

IN THE DISTRICT COURT OF RILEY COUNTY, KANSAS
DIVISION II

STATE OF KANSAS,)
Plaintiff,)
vs.) CASE NO. 81CR 575
EDDIE JAMES LOWERY,)
Defendant.)

TRANSCRIPT OF DEFENDANT'S
MOTION TO SUPPRESS CONFESSION

PROCEEDINGS had before the Honorable Jerry L. Mershon,
Judge of Division II of the District Court of Riley County,
Kansas, at Manhattan, Kansas, on the Twelfth day of November,
1981.

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 Q. So, were you there when the polygraph was given?

2 A. No, sir, I was not.

3 Q. Now then you started interviewing him then in the afternoon
4 around 1:00?

5 A. Yes, sir, I did myself and Investigator Johnson.

6 Q. And this interview was conducted in one of the interview
7 rooms on the administrative office side, is that correct?

8 A. This is correct, yes.

9 Q. Who was present during this interview?

10 A. Myself and Investigator Johnson and Mr. Lowery.

11 Q. What happened during the course of this interview?

12 A. Prior to this interview again, Investigator Johnson read
13 the Miranda warning verbally off the Miranda card to Mr.
14 Lowery.

15 Q. Again, at the time, was Mr. Lowery under arrest?

16 A. No, sir, he was not.

17 Q. If he had said I want to go, I don't want to have anything
18 more to do with this, what would have happened?

19 A. We would have had to have let him go at that time.

20 Q. And what was the nature of your conversation during this
21 interview?

22 A. Sergeant Raynor had advised us that he did show deception
23 on the polygraph - -

24 MR. VOGEL: Your Honor, again I'm merely saying that
25 that is a result on the test and I would not want that to be

1 brought up at the trial. It's all right to mention here.

2 THE COURT: Certainly I agree with you that it
3 shouldn't be brought up. Just in order that he might give us
4 a reasonable statement panorama what occurred. If he has to
5 refer to that in order just to place him at where he was and
6 what occurred, I think for those purposes and those purposes
7 only for this hearing that will probably be acceptable.

8 MR. VOGEL: Thank you, Your Honor.

9 Q. (By Mr. Caffey) What happened without reference to any
10 results of the polygraph?

11 A. Then advised Mr. Lowery that, well, we told him that there
12 was deception in the polygraph and that we believed that
13 he did commit the burglary and the rape that was reported.

14 Q. Then what happened?

15 A. Mr. Lowery would not look directly at us. He looked down
16 or toward the wall or something and we asked Mr. Lowery
17 if he could tell us what he did that evening. We also
18 advised Mr. Lowery that the clerk at the Mini Mart in Ogden
19 had put him in the Mini Mart description-wise between
20 1:00 a.m. and 2:00 a.m. He was not sure of the exact
21 time but it was - -

22 Q. Of what significance was that?

23 A. This was just on time frame of where he was and Mr. Lowery
24 advised us earlier that the evening before that he had
25 left his trailer a little after midnight or so and that's

1 when he got in this accident, when the accident occurred,
2 after 3:30 in the morning.

3 Q. Okay. Well, what significance did it have or what impact
4 did it have on him about telling him about this clerk at
5 the Mini Mart?

6 A. I'm sorry.

7 Q. What impact does that have on him telling him about the
8 clerk placing him there at the store?

9 A. What impact did it have on Mr. Lowery?

10 Q. Yes.

11 A. Mr. Lowery still did not look at us and then he stated that
12 he does remember being in the store and that he did get
13 a pack of cigarettes and couldn't pay for it all and the
14 clerk paid for it and then we asked Mr. Lowery to continue
15 to tell us his activities. Then Mr. Lowery stated that he
16 started driving around and that he seen this house and he
17 decided that he was going to burglarize the house. Mr.
18 Lowery stated that he parked his car and then he would
19 stop and we asked him, then what did you do. Then he
20 stated that he walked to the rear of the house and again
21 paused. Again we asked him, then what did you do. Mr.
22 Lowery stated that he then ripped open the screen on the
23 door.

24 Q. Is that the way you understood that this had happened at
25 the time?

1 A. No, sir. I thought I -- I had not looked at the screen
2 prior to this and I did not do the crime scene. I was
3 in the understanding that the screen was cut and not ripped.

4 Q. Did you inquire about that?

5 A. Yes, sir. I asked Mr. Lowery, I said, "Did you not cut
6 the screen" and Mr. Lowery then stated, "No, I ripped the
7 screen. I didn't have anything to cut it with. I ripped
8 the screen open and reached through the door and unlocked
9 the door."

10 Q. Did you subsequently make any determination about whether
11 the screen was actually cut or ripped out?

12 A. I did not. Investigator Johnson then contacted Sergeant
13 Myers which is our evidence officer.

14 Q. During the time that the questioning was going to?

15 A. Yes, sir.

16 Q. What did he determine?

17 MR. VOGEL: Excuse me. Who's the he now we're
18 talking about?

19 MR. CAFFEY: Johnson.

20 MR. VOGEL: Johnson.

21 A. Investigator Johnson had learned from Sergeant Myers that,
22 in fact, the screen was ripped and was not cut.

23 Q. Then what happened?

24 A. Then we asked Mr. Lowery, then what did you do. Mr.
25 Lowery stated that he went into the residence. Asked

1 him, then what did you do. He stated that he picked up
2 a knife in the kitchen. We asked him, then what did you
3 do.

4 Q. Now, you're indicating that each time he would tell you
5 this in increments?

6 A. Yes, sir. He would make a statement and then he would
7 pause and then, then what did you do and Mr. Lowery
8 stated that he then went into the living room area and
9 was looking around the living room area and I asked him,
10 then what did you do and then Mr. Lowery stated that he
11 heard a noise coming from down a hallway. Asked Mr. Lowery,
12 then what did you do. He stated that he walked down the
13 hallway and he seen a woman in bed that was starting to
14 sit up. Then what did you do. Mr. Lowery stated that he
15 then got scared and he jumped on the lady in the bed and
16 put the pillow over her head. Asked Mr. Lowery, then
17 what did you do. He stated that the person was struggling
18 and he took the handle of the knife and hit the person on
19 the head. He did not know how many times but he had hit
20 the person on the head with the handle of the knife. Asked
21 Mr. Lowery, then what did you do. Mr. Lowery stated that
22 he pulled the robe or correction, it was gown he stated,
23 pulled the gown off of the lady and pulled his pants down
24 and proceeded to rape her.

25 Q. Did he indicate what happened after the rape?

- 1 A. Then we asked Mr. Lowery again, again it was a pause.
2 Asked him then what did you do. Mr. Lowery stated that
3 he then jumped up, threw the knife down inside the resi-
4 dence and then left the residence.
- 5 Q. Did he proceed to tell you more about what happened or
6 does that sum it up?
- 7 A. That basically sums it up. I can't recall right offhand
8 what else he had said.
- 9 Q. What happened after he told you?
- 10 A. I'm sorry.
- 11 Q. What happened after he related this information to you?
- 12 A. Took quite a while to get the information due to the fact
13 that every time he'd say something we'd have to ask him,
14 then what did you do. It wasn't just throw out. Every
15 time he'd make a comment he would stop and we would ask him,
16 then what did you do. Mr. Lowery then stated he would
17 like to take a break which we said fine, 10, 15, 20
18 minutes so he thought about 15 minutes. I then went and
19 got Mr. Lowery a cup of coffee. He set in a room by him-
20 self and there was myself or Investigator Johnson was not
21 with him and about 15 minutes later we came back to Mr.
22 Lowery and again Investigator Johnson read the Miranda
23 warning to Mr. Lowery and asked Mr. Lowery if he would put
24 in writing form what he had told us, if he would make a
25 written statement to us. Mr. Lowery then stated that he