## INTERVIEW OF DONALD JOHNSTON Re: People vs. Tom McMillen

BC: Okay we are rolling. Today's date is November 11, 2008. The time is approximately 11:08 a.m. We're here in Carlinville on Plum Street. Henry, can I have you identify yourself?

HJ: Henry Johnston. Donny's brother.

BC: Okay. And what is the address where we're at today?

HJ: 302 W. Nicholas Street.

BC: In Carlinville, Illinois. And do we have your permission today to audio record the interview of your brother?

HJ: Yes.

BC: Okay. And Donald, can I have you introduce yourself?

DJ: My name is Donald Johnston.

BC: Okay. And if you can remember to speak up loudly enough so that the camera catches the audio.

DJ: (shakes head affirmatively)

BC: Do we have your permission today to audio and video record this interview today?

DJ: Yes sir.

BC: Okay. I'm Bill Clutter. I'm Director of Investigations for the Downstate Illinois Innocence Project. Also present for today's interview is Dr. Richard Leo. Dr. Leo do we have you permission to audio record...

RL: Yes.

BC: the interview today? And also present is Rhonda Price....

RK: Keech.

BC: I'm sorry Rhonda Keech, my apologies. She is the Project Coordinator for the Downstate Illinois Innocence Project. And I'll go ahead and focus the camera on Donald. And I'll let Dr. Leo begin the interview.

RL: So, um, Donald, my name is Richard Leo and I'm a professor in San Fransico. I think I mentioned that before. Uh, and I'm just going try, I'm going to ask you questions about your memory of the interviews and interrogations in this case. I know it's was many years ago. But before we start I just want to say a couple of things. One is that, if I talk to fast, tell me to slow down. If I use words that you don't know what I'm saying just tell me and I'll rephrase it. If you have any questions interrupt me and just ask me questions. I don't want to say anything that's confusing, sometimes I do. If you don't know the answer, feel free to say you don't know. I'm not looking for any particular answer. I'm just going to ask you questions that try to get you to tell me the best of your memory of what incurred in these interrogations many years ago that led to your identifying Thomas McMillen and ultimately his conviction. Does that make sense? Okay.

DJ: Yeah.

RL: Okay. Uh, so, so what I want you to do is describe for me the first time you had contact with the police in the Melissa Koontz case. The first time they contacted you while you were in their presence and the issue of Melissa Koontz's murder came up. Do you remember when that was?

DJ: I don't remember.

RL: Now I'm not talking about the date itself. But do you have a memory of the first time you talked to them about it?

DJ: It was Sangamon County.

RL: Okay, in Sangamon County, Sangamon County police?

DJ: Yeah.

RL: And do you remember, did you mention the murder, did they mention the murder, do you remember? What is your first memory of talking to the Sangamon County police?

DJ: I was in, I was in Macoupin County jail up here.

RL: Okay.

DJ: Up here. They transferred, they turned me loose and then these two private investigators cuffed me and took me to Springfield.

RL: Okay. And did they mention the Koontz case?

DJ: Yeah. David Leonard.

RL: Uh-huh.

DJ: I can't think of the other.

BC: Detective James Mitchell.

DJ: Yeah.

RL: Okay. So, and they're with the Sangamon County police?

DJ: Right.

RL: Okay so you were in their custody for something else.

DJ: Right. I was in custody up here for something and they turned me loose....

RL: You say, turn me loose, they turned you lose for that.

DJ: From up here and then the cuffed me outside the door and took me to Sangamon County.

RL: Okay. Did they tell you why you were going to Sangamon County?

DJ: Because I'm charging you with a murder.

RL: And that was the Melissa Koontz murder?

DJ: Right.

RL: And was that the first you had ever heard about it?

DJ: That's the first time I ever head about it.

RL: Did you know about the Melissa Koontz murder? Had you heard about it in the news papers before then?

DJ: Uh-huh (shaking head negatively)

RL: Did you know why they were charging you with the Melissa Koontz murder?

DJ: David Leonard and him take me over here, over here to this tavern over there. And the woman running the bar said I never, I don't recognize this guy.

BC: That would be The Still Tayern. Was that in New Berlin?

DJ: Yeah, New Berlin at the tavern.

RL: They were showing you to somebody?

DJ: To a woman bartending.

RL: Okay.

DJ: And then the woman said I don't recognize this guy. Said he's never been in this bar.

RL: Okay.

DJ: And then they took me from there, they took me to Springfield.

RL: Okay, now is this after they told you they were charging you with the murder?

DJ: Yeah, they said they don't charge (ia) you're innocent, guilty, guilty I meant on (ia).

RL: Did they say why they were charging you with the murder?

DJ: Said you (ia), it was me, Tom, Gary, Danny and Mary. They charged all five of us.

RL: Okay, but, I want to go back to the very beginning, before they questioned you, your first contact with them. They pick you up and they set you loose for something else.

DJ: Right.

RL: And then they take you in a car, the Sangamon County police.

DJ: Right.

RL: They take you to Springfield, but on the way they take you first to this tavern.

DJ: Yeah, they took me to the tavern.

RL: And then they show you somebody in the tavern....

DJ: Right.

RL: ...who says they have never seen you before.

DJ: Never seen me.

RL: And then after they take you to the tavern, where do they take you next?

DJ: Take me to, take me up to the jail.

RL: Okay. And as they are taking, when they're driving you to the tavern, that's when they tell you they are charging you with murder for Melissa Koontz, is that right?

DJ: Right.

RL: At that point, have they said anything about these other people Gary Eddington and Tom McMillen?

DJ: Yeah. They brought them, yeah the two investigators brought Tom, Tom, Gary and Mary and Danny.

RL: To Springfield or to the tavern.

DJ: No. Up there. They was talking.

RL: In the car.

DJ: Yeah.

RL: What were they saying to you in the car to the best of your memory?

DJ: They said, well we're charging all five of you's for murder. And I told him, I said I didn't commit murder at all and then said five us didn't commit murder and (ia) they had my cousin, my cousin Simmy Pocklington.

RL: Uh-uh.

DJ: When we were going to court over in Peoria. Had him and he told them too, we didn't commit no murder us five.

RL: So when you were in the car and they told you they were charging all five, and you told them you didn't commit any murder, did you, do you remember what they said to you after that? Do you remember that conversation, what occurred?

DJ: They locked me up in the cell.

RL: Okay, but in the car as you were driving.

DJ: Yeah, they said you going to jail, the jail, charging for a murder. Leonard and them said I am charging you for a murder. And I told them I didn't commit no murder. And then they got me up there and tried to cooperate, cooperate me. Then they tried to bribe me with some Kentucky Fried Chicken up there.

RL: This is when you were in the jail or were you in the car?

DJ: At the jail, at the jail.

RL: Before you got to the jail, did they say anything else in the car or did you say anything else. Do you remember?

DJ: No I didn't say nothing back to them.

RL: Okay.

DJ: At all.

RL: So then you get to the, is it Springfield.

DJ: Springfield jail, the old jail.

RL: And then what happens when you get there. What do they say? What do you say?

DJ: They talking to me, to try and bribe me, said you guilty, you guilty, both investigators said you guilty.

RL: What did you say?

DJ: I said I'm not guilty of nothing. Then they give me a lawyer named Pete Woody.

RL: What do you mean a lower name?

RK: Lawyer.

BC: Lawyer.

RL: Oh, lawyer's name, I'm sorry.

DJ: Pete Woody is his name. And then Pete Woody said I was guilty.

RL: Did you, you met with Pete Woody, the lawyer?

DJ: Yeah.

RL: Okay, but before you met with Pete Woody, did they say anything else to you when you got to the Springfield jail?

DJ: No, they didn't say no more to me.

RL: Because here you said they tried to bribe you with Kentucky Fried Chicken.

DJ: Yeah, tried to bribe me and I wouldn't answer them.

RL: But that, that was later, or that was then, before.

DJ: That was then.

RL: Okay. And when you say tried to bribe you, what do you mean? What did they say about the Kentucky Fried Chicken?

DJ: Tried to, tried to bribe me to spill, to spill out some beans you know to tell on somebody.

RL: Do you recall how they said it?

DJ: They got pretty smart about it, both of them officers.

RL: So you don't recall, when you say pretty smart, were they in your face, were they loud, were they soft.

DJ: They was yelling.

RL: What were they yelling.

DJ: Said you was the one who did the murder and were going to lock you up. I said take me to the cell.

RL: And then did, did that end it, or was there more conversation between.

DJ: They shut up. They wouldn't come back.

RL: Okay.

DJ: Then Pete Woody, the lawyer, he come talk to me, they took me out of the cell and talked to him.

RL: And what did he say to you?

DJ: He goes I think you're not innocent on the charge on the case. He thinks that somebody else did it too. Pete did.

RL: So your saying that he thought somebody else did it, but he also thought you did it?

DJ: No, he thought it then.

RL: Okay, so let's, focusing just on your first trip to Sangamon, to the Springfield jail, just on that trip and then before Pete Woody, before you see Pete Woody, you are saying they yell at you and tell you did it, you said you didn't do it, they offer to give you Kentucky Fried Chicken.

DJ: Yeah them officers.

RL: Okay. Did they say anything else before Pete Woody came that you remember?

DJ: No.

RL: Okay. And then at some point Pete Woody comes in, he says he thinks you did it

DJ: Come in there and think I did it too.

RL: Are you eventually questioned by the officers again in the Springfield jail, after that first time?

DJ: No, just the State's Attorney.

RL: Okay, so after Pete Woody, then the next person to question you is the State's Attorney?

DJ: Yeah, when they went and arraigned me. They took me out of the cell every day to go to, take me up to the State's Attorney's Office up there. Don, uh, Don Cadigan was his name.

RL: And the first time that you spoke to them, what happened. So we already talked about your first questioning at the Springfield jail and you said that's all you remember, right?

DJ: Right.

RL: And then, and then with Don Woody, is that his name?

DJ: Don Cadigan.

RL: No, no.

BC: Pete Woody.

RK: Pete Woody.

DJ: Yeah, Pete Woody.

RL: So I guess, I want to get the sequence right but I don't want to jump to the next one if there is anything else you remember on the previous one. So I think you were telling me, correct me if I'm wrong, that everything that you told me so far on the first encounter with the police is what you remember. And then I was asking you about Don Woody, is that his name?

RK: No, Pete Woody is the attorney.

RL: Pete Woody, Pete Woody, the attorney, sorry. Was there anything else that Pete Woody told you besides at that point, besides that he thought you were guilty.

DJ: He said, Pete, he took me out of the, everyday he took me out of the cell to take me up to the State's Attorney's Office everyday.

RL: Okay, so the first time you talked to the State's Attorney, was Don, you said his last name.

DJ: Don Cadigan.

RL: Okay. So what happened the first time that you spoke to him?

DJ: He had, he showed some pictures.

RL: What are the pictures that he showed you?

DJ: Picture of Melissa Koontz.

RL: Okay. And what did he say when he showed you her picture?

DJ: And he showed another picture of a necklace.

RL: Okay, so let's just focus on the picture of Melissa Koontz. Do you recall when you first showed you the picture of Melissa Koontz? Do recall what he said?

DJ: He goes this is the girl that you murdered.

RL: And is, did he say anything else besides that?

DJ: That's the only thing he said.

RL: Did the picture, what did the picture look like?

DJ: The picture, he showed exact picture that was in the newspaper.

RL: Okay. So was it a picture of her alive or was it a picture of her...

DJ: It was picture of a girl alive.

RL: So it wasn't a picture of her being murdered.

DJ: No.

RL: Okay. And so he just showed you this picture...

DJ: Yeah.

RL: ...and said you murdered her.

DJ: Yeah.

RL: Do you recall what your response was?

DJ: I said I didn't murder this girl.

And did he continue questioning you about it? RL:

DJ: Yeah he started asking some questions and he brought up about a necklace.

RL: Okay.

DJ: A necklace deal.

RL: So what happened with the necklace?

DJ: He goes this is the necklace you guys stole from the girl.

RL: Uh-uh. And what did you say?

DJ: I said I don't know nothing about this and that. There's another woman, I can't

think the other woman State's Attorney up there too.

RL: Uh-uh.

DJ: Woman State's Attorney, I can't think of her name.

BC: Was is it Carol Walker?

DJ: No, this is uh, kind of heavy set.

BC: Heavy set. Did she have blondish hair? DJ: Seemed like an old lady.

BC: Uh-uh.

DJ: Worked in there with Don Cadigan.

RL: Do you recall how long Don Cadigan questioned you for on this first occasion where he showed you the Koontz picture and told you about the necklace?

DJ: They pulled me out of the cell everyday up there.

RL: Uh-uh.

DJ: Up there out of the cell.

RL: Don Cadigan did this everyday.

DJ: Everyday, they take me up there everyday.

RL: To question you about it?

DJ: Yeah questioned me and then they got, when they got Tom and Gary, Tom and Gary up in there and Mary and had a 15 year old boy, Danny, start questioning him about that.

RL: Okay. But that wasn't in your presence right that they were questioning the 15 year old boy, it was separate right?

DJ: Yeah that was separate.

RL: So I guess what, what I hope you can describe more of those questioning sessions where Don Cadigan takes you out or anybody in the Springfield jail, takes you out and your best memory of what they would say and what would you say. How the questioning and answers went. So the first time you said, he showed the picture and he said you did it.

DJ: Right.

RL: You said you didn't. And I was wondering if there was anything else said about the picture besides that and then you mentioned the necklace.

DJ: He brought the necklace deal up. He did.

RL: So, was there, do you recall him accusing you of being involved in the murder one time...

DJ: That's what I think it felt like.

RL: ....or many times. Do you recall anything else that Don Cadigan said to you when he was taking you out and putting, everyday from your cell.

DJ: Again, they take me out and then they transfer me out of that jail to Rushville.

RL: Okay.

DJ: Over there in Rushville jail to house me over there.

RL: Do you recall anything else happening before you got to Rushville jail, anything that they said...

DJ: No they didn't say nothing, no more to me. They took me over there and housed me.

RL: When they took you out every day in the Springfield jail, how many days would estimate this occurred over.

DJ: They take me out 5 times a day.

RL: 5 times. How many days, do you recall?

DJ: Still said, I'm said, ,Pete, Pete Woody said I don't know why they keep on taking you out and talking to you, the State's Attorney.

RL: Uh-uh. So, so um, do you remember any other conversations from when the State's Attorney took you out during this time in the Springfield jail?

DJ: No, not (ia).

RL: Okay. So at some point they move you to the Rushville jail.

DJ: Yeah, Rushville.

RL: Did they tell you why they were moving you to the Rushville jail?

DJ: Because they brought Tom, they brought Tom in and Gary.

RL: Okay.

DJ: They transferred me out over there to Rushville.

RL: Is that what they said?

DJ: Yeah. Said we're transferring you out.

BC: That would have been, I think May 15 of 1990, either the 15<sup>th</sup> or 14<sup>th</sup> when they arrested Gary Eddington and Tom McMillen.

RL: Okay. Is there anything else that you recall them saying before they moved you to the Rushville jail?

DJ: Said we're going to take over there because we have to house you over there because Tom and Gary is in there, Springfield jail and try to keep me separate from them.

RL: Did they tell you anything about what was going to happen to? Do you recall at that time?

DJ: No.

RL: So you got transferred over to the Rushville jail, right.

DJ: Right.

RL: And do you recall what happened at the Rushville jail, your first interaction, did somebody come question you at the Rushville jail?

DJ: No.

RL: So you were never interviewed at the Rushville jail?

DJ: No, interviewed (ia).

RL: Okay.

DJ: They took a picture and (ia), a picture and some finger prints.

RL: Okay. Now at some point you were interviewed by some police officers in this case where you made statements about your involvement and Tom McMillen's and Gary Eddington, was that in a different location, not in the Rushville jail but eventually in another place?

DJ: I think in Sangamon County.

RL: Okay. So you stayed in Rushville jail, do you remember how long you stayed in Rushville jail for?

DJ: I don't remember.

RL: But at some point did they move you from Rushville jail to Sangamon County?

DJ: They keep on saying they come, they come over there to Rushville and then transfer me back and forth every day.

RL: Back and forth to where, Sangamon.

DJ: Sangamon County.

RL: Okay. Um, you don't remember any, you don't remember any interview or interrogation of you at the Rushville jail?

DJ: I don't remember nothing.

RL: Do you remember them questioning you at the Sangamon County jail?

DJ: I answered a lot of questions up there.

RL: Okay. So when they first questioned you at the Sangamon County jail, is it that they move you from Rushville to Sangamon and questioned you and then moved you back to Rushville?

DJ: Yeah, back and forth.

RL: Okay, so they would move you from Rushville to Sangamon County, question you in Sangamon County and then move you back to Rushville.

DJ: Right.

RL: Okay. So the, do you recall the first time you were questioned in Sangamon County?

DJ: I can't remember the date.

RL: No, no just general, not the particular date, but the first time they questioned you at Sangamon County. The first, you said that you were questioned many times, right?

DJ: (Shakes head affirmatively)

RL: Do you recall what they said to you the first time they questioned you at Sangamon County?

DJ: Oh, the two officers.

RL: Yeah.

DJ: They kept on saying that I'm charged with a murder.

RL: And do you recall what else they said besides that you were charged with a murder?

DJ: I can't recall what else they was saying. They was cussing too.

RL: Okay. So they were cussing at you and they were, were they yelling at you?

DJ: Dave Leonard, Dave Leonard said, kept on telling me you murdered, you murdered, kept on going and going and then they had an officer kept the same way back and forth, back and forth.

RL: And what was your response when they would say that?

DJ: I told them I didn't it (ia).

RL: Do you recall how long the first time they questioned you at Sangamon County was?

DJ: They questioned me then, they questioned me that night and the day they arrested me out there, put me in there. They arrested me two times, the officer did. They took me out of the cell, two private investigators, kept on questioning me.

RL: And do you recall how long it lasted?

DJ: Lasted for a long time.

RL: A long time. And if it lasted for along time, do you recall what else they said, besides yelling, besides cussing and telling you that you did it.

DJ: That Dave Leonard said I'm guilty.

RL: Okay.

DJ: He kept on going man, looking around, said you're guilty, guilty. He said there is some more people involved in this and their guilty too.

RL: And at first did you deny that?

DJ: I said I'm not guilty to nothing.

RL: Okay. Um, did they say what would happen to you if you continue to deny?

DJ: Well we lock you up and we'll get it out of you on way or another.

RL: Uh-uh.

DJ: The two officers.

RL: And then did they come back to talk to you again?

DJ: Then they took me out and took me over there to Rushville then.

RL: Okay. Then they, would they take you back then to Sangamon County to question you again?

DJ: Yeah, question me again, State's Attorney.

RL: Uh-uh.

DJ: Again. And he kept on talking you know.

RL: What else would they say to you when they would questioned you?

DJ: They asked all kinds of questions, some I don't understand.

RL: Like what? Do you remember?

DJ: He said something about something, I couldn't understand what he was saying and that and I tell them over when they got me up there. I tell them to take me back to my cell. I didn't want to talk.

RL: Did they ever talk about what might happen to you. Do you recall?

DJ: He said, them two officers, said they going, you going to get the death penalty.

RL: Did they say that specifically?

DJ: Yeah them two officers did.

RL: And how did they say it?

DJ: In a bad, bad way.

RL: Do you remember what their words were?

DJ: I don't understand the words what they was saying. Said that what you are going to get, the death penalty.

RL: And you would get the death penalty for what?

DJ: For Melissa Koontz murder.

RL: Did they say there was anyway you could avoid getting the death penalty?

DJ: I never paid, I paid attention to that woman State's Attorney.

RL: Uh-uh. And do you recall what she said?

DJ: Sandy, that was her name, Sandy.

BC: Sandy?

DJ: Yeah, she, she said he ain't going to get no death penalty or nothing.

RL: So they were saying you might get the death penalty.

DJ: Yeah.

RL: And she was saying you weren't going to get the death penalty?

DJ: Yeah, that what she said.

RL: Um, so um, they were trying to get you to admit...

DJ: Yeah to the murder.

RL: ....to being involved...

DJ: Yeah.

RL: ...to the murder? And did you have a sense of what, what did you think they meant when they said you were going to get the death penalty or you weren't going to get the death penalty?

DJ: I didn't, that's didn't care.

RL: Uh-uh. Did it scare you when they said that?

DJ: Yeah, it scared me.

RL: And why did it scare you?

DJ: They were going to put a lethal injuction.

RL: Did they say that? Do you recall?

DJ: Yeah.

RL: So the, would the officers said, they told you that you were going to get the death penalty and they told you how you would get the death penalty?

DJ: Yeah, that officer up there, Leonard.

RL: Did they say there was anyway to avoid getting the death penalty, avoid lethal injection?

DJ: Tell the truth.

RL: And when they said to tell the truth, what did you think they meant by that?

DJ: Brought that girl up and I admit it.

RL: Uh-uh. So they were, you thought they meant that you, they wanted you to admit to killing Melissa Koontz?

DJ: Right.

RL: And correct me if this, this is what I understanding you to be saying, but if I'm wrong, please correct me, so are you saying that they then said if you don't admit to this you will get the death penalty but if you do, and that might involve lethal injection, but if you do admit to it and tell the truth, what they was saying is the truth, you could avoid getting the death penalty and lethal injection?

DJ: That's what they told me.

RL: And that's what you understood them to mean?

DJ: Yeah.

RL: And did that have an affect on you?

DJ: Yeah, that's why I told them, I said yeah I did it, you know.

RL: So was it shortly after they told you about the death penalty that you said you did it.?

DJ: They didn't ask me (ia).

RL: How many times did they mention the death penalty, do you recall? Was it just once or was it more than once?

DJ: Three times.

RL: And then after that, you said you did the Melissa Koontz murder?

DJ: Yeah, that's what I told them.

RL: Was it because they scared you with the death penalty?

DJ: Yeah, they scared me.

RL: Uh-uh. What did you think they wanted to hear? Do you recall?

DJ: I don't know.

RL: Yeah. And then you said that they left you alone after that. What do you mean?

DJ: They didn't bother me no more.

RL: Okay. But eventually they asked you more questions about, about the murder of Melissa Koontz, right?

DJ: Right. When I went to court, court, me and uh, they kept on transferring me.

RL: But did they, did the officers question you more about the details of the Melissa Koontz case?

DJ: He said something about detail.

RL: About your role in it or Gary Angelo's role in it, or the Pockington's role in it. Do you recall any questioning about that?

DJ: He, they questioned them. Danny, Mary, Tom and Gary, and they questioned them up there. They had all 5 of is in a room.

RL: At the same time?

DJ: At the same time.

RL: Okay, so um, I want to get to that but I want to make sure that I've got the sequence right. So, after you, they threatened you with the death penalty, right, and then you admit to it, and then they leave you alone and then eventually they question you again. Do they question anymore before they had all 5 of you in the same room? Do you remember when the next questioning session was?

DJ: The last one, they took us in a room, they took us one at a time in a room. Two of us, me and Gary in a room and the got us on a tv.

RL: Did you know that you were on tv at the time? Did they tell you?

DJ: They told me and Gary.

RL: They did not.

DJ: And (ia). And then they pulled Gary out of there, then they bring Tom in there and interview Tom and us together inside of this cell and then bring the 15 year old boy in there and put him in there with me and that. Then when we come back out the door, come back out the door, where they bring us out, and there's got a tv right there with our pictures and all that and all the interview stuff, on the camera on tv.

RL: You knew at the time that it was being recorded?

DJ: We didn't know what they was recording.

RL: You saw the tv.

DJ: Yeah, we seen the tv with our pictures on it.

RL: So after they threatened you with the death penalty, is your next memory that you were having conversations one by one in that room with these people?

DJ: Yeah they had us in that room.

RL: They didn't interrogate you before that? See I want to make sure that I'm not missing anything.

DJ: An officer come in there, me and Tom, not, me and Gary was in there and this officer, private investigator and that.

RL: Now was he, was he asking you questions?

DJ: Asking questions to me and Gary and Gary said he did it.

RL: Uh-uh.

DJ: And that and he kept going on Gary.

RL: Do you recall what the officer was saying when asking those questions?

DJ: He said you two were going to get the death penalty, kept on.

RL: So it was again then with the death penalty.

DJ: Again, about the death penalty. Well they pulled him out of there and they'd bring Tom in there.

RL: Okay.

DJ: And he started asking Tom the same questions to us, me and him and Gary in there.

RL: Okay.

DJ: And he threatened Tom, said you going to get the death penalty.

RL: Okay.

DJ: And then they brought the 15 year old boy in there, 15 year old boy, Danny in there.

RL: Right.

DJ: And they started talking to Danny. And Danny started cussing them out. Danny was.

RL: Okay. When they were talking to Gary Eddington and Tom and Danny, were they also talking to you?

DJ: They were talking to me in the same room.

RL: Okay.

DJ: They kept Mary out of there, kept Mary Pockington in there, just had me, Tom, Gary and Danny in that room, us 4.

RL: Okay. And then did, did any of those, did you continue to say that you were involved at that point?

DJ: Officers said you guys are guilty. That's what kept on going, said you guilty, guilty. He said you three are going to get the death penalty.

RL: Okay. Keep going.

DJ: And then Pete come in there, Pete Woody, the lawyer come in there and said, I guess, these boys went then go back to their cell. And Pete started asking some questions to Tom.

RL: Okay.

DJ: Tom and Gary.

RL: Okay.

DJ: Took me, took me out of the room.

RL: Okay.

DJ: It had like a little a couch, and then they had a tv in the room and my lawyer's in there talking to Tom and Gary and their all on tv. We are sitting there watching the tv, me and Danny Pockington, sitting right there when they got them in there, in the room.

RL: Okay. Um, so at some point you started describing details of the murder, the Melissa Koontz murder, do you recall when you started providing them those details at all? The questioning session, was it after this questioning with all these individuals or before, do you recall?

DJ: Don Cadigan show me the pictures.

RL: Okay.

DJ: I did describe then.

RL: Okay, so Don showing you the pictures, um, now I don't know if you would remember any of these specific dates, the July 13, 1989, it looks like an interview or interrogation by Det. Leonard. When was the first time Det. Leonard questioned you, was it, have we gotten to Det. Leonard's questioning of you yet, is it during or before any of the questions that you've described or is it after?

DJ: That was after, at the tavern, that was in the car. He talked to me.

RL: Okay. So, the, if I remember sequence right that you described, you are talking about being in the Rushville jail and then being taken back and forth to the Sangamon County and that was all after what had occurred previously in the Springfield...

DJ: Right.

RL: ...and so, I'm looking at a transcript of some questioning by Det. Leonard and it looks to me like maybe this is 80 pages of transcript and so I, I would be, it occurred on July 13, 1989, and July 14<sup>th</sup>, I mean, do you remember this questioning at all? Do you remember?

DJ: Some of it don't.

RL: Do you remember Det. Leonard questioning you in car ride from the Rushville to the Sangamon? Or to the Springfield jail. When I say Det. Leonard's questioning of you, you mentioned a car. Was this in the car that...

DJ: In the car, transferring me back and forth.

RL: And what did he say in the car, do you recall?

DJ: They had two of us in the car.

RL: They had what in the car?

DJ: Two of us. Two prisoners, me and another guy.

RL: Okay.

BC: Who was the other person? Did you know him?

DJ: I can't think of his name. There was three on the case, there was three people, was on the case, testifying on the case, three people.

RL: Do you recall what Det. Leonard said to you when you were in the car?

DJ: I didn't pay half attention to him half the time.

RL: Uh-uh. Do you recall any other time when Det. Leonard questioned you that was not in the car but at a police station?

DJ: At the jail.

RL: Which jail?

DJ: Sangamon County jail.

RL: Do you recall what Det. Leonard said to you when he was questioning you?

DJ: He said, he talked about that murder case.

RL: And what, what do you recall what he said about the murder case?

DJ: I told him, I told him, I said I didn't murder. He goes well we got a charge you anyhow with something.

RL: Do you recall anything else Det. Leonard said?

DJ: Really nothing else.

RL: Okay. So, at some point you started, you agreed, you made the confession, the admission that you were involved and you described that was because they threatened you with the death penalty and they scared you and correct me if, I'm summarizing what you told me earlier, but if anything is wrong, correct me. And that they lead you to believe that if you admitted to this you could avoid the death penalty.

DJ: That's what they said.

RL: By what?

DJ: That's what they said.

RL: Okay. So, did you, when you started admitting to killing Melissa Koontz, after they mentioned the death penalty, did you know any details about how Melissa Koontz was killed?

DJ: No.

RL: So, how did you learn the details of Melissa Koontz murder?

DJ: Prisoners up there.

RL: So what sorts of things would prisoners say to you?

DJ: They said that guys hung this girl.

RL: Uh-uh.

DJ: (ia)

RL: Do you recall what else you, what else prisoners told you about Melissa Koontz murder?

DJ: They said you're guilty.

RL: The prisoners said that?

DJ: Yeah, the prisoners.

RL: And when you say prisoners, you mean people that you were in jail with.

DJ: Yeah.

RL: Okay. Um, so, did anybody tell you how the Melissa Koontz murder occurred?

DJ: No.

RL: So, when you were confessing to the Melissa Koontz murder, and giving the police information, did you make that information up or did somebody give you that information, do you recall?

DJ: I can't recall.

RL: So, if you said you let the girl out of the car, or you killed her a particular way, do you recall why you would've said what you said?

DJ: They got me scared, Dave Leonard and them.

RL: Okay. Um, so were you making up the details...

DJ: (shakes head affirmatively)

RL: ...or had you learned something and were giving them what you had learned about the case or both? Let me just ask you more simply. When you gave them some details, were some of the, were you making up some of the details about how Melissa Koontz was murdered?

DJ: Yes.

RL: And you said it was because they scared you that you were making up these details.

DJ: Yes.

RL: Did you learn any of the details about Melissa Koontz murder?

DJ: No.

RL: So, when you were giving them the details to the best of your memory, were you just making them up, or were you repeating what you had learned from anybody else?

DJ: (shakes head affirmatively)

RL: Just making them up...

DJ: (shakes head affirmatively)

RL: ...okay, sorry. I asked two questions in one, I didn't mean to do that. So, when you told them about Tom McMillen's involvement in this, were you just making up details to satisfy them?

DJ: Yes.

RL: Okay. Nobody told you that Tom McMillen was involved in this.

DJ: (shakes head affirmativel)

RL: Um, do you recall being questioned by Det. Leonard and Det. Mitchell?

DJ: Yes.

RL: And have you described to me everything that you remember about that or is there any other, anything else that Leonard and Mitchell told you?

DJ: No.

RL: So when they questioned you, you provided some details that you were making up and then sometimes they would say, that's not the truth, do you recall making up other details if they said it wasn't the truth? Do you recall any of that questioning, if they would tell you something wasn't the truth?

DJ: Can't recall that.

RL: So, the questioning that we have described so far, I'm wondering if I've left anything out, you talked about the Springfield jail, you talked about the car rides from Sangamon, or from Rushville to Sangamon, you talked about the death penalty and making up these stories, you talked about being questioned with other ones of the defendants, you've talked about them telling you what you did and who was involved, just mean that to summarize. I guess what I'm wondering is, was there any other questioning by anybody else about this that you can recall...

DJ: (shakes head negatively)

RL: ...other than what you have described? Sometimes I haven't, something I may not have asked about, Rushville, Springfield, Sangamon County, any other questioning that you recall besides what we have talked about?

DJ: Nothing else.

RL: Not now. Do you have any questions?

BC: I do have a few. Let me, what I would like to do is take you back to the very beginning. You mentioned that Don Cadigan showed you a photograph of Melissa Koontz when she was alive, it was, was that the same photograph that you saw on the missing person poster?

DJ: Yes.

BC: Okay. And you remember Dep. Gary Ewin, he was a sheriff's deputy for Macoupin County. Do you remember him?

DJ: I think so.

BC: And we have report from Dep. Ewin on June 28<sup>-</sup> 1989, that he was giving you a ride home one night and you happened to notice Melissa Koontz's picture on a missing person poster. Do you have any memory of that as you sit here today?

DJ: No, I don't remember.

BC: Okay. But I've got a report from Dep. Ewin that, where he wrote at the time that he, you saw a picture of Melissa Koontz and he explained to you that she was missing and you mentioned to him that you thought you may have him seen her in Carlinville earlier that day at Missy's, Bob Conley's house, do you have any memory of making that statement?

DJ: No, I didn't.

BC: Okay, that's fine. And it seems like a little bit later Dep. Ewin writes a report on July 8, so this would have been maybe 2 weeks later and this is when you were being booked into the jail at Carlinville. It was late at night, almost midnight, I think you might have been, maybe urinating, you might have been drinking that night. You may not have any memory of it, but he made a report that you mentioned to him that you knew who killed Melissa Koontz, he asked you how do you know, you said well I was there, then he, you know, then he wrote in his report that you said it was Tom McMillen that killed her. And then he asked about some details and you said, he choked her to death and that it happened on Madison Street in Springfield. Do you remember any of those details?

DJ: (shakes head negatively)

BC: And you might not have but that's in his report? It appears that based on that report then he contacted Det. Leonard and Det . Mitchell, and they drove from

Springfield to Carlinville when they interviewed you. Do you have a better memory of that?

DJ: (shakes head negatively)

BC: Okay. But it is it fair to say that you had no involvement in the murder of Melissa Koontz?

DJ: Yes.

BC: And what I have today, and this is based on our earlier interview, back in July, we have what's called an affidavit that we would like to read to you. You don't read well, is that correct?

DJ: (shakes head negatively)

BC: And let me just read each paragraph and if you have to make any changes, we can do it verbally and I'll make note and make changes. This is going to be an affidavit that's going to be filed in Court to support what's called a petition to have, what's called forensic evidence tested. Do you ever watch CSI on tv?

DJ: No.

BC: Okay. It's called DNA evidence. It's, the person that killed Melissa Koontz came in contact with her, may have transferred his DNA through skin cells or body fluids and so we are going to ask the court to have that evidence tested that would be able to scientifically show who actually killed Melissa Koontz. So we would like to have, I'll read this to you line by line and I'll have you initial each line after I read it and you can comment whether it's accurate or not accurate and we can, I'll read you some reports of Dep. Ewin to help what's called refresh your memory and you can rely on police reports if that helps to refresh the memory. So we'll go through it line by line. The first line is my name is Donald Johnston. That's correct.

DJ: Right.

BC: And you do reside in Carlinville, is that true?

DJ: Right.

BC: Okay. Do you want to initial this line, you want to look it over before?

DJ: (looks at Henry)

BC: Just initial where it says #1. That we just read that to you and that part is accurate. And don't hesitate, if there is something that is not accurate, to make,

to correct it. I am the same Donald Johnston who testified at the trial of Thomas McMillen on or about July 17, 1991 for which he is now serving a life sentence. You're the same Donald Johnston that testified in Tom's trial?

DJ: Yes.

BC: Then you'll have to rely on me that I got the right date, right?

DJ: (shakes heads affirmatively)

BC: Okay. Go ahead if you would, #2 just put your initial.

DJ: (initials)

BC: Okay. #3 – I gave false information to police detectives when I told them that I had information about the murder of Melissa Koontz. Is that statement true?

DJ: True.

BC: Okay. If you can just initial that #3.

DJ: (initials)

BC: Paragraph #4. The first time I saw Melissa Koontz was when Dep. Gary Ewin of the Macoupin County Sheriff's Office offered to give me a ride home on the evening of July, I'm sorry, June 28, 1989. I saw her picture on a missing person poster. I thought I recognized her as someone I had seen in Carlinville earlier that day. I had no information about her disappearance. And what I'll do is, I'll refresh your memory, this is, this is Dep. Ewin's report from June 28, 1989 and he said he was in Modesto, he got a call. He said that he found you walking down the street, you said you were going to Mary Pockington's house, apparently it was a long way away. He offered to give you a ride home. Does that help to refresh your memory?

DJ: (shakes head affirmatively)

BC: Okay. And he said that on the way to Tom and Mary's residence, Goose saw a picture of Melissa J. Koontz lying in the front seat of my squad car on a clip board. Goose told this reporting officer that he knew the girl in the picture and that he had seen her in Carlinville on June 28, 1989 at 12:00 noon at Bob Conley's house and that she was with another girl by the name of Sissy and they were driving a small black car. Does that help refresh your memory what you told Dep. Ewin?

DJ: I don't remember.

BC: Okay. But it's fair to say that if this in it's, in the report that that is probably a statement you might have made to him.

DJ: I might have.

BC: Okay. So let's just, if we could, if you can initial this and I'll put in here, you don't really remember this but we'll rely on Deputy, I'll attach Dep. Ewin's report to help support that paragraphs. Does that sound fair?

DJ: (shakes head affirmatively)

BC: Okay. So why don't you go ahead and #4, just put your initial.

DJ: (initials)

BC: And I'm going to go ahead and put on here, he doesn't remember this but see attached report of Dep. Ewin. And I'm going to put my initials here and that's #4. I'm going to circle #4. Now we will go to paragraph #5. And since I've written in this margin, I may go over to the opposite side of the paper to put your initials. This paragraph 5 reads, the truth is I was not present when Melissa Koontz was kidnapped. Is that statement true?

DJ: No.

BC: No. No it's not true or no you weren't present?

DJ: Not true. Not true.

BC: What's true?

DJ: I was not present.

BC: That's right. You were not present when she was kidnapped, is that correct?

DJ: That's correct.

BC: Okay. I was not present when she was killed. Is that statement, is that true?

DJ: Not true, was not present, I mean.

BC: You were not present when she was killed.

DJ: Right.

BC: Okay. I was not involved in the murder of Melissa Koontz in anyway. You were not involved in her murder....

DJ: No.

BC: ...is that true?

DJ: I was not involved.

BC: You were not involved, okay. I did not witness her abduction. You didn't see who kidnapped her. Is that true?

DJ: No. Not true.

BC: I'm sorry.

DJ: It's not true.

BC: Okay. Were you there when she was abducted?

DJ: No.

BC: And did you see her get abducted?

DJ: No.

BC: Okay, so we got that clear. I did not witness her murder. You weren't there when she was murdered, right?

DJ: No.

BC: Okay. I served time in prison for a crime I did not commit. Were you innocent?

DJ: No, I'm innocent.

BC: I'm sorry.

DJ: Not innocent.

BC: Okay. Did, when you plead guilty were you, well let me just explain, did you serve time in prison for a crime you didn't, did not commit?

DJ: Yes.

BC: Okay. Were you innocent?

DJ: Innocent.

BC: Okay. So we're clear. Alright. Anybody have any questions to clarify that more? I'm going to just go ahead and draw a line right here and have you initial that. That we just went over this paragraph and that's true and accurate.

DJ: (initials)

BC: Paragraph 6, on July 17, 1991, I lied when I testified that I was present when Melissa Koontz was kidnapped. Did you provide false testimony at Tom's trial?

DJ: Yes.

BC: I lied when I told the jury at Tom McMillen's trial that he pulled her out of the car and stabbed her in the arm.

DJ: Lie.

BC: It was a lie when you testified to that? I lied when I told the jury that Tom McMillen picked her up and placed her in the trunk of Mary Pockington's car. That was a lie.

DJ: That's a lie.

BC: Okay. I lied when I told the jury that our intent was to rob someone for beer money. Was that a lie when you testified to that?

DJ: A lie.

BC: I lie. Okay. And that we had stolen a silver necklace. Was that testimony a lie also?

DJ: I didn't mention nothing about a necklace.

BC: Okay. You may not remember but if you did that would have been a lie, is that true?

DJ: (shakes head affirmatively)

BC: Yes, okay. I'm going to have you initial right next to the number 6. That we've gone over it and that it's true and accurate.

DJ: (initials)

BC: Alright. Paragraph 7, there is only one more after that. I finally told the truth when I was contacted on Sunday July 20, 2008 by the Downstate Illinois Innocence Project. And that was when we saw you that Sunday morning, I was with two of my students.

DJ: Yeah.

BC: And you, you finally told the truth and we video taped that statement.

DJ: Yes.

BC: Okay. And that was, that was the truth?

DJ: The truth.

BC: Okay. The statement I made to Bill Clutter, which is myself, Sarah Wellard, and Prianka Daho, is the whole truth and nothing but the truth. Is that an accurate statement?

DJ: True.

BC: True, okay. That statement was video taped. Do you remember that being done?

DJ: Yes.

BC: Okay. Why don't I have you go ahead and initial right there, right next to 7.

DJ: (initials)

BC: And this is the last paragraph. During the interview that took place before the video, I told them that I was innocent. Do you remember making that statement?

DJ: True.

BC: And that Danny Pockington, my cousin, was innocent. Do you remember making that statement?

DJ: True.

BC: He served time in the juvenile department of corrections for a crime he did not commit. Is that true?

DJ: True.

BC: I told them that his mother, Mary Pockington, was also innocent. True?

DJ: True.

BC: She served time in prison because she was accused of lying when she told police that Tom McMillen was innocent.

DJ: True.

BC: Mr. Clutter then asked what about Tom and Gary, are they innocent? Do you remember me asking you that question and that's when you told me the truth.

DJ: True.

BC: I broke down crying. I told them every night I think about this. Do you remember making that statement to us?

DJ: True.

BC: It weighs on me, what I have done. Tom McMillen and Gary Eddington are in prison because I lied at their trials. Is that true?

DJ: True.

BC: Tom and Gary are innocent. True, you're shaking your head.

DJ: True.

BC: Okay. And this is where you sign your name and I'm going to place you under oath. This is just like being in court, except we are at your house. It's a little friendlier. Do you swear to tell the whole truth and nothing but the truth, so help you God?

DJ: Yes.

BC: Okay, you're going to have to speak up.

DJ: Yes.

BC: Okay. Would you sign this statement under oath today?

DJ: (shakes head yes)

BC: Alright. I'll go ahead and give you the pen.

DJ: (signs)

BC: Very good. Alright. And is there any other questions?

End of Interview