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IN THE CIRCUIT COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA
CASE NO.: 1985-CF-007084

STATE OF FLORIDA,

Plaintiff,

vs.

JAMES MILTON DAILEY,

Defendant.

-----/

DEPOSITION OF: JACK EDWARD PEARCY, JR.
DATE: TUESDAY, FEBRUARY 25, 2020
TIME: 9:30 A.M. - 12:16 P.M.
PLACE: SUMTER CORRECTIONAL INSTITUTION
9544 COUNTY ROAD 476-B
BUSHNELL, FLORIDA 33513

STENOGRAPHICALLY
REPORTED BY: BETH BUNN, RPR

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and
between the counsel for the respective parties and
the deponent that the reading and signing of the
deposition transcript be reserved.

P R O C E E D I N G S

1
2
3 COURT REPORTER: Would you raise your
4 right hand, please?

5 Do you solemnly swear or affirm that the
6 testimony you're about to give in this cause is
7 the truth, the whole truth and nothing but the
8 truth?

9 THE WITNESS: Yes, ma'am.

D I R E C T E X A M I N A T I O N

10
11 BY MR. DUBIN:

12 Q. Good morning, Jack.

13 A. Good morning.

14 Q. All right. You and I have met on three
15 prior occasions before today, correct?

16 A. Correct.

17 Q. All right. And --

18 MR. MARTIN: Excuse me, Josh. Have you
19 advised him that he has a right for an attorney
20 to be here?

21 MR. DUBIN: I'm not his attorney.

22 MR. MARTIN: I know. But he has a right
23 to have an attorney.

24 MR. DUBIN: Do you represent him?

25 MR. MARTIN: I do not --

1 MR. DUBIN: Okay.

2 MR. MARTIN: -- and that's why I'm asking:
3 Has he been told he has the right to an
4 attorney?

5 MR. DUBIN: I'm going to proceed with my
6 questions. Okay?

7 MR. MARTIN: Well, Jack, you have -- you
8 do have a right to have an attorney. Do you
9 understand that?

10 THE WITNESS: I do now.

11 MR. MARTIN: All right. And there are
12 some consequences to any type of statements you
13 make.

14 MR. DUBIN: No, I'm going to --

15 MR. MARTIN: You will have --

16 (Multiple people speaking simultaneously.)

17 THE COURT REPORTER: One at a time.

18 MR. DUBIN: -- you have no right doing
19 this.

20 MR. MARTIN: I do.

21 MR. DUBIN: You're obstructing this
22 deposition right from the start.

23 MR. MARTIN: Jack, do you understand
24 that --

25 MR. DUBIN: You have no right --

1 (Multiple people speaking simultaneously.)

2 MR. DUBIN: You have no right.

3 THE COURT REPORTER: One at a time, guys.

4 MR. DUBIN: You have no right --

5 MR. MARTIN: Yes, I do. He has the right.

6 MR. DUBIN: You have no --

7 MR. MARTIN: He has the right to know the
8 consequences of his actions today and you
9 haven't told him.

10 Now, Jack, do you understand that --

11 MR. DUBIN: Sir.

12 MR. MARTIN: -- your parole commission --

13 MR. DUBIN: Sir, you're --

14 MR. MARTIN: -- is still pending?

15 MR. DUBIN: Sir, you're raising your
16 voice.

17 MR. MARTIN: You have been? Do you
18 understand that? Do you understand that?

19 THE WITNESS: That my parole stuff is
20 still pending?

21 MR. MARTIN: Yes.

22 THE WITNESS: Yes, I understand that.

23 MR. MARTIN: All right. And you
24 understand there's consequences, potentially,
25 with your statement today with the parole

1 commission; just so that you know that? Do you
2 know that?

3 THE WITNESS: Yes, I do.

4 MR. MARTIN: All right. And do you
5 understand that you might even be subject to
6 the penalties of perjury if there are
7 inconsistent statements; do you understand
8 that?

9 THE WITNESS: I understand that as well.

10 MR. MARTIN: All right. And having all
11 that in mind, do you understand you have a
12 right for an attorney to explain all those
13 ramifications to you?

14 THE WITNESS: Yeah, I can't afford no
15 attorney.

16 MR. MARTIN: All right.

17 BY MR. DUBIN:

18 Q. Have you ever been -- has the State ever
19 come in here and done what they just did to you in
20 the past?

21 A. One time two people from the State came,
22 but that's been a -- that's been a couple of years
23 ago, I think.

24 Q. All right. And a couple of years ago,
25 that was when you signed an affidavit in 2017.

1 They came in here and went through the same kind of
2 thing with you, correct?

3 A. No, they didn't tell me about the lawyer
4 and stuff. They just asked me about what I was
5 going to say in the statement and whatnot.

6 Q. They didn't raise their voice like Mr.
7 Martin just did to me?

8 A. No, they didn't.

9 MR. MARTIN: Did I raise my voice so I
10 could talk over you because you were
11 interrupting me?

12 MR. DUBIN: Did -- did they point their
13 finger --

14 MR. MARTIN: Isn't that correct, Mr. Josh
15 Bolen (sic)?

16 BY MR. DUBIN:

17 Q. Did they point their finger at you like
18 Mr. Martin just did at me?

19 A. No.

20 Q. All right. When I came to see you on
21 December 18th, 2019, we had never met before,
22 right?

23 A. That would be the first time.

24 Q. Okay. And --

25 A. You seen me twice since then. Okay.

1 Yeah, that --

2 Q. Yeah.

3 A. -- was the first time then.

4 Q. The first time was in December of 2019.

5 And I think we met in this room, right?

6 A. We did.

7 Q. Yeah. So we've met two times prior to
8 today -- or three times prior to today in this
9 room, correct? Once in December, once in January,
10 and once yesterday, correct?

11 A. Right, three times, correct.

12 Q. Okay. And when I came to see you the
13 first time, I told you that I was interested in the
14 truth, right?

15 A. Correct.

16 Q. And I put a declaration before you,
17 correct?

18 A. Correct.

19 Q. All right. I'm going to go ahead and mark
20 Exhibit 1, this declaration.

21 MR. DUBIN: Here's a copy for you, sir.

22 (Whereupon, Exhibit Number 1 was marked
23 for identification.)

24 BY MR. DUBIN:

25 Q. Now, I put before you -- I'm just going to

1 put it right in front of you. I put before you the
2 same declaration that you saw on December 18th,
3 2019, if you could take a look at it. That's it,
4 correct?

5 A. Say it again.

6 Q. That's the declaration that you signed?

7 A. Yes, correct.

8 Q. Okay. And if you recall, when we sat
9 here, you looked at it for several minutes,
10 correct?

11 A. Correct.

12 Q. And you and I didn't say anything to each
13 other, you just read it and thought about it,
14 correct?

15 A. Correct.

16 Q. All right. And then you signed it, right?

17 A. Right.

18 Q. Okay. I never threatened you. I wasn't
19 -- I didn't --

20 A. No.

21 Q. -- put you under any duress or anything
22 like that, correct?

23 A. (Shaking head no.)

24 Q. Correct?

25 A. The only duress there may have been is

1 they was fixing to electrocute Jimmy -- or whatever
2 the death penalty is now -- within the next two
3 weeks. It was for December 30th or something like
4 that.

5 Q. Okay.

6 A. I mean, it wasn't you threatening me.

7 Q. Got it.

8 A. It was just that, you know.

9 Q. In your mind?

10 A. Correct.

11 Q. Okay. And if you recall, and only if you
12 recall, you asked me, after you signed it, if you
13 were going to have to come to court, correct?

14 A. Possibly.

15 Q. Okay. And I said I didn't know, correct?

16 A. (Shaking head yes.)

17 Q. Correct?

18 A. Correct.

19 Q. Oh, I'm sorry. You got to answer yes
20 because the Court Reporter is taking that down.

21 A. All right.

22 Q. And I asked you if you had to come to
23 court -- and I'm talking about on December 18th --
24 I asked you if you had to come to court and
25 testify, would you do that?

1 And you said, yes.

2 Correct?

3 A. Correct.

4 Q. Okay. Now, I came to see you again back
5 in January. And if you don't remember the date,
6 accept my representation that it was January 13th,
7 2020. Okay?

8 A. All right.

9 Q. All right. And do you recall that on
10 January 13th, I took some notes? Remember, I had a
11 pad and a -- excuse me, that I was taking some
12 notes?

13 A. Yes.

14 Q. Okay. And I'm going to give you an
15 opportunity to explain everything. I'm just
16 talking about what we discussed on January 13th.
17 Okay?

18 A. Okay.

19 Q. All right. So when I was there, when I
20 came to see you on January 13th, we sat in this
21 again, correct?

22 A. Correct.

23 Q. And I asked you some questions about prior
24 statements you had given in the past, correct?

25 A. Yes.

1 Q. All right. And I asked you why at various
2 points in the past you had claimed that James
3 Dailey was the one that killed Shelly Boggio when,
4 in fact, he had nothing to do with it. That's what
5 I asked you on January 13th, correct?

6 A. I don't remember it specifically that way.

7 Q. Okay. Well, do you remember that I had
8 asked you why you blamed it on Jim? And one of the
9 things that you told me was that you didn't want to
10 confess to the murder, correct?

11 A. I don't remember saying that. I remember
12 at one point we was -- we talked about it and I
13 told you, Who's going to go confess to first degree
14 murder --

15 Q. Okay.

16 A. -- of a 14-year-old girl?

17 Q. Got it.

18 A. I remember making that statement to you.

19 Q. Okay. And when I asked you have -- when I
20 asked you if -- why you had denied it in the past,
21 you said you still had appeals pending at that
22 time, correct?

23 A. It may have been at two different times
24 but, yeah, I'm sure we -- we did talk about that I
25 was still -- not that I had so much an appeal as I

1 was parole eligible, and the only way -- my only
2 appeal left would be newly discovered evidence.

3 Q. Got it.

4 A. All my other appeals have been expired.

5 Q. All right. And you remember at the time
6 we talked about the letter that -- and we'll get to
7 it in a little while -- there was a letter that had
8 been filed, I think, by the State that you wrote to
9 Ms. Boggio's sister?

10 A. No, we didn't talk about that until
11 yesterday because I didn't -- wasn't aware of it
12 the last time we had.

13 Q. Okay.

14 A. That all came out since then.

15 Q. All right. So that was yesterday. Okay.
16 So sticking with that second meeting on the 13th,
17 the second time we met, one of the things that I
18 asked you is that -- well, I said, Why did you
19 implicate Jim?

20 We talked about who confesses to killing a
21 14 year old. One of the things that you also said
22 angered you was that the prosecutors changed
23 evidence to make it look like two people did it and
24 that bothered you, right?

25 A. Yeah, but that wasn't the whole context of

1 it. I told you --

2 Q. Tell me the whole context.

3 A. I told you I made a statement when I was
4 first arrested. I went and turned myself in, seen
5 my family and told them I was turning myself in.
6 Turned myself in, came back down, made a statement
7 to the State Attorney's Office with my lawyer
8 there.

9 Then they went to give me a lie detector
10 test. And from there, the sheriff's brother tried
11 to say I wanted a rabbi, this, that, and the other.
12 And then -- and I didn't know it at the time, it
13 was a motion of mine or whatever that came out,
14 he's trying to say I made a one-line confession,
15 asked for a rabbi, a preacher, all this.

16 But that's -- he said -- he told me at the
17 time, when I'm unhooking the machine because they
18 wouldn't let me go to the restroom after a couple
19 of hours, that maybe you need to see a rabbi and
20 all this. But he put them words in my mouth later
21 in his motion for lamine (sic), or however you
22 pronounce it.

23 Q. Limine? Does that sound familiar?

24 A. Right. And then that's when Halliday
25 said, Okay, well, here's her (sic) one-line

1 confession in the car ride, that I told y'all.

2 So Buchaus, in his testimony, said nothing
3 was said during this car ride; no questions asked.
4 I didn't say anything, this, that, and the other.

5 So I said I -- you know, why would I
6 testify against Jim when they convicted me for a
7 crime I didn't do?

8 Q. Got it. And one good thing that you told
9 me in January was -- and, by the way, did you ever
10 make a one-line confession to Halliday?

11 A. No, I did not.

12 Q. Okay. So is it your position that that's
13 made up by Halliday?

14 A. It's definitely a lie.

15 Q. Okay. And --

16 A. The judge wouldn't even let it come into
17 court. The difference between Indian Rocks and the
18 Sheriff's Department, once Halliday said that, they
19 kicked Indian Rocks to the side and Halliday became
20 a lead detective in the case because he was willing
21 to do what they wanted done.

22 Q. Do you recall what it was he claimed you
23 said in that confession?

24 A. He said -- he said that I had made a
25 one-line confession that I stabbed her once in the

1 hand.

2 Q. And did you ever say that to him?

3 A. No. I never said that. Now they said it
4 to me a few times. They told me, One of you's --
5 what's the word for a bad guy the cops use all the
6 time? They did it in the lie detector test and --
7 and Halliday tried it, and it's the good guy/bad
8 guy. Anyway, but they got another word for it.

9 He said, So maybe you just stabbed her
10 once in the hand. If you just stabbed her once in
11 the hand, it wouldn't be that bad a deal.

12 I told him, Say what you want to say. And
13 that's what he did.

14 Q. Yeah, didn't he say, you're a no-goodnik?

15 A. Yeah, no -- no-goodnik, right. That's the
16 word he used.

17 Q. All right.

18 A. And you shouldn't -- just because you
19 stabbed her once in the hand, if you only stabbed
20 her once in the hand because Dailey threatened you,
21 or something like that -- you know, I mean, he's
22 trying to get me to say these things. That's where
23 it came from. And, finally, he just said I said
24 it.

25 Q. All right. What did you say to him, if

1 anything?

2 A. The only words I said to him is, Say what
3 you want to say. You're going to anyway.

4 Buchaus was wrong. There was a
5 conversation in the car because Halliday was trying
6 to tell me, you know, that you're not really a bad
7 guy, we know this, that, and the other. But if you
8 just stabbed her once in the hand so that Dailey
9 wouldn't do something -- you know, I mean, he's
10 trying to sell it to me to make me give some type
11 of confession.

12 And then, finally, he kept saying it, I'm
13 saying, you know, I didn't do it. That's why we
14 took the lie detector test and I made my statement.
15 And, finally, I said, Say what you want to say.
16 You're going to anyway.

17 And he sure enough did.

18 And you'll notice from that point on,
19 Buchaus was no part of the case anymore. And they
20 had the depo, they asked him five different ways:
21 Was anything said during the car ride?

22 No.

23 Did you ask him any questions?

24 No.

25 Did Halliday ask him questions?

1 No.

2 Did he make any statements?

3 No.

4 My lawyers didn't bring that out on the
5 stand though. They said, Oh, he'd say he
6 misunderstood the questions and thought it was some
7 other time and he would change his story.

8 Q. All right. Now what else, if anything,
9 did -- did either Detective Halliday, or anyone
10 else for that matter, make up that you said, that
11 you actually didn't say? Anything?

12 A. I don't remember any other statements by
13 any of them.

14 Q. Okay. Now, one of the things that I asked
15 you on January 13th -- that's the second -- the
16 second time we met in here.

17 A. Correct.

18 Q. Is I said to you, When you signed -- when
19 you signed an affidavit in the past --

20 A. Correct.

21 Q. -- in 2017, I'm talking about at the
22 second meeting when I was here, and I said, Well,
23 why was it that you then decided not to testify?

24 What you told me was that because the
25 prosecutors came down and told me that it might

1 impact or it might affect my chances at parole?

2 A. I don't remember that because that has
3 nothing to do with parole, and I know that, no
4 matter what they said. I would have told them that
5 that's irrelevant. It doesn't matter with parole.

6 I already know how the parole system
7 works. I've been in prison 35 years and I've been
8 around people that were in prison 10 or 15 years
9 when I first came in. I know how the parole system
10 works and it doesn't work.

11 Q. So when Mr. Martin just told you that this
12 might impact your chances for parole --

13 A. I know he's full of it.

14 Q. Okay. Why do you think that?

15 A. Because the parole system, the way it
16 works, they just aren't paroling anybody. They
17 parole -- more people die that are parole eligible
18 every year by -- probably five, ten times many
19 people die every year that are parole eligible than
20 get paroled.

21 Q. Okay. Now, do you recall back in 1993,
22 you made a statement to an attorney for Mr. Dailey?

23 A. Probably. I was at East Unit again. I
24 remember talking to him in the colonel's office one
25 time.

1 Q. That was at --

2 A. FSP.

3 Q. -- at FSP in Starke, correct?

4 A. Correct.

5 Q. Okay. Now, you were put under oath there,
6 right, swear to tell the truth?

7 A. Correct.

8 Q. Okay. And you remember his name? Does
9 Brent Armstrong ring a bell?

10 A. Not really.

11 Q. Okay. Do you recall that at that point
12 you told him that your appellate remedies, except
13 for a federal habeas, had been exhausted?

14 A. I might have said that.

15 Q. Okay. And you told him that when you left
16 with Shelly Boggio and Oza Shaw -- well, you tell
17 me. Did -- did -- when --

18 A. Okay. I'm not sure exactly what I told
19 him, but I know a couple of times that the people
20 from CCA, or whatever that organization is for
21 death row people, a couple of times I tried to make
22 some statements that would help get Jim's sentence
23 overturned from death to at least a life sentence,
24 or something like that.

25 I didn't want to see him get killed. One

1 person was already dead because of the crime. I
2 didn't want to see that happen. I wasn't happy
3 with him, but I still didn't want the State to kill
4 him.

5 Q. All right. Well, what happened? When you
6 left with -- on the night of the murder of Shelly
7 Boggio, when you left with -- at one point you take
8 Oza Shaw to a pay phone, correct?

9 A. Correct.

10 Q. All right.

11 A. Two blocks away from the house --

12 Q. All right.

13 A. -- just dropped him off.

14 Q. And who was with you at that point?

15 A. Shelly and Oza.

16 Q. Okay. Was Jim with you?

17 A. No. Jim stayed at the house to do
18 something, him and Gayle, my girl.

19 Q. Okay. In 1993, you testified that when
20 you came back to the house after dropping Oza off
21 at the pay phone, you and Shelly went somewhere,
22 and then when you came back, Shelly wasn't with
23 you. That's what you said in 1993, right?

24 A. Possibly.

25 Q. All right. Now, you know that -- well --

1 well, what -- what happened? Is that what
2 happened?

3 A. Yeah.

4 Q. Okay. And then at some point later in the
5 evening -- well, strike that.

6 You've heard that James Dailey maintains
7 that --

8 A. Well, just so we don't mistake, I'm not
9 saying, right, that Shelly wasn't with me when I
10 came back to the house. I said that's -- we
11 dropped Oza off, left, and came back. Just so you
12 don't misunderstood -- understand. I made that
13 statement at the time trying to, you know, help Jim
14 however I could to get off his death sentence.

15 Q. So what actually happened?

16 A. The statement I made to the State
17 Attorney.

18 Q. Was she with you when you came back to the
19 house?

20 A. Yes.

21 Q. She was?

22 A. Yes, she was.

23 Q. And what time was that?

24 A. I don't know. It was 35 years ago.
25 Midnight, I don't know, one o'clock.

1 Q. Okay. So let's walk -- let's walk through
2 that night. Okay?

3 A. All you got to do is read my statement
4 that I made to, I think it was, Jimmy Slater.
5 That's when it was fresh in my mind. It's 35 years
6 later. That statement's exactly -- I wasn't
7 charged with murder at the time I made that
8 statement.

9 All the, what I call, forensic evidence --
10 and you say it isn't -- back up exactly the
11 statement I made. I don't even know what that
12 evidence was. I just know what happened and told
13 exactly what happened. And the drag marks, the
14 whole nine yards, was exactly what I said went on.

15 Q. What about the drag marks and the whole
16 nine yards?

17 A. The fact that the county coroner said they
18 were consistent with being drug by the feet through
19 grass, because of the way it does the skin, and
20 over rocks, because of what it does. And then when
21 I got to trial, Beverly Andrews had her change her
22 story because that didn't fit the theory that two
23 people committed the crime.

24 So now they changed it. It -- the body
25 had to be carried over these rocks. And so the

1 postmortem marks from rocks would have said -- it
2 must have been when they took the body out of the
3 water.

4 Of course, that's a lie by photographic
5 evidence, which I never was able to do on an
6 appeal, because they just didn't drag this girl out
7 of the water over some rocks. She's head first on
8 -- on the thing and her feet were still in the edge
9 of the water, and they just don't drag a body over
10 the rocks like that.

11 Q. Okay. I think that was the thing that we
12 talked about on January 13th, the second time. You
13 didn't go into that detail but you said the thing
14 that bothered you was that they changed their
15 theory on the drag marks on the body. Do you
16 recall that?

17 A. Did everything they did. Halliday lied.
18 Then Beverly Andrews and Heyman, or whatever that
19 -- her -- her sidekick was. You know, they changed
20 it. Like, all -- all the evidence that was there,
21 they twisted it. You can't really change the
22 facts.

23 But Halliday straight lying, that changed
24 the facts, getting the county coroner to change her
25 story to fit the State's that two people committed

1 the crime, not one.

2 Q. Right. And you told me -- that's exactly
3 right. So that -- that is what you told me the
4 second time that we met is what pissed you off, I'm
5 talking -- I'm just talking about what you told me
6 the second time.

7 A. Correct.

8 Q. At that point, you had signed a
9 declaration and told me Jim had nothing to do with
10 it at that point, correct?

11 A. You're talking about the one --

12 Q. Yes.

13 A. -- that I signed right here?

14 Q. Right.

15 A. Correct.

16 Q. And you told me that, If they can change
17 evidence like that, whether I did it or not, they
18 were going to make it seem like I did it. Correct?
19 That's what you told me sitting right here in this
20 room?

21 A. I don't remember that statement, but
22 that's self-evident.

23 Q. Okay.

24 A. The fact that I didn't commit the crime
25 and I was convicted of it, because of a detective

1 making a lie and the State kind of twisting the
2 facts to what they wanted it to be, had the county
3 coroner to change her story.

4 Now, when she's doing her autopsy, she
5 knows exactly that she's recording it, you know,
6 what -- what -- what everything is. Why would you
7 come back later, you didn't do another autopsy or
8 anything, but you come back later and change your
9 testimony because that doesn't fit the State's
10 theory of what happened.

11 Q. Well, what you told me on the 13th -- just
12 stick with my question for a minute. What you told
13 me on the 13th, when we were here the second time,
14 what you told me -- because I said to you, Why did
15 you continue blaming this on Jim?

16 And you said to me, Because even if I
17 hadn't done it -- because, remember, at this time
18 you're telling me that you did it and that Jim had
19 nothing to do with it.

20 A. Go on.

21 Q. Right?

22 A. Go on, yeah.

23 Q. And you said that, Even if I hadn't done
24 it, I saw that they were putting it on me. They
25 were just making up evidence. Once I started to

1 say Jim done it, they then made it seem like two
2 people did it. But then when I went to trial, they
3 made it seem like just I did it. So they were
4 messing with the evidence.

5 A. No, I didn't say that, because that's not
6 true.

7 Q. Okay.

8 A. Why would I say they started changing the
9 evidence to me, to say Jim didn't do it? What --
10 that doesn't even make any sense how you laid that
11 out. Because I already made a statement before any
12 of the lying and all that stuff started.

13 I already made the statement of exactly
14 what happened. That came after the lie detector
15 test. When the first lie came up is when Halliday
16 did it. Well, not really, because when I went to
17 turn myself in and called the cops, told them I was
18 going to drop my son off at my mom's and come down
19 to the police station, they arrested me a couple of
20 blocks from my mom's, when the police station isn't
21 another mile away. I can make, like, two more
22 turns, a left and a right. And then I'd been
23 drinking a few quarts of beer and I smoked a couple
24 of joints because I'm going to turn myself in. I
25 don't know how long I'm going to be in jail. And

1 then they got there and said, We know you've been
2 drinking, but will you -- will you -- for us to
3 help you, you got to sign a paper that says you
4 haven't been drinking and you're not on drugs.

5 So right off the bat, a couple of
6 detectives started telling me to lie.

7 Q. What'd they tell you to lie about?

8 A. About saying --

9 MR. MARTIN: No, no, that's --

10 THE WITNESS: -- say you haven't been
11 drinking --

12 MR. MARTIN: Excuse me.

13 THE WITNESS: -- or doing drugs.

14 MR. MARTIN: Excuse me. Did you just make
15 -- you're not going to lead him that way: What
16 did he tell you to lie about? No, you're not
17 going to do that.

18 MR. DUBIN: He can --

19 THE WITNESS: He told me they couldn't get
20 --

21 MR. DUBIN: He can -- here's how this
22 works: He can object, and then you can answer
23 the question. He can put his objection on --

24 THE WITNESS: I just told you. They said
25 we can't help you unless you sign this paper

1 that you haven't been drinking or doing any
2 drugs or anything like that.

3 BY MR. DUBIN:

4 Q. And that was a lie?

5 A. Of course. I just told you I was
6 drinking. They seen the beer when they arrested
7 me. They looked in the car, I guess if I had a
8 weapon or something, and they could see a couple of
9 quarts of beer and stuff. And they even asked
10 Lori, my girl -- which she's gone, and you can't
11 ask her -- but she did make a statement at the time
12 that, yeah, I was under the influence of stuff.

13 Q. Okay.

14 A. They already got a statement from her like
15 that. But even then, even though that was
16 irrelevant right off the bat. You know, you asked
17 about the officers. I really forgot about them
18 because they were irrelevant to the whole case, but
19 they were with the false stuff immediately.

20 Q. Got it.

21 MR. DUBIN: All right. I'm going to mark
22 your 1993 statement as Exhibit 2 and hand that
23 to you. Here's a copy for you, sir.

24 (Whereupon, Exhibit Number 2 was marked
25 for identification.)

1 BY MR. DUBIN:

2 Q. So I'm going to refer you from time to
3 time to different page and line numbers --

4 A. Oh, on this?

5 Q. -- if you want to take a look at it. Now
6 back in 1993, when you gave this sworn statement,
7 in 1993, you testified that when you came back to
8 the house to get James, that Shelly was not with
9 you. That's what you said in 1993, correct?

10 A. Oh, I don't know if it's in this statement
11 somewhere.

12 Q. Take a look at Page 7, Line 4. See if
13 that refreshes your recollection.

14 A. Okay. I see it.

15 Q. That's what you testified to in 1993,
16 correct?

17 A. Yeah, if you got it here, I reckon.

18 Q. All right. Now, you also testified that
19 when you came back to the house and Shelly wasn't
20 with you, you woke Jim up, right? That's what you
21 testified to in 1993?

22 A. Yeah, I don't know if he was asleep. But,
23 yeah, I went and got him.

24 Q. Okay. And have you heard him say
25 something along the lines of James told me -- or

1 Jack told me, Come on, let's go smoke a couple of
2 joints, drink a beer or something? That's -- is
3 that what you said to him in 1993?

4 A. I don't know if I did or not.

5 Q. All right. Take a look at --

6 A. It's 35 years ago.

7 Q. Got it. Take a look at Page 6, Line 23.

8 And just start reading from Line 23 up through Line
9 3 on the next page.

10 A. Okay. I see it.

11 Q. All right. Now, you know that James
12 Dailey, he -- his position is that he got his pants
13 wet that night at the --

14 A. Yeah, blamed it on Belleair.

15 Q. -- Belleair -- yeah, the Belleair
16 Causeway, right?

17 A. (Shaking head yes.)

18 Q. Do you know where he got that story from?
19 Or where did you hear that? When's the first time
20 you heard that?

21 A. I couldn't tell you.

22 Q. Okay.

23 A. Are you done with this?

24 Q. I might come back to it a couple of times.
25 You're aware, as you sit here today, that that is

1 his position, that he got his pants wet at the
2 Belleair Causeway, right?

3 A. All right.

4 Q. Well, I'm asking you: Did you know that
5 before I just said it?

6 A. Yeah, I think you told me it before.

7 Q. Okay. No, I didn't tell you --

8 A. Or somebody has. If you weren't the one,
9 somebody said it before, I'm sure of it.

10 Q. And -- well, was that true?

11 A. No.

12 Q. It wasn't?

13 A. (Shaking head no.)

14 Q. You would have no way of knowing what he
15 was going to say about his pants when you gave
16 these statements, right? Because he said that much
17 later on, right?

18 A. I don't know.

19 Q. Well, where did that -- where did that --

20 A. I told you -- I told you we met each other
21 in county jail in the chapel, the library. Also, I
22 used to work in the law library and I'd go see him
23 in the writ room, when he was on death row at FSP.

24 Q. Well, where did that -- that was after
25 1993 though, when you would see him. You saw him

1 one -- there's one encounter that you had with him
2 at FSP, right?

3 A. No, quite a few of them.

4 Q. Well --

5 A. I told you I worked in the -- in the law
6 library. For death row, they come and put them in
7 cages in front of the room where we're at. They
8 got three different little doors we open up and
9 talk through the Plexiglass with holes in it. So
10 he came out there and seen me quite a few times.

11 Q. What year was that?

12 A. Let's see. I worked in the library
13 probably '88/'89/'90, something like that, before I
14 went to the welding shop.

15 Q. Okay.

16 A. And then I talked to him back on the row
17 because we went back there with the welding cart
18 sometimes because I'd bring him garlic and pepper
19 and whatnot like that, made sure he had a new TV.

20 Q. Okay.

21 A. We were in contact plenty of times.

22 Q. Okay. Where did he get this -- where did
23 you -- where did he or you or how did this whole
24 story come up with the pants being wet at the
25 Belleair Causeway?

1 A. I have idea.

2 Q. Okay. Do you have any recollection of --
3 I mean, what was the -- the first people that told
4 you that when you met with attorneys that Jim has
5 been trying to get exonerated? Is that the first
6 time you heard it? I'm trying to understand where
7 this story came from.

8 A. It could have been from his trial. I
9 don't know.

10 Q. Okay. All right. You also, in this 1993
11 statement, said that you made up this statement.
12 You -- that you made up the fact that James Dailey
13 actually committed the murder because you were
14 trying to exonerate yourself and you just did it to
15 be self-servant?

16 A. In here, you're talking about?

17 Q. Yeah.

18 A. Possibly.

19 Q. Okay. And -- so look at Page 9, Line 18.
20 See where it says, *Question: Okay. We're back on*
21 *the record.* At line 17.

22 And then it says, *Mr. Percy, did you make*
23 *a statement after your arrest to law enforcement or*
24 *a representative of the State Attorney's Office in*
25 *Pinellas County?*

1 *Answer: Yes. At one time, along with my*
2 *lawyer, Ky Koch, we set up -- he set up for us to*
3 *meet with the State Attorney at that time and give*
4 *a statement, which I did give a statement, and all*
5 *the facts are the same except for in my statement I*
6 *said Shelly was present in the car when I came back*
7 *and picked Jim up, which she wasn't.*

8 *And I said Jim, her, and I left. And then*
9 *I said -- made a statement as to what Jim had done,*
10 *exonerating myself, which all of it, it was just a*
11 *self-serving statement to exonerate yourself.*

12 *Question: So you made that statement to*
13 *help yourself out?*

14 *Answer: Right. At the time, Jim wasn't*
15 *even in custody. I was in custody and they were*
16 *going to charge me and I was just trying to get*
17 *around it, that's all. Lay the blame somewhere*
18 *else.*

19 *That's what you testified to in 1993,*
20 *correct?*

21 *A. I don't know if I testified to it, but*
22 *that's -- I did make that statement though. I told*
23 *you why I made it, trying to get him off the row.*

24 *Q. You didn't say in 1993, I'm just saying*
25 *this to get him -- try to get him off the row*

1 though? You were -- you wanted --

2 A. Yeah, I was trying to help get him off the
3 row. If I said -- made a statement and said I just
4 said this, lied on this statement to get him -- you
5 know, to get him off the row, then what's this
6 statement worth?

7 Q. Okay.

8 A. I mean, that doesn't make no sense.

9 Q. Got it. All right. We can go through the
10 night and what happened because -- we'll get this
11 straight once and for all.

12 Who's Juan Banda, by the way?

13 A. I remember the name when you said it
14 before, but I don't -- I don't even remember what
15 camp, but I remember that name Juan Banda from
16 somewhere.

17 Q. I never said that name Juan Banda to you
18 before.

19 A. Somebody had, here in the last year or
20 two, as being a witness. Now, I don't know whether
21 it was the State people coming to see me, or you,
22 or Chelsea, or some of them other people, but
23 somebody's asked me about Juan Banda and another
24 dude. There's somebody else that's saying
25 something for Jim, saying I said Jim didn't do it,

1 or something like that.

2 I remember his name, Juan Banda. I don't
3 think the other name --

4 Q. Travis Smith?

5 A. That's the name I never -- I don't
6 recollect him at all, ever knowing no Travis Smith.

7 Q. All right. Got it.

8 A. I remember the name Juan Banda from
9 somewhere.

10 Q. All right. We'll get back to Juan Banda
11 in a minute. But you said when the State came to
12 see, you the State did come to see you in 2017
13 before you testified -- before you went to court,
14 right?

15 A. Correct.

16 Q. And what did they tell you? What'd they
17 come here for?

18 A. To ask me what I -- what I was going to
19 say or whatever. They talked to me about the
20 statement I've done.

21 Q. All right. And what'd they tell you?
22 What'd they say to you? Whether it was yelling or
23 finger pointing like today or not --

24 A. No, there was none of that.

25 Q. All right. Was there any kind of a --

1 MR. MARTIN: (Indiscernible mumbling.)

2 MR. DUBIN: I'm sorry?

3 MR. MARTIN: Sorry for what?

4 MR. DUBIN: I didn't hear you.

5 MR. MARTIN: I didn't hear you either.

6 MR. DUBIN: All right.

7 BY MR. DUBIN:

8 Q. Whether it was yelling or finger pointing
9 or not, did they tell you, like -- like Mr. Martin
10 did today, that it would impact your ability for
11 parole? Did they give you legal advice that way?

12 A. Possibly. You know, like I say, I'm not
13 really -- I don't remember. It is possible they
14 could have.

15 Q. You don't remember if they did or didn't?

16 A. You know, they -- I'm sure they probably
17 brought it up. But like I already told you, I know
18 what's going on with the parole board, so I
19 probably wouldn't have been paying too close
20 attention to it.

21 Q. All right. Under -- understood. But,
22 Jack, we sat in here yesterday, a little more than
23 -- less than 24 hours ago, and you told me that
24 when they came to see you, that they had made you
25 -- they -- they had made you some promises -- not

1 promises, but they had --

2 A. No, they didn't make me no promises.

3 Q. But they had -- what they had said to you
4 was that this would hurt your chances for parole,
5 in words or in substance. Didn't you tell me that
6 yesterday?

7 A. I don't remember saying exactly like that,
8 but it's possible they could have said something
9 like that. But, like I said, I know that doesn't
10 make any difference to the parole board.

11 Q. Okay. Well, putting --

12 A. I have no hope of parole whatsoever.

13 Q. Putting aside, for a moment, putting aside
14 your knowledge of the realty of parole --

15 A. Correct.

16 Q. I know that you -- what you think about
17 it.

18 A. Okay.

19 Q. I just want to know what the State said to
20 you. When they came in, in 2017, it was after you
21 had signed the affidavit, right?

22 A. Correct.

23 Q. All right. And they came in and they
24 wanted to know what you were going to say, right?

25 A. (Shaking head yes.)

1 Q. Correct?

2 A. Correct.

3 Q. And -- sorry. She's just got to get it
4 down. And then -- it's my bad. I should have told
5 you to answer out loud. That's number one.

6 And, number two, they also told you --
7 however they said it -- the takeaway from you is
8 that they were trying to convince you that it was
9 going to hurt your chances for parole if you
10 testified, right?

11 A. Yeah, they might have told me that.

12 Q. Okay. Now, by the way, another thing that
13 keeps coming up that you've told me that was --
14 that they made up or that wasn't true was this
15 whole bit about your car getting stuck in the sand,
16 right?

17 A. I don't have no recollection of that
18 whatsoever. If I made that statement somewhere, I
19 have no idea where it came from or ever making that
20 statement. I don't -- I don't know if you're
21 attributing that to me or what.

22 Q. Well, I'm asking you if it happened.

23 A. I have no recollection of it whatsoever,
24 period. None whatsoever.

25 Q. Okay. So your car getting stuck in the

1 sand, people coming out with shovels to help you, a
2 bartender coming out and seeing you, that never
3 happened?

4 A. Not as far as I know.

5 Q. Okay.

6 A. If it happened, I must have been blacked
7 out or something because I have -- I'd at least
8 have a faint memory of something.

9 Q. Right.

10 A. Even if I was drunk or on drugs, I'd
11 remember something about it.

12 Q. Right, because the second time I came to
13 see you, you said, This thing about my car being
14 stuck never happened. I don't even know where
15 they're getting that from. That was what you told
16 me, right?

17 A. Yeah, I got a blank on that. I already
18 told you. I don't know where it came from.

19 Q. All right.

20 A. If I made the statement, I don't know why
21 I would have made that statement or where I ever --
22 you know, like I said, I have no memory of that
23 whatsoever, period.

24 Q. Okay. That night, talking about the night
25 before -- you know, because it goes into past

1 midnight when Shelly Boggio was murdered. I'm just
2 going to go through some of the things just to get
3 full clarification on what happened.

4 Okay. So what was the first time you
5 remember seeing Shelly and Stacy, if you recall?

6 A. I don't know, maybe a month before that.
7 First time we ever seen them I think we was in a
8 Burger King, or some -- some hamburger place, and
9 talked to them about getting some drugs from them.
10 They went and got us some marijuana.

11 Q. Right. And you were going to -- did you
12 go -- you went to, like, a house or something to
13 get -- buy the weed?

14 A. Uh-huh.

15 Q. All right. And then, at some point, you
16 go to KFC, correct?

17 A. I don't know. We was already -- well, we
18 was eating when we met them.

19 Q. But it was at a KFC?

20 A. Oh, it was at, I thought, it was Burger
21 King. It may have been --

22 Q. All right. It's all bad -- it's all bad
23 for you.

24 MR. EDELMAN: He's telling you about what
25 happened a month before.

1 MR. DUBIN: Oh, okay. So you're telling
2 me about --

3 Scott, thank you.

4 You're telling the first time you met
5 Shelly --

6 A. That's what you just asked me.

7 Q. Oh. I thought -- I meant --

8 A. You said, When was the first time you met
9 --

10 Q. I --

11 A. -- Shelly and Stacy.

12 Q. Sorry. Bad question on my part. I
13 screwed up. I meant that night, when was the first
14 time you saw them?

15 A. Oh.

16 Q. In any event. So you met them about a
17 month --

18 A. I think we picked them up hitchhiking.

19 Q. Right. So that would have been a month
20 before, correct?

21 A. The first time we met --

22 Q. Right.

23 A. -- was the month before.

24 Q. Okay.

25 A. Right. We'd seen them a few times since

1 then.

2 Q. And at some point -- and you hung out with
3 her a few times in between --

4 A. They'd been to the house. We'd been back
5 over to their house buying dope.

6 Q. Right. So you knew them?

7 A. Yeah, and their friends, because they
8 hooked us up with some friends that were better
9 connections as far as buying some weed and stuff.

10 Q. Got it. All right. And how did you meet
11 her father?

12 A. At her house.

13 Q. Right. And what -- what was he like? How
14 do you remember him?

15 A. I thought he was kind of a feminine type,
16 whatever like that. And, I guess, he's a hair
17 dresser, too, so that kind of fit, but he was
18 selling cocaine and stuff like that. I mean, he
19 was also dealing some drugs and stuff.

20 Q. Right.

21 A. That's another thing Penick wouldn't let
22 come up in trial.

23 Q. Who wouldn't?

24 A. Penick, the judge.

25 Q. Right. So who bought cocaine from him:

1 You? James? Both of you?

2 A. Probably both of us. I mean, whatever we
3 did, we did it together, so...

4 Q. Right. And did you ever do this cocaine
5 with Shelly and her sister?

6 A. No.

7 Q. Okay. So -- and at one point, did her
8 father, like -- what did he say to you? I don't
9 want to -- I don't want to mischaracterize
10 anything. He said something like, You're too old
11 to be hanging around my daughter, you guys?
12 Something like that?

13 A. No.

14 Q. What did he say about you guys -- about
15 you and Jim hanging out --

16 A. He never said nothing like that.

17 Q. Okay.

18 A. We only seen them, like, once or twice
19 there.

20 Q. All right. So now --

21 A. We also seen them at bars a couple
22 different times. They were already at the bars
23 when we went there.

24 Q. Right.

25 A. At St. Pete Beach, down there at the end,

1 they got one where you can drink inside and
2 outside. And then they took us to a couple of
3 bars, The Cap -- The Quarter Deck or The Captains
4 something.

5 Q. I mean --

6 A. So --

7 Q. Go ahead.

8 A. So I wouldn't think they were 14 years
9 old. And I think her sister already was living
10 with somebody.

11 Q. That's why --

12 A. We had no idea of the age at that time.

13 Q. That's what I wanted to clear up. So this
14 whole thing about taking an ID from Gayle and all
15 that --

16 A. That was a 21 club and they knew her and
17 knew she wasn't 21. That's why she needed it. The
18 Jerry's Rock and Disco, she couldn't get in there
19 because, I guess, they knew her or something and
20 wouldn't let her in unless she had an ID.

21 Q. So it wasn't this notion that she looked
22 so young and she needed an ID to show that she was
23 older --

24 A. No.

25 Q. -- it was just about getting into a 21

1 place?

2 A. Into one where she was known and they
3 wouldn't let her in unless she had an ID.

4 Q. All right. Now, I'm not trying to -- I'm
5 not trying to cause any --

6 A. Right.

7 Q. -- strife between you and Gayle. All
8 right?

9 A. No.

10 Q. But Gayle would get a little bit pissed
11 off if you were flirting with other girls, right?

12 A. Yeah, sure. That's a male and female
13 trait.

14 Q. You were a little bit of a ladies' man,
15 yes?

16 A. I don't know if I'd classify myself as
17 that.

18 Q. You're being too humble.

19 A. I mean, I like ladies, but...

20 Q. So, she was giving you a hard time for
21 dancing with her that night, right?

22 A. No. I danced with Gayle and I danced with
23 her.

24 Q. Right. So you danced with her and then
25 you danced with Gayle that night, right?

1 A. Correct.

2 Q. And Gayle was pregnant at the time?

3 A. She was, but she wasn't pregnant, showing
4 pregnant.

5 Q. Got it. But you knew she was pregnant?

6 A. Yeah.

7 Q. And at one point -- well, you tell how it
8 happened, but she gets creeped out by Jim early in
9 the night, right? Did he try to dance with her or
10 something?

11 A. No, he had tried to rape her one time in a
12 motel up in Kansas City while I was gone buying
13 some cocaine, and she didn't tell me about it until
14 quite a while later, and --

15 Q. Are you talking about Shelly or Gayle?

16 A. I'm talking about Gayle.

17 Q. Oh, no, I'm talking about Shelly.

18 A. You asked me about Gayle. You didn't ask
19 me about Shelly.

20 Q. No, I'm asking you a bad question.

21 A. You said was Gayle creeped out by Jimmy?

22 Q. I said "she", but that's when I was
23 probably talking about Gayle before then. My bad.
24 That night, the night of the murder, James tried to
25 dance with Shelly or -- or flirt with her or

1 something and she got creeped out by him, right?
2 Or she went and said, Get away?

3 A. I'm not aware of that.

4 Q. Well, what was your understanding of what
5 Shelly -- what Shelly's feelings were about James,
6 if any?

7 A. I don't know.

8 Q. Did you ever hear them have words?

9 A. Not really.

10 Q. Did you think she was attracted to James?

11 A. I don't know if they were or not. You
12 know how when you're out drinking and partying,
13 being attractive and going to have sex or something
14 like that, or you know.

15 Q. Okay.

16 A. It's not like they were planning on
17 getting married or something like that. I don't
18 know where you're going with it.

19 Q. I'm just asking. I'm trying to understand
20 what they're --

21 A. Yeah, I don't remember them ever having
22 words or whatever like that.

23 Q. Okay. And did he ever say to you anything
24 like, I want to have sex with her? Or anything
25 like that?

1 A. Not really.

2 Q. That you remember?

3 A. No.

4 Q. Okay. So, do you remember going to the
5 Mash Bar that night?

6 A. The Mash Bar? I don't remember.

7 Q. Okay. At some point, you're back at your
8 house, right?

9 A. (Nodding head yes.)

10 Q. And it's you, Jimmy -- I'll call him
11 "Jimmy" because you call him Jimmy. It's you,
12 Jimmy -- and so the record's clear "Jimmy" is James
13 Dailey. You, Jimmy, Oza, Gayle, Shelly, and who
14 else?

15 A. I think -- I think that was it that night.

16 Q. All right. And you are at the house and
17 Gayle -- Shelly works out a deal with Gayle where
18 she's going to take Gayle's ID to get back into the
19 bar?

20 MR. MARTIN: Let me stop you just a second
21 because I have an objection. We've been going
22 for quite a while now and I object to your
23 leading questions. Jack Pearcy is listed by
24 you as your witness.

25 In a deposition, you can ask questions

1 like you are in trial, and you've been leading
2 this witness the entire deposition. So I'm
3 going to object to the form of the question
4 because that's improper in this deposition.

5 Now, you can keep going, if you want, but
6 I'm going to object and I'll have a standing
7 objection, I don't care, but this is gone on
8 long enough. You're leading him, leading him,
9 leading him.

10 This is your witness. You're taking the
11 deposition of your own witness, so you treat
12 him just like he was in court. So I object to
13 the form of the question, all of the leading
14 questions. Now, if we can have an agreement,
15 if you want to keep doing that, that my
16 objection is standing to the very end of this
17 depo, that's fine with me. If you don't, then
18 every time you lead, I'll make my objection.
19 It's up to you.

20 MR. DUBIN: I agree to let you have a
21 standing objection. That's fine.

22 You can answer. I'll probably have to ask
23 you again.

24 THE WITNESS: Yeah.

25 BY MR. DUBIN:

1 Q. So, tell me what happens with the ID.

2 A. Okay. Instead of going through it all,
3 because you're right, I really didn't plan on -- on
4 going through all this, I'd rather go with the
5 statement that I made to the State Attorney's
6 Office back in '85, because that's exactly what
7 happened.

8 I told where we'd been, what we'd done
9 that night. In that statement, they asked me about
10 everything. They went from picking them up
11 hitchhiking to going to Miami to going to Kansas,
12 Colorado, the whole nine yards. Everything's in
13 that statement from May -- yeah, it would have been
14 May of '85, maybe June.

15 Q. June of '85.

16 A. Okay. Maybe June.

17 Q. Yeah, that's what I'm going through.

18 A. Okay.

19 Q. Just going through the statement.

20 A. Well, I just -- instead of going through
21 it, I'd just leave it that that's my statement
22 exactly what happened.

23 MR. MARTIN: I -- I -- I apologize because
24 I thought you were still going through the 1993
25 statement.

1 MR. DUBIN: So --

2 MR. MARTIN: Is that correct?

3 MR. DUBIN: In any event --

4 MR. MARTIN: Excuse me. I -- I'm a little
5 bit lost in your -- in your train of thought.

6 You've been asking about the 1993 statement --

7 MR. DUBIN: He knows I'm not asking about
8 that, so...

9 MR. MARTIN: Well -- all right.

10 MR. DUBIN: The -- I think the record's
11 clear. I'm going to continue.

12 MR. MARTIN: The record's not clear
13 because I'm not clear. Are you on the 1993
14 statement? Or are you simply asking him,
15 regardless of what statement, what happened
16 that night?

17 MR. DUBIN: No --

18 MR. MARTIN: Which is it?

19 MR. DUBIN: I'm just simply asking him,
20 regardless of what his statement is, what
21 happened that night.

22 MR. MARTIN: All right.

23 MR. DUBIN: All right.

24 BY MR. DUBIN:

25 Q. So --

1 A. I mean, I'd rather leave that at my
2 statement that I made when -- when everything was
3 fresh in my mind and I went and turned myself in
4 and told them what had happened. Because all this
5 that we're rehashing, they already have my
6 statement on what -- what happened that night.

7 Q. All right. Well, you've given statements
8 implicating James Dailey in this and also saying
9 that he had nothing to do with it, correct?

10 A. I did.

11 Q. Okay.

12 A. And I told you every statement, the '93
13 one, the -- any others. After that, both them
14 things I signed saying that I did it and he didn't
15 do it, I did that -- the -- the original one was
16 just trying to get him off death row.

17 The last two times I did it was because
18 he's got numerous advocates working for him. My --
19 my appeal -- appellate process is completed. The
20 only thing I can hope for is newly discovered
21 evidence.

22 When I seen what his attorneys -- before
23 you ever came onboard -- Chelsea and them were
24 doing, well they were digging into Beverly Andrews
25 and her sidekick, Halliday, Skalnik -- even though

1 I had one -- Skalnik typing mine, Skalnik didn't
2 testify against me.

3 I guess I'd already been to trial by the
4 time he tried to come forth on me, too. But these
5 statements were all just to get him off death row.
6 As far as me doing it, I lied on them statements.
7 The reason I lied on them statements is hopefully
8 new evidence would come up from what all his team
9 was doing.

10 Like I said, I had no advocacy. He had
11 numerous people went gagging, attorneys digging
12 into everything, and investigators and stuff. So I
13 did that to keep him alive because if the State
14 killed James Dailey, then it all goes away. Then I
15 have no -- no hope whatsoever.

16 As long as he's alive, he had people
17 digging in, and what they dug up, a lot of that
18 stuff possibly I could use, and that's -- that's
19 exactly why I did it. I signed that one on the
20 18th so that they wouldn't kill him on the 30th
21 because I didn't figure I had enough.

22 I already knew about Halliday putting
23 statements on the desk in front of people, calling
24 them in, trying to get them to testify, and stuff
25 like that. So already a bunch of dirt was coming

1 up on Halliday, and I already knew he lied on me so
2 many years before.

3 So I was hoping something positive would
4 come up that I could possibly use. I already knew
5 the coroner worked with the State and changed her
6 testimony. So that's the only reason I made them
7 two -- signed them two confessions was to keep him
8 alive and to keep people working on his case so
9 that I might get something out of it.

10 Q. And the first time you told me that was
11 yesterday, right?

12 A. I tried in a roundabout way -- straight up
13 yesterday is the first time I told you exactly
14 that's why I did it. I tried to kind of implicate
15 (sic) it to you a couple of other times. You
16 weren't receptive to it.

17 Q. Tell me how.

18 A. And I really wanted you to keep digging on
19 his case, so I backed off when I seen you were
20 acting a little funny because I do know --

21 Q. How did I act funny?

22 A. -- you want the truth. That's -- I know
23 you want the truth. I know your truth is you think
24 he's innocent.

25 Q. Uh-huh.

1 A. So I didn't want to -- I didn't want to
2 take away from that because I still wanted you to
3 keep digging and working, and I knew you were. I
4 knew you were dedicated to doing it. And I told
5 Chelsea the same thing. I said -- I asked her, I
6 said, You actually think he's innocent?

7 She said, Yeah.

8 I said, Okay, good. Then you'll fight for
9 him.

10 Q. Okay. How did you try to tell me in a
11 roundabout way?

12 A. Partially by telling you, you know, that I
13 could use whatever -- some of the stuff because I
14 told you about Halliday. I mentioned Joan Wood
15 and, you know, Beverly Andrews orchestrating it,
16 getting her to change her testimony and stuff like
17 that.

18 I told you about the blood on his shirt,
19 that it was catfish blood, but they wouldn't even
20 allow me to do a DNA test on it, stuff like that.

21 Q. You never told -- first time I've ever
22 heard catfish. I'll make the representation as of
23 right now, I never heard you ever say catfish to
24 me, ever.

25 A. Okay.

1 Q. Maybe it was to someone else; is that
2 possible?

3 A. It could have been one of the other teams.

4 Q. All right. But you never -- you told me
5 -- I told you, every time I met with you, right,
6 certainly on the 18th --

7 A. You wanted the truth.

8 Q. Right. And I understand what you're
9 saying now. But on the 18th, when you signed this,
10 under penalty of perjury --

11 A. Yeah.

12 Q. -- you told me -- when I told you I wanted
13 the truth, you signed this, correct?

14 A. Correct.

15 Q. All right. Now, the second time we met, I
16 still told you I wanted the truth, and you still
17 told me that James had nothing to do with it and
18 that you did it; the second time we met, correct?

19 A. Probably. I might not have said that, but
20 I didn't say the opposite of that, put it that way.

21 Q. All right. So, if now you are saying
22 James Dailey did it -- now you're saying he did
23 again?

24 A. Yeah.

25 Q. Okay.

1 A. Same as my original statement. That's
2 what happened that night.

3 Q. So let's -- let's go through what James
4 Dailey did, if you say he did it.

5 A. I already did it. I -- it's all in that
6 statement, exactly what happened that night and
7 what I seen and what went on. That's all you got
8 to do is refer to that original statement 35 years
9 ago when it was fresh in my mind -- or 34 years and
10 10 months, whatever it is.

11 Q. So let me get this straight, just so I'm
12 clear. Here's the statement. You have it in front
13 of you.

14 MR. DUBIN: I'm going to mark it as
15 Exhibit 3. This is Mr. Percy's '85 statement,
16 so we don't have to keep on going back and
17 forth on what you said and when you said it.

18 We're going to get to the bottom of this
19 once and for all. Fair?

20 THE COURT REPORTER: Give me one minute.

21 (Whereupon, Exhibit Number 3 was marked
22 for identification.)

23 MR. DUBIN: You good?

24 THE COURT REPORTER: Yes, sir. Thanks.

25 BY MR. DUBIN:

1 Q. All right. So just so you get that last
2 question: So that we can get to the bottom of this
3 once and for all; is that fair?

4 A. Correct.

5 Q. Okay. And I'll refer you to where I am in
6 your statement.

7 A. Can I go ahead and read through it first?

8 Q. Yeah, sure.

9 A. That way I'll be able to --

10 Q. You know what --

11 A. -- know where you're going --

12 Q. -- Jack, take your time.

13 You going to read the whole thing?

14 A. I'll go through it pretty quick.

15 Q. Okay. You can take your time.

16 A. The Mash Bar, they got a period behind
17 every -- every letter, so it's got to be something
18 else is the name.

19 Q. Maybe it's an acronym. Maybe it stands
20 for something. I don't know.

21 A. All right.

22 Q. All right. So let me -- now that you have
23 the statement -- and if you need to refer back to
24 it, we can. What you said in 1985, which you say
25 is the truth, right?

1 A. (Shaking head yes.)

2 Q. Is that at some point Shelly Boggio --
3 you're at -- at Hank's with Shelly, right?

4 A. (Shaking head yes.)

5 Q. And then she says, Let's go back and get
6 -- or actually you're at Quarterdeck -- I'm
7 confusing myself. Did James go with you to Hank's?

8 A. I don't know.

9 Q. Okay. Well, when you picked him back up,
10 okay, didn't you, Shelly, and him go back to
11 Hank's?

12 A. I don't even know where Hank's is, so I
13 don't know.

14 Q. Okay. And you said that at the time that
15 you dropped Oza Shaw off at the pay phone, that was
16 earlier in the night, right? That was before you
17 had come back to pick up Jimmy, right?

18 A. Right.

19 Q. All right. And the time that you go to
20 pick up Jimmy -- if you go to Page 13, and just
21 read Page 13. Do you see where it says on Page 13
22 that you, Jimmy, and Shelly left around 11?

23 A. Where's the page numbers? I don't have no
24 page numbers on here.

25 MR. EDELMAN: Me neither.

1 BY MR. DUBIN:

2 Q. All right. Let me get -- let me -- let me
3 direct you to it. So I'll count them out. Bear
4 with me a moment, sir. Here you go. So I'm going
5 to tell you to count out one, two --

6 A. I'm on 13 right now.

7 Q. -- three, four, five, six --

8 MR. EDELMAN: He's on 13.

9 BY MR. DUBIN:

10 Q. All right. So does it start, at the top,
11 the question is: *Did you stop at a bar on -- okay.*
12 Keep going. This is the Page I'm looking
13 for.

14 A. Page 6 is, *I danced.*

15 Q. At the top?

16 A. You say it starts at what?

17 Q. *Did you stop at a bar -- okay.*

18 A. Yeah, that's Page 7 I'm on.

19 Q. All right.

20 *I'm sorry. Keep going.*

21 *Answer: So, then we went back to the*
22 *house, and I asked Jimmy D if he wanted to go. All*
23 *right. Yeah, he wanted to go out. So, then Jimmy*
24 *D and Shelly and myself left. This is 11:00 or*
25 *11:30.*

1 A. Uh-huh.

2 Q. All right? Does that refresh your memory
3 that that was the time that you left with them?

4 A. (Shaking head yes.)

5 Q. Okay. So it was earlier in the night that
6 Oza Shaw was dropped off at the pay phone, you
7 said? And then Oza, what, walked back home?

8 A. It was two blocks from the house.

9 Q. All right. So was it -- when you picked
10 him up, this is 11:00 or 11:30, where do you guys
11 go next?

12 A. I don't know. It even says there I don't
13 remember. We may have went to the bar and had a
14 drink or something.

15 Q. Okay. All right. Thank you. So go back
16 -- go back one, two pages. And the top of the page
17 is the one that you said, *I danced*. See where it
18 says, *I danced once with* --

19 A. Uh-huh.

20 Q. All right. So why don't you read that --

21 A. I just read it.

22 Q. Okay.

23 A. What's the question?

24 Q. Hold on one second. Okay. So I'm just
25 trying to make sure that -- is this when -- see

1 where it says, *Okay. So, just take it slow again.*
2 *When you left Jerry's, where did you go?*

3 *Answer: Then we went -- we might have*
4 *stopped at the Mash Bar again, and then we went*
5 *back to the house.*

6 *What time was it when you left Jerry's?*

7 *Between 10:00 and 11:00.*

8 *Okay. All right. So you got back to the*
9 *house. What did you do when you got there? This*
10 *is your residence again?*

11 *Answer: Mm-hmm. Probably had a drink.*

12 *Okay. So right after this that you take*
13 *Oza Shaw to the pay phone, he goes to the pay*
14 *phone, makes his call, you leave with Shelly, and*
15 *then you eventually come back and get Jim later,*
16 *right?*

17 *A. I see what it says, but when we left is*
18 *when I dropped Oza off at the -- at the QuikTrip or*
19 *whatever.*

20 *Q. Got it.*

21 *A. We didn't leave and come back and leave*
22 *and come back again.*

23 *Q. So -- all right. So when -- when was that*
24 *then? Just as best as you recall from your*
25 *statement.*

1 A. You're talking about what time?

2 Q. It was -- so was -- now, was James with
3 you when you dropped --

4 A. No.

5 Q. -- Oza Shaw off at the pay phone?

6 A. No.

7 Q. That was before you had come back and got
8 Jim, correct?

9 A. Right.

10 Q. Okay. So it was some time prior -- it was
11 some time prior to 11:30, correct? Because you
12 said you got Jim around 11:00, 11:30?

13 A. I guess.

14 Q. Okay. All right. So after -- just so I
15 have it clear: After you drop Oza off at the pay
16 phone, you just testified James is not with you,
17 right?

18 A. Correct.

19 Q. All right. What -- where did you and
20 Shelly go after the pay phone?

21 A. All right. It says there at TI Island, I
22 guess, Treasure Island, and had a drink.

23 Q. Okay. And James is not with you, correct?

24 A. (Shaking head no.)

25 Q. So what happens next? How does he end up

1 getting back with you?

2 A. We went back to the house.

3 Q. Okay. And what -- so after TI Island, you
4 go right back to the house?

5 A. It says there we got stuck, but I don't
6 remember getting stuck. I see that I made the
7 statement, but right now I have no recollection of
8 digging the car out.

9 Q. All right.

10 A. None whatsoever.

11 Q. So when -- and I don't -- I certainly
12 don't want to -- don't want to, like, walk through
13 something that is unpleasant, I think, for
14 everyone. But that -- the -- the place where
15 Shelly is killed, had you fished there before?

16 A. Uh-huh.

17 Q. Yes?

18 A. Yes.

19 Q. It's a river kind of?

20 A. It's the Intracoastal.

21 Q. Okay. So it's not as wide as -- it's not
22 as wide as the ocean. It gets narrow in places
23 there, correct, on the Intracoastal?

24 A. It's probably about 70-, 80-foot wide
25 there.

1 Q. And --

2 A. It's pretty wide in that area.

3 Q. And you were fish -- what were you fishing
4 for?

5 A. Whatever. I'm not a salt-water fisherman,
6 so...

7 Q. Whatever bit?

8 A. I think we caught a flounder there and a
9 couple oddball fish we didn't know the names of.

10 Q. And did you fish there alone ever? Or
11 only with Jimmy?

12 A. No, with Jimmy and -- and Gayle went down
13 there with us before, too.

14 Q. Okay. I want to be -- before I move off
15 of this, I just want to be completely sure and put
16 this to bed: James Dailey was not with you when
17 you dropped Oza Shaw off at that pay phone, right?
18 That's -- that's what you say?

19 A. You're correct. He wasn't with me when I
20 dropped Oza at the phone.

21 Q. Okay. And when you dropped Oza at the
22 phone, how long, based on your statement or your
23 own recollection, how long were you with Shelly
24 before going back to pick up Jim? You said that
25 you went out to at least one other bar.

1 A. Yeah.

2 Q. In your statement, I think it says two.

3 A. Maybe an hour.

4 Q. Another hour?

5 A. Half-hour, hour.

6 Q. Okay. Could it have been longer?

7 A. I doubt it. It doesn't take long to go
8 have a drink somewhere.

9 Q. Okay. And what does Shelly say to you at
10 that point?

11 A. I don't remember what --

12 Q. She didn't tell you why she wanted --
13 wanted to go get Jim?

14 A. Maybe to party. I don't really remember.
15 It's 35 years. I mean, that's why I wanted to read
16 that because then is when stuff is fresh in my
17 mind. That's why I -- I didn't remember getting
18 stuck, and I still have no recollection of it even
19 with reading that.

20 Q. Okay. Do you have any recollection of why
21 you went back to go back and get Jim?

22 A. I guess see if he wanted to party some
23 more.

24 Q. Were you doing cocaine that night?

25 A. Yeah.

1 Q. Was Shelly doing it?

2 A. I don't think so. I don't remember her
3 doing it.

4 Q. All right. Now, at some point, when James
5 -- when you say James is killing Shelly Boggio,
6 you're -- you're where?

7 A. I was in the car when it started.

8 Q. Okay. And did you ever grab him -- grab
9 onto him?

10 A. I think I kind of tried to.

11 Q. All right.

12 A. I fell over the bank.

13 Q. Did you make contact with him?

14 A. I'm sure I did if I tried to grab him.

15 Q. Did he tell you why he did it?

16 A. All's he ever said as to why he did it, I
17 don't know, I -- I just snapped. I don't know what
18 happened.

19 Q. And you -- you were in the car drinking a
20 wine cooler and you were totally -- I mean, were
21 you with it? Were you out of it?

22 A. I was well lit.

23 Q. But you could hear what was going on
24 enough to go over there and to try to interfere?

25 A. At one point, like I said, I don't know if

1 I turned the music down or, you know, whatever, and
2 I noticed the commotion. That's when I got out of
3 the car.

4 Q. Okay.

5 A. Something didn't seem right.

6 Q. And then he -- and then was she already
7 dead by the time you went over there?

8 A. I don't think so.

9 Q. Okay. Was she dead when you cut her?

10 A. When I what?

11 Q. Did you ever cut her?

12 A. No, I didn't ever cut her.

13 Q. Did he ever say to you, Here, you have to
14 cut her and be part of this? Nothing like that?

15 A. No. I think that was one of them
16 jailhouse snitch's statements.

17 Q. Did you grab onto her and try to pull her
18 away from him?

19 A. No.

20 Q. Okay. And --

21 A. I didn't kill Shelly. I didn't stab
22 Shelly. I didn't know Shelly was going to be hurt
23 in any way, shape, or form. I didn't move Shelly's
24 body.

25 Q. Okay. She was killed with a blade, with a

1 six-inch blade with a serrated edge and a
2 bloodline, correct?

3 A. Uh-huh.

4 Q. Yes?

5 A. (Shaking head yes.)

6 Q. You have to answer audibly.

7 A. Yes.

8 Q. You had a knife just like that, right?

9 A. No. That was Jim's knife. It was one of
10 those Ka-Bar ones.

11 Q. Well, didn't you have a knife that was six
12 to seven inches long that you carried around all
13 the time?

14 A. No. I probably had one of them, like,
15 Buck Knives that may be four inches long or
16 something.

17 Q. All right. Have you ever had a knife that
18 you carried around that was like the knife that was
19 used in the murder?

20 A. No. I always had one, like, that fit in
21 my pocket.

22 Q. Just a little one?

23 A. Always had a pocketknife all my life.

24 Q. All right.

25 A. Until I reached prison.

1 Q. All right. Let me just see what else I
2 have here.

3 MR. DUBIN: Do you need to take a break?

4 Does anyone need to take a break?

5 Bear with me one second.

6 BY MR. DUBIN:

7 Q. So the knife that was used to kill Shelly
8 Boggio was James Dailey's knife?

9 A. Correct.

10 Q. Okay. And that was the knife that he used
11 -- he also used that knife to cut vegetables in the
12 kitchen, apparently? You recall that?

13 A. No.

14 Q. All right. And is it your testimony, Mr.
15 Percy, that you've never owned a knife like that
16 before that was similar to the one Shelly Boggio --

17 A. Sure. I used to go deer hunt and stuff.
18 I had a regular sheath knife that you take hunting
19 and stuff.

20 Q. All right. So was it like the knife that
21 was used to cut --

22 A. No, that was a -- that was, like, a
23 military Ka-Bar knife he had. It's got, like, a
24 nut on the back of it. I think it may have been
25 serrated on the back a little bit or something --

1 Q. And that --

2 A. -- with a star with a little woods and
3 stuff.

4 Q. And that one was, like, six inches, right?
5 The one that he used, you claim?

6 A. Yeah. I think the blade would probably be
7 six inches long.

8 Q. And you've never had a knife that was six
9 inches long, and you said you only had, like, a
10 Buck Knife that you used for hunting?

11 A. Right. I just -- I just told you I have
12 had one because when I go hunting and stuff that's
13 the type of knife you would take up there to gut a
14 deer and stuff.

15 Q. Same type of knife that she was killed
16 with?

17 A. No.

18 Q. It's not.

19 A. You -- you keep trying to put words in my
20 mouth. I told you that was, like, a Ka-Bar
21 military-type knife he had. I've had a regular
22 hunting-type knife. I don't even know if -- if
23 mine ever had a bloodline thing or whatever it is.
24 I didn't know what that was until Halliday and them
25 called it.

1 Q. Okay. You remember yesterday we talked
2 about the hair?

3 A. Yeah. You told me did I know -- or why
4 did Shelly have my hair in her hand and I told you
5 she didn't have none of my hair in her hand.

6 Q. Well, did she -- I said, Did she have your
7 hair in her hand, right?

8 A. I remember you saying, Why did Shelly have
9 your hair in her hand? And I told you she wouldn't
10 have my hair in her hand.

11 Q. Well, did you ever -- did you ever have
12 your hair sent to be compared to the hair in her
13 hand?

14 A. Sure they did that in county jail.

15 Q. They did?

16 A. Yeah, they took the -- I think they took
17 fingernail clippings and hair stuff. In fact, they
18 said she had her hair in her hand.

19 Q. Okay. And you're aware that James Dailey
20 -- there's no DNA evidence at all that was found on
21 Shelly Boggio matching James Dailey, correct?

22 A. There was none of me either.

23 Q. All right.

24 A. They said because she was under water, DNA
25 evidence would have disappeared.

1 Q. Except for that hair, but you're -- and --
2 but you claim that your hair was taken from you and
3 was compared to the hair in her hand?

4 A. As far as I know, the State did that.

5 Q. Okay. And --

6 A. Because I remember one of them saying that
7 her hair -- the hair in her hand tested positive
8 for hers. It was her hair.

9 Q. Now, did you know a guy by the name of --
10 last name of Leitner?

11 A. Yeah, I think he's one of them that worked
12 at the library or something.

13 Q. What did you tell him about this case?

14 A. I didn't tell him nothing about it. I
15 think what it was is him and some other guy,
16 DeJesus or something, passed a note or two between
17 Dailey and I.

18 Q. Okay. What was the name you checked into
19 in the hotel in Miami?

20 A. I have no idea.

21 Q. Wasn't your name?

22 A. You told me it wasn't, and I believe you
23 if you said it wasn't.

24 Q. Well, what did you plan to do when you
25 left Miami?

1 A. Go see my family -- well, first, I went to
2 Colorado kind of to see the mountains and figure
3 out what -- how I was going to handle this
4 situation, and then I went and seen my family, and
5 you know the rest.

6 Q. Okay. And you had been arrested a bunch
7 in Kansas before this -- before your arrest in this
8 case, correct?

9 A. Arrested a bunch for what?

10 Q. I don't really want to go through it all,
11 but you were arrested for -- were you ever arrested
12 for battery?

13 A. I think I was.

14 Q. Okay.

15 A. What year was that?

16 Q. 1979. Does the name Kenneth Squire ring a
17 bell?

18 A. Uh-huh.

19 Q. Who was he?

20 A. Somebody I battered, evidently. I think
21 it was a confidential informant.

22 Q. In jail?

23 A. On the streets.

24 Q. Got it. What about Gregory O'Halloran?

25 A. The name doesn't ring no bell.

1 Q. Okay.

2 A. I was arrested for battery on him?

3 Q. I was asking you -- what about Mark -- I
4 was asking you if you were.

5 A. Not that I'm aware of.

6 Q. Yeah, willfully and intentionally applied
7 force to the person of another, and that was
8 Kenneth Squire. Verbally -- yeah, pushed and
9 verbally challenged Gregory O'Halloran to a
10 fight --

11 A. I was arrested for that?

12 Q. I believe so. There was a criminal
13 complaint filed.

14 A. What year was that? I don't remember
15 being arrested for no pushing somebody.

16 MR. DUBIN: Here, let me show you. I'll
17 mark it -- I'll mark it as Number 3 -- or
18 Number 4.

19 THE WITNESS: Number 4.

20 MR. DUBIN: I'll hand that to you.

21 I don't have a copy.

22 (Whereupon, Exhibit Number 4 was marked
23 for identification.)

24 THE WITNESS: I don't remember anything
25 like that. I don't remember being arrested for

1 it neither.

2 BY MR. DUBIN:

3 Q. Who's Martha Cupp?

4 A. That's my son's mother.

5 Q. All right. And did you get arrested in
6 connection with fights with her?

7 A. Yeah. One time she had me arrested
8 because they come and arrested me at a ballpark for
9 a terroristic act.

10 Q. What was that about?

11 A. We had a disagreement and I did threaten
12 her a little bit, and she went and talked to a
13 state attorney about it, and they wanted to
14 prosecute her -- me for it. And you know how
15 couples have their problems and then they
16 straighten them out.

17 Q. Got it. What about battery?

18 A. Battery on who? I was arrested for the
19 terroristic threat and I was arrested for a theft
20 or something in Kansas. You said "All them
21 arrests", there's only two times I ever remember
22 being arrested.

23 Q. Okay. What about disorderly conduct?

24 A. I was arrested for that?

25 Q. Let me show you what I'll mark as Number

1 5, a 1982 case in Kansas.

2 (Whereupon, Exhibit Number 5 was marked
3 for identification.)

4 BY MR. DUBIN:

5 Q. Do you recall that?

6 A. Nope.

7 Q. Okay. What about -- what about the murder
8 for hire case in Missouri?

9 A. What about it?

10 Q. You were arrested for that, right?

11 A. Nope.

12 Q. What were you -- were you charged for it?

13 A. Nope.

14 Q. Okay. And that was a case in which you
15 were accused of conspiring with someone to murder a
16 doctor, correct?

17 A. I wasn't accused of it. The guy that
18 committed the crime tried to blame it on me and
19 another dude, somebody who was kind of a cousin of
20 his that I knew.

21 Q. And you admitted under oath in that case
22 that you had thought about doing it, right?

23 A. Not too much thought about it as accepting
24 money for doing it.

25 Q. Okay. And that you were going to knife

1 the doctor, correct?

2 A. No. I was going to shoot him.

3 Q. Okay. At one point, you had considered
4 stabbing him, right?

5 A. I think that was that dude's plan that
6 wanted us to do it. Him and his girlfriend met
7 with Detroit, the dude that I knew, and he wanted
8 us to stab him in some hotel or something on a
9 honeymoon or some stuff.

10 Q. And did you have a knife to stab him with?

11 A. Wasn't going to stab him with it.

12 Q. Well, did you have a knife that you could
13 have stabbed him?

14 A. Oh, I probably had a knife at the time. I
15 told you I carried a pocketknife all the time.
16 When I hunt and fish all the time, you pretty much
17 keep a knife.

18 Q. Okay.

19 A. And I worked construction.

20 Q. Okay. Well, was it a fishing knife?

21 A. I told you I kept a -- one of them
22 lock-blade Bucks, that I had one most of my life.

23 Q. And you're making a motion with your hand.
24 Those are, like, two or three inches, the blade on
25 them.

1 A. That's not two or three inches. Your
2 finger's three inches long, and I'm doing it longer
3 than my finger. I'd say it's probably about three
4 and a half to four inches.

5 Q. All right. Three and a half to four --

6 A. It's one of them that, you know, it fits
7 in your pocket. It's not too bulky.

8 Q. Okay. And do you -- back then, did you
9 carry knives around all the time, back in the early
10 80's?

11 A. I just told you about four times I told
12 you I -- I always carried a pocketknife. Since I
13 was a kid, I carried a pocketknife.

14 Q. Okay.

15 A. It's not like it is nowadays where you
16 can't go to school with a knife in your pocket.
17 Everybody has a pocket knife back then.

18 Q. Okay.

19 A. Just like your dad did, your grandpa did.
20 It doesn't mean you're going to go kill people
21 because you carry a pocketknife.

22 Q. Okay. Was Jim Dailey ever with you at
23 Hank's Bar?

24 A. I couldn't tell you for sure one way or
25 the other.

1 Q. Okay. Now, you remember taking a lie
2 detector test?

3 A. I do.

4 Q. All right. And when you took the lie
5 detector test, you -- I asked you about that when
6 we met, correct?

7 A. We discussed it, I'm sure.

8 Q. All right. Now, you remember that there
9 was an expert that was administering or giving you
10 the lie detector test?

11 A. I remember somebody was there, yeah.

12 Q. You told me yesterday that some of the
13 things that they claim you said to that person were
14 false, correct?

15 A. Make that statement one more time.

16 Q. You told me yesterday that that person
17 that gave you the lie detector test lied, correct?

18 A. I said the sheriff's brother lied. He
19 wasn't the polygraph operator.

20 Q. Oh, okay. So what did the sheriff's
21 brother lie about?

22 A. In the motion, he tried to say that I
23 broke down and said I needed a rabbi, a priest, or
24 this, that, or the other, and that I made a
25 statement that I might have stabbed Shelly in the

1 hand or something.

2 Q. Okay.

3 A. I'm not sure exactly what it was he said,
4 but it was along that line somewhere. You should
5 have a copy of that motion in line (sic) or
6 whatever.

7 Q. Okay.

8 A. And he was trying to say what Halliday
9 ended up saying when they wouldn't allow him to say
10 it.

11 Q. All right. Did you ever tell -- do you
12 remember meeting with the -- the -- I mean, the lie
13 detector, the person that gave you the lie detector
14 test?

15 A. Do I remember meeting with him?

16 Q. Yeah. Do you remember speaking to him?

17 A. Yeah, I'm sure they talked to me for a
18 little bit when they were hooking me up and stuff,
19 told me how they were going to ask me questions or
20 whatnot.

21 Q. All right. So I want to ask you if -- if
22 certain things are true or not that you said,
23 apparently, to the person who administered the lie
24 detector. Did you tell that person that you were a
25 bouncer at one point and, quote "Broke a nigger's

1 jaw", end quote?

2 A. I don't know.

3 Q. Well, did you ever do that?

4 A. I might have.

5 Q. Okay.

6 A. Oh, did I do it?

7 Q. Yeah.

8 A. Or did I tell him?

9 Q. Let's start with: Did you do it?

10 A. I think I did one time.

11 Q. Okay. Did you tell him that?

12 A. If he knows that I did it, then I had to
13 have told him, I reckon.

14 Q. All right. And did you also tell the lie
15 detector person that you shot a guy in the butt and
16 got 30 days for it?

17 A. I did.

18 Q. Where was that?

19 A. Kansas. I think that's one of them
20 charges there.

21 Q. Is that the battery?

22 A. Yeah, I think that's what they lowered it
23 down to.

24 Q. What was that about? Why'd you shoot him
25 in the butt?

1 A. We had words before and he had -- he made
2 some threats.

3 Q. Were you aiming for the butt?

4 A. No, not necessarily.

5 Q. And where'd that happen?

6 A. Some place in Kansas.

7 Q. On the street?

8 A. Yeah.

9 Q. And did you also tell the person
10 administering the lie detector that you had, on
11 another occasion, stabbed a guy a bunch of times
12 and left, and you don't know whether that person
13 lived or died because you left town and didn't find
14 out?

15 A. I don't remember that.

16 Q. Well, did that ever happen?

17 A. No. That's why I don't remember saying
18 that to him.

19 Q. Well --

20 A. I remember the other stuff.

21 Q. Take a look at Page --

22 A. Oh, I doubt it if you're saying -- you
23 know. But I'm saying I don't remember that ever
24 happening or telling him that.

25 Q. Well, that's a pretty serious thing if you

1 stabbed someone a bunch of times and don't know
2 whether they live or die and you left town?

3 A. Well, I never stabbed nobody, so that's
4 why I don't remember never telling nobody that.

5 Q. All right. So let me just show you what
6 he said, and if you tell me it's false, then tell
7 me it's false. I'm going to mark this --

8 MR. DUBIN: What are we up to?

9 THE COURT REPORTER: Six.

10 MR. DUBIN: All right. So let's mark that
11 as Exhibit 6.

12 (Whereupon, Exhibit Number 6 was marked
13 for identification.)

14 BY MR. DUBIN:

15 Q. Before I tell you what Page to go to, let
16 me make sure the page is right.

17 A. Yeah, this one's got page numbers finally.

18 Q. All right. So let me -- and -- and,
19 interestingly, the one that I wanted to show you
20 has two page numbers on it. So go to Page 19, and
21 this is Exhibit 6. This is a deposition of a
22 Michael Hunter.

23 A. I only got one page number on mine.

24 Q. You got a 19?

25 A. Yep.

1 Q. All right. Now, if you'll flip to the
2 next page.

3 A. 22/21.

4 Q. This one right here, the one -- the one
5 before 21.

6 A. 20, okay.

7 Q. So at the bottom of the page at Line 22,
8 *Question: Let's just go through it and you tell me*
9 *everything he said.*

10 And accept my representation they're
11 talking about you, what you told this guy.

12 *And when you can tell me who asked the*
13 *questions --*

14 *Answer: Okay. First of all, when we were*
15 *talking to him about his past history --*

16 And again, Jack, they're talking about you
17 here. I'm going to go back to the transcript now.

18 *-- that's when he said that he was a*
19 *bouncer in a bar and he, quote, "Broke a nigger's*
20 *jaw", end quote.*

21 All right. You already testified that
22 that did happen, correct?

23 A. Uh-huh.

24 Q. All right. *He said he shot a guy in the*
25 *butt and got 30 days for it.*

1 We already established that that happened,
2 correct?

3 A. (Shaking head yes.)

4 Q. Yes?

5 A. Uh-huh.

6 Q. All right. And then it says, *Another time*
7 *he stated that he had stabbed a guy a bunch of*
8 *times and left, but he didn't know whether the guy*
9 *lived or died. He left town and didn't ever find*
10 *out. That was concerning his prior acts of*
11 *violence.*

12 So that last thing where -- where Hunter
13 claims that you told him that you stabbed a guy a
14 bunch of times and left and you didn't know whether
15 the guy lived or died and left town and didn't ever
16 find out, did that ever really happen?

17 A. No.

18 Q. Okay. So Hunter, as far as you're
19 concerned, to the extent that he claims you said
20 that, made that up?

21 A. I don't remember telling him that. And it
22 didn't happen, so -- I remember the other stuff
23 because it did happen.

24 Q. Okay.

25 A. That's why as soon as you asked that, I

1 remembered the -- but that, I don't remember
2 telling him and I know it didn't happen.

3 Q. Have you ever stabbed someone in your
4 life?

5 A. No. I just told you I haven't. Been
6 stabbed a few times.

7 Q. Tell me about that.

8 A. I know I got stabbed in the infirmary
9 (sic) one time. And outside the same bar where I
10 got in the fight with the nigger, he -- I got
11 stabbed three times in front of that bar.

12 Q. That's how you refer to black people,
13 African --

14 A. No. I just did that because it's in
15 there. I don't think I said that to him either.

16 Q. All right.

17 A. I'm -- I'm kind of racist now, but I
18 wasn't before I came to Florida.

19 Q. You -- you're racist now, but you weren't
20 before Florida?

21 A. Right. I mean, I never lived around this
22 character of black people before.

23 Q. What is the character of black people
24 you're referring to?

25 A. I guess the ghetto gang whatever stuff

1 they got going on down here in Florida. Now, I was
2 always -- any of the blacks I was around -- my
3 dad's military, so they worked with my dad, they
4 went to school with us. There was no character
5 like the blacks in Florida have.

6 Q. So it's the gangs that bother you about
7 the black people in Florida?

8 A. Oh, no. They -- they're completely
9 different character from the people, I guess, I
10 associate with.

11 Q. Just bear with me one second, please. I
12 just want to make sure that I --

13 You told me yesterday that prosecutors
14 went to see your mother a couple of days ago,
15 right?

16 A. Uh-huh.

17 Q. Okay. What prosecutors went to see your
18 mother?

19 A. I have no idea. She just told me somebody
20 from the prosecutor's office came and she was
21 pretty shook up. My mom's 85 years old; no reason
22 really to mess with her. She wasn't there for the
23 crime. She doesn't know nothing about it.

24 Q. Right. And do you know what they said to
25 her?

1 A. From what she said -- she was kind of
2 mixed up even trying to tell me about it -- but
3 they just tried to talk to her about what I said to
4 her, and did she think I did the crime, and this,
5 that, and the other.

6 Q. All right. And did they tell her that you
7 had signed another document?

8 A. She already knew about that anyway.

9 Q. Okay. And then, after that, you told me
10 she e-mailed you and said, Call me, right?

11 A. The day they talked to her, yes. She
12 said, Please, please give me a call. I need to
13 talk to you about something.

14 Q. Okay. So what did she tell you when you
15 all spoke? I don't want to know about personal
16 stuff beyond the conversation that happened --

17 A. No, she -- like I said -- like I said,
18 she's 85 years old. She was kind of mixed up and,
19 I guess, she vented on -- on whatever about the
20 whole nine yards because she's been there. She
21 knows it all from beginning to end with what's went
22 on, so...

23 Q. Did she -- did she ask you not to testify
24 about this declaration after they spoke to her?

25 A. No.

1 Q. Okay. What -- what did she tell you
2 regarding this declaration? Anything?

3 A. She wasn't happy that -- when I told her
4 about feeling sorry for his mom and didn't want to
5 see the State kill him, this, that, and the other.
6 She wasn't happy that I would get him out of prison
7 maybe and me be stuck in prison for something he
8 did.

9 Q. One of the things that's pissing you off
10 is that he has a bunch of lawyers, and you don't,
11 right?

12 A. No, that doesn't piss me off. That's to
13 my advantage.

14 Q. I mean, wasn't you -- didn't you tell me
15 yesterday that James has all these people fighting
16 for him?

17 A. I told you yesterday, too, he has a whole
18 -- all these advocates that are digging up dirt and
19 I don't have nobody to represent me like that. And
20 if I hadn't signed this thing and they'd killed
21 him, that all y'all'd go away and nobody's digging
22 up the dirt that -- that went on back in the 80's
23 in the Pinellas County Sheriff's Department, the
24 State Attorney's Office.

25 Q. Well, how do you --

1 A. It's not being mad that he's got
2 attorneys. Because the fact that he does have
3 attorneys is, if anything, it would be beneficial
4 to me.

5 Q. How? How would that be beneficial to you?

6 A. I just told you. By digging up the dirt
7 that if -- you've already brought out stuff how
8 Halliday -- I didn't know about him laying out
9 newspaper articles, trying to get people to testify
10 by giving them information, laying it out.

11 I didn't know Joan Woods had admitted to
12 messing with evidence, false testimony, whatever
13 she did, and then had a nervous breakdown after she
14 admitted or got caught doing it. All that stuff I
15 found out because of James having all these
16 attorneys working on his case.

17 Q. Okay. Now, you have lied to a bunch of
18 people about various things regarding this case,
19 correct?

20 A. You mean by signing these things? Yes, I
21 did.

22 Q. Okay. And you have, on at least three
23 occasions, testified, subject to the penalty of
24 perjury, that James Dailey had nothing to do with
25 the murder of Shelly Boggio, correct?

1 A. Correct.

2 Q. And you then subsequently changed that and
3 said, Yes, he did, correct?

4 A. Because he did it. I told you why I
5 signed those things.

6 Q. Okay.

7 A. I was lying to try and save my life, not
8 spend the rest of my life in prison for something I
9 didn't do.

10 Q. Okay. Every time you have signed, we went
11 over in no uncertain terms, you and I, when you
12 signed this and --

13 A. We did.

14 Q. -- the second time I met with you, I asked
15 you, Are you going to testify?

16 And you said, Yes.

17 Correct?

18 A. Uh-huh.

19 Q. Right?

20 A. Yes.

21 Q. All right. And I said that I wanted the
22 truth and I wanted you to testify, and you told me
23 that you were going to testify about what was in
24 the contents of that declaration, correct?

25 A. Correct.

1 Q. And then what happened is the prosecutors
2 went and saw your mother, and then I came here to
3 see you yesterday, and for the first time, you told
4 me that now you weren't going to testify to what's
5 in the affidavit; that you were now switching back
6 to James Dailey did it, right?

7 A. The prosecutors talking to my mother had
8 nothing to do with it. My decision was made before
9 I ever signed those things.

10 Q. Okay. So --

11 A. I signed them with a reason. Even though
12 it's a lie, it's a lie for my benefit I told them.

13 Q. So you lied to me then when you told me
14 that you were going to testify about this. You
15 were lying to me, right?

16 A. Yes, sir, I was.

17 Q. Okay. And --

18 A. We discussed that yesterday.

19 Q. You were lying to me the second time we
20 met when you told me the reasons why that falsely
21 implicated James Dailey, correct?

22 A. State that one again.

23 Q. So, in other words, when I came in the
24 second time, you continued to lie to me. Because I
25 said to you, Why did you implicate James?

1 And you said, Well, I still, you know, I
2 still had appeals going, so I had to blame it on
3 him.

4 A. No, that's not true because I don't have
5 appeals going.

6 Q. Back when I --

7 A. I did -- I did lie to you when I told you
8 I'd testify. But I told you I lied, did that on --
9 intentionally.

10 Q. All right.

11 A. The same way I signed it the first time.
12 The time you said, '93 and them other ones, I did
13 admit I did it then. I was just trying to take it
14 off Jimmy so he could get off death row.

15 Q. But you did admit --

16 A. I signed these ones so that you guys would
17 keep digging, hoping I could come up with some
18 newly discovered evidence because that's my only
19 avenue back into court right now. All my other
20 appeals are exhausted. So you guys digging, him
21 having the advocates, and y'all doing what you're
22 doing was my only chance.

23 Q. But in 1993 and in 2017, you -- you did
24 admit that you did it, didn't you?

25 A. In '17 I did; not in '93. In '93 I just

1 said she wasn't in the car or something like that,
2 enough to give them to try and file an appeal to
3 get his sentence overturned to a life sentence.

4 Q. Well, where -- well, where else would she
5 have been if not in the car?

6 A. Where else would she have been when?

7 Q. Well --

8 A. That was the whole reason I said that, so
9 that they would have something to file to get his
10 -- try and get his death sentence overturned.

11 Q. So it's your testimony that out of nowhere
12 that night, Shelly Boggio says, Let's go get Jim
13 and party some more, even though he was in for the
14 night, correct?

15 A. I don't think he was in for the night at
16 midnight, since we partied till 3:00 and 4:00
17 plenty of times and he enjoyed partying, so...

18 Q. Okay.

19 A. And it's not like he said, No, go on. I
20 don't want to go.

21 Remember he told you he went and played
22 frisbee in the ocean or something?

23 Q. Right. That's just something he came up
24 with, right?

25 A. Okay.

1 Q. Well, I'm asking you.

2 A. But I'm saying, it's not -- you're acting
3 like I made him get up and go or something to --
4 for an alibi, or something, is the way you're
5 putting it, and that's not what happened.

6 Q. Well, let me ask you this: Have you ever
7 told anyone -- I mean, you -- you told me earlier
8 today that that's not true, that he didn't play
9 frisbee in the ocean, right?

10 A. Yeah, I don't --

11 Q. So you've never told anyone that because
12 that's a story that he's told, correct?

13 A. I don't know if -- if I ever said that in
14 one of them statements to help him or not. I may
15 have. Back in '93, I may have said it.

16 Q. How would you have known that?

17 A. How would I have known what? I just told
18 you I seen him in county jail. I seen him all the
19 time at the East Unit from when he got there and --
20 let's see, he probably came in the end of '87. I
21 worked the library for the next couple of years, so
22 I'd see him in the writ room all the time.

23 Q. Okay.

24 A. I went back there on his wing where he
25 lived on death row with the welding cart. I could

1 make work orders out and get my boss to take us
2 back there so we could look out because there's a
3 few of the crew who knew people on death row.

4 Q. Jack, the first and only time anyone ever
5 said to anyone that James Dailey's pants were wet
6 were because he was playing frisbee on the Belleair
7 Causeway was you, right?

8 A. I don't know.

9 Q. Because that's the truth, right?

10 A. No.

11 Q. Jack, where did he tell you? How did you
12 get this story that he got his pants wet on the
13 Belleair Causeway? Where did he tell you that?
14 Where were you?

15 A. I have no idea. I just told you I seen
16 him numerous times, but I don't know when that was
17 discussed.

18 Q. Never discussed it with him, did you?

19 A. How else would I know that that's what
20 he's saying?

21 Q. Because you were there with him, and
22 that's the truth, right?

23 A. No.

24 Q. All right. First time anyone ever said
25 that under oath, ever, that story ever appears, is

1 you saying it, right, in 1993? You said it, that
2 he got his pants wet in the Belleair Causeway when
3 y'all were playing frisbee, right?

4 A. Then we probably discussed it and I told
5 him -- told him that I'd say that.

6 Q. All right. Well, when did you --

7 A. Just like I probably said I'd say that she
8 wasn't in the car or something.

9 Q. When we met -- who wasn't in the car?

10 A. Shelly.

11 Q. What do you mean?

12 A. That probably Jim and I had probably said,
13 Well, I'll say that and see if your lawyers can do
14 something with it.

15 Q. Okay.

16 A. The same way that I got Skalnik's
17 affidavit when he said Beverly Andrews and Halliday
18 made him do all that testifying and made a deal
19 with him. I kept that and give it to Jimmy in the
20 writ room so he could give it to his lawyers. He
21 knew about it before his lawyers because he took it
22 to them.

23 Q. When we met the second time in January,
24 this past January, you told me that you guys pulled
25 off the Belleair Causeway -- just want to make sure

1 that I have this straight -- you guys pulled off
2 the Belleair Causeway and you flipped open the
3 trunk, so that no one could see you, because you
4 were smoking a joint and drinking beers. That was
5 what you told me. You can tell me if it's a lie.

6 A. I didn't tell you that. You may have read
7 that somewhere. I never told you that.

8 Q. Okay. So it's your testimony that you
9 never said to me that, We were down there by the
10 Belleair Causeway and I don't know if Jimmy threw
11 the frisbee up or I threw it to him, but that was
12 when he got his pants wet. It's your testimony you
13 never said that to me?

14 A. That I never said it to you? Correct. I
15 never said that to you. You may have read it in
16 something, but I never made that statement to you.

17 Q. Okay. So where was it that James Dailey
18 said to you -- where were you when he said to you,
19 Listen, Jack, if they ever ask you how I got my
20 pants wet, tell them we were playing frisbee in the
21 water? Where were you when he told you that?

22 A. I have no idea.

23 Q. Okay. Well, did he tell you that?

24 A. I'm sure we must have discussed it if --
25 if that's what I said and that's what he said, too,

1 and it was back then, that's when I was seeing him
2 regular, and I was trying to get his death sentence
3 overturned.

4 Q. Let me get it straight though. So what he
5 said to you is, By the way, here's what you tell
6 them? Tell them we were playing --

7 A. I don't know. You just asked that
8 question. I told you I don't know. I don't know
9 when we discussed it, whether it was in the writ
10 room, in his cell when I come with the welding
11 cart. I don't know what year, month, day it was.
12 If, you know --

13 Q. So you've given two completely different
14 versions of what happened. In the one instance you
15 say that James Dailey did it, correct?

16 A. Correct.

17 Q. And in the other instance, you say -- in
18 many other instances, you say, I did it on my own,
19 right?

20 A. And every time I did that, I told you why
21 I did it, trying to get him off death row, and to
22 keep y'all working on the case to dig up the dirt
23 that went on back then. I told you exactly the
24 reasons why I did that.

25 Q. And you told me that after you had lied to

1 me and told me that you were going to testify,
2 right?

3 A. Correct.

4 Q. And you did the same thing to the CC --
5 and, by the way, when you signed the affidavit in
6 2017 -- let me show you that.

7 A. I've seen it. I don't need to see it.

8 Q. I'm going to put it into evidence.

9 A. All right. Excuse me one second.

10 MR. DUBIN: Am I up to 7?

11 THE COURT REPORTER: Yes, sir.

12 MR. DUBIN: I just wrote across the top
13 2017 Affidavit -- April 2017 Affidavit. That
14 wasn't on the original affidavit you signed.
15 That was a copy of my handwriting.

16 (Whereupon, Exhibit Number 7 was marked
17 for identification.)

18 BY MR. DUBIN:

19 Q. I put before you what's been marked as
20 Exhibit 7. So I want -- want to go through this
21 and find out what is true about it and what's not
22 true. So see Paragraph 5, it says, *Gayle Bailey*
23 *went into the bathroom. As Shelly and I were*
24 *leaving the house, Oza Shaw --*

25 A. It's true up to Number 7. Number 8's a

1 lie. Number 9's a lie.

2 Q. Okay.

3 A. And Number 10's a lie. 1 through 7 is
4 correct; 8, 9, and 10 is a lie.

5 Q. Okay. Give me one second.

6 A. Take your time.

7 THE WITNESS: If I wanted to get a copy of
8 this, how would I get one? Is there a case
9 number, if I wanted to get a copy of everything
10 that goes on today? Or --

11 MR. MARTIN: He should explain it to you
12 that you have a right to read it before it's
13 transcribed and filed, so...

14 THE WITNESS: How would I read it though?

15 MR. MARTIN: She'll have to make it
16 available to you. He'll explain it to you.
17 It's his depo.

18 MR. DUBIN: I'll do it again in the end,
19 but you have -- you have the right to get a
20 copy of the deposition. I'll represent to you
21 that we'll make sure you get a copy of it, and
22 you can correct anything in the deposition.
23 It's called an Errata Sheet.

24 THE WITNESS: I don't think she made no
25 mistakes.

1 MR. DUBIN: So -- and, you know, there's a
2 period within which, I don't know if it's 30 or
3 60 days, where you have to go through it and
4 correct it if there's any mistakes. But we'll
5 make sure that you get that information.

6 THE WITNESS: All right.

7 BY MR. DUBIN:

8 Q. So, I -- I don't -- okay. So for Number
9 -- on Number 8, you said Number 8 was not true.
10 But earlier, where it says, *I returned the*
11 *residence approximately one hour to one and a half*
12 *hours later alone, Shelly Boggio was not with me.*
13 The only thing that's not true about Number 8 is
14 just that Shelly Boggio was not with you, correct?

15 A. Correct.

16 Q. All right. The part that's true on Number
17 8 is that you did return to the residence
18 approximately one hour to one and a half hours
19 later alone, but Shelly Boggio was with you?

20 A. It could have been 30 minutes to an hour,
21 hour and a half.

22 Q. All right.

23 A. I don't know the exact time, but yes.

24 Q. Okay. I don't understand. Why was it in
25 your interest back when you signed this to claim

1 that I did it alone? And then, all of a sudden, it
2 was no longer in your interest?

3 So, in other words, why did you back off
4 of testifying to this in court?

5 A. Because I'd be telling a lie. Yeah, I
6 lied plenty of times, but I told you why I did it,
7 to keep y'all working, digging up stuff. Because
8 clear back at that time, Chelsea and them told me
9 that they'd found out this, they found out that.

10 Then not too much happened for a couple of
11 years, and you came up here. Now, the fed ladies
12 come before you did and they said they were willing
13 to share anything. And they mentioned some stuff
14 they were digging up. And so when you came, I was
15 ready to sign and keep them from killing him on the
16 30th.

17 Because if he's dead, like I said, all of
18 y'all go away and there went any chance I had for
19 getting some new evidence to get back in there
20 and --

21 Q. Okay. But by that logic, if you keep on
22 saying --

23 A. I'm not going to testify in court. The
24 only thing I'd testify to is the same thing my
25 statement was.

1 Q. Okay.

2 A. Both these confessions you brought up here
3 already typed out for me to confess and I signed
4 them for exactly what I told you, to keep y'all
5 working on the case.

6 Q. And you had confessed before that, hadn't
7 you? Years before that?

8 A. No, not so much in them. I didn't -- I
9 didn't -- all's I did was try in the '83 one -- or
10 '93 one, or whatever, was to muddy the waters so
11 his lawyers would have something for an appeal to
12 get him off of death row.

13 Q. In 1993, you said -- I read this to you
14 earlier -- that when I made -- *I said made a*
15 *statement as to what Jim had done exonerating*
16 *myself, which all of it, it was just a self-serving*
17 *statement to exonerate myself.*

18 A. Correct.

19 Q. So you admitted that Jim -- you admitted
20 that you did it and Jim did nothing and that it was
21 a self-serving statement; wasn't that what you were
22 saying in 1993?

23 A. No, I didn't say Jim didn't do nothing,
24 but I was trying to take some of the heat off of
25 him to get him off of death row.

1 Q. Well --

2 A. They couldn't do nothing else to me
3 anyway. But by me helping him, I could get him off
4 of death row.

5 Q. You knew in 1993, when you made this
6 statement, that the State's theory was that James
7 Dailey was with you when Shelly Boggio was killed.
8 That was their theory, right?

9 A. Of course.

10 Q. All right. So by saying that when you
11 went back to the house and Shelly Boggio was not
12 with you, didn't you know that the clear
13 implication or the inference was that you had
14 already killed her?

15 A. Yeah, I understood that. That was, I just
16 told you, so his lawyers would have something to
17 work with. I wasn't going to go testify.

18 Q. Okay.

19 A. You know, but that was just so his lawyers
20 could muddy the water, so if anything else --
21 nothing else, then an appellate court would
22 overturn his death sentence.

23 Q. Now, when -- you know when you swear to
24 tell the truth, subject to the penalty of perjury,
25 do you know whether or not that's admissible in

1 court?

2 A. Whether or not what's admissible?

3 Q. What you're saying here today.

4 A. I don't understand. Do I understand that
5 if I lie they could give me some more time or
6 something?

7 Q. Well --

8 A. What's your question? I don't --

9 Q. Is it your under -- is it your
10 understanding -- well, strike that. Your thing
11 that you're hung up on and that you absolutely
12 won't do is go into a courtroom and give this
13 testimony?

14 A. The testimony that I just gave?

15 Q. Any of it?

16 A. The truth that he did it, yeah, I'll give
17 that testimony. No, I would -- I really wouldn't
18 even do that. I'm not going to testify against
19 him. Once they convicted me of a crime I didn't
20 commit, I'm not testifying against him to get
21 somebody else for the same crime.

22 Q. Did you tell Hunter that you were having
23 nightmares or flashbacks about the murder of Shelly
24 Boggio, and that when you thought about it, you
25 would see somebody on top of Shelly Boggio

1 murdering her, and that when you focused in on the
2 face, it was your face?

3 A. No.

4 Q. You never said that?

5 A. No.

6 Q. All right.

7 A. Now, I might have said that I'm having
8 trouble sleeping or whatever like that because,
9 yeah, I was pretty much in shock from the day it
10 happened, and it still bothers me that I had
11 anything to do with it, was even there. The
12 lifestyle I was living led me to even be, you know,
13 in any circumstances to lose my life like this.

14 Q. Were you ever having nightmares where
15 during the nightmare you would see someone stabbing
16 a girl, sitting over her, stabbing her, and that
17 when you zero in and see the face, it's your face?
18 Did you ever say that?

19 A. No. And that's not the type of language
20 I'd use. Zero in? That's more, like, cop
21 language.

22 Q. So let me show you the Hunter deposition
23 again.

24 A. I read it. I believe you said he said
25 that. But I also see it for what it is, too. They

1 just embellished a little bit because that's not
2 even the way I talk and the -- right off when you
3 said "zero in" seeing, you know, that's something
4 Colombo would come up with or something.

5 Q. Did you ever -- all right. So forget
6 about the language. In your own --

7 A. But when he says that that's my statement,
8 that tells me right there, I already know I don't
9 talk like that, so it just tells me --

10 Q. Did you ever tell anyone that you were
11 having -- whether it was Hunter or anyone else --
12 that you had nightmares about killing Shelly Boggio
13 or killing a girl, and that in the nightmare, it
14 was you that was doing the killing?

15 A. No.

16 Q. Okay.

17 A. As far as having -- I don't know if I'd
18 even call it nightmares, but not sleeping good and
19 depression and stuff because of her being dead,
20 yeah; but not because I killed her. Just because
21 of the lifestyle I led that led up to me being any
22 part of it.

23 Q. Okay. Did you tell the -- did you tell
24 Hunter or anyone else that James Dailey made you
25 hold the knife?

1 A. Why would he make me hold the knife?

2 Q. Okay. Did you ever tell anyone that
3 Dailey made threats toward your son? Yes or no?

4 A. I don't remember telling nobody that.

5 Q. Did you ever tell anyone that after Dailey
6 gave you the knife and made you hold it and
7 threatened your son, that you cut Shelly Boggio
8 several times on the head --

9 A. I never told --

10 Q. -- on the arms --

11 A. -- nobody no such stuff.

12 Q. -- on the hands? I'm sorry?

13 A. I've never told nobody that.

14 Q. All right. I want to just read to you the
15 testimony, and then just tell me whether or not
16 it's true. Bear with me one second.

17 A. Boy, this is a good one here. This is the
18 first I ever heard this. Is this Juan Banda or the
19 other dude?

20 Q. I'm showing you, again --

21 MR. DUBIN: Do we have the mark -- do you
22 have all the marked exhibits?

23 THE COURT REPORTER: No. They're all gone.
24 They were up there.

25 MR. DUBIN: Oh.

1 THE WITNESS: You -- you picked them all
2 up and put them back in your stuff.

3 MR. DUBIN: I'll sort through it in a
4 moment. I'm showing you again -- that's very
5 possible because I keep on putting things in
6 the folders. So let me try to get the marked
7 exhibit.

8 Well, let me just bring you to it now and
9 I'll come back to it. This is the deposition
10 of Hunter. Okay?

11 A. Uh-huh.

12 MR. DUBIN: All right. Here are all the
13 exhibits.

14 BY MR. DUBIN:

15 Q. Here's Exhibit 6. Let me trade you.
16 Here's the exhibit and here are the others. I'd
17 like you to go to Page -- go to Page 29, Page 29,
18 Line 7.

19 *Question: Did he ever tell you --*

20 *And that's meaning you, Jack.*

21 *Question: Did he ever tell you that he*
22 *participated in stabbing her?*

23 *Answer: Never stabbing her. He said he*
24 *remembered cutting her with a knife, that he did*
25 *have the knife, that Jimmy made him hold the knife,*

1 that he told him that he was just as guilty as he
2 was, that they were both in it up to their eyes.

3 He also said that Jimmy had made
4 innuendo-type threats toward his small son, not a
5 direct threat; that it wasn't an implied threat
6 that if he ever told anybody about what happened,
7 that his son might meet with an untimely death, was
8 the indication.

9 Question: Okay. Now, what was his final
10 version of what his participation was in this
11 thing?

12 Answer: The final version was that he had
13 cut her, perhaps several times.

14 Question: Did he say where he cut her?

15 Answer: He said he might have cut her on
16 the head and that he might have cut her on the arms
17 and hands, but he doesn't remember ever stabbing
18 her.

19 Question: Was -- what kind of questioning
20 was this in response to?

21 Answer: I don't understand.

22 Question: Did you just ask him about it?
23 Or was -- were you trying to --

24 Answer: We were trying to clarify up the
25 problem areas that he had on the chart before we

1 *ran the last chart. And he kind of emotionally*
2 *broke down and, during that time, and started*
3 *telling Frank about it, you know, the additional*
4 *information that he was seeing.*

5 *He originally told us that he just didn't*
6 *remember any of this stuff, that he blocked it out.*

7 *Question: What else did he tell you*
8 *besides the fact that he cut her several times?*

9 *Answer: That he had helped carry her for*
10 *a little ways.*

11 *And let me just stop right there. Is any*
12 *of that true?*

13 *A. No, none whatsoever. That's why the*
14 *recording stuff wasn't working that day. As soon*
15 *as my lawyer said, Oh, they said you confessed, I*
16 *said, Well, they have it on audio and video.*
17 *They're lying. I said, Make them play it back.*

18 *Oh, they said it wasn't working that day.*

19 *Now, I see why because I never read this*
20 *before, never seen it in my life. Even in the*
21 *Motion for Lamie (sic), I don't know how I missed*
22 *all that.*

23 *Q. All right. Well, I'm going to go through*
24 *and find out what else you contend he lied about.*
25 *So this is a lie, is that your position?*

1 A. Complete fabrication.

2 Q. Okay.

3 A. I need my minister and my rabbi. Who was
4 the other one? And that I cut and did all that
5 stuff, I need my public defender.

6 Q. Did you help carry Shelly Boggio --

7 A. No.

8 Q. -- for a little ways?

9 A. Nope.

10 Q. Okay.

11 A. Never moved her body whatsoever. I didn't
12 stab her none whatsoever, not one time, not in her
13 hand, not anywhere else.

14 Q. All right. I'm going to read -- keep
15 reading and you tell me if any of this is true.
16 And now I'm on Page 30.

17 *Question: How did he get the knife to --*

18 *Answer: He says --*

19 A. None of that. I just told you. I just
20 read that whole section.

21 Q. You read --

22 A. None of that.

23 Q. -- on line -- page -- well, let me just
24 read it into the record.

25 *He says that he -- he doesn't remember*

1 exactly, but he thinks Jimmy gave it to him.

2 Question: Was she still alive when he cut
3 her?

4 Answer: I think, I'm not positive on
5 this, but I think he stated that she was still
6 alive when they were dragging her towards the water
7 because he says she was. He could hear a sucking
8 noise and he knew that she was going to die, but
9 she --

10 Question: Did he go into the water?

11 Answer: I don't believe he did. He
12 didn't say he did.

13 Any of that true?

14 A. No.

15 Q. Did you ever touch her body?

16 A. Nope.

17 Q. On Page 31. Question: Did he say why he
18 cut her?

19 Answer: He said because Jimmy made him,
20 told him he -- he had to do it.

21 Question: And he said at one point he had
22 picked her up?

23 Answer: That he did take her by the
24 hands, and while Jimmy carried her by her feet, and
25 carried her for a short distance.

1 Did you ever say those things to Mr.
2 Hunter?

3 A. Nope.

4 Q. Are any of those things true?

5 A. Nope.

6 Q. Now, if you go to Page 34, and I can just
7 read it for you, if you'd like.

8 A. Go ahead. Read it. I had no idea Hunter
9 tried the same thing. Him and Halliday probably
10 drink together.

11 Q. I'm on Page 34, Line 8. Question: *Did*
12 *Sergeant Coleman ask him more than one time about*
13 *the possibility of him cutting her?*

14 *Answer: I'm sure that he asked him more*
15 *than one time whether he stabbed her. The cutting*
16 *was something that he volunteered pretty quick.*

17 *Question: So basically Sergeant Coleman*
18 *had asked him several times about the stabbing?*

19 *Answer: Throughout, yeah, because that*
20 *was one of the relevant test questions and he said,*
21 *quote, "Well, I cut her," end quote.*

22 *Question: Did he equivocate on that at*
23 *all? Did he say, quote, "Maybe I cut her"? Or did*
24 *he say, quote, "Yeah, I cut her"?*

25 *Answer: It was one of these things I seem*

1 to remember -- it was one of those things, quote,
2 *"I seem to remember that I cut her now"*, where
3 every -- end quote, where -- everything that he had
4 told us, he had to remember it one piece at a time,
5 like by little flashbacks of what was going on.

6 Is that true?

7 A. No.

8 Q. Okay. Is it your testimony that this is
9 complete fabrication?

10 A. That story he just went through there is.
11 It's strange how I confessed to everything and
12 their equipment wasn't working, since they had the
13 audio and video all set up in there.

14 And that's the first thing when my lawyer
15 said, Oh, they said you did this.

16 Said, It's a lie. Look at the -- look at
17 the tape and -- and listen to it. I said, I didn't
18 do none of that.

19 And their first response was, Oh, they
20 said it was malfunctioning that day.

21 Q. Are you concerned, Mr. Percy, that if you
22 testify in open court that you actually killed
23 Shelly Boggio, as you have sworn in this
24 declaration and the affidavit and in 2017 and in
25 other sworn testimony, are you concerned for your

1 safety here in this facility?

2 A. No. Why would I testify to something I
3 didn't do in open court, closed court, or any other
4 kind of court? I --

5 Q. Well, you have --

6 A. I signed that and I told you the reasons I
7 signed it; not because I killed Shelly, but --

8 Q. Okay.

9 A. -- so that I could hope to get back in
10 court and prove the truth.

11 Q. Okay. And we have to accept your word to
12 believe that, right?

13 A. You don't have to accept it.

14 Q. Okay. But that's according to you, right?

15 A. Correct.

16 Q. And you have told me on the record today
17 that you've lied many, many times about this case
18 in the past, correct?

19 A. Correct.

20 Q. And you have lied about details of the
21 crime over the years, correct?

22 A. If you're talking about that '93 thing,
23 yes, I did.

24 Q. Okay. And you now claim today that
25 statements that were attributed to you by the state

1 were made up and false, correct?

2 A. As far as Halliday and now this Hunter
3 dude, correct.

4 Q. Okay. And we have to, again, accept your
5 word --

6 MR. MARTIN: I'm going to object. You're
7 -- you're argumenting (sic) -- you're arguing
8 with the witness.

9 THE WITNESS: Well, you guys also say --

10 MR. MARTIN: You're arguing --

11 (Multiple people speaking simultaneously.)

12 THE COURT REPORTER: One at a time.

13 MR. DUBIN: You -- you can con -- you can
14 answer.

15 MR. MARTIN: Wait a minute. My objection
16 is the question is argumentative.

17 MR. DUBIN: Okay.

18 BY MR. DUBIN:

19 Q. You can answer.

20 A. You also say Halliday is a liar, so it's
21 not just -- you don't have to rely on me because
22 you also know how Halliday is. As far as his
23 character, you might not know him and I didn't know
24 -- I didn't remember none of this in the motion of
25 mine. I must have been in a daze there because I

1 don't remember him saying none of that stuff.

2 Q. Okay.

3 A. But I know my lawyers first told me that
4 they said you made -- they said a one-line
5 confession, or something, at the lie detector test.
6 And immediately my first response was, Look at it.
7 That's a lie. I did not confess to nothing.

8 Like I said, all's I did, when they
9 wouldn't unhook me, I unhooked myself and --
10 because they kept me a couple of hours after I was
11 telling them I had to use the restroom.

12 And they told me then that the equipment
13 was broke. So why would I tell my lawyers to
14 listen to it when they first tell me? I don't know
15 the equipment's broke. But, all of a sudden, it is
16 and they got this confession going on.

17 Q. Now, when you signed the affidavit in
18 2017, that was in April of 2017? You see that?

19 A. Uh-huh.

20 Q. Okay. And there was an evidentiary
21 hearing --

22 A. Correct.

23 Q. -- in -- in 2018?

24 A. In Hillsborough or something.

25 Q. Right.

1 A. Uh-huh.

2 Q. And between signing the affidavit and
3 actually testifying at the evidentiary hearing, you
4 visited with Ms. Shirley, correct?

5 A. Ms. Shirley?

6 Q. Chelsea.

7 A. Oh, okay. Yes.

8 Q. Okay. And she came to see you sometimes
9 with an investigator from the CCRC or another
10 person, right?

11 A. Yeah, usually there was two or three of
12 them.

13 Q. Okay. And do you remember one of their
14 names was Collin? If you remember.

15 A. Is that a dude?

16 Q. Yeah.

17 A. Yeah, I think so.

18 Q. All right. And do you remember that
19 Collin was taking notes and Chelsea was taking
20 notes when they met with you?

21 A. Usually somebody was.

22 Q. Okay. And didn't you tell them in October
23 of 2017, in one of these meetings, that you -- you
24 were unhappy -- or you tell me. I don't want to
25 mischaracterize that.

1 You found out that they went to go see --
2 that they went to go talk -- try to talk to Gayle
3 Bailey, right? Yes?

4 A. Is that the question?

5 Q. Yeah.

6 A. That --

7 Q. You were unhappy that they had gone to see
8 Gayle Bailey?

9 A. I guess.

10 Q. Okay.

11 A. I mean, she's got nothing to do with the
12 crime really, and she's not a record type.

13 Q. By the way, you also told me on the 13th
14 when I met with you the second time, I said to you
15 -- you were sitting where the Court Reporter is
16 seated and I was sitting here, right? Correct?

17 A. Yeah, that's the seating arrangement.

18 Q. And I said -- and I said to you, Jack, did
19 you tell Jim that night when you went out to the
20 Belleair Causeway, did you tell him what you had
21 done?

22 A. And you told me, No, you didn't tell him,
23 right?

24 A. I don't remember us talking about the
25 Belleair Causeway. I already told you, when you

1 asked me that question earlier, I don't remember us
2 talking about that. I do remember you asking
3 something about saying something to Jim or
4 something, and I gave you the answer I knew you
5 wanted, No.

6 Q. Okay. Regardless of whether you thought I
7 wanted to know that answer or not, putting Belleair
8 Causeway --

9 A. But that is why I answered it the way I
10 did.

11 Q. Okay. Okay. That's fine. You never told
12 me, By the way, I'm just telling you what you want
13 to know?

14 A. I already said that you said you wanted
15 the truth. And for me to tell you the truth, you
16 wouldn't have done what you did, so, yeah, I went
17 along with the truth I wanted to give you.

18 Q. Okay.

19 A. But your character, no, you wanted the
20 truth. You didn't want me to lie for you.

21 Q. So what I said was, Tell me the truth,
22 Jack. Did you ever tell Jim what you had done the
23 next day? And you told me you hadn't told him,
24 correct?

25 A. Yeah, I kind of remember that. That's one

1 of them times when I was kind of trying to let you
2 know what was going on. Because you even asked me,
3 What? And I -- and at the time, I told you, Nah,
4 nothing. Because I think you read my -- in my
5 expression something, but I said, Yeah, never mind.

6 Q. All right. So regardless --

7 A. I remember the incident because now I
8 remember --

9 Q. All right.

10 A. -- wanting to tell you and then couldn't
11 -- and couldn't tell you.

12 Q. All right. So regardless of what you
13 wanted to tell me and how you think I read your
14 expression or otherwise --

15 A. All right.

16 Q. I just want to make sure that what I said
17 to you was, Jack, just tell me the truth. Did you
18 tell Jim the next day or that night or at any time
19 that you killed her?

20 And you said to me, No, I didn't, Josh.

21 A. Why would I tell him I killed her when he
22 killed her? And that doesn't even make any sense I
23 would tell him that.

24 Q. Okay. But let me --

25 A. Your question is, No, I didn't tell him I

1 killed her.

2 Q. You didn't tell -- you think it's --

3 A. But why would I tell him I did something
4 he did? That makes no sense.

5 Q. You told me though that day -- I was still
6 under --

7 A. You asked me did I tell him that I killed
8 her? And I told you, No.

9 Q. Okay. Now, didn't you tell Chelsea
10 Shirley -- she's got two first names. It's the
11 same person, Chelsea Shirley.

12 A. Okay.

13 Q. Did you tell Chelsea Shirley and, in the
14 presence of others, at least with the investigator
15 there, that you were waiting to tell your family
16 the truth and you might do so in the next couple of
17 weeks before your mother visits?

18 A. I think they probably asked me something
19 about what my family thought or something like
20 that.

21 Q. Okay. But it's a fact, isn't it, that you
22 lied to Chelsea and you lied to Collin, the
23 investigator from CCRC, as well?

24 A. What did I lie to them about?

25 Q. Well, you told them that you were going to

1 testify.

2 A. Okay. Yes, I did lie about that.

3 Q. And you told them that -- that everything
4 that you were telling them was true, right? And
5 that was a lie?

6 A. Correct.

7 Q. Okay.

8 MR. MARTIN: I'm going to have an
9 objection at this point. We've been going on
10 for almost two hours and it seems obvious now
11 that the whole purpose of this depo is to
12 impeach your own witness.

13 So it appears -- and I'm well aware that
14 you can impeach your witness, but you cannot
15 put a person on solely to impeach the witness.
16 Mr. Percy has already told you that he did not
17 kill the victim. The only way you're going to
18 put him on is you're going to impeach him;
19 therefore, I object to any more of this
20 deposition.

21 It is clear that you are abusing the
22 privilege of a discovery deposition. So I'm
23 going to object and I'm, basically, asking it
24 stop because you're -- you're absolutely
25 abusing the discovery process.

1 Are you going to stop?

2 MR. DUBIN: Mr. -- no, I'm not going to
3 stop.

4 MR. MARTIN: All right. Well, then I'm
5 going to have a continuing objection and it
6 will be raised with the Court.

7 BY MR. DUBIN:

8 Q. Mr. Percy, why did you leave the house
9 with just Shelly to go for a drink? At some point,
10 you did leave the house with just her and Oza, you
11 said before. Why -- why didn't the rest of the
12 crew go with you?

13 MR. MARTIN: I'm going to object to that
14 it calls for speculation on his part and been
15 asked and answered.

16 THE WITNESS: I don't know.

17 BY MR. DUBIN:

18 Q. When you left the house with Shelly and
19 Oza, did you tell Gayle that you were leaving?

20 A. I'm sure I probably did.

21 Q. You don't recall one way or another?

22 A. It's 35 years ago.

23 Q. Okay.

24 A. You know what you did 35 years ago, even
25 if a murder didn't happen that night?

1 Q. Having seen your 1985 statement, is it
2 possible that you actually did get your car stuck
3 in the sand that night and just forgot about it?

4 MR. MARTIN: I'm going to object. It
5 calls for speculation, asked and answered, and
6 it's argumentative.

7 BY MR. DUBIN:

8 Q. You can answer.

9 A. Even reading it, I really -- I don't have
10 a recollection of it. I mean, I guess it's
11 something that was irrelevant to actually
12 everything I thought about for the last 35 years
13 because it had nothing to do with the crime or
14 something. I don't know. I really don't. Maybe I
15 blacked out for that part. I remembered it for
16 whatever reason, because I really can't recollect
17 it at all now.

18 Q. Well, did you black out for other parts of
19 the night?

20 A. That's the only thing I can't remember.

21 Q. Did you tell Shelly Boggio's sister in a
22 letter that you blacked out?

23 A. No.

24 Q. Did you tell -- have you ever told anyone
25 that you were so inebriated, drunk, high, whatever,

1 that Jim just killed her, and when you came to, it
2 was all over with?

3 A. No. If I hadn't been so high and living
4 the lifestyle I was, I may have been able to stop
5 it. I've thought that to myself numerous times,
6 and I said something about, in a letter I wrote to
7 her, about wishing I'd been able to do something
8 more.

9 Q. I just have a few more questions. When
10 you came back to the house and now you -- you're --
11 now you're testifying, or you claim, that James
12 actually came with you and Shelly, right?

13 A. Correct.

14 Q. So where -- where was he when you came
15 back to the house?

16 A. It's thirty-five years ago.

17 Q. Well, was he sleeping?

18 A. No, I wouldn't have woke him up.

19 Q. So when you testified in 1993 that you
20 woke him up, that was a lie?

21 A. I reckon, because I wouldn't have had to
22 wake him up. We -- I mean, we've been out
23 partying. He's not going to sleep at 11:00, 11:30,
24 or whatever.

25 Q. All right. Did Shelly come inside with

1 you when you went to get Jim? Or did she wait in
2 the car?

3 A. I don't remember her coming inside, but I
4 can't be positive.

5 Q. Do you remember where -- was Gayle asleep?

6 A. I doubt it, because I remember from the
7 evidence, when we came back, Gayle and Oza was both
8 on the -- on the couch because they testified about
9 him coming in with his clothes wet and carrying his
10 shoes and stuff. So he couldn't have been asleep.

11 Q. Okay. So when you went back to get -- but
12 I'm talking about when you came back with Shelly to
13 get Jim. His clothes were already wet?

14 A. Say it again.

15 Q. When you came back with Shelly to get Jim
16 to go out for another drink or to party more, were
17 -- were his pants already wet?

18 A. No. His pants were wet from where he took
19 her in the water.

20 Q. Okay. So when he came back -- when you
21 came back with Shelly to get Jim, where was Oza?
22 And where was Gayle?

23 A. I don't know. The only reason I know they
24 were sitting on the couch is because that was their
25 testimony. But where they were before, I have no

1 idea. I could have been there for a little while
2 because I know Gayle and I had sex that evening,
3 and somewhere in that span, we had sex.

4 So I don't know which time it was, whether
5 we was there for a while the first time and did it,
6 or when I came back that time and then when -- you
7 know, I don't remember.

8 Q. Where was Shelly when you were having sex
9 with Gayle?

10 A. She could have been sitting out there on
11 the couch. She could have been in Jim's bedroom.
12 I have no idea where she was.

13 Q. And was that the first time you had all
14 come back to the house? Or was it the time --

15 A. I just said, I don't remember. I remember
16 we had sex sometime in that evening, but I don't
17 remember exactly when. Gayle could probably tell
18 you that.

19 Q. And it was at the house, when you had sex?

20 A. Uh-huh.

21 Q. And it was either the time that you had
22 first come back with -- it was -- it was either the
23 time when you all had first come back? Or the time
24 when you came back to get Jim with Shelly? One of
25 those times, you had sex with Gayle?

1 A. Right.

2 Q. Okay. I don't want to get too personal,
3 but do you recall how long this lasted?

4 A. No.

5 Q. Okay. And where -- where did that happen?
6 In your bedroom?

7 A. Uh-huh.

8 Q. Okay.

9 A. The bedroom or bathroom. I'm not sure.

10 Q. Okay. So when you picked Jim up with
11 Shelly, when you came back to the house, where did
12 you guys go to have a drink?

13 MR. MARTIN: I'm going to object. It's
14 been asked and answered at least twice.

15 THE WITNESS: I don't remember.

16 BY MR. DUBIN:

17 Q. Was it to just a bar?

18 A. I guess. I don't really remember, like I
19 told you. If I remembered, I'd say it.

20 MR. DUBIN: Just give me one more second.

21 I don't know -- I might just have one or a few
22 more questions. Give me one second.

23 BY MR. DUBIN:

24 Q. All right. So I'm just going to see if
25 this refreshes your recollection. If you go back

1 to the 1985 statement, you said that everything in
2 your 1985 statement is true, right?

3 A. (Shaking head yes.) Yes. Sorry.

4 Q. It's all right. Let me just find the '85
5 statement. I'm going to bring you to it. All
6 right. So --

7 MR. MARTIN: What's the exhibit number?

8 MR. DUBIN: It's the -- it's Exhibit
9 Number 3, sir.

10 MR. MARTIN: Thank you.

11 BY MR. DUBIN:

12 Q. I'm going to the -- the -- I'm going to
13 Page -- three, four, five, six, seven, eight, nine,
14 ten -- I believe it's Page 11, Line 1. Okay. I'm
15 going to just read it with you, if that's all
16 right.

17 *Question: Did you stop at a bar on --*
18 *okay. I'm sorry. Keep going.*

19 *Answer: So, then we went back to the*
20 *house and I asked Jimmy D if he wanted to go.*
21 *Yeah, he wanted to go out. So, then Jimmy D and*
22 *Shelly and myself left. This is 11:00 or 11:30*
23 *when we headed back out by the time we was up*
24 *there.*

25 *We went down towards the Beach Place.*

1 What is that, like, a place where there
2 were bars?

3 A. *Went in and --*

4 Q. *Went in and had a beer, maybe a drink.*
5 *I'm not sure. I think I might have had another*
6 *Tequila Sunrise in there. And then we got ready to*
7 *leave there and Jimmy said, Pull down where I used*
8 *to go fishing.*

9 A. *Towards Beach Place. I guess it's got to*
10 *be one of them bars on the beach.*

11 Q. Okay. So, in any event, you went for
12 another drink or two somewhere, correct?

13 A. Correct.

14 Q. Okay. Do you remember how long you were
15 in there having that drink or two?

16 A. Fifteen minutes. I don't know. Doesn't
17 take long to go in and drink a Tequila Sunrise.

18 Q. Well, could it have been longer? Do you
19 remember?

20 A. I don't remember.

21 Q. All right.

22 A. It could have been 15 minutes, could have
23 been 30. I don't know.

24 Q. All right. Was it an hour or two?

25 A. I just told you. How could it go to two

1 hours when I told you it could have been 15
2 minutes?

3 Q. Okay.

4 A. I don't know how long we was in there.

5 Q. Okay.

6 A. I don't remember the bar. I don't -- you
7 know.

8 MR. DUBIN: You know what, can we take a
9 -- let's take a five-minute break. Let me just
10 go to the bathroom and see if I have anything
11 else to cover.

12 (Whereupon, a break was taken from 12:01
13 p.m. until 12:11 p.m.)

14 BY MR. DUBIN:

15 Q. Did you ever meet with a prosecutor with
16 the last name of Slater?

17 A. No, sir. I made that statement before. I
18 think Jamie Slater was his name.

19 Q. Okay. Have you met with him before?

20 A. When I made the statement back in --

21 Q. Oh, okay.

22 A. -- '86 or whenever, '85.

23 Q. And was that the only time you met with
24 Mr. Slater?

25 A. The best I can recall.

1 Q. Okay. Now, earlier today, you testified
2 that the knife was Jim's knife, right?

3 A. Uh-huh.

4 Q. All right. And do you know why he kept
5 the knife in Gayle's car?

6 MR. MARTIN: I'm going to object. It
7 calls for speculation on his part, unless he
8 actually knows.

9 BY MR. DUBIN:

10 Q. Well, back up. Did you know whether or
11 not he kept the knife in Gayle's car?

12 A. Yeah, it stayed between the seats. I
13 don't know why he kept it in there. I guess just
14 so he'd have it whenever we was out, you know.

15 Q. He would keep it where?

16 A. Between the seats. It was a little
17 Toyota, so, like, between the transmission whatever
18 and the seats, there's a gap right there.

19 Q. Okay. And that's --

20 A. You can set cups, you can set all kinds of
21 stuff in there.

22 Q. And he'd usually keep it out in plain
23 sight?

24 A. Why would you hide it?

25 Q. Okay. Who -- who would drive the car?

1 Would you drive the car?

2 A. Yeah, I drove it.

3 Q. Did Gayle drive the car?

4 A. Yep, Gayle drove it, too.

5 Q. Did James used to take the car out?

6 A. No, because James was a drunk.

7 Q. Okay. And did it have back seats in that
8 car?

9 A. Uh-huh.

10 Q. That's a tiny car though, right?

11 A. Yeah, it's fairly small.

12 Q. Okay.

13 A. I mean, you can ride five, two in the
14 front and three in the back, but anymore it'd be
15 too crowded.

16 Q. When you and -- when you dropped Oza Shaw
17 off at the pay phone, that pay phone, you said, was
18 about two blocks from the house?

19 A. Uh-huh.

20 Q. All right. And you and Shelly went and
21 had drinks. Do you remember what bar you went to
22 to have drinks?

23 A. I have no idea.

24 Q. Okay. And, at that point, it was just you
25 and her because Oza was at the pay phone, correct?

1 A. Correct.

2 MR. DUBIN: Okay. All right. I don't
3 have anything else.

4 MR. MARTIN: State has no questions.

5 MR. DUBIN: Okay.

6 THE COURT REPORTER: Read or waive?

7 MR. DUBIN: I'm sorry?

8 THE COURT REPORTER: Read or waive?

9 THE WITNESS: If they call me down to
10 court, I'll just take the Fifth Amendment.
11 Everything you needed, I reckon you got today,
12 that's why you had the deposition. So you
13 can't -- you've got all the questions asked and
14 answered from me. So from this point on, I'll
15 just take the Fifth Amendment.

16 BY MR. DUBIN:

17 Q. Well, you know that the Florida Supreme
18 Court ruled in 2017 that --

19 A. Yeah.

20 Q. Were you aware of that?

21 A. They could -- they could give me some more
22 years and it really doesn't affect me. They give
23 me time for not answering -- for not giving a
24 deposition and testifying in Jimmy's trial when I
25 was still facing my direct appeal days. 528 days

1 in violation of the Gordon G. Liddy Law; they did
2 it twice.

3 They did a deposition in the courtroom.
4 The State asked questions. I took the Fifth.
5 Penick ordered me to answer her questions, found me
6 in contempt of court when I took the Fifth again;
7 gave me 528 days, which was the maximum. Then for
8 his actual trial, they took the jury out and
9 brought me in. We did the same thing again, and he
10 did it again. Then my lawyers at the time filed
11 and said he's still -- he didn't testify in his own
12 trial. He's still facing it, and it didn't matter.

13 BY MR. DUBIN:

14 Q. You know that you have right -- have you
15 ever been told that the Supreme Court ruled in 2017
16 that you have no right to waive the Fifth -- I mean
17 to plead the Fifth?

18 A. No, I wasn't aware of that.

19 Q. Okay. Would you like to see a copy of
20 that ruling?

21 A. They still can't tell me what I can and
22 can't do.

23 Q. Okay. Do you think this is all just a big
24 game, Mr. Pearcy?

25 A. No. It's not a big game. But I just said

1 I answered -- and this, like he said, we've been
2 here more than two hours. I answered every
3 question you asked, so there's no reason for me to
4 say anything else in court or anywhere else. I
5 figured you got everything you need. You can save
6 your money on transporting me just to hear me say
7 the Fifth.

8 Q. Okay. Well, I'm going to leave that to
9 the judge. That's up to the judge.

10 A. Okay. That's why I wanted it on the
11 record. The judge is going to see this to make his
12 decision. No, I'm not -- I have nothing to say,
13 nothing more to say. I done answered all your
14 questions.

15 Q. You just had plenty to say for the last
16 three hours, sir. So --

17 A. But I'm saying I did that so you'd already
18 -- we'd be done with, period, it's over. From now
19 on, I don't have nothing else on the subject. I
20 answered all your questions you asked.

21 Q. Okay. We're all done.

22 THE COURT REPORTER: In the event this is
23 typed up and made into a booklet form, like you
24 just read, do you want to proofread it for my
25 accuracy? Or do you want to waive that right?

1 THE WITNESS: I'll waive that right.

2 THE COURT REPORTER: Very good.

3 THE WITNESS: Okay. And --

4 MR. DUBIN: So, like I said -- let me just
5 get back on the record.

6 THE COURT REPORTER: Okay.

7 MR. DUBIN: Like I said, you have --
8 you're going to have the opportunity -- I think
9 you just waived the right to do it, but you do
10 have the right to --

11 THE WITNESS: I don't believe she's biased
12 and put something that wasn't said on the
13 record, if that's, you know --

14 MR. DUBIN: Okay.

15 THE WITNESS: -- I don't doubt she did it
16 as accurate as -- she might have made a little
17 mistake, but I don't see her changing none of
18 the major facts, so...

19 MR. DUBIN: Okay. Thank you.

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3 CERTIFICATE OF OATH

4 STATE OF FLORIDA:

5 COUNTY OF SUMTER:

6 I, Beth Bunn, Notary Public, State of Florida,
7 do hereby certify that Jack Edward Pearcy, Jr.
8 Personally appeared before me on February 25, 2020
9 and was duly sworn and produced a Department of
10 Corrections identification card.11 Signed this 26th day of February, 2020.
12
13
14
1516 /s/ Beth Bunn
17 Beth Bunn, RPR
18 Registered Professional Reporter
19 Notary Public, State of Florida
20 My Commission No.: GG-949570
21 Expires: 1/25/2024
22
23
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA:

4 COUNTY OF SUMTER:

5
6 I, Beth Bunn, Notary Public, State of Florida,
7 certify that I was authorized to and did
8 stenographically report the deposition of Jack
9 Edward Percy, Jr.; that a review of the transcript
10 was not requested; and that the foregoing
11 transcript, pages 04 through 144, is a true and
12 accurate record of my stenographic notes.13 I further certify that I am not a relative,
14 employee, or attorney, or counsel of any of the
15 parties, nor am I a relative or employee of any of
16 the parties' attorneys or counsel connected with
17 the action, nor am I financially interested in the
18 action.19
20 DATED this 26th day of February, 2020.21
22
23 /s/ Beth Bunn
24 Beth Bunn
25

STATE OF FLORIDA

v.

JAMES MILTON DAILEY

_____/

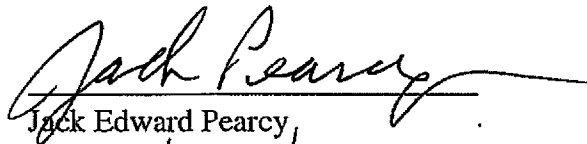
State of Florida)
County of Sumter)

DECLARATION OF JACK EDWARD PEARCY, JR.

I, Jack Edward Percy, Jr., declare on this 18th day of December, 2019, and pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct:

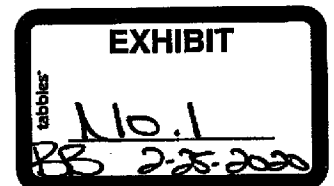
1. My name is Jack Percy and I am an inmate at Sumter Correctional Institution. My DC number is 106311.
2. I was James Dailey's co-defendant in the above mentioned case.
3. I was convicted of the murder of Shelly Boggio, and sentenced to life in prison with the possibility of parole.
4. I have not been pressured in any way to sign this declaration.
5. James Dailey had nothing to do with the murder of Shelly Boggio. I committed the crime alone. James Dailey was back at the house when I drove Shelly Boggio to the place where I ultimately killed her.

I declare under penalty of perjury that the foregoing is true and correct.



Jack Edward Percy
12/18/19

Date



1993 Statement

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IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, IN AND
FOR PINELLAS COUNTY, FLORIDA.

CASE NO. CRC85-07084-CF-A

STATE OF FLORIDA

vs.

JAMES DAILEY,

Defendant.

ORIGINAL

SWORN STATEMENT

of

JACK PEARCEY, JR.

Taken on March 19, 1993, at Florida State
Prison, Starke, Florida, commencing at
approximately 11:10 a.m.

Present was Brent D. Armstrong, Esquire,
Druhill Professional Center, 611 East Druid Road,
Ste. 308, Clearwater, Florida 34616.

JOHNS, STEPHENSON & ASSOCIATES
Court Reporters
116 NE Third Avenue
Gainesville, FL 32601
(904) 373-7778

EXHIBIT
tabbles
No. 2
PB 225-200

1 JACK E. PEARCEY, JR.,
2 being first duly sworn, testified as follows on

3 Examination By Mr. Armstrong:

4 Q Please state your name.

5 A Jack Edward Pearcey, Jr.

6 Q Mr. Pearcey, my name is Brent Armstrong. I'm
7 an attorney. My office is located in Clearwater,
8 Florida.

9 You and I have had a conversation prior to this
10 statement regarding my purpose for being here, but I'd
11 like to just repeat that so that it is on the record and
12 talk about a few other things as well and then we'll get
13 into the substance of your statement. Okay?

14 A All right.

15 Q As I advised you, I was appointed by the court
16 in Pinellas County to represent Mr. Dailey on any kind of
17 motion for post-conviction relief. Originally, I did
18 some investigating into his case. However, for the past
19 two years, I haven't done much until I was contacted by
20 Mr. Swisher, who currently represents Mr. Dailey, to come
21 up here and interview you.

22 Mr. Swisher was also court appointed to
23 represent Mr. Dailey, whose sentence on his first degree
24 murder case was reversed by the Florida Supreme Court.
25 So, he currently has a resentencing hearing pending.

1 Whether or not that will be before a jury or simply
2 before the judge, I don't know at this point. I know
3 Mr. Swisher was pursuing trying to get him a complete new
4 penalty phase.

5 In any event, Mr. Swisher asked me to come on
6 up here and speak with you regarding any information you
7 have that may help, hurt or just shed some light on the
8 events which led up to Mr. Dailey's conviction for first
9 degree murder.

10 Now, are you currently represented by an
11 attorney?

12 A No, sir.

13 Q Is it your understanding that all of your
14 appellate remedies in state court have been exhausted?

15 A Yes. At this point, I could still file the
16 state habeas, but I'm not going to pursue that.

17 Q A state habeas you still can file or a federal
18 habeas?

19 A Federal habeas.

20 Q Okay. So, as far as you know, you've done your
21 direct appeal in state court and that was denied?

22 A Yes.

23 Q And then you've done some post-conviction
24 relief in state court and that has been denied?

25 A Yes.

1 Q So, the avenue you have left is in federal
2 court on a habeas proceeding?

3 A Yes.

4 Q Okay. And you don't have an attorney to
5 represent you on that at this point?

6 A No.

7 Q One of the things we talked about was that this
8 statement could be used against you if the federal courts
9 give you a new trial in state court, do you understand
10 that?

11 A Yes.

12 Q You and I have briefly gone over the facts of
13 this case. Quite frankly, I had to refresh my
14 recollection regarding the facts and I used the statement
15 of facts which was contained in the brief that was
16 prepared on behalf of Mr. Dailey. And I would like to
17 read something into the record and then ask you about it.

18 On page four of that brief, it states that,
19 quote, "Gayle Bailey testified that she lived with Jack
20 Pearcey and James Dailey in Seminole, Florida, in May of
21 1985. Oza Dwaine Shaw from Olathe," O-l-a-t-h-e,
22 "Kansas, was staying with them temporarily because of
23 marital problems. Gayle was then pregnant with Jack
24 Pearcey's baby and had subsequently given birth to the
25 child, a boy who was almost two years old at the time of

1 the trial. Gayle said she had testified at Pearcey's
2 trial and continued to visit him in prison occasionally.

3 "Gayle testified that on May 5th, 1986, she,
4 Pearcey, Jim Dailey and Dwaine Shaw went to the beach,
5 returning about five or six that evening. After dinner,
6 the three men left for a few hours, returning with three
7 women. They rolled and smoked a joint. Gayle
8 reluctantly loaned Shelly Boggio her identification card
9 and they all went out with the exception of Dwaine Shaw.
10 They dropped off the two girls, but Shelly remained
11 riding in the back seat with Dailey.

12 "They went to Jerry's Rock Disco and stayed
13 about an hour. Shelly declined to dance with Jim but
14 danced once with Jack with Gayle's permission. They
15 returned home late, probably about midnight. Shaw was
16 still there.

17 "When they went in the house, Shelly slumped in
18 the chair as though she were drunk or something. Gayle
19 went to the bathroom and, when she came out, Jack, Jim
20 and Shelly were gone. Shaw was still on the couch.
21 Gayle did not look in Dailey's bedroom to see if he was
22 there. She was angry because Jack brought the girls
23 home, danced with Shelly and left without her to take
24 Shelly home."

25 Okay, I'm going to stop reading from the brief

1 and ask you about those several sentences that I just
2 read. Is the last part of that correct, that when Gayle
3 went to the bathroom, she came out, you, Jim and Shelly
4 were gone?

5 A No. I had left with Shelly, and Jim, I don't
6 know where he was. He could have been in his bedroom or
7 wherever. And when Shelly and I left, Oza asked me to
8 drop him off to make a phone call to his ex-wife, Rose,
9 in Kansas and the three of us left and I dropped Oza off
10 a couple blocks from the house at a quick trip type
11 store.

12 Q And when you say the three of you left, who
13 were the three that you're talking about?

14 A Shelly, myself and Oza.

15 Q Okay. Do you know where Jim was at that time?

16 A Could have been in the kitchen, his bedroom. I
17 guess he wasn't in the bathroom because Gayle was in
18 there, but I'm not specific on where he was.

19 Q All right. Do you recall when you returned to
20 the house?

21 A Approximately an hour, ninety minutes later,
22 something like that.

23 Q Okay. When you returned to the house, what
24 happened?

25 A I went in, got Jim up. He was in his bedroom.

1 I told him, "Come on, let's go smoke a couple joints,
2 drink a beer or something." He said all right. We got
3 up and left.

4 Q Okay. Was Shelly with you at that time?

5 A No, Shelly was no longer with me.

6 Q She wasn't out in the car, waiting in the car
7 or anything like that?

8 A No.

9 Q Okay. So, you had left with Shelly, then
10 returned about an hour later without Shelly?

11 A Right.

12 Q Went into the house, got Jim. You and Jim then
13 left?

14 A Yeah, went to Bellair Causeway.

15 Q Approximately how long were you and Jim gone?

16 A An hour.

17 Q An hour? So, you returned to your house
18 approximately when?

19 A Two o'clock.

20 Q Did you see anybody when you returned? Was
21 anybody up, Oza, Gayle --

22 A Oza and Gayle were in the living room.

23 Q Okay, reading from the same brief, this is on
24 page six, "Oza Dwaine Shaw testified that he was
25 presently incarcerated. He recalled that on May 5, 1986,

1 he, Jack and Jim rode around most of the day drinking
2 beer. They spotted three girls hitchhiking at about
3 three or four o'clock in the afternoon. The girls
4 recognized the car and knew Jack and Jim. The six of
5 them rode around drinking beer for another hour or two.
6 Afterwards, they all went to the house in Seminole, where
7 they drank more beer.

8 "Eventually, the others left and Shaw fell
9 asleep on the couch. When he awoke, they had returned
10 and Jack was leaving with Shelly. Shaw asked Jack and
11 Shelly for a ride to the phone booth, where he called his
12 ex-wife and his girlfriend. Dailey did not go with them.

13 Shaw walked home after about an hour and found only
14 Gayle there. He did not look in Dailey's bedroom.

15 "After talking to Gayle, he fell asleep until
16 two or two-thirty in the morning when Jack and Jim
17 returned. He noticed that Jim seemed to walk a little
18 bowlegged and the inside of his pants were wet. There
19 was no conversation. Everyone went to bed."

20 Is that correct?

21 A Yes.

22 Q Okay. So, he indicates -- apparently, he
23 testified at trial, at least his testimony as summarized,
24 that he did in fact leave with you and Shelly, was
25 dropped off at a phone booth and then he returned to the

1 house, but Jim was not with the three of you when the
2 three of you left originally --

3 A When we left.

4 Q Okay. I believe both Gayle and Oza testified
5 that Jim's pants were wet. Do you have any idea how his
6 pants got wet?

7 A Yeah. We went to the Bellair Causeway after I
8 picked him up and was playing frisbee and he ended up
9 going out in the water. When he went in the water, he
10 went out there and then he was still staying out there
11 while we was playing frisbee. We drank beer; we smoked a
12 couple joints.

13 MR. ARMSTRONG: Okay, I think that's all I
14 have.

15 (Thereupon, an off-the-record discussion was
16 had.)

17 Q Okay, we're back on the record.

18 Mr. Pearcey, did you make a statement after
19 your arrest to law enforcement or a representative of the
20 state attorney's office in Pinellas County?

21 A Yes. At one time, along with my lawyer, **Ky
22 Koch, we set up -- he set up for us to meet with the
23 state attorney at that time and give a statement, which I
24 did give a statement, and all the facts are the same
25 except for in my statement I said Shelly was present in

1 the car when I came back and picked Jim up, which she
2 wasn't, and I said Jim, her and I left and then I said --
3 made a statement as to what Jim had done, exonerating
4 myself, which all of it, it was just a self-serving
5 statement to exonerate myself.

6 Q So, you made that statement to help yourself
7 out?

8 A Right. At that time, Jim wasn't even in
9 custody. I was in custody and they were going to charge
10 me and I was just trying to get around it, that's all,
11 lay the blame somewhere else.

12 MR. ARMSTRONG: Okay, that's all I have.

13 (Thereupon, the proceedings were adjourned at
14 11:20 a.m.)

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1993 Statement

1 STATE OF FLORIDA

2 COUNTY OF ALACHUA

3 I, Karen L. Biery, Official Court Reporter and
4 Notary Public, State of Florida at Large, do hereby
5 certify that the witness, JACK PEARCEY, JR., was by me
6 first duly sworn to testify the whole truth; that the
7 foregoing statement given by said witness was reported by
8 me in Stenograph, reduced to typewriting by my hand; and
9 the foregoing pages, numbered 1 through 10, inclusive,
10 constitute a true and accurate transcription of said
11 proceedings.

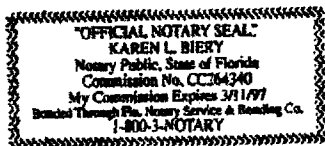
12 I further certify that the statement was taken at
13 Florida State Prison, Starke, Florida, commencing at
14 approximately 11:10 a.m. on March 19, 1993.

15 I further certify that I am neither attorney nor
16 counsel for any of the parties; nor a relative or
17 employee of any attorney or counsel connected herewith;
18 nor am I financially interested in the event of the
19 cause.

20 IN WITNESS WHEREOF, I have hereunto affixed my hand
21 and official seal this 7th day of April 1993.

22 Karen L. Biery
23 Karen L. Biery
24 Official Court Reporter
25 Notary Public, State of Florida

My Commission Expires: 3/11/97



STATE ATTORNEY'S INVESTIGATION

STATEMENT OF: JACK EDWARD PEARCY, JR.

DATE: June 19, 1985.

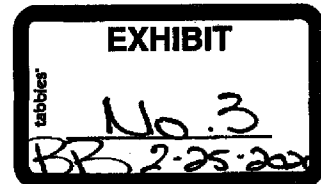
PLACE: Room B200,
State Attorney's Office,
Criminal Court Complex,
Clearwater, Florida.

REPORTED BY: Karen S. Tomczak, RPR, CP, CM,
Deputy Official Court Reporter,
Notary Public,
State of Florida at large.

PRESENT: MR. JAMES SLATER,
Assistant State Attorney,
Attorney for State of Florida.

MR. WAYNE SHIPP,
Assistant Public Defender,
Attorney for Witness.

Tampa Bay
KANABAY



FILED
JUN 20 1985
CLERK OF COURT
JAMES H. HARRIS
CLEARWATER, FLORIDA

KANABAY & KANABAY

Official Court and Shorthand Reporters

PLAZA SUITE 1400
201 E. KENNEDY BLVD.
TAMPA, FL 33602

265 PINELLAS COUNTY BUILDING
150 FIFTH STREET NORTH
ST. PETERSBURG, FL 33701

CRIMINAL COURTHOUSE
5100 144th AVENUE NORTH
CLEARWATER, FL 33520

1 JACK EDWARD PEARCY, JR.,

2 the witness herein, being first duly sworn, was examined
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SLATER:

6 Q Please state your name.

7 A Jack Edward Percy, Jr.

8 Q And what is your date of birth?

9 A May 13th, '55.

10 Q And presently where are you staying?

11 A Incarcerated at the Pinellas County Jail.

12 Q Okay. Mr. Percy, my understanding is that we
13 have already been speaking to you for some time this
14 afternoon and that we started this conversation with your
15 willingness to talk to us. You wanted to come over and
16 tell us what you knew about this incident?

17 A Yes.

18 Q Correct? Okay. And this involves a young lady's
19 body being found out by the Indian Rocks Bridge. Okay.
20 Your attorney is present here during this conversation that
21 we are having, and again I want to just tell you again that
22 any time if you feel that you have a question about what
23 I'm asking you, you have a question about what your response
24 should be, don't hesitate to just stop the proceedings and
25 we'll leave and allow you as much time as you want to talk to

1 Q And an individual by the name of Dwayne?

2 A A friend of mine, Oza Shaw, had come down two
3 days previous to this Sunday to look for employment, and
4 he was just staying with me for a week or two to see if
5 he found something, and go back home if he didn't.

6 Q And how long had you, Jimmy or James Dailey, and
7 Gail been living there?

8 A About two and a half months.

9 Q Okay. On Sunday, the 5th of May, just tell me when
10 you all got up what you did.

11 A Well, I think we headed down towards the beach
12 to Clearwater Beach and TI Island and everything as this
13 was his first time to Florida and to the coast, to any
14 coast, so we were just going to show him the beaches.

15 Q Who all went?

16 A Oza, Jimmy, Gail, and myself for a couple of
17 hours, and then Gail wanted to go back home so we dropped
18 her back off at home to get some sun or do laundry, clean
19 the house, whatnot, since we had been gone a few days, a
20 week almost, and then Oza and Jimmy and myself went back
21 out to the beach, bought some beers and wine coolers, and
22 toured Clearwater Beach and probably TI Island and stuff
23 for a few hours and went through Seminole Park off Park
24 Boulevard and then went over off 54th Street.

25 Q So, at this point it was just you three guys?

1 last name. He lived over in the same vicinity.

2 Q Okay. So, you went over to their place and
3 tell me what happened.

4 A On the way over there, a few blocks from their
5 house, we seen them running across the street which would
6 have been Fifth (sic) Street.

7 Q Who's them?

8 A Shelley, Sherri -- or it was Shelley and Stacey
9 and some other girlfriend. Sherri wasn't there.

10 Q That's Shelley Boggio?

11 A I guess that's her last name.

12 Q Okay.

13 A And they were running across the street and waving
14 us down. We pulled over and picked them up.

15 Q How many girls total?

16 A Three.

17 Q Okay.

18 A Two sisters and some other girlfriend. They were
19 telling us about how they had just gotten some money from
20 somebody or something that one of them knew and to hurry
21 up and get out of there, and -- and we drove away, and
22 Stacey wanted us to go by her house to get something, change
23 clothes or something like that, and we run by there, and
24 they wanted to go somewhere and eat so we took them by
25 Kentucky Fried Chicken, and I think we stopped at somebody

1 A The same ones that came left.

2 Q Shaw, Dailey, and the girls? So, go ahead. You
3 tried to get into Jerry's Disco?

4 A Yeah, and she couldn't get in because she knew
5 that guy.

6 Q That was Shelley?

7 A Yes. So, then we may have stopped by the M.A.S.H.
8 Bar and had a drink and then went to the house. It was real
9 close to the house.

10 Q Back to your house?

11 A Yes. And then Shelley got -- made a deal with
12 Gail to use her ID to go back in this bar. So, then Gail
13 got ready. We was maybe there a half hour or hour before
14 we headed back to the bar.

15 Q What did Shaw do?

16 A He stayed at the house I guess when we went back
17 to Jerry's. I think I may have even taken a shower while
18 we was there and changed clothes and stuff to go over to
19 that bar.

20 Q Okay.

21 A And then -- so, Gail and myself and Jimmy D. and
22 Shelley headed over to Jerry's, and we spent an hour to two
23 hours in there.

24 Q Okay. Let's back up a minute. What happened to
25 the two girls? Did you --

1 A I danced I think once with Gail and once with
2 Shelley.

3 Q Did you notice whether Jimmy Dailey had danced
4 with anyone?

5 A I think he did, but I don't -- you know, I
6 didn't pay attention. I remember he danced one time right
7 in front of the table with a couple of girls, but I don't
8 know if he necessarily danced with them or just went out
9 there dancing because there was maybe six or eight girls
10 that went out to dance by themselves or with each other,
11 and I think he got down there and danced with them.

12 Q Okay. So, just take it slow again. When you left
13 Jerry's, where did you go?

14 A Then we went -- we might have stopped at that
15 M.A.S.H. Bar again, and then we went back to the house.

16 Q What time was it when you left Jerry's?

17 A Between 10 and 11.

18 Q Okay. All right. Okay. So, you got back to the
19 house. What did you do when you got there? This is your
20 residence again, right?

21 A Mm-hmm. Probably went in and had a drink. I don't
22 know if we smoked anymore or not. And then, like I said,
23 just Shelley and I left. Jimmy D. stayed there and Oza
24 and Gail. And we went down to TI Island and went in some
25 bar called Hank's and had a beer or whatever or a drink. I

1 Q Did you stop at a bar on -- okay. I'm sorry.
2 Keep going.

3 A So, then we went back to the house, and I asked
4 Jimmy D. if he wanted to go. Yeah, he wanted to go out.
5 So, then Jimmy D. and Shelley and myself left. This is
6 11 or 11:30 when we headed back out by the time we was
7 up there.

8 We went down towards the Beach Place, went in,
9 and had a beer, maybe a drink. I'm not sure. I think I
10 might have had another Tequila Sunrise in there. And then
11 we got ready to leave there and Jimmy said pull down where
12 I used to go fishing, which is pretty close to the Beach
13 Place or the Beach Pub, whatever it is. So, I pulled down
14 there.

15 Q Okay. Describe that for me. Where exactly is
16 that?

17 A It's where 688 and Wine Garden comes across the
18 causeway. It's right before you hit 19 or whatever it is,
19 the road that runs right along the beach, and there's a
20 causeway right there going over the intercoastal waterway.

21 Q The Indian Rocks Bridge that goes right over to
22 Indian Rocks Beach?

23 A Yeah, I guess.

24 Q Okay. And that's where you used to do some
25 fishing?

1 A I -- I didn't look at them. I'm not sure what
2 they were doing.

3 Q Did you hear a lot of conversation or was it
4 quiet?

5 A No. I had the radio on so they could have been
6 talking and I couldn't have heard them unless they were
7 talking loud or kissing. I'm not sure what they were doing.
8 I took it for granted they were necking. I wasn't paying
9 attention to what they were doing.

10 Q So, you drove down there to that fishing spot?

11 A Yeah. Then I pulled down in there and then they
12 got out of the car and I remember I just sat there drinking
13 a wine cooler and kicked my seat back and was listening to
14 the radio, and eventually I remember hearing a noise. I
15 don't know if it would have been five minutes, thirty
16 minutes. It could have been sixty minutes.

17 Q Let me ask you this. Earlier today we drew a
18 little diagram indicating where the Indian Rocks Beach Bridge
19 is, the intercoastal waterway, and the channel from the
20 area that you used to go fishing.

21 A Yes.

22 Q On that diagram you drew an arrow where you had
23 driven the car into and where you parked it with an F which
24 was the front of the car.

25 A Yes.

1 A Ten to 20 foot.

2 Q Okay. And from which side of the car?

3 A The passenger side out back that way (indicating)

4 Q Okay. So, you said you saw Jim Dailey sitting
5 on top of Shelley?

6 A And I heard some commotion. I could tell something
7 was up. It wasn't right. I got out of the car.

8 Q Did you hear Shelley say anything, any sounds
9 or words at all at that point?

10 A I heard something, but I couldn't really tell
11 words or, you know, it wasn't nothing plain.

12 Q Again, as you are sitting in the car, describe to
13 me what you can see.

14 A I could see -- I could see Jimmy D.'s back and
15 I could see his right arm making an in-and-out motion and
16 he just kind of up on his knees or sitting on her back or
17 something like that.

18 Q Was Shelley facing up or down?

19 A She was facing down.

20 Q Okay. Could you see any part of her body from
21 where you sat in the car?

22 A I'm not sure if I could see when I was in the car
23 or if I seen it when I got out, but I remember when I went
24 out that I --

25 Q So, then you get out of the car and you ran around

1 something like that. No was the only word that I can
2 really remember her saying.

3 Q Was it a clear -- a clear word or was it muffled
4 sounding?

5 A It was muffled before that. I remember the no.
6 No I remember. I could distinguish the no. I heard other
7 noises, but they weren't distinguishable as being words or
8 anything like that that I could make out. No is the only
9 word that I could really stick in my mind.

10 Q They were definitely coming from Shelley?

11 A Yeah.

12 Q Okay. Okay. So, go ahead.

13 A So, then I went up and I remember I may have
14 said something. I'm not sure what I would have said, but
15 I remember trying to grab him, and somehow I went off the
16 bank up in front of him into some bushes, stick bushes or
17 something, and then I crawled up out of there, and by this
18 time, she was turned over and I tried to reach for her,
19 but he grabbed her feet and started pulling her away back
20 past the back of the car.

21 Q Let me ask you something else I forgot. When you
22 came around the back of the truck (sic) and you could see
23 what was going on, did you notice if Shelley had any clothing
24 on?

25 A I could see she had jeans on, but they were like

1 A It would have been on the right side of her body
2 wherever it was.

3 Q And as far as you could see, at some point she
4 was trying to put her hand up to protect her face or --

5 A Yes. I remember her -- seeing her holding onto
6 the knife.

7 Q Okay.

8 A His hand -- I remember seeing her hand was up
9 there with his hand. I'm not sure if she had the knife
10 or she had his fist or what she had. I just remember
11 seeing her hand in there.

12 Q In there too. Okay.

13 A That's when I was coming around the car, but I
14 didn't approach him from that side. I approached him from
15 the other side. When I went to grab him, it was from the
16 left side, not the side that he had the knife in, and I
17 fell off that side.

18 Q All right. So, you were at the point where he
19 was dragging her by her feet and you saw the blood.

20 A That's when I crawled up the bank and seen her.
21 I could see in the clear light then. I guess maybe the car
22 was shadowing or something to begin with because when he
23 had dragged her back, maybe he pulled her out of the shadows
24 because I could see clearly, and that's when I started
25 throwing up and everything.

1 Then he started dragging her again, and I fell
2 down to one knee or something like that. I just tripped
3 and fell down. At this time I was still having convulsions,
4 throwing up-type thing. Everything was probably out of my
5 stomach, but it was just dry heaves like.

6 And then he kept on dragging her, and I got up,
7 and by this time, when I got up, and I was still throwing
8 up or whatever, they were already in the water, which --

9 Q You saw James Dailey actually in the water?

10 A Yeah. I seen him standing out in the water and
11 what appeared to be her would have been in the water with
12 him.

13 Q Did she appear to be standing?

14 A No. She was -- you know, I could just see something
15 in the water, and he's standing up. I could see him waist
16 up or so in the water, you know.

17 Q Did it appear that she was being submerged under
18 the water?

19 A Yeah, because I just -- she was like -- I remember
20 I noticed she was by him in the water, but I don't know,
21 you know, if she was down under the water or just part of
22 her was showing or something, but I could see something by
23 him in the water which was her I'm sure.

24 Q Okay.

25 A And then at this point I went around and got in

1 A Yeah.

2 Q Okay. Tell me how you recognized it.

3 A It was a survival knife that he owned. It only
4 used to stay in the car between the seats all the time.

5 Q Had he had the knife ever since you met him two
6 years ago?

7 A I didn't really remember it from two years ago,
8 but when I first wanted him to move to Florida with me,
9 he reminded me that he still had his knives, and I just
10 took it for granted that he had them before. I -- I didn't
11 really remember it, but, from the way he put it, I knew he
12 must have had them when I had known him before because the
13 way he said it.

14 Q Why don't you describe that knife as best you can.

15 A It's like a military survival knife. It has like
16 a nut on the back end of it and then a type of leather handle
17 grip and then it's got a bayonet-type deals that come out.
18 One of them had a hole in it. And then it has a serrated
19 edge, like a saw edge, on the back of it. Then it kind of
20 curves up a little bit. It's maybe a five-and-a-half, six-inch
21 blade. And then it has a bloodline or whatever you call it.

22 Q An indentation --

23 A Yeah.

24 Q -- in the steel?

25 A Yep, along the blade.

1 A Within a couple of days before that or maybe
 2 I had seen it that day. Like I said, it had been there
 3 a couple of days, but it wasn't something that I noticed
 4 if it was or wasn't. If it wasn't, I just figured he
 5 had it in the house or had put it in the trunk because
 6 Gail moved it once in a while. She didn't necessarily
 7 like it being between the seat. She would stick it under
 8 the seat or put it in the back or something.

9 Q Okay. So, you were at the point where you were
 10 backing the car out, and he either just prior to or as you
 11 were backing out he jumped in the passenger side, correct?

12 A Correct.

13 Q What happened at that point?

14 A I just started driving out of there. I remember
 15 cussing him and calling him something.

16 Q Go ahead. What did you call him?

17 A I just called him a son of a bitch or something
 18 like that, and he just said, "Sorry, Jack." I remember
 19 saying something about, you know, "You killed her and they
 20 electrocute people down here for that," and I said, you
 21 know, "You killed me too," and he just was sorry, you know.

22 Q Did he -- was he apologizing to you?

23 A He was apologizing for getting me in trouble.

24 Q Okay.

25 A He just said -- it was like "Sorry I got you into

1 water or a splashing sound?

2 A Yeah, I think I remember hearing a splash
3 because I think I was looking to see it hit the water,
4 but I didn't see it, but I heard it. At this time I'm
5 sure I had my radio off, but if I had it on, I had turned
6 it down or something when he said pull over there.

7 Q Okay. So, then he got back in the car?

8 A Yes.

9 Q What happened?

10 A And we continued on to my house where we got out
11 and I went in the house and went in my bedroom, and he
12 followed me in because I remember hearing Gail or Oza
13 saying or one of them saying something about "Why are your
14 pants wet" or "How did you get your pants wet?"

15 Q Were his pants and shoes wet up to the waist
16 area?

17 A Yeah, the thigh area. I remember they were wet,
18 though.

19 Q Did you notice any blood on him anywhere?

20 A Sure didn't. Like I said, when I got in the
21 car, it was dark the whole time until we got to the house,
22 and I got out and just -- the doors on my side going in
23 the house, and I just walked straight on into my bedroom.
24 He would have followed me in ten to 15 foot to get around
25 and come into the house behind me.

1 the intercoastal waterway, and there was a bunch of
2 people standing on the bridge and police cars and
3 things down in the field by the water, and I drove
4 across and I just said something to the effect of again
5 about the son of a bitch. "Now what?" And he just said,
6 "Sorry I got you into this. What can I say?" or something.
7 And then we drove on around back up the beach and over
8 Belleair Causeway and back to the house.

9 Q Did he ever say to you he was sorry that he
10 killed a girl or just that he was sorry that he had
11 dragged you into a bad situation?

12 A I think I said something to him to the effect
13 about "Why -- why did you have to kill her?" and it was
14 just "I don't know. Sorry I got you into this," and it
15 wasn't -- it wasn't apologizing for killing the girl. He
16 was apologizing for me -- to getting me in trouble and
17 having me involved in the situation.

18 Q Okay. Okay.

19 A I went back home. I went back in my room.
20 Gail took off in the car. She was upset with me. She
21 just got her keys and jumped in and took off. She came
22 back in a half hour to an hour and I was packing the
23 suitcase or something, and I may have even told her to go
24 do laundry. I'm not sure, but she was still upset with
25 me. I may have went out and talked to her. She may have

1 anywhere. Just get away.

2 And then as soon as Gail got home, I discussed
3 it with her and said something about "Pack your stuff.
4 We are going to Miami." She wanted to know why. I told
5 her, "Don't worry about it. Just get ready. We are
6 going."

7 And I think while she was gone, I told Oza, you
8 know, "Come on. We are going down there," and he didn't
9 want to because his girlfriend was flying in to St. Pete
10 or Tampa, and I told him, "Well, we are not going to be
11 here. If you want to stay, go ahead. I'm going to Miami.
12 I'm getting out of here." He just took it from me that he
13 better go too.

14 Q Did you ever tell him somebody had been murdered?

15 A No. He kept asking me, and I kept telling him,
16 "You just don't want to know. It's just a terrible thing.
17 You need to come on. Let's go. You can call her and have
18 her fly in down there."

19 So, Gail got back, and I guess we probably had
20 -- well, most of our clothes were dirty since we just come
21 back from Kansas on Friday night or Saturday morning we
22 had arrived and all this happened on Sunday. So, we had
23 not been to the laundrymat or nothing for quite a few days,
24 and we had been traveling.

25 So, we went to do the laundry, and all four of

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Q Okay.

A And then we -- I don't remember going to a bar or anything there that night. I think Gail and I just stayed in our room all night.

Q During the drive between Pinellas County and over to Miami, did anybody talk about what had happened? you or Jimmy D.?

A I remember stopping at a gas station or something, and Gail or Oza, one of them, asked me about, you know, "Why are we going down there?" They were still pushing me as to what happened, and I just -- just told them that they didn't want to know. We just had to leave. Just don't even ask me about it. You don't want to know.

And then like we was pulling into a gas station or snack bar or something, you know, and went to get a pop or something, and I don't know which of them it was, but one of them I know asked me about it again. At that point, which it was just like them and me, and I expressed to them they didn't want to know, and then we went on down there.

I remember Gail questioning me more at the motel room. She probably even asked me, "Did Jimmy D. do something to that girl?" and I told her, "I don't know and you don't want to know anything anyway, you know."

And the next morning I went up in the room -- no. Gail and I walked in. I don't remember, but somehow I ended

1 BY MR. SLATER:

2 Q At some point did you become aware that there
3 was blood on any of your clothing or in the car or
4 anything like that?

5 A Yeah. It would have been on the way to Miami
6 or that night or the next morning. I noticed a couple
7 of little spots of blood on top of my shoe or dark spots
8 on them. They were almost white. So, then, you know,
9 when I looked at them and seen it, I figured it must have
10 been blood, and then I took -- you know, I had them off
11 or something. I was probably putting them on when I
12 noticed it. I remember looking at them and even the bottoms
13 had stains on it that I figured were blood. There were just
14 different lines going every which way, and, so, I figured
15 it was blood at that time, but I wore the shoes for a few
16 days, and then when I got to Denver four or five days later,
17 I threw them in the dumpster. I bought me a pair of boots
18 and threw them away.

19 Q What -- what items of clothing was James Dailey
20 wearing the night that Shelley was murdered?

21 A A pair of Levi's and a stripped tank top, muscle
22 shirt.

23 Q When you got back to the house, do you remember
24 whether he still had the shirt on or not that night?

25 A I'm not positive, but I think he took it off in

1 A While we was still over in the neighborhood,
2 we ran them two or three different places. I'm sure
3 there were someplace else that I even haven't mentioned
4 that we ran them, but I just don't recollect where it
5 was. It was somebody's house or something.

6 Q Right. And earlier you said that when you took
7 her home to change clothes, it wasn't really where she
8 lived, but a boyfriend's house, right?

9 A No, it was because I had been there in the past
10 month or two that I knew them. That's where one of her
11 sisters would want to go over there and get some clothes
12 that she had taken from them or something like that. You
13 know, she lived with some guy over there.

14 Q And somewhere on the way back to your residence
15 did you stop to eat?

16 A They wanted to eat, which I either ate or didn't
17 want to eat because I was drinking. So, I pulled over to
18 the -- crossed back across the street because I had missed
19 and went through a light and had to pull over in the Gulf
20 station or something. They went over to Kentucky Fried
21 Chicken and got some stuff.

22 REDIRECT EXAMINATION

23 BY MR. SLATER:

24 Q Who all went in?

25 A Stacey and the other girlfriend went in and Shella

1 Q Did he ever tell you that he was going to hurt
2 the girl?

3 A Sure didn't.

4 Q Okay. Did you ever in any way, other than the
5 one attempt you made to grab her, touch her or try to
6 touch her?

7 A I may have touched her that second time when I
8 fell down too.

9 Q Did you ever -- did you ever stab her?

10 A No.

11 Q Did you ever help hold her down while James
12 stabbed her?

13 A No.

14 Q Did you ever have sexual intercourse with her
15 that evening or at any time?

16 A No, not then or any other time either.

17 Q Did you ever attempt to have sexual intercourse
18 with her that evening?

19 A No.

20 MR. SHIPP: I don't have anything else.

21 MR. SLATER: Okay.

22 (Whereupon, the diagram was marked as Exhibit
23 Number 1.)

24
25

FURTHER WITNESS SAITH NOT.

58-61-9

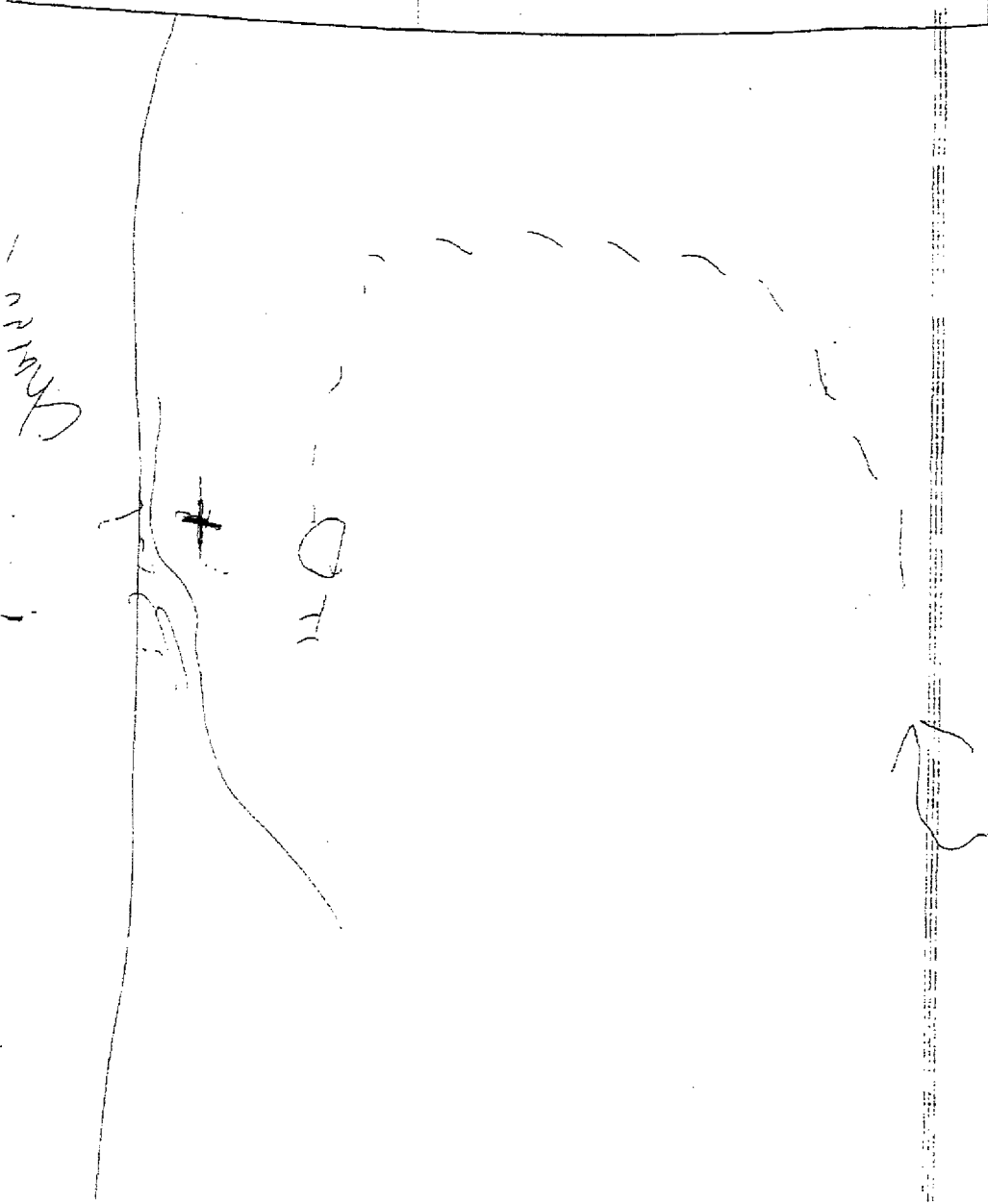
Exhibit #1

Intersect

Spring
P.O.S.

Channel

D.F.



COMPLAINT

THE CITY OF OLATHE, KANSAS, Plaintiff)
)
 V. Jack E. pearcy W/M, DOB: 5-13-55)
) Case No. 82000821
912 Woodside Dr., Olathe, Ks. 66061)
)
) Defendant.)

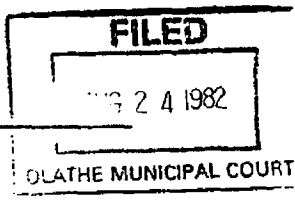
STATE OF KANSAS, COUNTY OF JOHNSON, SS. *Penillas Co. 50*
 The undersigned, complains that on or about the 15 day
 of August A.D. 1982, in the City of Olathe, County
 of Johnson, and State of Kansas, Jack E. Pearcy
 did then and there unlawfully and wilfully with knowledge or with
probable cause to believe that said acts will provoke an assault to wit:
did engage in conduct, to wit: pushed and verbally challenged the
complainant to a fight, which results in harassment of another, to wit:
Gregory J. O'Halloran
 in violation of Section 54D of Standard of Ordinance No. 239
of the City of Olathe, Kansas.

Gregory J. O'Halloran
 Complainant

Subscribed and sworn to before me this 15th day of August
1982.

Clifford O'Hill
 Municipal Judge/Court Clerk/Notary Public

My Appointment expires:



DOCKET

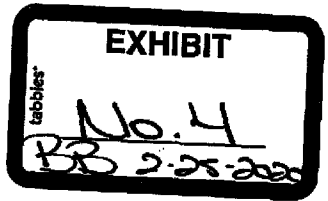
COMPLAINT FILED _____, 19____.
10-1, 1982. Defendant appears and pleads (guilty)
 (no contest).
 _____, 19____. Defendant appears and pleads not
guilty.

Bench Notes:

Disposition and Court Order:

G. 50th fine

Defendant shall stand committed until said judgment is complied with.



IN THE MUNICIPAL COURT OF OLATHE, KANSAS

The City of Olathe, Kansas

vs.

JACK E. PEARCY

(accused person)

912 Woodside Dr. Olathe Ks

(address)

JACKET 6A00218
Alert 2481371
CASE # 820098

NOTICE TO APPEAR

The City of Olathe, Kansas, To the above named accused person.

You are hereby summoned to appear before the Municipal Court of Olathe, Kansas, on the 15 day of October, 19 82, at 1:00 o'clock, P. M., to answer a complaint charging you with Disorderly Conduct

If you fail to appear a warrant will be issued for your arrest.
Dated August 15, 19 82

Suzanne J. O'Halloran
Signature of Official

PHI
Title of Official

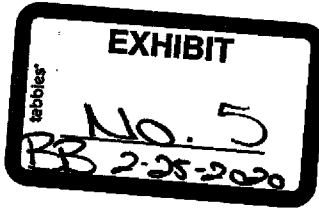
This information is restricted as to dissemination. I agree to appear in said court at said time and place.

Jack Pearcy
Signature of Accused Person

RETURN

The undersigned hereby certifies that on the 15 day of August, 19 82, the notice to appear was served, mailed, or delivered.

Suzanne J. O'Halloran
Law Enforcement Officer



IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CRIMINAL NO. 85-07851CFANO-C

STATE OF FLORIDA)

VS.)

JACK PEARCY,)

Defendant.)

RECEIVED
APR 17 1986
Ans'd.....

DEPOSITION OF: MICHAEL D. HUNTER.

TAKEN BY: Defendant.

BEFORE: Phyllis B. Pennington, RPR, CP,
Deputy Official Court Reporter.
Notary Public,
State of Florida at large.

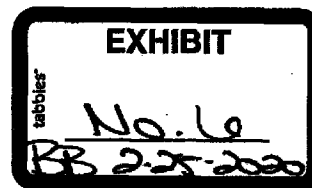
DATE: December 17, 1985.

PLACE: Criminal Courts Building,
Clearwater, Florida.

APPEARANCES: MR. LARRY SANDEFER,
MR. BOB HEYMAN,
Assistant State Attorneys,
Attorneys for State of Florida.

MR. RON CRIDER,
410 South Lincoln Avenue,
Clearwater, Florida 33516,
Attorney for Defendant.

**Tampa Bay
KANABAY**



KANABAY & KANABAY

Official Court and Shorthand Reporters

PLAZA SUITE 1400
201 E. KENNEDY BLVD.
TAMPA, FL 33602
(813) 224-9500

265 PINELLAS COUNTY BUILDING
150 FIFTH STREET NORTH
ST. PETERSBURG, FL 33701
(813) 821-3320

CRIMINAL COURTHOUSE
5100 144th AVENUE NORTH
CLEARWATER, FL 33520

1 Q Okay. That seven-week course was taught by who?

2 A The director was Fred Link (phonetic), who is a
3 retired Army polygraph instructor.

4 Q Did he teach all the courses or were there
5 different instructors?

6 A No, there were different instructors.

7 Q Several different instructors?

8 A Yes.

9 Q Are you a member of any kind of polygraph
10 associations or --

11 A I'm a member of the American Polygraph Association.
12 I'm a member of the Florida Polygraph Association. I have
13 attended various seminars around the state on polygraph.
14 I have also gone to the yearly seminar for the National
15 Training Center in New York.

16 Q Okay. Have you ever been certified or accredited
17 by any organization as being proficient in the operation of
18 this thing? Or do they do that?

19 A No. The APA, the American Polygraph Association,
20 comes and gives you an examination at the end of your course
21 to make sure you know what you are supposed to know.

22 Q Did you take that examination?

23 A I did.

24 Q Did you successfully pass that examination?

25 A Yes, I did.

BARBARA

OFFICIAL COURT AND
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1 A Approximately two and a half hours.

2 Q So that two and a half-hour period of time you
3 spent with Pearcy on June 20, 1985 is the extent of your
4 contact with him?

5 A Yes, sir.

6 Q Was there anyone present during the time that you
7 had contact with Mr. Pearcy?

8 A Yes. Frank Coleman was present.

9 Q Anyone else?

10 A No.

11 Q What was the purpose of your contact with Mr.
12 Pearcy?

13 A To run a truth verification polygraph to verify
14 that the statements he had given to detectives earlier were
15 in fact truthful.

16 Q Tell me what a truth verification process is.

17 A It's a process asking relevant test questions
18 which would be did-you-do-it questions: Did you stab her,
19 are you being truthful when you said this, or, are you being
20 truthful when you said that.

21 You compare that with control-type questions and
22 also with irrelevant questions which would be, you know,
23 is your name Jack, is today Friday, or whatever. A series
24 of questions comparing the control questions and the
25 relevant questions and trying to verify whether in fact on the

1 stabbed. He went out and tried to stop it and got sick,
2 threw up, fell down an embankment. That was basically it.

3 They thought that since he was actually an
4 eyewitness to a murder we needed to verify the truthfulness
5 of those statements that he was an eyewitness but not
6 involved.

7 Q Did Halliday tell you any facts or circumstances
8 concerning the physical evidence or other information that
9 they had which would lead him to believe Percy was not
10 being truthful?

11 A I don't believe he told me. I don't recall. He
12 may have told Frank.

13 Q Did he give you any indication as to whether or
14 not he believed Percy?

15 A No, he didn't.

16 Q Didn't give you any indication at all?

17 A No.

18 Q And he didn't tell you any, anything about physical
19 evidence or circumstances of the crime scene that would lead
20 him to disbelieve what Percy was saying?

21 A I don't recall John talking to me about that, no.

22 Q Okay. So at the time that you started this
23 truth verification process you had no preconceived idea at
24 all as to whether or not Percy was telling the truth or not?

25 A No.



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Q Was there anything in that case file that was inconsistent with the indication that you had got from Detective Halliday concerning Pearcy's story?

A The only thing I, I think that was inconsistent was the fact on the skid marks or the drag marks where they drag the body, you know, where it would appear to be obvious they were dragging it and then picked it up and carried it for a while and then throw it in the water.

And it would be kind of difficult for one person to do that if Pearcy had not been involved in it.

Q Okay. And you had reviewed that prior to the administration of the test?

A I believe so.

Q Anything else of that nature that you had knowledge of?

A No.

Q Everything else that you reviewed in the case file was consistent with, with Pearcy's story except that?

A I believe so.

Q Okay. Had Detective Coleman talked to anybody else other than Halliday?

A I don't know.

Q To your knowledge?

A I don't know.

Q Had Detective Coleman reviewed the case file to your



1 A Team testing.

2 Q Team testing concept. Can you tell me what that
3 means and what it is?

4 A It's just that two people are in the room at the
5 same time. Basically, Frank does most all of the talking.
6 I take notes. I run the instrument, make the adjustments,
7 make any notations on the instrument. He actually pushes
8 the button that indicates when the question was asked and
9 when the answer was given. I do all the writing on the
10 chart, all the adjustments on the instrument.

11 Q Tell me what you mean by "pushes a button."

12 A There's an automatic button that you push --
13 I showed you at the top of the chart earlier -- that when
14 the question, when you start talking, when you start asking
15 the first question, "Is your name Mr. Crider?," you push a
16 button and it makes an ink line on the paper and it stays
17 on until you let up on the button. At the end of the
18 question you let up on the button.

19 Then when he gives his answer yes or no, you hit
20 the button and it draws a sharp line.

21 Q So you know exactly when the question is asked
22 and exactly when the answer is given so that the response
23 on the chart corresponds with the answer?

24 A Right.

25 Q All right.

REDACTED

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1 that the main issue was whether in fact this man did stab
2 the girl or assist in the homicide in any way. That's what
3 we were trying to clear up.

4 Q How many questions did you ask him?

5 A Probably about five relevant questions.

6 Q Okay. What were those five relevant questions?

7 A Okay. We asked: Did you really see Jimmie Dailey
8 stab Shelley? Did you really believe Jimmie Dailey was
9 going to kill Shelley? Did you yourself stab Shelley? Did
10 you hold Shelley down so Jimmie Dailey could stab her? Did
11 you help Jimmie Dailey actually throw Shelley into the
12 water?

13 Q Those were the five?

14 A Correct. He replied yes to the first two and
15 no to the last three.

16 Q Okay. Did you ask him any other questions other
17 than the control questions?

18 A On the polygraph test?

19 Q Uh-huh.

20 A Yes.

21 Q What were the other questions that you asked him?

22 A We asked him: Do you live in the United States?

23 Q That would be like a control question?

24 A That's an irrelevant question.

25 Q Okay.

RANDY

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chitchat. I don't know.

Q Okay. Did he introduce you to Pearcy?

A I am sure he did.

Q Do you recall what he said?

A No, I don't.

Q Okay. Sergeant Coleman was there at that time also?

A Yes, he was.

Q To your knowledge was that the first contact he had with Mr. Pearcy?

A To my knowledge.

Q What happened after Mr. Pearcy was brought in?

A He just sat down and we started talking to him.

Q You didn't immediately hook him up to the machine?

A No.

Q You started talking to him, --

A Yes.

Q -- right? Did you read him his rights?

A I believe Frank did. I'm not positive, but usually he does.

Q Do you have a recollection of him reading him his rights?

A I don't have a recollection, no. We also have him sign a waiver form which basically tells him what his rights are in addition to other waivers.

Q Did he sign a waiver form?



1 Q Did anybody try and contact Mr. Pearcy's lawyer
2 to verify that he did not want to be present?

3 A I don't think either one of us did. I don't know
4 whether anybody else did or not.

5 Q To your knowledge nobody did?

6 A No.

7 Q Was there any other conversation at all concerning
8 Mr. Pearcy's rights or his lawyer, the fact that he was
9 represented by a lawyer?

10 A Not that I recall.

11 Q Did you or Sergeant Coleman talk about that at all?

12 A Not that I recall.

13 Q If Mr. -- if Mr. Pearcy's lawyer would have been
14 there would it have been common practice for you to allow
15 him to be present during the administration of the test?

16 A No. He would have had to wait outside in the
17 other room.

18 Q The testing procedure doesn't allow anyone else
19 to be present?

20 A No.

21 Q Okay. Did you have any conversation with James
22 Slater from the State Attorney's Office in regard to the
23 testing?

24 A I don't believe I ever talked to him.

25 Q Okay. Okay. What did you talk to Mr. Pearcy about

EMERY

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Defendant told you in response to questions?

A Yes, they do.

Q And then those notes were the basis of the police report?

A Right.

Q Does the police report accurately represent what the Defendant told you?

A Yes, it does.

MR. SANDEFER: Are they verbatim? Are they word for word --

THE DEPONENT: Whenever possible, yes, I copy exactly --

MR. SANDEFER: Do you know which ones are word for word and which ones aren't?

THE DEPONENT: I -- usually I put parentheses if they're word for word.

MR. CRIDER: What I would like to do is object for the record. I would like to conduct this procedure as a deposition should be conducted with me asking my questions first and the prosecution asking their questions when their turn arrives.

MR. SANDEFER: Obviously what you are trying to get at is whether that is discoverable, so I think we ought to cover all the issues, whether



1 bouncer in a bar and he "Broke a nigger's jaw." He said he
2 shot a guy in the butt and got thirty days for it. Another
3 time he stated that he had stabbed a guy a bunch of times
4 and left. But he didn't know whether the guy lived or died.
5 He left town and didn't ever find out.

6 That was concerning his prior acts of violence.

7 Q Now, do you normally ask somebody about prior acts
8 of violence?

9 A We do if we're trying to develop some control
10 material for questions.

11 Q Had you received information from the prosecutor's
12 office or from anybody else that requested information about
13 prior acts of violence?

14 A No, we had not.

15 If you are doing a polygraph test on acts of
16 violence you would try to get control material that also
17 had to do with hurting somebody in the past. You wouldn't
18 delve into it deeply as to who it was or what they did, but
19 just the fact that he had or hadn't hurt somebody in the past.

20 Q Okay. What -- is that all he said concerning these
21 prior acts? Give you any other information?

22 A Not that I recall, no.

23 Q Did you ask him how many times he had been
24 convicted of felonies or anything like that?

25 A I don't -- I don't believe so. Frank may have. I'm

**TAMPA BAY
KANABAY**

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1 And he pulled down there, pulled the car around
2 and then he sat in the car drinking wine coolers while
3 Jimmie D. and the girl got out supposedly to have relations
4 or whatever. He wasn't that clear on why they got out. He
5 said he was pretty drunk at the time.

6 He said that then he remembered a commotion alongside
7 the car and he looked out and saw Jimmie D.'s hand coming
8 up and down with a knife in it and that he figured at that
9 point the girl was getting stabbed. Stated that the knife
10 was one that was kept in between the seats in the Toyota.
11 That it was a survival-type knife.

12 He stated that after he saw what was going on he
13 got out of the car and ran around the back of the car to
14 try to stop Jimmie from doing what he was doing. That he
15 got sick, he vomited. He fell down, he tripped and fell down
16 a little embankment there alongside the car and that when
17 he got back up he noticed that the girl was finished anyway.

18 And so he said -- at that point I believe the first
19 story was that Jimmie then carried her to the water and
20 threw her in the water. And he got back in the car at that
21 point before she was carried to the water. He was back in
22 the car and cranked it up and was getting ready to leave.

23 And then Jimmie came over and got in the car and
24 got in with him and they drove away. That Jimmie directed him
25 to go to Wausingham reservoir, told him to stop the car and

TAMPA

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1 about the girl being taken to the water. At one point he
2 said he was in the car before that happened and at another
3 point he said he was not in the car yet, is that right?

4 A No. I believe he said that after he fell down
5 the embankment he climbed back up, looked at her and saw the
6 blood and, of course, he had gotten sick, was throwing up.
7 That then he realized that he watched Jimmie D. trying to
8 pull her away and looked and saw that there was just so much
9 blood that she was going to die, or she wasn't dead yet I
10 don't think but she was going to die, and that then he got
11 in the car and cranked it and started to move it. And about
12 that time Jimmie D. came back soaking wet and got in the car
13 and they drove off.

14 Q Was there another story that he gave then?

15 A He throughout the entire interview would continue
16 to remember and get flashbacks. And he would tell us from
17 time to time that he didn't want to remember, that it wasn't
18 going to bring her back. That, you know, he was trying to
19 repress all of his memory of the incident.

20 When asked -- originally when asked --

21 (Whereupon the deposition was temporarily
22 interrupted.)

23 MR. CRIDER: Back on the record.

24 MR. CRIDER:

25 Q I think we talked about you were telling me about



1 providing they were not bloody fingerprints, was there
2 any chance any bloody fingerprints were on the knife?"

3 To that he started getting more flashbacks and
4 said, "Well, it seems like I might have." Then he started
5 going towards the -- "Jimmie putting the knife in my hand
6 and told me that I was just as guilty as he was."

7 And then he started having flashbacks that -- when
8 we asked him, "Did you stab her?" He said, "No, I don't
9 remember stabbing her but, but I may have cut her once or
10 twice." And then as it progressed, "I may have -- I may
11 have cut her several times," and, "but I don't believe I
12 ever stabbed her." Okay. And he said he may have cut her
13 on the arms, he may have cut her on the head, he doesn't
14 recall for sure.

15 Then he starts saying that he's been having real
16 bad nightmares. In these nightmares he would --

17 Q Let me stop you. Are all these statements that
18 he made prior to being hooked up to the machine?

19 A No. This is a continuation. A polygraph test
20 is given in several segments. And if you see a problem
21 area on a particular question, it may not be the person's
22 being deceptive, it may be that he misunderstands the
23 question or whatever. So after each segment of a polygraph
24 test you stop and talk to the individual concerning reactions,
25 flashbacks, anything like that, any question that he feels

1 A I don't recall any, anything else, you know, other
2 than just that.

3 Q Did he ultimately --

4 A There may -- you know, it was a disjointed-type
5 thing. There may be other things that I'm just not thinking
6 about right now.

7 Q Did he ever tell you that he participated in
8 stabbing her?

9 A Never stabbing her. He said he remembered cutting
10 her with the knife, that he did have the knife, that Jimmie
11 made him hold the knife, that he told him that he was just
12 as guilty as he was. That they were both in it up to their
13 eyes.

14 He also said that Jimmie had made innuendo-type
15 threats toward his small son. Not a direct threat, that
16 it was an implied threat that if he ever told anybody about
17 what had happened that his son might meet with an untimely
18 death was the indication.

19 Q Okay. Now, what was his final version of what
20 his participation was in this thing?

21 A The final version was that he had cut her perhaps
22 several times.

23 Q Did he say where he cut her?

24 A He said he might have cut her on the head and
25 that he might have cut her on the arms and hands. But he

RAMSAY

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Q Did he go in the water?

A I don't believe he did. He didn't say he did.

Q Did he say why he cut her?

A He said because Jimmie made him, told him he had to do it.

Q And he said at one point he had picked her up?

A That he did take her by the hands and, while Jimmie carried her by her feet, and carried her for a short distance.

Q But he denied throwing her in the water or putting her in the water?

A I believe, yes.

Q Did he give you any indication as to why Jimmie killed her or stabbed her?

A No, not that I can recall.

Q Did he give you any indication that he knew it was going to happen beforehand?

A No, I don't believe he did.

Q Did he tell you anything else?

A Not that I can recall.

Q Did you ask him any other questions?

A I didn't, no.

Q Did Sergeant Coleman ask him anything that we haven't talked about?

A Not that I can recall.



1 a witness?

2 A It was the kind I would have wanted --

3 Q Does that concern anybody, that there was no
4 recording made?

5 A Concerned us afterwards. You see, originally we
6 thought that, that all we were doing is testing a -- verifying
7 a witness's truthfulness. And that would not necessarily
8 need to be recorded. Obviously, a confession would be
9 nice to have on tape.

10 Q Okay.

11 A Had we thought that he was going to confess, we
12 would probably have gotten a tape recorder and done it.

13 Q You could have easily done it?

14 A I could have done it. We would have had to go to
15 the other building and found one that was compatible and
16 hooked it up. It could have been done.

17 Q Compatible with what?

18 A With the microphone that we got in there. When
19 he signs the waiver form, it gives us permission --

20 Q To record --

21 A -- record, if necessary. But we just don't have
22 a recorder there at our disposal.

23 Q You could use the small hand recorders too, couldn't
24 you?

25 A I don't have one.

TAMPA

OFFICIAL COURT AND
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TAMPA
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1 A No.

2 B Okay. Have you talked to anybody about his
3 statements since then? Obviously you talked to prosecutors
4 about it. Have you --

5 A I -- no, I haven't talked to prosecutors about it.

6 Q Okay.

7 A The only thing that I -- I haven't talked to
8 anybody directly about it, no. I heard a rumor, but that
9 was all.

10 Q And I take it on the test questions that you
11 indicated to us that you asked him, the five questions,
12 that there was deception indicated?

13 A Yes, there was.

14 Q Which question was there deception indicated on?

15 A I believe -- hold on just a second -- definitely
16 deception on the question concerning, concerning "Did you
17 hold Shelley down so Jimmie D. could stab her?" Deception
18 on that.

19 Q Okay. Before we go to the next one, did he
20 admit to you that he had in fact held her down?

21 A I don't recall him ever saying point-blank that
22 he did. There was deception to the question "Did you
23 yourself stab Shelley?"

24 Q And there again he indicated ultimately that he
25 may have cut her?

AMERICAN

OFFICIAL COURT AND
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Q Okay. Did the Defendant make any other statements in response to questions by either you or Sergeant Coleman that we haven't talked about?

A Not that I can recall.

Q Did he make any other statements spontaneously or not in response to questions that we haven't talked about?

A Not that I can recall.

Q Okay. Did you do anything else in regard to this investigation?

A No, I didn't.

MR. CRYDER: I don't have any further questions. Do you want to read or waive?

THE DEPONENT: Read.

FURTHER DEPONENT SAITH NOT.

MICHAEL D. HUNTER

DATE

Michael D. Hunter
Clearwater



IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA

CIRCUIT CRIMINAL NO. 85-07851CFANG-C

STATE OF FLORIDA

vs.

JACK FARCY,

Defendant.

NOTICE OF FILING
OF DEPOSITION

MR. JAMES T. RUSSELL,
State Attorney,
Criminal Courts Building,
Clearwater, Florida 33520.

MR. ROY CRIDER,
416 South Lincoln Avenue,
Clearwater, Florida 33516.

Gentlemen:

PLEASE BE NOTIFIED that on this 16 day
of April, 1986, I have delivered to the Clerk of the
above-captioned court at Clearwater, Pinellas County,
Florida, the deposition of MICHAEL D. HUNTER, taken before me
on the 17th day of December, 1985, at Criminal Courts
Building, Clearwater, Florida, for filing in said cause.

I HEREBY CERTIFY that on this 15 day
of April, 1986, I have delivered copies of the above
Notice of Filing to each of the above-named addressees,
at the addresses indicated as above.

Phyllis B. Pennington
PHYLLIS B. PENNINGTON, RPB, C.F.
Notary Public,
State of Florida at large.
My commission expires: 5-11-86.



April 2017 Affidavit

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

Case No. 1985-CF-007084

James Dailey,
Defendant.

STATE OF FLORIDA)

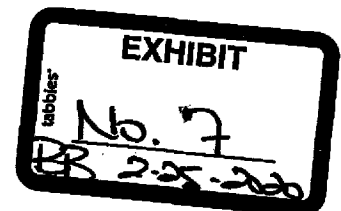
) ss

COUNTY OF SUMTER)

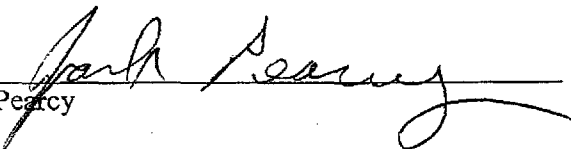
Affidavit of Jack Edward Percy, Jr.

I, Jack Edward Percy, Jr., declare on this 20th day of April 2017, and pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct:

1. My name is Jack Percy and I am an inmate at Sumter Correctional Institution. My DOC number is: 106311. I was James Dailey's co-defendant in the above mentioned case.
2. I was tried and sentenced to life imprisonment with the possibility of parole for the murder of Shelly Boggio.
3. On the evening of May 5, 1985, James Dailey, Gayle Bailey and I left my house in Seminole with Stacy Boggio, Shelly Boggio, and Stephanie Forsythe. We dropped Stacy Boggio and Stephanie Forsythe off at a nearby house or apartment.



4. James Dailey, Gayle Bailey, Shelly Boggio and I went to Jerry's Rock Disco where we drank and danced. Afterwards, we returned to my house in Seminole.
5. Gayle Bailey went into the bathroom. As Shelly and I were leaving the house, Oza Shaw – a friend who was staying at the house – asked me to drop him off at a pay phone so he could call his ex-wife.
6. Oza Shaw, Shelly Boggio and I left the residence in Gayle Bailey's car. James Dailey was not with us.
7. I dropped Oza Shaw off at the pay phone and left, alone, with Shelly Boggio.
8. I returned to the residence approximately one hour to one and half hours later alone. Shelly Boggio was not with me.
9. James Dailey was not present when Shelly Boggio was killed. I alone am responsible for Shelly Boggio's death.
10. I am available to testify at an evidentiary hearing and, if I am called to do so, I would testify consistently with this affidavit.



Jack Pearcy

FURTHER AFFIANT SAYETH NAUGHT.

Sworn and subscribed before me this 20th day of April, 2017, by Jack Pearcy,

who is personally known to me or has produced the following identification:

inmate identification card



Notary Public, State of Florida

