

1 taken from Mr. Zagorski by Sheriff Emery, Detective Perry, and
2 the Assistant District Attorney, Dee Gay, at the jail.

3 THE COURT: I am familiar with that. I believe
4 that was set forth in your motion.

5 MR. WILKS: Yes, sir. And the District Attorney
6 has responded to our discovery request by letter and said that
7 the length of this statement was too long to set out in
8 writing. So we do not have a transcription of this statement
9 to attach to our motion. As Your Honor knows, there was
10 counsel present for the State; there was not counsel present
11 for the defendant, even though on the same date counsel was
12 appointed. We're not exactly sure which came first, whether
13 the statement was taken and counsel appointed for the
14 defendant later or not. But nevertheless, a statement was
15 taken from the defendant.

16 At this time, Your Honor, I think, as the Court
17 knows, the defendant had, while involved in a shootout with
18 police in the State of Ohio, been wounded. He was ambulatory
19 but, nevertheless, he was subjected to an interrogation at the
20 jail. At this point in time, Your Honor, my discovery records
21 do not reflect a waiver from the defendant as to this
22 statement. The State may have that in its files, but as yet I
23 cannot find a copy in mine that I have received by discovery
24 from the State.

25 The State, Your Honor -- and I would like to cite a

1 all, Sheriff?

2 A. Since '72, some ten or twelve years.

3 Q. Did you have occasion to go to the State of Ohio to

4 meet a person named Edmund George Zagorski?

5 A. Yes, sir.

6 Q. When did you meet with Mr. Zagorski?

7 A. The first time was near the end of May. Then the

8 second time was when I went to pick him up. I believe it was

9 on the 27th, the day we talked to him at the hospital. We

10 brought him back here the 31st.

11 Q. You did talk to him at the hospital on May the

12 27th?

13 A. Yes, sir.

14 Q. Who was with you when you spoke with him?

15 A. Detective Stollard from Ohio -- Ironton, and Perry.

16 Q. Ronnie Perry?

17 A. Ronnie Perry from my office, and I believe there

18 was another officer from up there present in the room, but I

19 don't recall his name.

20 Q. Was Mr. Zagorski advised of his constitutional

21 rights according to the Miranda decision before you spoke with

22 him?

23 A. Yes, that's the first thing we did.

24 Q. Did he fill out an admonition and waiver form?

25 A. Yes, sir.

1 ask him any questions about anything?

2 A. The only one I recall asking at all was did he know
3 a Myers, some Myers fellow that came up in the investigation.
4 I just happened to think about it, and I just asked him if he
5 knew of anybody by that name, and he replied that he didn't.

6 Q. That was it?

7 A. That was it.

8 Q. When did you arrive here in Robertson County from
9 that trip?

10 A. As I recall, somewhere around nine or ten o'clock
11 that night, the 31st of May.

12 Q. The night of the 31st?

13 A. Yes, sir.

14 Q. The next day, was there any meeting arranged with
15 Mr. Zagorski and other people?

16 A. Yes. He was concerned over the money. At this
17 point we contacted Dee Gay to meet with him.

18 Q. Dee Gay, the Assistant District Attorney?

19 A. Yes, sir, and myself and Ronnie Perry talked to him
20 in my office.

21 Q. What time of day or night was this conversation or
22 meeting?

23 A. As I recall, it was in the morning, nine or ten
24 o'clock.

25 Q. When this meeting commenced, had Mr. Zagorski been

1 appointed an attorney?

2 A. No, he came up later on a special arraignment.

3 Q. Who came up later?

4 A. Zagorski came up to the -- he was brought up later
5 for special arraignment and to appoint him attorneys.

6 Q. Later after the meeting?

7 A. Yes, sir.

8 Q. There was a meeting?

9 A. Yes.

10 Q. Just tell the Judge how the meeting got started.

11 A. The Assistant District Attorney, Dee Gay, asked Mr.
12 Zagorski and myself and Ronnie Perry had he been advised of
13 his rights and he said that he -- Ed Zagorski replied that he
14 had been advised of his rights and understood them. He said,
15 you understand that you have the right to have an attorney
16 present for questioning, and he said, yes, that he did. And
17 he -- Dee Gay asked him if he wanted to tell us about it, and
18 Zagorski replied that we already had his statement. And Dee
19 Gay told him at this time that he had no opportunity to
20 discuss it with myself or Ronnie Perry about what we had
21 talked to him about, and he was just there to give him an
22 opportunity -- if he wanted to tell him, that he wasn't
23 familiar with the statement, which at that point we had
24 nothing.

25 He said, well, he didn't feel that he needed to

1 answer any questions about the case at that time, you know,
2 that he would probably talk to an attorney later.

3 Q. Well, let me ask you; what were his words?

4 A. Okay, he advised us at this point that he would
5 talk to us about his background. Dee Gay, as I recall, asked
6 him would he just give us some information about his
7 background.

8 Q. Was any discussion had between Mr. Gay or Mr.
9 Zagorski about whether or not the murders were going to be
10 talked about?

11 A. Dee Gay told him, you know, if you don't want to
12 answer anything about that, we just want to get some general
13 information from you. You can stop answering at any time; he
14 told him this at that point again; that you can stop answering
15 at any time; that we need to get some information about your
16 background.

17 Q. Was it made clear, Sheriff Emery, to Mr. Zagorski
18 that you weren't going to ask, or Mr. Gay wasn't going to ask
19 any questions about the murders?

20 A. That's correct.

21 Q. Was that satisfactory to Mr. Zagorski?

22 A. Yes, sir.

23 Q. What did he say?

24 A. He said, fine, he would answer the questions; that
25 he understood that he didn't have to answer anything without

1 an attorney.

2 Q. Well, were questions asked about his background or
3 his past?

4 A. It was asked about Jimmy Blackwell, if he knew him.
5 He advised us that he had done dope deals with Jimmy
6 Blackwell. At this point Mr. Zagorski appeared to be very
7 angry with Mr. Blackwell, and Dee Gay was not aware of why.
8 Mr. Zagorski had read the affidavit on the warrant.

9 Q. The arrest warrant?

10 A. The arrest warrant, which named Jimmy Blackwell as
11 giving certain information. Mr. Zagorski made -- said that he
12 had done the dope deals with Blackwell before, and he had
13 known him a pretty good while. We talked on about general
14 information, where he had been. He went into some things
15 about mercenaries.

16 Q. What did he say?

17 A. That he had been dropped off by plane, parachuted
18 into Hickman County, and he was thinking about going to some
19 type of mercenary school in the Columbia, Tennessee area; that
20 he had heard there was one there.

21 Q. Did he tell you where he had come from?

22 A. He said that he had been a riverboat -- a boat
23 pilot in Louisiana, and he had been a mercenary since about
24 1980; that he came up here for some training, extra training.

25 Q. Did you ask him who he was a mercenary with?

1 A. Yes, and he said he didn't want to answer that, and
2 we didn't question him any more about who it was. We asked
3 him about Blackwell and some of the people that just came up
4 casually in our investigation. This had been going on two or
5 three weeks prior to picking him up. It evidently wasn't
6 worthy of taking notes on. He either said he didn't know them
7 and that was the end of it.

8 Q. How did you get to talking about drugs, Sheriff?

9 A. Okay, he was talking about the mercenaries, and he
10 said the way mercenaries finance their operation is mostly
11 through drugs, through the sale of drugs; that they bring them
12 back from the country they're working in and sell them to help
13 finance. And then he said there was other ways to finance
14 them. He didn't elaborate on that, and we didn't question him
15 on it. But somewhere during that point of the conversation he
16 said something to the effect, I might as well make it easy on
17 you.

18 Q. Before you say that, let me ask you about what you
19 mentioned earlier in your testimony. You said that he
20 apparently was mad at Jimmy Blackwell. How did that come out?

21 A. When we were talking about Blackwell, he blurted
22 out, makes me mad that Jimmy would betray me over the knife
23 case. That was in the affidavit.

24 Q. What's the knife case?

25 A. The knife case was this boot type knife,

1 double-edged knife, the scabbard that the knife goes in.
2 Q. What did that have to do with anything?
3 A. It was in the affidavit that was found at the scene
4 of ...
5 Q. Where the bodies were found?
6 A. Bodies were found.
7 Q. Mr. Zagorski had read the affidavit?
8 A. Yes, sir.
9 Q. So what did he say about that?
10 A. What he blurted out at this point was that it made
11 him mad that Jimmy would betray me over the knife case.
12 Q. Then where did the conversation lead?
13 A. Okay, he said that, I might as well make it easy on
14 you, or something to that effect. At this point, Dee Gay
15 stopped him.
16 Q. Why?
17 A. He stopped him and advised him that he didn't have
18 to answer any of that without an attorney present.
19 Q. What did Mr. Zagorski say?
20 A. He continued to talk.
21 Q. What did he say?
22 A. He said, I might as well make it easy on you.
23 Q. On who?
24 A. Make it easy for us; that he would just go ahead
25 and tell us, you know.

1 charge here?

2 A. Yes, sir.

3 MR. WHITLEY: Your Honor, I'd like to make this rap
4 sheet part of the record.

5 THE COURT: All right.

6
7 (Whereupon, Exhibit No. 2 was marked and
8 filed.)

9
10 THE COURT: Anything else, General?

11 MR. WHITLEY: Your Honor, that's all of my direct.

12 CROSS EXAMINATION

13 BY MR. WILKS

14 Q. Now, Sheriff Emery, with regard to the June 1, 1983
15 statement from the defendant, I understood your direct
16 testimony to be that you weren't going to ask him any
17 questions about the homicide. Is that right?

18 A. Yes, sir.

19 Q. Now, this interrogation, it took place in your
20 office?

21 A. Yes, sir.

22 Q. Was the defendant shackled?

23 A. I imagine -- he might have had leg irons on, yes,
24 sir.

25 Q. Did he also have the wrist or belly chains on at

1 that time?

2 A. I don't recall if he had one or both on at that
3 time.

4 Q. I believe you returned from Ohio on May the 31st.
5 Is that right?

6 A. Yes, sir.

7 Q. About what time did you all return?

8 A. It was, I believe, nine or ten o'clock when we got
9 in.

10 Q. At night?

11 A. Yes, sir.

12 Q. Nine or ten p.m. on May the 31st. At that time was
13 the defendant placed in a special cell at the jail that you
14 had prepared for him?

15 A. I don't recall if he was put in that. It might
16 have not been finished hardly when we got back.

17 Q. Where would he have been put, if he was not put in
18 the special cell?

19 A. One of the drunk tanks, more than likely, if we did
20 not have that cell finished.

21 Q. So he was segregated from the rest of the
22 population?

23 A. He was segregated, yes, sir.

24 Q. Now, I believe that you have relied on an execution
25 and waiver from your May 27 or 28 interrogation of the

1 Q. Now, Sheriff, if you would, come down to
2 approximately the middle of the page where it says, (Reading)

3 Emery: Okay, now that you know what your
4 rights are, let's turn on the tape recorder.
5 There. See what you want to answer.

6 Do you have that place with me?

7 A. Yes, sir.

8 Q. Mr. Zagorki's response was, (Reading)
9 I wasn't going to make no statements or
10 answer any questions.

11 Is that correct?

12 A. Yes, sir.

13 Q. Next line, (Reading)

14 Mr. Emery: You don't want to answer any
15 questions at all?

16 Mr. Zagorski: If you will (inaudible).

17 It's pretty serious (inaudible).

18 Mr. Emery: Yes, sir.

19 Mr. Zagorski: It's not that I'm trying to
20 get -- hard to get along with, but --

21 Mr. Perry: I know what you mean, Buddie.

22 I know what you mean.

23 There are several questions there that really aren't relevant
24 to this inquiry. If you would turn to the second page, about
25 a third of the way down where Mr. Emery asks -- I believe you

1 asked Mr. Zagorski a question, from where. Do you find that
2 line?
3 A. What did you say now?
4 Q. On the second page, about a third of the way down.
5 A. Yeah.
6 Q. Mr. Zagorski responds, (Reading)
7 Well, I better not. There is other people
8 involved and I better not answer any
9 questions (inaudible).
10 A. Yes.
11 Q. That's correct, is it not?
12 A. Yes, sir.
13 Q. This is after he has executed a waiver. Is that
14 correct?
15 A. Yes, sir.
16 Q. If you would, help me by reading the next thing
17 that you said.
18 A. (Reading)
19 Jimmy Blackwell and Salli picked you up?
20 Q. And Mr. Zagorski responded, (Reading)
21 Who, Jimmy Blackwell? See, I knew there
22 would be questions like that (inaudible).
23 Well, like I said, I really should not talk
24 about it.
25 Is that correct?

1 A. Yes, sir.

2 Q. Would you read the next thing that you said?

3 A. (Reading)

4 Well, I'm really not dealing in the homicide.
5 I'm just asking you some questions. It's
6 your right to remain silent.

7 Q. Mr. Zagorski responded, (Reading)

8 Like I said, I guess I really should talk
9 to a lawyer (inaudible).

10 Is that correct?

11 A. Yes, sir.

12 Q. Isn't it true that the questioning should have
13 stopped at that time?

14 A. Well, at the front part of this -- part of it
15 there, what he said there, and they couldn't read in the tape,
16 was the fact that, you know, we wanted just basically some
17 information about his history; not anything doing with the
18 murder, and he agreed to answer that. All these questions
19 were dealing with how he got to Hickman County, nothing about
20 the murder or anything after the date he got there; just how
21 he got to Hickman County from Louisiana.

22 Q. So the same -- you're saying the same thing
23 occurred on June the 1st, that you and District Attorney Gay
24 and Mr. Perry advised him, we're not going to ask any
25 questions about the murder; we just want some background

1 information?

2 A. Yes, we tried to find out -- as you can see, he
3 didn't answer anything about Blackwell much in there.

4 Q. But as I understand your direct testimony, you said
5 that Mr. Zagorski stated to you and Mr. Gay and Mr. Perry on
6 June the 1st that he didn't want to answer any questions
7 without a lawyer being present?

8 A. Yes, sir.

9 Q. Nevertheless, the interrogation continued after
10 that?

11 A. We asked him if he would answer questions about his
12 background. We had nothing on him.

13 Q. But you continued to ask him questions. Is that
14 correct?

15 A. Yes, sir.

16 Q. After he made that statement?

17 A. After he agreed that he would talk to us about
18 those type questions.

19 Q. What I'm saying is, you continued to insist on
20 asking him these sort of questions, even after he had asked
21 for a lawyer. Is that correct?

22 A. No, we didn't insist on asking him anything. He
23 agreed to that because he was apparently the type of character
24 that, you know, well, I'll answer those questions or, you
25 know, I just don't want to deal in this, and that's the type

1 question we proceeded with.

2 Q. But I understood your testimony on direct to be
3 that he said he didn't want to -- at least on one occasion in
4 your interview he said, I don't want to answer any questions
5 about the murder without a lawyer being present. Is that
6 right?

7 A. Yes, sir.

8 Q. Nevertheless -- let me back up and ask you one
9 other question. Isn't it also true that he said that he
10 didn't want to answer any questions without a lawyer being
11 present, just like he did on May the 27th when he said, I
12 guess I should -- I probably should talk to a lawyer.

13 A. No, not on the first; not any questions, no.

14 Q. You've said that the interrogation on June the 1st
15 started about nine or ten o'clock. Is that right?

16 A. As I recall.

17 Q. How long did it go on?

18 A. Maybe an hour or less.

19 Q. What time did Mr. Zagorski come to the courthouse?
20 Do you recall?

21 A. No, sir, I don't. I believe it was one o'clock,
22 but I'm not sure.

23 Q. Were you and Mr. Gay and Mr. Perry all three
24 present during the course of the conversation?

25 A. Yes, sir.

1 his background and how he ended up in Hickman County, and he
2 rambled a lot about mercenaries and boats and this type thing.
3 It was a lot of that went on during the thing.

4 Q. Did he ever, during the course of your conversation
5 with him on June the 1st, specifically refuse to answer any
6 specific questions?

7 A. There was things he said, even after he started in
8 on this, like who was with him, you know, after he told us
9 this. He would say, I don't want to answer that. He wouldn't
10 answer anything else about it.

11 Q. Would you continue to ask him questions after he
12 had refused to respond to your question?

13 A. No, he never refused to respond to any particular
14 question. He was told, like I said, three or four times that
15 he had the right to stop at any time or not answer any
16 question he didn't want to. When it was a question he didn't
17 want to answer, he just flat told us he didn't want to answer
18 it. Dee Gay asked him, if you're not involved in the murder,
19 why don't you tell us who done it then? He said, I didn't say
20 I wasn't involved in the murder.

21 Q. I thought you weren't going to ask him any
22 questions about the murder?

23 A. This was -- that's right, on the front. After the
24 third time -- when he started to talk about it -- at the point
25 he said, I want to make it easy on you -- I'll just make it

1 easy on you and tell you then, Dee Gay stopped him. He
2 interrupted him and told him, you know, if you're going into
3 the murder, you have the right to talk to your attorneys
4 first. He said, I'll just go ahead and make it easy on you.

5 Q. Why didn't you all stop and execute a written
6 waiver?

7 A. We already had one, you know, that he had signed
8 that he had been read his rights and knew what his rights
9 were, and he had been told numerous times he had the right to
10 have an attorney there before he answered any questions;
11 verbally, he was told numerous times.

12 Q. But you all three knew this was a murder case?

13 A. Yes, sir.

14 Q. You knew that the defendant didn't have an attorney
15 appointed yet, according to the timing that you've given us?

16 A. Yes, sir.

17 Q. You knew that it had been since May the 27th or
18 28th since he had executed any kind of waiver, and you knew
19 that during that conversation at Cabell-Huntington Hospital on
20 the 27th that he had specifically asked for a lawyer. So why
21 didn't you stop and get a written waiver on June the 1st?

22 A. Because we were satisfied with a clear conscious he
23 knew what his rights were, and he was told the part about the
24 attorney numerous times.

25 Q. Sheriff Emery, is it true that there was some

1 THE COURT: Were there other statements?

2 MR. WILKS: Yes, sir, there were two other possible
3 statements, Your Honor. Your Honor, would you prefer to rule
4 on each statement as it comes up or wait until the end and
5 make one ruling?

6 THE COURT: I believe I'd rather wait.

7 MR. WILKS: Yes, sir. Your Honor, the next area of
8 inquiry in our motion to suppress statements concerns July the
9 27th, 1983, and August the 1st, 1983, and possibly on some
10 other occasions, but we're not sure. The defendant was
11 interrogated by Detective Perry. Your Honor, these contacts
12 occurred clearly after counsel had been appointed for the
13 defendant. They took place without any notice being given to
14 counsel for the defendant. They occurred at the jail. They
15 occurred at a time the defendant was in solitary confinement
16 in the jail in an eight by eight foot steel room. It occurred
17 at a time when the heat in the jail, all over the jail, was
18 almost unbearable, but it was particularly so where the
19 defendant was kept because he was, in fact, segregated from
20 the rest of the population, and had been for a significant
21 period of time. There was little, if any, ventilation.

22 The Sheriff's Department had been kind enough to
23 provide a small fan that blew through about an eight inch area
24 where there were steel bars, and everywhere else surrounding
25 the defendant was steel, solid steel. It was a time when the

1 A. Yes, sir, he had a bullet-proof vest on.

2 Q. Were these the reasons he was placed in this

3 isolation cell in Robertson County?

4 A. Part of them, yes, sir.

5 Q. Did Judge Pellegrin, the Criminal Court Judge at

6 that time, know that he was placed in an isolation cell?

7 A. Yes, sir, I believe he did.

8 Q. What occasioned you to talk to Mr. Zagorski on July

9 the 27th of 1983?

10 A. I previously received two notes from Mr. Zagorski

11 saying that he wanted either to see myself or the Sheriff.

12 Q. From whom did you receive the notes?

13 A. They were put in our -- we've got a box downstairs

14 that we get messages and notes, and they were put in that box.

15 Q. When did you receive the notes?

16 A. When did I receive them? I believe it was July

17 22nd.

18 Q. At the time you received the notes, had you

19 initiated any contact with Mr. Zagorski?

20 A. At the time I received them?

21 Q. Right.

22 A. No, sir.

23 Q. Had the Sheriff, to your knowledge?

24 A. No, sir.

25 Q. Had any law enforcement officer sent word to Mr.

1 Zagorski that you wanted to talk to him?

2 A. No, sir.

3 Q. I've got two scraps of paper here with some writing
4 on it. See if you can identify those.

5 A. Those are the notes received from Mr. Zagorski.

6 Q. The first one says what?

7 A. (Reading) I need to see the Sheriff or Ron Perry,
8 Ed Z or E.D.Z.

9 Q. What does the next one say?

10 A. (Reading) I need to talk with Ron Perry or the
11 Sheriff. It's got, E.D.Z. on it.

12 Q. Did you receive both of these notes at the same
13 time?

14 A. Yes, sir, I got them out of the box at the same
15 time.

16 Q. Is that the first time you were aware of them?

17 A. Yes, sir.

18 MR. WHITLEY: I'd like to make these a collective
19 exhibit and hand them to Your Honor.

20 THE COURT: All right.

21

22 (Whereupon, Exhibit No. 3, collective, was
23 marked and filed.)

24

25 Q. When you received these notes on July the 22nd, Mr.

1 Perry, did you go and see Mr. Zagorski that day?
2 A. No, sir, not on that day, I didn't.
3 Q. You went to see him on July the 27th?
4 A. Yes, sir.
5 Q. Why did you wait from the 22nd until the 27th to
6 see him?
7 A. I really hadn't got no good reason for it; just
8 being busy.
9 Q. No particular reason?
10 A. No particular reason.
11 Q. Did you have any idea what he wanted with you?
12 A. None whatsoever.
13 Q. What happened when you went to see him?
14 A. Well, I believe it was before the preliminary
15 hearing in General Sessions Court. I was at the District
16 Attorney's Office, and I got a phone call from the jailer
17 saying that Ed wanted to talk to me before we went to court.
18 Q. Ed Zagorski did?
19 A. Yes, sir. He said it was real important. So I
20 went back down to the jail and went in the lower cell block
21 into Ed's cell and asked him what he needed. He asked me,
22 said, what's going to happen today? I said, well, we've got
23 to show proof, and then it will probably be bound over to the
24 Grand Jury. He said, are my lawyers going to be there? I
25 said, yes. He said, well, I'll tell you what I'll do -- if

1 you'll let me pick the type execution and the day of
2 execution, I'll confess to these murders. I told him, I said,
3 look, man, you need to stop right here and go talk to your
4 lawyers; don't be doing stuff like this right now. He said,
5 well, he didn't need to talk to his lawyers; he knowed what he
6 wanted to say. I said, well, I think you need to talk to
7 them. He said, well, them men wasn't killed up here. I said,
8 they wasn't?

9 Q. He said what?

10 A. He said, those two men weren't killed up here.

11 Q. Weren't killed up here?

12 A. I said, they wasn't? He said, no, they were killed
13 down in Hickman County and Boiling Springs. That was about
14 the extent of the conversation.

15 Q. Well, did you ask him any questions?

16 A. Not that I can remember.

17 Q. Did he provide any other information, other than
18 the fact that the men weren't killed up here; they were killed
19 in Boiling Springs?

20 A. Not that I can remember at that time.

21 Q. Did you have another occasion to talk to Mr.
22 Zagorski?

23 A. Yes, sir, I did.

24 Q. When was that?

25 A. I believe it was on -- I forgot that date.

1 Q. Mr. Wilks mentioned earlier the date of August the
2 1st. Does that help you?

3 A. Yeah, I believe that's correct, August the 1st.

4 Q. Tell the Judge how that came about?

5 A. Well, I was in the office and the jailer called me
6 and told me that Ed was wanting to talk to me. He said it was
7 pretty important again. I said, well, I'll be down in a few
8 minutes. I went downstairs and they got him out. We went in
9 the Lieutenant's office and sat down and started talking.

10 Q. What did he say?

11 A. He was wanting to talk about the murders again. He
12 said that he wasn't the trigger man in the murders, but he did
13 have something to do with them. He said that he just set them
14 up; said he was hired by a man from -- no, it was a man from
15 Florida that was the trigger man, and all he done was drove
16 them to the spot in Boiling Springs. He got out of the car,
17 Porter and Dotson got out of the car, and they were shot.

18 Q. Did he say how they were brought up here?

19 A. He said they were put in plastic bags and carried
20 up here.

21 Q. Did he say what his job was with regard to the
22 murders?

23 A. Just set the murders up. He said that Dale
24 Dotson's killing was a mistake. He said the person he was
25 hired to kill was Jimmy Porter.

1 Q. Did he say why?

2 A. He said it was drug related. That was all he would
3 say.

4 Q. Did he say how long it took for them to be killed?

5 A. About five seconds. That's what he said.

6 Q. Well, again, on this August 1st date, did you ask
7 Mr. Zagorski any questions?

8 A. None that I can think of.

9 Q. The second time that you went down to see Mr.
10 Zagorski, did he acknowledge that he had sent for you?

11 A. I did ask him a question. I said, was you wanting
12 to see me? He said, yeah. He said, you're a hard man to get
13 ahold of.

14 MR. WHITLEY: That's all I have on direct, Your
15 Honor.

16 CROSS EXAMINATION

17 BY MR. WILKS:

18 Q. Detective Perry, you were present when the
19 defendant, Ed Zagorski, executed a waiver in West Virginia?

20 A. Uh-huh.

21 Q. When Ed Zagorski got ahold of you - or whatever
22 occurred on July the 27th and August the 1st - and left you
23 those notes, when you went in the cell or the office to talk
24 to Ed Zagorski, were you still relying on that waiver
25 executed?

1 A. Well, I wasn't really interrogating him or
2 anything, but if I had been interrogating him, I would have
3 relied on that waiver.

4 Q. After you asked Mr. Zagorski what can I do for you
5 or whatever, did you ever at any time ask him any other
6 question on July the 27th?

7 A. July the 27th?

8 Q. Yes, that's the first statement.

9 A. As far as asking him any questions, I can't recall
10 that I did. The only thing I done on that day was told him
11 that he really needed to talk to his lawyers before he made
12 any kind of statements to me like that.

13 Q. It's my understanding -- and you correct me if I'm
14 wrong -- isn't it true that he said that he wanted to be
15 executed on Halloween night at midnight, and he would confess
16 to these statements?

17 A. (Responded in the negative.)

18 Q. That's not correct?

19 A. I didn't hear it, if it is.

20 Q. Let me ask you again then: what were his exact
21 words when he said something about if I could name my
22 execution?

23 A. He told me, he said, you know, Ron, I'd confess to
24 these murders if you all would do one thing for me; if you all
25 would let me pick the type of execution and the date and time

1 of execution. I told him, I said, you need to start talking
2 to your lawyers, Ed; you don't need to be telling me stuff
3 like that.

4 Q. He didn't say he wanted to be shot by firing squad
5 at midnight on Halloween night?

6 A. No, not to me, he didn't.

7 Q. Now, let's go back in time for just a moment. You
8 understand that Ed Zagorski had been incarcerated in the
9 Robertson County jail since May the 31st?

10 A. Uh-huh.

11 Q. That he had been incarcerated in that eight by
12 eight foot special cell since May the 31st or as soon
13 thereafter as it was completed. Do you remember if it was
14 completed when he first came there?

15 A. I don't think it was.

16 Q. Do you know how long it was before he would have
17 been moved into that cell?

18 A. It wouldn't have been long.

19 Q. A day or two, at most?

20 A. I can't say for sure, but I don't think it was
21 long.

22 Q. Give or take a day from June the 1st, Ed Zagorski
23 had been segregated from the rest of the population in the
24 jail. Is that right?

25 A. Yes, sir.

1 defendant as a high security risk. Is that correct?

2 A. Yes, sir.

3 Q. Isn't it true that no one but Ed Zagorski has ever
4 been in that eight by eight foot cell at the jail?

5 A. It was built --

6 Q. Just for him?

7 A. It was built so we would have a security cell.
8 We're presently in a Federal suit, and we didn't have any
9 isolation cell; therefore, we cannot have disciplinary
10 hearings or anything on any prisoners. We had started on it.
11 It was already a cell isolated by separate doors, so we
12 decided we'd just put the steel around it and make one, and we
13 did need it, in particular, at that time.

14 Q. So he's the only man that's ever stayed in that
15 cell?

16 A. No, we've had others in there since he's been gone.

17 Q. Since he's left?

18 A. Yes, sir.

19 Q. And, basically, he was in solitary confinement,
20 wasn't he?

21 A. Well, yes, he was the only one in there.

22 Q. He never received any sunshine, except the day that
23 he came up here to the preliminary hearing while he was
24 incarcerated?

25 A. Yes, sir.