 Q Friends of [REDACTED]?

18 A Yes.

19 Q And had you, in effect, put together the last days
20 -- the last hours of November 10, 1984, from various reports
21 and various people?

22 MR. KLEIN: Objection.

23 THE COURT: If you can answer the question,
24 I'll permit it.

25 Q Well, if I can finish. As to [REDACTED]'s

110 1

2 whereabouts on December 10, 1984.

3 MR. KLEIN: I object to his putting together.

4 THE COURT: Rephrase the question.

5 Q Had you received various written reports, first
6 with regard to Connie Napoli, and her statement, as to her
7 recollection of November 10, 1984, and [REDACTED]'s
8 whereabouts on that date, and activities on that date?

9 A Yes.

10 Q Had you received and reviewed a report from -- with
11 regard to Joan Lenahan, and her report as to [REDACTED]'s
12 whereabouts, on November 10, 1984?

13 A Yes.

14 Q Had you received and reviewed a report on -- or, in
15 fact, questioned, yourself, Lisa Kaplan, and learned her
16 memories of [REDACTED] on November 10, 1984?

17 A Yes.

18 Q Now, when you first spoke with John Kogut on March
19 21, 1985, did he tell you that Mrs. Skellington had told him
20 [REDACTED]'s body was found in a cemetery?

21 A Yes. In or by a cemetery.

22 Q And at that time, in that discussion, you didn't
23 correct him and say anything about the railroad tracks; did
24 you?

25 A No, I didn't.

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2 Q When you interviewed John Kogut, on March 21, 1984,
3 you learned that he was living at 161 Traymore Blvd., in
4 Island Park, with Lisa Price and her father, Michael Price.
5 Did you not?

6 A Yes, I did.

7 Q You learned where he was working; did you not?

8 A Yes, I did.

9 Q You received phone numbers for both his place of
10 employment and the Price home?

11 A Yes.

12 Q And as I understand it, when you left him, about
13 eight-thirty on March 21, 1985, you asked him, would he come
14 back for another interview; is that right?

15 A Yes, I did.

16 Q And he indicated he would?

17 A Yes.

18 Q And you said you would get in touch with him?

19 A I told him I would get back to him.

20 Q And the last thing you said to him, was you thanked
21 Lisa for coming over and saving you a trip back to Island
22 Park?

23 A Yes.

24 Q Now, on March 25, 1985, did you make any attempt to
25 call John Kogut; either at work or at home?

2 A No, I didn't.

3 Q Did you direct Officer Connaughton to attempt to
4 contact him there?

5 A No. In the afternoon, I told him to just respond
6 to Island Park, to his residence.

7 Q Go down there, pick him up?

8 A Ask him if he would come in for the interview with
9 Gruber.

10 Q That was just about the time you went home?

11 A Just before it.

12 Q Before you went home, you had discussed the case
13 file with Detective Gruber, for his interview, to give him
14 background; hadn't you?

15 A Yes, I did.

16 Q And then, as I understand it, the next you heard
17 about this case, would have been about nine o'clock at night,
18 when you get a call at home?

19 A Yes, I did.

20 Q From Officer Connaughton; is that right?

21 A That's correct.

22 Q When Officer Connaughton called you, did you direct
23 Officer Connaughton, just hold him. I'll be in?

24 A I just told him that I would come in.

25 Q Did you tell Officer Connaughton not to question

113 1

2 him?

3 A I told him not to talk to him.

4 Q Not to talk to him at all. And it took you about
5 an hour before you got into Homicide. Is that right?

6 A That's correct.

7 Q On arriving there, did you go directly to Mr. Kogut
8 and Officer Connaughton?9 A No, I didn't. I met with Officer Connaughton in
10 the Homicide office. And he had told me that Kogut had
11 completed his interview with Gruber. I went down to Gruber's
12 office.13 Q At this point, to your knowledge, was John Kogut in
14 the Homicide office, or in room 219?

15 A He was in 219.

16 Q Well, you went right directly down to talk to
17 Gruber in his office; is that correct?

18 A Yes.

19 Q You didn't see Kogut, at that point?

20 A No.

21 Q To the best of your knowledge, Officer Connaughton
22 was not with Kogut at that point, because he was with you.
23 Is that right?

24 A That's correct.

25 Q Do you know who was with John Kogut?

1
2 A Yes. Police Officer Diehl.

3 Q Now, approximately when for the first time on that
4 night, did you see John Kogut?

5 A Ten-thirty p.m.

6 Q When you saw him, you were in the company of
7 Detective Dempsey; is that right?

8 A That's correct.

9 Q Was Detective Martino also present?

10 A No, he wasn't.

11 Q Did you and Detective Dempsey remain in room 219
12 with John Kogut, at ten-thirty?

13 A Yes, we did.

14 Q For approximately how long did you remain there?

15 A Detective Dempsey was with me for five or ten
16 minutes.

17 Q That's when Detective Dempsey left to review the
18 file; is that right?

19 A Yes.

20 Q And at that point, did you call Detective Martino
21 in, or was he actually there?

22 A He came in when Dempsey left.

23 Q Was there a point that only you were there? Or did
24 Detective Martino pass Detective Dempsey on the way?

25 A He came in as Detective Dempsey left.

2 Q Did you call for him?

3 A He knew that Dempsey would be coming out, and he
4 was going to come in.

5 Q You had informed him of that, before?

6 A Yes, I did.

7 Q After Detective Dempsey left, that's when you first
8 really started to talk to John Kogut; is that right?

9 A Yes, it was.

10 Q And what was the first thing you recall saying to
11 him, at that point?

12 A I told him that I had spoken to Detective Gruber.
13 And Detective Gruber felt that he wasn't telling the truth,
14 and that, in fact, he was involved in the murder.

15 Q At this point, Detective Gruber had told you that
16 John completely denied any participation in the murder?

17 A Gruber told me that, in his opinion --

18 Q (Interposing) No. I'm asking you, can you say that
19 Gruber told you that John Kogut completely denied any
20 participation in the murder?

21 A Oh, yes; he did.

22 Q And in fact, the only thing Gruber told you John
23 Kogut said about the murder, was maybe Dennis Halsted had
24 something to do with it. He gets crazy when he drinks.

25 A That's correct.

1
2 Q Now, after you told him you didn't -- or the story
3 was not believed, his lack of involvement was not believed,
4 you told him, "I want the truth." Is that right? Is that
5 your words?

6 A After the first version he gave me.

7 Q No. Before anything was given.

8 A I told him that Detective Gruber thinks he's lying.
9 And that he was involved in the murder.

10 Q Did you ask him to tell you --

11 A (Interposing) Yes, I did.

12 Q And did you, in fact, say, now, I want to know the
13 truth?

14 A Now, tell me the truth.

15 Q And he then told you that he was riding with
16 Restivo; is that right?

17 A That's correct.

18 Q Did he say that immediately, in response to your, I
19 want the truth?

20 A No. He said, "Okay. I'll tell you."

21 Q Did you then ask him if he was with Restivo?

22 A No. He told me that he was with Restivo.

23 Q Now, as I understand, he said, "Okay. I'll tell
24 you"?

25 A Yeah. "I'll tell you the truth."

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2 Q Did you say anything in response to that?

3 A No.

4 Q You didn't say, good, let's go; or anything like
5 that?

6 A No.

7 Q Detective Martino was present at this point; is
8 that right?

9 A Yes.

10 Q Did you hear Detective Martino say anything?

11 A No.

12 Q Then what if anything did John Kogut say, at that
13 point?

14 A He told us that he was in the van with John
15 Restivo, and they were westbound on Merrick Road.

16 Q What I'm asking you, Detective, is the words that
17 he used; not the general feeling of it. Do you recall the
18 words that he used, at that point?

19 A That he said that he was with John Restivo in his
20 van, in John's van.

21 Q After he said he was with John Restivo, in John
22 Restivo's van, did you ask him, what road were you driving
23 on?

24 A He told me he was westbound on Merrick Road.

25 Q This was all in one sentence?

2 A In that particular opening; yes.

3 Q Did you talk for some period of time, before you
4 asked another question?

5 A I asked him where the girl was. He said she was
6 walking on the street --

7 Q (Interposing) No. I'm asking you, you said, okay,
8 tell me the truth. In response to that, he said, "I was in
9 John Restivo's van." Is that correct?

10 A That's correct.

11 Q And he continued to talk, with no questions from
12 you, no questions from Detective Martino?

13 A He went right into that he was westbound on Merrick
14 Road.

15 Q He told you that they were westbound on Merrick
16 Road?

17 A Yes.

18 Q Without any questions? There was no question, what
19 direction were you going in? What street were you on?

20 A Not at that point; no.

21 Q Did you then ask him if they saw the girl?

22 A I asked him if he saw the girl. He said they saw
23 her walking.

24 Q He said they saw her walking while they were
25 westbound on Merrick Road?

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2 A Yes.

3 Q Did you then ask him, what did you do?

4 A What did you do next.

5 Q What did he say to that?

6 A He said they pulled up to the girl, and they
7 stopped.8 Q Did you ask him, what did you do, or what did you
9 say?10 A Or what happened next. He said that Restivo was
11 talking to the girl. And that he thought Restivo knew her
12 from her older sister.

13 Q Did you ask him if Restivo knew her?

14 A No. He told me.

15 Q That was all one? He went right through that: I
16 thought Restivo knew her from his older sister?

17 A Right.

18 Q Then did you ask another question? Or did he just
19 keep talking?20 A At that point, I showed him the Polaroid photograph
21 of the Fusco girl.22 Q And you showed him where you wanted him to initial
23 it, and you told him to put a date on it?24 A I just told him, initial it on the back, and put
25 the date.

2 Q Did you tell him what the date was?

3 A No.

4 Q Did he ask you?

5 A No.

6 Q And he put March 26, 1985; is that right?

7 A Yes, he did.

8 Q Then you initialed that?

9 A No, I didn't.

10 Q Did anyone initial that?

11 A He did.

12 Q Did you ask him, did she get in the truck?

13 A Excuse me?

14 Q Did you then ask him, did she get into the truck?

15 A I asked him what happened next. He said that she
16 got into the right front seat, and he moved to the back.

17 Q Did you ask him what she was wearing?

18 A Yes, I did.

19 Q Did you ask him what color her pants were?

20 A Yes.

21 Q Did you ask him what color her jacket was?

22 A Yes, I did.

23 Q Did you ask him, was she wearing a dungaree jacket?

24 A No.

25 Q Did he tell you she was wearing a dungaree jacket?

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2 A He told me she was wearing a blue denim jacket.

3 Q Did you ask him if she was wearing a denim jacket?

4 A No.

5 Q His initial description of the jacket, was that it
6 was a blue denim jacket? Not a blue jacket, but a blue denim
7 jacket?

8 A Blue denim jacket; that's correct.

9 Q When he described the clothing she was wearing, his
10 description was hightop sneakers; is that correct?

11 A Yes.

12 Q That's the way he described them; as hightop
13 sneakers?

14 A Yes.

15 Q The only thing he could not describe, was her
16 blouse; is that correct?

17 A He wasn't sure.

18 Q Now, at the conclusion of your first discussion
19 with him -- do you know, by the way, what time that
20 discussion started, and what time it ended?

21 A About ten to eleven. It was concluded about
22 quarter after eleven.

23 Q Do you have anything that might refresh your
24 recollection, as to the exact time that it began and ended?

25 A My notes.

422 1

2 Q Would you review those notes, and see if they
3 refresh your recollection as to the exact time it began and
4 ended.

5 A I know that's the time.

6 Q In other words, that's not an approximation; that's
7 the time it began and ended?

8 A It's the time I recorded in my notes.

9 Q Now, at 11:15, still, it was only you and Martino
10 in that room. Is that right?

11 A Yes, it was.

12 Q And, of course, John Kogut?

13 A Yes.

14 Q Dempsey had not returned; had he?

15 A No.

16 Q Was there a telephone in that room?

17 A In 219? Yes.

18 Q Had that telephone rung or been used, in that
19 eleven to fifteen minutes time you were in there?

20 A No.

21 Q Is it fair to say that to the best of your
22 knowledge and observation, nobody in that room had
23 communicated with anybody outside of that room, in that hour
24 and fifteen minutes?

25 A No; no one.

423 1

2 Q At the conclusion of the first discussion you had
3 with him, you told him that you didn't believe what he was
4 telling you. Is that correct?

5 A Yes, that's correct.

6 Q You told him, I have evidence that something
7 happened a different way; is that correct?

8 A That's correct.

9 Q You, in fact, did have certain evidence that was
10 quite different than what had been told to you; is that
11 correct?

12 A Yes, I did.

13 Q So you then began questioning him again; is that
14 correct? Still with Detective Martino.

15 A Yes.

16 Q That was still in room 219?

17 A Yes.

18 Q And was there any kind of a break, like from 11:15
19 until the second questioning? Or did that begin almost at
20 11:15?

21 A About twenty after eleven, it began.

22 Q In that five minutes, did you have coffee or
23 anything?

24 A Not at that time; no.

25 Q Now, during this time, was John Kogut smoking?

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2 A Yes.

3 Q Do you smoke?

4 A Yes, I do.

5 Q Does Detective Martino smoke?

6 A No.

7 Q Did he smoke on that night?

8 A He may have, at that time.

9 Q But definitely, to your recollection, were both you
10 and John Kogut smoking?

11 A Yes.

12 Q Is it fair to say that he was smoking, almost chain
13 smoking, from the time he was talking to you?

14 A He smoked a lot.

15 Q Were you keeping up with him, cigarette for
16 cigarette; or not really?

17 A I wasn't too far behind him.

18 Q And at this point, you don't really have a
19 recollection as to whether or not Detective Martino was
20 smoking?

21 A He's recently reformed. I don't know if he was
22 smoking at the time.

23 Q Now, you began this second statement. Did you tell
24 John Kogut why you did not believe his first statement?

25 A I told him that that story was certainly

125 1

2 inconsistent with what we knew in the investigation.

3 Q What did you tell him you knew, that created the
4 inconsistency?

5 MR. KLEIN: I object to that. I ask to
6 approach.

7 THE COURT: Yes.

8 (Whereupon the following side bar conference
9 took place outside the hearing of the jury:)

10 MR. KLEIN: It seems to me that a question
11 like that is leaving wide open, the answer that he
12 failed the polygraph exam.

13 THE COURT: Is there something else you know
14 about, he can ask him.

15 MR. KLEIN: I think that's unfair. Then
16 you're asking -- because really, that is what he
17 told him.

18 Now, to say, well, what else did you tell him,
19 and you know he can't bring out what he told him,
20 is unfair.

21 MR. WOODS: I don't see the inconsistency.
22 The inconsistency that he's talking about, are you
23 saying that's the polygraph?

24 MR. KLEIN: Yes.

25 MR. WOODS: My understanding is that once he's

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1
2 admitting knowledge --

3 MR. KLEIN: Well, my understanding is that
4 they kept telling him that he failed the polygraph.
5 You failed the question that said you murdered her.

6 THE COURT: During the pre-trial hearing, the
7 words I heard, were scientific evidence. It wasn't
8 otherwise explained. I don't know whether that was
9 the polygraph or not.

10 MR. WOODS: I didn't think the polygraph was
11 scientific evidence.

12 MR. KLEIN: Whatever they consider it.

13 THE COURT: I can understand your
14 apprehension, Mr. Klein. If he wants the polygraph
15 to come -- I assume he knows enough not to say
16 anything.

17 MR. KLEIN: I'm saying, that asking him to --
18 he can't specify.

19 MR. WOODS: I think there are certain items he
20 can specify.

21 MR. KLEIN: Why don't you ask him, did you
22 know this. Was it consistent with this.

23 THE COURT: Or was it consistent with anything
24 you learned from Detective Gruber, other-than what
25 you learned from Detective Gruber.

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MR. WOODS: I'm not going to do that.

3

THE COURT: All right. However you want to

4

phrase it.

5

(Whereupon the following took place back

6

within the hearing of the jury:)

7

BY MR. WOODS: (Continuing)

8

Q Detective Volpe, is it fair to say that from the

9

scientific investigation evidence you reviewed, it was your

10

opinion that at least two persons had participated in the

11

depositing the body of the victim that you saw on December 5,

12

1984, in that wooded area?

13

MR. KLEIN: Objection to what his opinion was.

14

THE COURT: May I have the question read back.

15

(Whereupon the pending question was read back

16

by the court reporter)

17

THE COURT: No. I'll permit it. Overruled.

18

A At that time, I couldn't judge how many people were

19

involved with the murder and the disposing of the body.

20

Q I'm not talking about on December 5th; I'm sorry.

21

I'm talking about as you were seated, questioning John Kogut,

22

on March 25, 1985.

23

A I had no absolute information that would lead me to

24

believe that, at that point.

25

Q Did you immediately discount that first statement

2 of John Kogut, based on the fact that there was only one
3 person left with Theresa Fusco, according to his story?

4 A Could you repeat that? I don't understand.

5 Q As I understand it, because of Scientific
6 Investigation Bureau evidence that you were in possession of,
7 you did not accept that first explanation that John Kogut
8 gave you, of basically being in the back of the van and him
9 being dropped off.

10 A Yes; that's correct.

11 Q I'm asking you, is one of the reasons you could not
12 accept that, the fact that by that time, it was your opinion
13 that at least two people had participated in depositing a
14 body in the wooded area?

15 A No. It was just my opinion that he was not telling
16 me the truth.

17 Q Did you, on March 25, 1985, have your own theory as
18 to exactly what had occurred?

19 MR. KLEIN: Objection.

20 THE COURT: Sustained.

21 Q Had you, from a review of the Scientific
22 Investigation Bureau reports, the autopsy report, your own
23 view of the scene, formulate an opinion as to what had
24 occurred?

25 MR. KLEIN: Objection.

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2 THE COURT: Sustained.

3 Q On March 21, 1985, the first time you saw John
4 Kogut, and you indicated the various reports you reviewed,
5 did you believe him when he told you he had nothing to do
6 with [REDACTED]'s murder?

7 A You're asking me, on March 21st?

8 Q On March 21st.

9 A I never asked him if he had anything to do with
10 Theresa Fusco's murder, on March 21st.

11 Q You didn't ask him about that, on March 21st?

12 A I asked him about [REDACTED]

13 Q And he indicated to you that he didn't know?

14 A I just asked him when he had heard about it, when
15 he had seen any posters around town, and when he had first
16 found out about the other girl's body being found. That's
17 what I asked him about [REDACTED]

18 Q You asked if he had seen posters around town, and
19 had heard about the girl's body being found?

20 A That's correct.

21 Q Is it fair to say you were not satisfied with his
22 answers at that time; and therefore, wanted a further
23 investigation?

24 A I wanted to conduct another interview.

25 Q And you, in fact, arranged for that interview to be

130 1

2 conducted?

3 A Yes.

4 Q Now, at the conclusion of a further interview with
5 Detective Gruber, you then began your own further interview;
6 is that right?

7 A Yes.

8 Q And in this interview, you were far more specific
9 as to [REDACTED]; were you not?

10 A Yes, I was.

11 Q And you were very specific as to John Kogut's
12 involvement?

13 A Yes, I was.

14 Q And you asked him very specific questions as to
15 participation in [REDACTED] s murder; did you not?

16 A Yes, I did.

17 Q Now, during the time you were -- between ten and
18 eleven-thirty, on March 25th, did you ever mention Dennis
19 Halsted's name to John Restivo?

20 THE COURT: To John Restivo?

21 MR. WOODS: I'm sorry.

22 Q To John Kogut.

23 A No, I didn't.

24 Q He never -- John Kogut never mentioned his name;
25 did he?

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A Not at that time; no.

2

3

4

Q Did you mention John Restivo's name to him, during that time; to John Kogut?

5

A He mentioned it to me.

6

7

8

9

Q He mentioned it to you. Did you again ask him to amplify things about John Restivo? Did you use John Restivo's name during that whole conversation? I didn't mean were you the --

10

11

A (Interposing) He brought John Restivo's name to my attention in the first conversation, as he did in the second.

12

13

14

Q To the best of your knowledge, when for the first time during that evening, or into the following morning, was Dennis Halsted's name mentioned?

15

A It would be about one-thirty in the morning.

16

17

Q And it was mentioned by John Kogut?

18

A Yes.

19

Q And not in response to any question asked about Dennis Halsted?

20

A No.

21

22

23

24

25

Q Now, from 10:00 p.m. until 11:15, while John Kogut was talking to you, and you were questioning him, were you writing a statement, or writing notes, as to what John Kogut was saying? And at the completion of them, did you pick up the notes, tear them up and say, I don't believe that?

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2 A No, I didn't.

3 Q Did you write any notes at all?

4 A No, I didn't.

5 Q Did you have any paper with you during that time?

6 A Just a small scratch paper.

7 Q Did you have a pen or a pencil with you?

8 A Yes, I did.

9 Q Did you write on that small scratch paper, at all,
10 during that time?

11 A Yes.

12 Q What if anything did you write on that scratch
13 paper?

14 A I recorded the times that we started, and the times
15 that we concluded.

16 Q So, in other words, on that scratch paper, would
17 have been 10:00 p.m., and then 11:15 p.m.?

18 A In military time. I use military time.

19 Q Oh, you did it in military time?

20 A Yeah.

21 Q So it was 2200 to 2115 -- 2315?

22 A No. It would actually be 2230.

23 Q It was ten-thirty?

24 A Ten-thirty p.m.

25 Q And next to those times, did you put any key words

133 1

2 of anything that was said by John Kogut or yourself, during
3 that conversation?

4 A No, I didn't.

5 Q And Detective Martino, did he, in that forty-five
6 minutes, from ten-thirty to 11:15, say anything at all to
7 John Kogut, that you overheard?

8 A He didn't ask any questions, or too many questions.
9 He may have asked one question. I don't recall; within the
10 first interview, if he did.

11 Q You don't recall any specific question that he
12 asked?

13 A No; I don't recall.

14 Q To the best of your recollection, at this point, he
15 didn't ask any?

16 A I asked the majority of the questions.

17 Q When you say you asked the majority, does that mean
18 that he may have asked some, or he did ask some?

19 A He may have asked one question.

20 Q Now, as I understand it, you did not feel that
21 Detective Martino had a full knowledge of this case; is that
22 right?

23 A Yes. That's true.

24 Q He had not been working on it with you?

25 A No.

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Q And his involvement on the night of March 25th, was more of, he was there?

4

A That's correct.

5

Q Than had anything to do with the case?

6

A That's correct.

7

Q Detective Dempsey had been working the case with you; is that right?

8

9

A He worked portions of it with me.

10

Q Did Detective Alger work portions of the case with you?

11

12

A Yes.

13

Q Did Detective Sharkey?

14

A Only in the initial stages, on December 5th.

15

Q Was there a particular supervisor assigned from Lieutenant Spillane, that was working on this case, or had responsibility for this case, to your knowledge?

16

17

A A Homicide supervisor?

18

19

Q Yes.

20

A For a short period of time, Sergeant Campbell was the supervisor from Homicide, assigned to it.

21

22

Q To your knowledge, was Sergeant Campbell present on the night of March 25, 1985, in the Homicide office?

23

24

A No.

25

Q Or in police headquarters?

135 1

2 A No, he wasn't.

3 Q Was Detective Alger present?

4 A No.

5 Q Detective Sharkey?

6 A No.

7 Q When you -- strike that.

8 To your knowledge, on 9:00 p.m. on March 25, 1985,
9 was Detective Dempsey working a tour of duty?

10 A The 25th? Dempsey would be working a four to
11 midnight.

12 Q So is it fair to say that when you arrived at
13 police headquarters at about 10:00 p.m. that night, Detective
14 Dempsey was physically present?

15 A At 10:00 p.m.?

16 Q Yes.

17 A Yes.

18 Q So then, after about five minutes, you began asking
19 John Kogut additional questions with regard to that second,
20 what you described as a second statement. Is that right?

21 A Yes.

22 Q And what if anything did you ask him about the
23 shallow grave in the cemetery?

24 A As he described the story to me, he said when he
25 got out of the van and realized that they were in the

1
2 cemetery, he approached Restivo, and Restivo told him, we
3 have to bury her. They subsequently buried her in a shallow
4 grave.

5 MR. WOODS: I move to strike. I asked him
6 what if anything he asked about the shallow grave.

7 THE COURT: Granted. Do you want the question
8 read back?

9 Read it back.

10 (Whereupon the pending question was read back
11 by the court reporter)

12 THE WITNESS: I didn't ask him about a shallow
13 grave. I asked him what happened next, as he
14 approached Restivo with the girl.

15 Q After he told you, did you ask him anything about
16 that grave, as to its location?

17 A He didn't remember.

18 Q What did you ask him, though?

19 A I asked him if he remembered if it was a grave --
20 he said he didn't remember if it was a headstone, or just
21 that she was buried in a shallow grave somewhere in the
22 cemetery.

23 Q Did you ask him one question like that, or more
24 than one question like that, as to finding the location?

25 A Of the shallow grave? That was the question I

137 1

2 asked.

3 Q Did you ask him, was it near a headstone?

4 A No. I asked him if, in fact, the grave was by a
5 headstone. He said no. He wasn't sure; just a shallow
6 grave.

7 Q Did you ask him if it was in a walkway, as opposed
8 to a grave actually was?

9 A I asked him if he recalled where he thought that in
10 the corner of the cemetery, somewhere in the corner, as he
11 described it.

12 Q Did you ask him, was it the northwest corner,
13 northeast corner, southwest, southeast? Did you give him
14 anything to ask him what corner of the cemetery it was in?

15 A He said --

16 Q (Interposing) No. I'm asking you what you asked
17 him; not what he said. Did you try to locate it by asking
18 him questions about the location?

19 A He couldn't locate it for me. He couldn't pinpoint
20 it for me.

21 Q Not what he couldn't do, Detective. What did you
22 ask him, to attempt to locate it, is my question.

23 A I just asked him if he knew where the shallow grave
24 was. He said, in the corner of the cemetery. At that point,
25 I didn't pursue it.

138 1

2 Q You didn't ask him which corner?

3 A No.

4 Q Now, did you ask him if he ever moved the body from
5 that shallow grave?

6 A Yes. I asked him if he ever went back. And he
7 said no.

8 Q Did you ask him if he ever discussed moving the
9 body with Restivo?

10 A He said he didn't. I asked him if he did discuss
11 it, or if, in fact, he subsequently moved the body. He said
12 he didn't.

13 Q Did you ask him if he went back and moved the body
14 with Halsted?

15 A No.

16 Q Did you ask him if Dennis Halsted or John Restivo
17 ever discussed moving the body with him?

18 A No.

19 Q Now, approximately what time did you finish taking
20 this second statement?

21 A About twenty-five after midnight. And that would
22 be into the 26th.

23 Q And again, while the second statement was being
24 taken, were you taking any notes?

25 A No.

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2 Q Did you observe Detective Martino taking any notes?

3 A No.

4 Q In between the start of the first statement -- the
5 end of the first statement and the start of this statement,
6 had anybody entered or left the room?

7 A No.

8 Q Had anyone, in any way, communicated with anyone
9 outside the room?

10 A No.

11 Q And that continued through the taking of the second
12 statement; that no one entered or left the room?

13 A That's correct.

14 Q Now, at the conclusion of the second statement, you
15 again told John Kogut, I don't believe you. That's not the
16 way it happened. Is that right?

17 A At the conclusion of the second statement with
18 Martino; when I changed locations from 219 to the Homicide
19 office.

20 Q When you changed locations, you, John and Martino
21 got up and went back down to the Homicide Squad?

22 A At my request; yes.

23 Q You didn't tell him what your opinion of the
24 statement was?

25 A Not yet.

140 1

2 Q You went into the Homicide office?

3 A Yes.

4 Q At this point, you went into the smaller room
5 you've described as seven by seven, eight by eight room; desk
6 -- I don't remember if there were two or three chairs.

7 A A total of three.

8 Q A total of three chairs?

9 A Yeah.

10 Q And a small window?

11 A Well, Mr. Kogut went into the room with Detective
12 Martino.

13 Q You waited outside?

14 A I had met with Detective Dempsey in the Homicide
15 office.

16 Q You asked Detective Dempsey if he had reviewed all
17 the Scientific Investigation Bureau's material, all the other
18 material, and felt confident and familiar with the case and
19 the facts that you knew so far, to help you with the
20 questioning; is that right?

21 A He had done review. I didn't get into the specific
22 of what items he reviewed.

23 Q He assured you that he had done a full enough
24 review, that he was ready to go ahead and assist you?

25 A Yes.

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2 Q You were confident with that assurance?

3 A Yes.

4 Q As I understand it, at this point, you relieved
5 Detective Martino, and the two of you went and questioned
6 John Kogut. Is that right?

7 A Yes.

8 Q Approximately what time was this?

9 A About twenty to one, on the 26th.

10 Q Now, at this point, had you had a cup of coffee,
11 since you arrived at police headquarters?

12 A No, I hadn't.

13 Q Did, to your knowledge, did John Kogut?

14 A He may have; I don't recall.

15 Q Not in your presence?

16 A I don't recall getting him a cup of coffee, myself.

17 Q Did you then go and get coffee, at that time?

18 A I believe.

19 Q Now, when you went into this room, there was one
20 desk. Is that right?

21 A Yes.

22 Q There are three chairs?

23 A Yes.

24 Q And there's a window?

25 A Yes.

142 1

2 Q Does that window face north, east, south, west; if
3 you know?

4 A The window would face west.

5 Q It faces a parking lot out back?

6 A No. It's facing the Homicide office.

7 Q This window doesn't go to the outside?

8 A No, it doesn't.

9 Q Is it a glass partition, or a window that can
10 actually be opened and closed?

11 A It's a glass partition, I guess.

12 Q Is that one-way glass, or two-way glass?

13 A You can see in, and you can see out.

14 Q So from within that room, you could observe a good
15 portion of the main office at Homicide; is that right?

16 A Yes.

17 Q And they could also observe you?

18 A That's correct.

19 Q Now, from the time that you were in this room, John
20 Kogut, was he still smoking?

21 A Yes.

22 Q You were smoking?

23 A Yes.

24 Q Was Detective Dempsey smoking?

25 A He doesn't smoke.

143 1

2 Q He was not smoking?

3 A He doesn't smoke.

4 Q Did John Kogut ask you for cigarettes, on arriving
5 in that room? Or did he have his own, or did you get some
6 for him?

7 A He didn't ask me for cigarettes until about 1:20,
8 after that interview.

9 Q After the third interview?

10 A Yes.

11 Q But he had his own cigarettes with him, or some
12 cigarettes with him?

13 A He had some left.

14 Q Now, as I understand it, when you arrived -- you
15 indicated to him, you felt he was lying? You said, I feel
16 you're lying, or words to that effect?

17 A That's correct.

18 Q And then you began asking him more questions about
19 what occurred on the night of November 10, 1984. Is that
20 right?

21 A Yes.

22 Q And at this point, he changed the relationship to
23 John Restivo's younger brother knowing [REDACTED] is that
24 correct?

25 A Yes. From the second story to the third.

144 1

2 Q And on this occasion, he said to you, he woke up to
3 screams; again in a cemetery. Is that right?

4 A Yes.

5 Q And when you asked him what John Restivo said, he
6 said, he told me to help him get rid of the body.

7 A Mr. Kogut told me that Restivo told him, you're in
8 this with me. You're going to help me get rid of the body.

9 Q And now, he described driving to a dead-end
10 somewhere. Is that right?

11 A That's correct.

12 Q And at this point, he talks about carrying the
13 body, putting leaves on it. Is that correct?

14 A Yes.

15 Q And then, did he discuss pallets, at this point?

16 A Yes.

17 Q Was pallet his word; or was that a word you asked
18 him, was it pallets you put on?

19 A He said, pallets.

20 Q He used the word, pallets?

21 A Yes, he did.

22 Q Did he use that in response to what did you put on
23 top of the body; and not, did you put pallets on top of the
24 body?

25 A In response to what did you do next, after you

145 1

2 kicked leaves on the body.

3 Q Now, at this point, you had some discussion with
4 him about the fort area. Is that right?

5 A Yes.

6 Q Did you ask him, did he know that area as the fort?

7 A Yes, I did.

8 Q And his response to you was, the kids call it that?

9 A He told me it was a local hang-out. I asked him if
10 he recalled it being called the fort. He said, yes, he did.

11 Q Did he indicate that he had been there before,
12 himself?

13 A I don't believe I asked him if he had been there.

14 Q At that point, he said that from there, he walked
15 home to Oakland; is that right?

16 A He left and went to Oakland.

17 Q Not with John Restivo, in the van?

18 A No.

19 Q Now, at this point, he still had not identified
20 Dennis Halsted?

21 A That's correct.

22 Q Did you ask him at this point, if Halsted was with
23 him?

24 A No. After that version, at 1:20 p.m., and after
25 another discussion, I again told him that we didn't believe

1
2 him. I told him I didn't believe him. I felt he was still
3 lying; at which time, he started this next version of the
4 incident --

5 Q (Interposing) But there was no mention of Halsted,
6 at this point, up to 1:20?

7 A No.

8 Q By either of you or him?

9 A That's correct.

10 Q Now, in your discussions with Detective Gruber, who
11 had questioned him at length, earlier, Detective Gruber
12 informed you that he mentioned Dennis Halsted; didn't he?

13 A Yes, he did.

14 Q Detective Gruber didn't mention John Restivo; did
15 he?

16 A No, he didn't.

17 Q In fact, as far as you knew, there was no
18 discussion of John Restivo, with Detective Gruber and John
19 Kogut; is that right?

20 A That's correct.

21 Q Now, at this point, after you indicated to him you
22 didn't believe this story, you left and got some cigarettes.
23 Is that correct?

24 A Cigarettes and coffee.

25 Q That would be coffee for all three of you, and

147 1

2 cigarettes for yourself and John Kogut?

3 A I had cigarettes.

4 Q Just the cigarettes for Kogut. You had your own.

5 A Yeah.

6 Q And you were gone for what, about fifteen minutes?

7 A No; five minutes.

8 Q Now, during the time this third statement was being
9 taken, did you -- did you write the statement down, and then
10 when he finished it, take your paper, rip it up, and say,
11 that's not the truth. I don't believe you?

12 A No.

13 Q Did you take any notes about this statement?

14 A Just the times, as I described.

15 Q The start and finish times, on military time, on
16 your little scratch paper.

17 A Yes.

18 Q No notes whatsoever, about what was said?

19 A No.

20 Q No notes, whatsoever, about any variances between
21 this story and the story before, the story before, or your
22 own case?

23 A No.

24 Q Now, aside from the little scratch paper, did you
25 have any kind of police files with you; any notes on the

148 1

2 prior version up to that time, in that room with you?

3 A No.

4 Q And did Detective Dempsey have any such paperwork
5 with him?

6 A No, he didn't.

7 Q He had been directed to review that outside of the
8 room. It was never brought into the room; is that correct?

9 A That's correct.

10 Q And to the best of your knowledge, Detective
11 Dempsey did not have any notes that he was taking?

12 A No.

13 Q He didn't take notes.

14 A No.

15 Q Do you know whether or not he had a tape recorder,
16 or there was a tape recorder running?

17 A There was no recorder running.

18 Q Is that interview room off the Homicide office,
19 equipped to tape record interviews?

20 A I believe -- no, it's not. I believe you can
21 listen from another room. But I don't recall that you can
22 record.

23 Q You're saying you can sit in another room and
24 listen?

25 A If it's functioning. It's broken. But I believe

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1
2 you can listen.

3 Q You say it's broken. Is it broken now, or was
4 it --

5 A (Interposing) It's been broken since I have been in
6 Homicide.

7 Q So it has a device that should let it do that; but
8 it doesn't work?

9 A That's correct.

10 Q And to the best of your knowledge, no tape
11 recording was made of your discussions with John Kogut?

12 A No.

13 Q Now --

14 THE COURT: I think I'd like to take a short
15 recess, Mr. Woods, if you don't mind.

16 We'll take a five minute recess. Don't
17 discuss the case among yourselves, during this
18 break. Keep an open mind.

19 (Whereupon there was a recess)

20
21 THE CLERK: People vs. John Kogut.

22 Are the People ready?

23 MR. KLEIN: The People are ready.

24 THE CLERK: Is the defendant ready?

25 MR. WOODS: Yes.

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THE CLERK: The jury is present. Detective,
you're still under oath.

BY MR. WOODS: (Continuing)

Q Now, Detective Volpe, the fourth statement began at
approximately what time?

A About one-thirty.

Q And that lasted for how long?

A Hour.

Q And in this statement, John Kogut told you that,
that all three of them had relations with Miss Fusco. Is
that right?

A Yes, he did.

Q And in this statement, you asked him some questions
about her jewelry. Is that right?

A Yes, I did.

Q And you, in fact, had found certain pieces of
jewelry, or had been found and reported to you, and you saw
where they were found. Is that right?

A Yes.

Q In addition, there was some other jewelry that was
not found, but you had heard that she was wearing, from
interviews with her mother and friends. Is that right?

A That's correct.

Q And in this statement, all those pieces of jewelry

151 1

2 were described; is that right? There was a ring, there was a
3 unicorn, and there was a heart, or a double heart, broken?

4 A There were a couple of rings. There were two rings
5 and the unicorn, as you described; and the heart charm.

6 Q But in this statement, they're all described for
7 the first time; is that correct?

8 A No.

9 Q The fourth statement.

10 A No.

11 Q What was described in the fourth statement?

12 A He indicated that Mr. Halsted took the jewelry; and
13 that Mr. --

14 Q (Interposing) So there was no description of any of
15 the jewelry?

16 A No.

17 Q And you, in fact, knew that all the jewelry was not
18 removed from the scene; is that correct? You found some?

19 A Yes.

20 Q So this story was not satisfactory to you; is that
21 right?

22 A That's correct.

23 Q Once again, as I understand it, you didn't take any
24 notes?

25 A That's correct.

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Q You didn't report anything, or note recording.
This is all just you and Dempsey and John Kogut sitting
there, talking, and questioning him?

A Just the times, I recorded, as I told you.

Q Now, during this statement, did Detective Dempsey
ask any questions?

A In the fourth story?

Q Fourth.

A As we described it; yes, he did.

Q Do you recall what questions he asked?

A No, I don't.

Q Did he ask one question, several questions; almost
as many as you?

A He asked a few questions.

Q How would you describe it?

A He asked a few questions.

Q The questions that he asked, were they specific
questions about what John Kogut did; or what anybody else
did?

A I don't recall exactly which questions he asked
Kogut, at that interview.

Q Is it fair to say at this point, you don't know
what questions you asked, vs. what questions Dempsey asked?
It was just one conversation involving three people, you're

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testifying on?

A Yes.

Q And your recollection is a lot better as to what John Kogut's answers were, than to what the questions that were asked. Is that right?

A That's correct.

Q In any event, at about 2:30 a.m., that ended the second statement. Is that right -- the fourth statement, excuse me.

A Yes.

Q And at that point, you once again told John Kogut you didn't believe him?

A I told him I didn't believe him; with what the investigation was, that the stories were in conflict with our investigation. I wanted him to tell me the truth.

Q Now, at this point, you began asking questions again, for what you referred to as the fifth statement?

A Yes.

Q This is about 2:35?

A About twenty to three.

Q Twenty to three. In that ten minutes, between the end of the fourth statement and beginning of the fifth statement, did you remain in the room?

A That was at the time, that ten minute period, when

2 I was telling Mr. Kogut that I didn't believe him, and I felt
3 he was lying; as I had previously said.

4 Q And during that ten minute period, were you doing
5 the talking, or was Detective Dempsey, or both of you?

6 A I was doing most of the talking.

7 Q When you say you were telling him you didn't
8 believe him, Detective Dempsey was also telling him he didn't
9 believe him; didn't he?

10 A Sure. He could have been.

11 Q During the time you were together, from when
12 Detective Dempsey first entered the room until this point,
13 were you seated, standing, walking around?

14 A For the most part, I was seated.

15 Q But you'd get up and walk around and stretch?

16 A I left the room at one time.

17 Q When you went for the cigarettes?

18 A That's correct.

19 Q I'm talking about while you were questioning John
20 Kogut.

21 A I sat down for most of the time.

22 Q How about Detective Dempsey?

23 A I believe he did, too. He may have gotten up;
24 I don't recall.

25 Q During this time, had John Kogut ever moved an arm

2 toward you, or toward Detective Dempsey?

3 A No.

4 Q He never made any gesture you would take as a
5 threatening gesture towards you or Dempsey?

6 A No.

7 Q As a matter of fact, would it be fair to say, he
8 was basically sitting there, cooperating, and doing anything
9 he was asked to do?

10 A That's correct.

11 Q Incidentally, had you learned from Detective
12 Gruber, that John had worked that day, at a nursery?

13 A From Gruber?

14 Q Yes.

15 A No.

16 Q Had you learned from John, himself?

17 A Yes, I did.

18 Q So you knew, in fact, that he had been going since
19 sometime around seven o'clock that morning?

20 A I didn't discuss with him how long that he worked,
21 or that he worked the whole day. He told me that he had
22 worked.

23 Q It was of no interest to you, the time he started
24 work?

25 A I just asked him if he worked. I didn't ask the

1
2 time.

3 Q Now, you started taking the fifth statement; is
4 that right?

5 A Yes.

6 Q And once again, it was you and Detective Dempsey
7 asking questions?

8 A Yes.

9 Q Pretty similiar -- you don't recall who asked what
10 particular question?

11 A I asked the majority of the questions.

12 Q But you asked the majority. And in this statement,
13 at the conclusion of this statement, as I understand it, John
14 Kogut referred to them.

15 A That's right.

16 Q But this was after he had already mentioned both
17 Halsted and Restivo in his prior statement; is that right?

18 A The statement prior to this fifth statement; yes.

19 Q So at this point, you informed him that you caught
20 him in a lie; saying, them, when he was describing one
21 person?

22 A Yes.

23 Q And at that point, what if anything did he say?

24 A He started to cry.

25 Q Well, did he say anything?

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2 A When I challenged him on them? No. He just
3 started to cry.

4 Q And you gave him some time to compose himself;
5 right?

6 A Yes.

7 Q Did you walk out of the room and leave him alone?

8 A No, I didn't.

9 Q Did you stay there in the room with him?

10 A I was there with him.

11 Q Did Detective Dempsey stay in the room?

12 A He was there, also.

13 Q At this point, did either you or Dempsey touch him,
14 in any way?

15 A No.

16 Q Put your arm on his shoulder; anything like that?

17 A I may have. I may have rubbed his shoulder.

18 Q And you were acting conciliatory to him, for about
19 ten minutes, until he pulled himself together. Is that
20 right?

21 A That's correct.

22 Q Detective Dempsey was basically doing the same
23 thing?

24 A He was just sitting there.

25 Q He just kind of sat back and watched?

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A He was sitting.

3

Q You were consoling him?

4

A Yes, I was.

5

Q Not Dempsey?

6

A No.

7

Q Now, at this point, you started referring to his

8

birthday; is that right?

9

A Excuse me?

10

Q After he finished -- you asked him about his

11

birthday?

12

A Going into the oral statement? Yes.

13

Q The next statement.

14

A I had done that on the prior statement.

15

Q When was the first time you asked him about his

16

birthday; what statement?

17

A When we were discussing when it was himself,

18

Restivo and Halsted.

19

Q That would be the fourth statement?

20

A That's correct.

21

Q But now, as we start, what I guess we would call

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the sixth statement -- this was an oral statement, also;

23

wasn't it?

24

A Yes.

25

Q This statement began about 2:45 a.m.?

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2 A No. About three-thirty.

3 Q And this statement took from three-thirty until
4 about six to complete?

5 A A little bit before six.

6 Q And this is John Kogut talking; you and Detective
7 Dempsey asking questions?

8 A That's correct.

9 Q Now, you and Dempsey both asked questions, and he
10 answered them. And you put together the words that you
11 testified to. Were these the exact words he used; or are
12 they what you understood, what you put everything together to
13 be?

14 A They were the responses to the questions, with
15 regard to that story, that version. And some of them were,
16 you know, his continuing sentences.

17 Q I'm asking you, did you claim they're the exact
18 words John Kogut used; or are they the sense of what he said?

19 A I can't say they were the exact words, word for
20 word, each line.

21 Q But certain places, where you said a specific word
22 that he used, those were the exact words he used?

23 A Yes.

24 Q And at about ten minutes to six, on March 26th,
25 when he completed that statement, the three hours, you were

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2 satisfied that that story fits in with all my scientific
3 investigation; I'll accept that story?

4 A Oh. Yes, yes.

5 Q And it, in fact, had almost everything that you had
6 learned from Scientific Investigation, put in perspective; is
7 that right?

8 A It had the majority of them; yes.

9 Q And his various descriptions of color were correct,
10 as to your best knowledge. Were they not? The color of the
11 pants, color of the jacket, color of blankets.

12 A He was accurate with the description of the
13 clothing, other than the -- well, in his own mind, other than
14 the blouse. He wasn't sure.

15 Q Well, in fact, there was no description of the
16 blouse that you had either; was there?

17 A No.

18 Q Then, at that point, you began to write; is that
19 right?

20 A About six-thirty in the morning.

21 Q What did you do from ten to six until six-thirty?

22 A We smoked more cigarettes, and he had a cup of
23 coffee. And I told him that I would like to take a written
24 statement from him. He said okay. And he may have gone to
25 the bathroom. I don't recall.