

IN THE DISTRICT COURT OF RILEY COUNTY, KANSAS

STATE OF KANSAS,)
Plaintiff,)

vs.)

EDDIE JAMES LOWERY,)
Defendant.)

CASE NO. 81CR 575

VOLUME II

(Pages 236 - 320 inclusive)

TRANSCRIPT OF JURY TRIAL

PROCEEDINGS had before the Honorable Jerry L. Mershon,
Judge of Division II of the District Court of Riley County,
Kansas, and a jury of twelve, at Manhattan, Kansas, on the
Fifth through Seventh days of January, 1982.

APPEARANCES:

The Plaintiff, State of Kansas, appeared by Mr.
Patrick Caffey, Assistant County Attorney, Riley County
Courthouse, Manhattan, Kansas 66502.

The Defendant, Eddie James Lowery, appeared in person
and by Mr. Lawrence Vogel, Attorney at Law, 1619 Poyntz,
Manhattan, Kansas 66502.

Lori A. Prater, C.S.R.

21st Judicial District

Division II

Riley County Courthouse

Manhattan, Kansas 66502

1 THE COURT: Mr. Vogel, are you ready to proceed,
2 sir?

3 MR. VOGEL: Yes, Your Honor. I'd like to call
4 Eddie Lowery to the stand please.

5 EDDIE LOWERY,
6 called as a witness in his own behalf, being of legal
7 age and having been first duly sworn, testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. VOGEL:

11 Q. Would you state your name please?

12 A. Eddie James Lowery.

13 Q. And how old are you?

14 A. 22.

15 Q. And what is your educational level?

16 A. High school graduate.

17 Q. And do you understand that in a criminal case such as
18 this you are not required to testify?

19 A. Yes, I do.

20 Q. And you so desire to testify here today?

21 A. Yes, sir.

22 Q. What was your address, in other words, where were you
23 living on July 26, 1981?

24 A. I was living at Elfin Acres, Lot 60, Elm Street.

25 Q. Could you go over and look at I believe it's State's

1 exhibit 1, a map of Ogden and show me where you live
2 please? Why don't you go ahead and mark it with a B
3 so we can distinguish the two.

4 A. I think it's right here.

5 Q. Make it pretty large and bold so that the jury can
6 easily look at that. Thank you.

7 (The witness complied with the request.)

8 Q. Prior to being charged with the offenses you're now in
9 court about, did you have any criminal record at all?

10 A. Uh, I had a D.W.I. in '78 but that was the only one.

11 Q. Other than that D.W.I. have you been in any type of
12 criminal trouble?

13 A. No, sir.

14 Q. You have no misdemeanor or felony convictions against you?

15 A. No, sir.

16 Q. And where are you employed?

17 A. I was employed at United States Army.

18 Q. And what was your rank?

19 A. Sp-4.

20 Q. How long had you been in the military service?

21 A. Since April 16th, 1979.

22 Q. And during the period of time you were in the military
23 service, did you receive any type of Article 15's or any
24 other company or higher grade offenses or violations on
25 your record?

1 A. No, sir.

2 Q. How long had you been stationed at Fort Riley?

3 A. Since August, '79.

4 Q. And how long had you lived at this Elfin Trailer Court?

5 A. Since August of '79.

6 Q. Prior to being charged with these crimes you're now
7 testifying about did you know [REDACTED]?

8 A. No, sir.

9 Q. Did you know where she lived?

10 A. No, sir.

11 Q. Do you recall what, if anything, happened on the morning
12 of July 26, 1981?

13 A. Okay.

14 Q. Starting around, let's say approximately 1:00 o'clock in
15 the morning.

16 Q. Oh, okay, that morning I was at my trailer with some
17 friends and I said I was going to go to the Mini-Mart and
18 buy a pack of cigarettes.

19 Q. Did you do that?

20 A. Yes, sir, I went up to the Mini-Mart to get a pack of
21 cigarettes and returned to my trailer within 15 minutes.

22 Q. And after you returned to your trailer what happened next?

23 A. I stayed at my trailer till approximately 3:00 o'clock.

24 Q. And then what happened, if anything?

25 A. I left my trailer, I can show you on the map.

1 Q. All right.

2 A. I left my trailer at 3:00 o'clock and I live right here and
3 this is a dirt road and I proceeded up this dirt road to
4 Elm Street and made a left on Elm Street and went two
5 blocks and was involved in a car accident.

6 Q. And the car accident happened where it is marked A?

7 A. Right here (pointing).

8 Q. What was the reason for leaving your mobile home around
9 3:00 o'clock that morning?

10 A. I was going down to the river.

11 Q. And why were you doing that?

12 A. I've had some family problems and I was just getting
13 away from the people around my trailer.

14 Q. Do you recall then or would you have any recollection on
15 approximately what time you were involved in this car
16 accident?

17 A. About 5 minutes after 3:00.

18 Q. All right. Do you know whose vehicle you hit?

19 A. I didn't know at the time.

20 Q. Do you know who now?

21 A. Yes, I do now.

22 Q. And do you recall his name?

23 A. Charles Adams.

24 Q. After you collided with this other car belonging to
25 Charles Adams, what happened?

1 A. After I hit his car I set in my car for a few minutes
2 and that's after -- I was sitting in my car and I took my
3 shirt off.

4 Q. Why did you take your shirt off?

5 A. I had a scar right here where I hit my chin on the steering
6 wheel.

7 Q. You hurt your chin as a result of the accident?

8 A. Yes, I hit it on the steering wheel.

9 Q. Were you bleeding?

10 A. I was bleeding pretty bad.

11 Q. So you took your shirt off for what reason?

12 A. I sit in the car and threw my shirt down on the passenger
13 seat of the car and I got out of the car and checked the
14 front end of my car and went over to his car and then I
15 went in the yard where these people were having a party.
16 I guess that's where the owner of the car was at.

17 Q. Do you recall if there was anyone in this vehicle that you
18 hit when you hit it?

19 A. There was nobody in it.

20 Q. It was a parked car?

21 A. Yes, sir.

22 Q. Was there any reason why you hit that car, do you know
23 what happened there?

24 A. I didn't see the car. There was no street lights there
25 or anything and I didn't see the car and hit the back of it.

1 Q. Then after you got out of your car and looked at your
2 own car and the car belonging to Mr. Adams, what happened?

3 A. I went in the front yard and asked some people if they
4 knew whose car that was that I hit.

5 Q. Did you find out who it was?

6 A. Yes, I did about 5 or 10 minutes.

7 Q. Then what happened?

8 A. After I found out whose car it was Mr. Adams came up to me
9 and said he didn't want to talk to me about it right now
10 because he was upset and after he said that, he, he left
11 and Mr. Shatto called me over to his house.

12 Q. And where did Mr. Shatto -- did you know Mr. Shatto prior
13 to this accident at all?

14 A. No, sir.

15 Q. Where did -- without going back to the map, can you
16 verbally explain roughly where Mr. Shatto lived in
17 relationship to where the accident occurred?

18 A. Mr. Shatto lived, I think it was just two doors over from
19 where the accident occurred.

20 Q. And the accident occurred at approximately 7th and Elm, is
21 that right?

22 A. Right, yes, sir.

23 Q. So you're stating that Mr. Shatto offered for you to come
24 into his home. Did you do that?

25 A. Yes, I went to his home.

1 Q. And what did you do in there?

2 A. I went in there and asked him if I could clean up in
3 his bathroom so he gave me a wash rag.

4 Q. What was the reason you wanted to clean up?

5 A. Because I was bleeding all over myself again.

6 Q. Okay.

7 A. And I went into the bathroom and washed my chin to try
8 to stop it from bleeding and when I got it slowed down from
9 bleeding I put the wash rag in the sink and I went to his
10 living room and asked him for some gum but he didn't
11 have any and he offered me some potato chips so I set
12 down and was eating potato chips.

13 Q. After that what, if anything, happened?

14 A. After I set on the couch his wife said that there was a
15 police officer out there and that's when I proceeded
16 outside.

17 Q. Would you have any estimation on time as to when you
18 went outside to talk to the police officer?

19 A. How long I was in the house for?

20 Q. Let's put it this way, do you recall how long after the
21 accident occurred that you were either outside talking with
22 Mr. Adams or in Mr. Shatto's home?

23 A. I believe the accident happened about 5 minutes after 3:00
24 and the officer arrived about 10 minutes before 4:00 so
25 about an hour almost, not quite an hour.

1 Q. So after Mrs. Shatto informed you that the police arrived
2 then what did you do?

3 A. I went outside and I was -- I talked to the police officer.

4 Q. Do you recall if you had your shirt back on when you
5 were in the Shatto's home?

6 A. No, I didn't. I never put it back on after I took it
7 off.

8 Q. So after leaving the Shatto's home you state that you
9 went outside to talk to the police officer?

10 A. Yes, sir.

11 Q. Is this this Officer Davis that previously testified?

12 A. Officer Davis.

13 Q. Okay, Officer Davis stated that the way he obtained the
14 time the accident occurred was after talking with you
15 and Mr. Adams. Do you recall being asked what time the
16 accident occurred?

17 A. I don't recall being asked what time the accident occurred
18 because I was a little upset and everything, you know,
19 because of the accident and everything and the only thing
20 I remember him asking me is to get a tow truck to call
21 somebody to haul my car away and I asked if I could go
22 up to my trailer and get some friends to help me push the
23 car back up.

24 Q. Do you recall what type of pants you were wearing that
25 night?

1 A. White pants.

2 Q. I hand you what has been marked State's exhibit 20. You
3 stated that you were wearing a shirt and after you were
4 involved in this accident and before getting out of the
5 car you took the shirt off to wipe the blood off of you,
6 is that right?

7 A. Right, yes, sir.

8 Q. Do you recognize that as being the shirt you're talking
9 about?

10 A. Yes, sir, this is the shirt that I was wearing.

11 Q. Okay and you stated that you were wearing a pair of white
12 pants. I hand you what's been marked State's exhibit 21
13 and see if you can recognize this exhibit as the pants
14 you were wearing the morning of July the 26th?

15 A. These are the pants that I was wearing on the 26th.

16 Q. And do you recall if you had blood both on the shirt and
17 on your pants as a result of that car accident?

18 A. Yes, sir, I was bleeding pretty bad. I had blood all over
19 myself.

20 Q. I believe you then testified or stated that approximately
21 5 or 10 till 4:00 is when Officer Davis arrived at the
22 scene to investigate the accident?

23 A. Yes, sir.

24 Q. Then let's move on to the July 27th, the next day?

25 A. All right.

1 Q. Of 1981. Do you recall what if anything happened that day?

2 A. Yes, I went to work that morning, Monday morning, came
3 home that afternoon and I had a message to call Investi-
4 gator Malugani.

5 Q. Did you know Investigator Malugani at all prior to receiving
6 this message to call him?

7 A. No, sir.

8 Q. Did you then place that call?

9 A. Yes, sir.

10 Q. And what resulted from that call?

11 A. I called him and he asked me if he could come down and
12 talk to me or if I could come up to the police station
13 and talk to him. I told him I didn't have no transportation
14 and he said he'd be down to pick me up.

15 Q. Did he in fact come down and pick you up?

16 A. Yes, sir.

17 Q. Was anyone else with him when he did that?

18 A. Investigator Johnson.

19 Q. Did you know Investigator Johnson at all prior to that
20 morning?

21 A. No, sir.

22 Q. Do you recall what conversation if any transpired between
23 you and the two policemen when they first came to pick
24 you up the afternoon of July 27th?

25 A. They just -- they came down there and just asked me if I

1 could come up to the police station and talk to them
2 about the accident I had the previous night and I said
3 sure.

4 Q. Do you recall approximately what time it was when the
5 policemen came to pick you up that day?

6 A. I believe it was about 4:00 o'clock that afternoon.

7 Q. At the time they picked you up were you advised at all
8 that you were under arrest?

9 A. No, sir.

10 Q. And after being transported by the police officers to the
11 Riley County Police Department, what happened?

12 A. I was placed inside an interview room. Investigator
13 Johnson and Malugani came in there with me and handed me
14 a Miranda warning to sign.

15 Q. Before we talk about the Miranda warning, can you just
16 briefly describe what the interview room was like?

17 A. It was a square room with a table in the middle of it with
18 two chairs on each side of the table.

19 Q. Do you have any idea what size it was?

20 A. I couldn't guess by feet but I would say about the size
21 of a bathroom.

22 Q. Do you recall if there were any windows in it?

23 A. I noticed one window which I took as a one-way mirror.

24 Q. Then you stated that you were handed or read your rights,
25 your Miranda rights, is that correct?

1 A. Yes, sir.

2 Q. Do you recall who read those rights to you?

3 A. Officer Malugani.

4 Q. I hand you what's marked State's exhibit number 18, is
5 this the waiver of rights form that you signed on July
6 the 27th?

7 A. Yes, sir.

8 Q. And what time does it indicate on that?

9 A. 1630 hours.

10 Q. Okay, so that would be 4:30 in the afternoon, is that
11 right?

12 A. Yes, sir.

13 Q. After you signed this waiver of rights form, what happened?

14 A. Officer Malugani and Investigator Malugani and Investigator
15 Johnson started asking me questions about rape charges,
16 a rape crime that was committed and I asked them, I go,
17 "I thought you were going to talk to me about the car
18 accident." And they said that ain't what they wanted to
19 talk to me about because that ain't in their jurisdiction.

20 Q. Do you recall any of the specific questions that were
21 asked of you that afternoon on July 27th by either Officer
22 Malugani or Johnson?

23 A. They asked me if I had any idea of a rape that was com-
24 mitted that -- early hours of the 26th and I told them I
25 didn't know of anything that happened.

1 Q. Other than them indicating or asking questions about a
2 rape that occurred, any other information that they
3 supplied you or asked you about?

4 A. Well, I kept on telling them that I didn't know anything
5 about a rape case and they kept on -- Investigator Malugani
6 kept on insinuating that I did know something about it
7 and I kept on telling him I didn't and everything and
8 after I kept on telling him I didn't know anything he
9 started getting a little loud with me.

10 Q. Are you saying that Officer Malugani raised his voice?

11 A. Yes, sir.

12 Q. Do you recall what if anything he stated to you when
13 he raised his voice?

14 A. At one point he told me he had ten more years on the
15 force and if it took him that ten years he was going to
16 prove that I committed this crime.

17 Q. And this occurred the afternoon of July the 27th at the
18 Riley County Police station in the interview room?

19 A. Yes, sir.

20 Q. Was Officer Johnson present when he said that or not?

21 A. Yes, sir.

22 Q. Did you make any type of admissions to either Officer
23 Johnson or Malugani on July 27th, 1981?

24 A. No, sir.

25 Q. After they interviewed you for a period of time what then

1 occurred?

2 A. Well, after I kept on telling them I didn't do anything
3 they asked me if I would sign a waiver of search and I
4 said, yes.

5 Q. And did you sign one of those?

6 A. Yes, sir.

7 Q. Do you recall about what time it was?

8 A. I don't remember exactly but I would guess around 5:30.

9 Q. Okay, does this look like the waiver that you signed for
10 that search?

11 A. Yes, sir.

12 Q. And do you recognize your signature on that?

13 A. Yes, sir.

14 Q. And what time does it indicate that you initially or actually
15 signed the waiver of search?

16 A. 1748 p.m.

17 Q. That would be 5:48 in the afternoon?

18 A. Right.

19 Q. And does this waiver of search indicate about when the
20 search was actually conducted or started?

21 A. 1848 p.m.

22 Q. That would be 6:48, same day, July 27?

23 A. Yes, sir.

24 Q. And does it indicate on the same waiver we're talking
25 about here the time that the search was completed?

1 A. 1906.

2 Q. That would be 7:06 p.m.?

3 A. Yes, sir.

4 Q. After you signed this waiver of search, what happened?

5 A. They took me out of the interview room and took me back
6 to Ogden and proceeded on with the search.

7 Q. And do you recall what if anything either police officer
8 Malugani or Johnson obtained as a result of this search
9 on July 27th?

10 A. First they searched my car and took out a brown handled
11 knife out of the -- where the tire sits in the back of the
12 car and then they went inside my trailer and took, they
13 asked me where were the pants that I was wearing that
14 night so I took them to the bedroom and gave them the
15 pants.

16 Q. This knife that they found in your car, do you recall
17 why that knife was there or how it got there?

18 A. I'd been putting in speakers earlier, I'd say about a
19 month before that or so and I had spliced some wires and
20 used the knife and must have left it in there or something.

21 Q. And those pants that the police officers obtained on
22 July 27th, you're stating that those were the pants that
23 you were wearing on July 26th when you were involved in
24 that car accident?

25 A. Yes, sir.

1 Q. After this search was completed, what then happened?

2 A. They asked me if I could come back the next day at 8:00
3 o'clock in the morning and I told them yes.

4 Q. And at any time while you were with either police officer
5 Johnson or Malugani were you ever told that you were
6 under arrest?

7 A. No, sir.

8 Q. Did you at any time during that day when you were with the
9 police officers request an attorney?

10 A. No, not on the 27th, no.

11 Q. Let's switch over now to July 28th, all right. Do you
12 recall what happened after you woke up on July 28th?

13 A. When I woke up I went to a friend's house to see if I
14 could borrow his car to go down to the police station
15 but he had already left for work so I came back to my
16 trailer and called Investigator Malugani and told him
17 I didn't have no way in so he said he'd come back and
18 pick me up.

19 Q. Did he do that?

20 A. Yes, sir.

21 Q. Do you recall what time it was when Officer Malugani picked
22 you up on July 28th?

23 A. I believe it was about 8:20 or 8:25.

24 Q. Was anyone else with him when he picked you up?

25 A. No, sir.

1 Q. Do you recall when you were picked up at that time if
2 you were placed under arrest?

3 A. No, sir.

4 Q. After he picked you up, Officer Malugani picked you up
5 on July 28th, where did you go?

6 A. I went to the Riley County Police Department and they
7 put me again in another interview room.

8 Q. And is this interview room on July 28th similar to the
9 one you just described that you were in on July 27th?

10 A. Yes, sir.

11 Q. And do you recall who was present in the interview room
12 when you first arrived at the police department?

13 A. Officer Malugani and Officer -- Officer Malugani came in
14 there and then Officer Johnson came in with another Miranda
15 warning.

16 Q. And what happened after they came in with the other
17 Miranda warning you testified to?

18 A. He asked me to sign another Miranda warning.

19 Q. Do you recall if the Miranda rights were read to you that
20 day?

21 A. Officer Malugani read them off his card.

22 Q. And after he read those rights off the card then what did
23 you do?

24 A. Then I signed the Miranda warning.

25 Q. This is State's exhibit number 19 I'm handing you, is this

1 the waiver of Miranda right form that you signed on
2 July the 28th?

3
4 A. Yes, sir.

5 Q. Is that your signature on there?

6 A. Yes, sir.

7 Q. And what time approximately did you sign that waiver?

8 A. 8:51 hours.

9 Q. That would be 8:51 in the morning of July 28th?

10 A. Yes, sir.

11 Q. After you signed this waiver of rights on July 28th,
12 what then happened?

13 A. Officer Malugani stayed in the room and Officer Johnson
14 left and Investigator Malugani was asking me questions
15 about do I remember any more about what we were talking
16 about yesterday and I said no and then he told me that he
17 thinks that I'm the one that committed this crime and I
18 kept on saying I don't have nothing to do with it and I never
19 did from the starting of this.

20 Q. All right. After Officer Malugani talked with you, what
21 happened?

22 A. After he got done talking to me and everything I
23 requested for a lawyer. I asked if I could see a lawyer
24 and then he said, he goes, "Well, there's no need for a
25 lawyer right now because all we want to do is find out
 some questions from you." I said okay.

1 Q. So you're stating that you did specifically ask Officer
2 Malugani to speak to a lawyer sometime in the morning of
3 July 28th at the police station?

4 A. Yes, sir.

5 Q. Was anyone else present in the room besides you and Officer
6 Malugani?

7 A. Just Malugani.

8 Q. All right. After you stated that Officer Malugani refused
9 to comply with your request to see an attorney, what
10 happened?

11 A. He left me in the room and then later returned with
12 Investigator Johnson and I went over and spoke to Officer
13 Raynor.

14 Q. Okay and how long did you talk with Officer Raynor?

15 A. From about 9:30 to about 12:30.

16 Q. And after you were through talking with Officer Raynor,
17 what happened?

18 A. Officer Johnson and Officer Malugani came back where I
19 was talking to Officer Raynor at and took me back over to
20 the interview room on the other side of the station.

21 Q. After you were through talking with Officer Raynor did
22 you request an attorney? Do you recall if you did or
23 not?

24 A. After I talked to Officer Raynor?

25 Q. Yes.

1 A. No, sir.

2 Q. After then being transported back over to the interview
3 room in the administration building of the Riley County
4 Police Department, what happened?

5 A. Officer -- Investigator Malugani and Johnson started
6 asking me questions about the rape again.

7 Q. At any time up to that time had either police officer
8 offered you any food?

9 A. No, sir.

10 Q. Had you requested any?

11 A. No, sir.

12 Q. At any point up to that time had you been advised that
13 you were under arrest?

14 A. No, sir.

15 Q. Then after this interview began again with Officer Malugani
16 and Johnson the afternoon of July 28th, what happened
17 during this interview?

18 A. Officer Malugani started asking me questions about the
19 rape. He said, "We think you have something to do with
20 it." I kept telling them that I don't know what he's
21 talking about. I don't have nothing to do with this rape
22 and he kept on, "Well, c'mon Lowery, if you admit that
23 you did this we'll get you proper help" and I go, "There's
24 nothing wrong with me." He kept on saying, "Well, we know
25 you did this, Lowery. All you got to do is admit that you

1 did this and this whole thing will be over with."

2 Q. Do you remember any other questions or anything else that
3 was asked of you during this interview?

4 A. Just that he kept on, you know, accusing me of committing
5 this rape and I kept on telling him that I didn't do this
6 and everything and he just kept on telling me, "Well,
7 admit that you did this, Lowery and we'll get proper help
8 for you."

9 Q. This was Officer Malugani that did this?

10 A. Yes, sir.

11 Q. Was Officer Johnson in the room when this was going on?

12 A. Yes, sir.

13 Q. Can you describe how the tone of the voice or how this was
14 handled by Officer Malugani, those questions?

15 A. You want me to say about how loud it was?

16 Q. That would be fine.

17 A. Malugani was saying, "C'mon, Lowery, admit that you did
18 this." About that loud.

19 Q. And then finally after continually being questioned and
20 the police officers asking you to admit what happened if
21 anything?

22 A. After I kept on telling them I didn't do this and everything,
23 I started getting really emotionally upset. I started
24 crying and everything and I kept on trying to tell them I
25 didn't have nothing to do with it and he kept insinuating

1 that I did and at that time, you know, I was crying and
2 I was upset and had my head hung down low. I was
3 thinking of my sister. I had a sister that was raped
4 just a year and-a-half ago and I was thinking of her at
5 the time and now these people were accusing me of raping
6 somebody.

7 Q. Do you know if the police officers Malugani or Johnson
8 were aware that your sister had been raped approximately
9 a year and-a-half ago?

10 A. I told them.

11 Q. Did they in any way use that sort of thing in their
12 questioning back to you?

13 A. It was only brung up one time. They asked me about my
14 past history and when I was crying I brung up my sister
15 that was raped and my brother that was killed.

16 Q. All right. Then what happened?

17 A. Well, after that, after I was crying and everything and
18 really just couldn't -- couldn't handle myself or any-
19 thing, you know, and finally they wanted to hear a con-
20 fession and everything so I just made up a confession
21 and told them.

22 Q. The police officers both testified -- this is Johnson and
23 Malugani that you admitted that you were driving around
24 in the early morning hours of July 26th and stopped at a
25 home, I believe a white house on the corner?

1 A. Right.

2 Q. Did you state that?

3 A. I told them that after I left the Mini-Mart and every-
4 thing I came back to my trailer and they said well, after
5 you left the trailer you must have went up to somebody's
6 house and I said no, I went and got in my accident and
7 it came to a point where finally I told them okay, you
8 want to hear them -- I told them I stopped in front of
9 somebody's house.

10 Q. You're stating then that you never admitted that you
11 stopped at a white house on the corner?

12 A. No, as a matter of fact, I never knew the house was
13 white until this trial.

14 Q. After you stated that you were driving, you made this
15 admission that you were driving around and then stopped
16 at this house, what then did you recall stating or how
17 did it go? How did the questioning go?

18 A. They asked me after you stopped at the house, what did
19 you do. C'mon Lowery, tell us what happened and I told
20 them I went to the front door.

21 Q. You said front door?

22 A. Yes, I said I went to the front door.

23 Q. Now as you recall you've been sitting here and both Officer
24 Malugani and Johnson testified that you made admissions
25 to them that you went to the back door?

1 A. I never told them I went to the back door.

2 Q. You're stating that you told them you went to the front
3 door?

4 A. That's what I told them on the 28th.

5 Q. Okay.

6 A. I told them I went to the front door and I stopped again
7 and I wouldn't say anything and he goes, "C'mon, Lowery,
8 tell us what happened and we'll get you help. How did
9 you get in the house?" You know, "Did you cut the screen
10 door or bust it open and pull the screen back?" So, I
11 told him I busted the screen door down with my hands.

12 Q. Again, you're stating that the information was presented
13 to you that there was a screen door that was broken into?

14 A. Yes.

15 Q. And you didn't volunteer the information about the screen
16 door first?

17 A. No.

18 Q. All right. Then what happened?

19 A. Okay, after I told them I tore the screen door down I
20 told them I busted the front door down and went inside the
21 living room.

22 Q. Again, you are saying front door, right?

23 A. Yes, sir.

24 Q. Not back door as they testified?

25 A. No, front door. I told them I went into the living room

1 and proceeded into the kitchen and then they said, "Well,
2 what happened after that?" After I got to the kitchen I
3 wouldn't say nothing else and everything and I was
4 crying at the time. I didn't know what to say. I was
5 scared.

6 Q. How did you come up with this, you stating that you went
7 into the living room and then the kitchen?

8 A. Well, being that I don't know what the house looks like
9 inside, I've never seen it in my life, I was using my
10 own trailer because my trailer you go in the front door
11 and there's a living room and then you go into the kitchen.

12 Q. And this is how you were stating to them you were going
13 in the house based on the things of your own home? So
14 you stated then that you told them that you went into the
15 living room and then into the kitchen?

16 A. Yes.

17 Q. Then what happened?

18 A. They asked me, no, what happened after that and everything
19 and I didn't know what to say and he goes, "Did you hear
20 a noise?" I go, "Yeah, I heard a noise." He goes, "Where
21 did it come from?" I go, "Down the hall."

22 Q. Again, the information was brought to your attention about
23 did you hear a noise, they asked that specifically of you?

24 A. Yes, they asked me if I heard any noises and I said, "Yes."
25 I told them I went down a hall and stopped at a bedroom

1 door.

2 Q. And then what occurred?

3 A. Then I didn't say anything after that right then, you
4 know. He just kept on going, "C'mon Lowery, you're al-
5 most there. Tell me the rest of it, what happened, admit
6 that you did this and we'll get help for you." I didn't
7 know what to do. I was all scared and everything and
8 finally he goes, "Did you see anybody laying on the
9 bed or anything?" He goes, "Did you jump on the bed or
10 anything?" I said, "Well, I jumped on the bed."

11 Q. Who was asking that question of you?

12 A. Malugani was doing most of the questioning, asking me most
13 of the questions.

14 Q. Again, you're stating that Malugani first brought to your
15 attention or first brought forth the information or
16 suggested to you about jumping on the bed?

17 A. Yes.

18 Q. And you did not bring that up on your own?

19 A. No. After I got to the doorway I stopped and didn't say
20 anything after that and he kept on telling me what did you
21 do after that. Did you jump on the bed or what and I
22 told him, I go, "I jumped on the bed." And he goes, "What
23 did you -- the lady was hit, what did you hit her with?"
24 I go, "I didn't hit her with anything." And he goes,
25 "C'mon Lowery, you're lying, tell us the truth."

1 Q. Then what happened?

2 A. He goes, "What did you do? Did you hit her with a vase
3 or with the butt of a knife?" I said, "I hit her with
4 the butt of a knife."

5 Q. Were you telling the truth or making up a story?

6 A. I was making up the story this whole time.

7 Q. Then what happened?

8 A. After I told him I hit her with the butt of a knife, you
9 know, he just said, "Well, what happened after that?"
10 I said, "Well, I raped her." I never said that, you
11 know, I put the covers over her face or anything like
12 that that I remember.

13 Q. Then after you stated to them that you raped her, what
14 next?

15 A. I told them that I left the house.

16 Q. Do you recall or would you have any estimation on the
17 time that lapsed during the period that you began making
18 those admissions and the time you were finished with them?

19 A. I'd say it was about three hours because it took a -- I
20 wasn't saying anything for a while, you know, and it took
21 a long time for them to get me to say anything. After
22 I'd say something, I'd stop and they'd tell me, "Well,
23 c'mon, tell me this, tell me what happened", you know.

24 Q. During the period of time that you were making these
25 admissions, do you recall how you were physically?

1 A. I was -- after I got back from talking to Officer Raynor
2 after about 15 minutes and everything they kept on saying
3 that I was the one that did this, "We know you're the one
4 that did this." And I got really upset, you know, of
5 someone trying to accuse me of raping somebody and every-
6 thing and I felt that I couldn't do nothing about it and
7 I was upset and I was crying and I had my head hanging
8 down.

9 Q. Do you recall if you were crying before you began making
10 these admissions or during or after?

11 A. Before. Just through the whole thing.

12 Q. And do you recall if voices were raised at all by the
13 police officers during the period of time that you were
14 making these admissions?

15 A. Malugani was always raising his voice at me, you know,
16 kind of yelling at me saying, "Lowery, admit that you
17 did this. You're almost there. We know you did this."
18 Officer -- Investigator Johnson really wasn't saying too
19 much through the whole thing.

20 Q. Why did you make these admissions if you're stating in
21 Court today that they were not true, is that right?

22 A. Yes, sir.

23 Q. Why then did you make these admissions to the police
24 officers?

25 A. Because I felt that I couldn't leave and if I did leave

1 Investigator Malugani was just going to keep on getting
2 all over me till he proved I was the one that did this
3 or, you know, I just felt like I couldn't leave or any-
4 thing.

5 Q. And by you making these admissions how did you feel that
6 that would resolve that problem of not being able to leave
7 or not?

8 A. I felt that they would throw me in jail and I could get
9 me a lawyer and try to fight this case.

10 Q. After you made these admissions that you're testifying
11 to today, that you're stating were not true, what
12 happened?

13 A. After I -- they took me back to my, well, I asked for a
14 break and they gave me a 15 minute break and they brung
15 in a cup of coffee and they came back about 15 minutes
16 later and they asked me to write a statement out for them
17 and they said, "If you don't want to write a statement,
18 would you say it into a recorder if that would be easier"
19 and I told them I didn't want to say anything else, I
20 wanted a lawyer and that's when they stopped asking me
21 questions.

22 Q. After you, for the second time you stated the first time
23 you asked for a lawyer it was refused by Officer Malugani?

24 A. He told me there was no need for one right now.

25 Q. And the second time you asked for a lawyer was after you

1 already made this oral confession, is that correct?

2 A. Yes, sir.

3 Q. And you're stating then at that time they stopped
4 questioning you?

5 A. Yes, sir.

6 Q. What happened then?

7 A. They took me back to my trailer back in Ogden.

8 Q. Do you recall if you were placed under arrest or advised
9 you were under arrest at any time after the break?

10 A. I believe Officer Malugani placed me under arrest, I'm
11 not quite sure if it was after the statement or after we
12 got back from my trailer, I'm not too sure.

13 Q. What was the reason if you know why Investigator Malugani
14 and Johnson wanted to go back to your trailer?

15 A. Pick up my shirt that I had on.

16 Q. And did you agree to that?

17 A. Yes, sir.

18 Q. Why did you agree to that?

19 A. I didn't have nothing to hide and everything and they asked
20 me if they could get my shirt and I told them okay and
21 we went back to my trailer and a girl that was staying
22 at my trailer had it in the wash machine and I looked in
23 the bathroom and I seen it in the washer.

24 Q. Were you the one that found the shirt or them?

25 A. I went in the bathroom and took it out of the washing

1 machine.

2 Q. And did you give it to the police officers?

3 A. Yes, sir.

4 Q. Do you recall what happened then after the police
5 officers obtained your shirt?

6 A. They took me to Saint Mary's Hospital, took blood from
7 me and then brung me back to Riley County Jail.

8 Q. And after you were brought back ot the Riley County
9 Jail what happened?

10 A. I was fingerprinted and photographed and placed inside a
11 cell.

12 Q. During the day of July 28th while you were with Officer
13 Malugani and Johnson you indicated that until you made that
14 oral confession you were never advised that you were
15 under arrest, is that correct?

16 A. Yes, sir.

17 Q. Why then prior to that time didn't you just ask for the
18 questioning to stop?

19 A. I didn't -- I just didn't think of it or anything because
20 I told them, you know, they asked me to cooperate with
21 them and everything would go a lot easier and that's what
22 I was trying to do.

23 Q. And by cooperating what did you do?

24 A. I told them what they wanted to know. I told them that
25 I wasn't doing this and everything and after a while they

1 just kept on insinuating that I did this crime and every-
2 thing.

3 Q. Were you ever offered any food on July 28th at all by
4 either officer?

5 A. No, sir.

6 MR. VOGEL: I have no other questions.

7 CROSS-EXAMINATION

8 BY MR. CAFFEY:

9 Q. Mr. Lowery, you're a high school graduate?

10 A. Yes, sir.

11 Q. I presume then you do know how to read?

12 A. Yes, sir.

13 Q. I presume then that when the police officers informed you
14 of your rights and gave you this form to read and sign
15 you were in fact able to read that form?

16 A. Yes, sir, I read it.

17 Q. Are State's exhibits 18 and 19 identical with regard to
18 the printed or typed portion on there?

19 A. Yes, sir.

20 Q. Pick one of those which ever you choose and could you
21 read to me the portion right here, just read the whole
22 portion.

23 A. If you decide to answer questions now without a lawyer
24 present you will still have the right to stop answering
25 at any time. You also have the right to stop answering