

1 not released.

2 MR. WESTLING: Yes. I was just going to say that.

3 THE COURT: All right. Call your next witness.

4 MR. JOHNSON: Agent Mullen, Terry Mullen.

5 (BRIEF PAUSE)

6 (MR. MULLEN PRESENT)

7 THE COURT: Sir, if you'll turn this way and raise  
8 your right hand and take the oath.

9 COURT CLERK: Do you solemnly swear or affirm that  
10 the evidence you shall give to the Court and jury in the  
11 matter now pending before the Court shall be the truth,  
12 the whole truth and nothing but the truth, so help you,  
13 God?

14 THE WITNESS: I do.

15 T E R R E N C E J. M U L L E N, having been duly sworn,  
16 took the stand and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JOHNSON:

19 Q State your name, please, sir.

20 A My name is Terrence J. Mullen, T-E-R-R-E-N-C-E.  
21 Last name is Mullen, M-U-L-L-E-N.

22 Q Where do you work?

23 A I'm a special agent with the Florida Department of  
24 Law Enforcement.

25 Q On January the 13th, 2000, where was your duty

1 station?

2 A Jacksonville, Florida.

3 Q And did you have an occasion on that particular day  
4 around 4:15 to go somewhere in the Jacksonville area with some  
5 other officers?

6 A Yes. I was assigned to assist the United States  
7 Marshals Service, the Georgia Bureau of Investigation and the  
8 Camden County Sheriff's Office in an investigation of  
9 apprehension of a subject that was wanted for murder.

10 Q And who was the subject that was wanted for murder?

11 A Dennis Perry.

12 Q Is he in the courtroom?

13 A Yes, he is.

14 Q Where is he seated, sir?

15 A Sitting between the two attorneys there.

16 Q All right. Where did that arrest take place?

17 A Right near his residence, which would be near the  
18 Budweiser plant in Jacksonville, Florida. He lived in the  
19 area of Saw Pit Road. I think it was either Brim or Bream  
20 Road that we actually stopped him on.

21 Q All right, sir. When Mr. Perry was arrested, who  
22 transported him back to the -- or transported him to some  
23 office?

24 A Mr. Perry was transported back to the Jacksonville  
25 office of the Florida Department of Law Enforcement in

1 downtown Jacksonville by myself. I was driving the car and  
2 Detective Dale Bundy from Camden County Sheriff's Office was  
3 sitting in the back seat with Mr. Perry.

4 Q Where in relationship to the driver's side was Mr.  
5 Bundy?

6 A Mr. Bundy was behind me and Dennis Perry was in the  
7 passenger rear seat of the car.

8 Q Were you present at any point in time on the side of  
9 the road when Mr. Perry was told what his rights were under  
10 the Miranda decision?

11 A I did not see that, with all the policemen and the  
12 confusion, and at the same time they were going -- agents were  
13 going to execute a search warrant at Mr. Perry's residence.  
14 And I saw agents around the defendant, but I didn't -- I  
15 didn't participate in that.

16 Q You didn't participate in that.

17 A No, sir.

18 Q All right. On the way back to the F.D.L.E. office,  
19 while you were in the car with Mr. Perry and Dale Bundy, did  
20 you make any statements to him, threaten him, try to coerce  
21 him, promise him any hope of benefit or reward if he would  
22 make statements to you?

23 A Absolutely not.

24 Q Did you hear Mr. Bundy do any of that?

25 A No.

1 Q When you got back to the F.D.L.E. office, where was  
2 Mr. Perry taken?

3 A Mr. Perry was taken into a private office at the  
4 Florida Department of Law Enforcement, known as F.D.L.E., and  
5 he was brought into an office.

6 Q And what happened in that office?

7 A Mr. Perry was brought into an office and I believe  
8 that Agent Rhodes and Detective Bundy may have gone in and  
9 spoke with him for a short period of time. I was not in the  
10 room.

11 Q Did you have an occasion to go in the room?

12 A Yes, I did.

13 Q And when you were in the room, at any point in time  
14 during this part of the interviews, did you threaten him?

15 A Oh, absolutely not.

16 Q Promise him any hope of benefit or reward?

17 A No.

18 Q During any part of this interview, before y'all  
19 started to leave, did you have an occasion to tell him or  
20 remind him of anything that might be what his rights were?

21 A When I walked into the -- when I walked into the  
22 interview, he was seated in a corner seat in the office and I  
23 sat -- I sat down in a seat across, across from him, and I  
24 advised him that he was entitled to an attorney and he didn't  
25 have to speak, he didn't have to speak to us.

1 Q Did you ask him if he understood that?

2 A Yes.

3 Q And what was his response?

4 A He understood.

5 Q Did there come a point in time when y'all began to  
6 take him to the Duval County jail?

7 A Yes. We spoke -- we spoke with Dennis, you know,  
8 for a short period of time. He was denying any involvement in  
9 the crime. And at that point the judge or authorities made a  
10 decision to, you know, take him over to the jail, which he'd  
11 be booked under a State of Florida fugitive-from-justice  
12 warrant.

13 Q Where did you go?

14 A We walked out of the -- we walked out of the office  
15 and we walked down the corridor to the front of our building.

16 Q And where did Mr. Perry go at that point in time?

17 A Mr. Perry was walking with Detective Bundy and they  
18 sat in a -- they sat in like a chair that we have in the foyer  
19 of F.D.L.E.

20 Q And where did you and Mr. Rhodes go?

21 A We were getting -- preparing to go over to the Duval  
22 County jail to bring Mr. Perry over and we were -- I think we  
23 were in the dispatch area, in and out, getting ourself ready  
24 to bring the prisoner over to jail.

25 Q Did you have an occasion to have Mr. Bundy then make

1 some statement to you? We will not go into that, but make a  
2 statement to you?

3 A When we came out of the dispatch room, after we got  
4 our stuff together to bring him over to jail, Mr. Bundy  
5 approached myself and Special Agent Rhodes and said that --

6 MR. WESTLING: Judge, I object to hearsay  
7 declaration.

8 THE COURT: Sustained.

9 MR. JOHNSON: I understand, Judge. We still have  
10 the same argument with the Court.

11 THE COURT: I understand.

12 MR. JOHNSON: We understand you've sustained it.

13 Q Detective Bundy made a statement to you, did he not?

14 A That's correct.

15 Q And as a result of that, what did you do with Mr.  
16 Perry?

17 A Mr. Bundy told me that Dennis --

18 Q Well, let's don't go into what Mr. Bundy told you  
19 Dennis Perry said, but let's talk about what you did. After  
20 that was said to you, where did you take Dennis Perry?

21 A We brought Mr. Perry back into the office of  
22 F.D.L.E. and sat him down in a -- the office space at this  
23 time is a squad-bay atmosphere where there is maybe, you know,  
24 fifteen desks with partitions and I brought him over to where  
25 my desk was at the time. We did not bring him back into the

1 office. We left him in an open-air environment. We're the  
2 only agents in the building at that time.

3 Q Was Mr. Bundy -- I mean, sorry. Was Mr. Perry  
4 standing or seated?

5 A Mr. Perry was seated across from myself and Agent  
6 Rhodes.

7 Q Okay. What happened at that point in time?

8 A The defendant was very remorseful. He looked like  
9 he was on the verge of --

10 MR. WESTLING: I object to that, Your Honor. That  
11 calls for a conclusion -- well, it is a conclusion. I'm  
12 sorry.

13 Q Well, let me ask you this. Did he exhibit -- what  
14 was his physical mannerisms at that time?

15 A He had his head down. He appeared to me like he was  
16 on the verge of crying. He was welled up.

17 Q Welled up?

18 A Welled up, with his eyes. Had his head down. He  
19 was bowed -- he was bowed down to us.

20 Q Okay. And what happened?

21 A He said that he didn't remember a lot about what  
22 happened because he was using drugs and drinking a lot and  
23 myself and Special Agent Rhodes started talking to him and  
24 Perry advised that he could have been at the church that night  
25 of the murder, but he could not remember.

1 Q How did he say he had gotten down to Camden County?

2 A He said that he had rode a motorcycle with his  
3 brother the weekend before the murder to Camden County.

4 Q Okay. What did you ask him?

5 A I asked Mr. Perry if the shooting was an accident  
6 and he said, "Yes."

7 Q What happened then?

8 A Special Agent Rhodes asked Perry if the gun went off  
9 by accident and Perry stated, "Yes."

10 Q His demeanor at this point in time, had it changed  
11 in any respect from what you've explained to us?

12 A From the time that he was arrested till -- up until  
13 this point, there was a hundred-and-eighty-degree turn in his  
14 demeanor. At first, he was in the car -- when we were driving  
15 down, he was denying any involvement in the crime. While we  
16 were at the Florida Department of Law Enforcement earlier in  
17 that room, he was denying any involvement in the crime. This  
18 is when he broke down and he started to -- he started to tell  
19 us what happened that night.

20 Q So his actions, his physical demeanor -- you said  
21 bowed over and his eyes had welled up -- that was different  
22 before that?

23 A Yes, absolutely.

24 Q Did you ask him another question? After Rhodes  
25 asked him if the gun went off by accident, what did you ask



1 him?

2 A What I did was at that point I got up from my seat  
3 and I went to find Detective Bundy.

4 Q And where was Detective Bundy?

5 A He was on the cell phone inside the building of the  
6 F.D.L.E. while we were conducting this interview.

7 Q What did you tell Detective Bundy?

8 A That his client -- that the defendant was confessing  
9 to the crime.

10 Q And where did you ask Detective Bundy to go?

11 A I asked Detective Bundy, I said, "Detective --" I  
12 said -- his name is Dale. I said, "Dale," I said, "you need  
13 to come over and hear this."

14 Q So where did y'all go?

15 A He walked over to the -- to my desk where I was and  
16 stood over -- stood over myself and Agent Rhodes.

17 Q And what happened at that point?

18 A Bundy came over and the statements were reiterated  
19 by -- by Mr. Perry.

20 Q When you say "the statements were reiterated," what  
21 are we talking about?

22 A We started talking about the same things that I just  
23 talked to you (sic). "Did the gun go off by accident?"  
24 "Yes." "Was it an accident?" "Yes." How he got down to --  
25 how he went down to the church the weekend before on a

1 motorcycle with his brother. We went over the same -- same  
2 general -- same general questions.

3 Q Were you present when Agent Rhodes asked Mr. Perry  
4 what he thought happened that night?

5 A Yes, I was.

6 Q And what was Mr. Perry's response?

7 A Agent Rhodes asked him what he thought happened that  
8 night and the defendant stated, "I think someone ran out of  
9 gas and someone needed money." He also at that time said that  
10 he had a -- could have had a drug and alcohol problem during  
11 this period.

12 Q What did Detective Bundy ask Mr. Perry at that  
13 point?

14 A Bundy asked him if he was scared that this day had  
15 been coming for a long time and Perry said, "Yes."

16 Q You asked him a question then, didn't you? Didn't  
17 you?

18 A Yes, sir.

19 Q What was the question?

20 A I asked him at that point, as he was confessing to  
21 it, to the crime, and he was still very remorseful, I asked  
22 him, I said, "Where --" I said exactly, "Where --" I asked him  
23 where the gun could be located. I said, "Dennis, tell us  
24 where the gun is."

25 Q And what did he do at that point?

1           A     He went back to his previous demeanor. He had his  
2 head down. He kind of bowed up on me and he looked right  
3 across from me and he said, "Hey, you're trying to put words  
4 in my mouth."

5           Q     And at that point what happened to the interview?

6           A     I believe at that time Agent Rhodes was removing a  
7 tape recorder from his briefcase or his -- whatever and he  
8 didn't want to make any more statements. He didn't want to  
9 talk to us.

10           MR. JOHNSON: Tender the witness.

11           CROSS-EXAMINATION

12           BY MR. WESTLING:

13           Q     Good afternoon, Agent Mullen.

14           A     Good afternoon, sir. How are you?

15           Q     I'm all right. Agent Mullen, I attempted to speak  
16 to you about this particular crime on Tuesday of this week and  
17 you refused to do so, didn't you?

18           A     That's correct.

19           Q     Could you tell me why you wouldn't talk to me?

20           A     Because I -- it's just my policy that I don't talk  
21 to the defense attorney without the presence of the -- of the  
22 prosecutor in the -- in the case.

23           Q     Did you say to me, "Go get Mr. Johnson and I'll talk  
24 to you?"

25           A     No.

1 Q You just said, "I'm not talking to you."

2 A That's correct.

3 Q And, matter of fact, I attempted to talk to you  
4 again this morning, didn't I?

5 A That's correct.

6 Q And you said, "I'm not talking to you." Or, "No."  
7 You just said, "No."

8 A No. I shook my head, "No."

9 Q You shook your head, "No." All right. We can get a  
10 lot by what we see and hear, can't we?

11 A That's correct.

12 Q I should have known that the shaking meant no  
13 because you didn't actually say, "No," did you?

14 A I said, "No."

15 Q Well, did you say "no" or shake your head?

16 A I believe I shook my head.

17 Q And why wouldn't you talk to me this morning?

18 A I just reiterated to you that I -- it's my policy  
19 where I don't talk to the -- I don't talk to the defense  
20 attorney without the presence of the -- the State attorney.

21 Q And did you tell me this morning, after you shook  
22 your head, "I won't talk to you unless Mr. Johnson is  
23 present?"

24 A No, sir.

25 Q Why do you have that policy?

1 MR. JOHNSON: Judge, I'm going to object at this  
2 point. He's answered those questions and we -- I object  
3 to that. It's not relevant.

4 MR. WESTLING: Judge, I think it's very relevant to  
5 know -- for this jury to know why he won't --

6 THE COURT: I'll let him ask that last question. It  
7 really is not relevant to this trial, but I'll allow  
8 that.

9 MR. WESTLING: If you think it's not relevant,  
10 Judge, I'll move on.

11 THE COURT: It's not relevant, Mr. Westling.

12 MR. WESTLING: All right.

13 Q You mentioned a moment ago that while -- well, first  
14 off, what have you been looking at the whole time you've been  
15 talking to Mr. Johnson?

16 A Notes.

17 Q What notes?

18 A Notes of the interview with Mr. Perry.

19 Q Whose notes are those?

20 A These are my notes.

21 Q You wrote out those notes?

22 A I wrote out these notes from the G.B.I. report  
23 earlier this morning.

24 Q All right. You didn't shred your notes.

25 A Excuse me?

1 Q Did you -- I don't care what you wrote out this  
2 morning. I want to go back to January the 13th, 2000. Were  
3 you writing notes at that time?

4 A No, I don't believe so.

5 Q Did you have a hand-held recorder?

6 A No.

7 Q Is it correct to say, then, that what you've been  
8 looking at, sitting there in your lap the whole time you've  
9 been talking to Mr. Johnson, are notes that you wrote out this  
10 morning based upon the report that Detective Rhodes wrote?

11 A That's correct.

12 Q Okay. Now, why did you find it necessary to write  
13 out notes based upon what Detective Rhodes wrote?

14 A Detective Rhodes wrote the interview report of the  
15 interview that I just described. Detective Rhodes sent me  
16 that report so I could look over the report to make sure it  
17 was accurate. I called Mr. Rhodes back and I said, "That's an  
18 accurate report," when he did his G.B.I. report. And so this  
19 morning, when I knew that I was going to be testifying before  
20 this jury, I made notes from his report so it would be concise  
21 and right to the point.

22 Q You said a moment ago that at the end, "after Dennis  
23 had confessed."

24 A Uh-huh.

25 Q Show me where in this report Dennis Perry says, "I

1 killed Mr. and Mrs. Swain."

2 A I asked him if the gun went off by accident. Perry  
3 said, 'Yes.'

4 Q Was he talking about a gun in his hand or do you  
5 know?

6 A He was leading me to believe that he actually -- the  
7 gun went off by accident.

8 Q And this is --

9 A And -- I'm trying to answer your question. And --

10 Q Okay. Well, first, just point to me where it says,  
11 "I killed Mr. and Mrs. Swain."

12 A Didn't say that.

13 Q What is the definition of that word "confession" to  
14 an F.D.L.E. officer like yourself?

15 A When you make incriminating statements,  
16 incriminating statements about, for example in this case, a  
17 double homicide. He made those statements. That, to me, in  
18 my opinion, is a confession.

19 Q So your opinion says that if you have statements  
20 that are made, those statements viewed in their totality may,  
21 in your opinion, equal a confession.

22 A Correct.

23 Q Okay. Any recording made of these statements?

24 A No, sir.

25 Q So when you used the word "confession" a few moments

1 ago, that was your opinion of the summary of the statements  
2 given by Dennis Perry.

3 A That's correct.

4 Q You will agree, will you not, that he never said, "I  
5 killed Mr. and Mrs. Swain."

6 A That's correct.

7 Q "You're trying to put words in my mouth." How many  
8 times did he say that?

9 A He said that at the end.

10 Q And that's when Agent Rhodes got the tape recorder  
11 out?

12 A About -- it was right about the same time when I  
13 asked him -- when I was asking him where the gun was when  
14 Agent Rhodes was taking his tape recorder out, or was -- had  
15 it.

16 Q Do you agree that if we had a recording of that  
17 conversation, we wouldn't have to rely upon your assessment  
18 and opinion and to the significance of the summary of the  
19 statements?

20 A No, that's not correct because what I'm telling you  
21 is the truth.

22 Q I'm not suggesting it's not. Did I?

23 A Well, you had said that you have to rely on me.  
24 What I'm presenting to this jury is the truth and what he  
25 said.



1 Q Let me ask the question. I'm not suggesting that  
2 you're lying. Did I say you're lying?

3 A Why don't you repeat the question for me, please?

4 Q What part did you not understand?

5 A The one about the summary.

6 MR. JOHNSON: Judge, I'm going to object at this  
7 point. We're becoming argumentative.

8 THE COURT: Sustained.

9 Let's try again, Mr. Westling.

10 Q Do you agree that your definition of confession, if  
11 it's not black and white, "I killed them," okay? -- in this  
12 case we've got a lot of little statements here and there --  
13 that your definition of confession is a summary of the  
14 significance of the words that were given. That's what you  
15 told me a moment ago. A summary. Your evaluation of the  
16 summary. You agree with that?

17 A I don't understand what you're saying.

18 Q Well, let me --

19 A What I'm --

20 Q I'll go ahead. I'll do it again.

21 A Thank you.

22 Q Do you agree -- first off, you didn't write a  
23 report, did you?

24 A No, sir.

25 Q You didn't take any notes, did you?

1           A     No, sir.

2           Q     You agree, then, that when you use the word  
3 "confession" -- and you've already told me that there is no  
4 statement in this, in the Rhodes report, where Dennis Perry  
5 said, "I killed them." You've already told me that. Do you  
6 agree, then, that your belief that there was a, quote,  
7 "confession," end quote, is based upon your analysis of the  
8 total statements that were made that day?

9           A     That's correct.

10          Q     You're not sitting on this jury, are you?

11          A     That's correct.

12          Q     Do you agree that in order to form a complete  
13 analysis, that a tape recording would have been much better  
14 than just your summary of somebody else's notes?

15          A     I would agree with you, that it would -- we would  
16 like to have taken a tape recorded statement from him.

17          Q     Can you tell me why you decided to pull the tape  
18 recorder out when he said, "You're putting words in my mouth  
19 and it's over?" Why did you do it then?

20          A     Investigatively, when we brought him back into -- we  
21 brought him back into F.D.L.E. to sit him down, at that point  
22 was the first time during the night that he actually started  
23 to make these statements that he made, and it's been my  
24 experience and training that at that juncture was not an  
25 appropriate time to tape record his statement. What we

1 normally do in police work and investigations such as this, we  
2 usually get the whole story out on the table, and once we get  
3 the story out on the table, then we go in and memorialize the  
4 statement with a tape -- with a tape recorded statement.

5 Q And that's when he said, "You're putting words in my  
6 mouth."

7 A When I asked him where the gun was. I said,  
8 "Dennis, you need to tell me where the gun is," and he changed  
9 his whole attitude.

10 Q During the lunch break, did you speak with Detective  
11 Bundy about his testimony?

12 A No, I did not.

13 Q Did you speak with him this morning?

14 A No, I did not.

15 Q Did anyone during the lunch break relate to you the  
16 questions that were asked of Detective Bundy by me?

17 A No. I went to -- although, I went to lunch with Mr.  
18 Bundy in the presence of a sheriff, we did not discuss the  
19 case. When I wanted to discuss the case, the prosecutor and I  
20 went onto the sidewalk in front of the restaurant and we  
21 discussed the case.

22 Q You wanted to discuss the case?

23 A I wanted to discuss the case with the prosecutor;  
24 yes, I did.

25 Q Oh, all right.

1           MR. WESTLING: Judge, that's all that I have of this  
2 gentleman.

3           THE COURT: Okay.

4           MR. JOHNSON: That's all we have. He may come down,  
5 Judge.

6           THE COURT: Okay. Do you want him excused or do you  
7 want him to stay?

8           MR. JOHNSON: Judge, I'm probably going to excuse  
9 him in a few minutes, but I want to make sure he's  
10 outside for a few minutes more.

11          THE COURT: Okay. So you may retire from the  
12 courtroom, sir. Please do not leave the courthouse.

13          THE WITNESS: Thank you, Your Honor.

14                   (WITNESS WITHDREW FROM THE STAND)