

CERTIFIED COPY

1 IN THE FOURTH CIRCUIT COURT, STATE OF UTAH

2 -o0o-

3 STATE OF UTAH,)

4 Plaintiff,)

Case No. 85 SF 044

5 vs.)

PRELIMINARY HEARING

6 DOUGLAS A. LOVELL,)

7 Defendant.)

8 -o0o-

9
10 BE IT REMEMBERED that on the 12th day of June, 1985,
11 the above-entitled matter came on for hearing before the
12 Honorable Alfred C. Van Wagenen, sitting as Judge in the above-
13 named Court for the purpose of this cause, and that the
14 following proceedings were had.

15 -o0o-

16 APPEARANCES:

17 For the State:

MR. BRIAN NAMBA
Deputy Davis County Attorney
Farmington, Utah 84025

19 For the Defendant:

MR. JOHN BLAIR HUTCHISON

I N D E X

Page

WITNESSES FOR THE STATE

JOYCE YOST

Direct Examination by Mr. Namba 5
Cross-Examination by Mr. Hutchison 27
Redirect Examination by Mr. Namba 33

BILL HOLTHOUSE

Direct Examination by Mr. Namba 34
Voir Dire Examination by Mr. Hutchison 39
Direct Examination (Continuing) by Mr. Namba 41
Cross-Examination by Mr. Hutchison 46

STATE RESTS 50

* * *

E X H I B I T

<u>Number</u>	<u>Description</u>	<u>Received</u>
Plaintiff's "A"	Photograph	50

* * *

1 P R O C E E D I N G S

2
3 THE CLERK: Call No. 2 on the calendar, State of
4 Utah vs. Doug A. Lovell. 85 State felony 044. This is the
5 time set for preliminary hearing on aggravated kidnapping,
6 rape, two counts, forcible sodomy and aggravated sexual
7 assault. The defendant is present in Court and represented by
8 John Blair Hutchison. The State is represented by Brian Namba.

9 MR. HUTCHISON: I want to invoke the exclusionary
10 rule. I know I can't do it with the press, in view of the new
11 decision; but I certainly can make an exclusionary rule as to
12 witnesses, and I also want spectators excluded.

13 THE COURT: All right. How many--

14 MR. HUTCHISON: I think that--that'll--

15 THE COURT: --are here that are here as witnesses?

16 MR. HUTCHISON: Well, the one--one back there is my--
17 the defendant. Come on up here, Doug.

18 THE COURT: Let's have the defendant come up here and
19 let's determine who we've got here. Who are your witnesses,
20 Mr. Namba?

21 MR. NAMBA: We have only the complaining witness,
22 the officer, and--

23 MR. HUTCHISON: And I don't care if the officer stays.
24 I don't care.

25 THE COURT: Okay, so the officer can stay.

1 MR. HUTCHISON: Yeah.

2 MR. NAMBA: And the victim are the only witnesses we
3 have.

4 THE COURT: Okay. Will the victim be the first one
5 that--

6 MR. NAMBA: Yes.

7 THE COURT: Okay. Now, have you got any witnesses,
8 or--

9 MR. HUTCHISON: No. No witnesses.

10 THE COURT: All right. The press can stay, because
11 essentially that's what the court--Supreme Court's required;
12 but as far as the other people who are not involved in this
13 matter, the Court will issue an order excluding them.

14 MR. HUTCHISON: I'd like a tape of this proceeding,
15 too. Thank you.

16 THE COURT: You'll have to make those arrangements
17 later.

18 MR. HUTCHISON: Do I have to make a written demand
19 for a tape?

20 THE COURT: Yeah. Make a written demand and we send
21 it off and you pay for it.

22 MR. HUTCHISON: Do I need to enclose a check, or will
23 you bill me? And good old Ogden, all they do is say you need
24 a tape and then they give it to you and you pay them five
25 bucks for it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE CLERK: I'll tell you after Court, John.

MR. HUTCHISON: Okay. Thanks.

THE COURT: You'll get it for the least possible price, John.

MR. HUTCHISON: I just want to get it. Okay.

THE COURT: Okay.

Any opening statement?

MR. NAMBA: No.

THE COURT: All right. You may proceed, Mr. Namba.

MR. NAMBA: We'll call Mrs. Joyce Yost.

THE COURT: All right. If you'll come forward and be sworn.

JOYCE YOST,

called as a witness by and on behalf of the State in this matter, after having been first duly sworn, was examined and testified as follows:

THE COURT: Be seated right here, please.

DIRECT EXAMINATION

BY MR. NAMBA:

Q State your name and your address, please?

A Joyce Yost, 765 40th Street, Ogden, Utah.

Q Okay. Will you spell your last name for the Court?

A Y-o-s-t.

Q Thank you. Mrs. Yost, on the early morning hours of April--April the 4th, or the late evening hours of April the

1 3rd, what were you doing?

2 A I was up at Pier Three in Clearfield.

3 Q Excuse me? Where was that?

4 A Pier Three in Clearfield.

5 Q Okay. How long did you stay there?

6 A About three hours.

7 Q What were you doing there?

8 A Having dinner.

9 Q Were you accompanied by anyone?

10 A Yes. I was.

11 Q Who were you accompanied by?

12 A Mr. Lex Baer.

13 Q And about--

14 MR. HUTCHISON: Would you spell that name, last name?

15 THE WITNESS: B-a-e-r, I guess.

16 Q (By Mr. Namba) Okay. About what time did you arrive
17 there?

18 A Probably between 6:30 and 7:00.

19 Q And about how long did you stay?

20 A Oh, approximately 10:00 o'clock.

21 Q So, you--you left--

22 THE COURT: Can we have you slide forward just a
23 little bit, so we can record this well. Thank you.

24 Q (By Mr. Namba) Try to speak in the microphone, if
25 you would.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Okay.

Q So, you left that location about 10:00 o'clock, you say?

A Yes.

Q Okay. When you left the Pier building, where did you go?

A Outside to my car.

Q Okay. You were accompanied by another person, did you come in the same car?

A No.

Q Okay. So, you went to your car and he went to his car?

A Yes. And he walked me to my car.

Q Okay. He saw that you got into the car then?

A Yes.

Q All right. What did you do at that time?

A I left to go home.

Q And did you--your drive to your home in Ogden, was that an uninterrupted drive, without any other--anything unusual occurring?

A Yes.

Q Okay. Once you arrived at your home, did anything unusual happen?

A Yes.

Q What happened?

1 A Someone pulled in behind me.

2 Q All right. When you noticed that, where were you?

3 A In my car.

4 Q You hadn't opened the door, or gotten out?

5 A No.

6 Q Let's talk about your home just a little bit; do you
7 have a garage or a carport?

8 A Carport.

9 Q Okay. So, your vehicle was in the carport when the
10 other car came?

11 A Uh huh.

12 Q Then what happened? The other car pulled in behind you.
13 Then what happened?

14 A He pulled in the stall next to me, behind the car
15 that parks in that stall.

16 Q All right. Describe for me basically the--is this an
17 apartment complex?

18 A It's a four-plex.

19 Q It's a four-plex, so you've got a carport that--that
20 has more than one car, is that--

21 A Yes. Four cars.

22 Q All right. What was--can you remember what kind of
23 car it was that pulled up behind you?

24 A Uh huh. A red Mazda.

25 Q Any particular model, or can you describe the--the

1 vehicle?

2 A Uh huh. It had a sunroof, it had levelors, whatever
3 you call them on the back, levelors, nice-looking car.

4 Q It was a sports car as opposed to--

5 A Yes.

6 Q --a passenger car?

7 A Right.

8 Q All right. What happened after the car pulled in?
9 After he pulled into the space next to you? Did he--did any
10 person get out of the vehicle?

11 A Yes. He did.

12 Q Okay. Did you notice how many people were in the
13 vehicle?

14 A Well, only one got out of the vehicle.

15 Q All right. Then what happened?

16 A He came over to my car.

17 Q You were still in the car?

18 A Uh huh. He opened my car door.

19 Q Then what happened?

20 A He asked me if I would go have a drink with him.

21 Q Did he introduce himself?

22 A No.

23 Q Okay. So his first statement to you was about having
24 a drink?

25 A Uh huh.

1 Q Okay. What was--what was your reply?

2 A I said, no thank you, I wouldn't care to go have a
3 drink?

4 Q Did you know this person--

5 A No.

6 Q --at that time? You'd never met him before?

7 A Never.

8 Q If you were to see him again, would you recognize him?

9 A Yes.

10 Q Is he here in the courtroom today?

11 A Yes.

12 Q Would you point him out for us?

13 A Right there.

14 MR. NAMBA: May the record reflect that she's pointed
15 out--that the defendant--that the victim has pointed out the
16 defendant?

17 THE COURT: Yes. It may.

18 MR. NAMBA: All right.

19 Q (By Mr. Namba) After you had refused to go have a
20 drink with him, what happened? Was there more conversation?

21 A Yes. There was conversation, and--

22 Q Was there anyone present besides you and the
23 defendant?

24 A No.

25 Q Okay. What was the nature of the conversation?

1 A He wanted to have a drink. I didn't want to go have
2 a drink. I says, "I don't know you." I said, "Who are you,
3 anyway?" And--

4 Q Did he tell you who he was?

5 A Well, he gave me a phony name.

6 Q What was the name that he gave you, can you remember?

7 A I think he said Dave.

8 Q Did he make any other statements to you about why he
9 had come to you?

10 A He said he saw me at the Pier Three and thought I was
11 attractive and followed me.

12 Q Okay. Did anything--did--there at that location, did
13 you have any further conversation that you can remember?

14 A I just--that's basically what the conversation was.

15 I--

16 Q Okay. Then, so then the conversation ended, what--

17 A I said I would go have a cup of coffee, but I would not
18 like to go have a drink, and he didn't want a cup of coffee, so...

19 Q Okay. So, then what happened?

20 A He proceeded to enter my car. And--

21 Q Okay. I wanted to make sure that I understand the
22 logistics of what's happening. He's opened the door of the
23 car; is that correct?

24 A Oh, yes.

25 Q Had you gotten out of the car?

1 A No.

2 Q You were still sitting in the driver's seat of your
3 vehicle?

4 A Yes.

5 Q What kind of vehicle do you have?

6 A I have an Oldsmobile.

7 Q What year is it?

8 A '75.

9 Q What type of vehicle is it? A four-door, a two-door?

10 A Two-door.

11 Q Do you know the model?

12 A Delta 88 Royal.

13 Q Does it have bucket seats or bench seats?

14 A Bucket. Well, no, it's got a split bench seat, I
15 guess is what it is.

16 Q Okay. You say that he was trying to get into the
17 car?

18 A Well, he did, after I said no, I didn't want to go
19 have a drink.

20 Q Okay. When you say that he was trying to get into
21 your car, what was he doing in relationship to you? I mean,
22 you're already sitting in the driver's seat; is that correct?

23 A He grabbed ahold of my throat.

24 Q Okay. And then what did he do?

25 A Proceeded to rape me.

1 Q Okay. I'd like to take this a little bit more slowly,
2 so that I know in sequence the physical actions that he took
3 with regard to you, so that we know exactly what's happened.

4 When you say rape, that's a conclusion, we need to
5 know in sequence the things that he did; okay?

6 You say that he put his hand on your throat. What
7 kind of a touching was that? Was he--was he--what I mean, was
8 he pushing or grabbing, or--

9 A It was forceful.

10 THE COURT: Let me just interject a question here.
11 When you say he opened the door, I'm just curious which door
12 he was opening there.

13 THE WITNESS: The driver's side.

14 THE COURT: Opened your door?

15 THE WITNESS: Right.

16 THE COURT: Thank you.

17 MR. NAMBA: Okay.

18 Q (By Mr. Namba) He was standing at your door with the
19 door open and you say he placed his hand on your throat in a
20 forceful manner; was his hand open?

21 A Uh huh.

22 Q Okay. Was he--was he squeezing or was he just
23 pushing, or what kind of a motion was it?

24 A He squoze. He squoze my throat.

25 Q Okay. What else did he do?

1 A He said, if you say one word, he says, I'm going to
2 tear it out.

3 Q Okay. Referring to your throat--

4 A Yes.

5 Q --you believe? All right. When he was doing that,
6 was he seated next to you by that time?

7 A No.

8 Q What was the relationship of his person to yours at
9 that time?

10 A Well, he laid me down in the front seat of my car and
11 proceeded to tear my clothes.

12 Q So, at that point, he was in the vehicle?

13 A Yes.

14 Q And he had pushed you down to where you were lying
15 down on the--across the seat; is that correct?

16 A Yes.

17 Q Okay. I don't want to--to lead you, or to put words
18 in your mouth and so if at all possible, if you could describe--
19 I know it's difficult for you to do this--but if you could
20 describe the things that were occurring, or that have occurred,
21 then it would be--it would be easier for me to ask you the
22 questions.

23 Okay. He didn't begin to take your clothes off until
24 you were lying down; is that correct?

25 A Right.

1 Q Okay. What articles of clothing did he remove?

2 A He didn't actually remove them. He tore them.

3 Q Okay. Let's begin in this manner: What clothing

4 were you wearing at the time, before he--

5 A I had a dress on.

6 Q Okay. It was a full-length--I mean, it was not a

7 skirt and a blouse, it was a one-piece dress?

8 A Right. It was a one-piece dress.

9 Q Okay. Were you wearing hose?

10 A Yes.

11 Q And did he--did he remove--did he tear your dress; or

12 when you say he tore your clothes, what--what types of--what

13 types of clothing did he tear?

14 A It was a dress that buttoned down the front, a shirt-

15 waist dress, and he ripped the buttons off.

16 Q Okay.

17 A Ripped my bra.

18 Q Okay. And you were wearing panties?

19 A No. I had pantyhose on.

20 Q You had pantyhose on; and he removed those?

21 A Tore them.

22 Q He tore them off of you? All right. As he was doing

23 this, did he say anything else besides what you've just told us

24 to you?

25 A Well, there was a lot of anger.

1 Q I'm asking about the words that he may have said.

2 A I don't remember everything that he said, but he told
3 me that I better cooperate because he threatened me, he said he
4 had a gun.

5 Q Did you ever see a gun?

6 A No.

7 Q But he told you that he had one?

8 A Yes.

9 Q Okay. Did he say anything else?

10 A Told me he would kill me.

11 Q Okay. Now, prior to his using force upon you, did--
12 had there been any conversation with regard to having sexual
13 relations with him?

14 A No.

15 Q Okay. So, the conversation was basically having a
16 drink of coffee or a drink?

17 A Yes.

18 Q All right. Did he--well, did--what did you do, or did
19 you do anything to resist the advances that he made toward you
20 at that time?

21 A Oh, yes.

22 Q What did you do?

23 A I was able to get ahold of my car keys, and I hit him
24 in the face, along the side of the face with my car keys.

25 Q All right. Did you get any reaction from him when you

1 did that?

2 A Yes. He became very violent.

3 Q He became more--more violent at that time?

4 A Yes.

5 Q What had he done physically, to you at the time that
6 you'd struck--that you struck him with the keys?

7 A There was--I was resisting and he was forcing himself.

8 Q All right. Sequentially, was the--when you struck him
9 with the keys, was that prior to his ripping your clothes or
10 during the time he was ripping your clothes?

11 A I don't remember exactly if it was before or after.

12 Q Okay. All right. All right. After he had torn your
13 clothes, what did he do?

14 A He proceeded to have intercourse.

15 Q Okay. And that is intercourse in the common,
16 ordinary understanding of sexual intercourse; is that correct?

17 A Yes.

18 Q Okay. Did you have any other sexual contact with him
19 at that point in the car?

20 A No.

21 Q Okay. What happened then after he completed the
22 sexual intercourse with you?

23 A I tried to get out of my car, realizing that I was
24 definitely in a situation that my life was at stake, I just
25 prayed for help and I, as I was getting out of my car, I grabbed

1 ahold of the horn and thought maybe if I honked the horn that
2 one of my neighbors or somebody, would hear. It didn't work.
3 He became very angry.

4 Q What did he do?

5 A Well, he grabbed me by the throat again.

6 Q Okay. And after he grabbed you by the throat, what
7 did he do?

8 A He led me to his car.

9 Q Okay. When you say he led you--

10 A He dragged me, pulled me, forced me.

11 Q Okay. Were you making any resistance at the time that
12 he was forcing you to his car?

13 A Yes. I was.

14 Q What were you doing to resist him at that time?

15 A I was just trying to get away. By this time, I didn't
16 have my shoes, I didn't have my purse. He threw me in his car.

17 Q And you were physically unable to resist?

18 A I was not able to resist.

19 Q Okay. Did you get into his car?

20 A He threw me in his car.

21 Q All right. Which door did you get in, to get into his
22 car? The driver's door or the passenger's door, do you recall?

23 A I don't.

24 Q Okay. Do you recall which seat you got into?

25 A I was on the--on the passenger's side with my head on

1 the floor of his car.

2 Q Okay. You say that your head was on the floor of his
3 car; where were you feet?

4 A The top of the seat of his car.

5 Q The--the passenger seat of the car?

6 A Yes.

7 Q So, you were basically sitting--being on your head?

8 A Upside down, yes.

9 Q Your feet are dangling over the back of the car--

10 A Yes.

11 Q --of the seat? And your head was down? All right.

12 Did he close the door?

13 A Yes.

14 Q Okay. Was he in the vehicle?

15 A He got in the vehicle.

16 Q And then what happened?

17 A I don't know if he put a tape in the tape or what he
18 did, but he told me that he had a gun and he would use it if I
19 made one wrong move, and I heard a clicking, but I don't know
20 whether it was a gun or whether he put a tape into the tape deck;
21 but I felt like he was going to kill me.

22 Q Okay. You heard a metallic sound? All right. All
23 right. You're both in the vehicle; then what happened? Did he
24 move the vehicle, start the engine and move the vehicle?

25 A Yes.

1 Q Okay. As the vehicle was moving, your head was still
2 down--

3 A Oh, yes.

4 Q --on the floor? Okay. Do you know, can you estimate
5 more or less, how much time you were driving?

6 A It was very difficult. I had no sense of direction,
7 because I didn't know which way I was going because I couldn't
8 see. And it seemed like forever; however, I guess it wasn't,
9 but--

10 Q All right. Eventually, the vehicle did come to a
11 stop?

12 A Uh huh.

13 Q Okay. After the vehicle came to a stop, what
14 happened?

15 A He went around to the back of the vehicle and got a
16 piece of material, a piece of cloth, and put it over my eyes.

17 Q Okay. During this time that you were traveling, did
18 you ever straighten yourself up in the seat, or were you--

19 A No.

20 Q You were traveling the entire time with your feet up--

21 A Yes.

22 Q --and your head down? Okay.

23 But you--and the way you concluded that he got something
24 out of the back was just by sound?

25 A Yes.

1 Q Okay. You say he tied something around your eyes?

2 A He just--he didn't tie it, he just put it over my
3 eyes.

4 Q Okay. Then what happened?

5 A He led me.

6 Q Again, was he using force, or was he--

7 A He didn't have to, by this time.

8 Q Okay. He simply told you where to go?

9 A He just led me into his house.

10 Q I see. Okay. At any rate, he led you into a building;
11 is that correct?

12 A Yes.

13 Q All right. What happened after you'd entered into
14 this building?

15 A He led me to a bedroom.

16 Q Okay. And then what happened?

17 A I pleaded with him, I was thirsty and I wanted a
18 cigarette and I said, please get me a glass of water and a
19 cigarette, and he seemed reluctant to give me the water, but
20 he did. I sat down and I tried to talk to him.

21 Q Okay. This took place in the bedroom?

22 A Yes.

23 Q You were sitting in the bedroom and you asked for a
24 glass of water; so he had to leave the room to get a glass of
25 water; is that correct? He came back in with a glass of water.

1 Were your eyes covered during this time?

2 A No.

3 Q Okay. Then what happened? You drank the water, I
4 presume?

5 A I sure did.

6 Q Okay. Then what happened?

7 A Tried to have conversation with him and talk him out
8 of it.

9 Q Was there anybody else present in the room?

10 A No.

11 Q You didn't see anybody present in that building?

12 A No. No, I did not.

13 Q Okay. What was the nature of the conversation that
14 you had with him?

15 A Well, I begged, pleaded, tried to talk him out of
16 having intercourse.

17 Q Okay. Was he telling you that that was his intention
18 again, or--

19 A Yes.

20 Q Okay. What words, to the best of your recollection,
21 was he saying to you?

22 A I don't remember exactly what words he used, but he
23 was very insistent that that was the motive behind all of this,
24 and--

25 Q All right.

1 A --he said, you realize what you can do to me. I tried
2 to--I really tried to talk him out of it.

3 Q All right. Then what happened? After you completed
4 this conversation, what happened?

5 A Well, I was not successful in talking him out of it.
6 Because of the fact I was afraid for my life, I cooperated.

7 Q Okay. You say you cooperated; you mean you had
8 sexual intercourse--

9 A Yes.

10 Q --with him again? Okay. And that was the second
11 time?

12 A Yes.

13 Q And did any--did you have any other sexual contact
14 with him in that particular occasion?

15 A No.

16 Q What happened then after you completed that act of
17 sexual intercourse?

18 A He said he would take me home, and I asked him if he
19 had something I could wear, if he had an old sweatshirt or
20 something I could wear, and he gave me a shirt.

21 Q Did you still have a dress on at that time?

22 A No.

23 Q The dress was completely off?

24 A Yes.

25 Q Was it on, when you were in the car?

1 Q So, you took it off in the house?

2 A Yes.

3 Q Or it was removed, at any rate. There wasn't enough
4 left to wear, is that--

5 A It was torn.

6 Q And so you put a shirt on, and you didn't replace your
7 dress? You didn't take--you didn't put the dress back on?

8 A No.

9 Q Okay. Then what happened?

10 A He took me home.

11 Q All right. When he took you home, did he cover your
12 eyes when you left the building?

13 A No. He did not.

14 Q So, you saw the building as you left the building?

15 A Yes.

16 Q Do you know the location of that building?

17 A I don't have the exact address, but I--I know where
18 it is.

19 Q Okay. Did you ever point the building out to anybody
20 else?

21 A Yes.

22 Q And who did you point that out to?

23 A South Ogden Police.

24 Q All right? Did you have a conversation with him on the
25 way home from his place to yours?

1 A There was brief conversation.

2 Q What was the nature of the conversation at that time?

3 A He really tried to convince me what a nice person he
4 was, that normally, he gives girls flowers, doesn't do things
5 like this.

6 Q Anything else?

7 A Basically, that was about it.

8 Q Okay. When he took you home, did he pull back into
9 the same parking spot that he was--

10 A No.

11 Q --originally?

12 A No.

13 Q Where did he pull?

14 A Pulled out on the side street by my place.

15 Q And then you just got out of the car there?

16 A Yes.

17 Q Did you have any conversation upon leaving?

18 A No.

19 Q Parting company?

20 A I don't remember saying anything.

21 Q Okay. Did you find anything unusual about your
22 vehicle, when you returned to the vehicle?

23 A It was still the way I left it.

24 Q What condition was that?

25 A The car door on the driver's side was open, my purse

1 was still in it, and my shoes.

2 Q All right. You testified about two acts of sexual
3 intercourse. At any time during the night, did you and the
4 defendant engage in any other form of sex, other than--than
5 normal sex, commonly known as sexual intercourse?

6 A No.

7 Q Was there ever any contact with your--with your body--

8 MR. HUTCHISON: Object to the form of the question.

9 It's been asked and answered anyway, she said no.

10 MR. NAMBA: Well--

11 THE COURT: You may rephrase the question.

12 Q (By Mr. Namba) Do you understand my question--the
13 form of the question that I asked you with regard to--to the
14 sexual intercourse; do you understand what I'm asking you about
15 any other type of sexual contact, sodomy, or anything?

16 MR. HUTCHISON: Object, your Honor. That is certainly
17 a leading question. It's already been asked and answered anyway.
18 She said no, and now he's leading her into something else.

19 THE COURT: I'll allow her to answer the question.

20 MR. HUTCHISON: In that form?

21 THE COURT: In that form.

22 Q (By Mr. Namba) Do you understand the question?

23 A Repeat the question.

24 Q You understand my prior question was as to sex in the--
25 sexual intercourse in the common manner, commonly understood

1 manner?

2 A Yes.

3 Q When I asked you if there was any other sexual conduct
4 or contact, I'm asking--

5 A No.

6 Q There--you're saying that there was none?

7 A No--

8 MR. HUTCHISON: Objection. It's been asked and
9 answered.

10 MR. NAMBA: Okay.

11 THE COURT: She's answered it now.

12 MR. HUTCHISON: All right. Thank you.

13 MR. NAMBA: Okay.

14 No other questions of this witness, your Honor.

15 CROSS-EXAMINATION

16 BY MR. HUTCHISON:

17 Q What is your date of birth, Mrs. Yost?

18 A 1-3-46.

19 Q Are you married?

20 A No.

21 Q Divorced?

22 A Yes.

23 Q What's your maiden name?

24 A It's F-i-g-e-l.

25 Q F-i-g-e-l? Do you have any other former married

1 names, other than Yost?

2 A No.

3 Q You've always been known as either Figel or Yost then;
4 is that right?

5 A No. I've been married twice.

6 Q What was the other married name?

7 A Roberts.

8 Q Roberts. After you say the defendant dropped you off
9 at your house, I presume he didn't come in with you; is that
10 right?

11 A No. He did not.

12 Q He left? Did you get the license number, or something
13 off his vehicle?

14 A No. I didn't.

15 Q You went in; did you call the police?

16 A Yes.

17 Q Right then?

18 A I called my sister, first.

19 Q Your sister?

20 A Yes.

21 Q And I guess you've explained that was immediately
22 after going in the house?

23 A Yes.

24 Q Were you still wearing the shirt?

25 A Yes.

1 Q So, you have the shirt?

2 A I don't have the shirt, no.

3 Q You've turned the shirt over to the police?

4 A Yes.

5 Q All right. What about the dress that was torn, did
6 you take that from his residence?

7 A Yes.

8 Q So, you turned that over to the police also?

9 A Yes.

10 Q And in addition to those two items, I presume they
11 have the pantyhose?

12 A Yes.

13 Q You say he tore the bra or just took the bra off?

14 A Tore it.

15 Q They have that also, I presume?

16 A Yes.

17 Q And you turned those over to the South Ogden Police, or
18 to Mr. Holthouse?

19 A The Clearfield Police, I guess.

20 Q Clearfield; all right. But that was--when did you do
21 that? That night? The next day?

22 A That night.

23 Q All right. So, about what time did you get home, would
24 you say?

25 A Oh, a little after 1:00 o'clock in the morning.

1 Q And this whole incident started at your house, what's
2 your estimate of the time there?

3 A Oh, about between 10:00 and 10:30.

4 Q All right. Now, you'd been at the Pier Three for
5 approximately three hours with Mr. Baer before you left to go
6 home?

7 A Yes.

8 Q That was a pre-arranged meeting, I presume, between
9 you and Mr. Baer?

10 A Yes.

11 Q And you were each in your own vehicles?

12 A Yes.

13 Q Had you seen the defendant at all before he pulled up
14 beside you over at your house?

15 A No.

16 Q And you live in South Ogden?

17 A Yes.

18 Q In a four-plex?

19 A Yes.

20 Q He can--when he came up to the car and started engaging
21 in a conversation and asking you about a drink, did he explain
22 that he'd seen you at the Pier Three earlier?

23 A Yes.

24 Q All right. And said he'd followed you home; is that
25 right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q And you told him no, you wouldn't go have a drink with him? And you'd never seen the defendant before; right?

A No.

Q But you did offer to go have a cup of coffee with him?

A Yeah. I said I'll have a cup of coffee.

Q And this was before he had grabbed ahold of you, or obviously before he grabbed ahold of you or made any threats or references to rape?

A Yes.

Q Have you ever charged anyone with rape, before?

A No.

Q Have you ever been raped before?

A No.

Q Do you have any kind of criminal record, yourself?

A No.

Q Did you have a medical examination after this purported incident?

A Yes.

Q Who was the doctor, do you know?

A I don't know.

Q This was a doctor arranged by the police? Did the police arrange this medical examination?

A Yes.

Q It wasn't your family physician?

1 A No.

2 Q They took you in for somebody to examine? Was that
3 the same night?

4 A Yes.

5 Q Where did you go for this examination?

6 A McKay Dee Hospital.

7 Q All right. Do you know--and I presume, among other
8 things, it was a vaginal examination?

9 A Yes.

10 Q All right. Do you know what the conclusions were that
11 the doctors reached?

12 A No.

13 Q Do you (inaudible) Do you know whether they found
14 any evidence of force, any tearing or anything in your vagina
15 area?

16 A I don't know.

17 Q Did you have any marks or contusions or abrasions on
18 yourself?

19 A Yes.

20 Q Where were these that you found?

21 A I had black and blue marks on my arms and I had them
22 on my face and my ear, my hands.

23 Q These were photographed, I presume?

24 A Yes. Marks on my neck.

25 Q Marks of what? I'm sorry.

1 A On my neck.

2 Q On your neck.

3 MR. HUTCHISON: That's all the questions I have.

4 THE COURT: Mr. Namba, anything further?

5 MR. NAMBA: It appears I've had a lapse of memory.

6 I'm not sure if I established the location of the apartment
7 or not.

8 MR. HUTCHISON: I don't think you did, but I won't
9 complain at all.

10 THE COURT: I don't think you did, either. She
11 indicated that she had shown the police where it was, but I
12 don't think you've established that. So, go ahead.

13 MR. NAMBA: All right.

14 REDIRECT EXAMINATION

15 BY MR. NAMBA:

16 Q You indicated that you took the police back to the
17 loca--the South Ogden Police back to the location of what you
18 believe to be his home; is that correct?

19 A Yes.

20 Q Do you know where that was? Can you tell us what
21 city it's in?

22 A It's right on the Clearfield-Sunset border.

23 Q Okay.

24 MR. HUTCHISON: I'm sorry. I didn't hear the answer.
25 What was it?

1 MR. NAMBA: She said on the Clearfield-Sunset border.

2 MR. HUTCHISON: Okay.

3 Q (By Mr. Namba) Can you give us any kind of a
4 generalized, other than that, by streets or anything, that you
5 you can recall?

6 MR. HUTCHISON: I'll stipulate for the purpose of the
7 preliminary hearing to expedite matters, that it's in Clearfield.

8 MR. NAMBA: All right.

9 THE COURT: All right.

10 MR. NAMBA: And that's in Davis County.

11 THE COURT: All right.

12 MR. NAMBA: No other questions for her.

13 MR. HUTCHISON: I have no questions.

14 THE COURT: You may step down.

15 MR. NAMBA: We call Officer Holthouse.

16 BILL HOLTHOUSE,

17 called as a witness by and on behalf of the State in this matter,
18 after having been first duly sworn, was examined and testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. NAMBA:

22 Q State your name and your occupation.

23 A William Holthouse, police officer.

24 Q How long have you been so employed?

25 A Three years.

1 Q What's your responsibility with the police department?

2 A I am a detective for the Clearfield Police Department.

3 Q Were you on duty on the 4th of April, 1985?

4 A I was called to duty on that date.

5 Q All right. And you've been here present during the
6 proceedings today?

7 A I have.

8 Q Did you investigate that particular incident?

9 A I did.

10 Q What did you do in regard to that investigation?

11 A In the early morning hours of the 4th, I was called
12 at home, and informed that we had an alleged rape situation
13 that had occurred in our city, and had been reported by the
14 South Ogden Police Department. I responded to South Ogden
15 Police Department and talked to an Officer Hackworth. He
16 informed me of the situation, turned over some evidence to me
17 and then introduced me to Mrs. Yost.

18 Q Okay. And that's the person that just testified; is
19 that correct?

20 A That's correct.

21 Q All right. Did you ever have an occasion to talk to
22 the defendant?

23 A I did.

24 Q When did you do that?

25 A That was also on the 4th, in the early daylight hours,

1 around 8:30, in that vicinity.

2 Q Where was that conversation?

3 A The conversation itself took place both on Interstate
4 15 and approximately 700 South in our city, and then at our
5 city office, later.

6 Q You stopped him on the street?

7 A I stopped his vehicle on the road, that's correct.

8 Q All right. What persons were present when you talked
9 to him on the street there?

10 A Mr. Lovell and a trooper from the Highway Patrol.

11 Q No one else?

12 A No one else.

13 Q Okay. What was the nature of your conversation at that
14 time?

15 A I--at which location, sir?

16 Q On the street.

17 A I simply informed Mr. Lovell that he was a suspect in
18 an investigation that I was conducting and asked him to
19 accompany me to the Clearfield Police Department.

20 Q You didn't ask him any questions at that time?

21 A I did not.

22 Q Okay. Then you went to the Clearfield Police
23 Department; is that correct?

24 A That's correct.

25 Q He just followed you in his vehicle?

1 A No. I asked him for permission to leave his vehicle
2 secured in that area and obtained that permission, with the
3 trooper present, and he accompanied me in my vehicle to the
4 Clearfield Police Department.

5 Q All right. Just the two of you in that vehicle?

6 A That's correct.

7 Q Did you have any conversation in the vehicle?

8 A No. We did not.

9 Q All right. So then you went to the police
10 department?

11 A That is correct.

12 Q Okay. When you--I presume you asked him some
13 questions there?

14 A I did.

15 Q Was there anybody else present at that questioning?

16 A No. There was not.

17 Q All right. What was the nature of the conversation
18 there?

19 A Informed Mr. Lo--

20 MR. HUTCHISON: We don't have a foundation yet for
21 the subject matter of the conversation itself.

22 THE COURT: I think he's just in the process of laying
23 that, aren't you?

24 MR. NAMBA: Yes.

25 MR. HUTCHISON: All right. I just don't want any

1 substantive comments until we get past the Miranda.

2 MR. NAMBA: All right.

3 Q (By Mr. Namba) Did you inform him of why you were
4 going to question him?

5 A Yes. I did. When I brought him into the office, I
6 informed him of why I wanted to question him.

7 Q Did you tell him what the allegations were that you
8 were investigating?

9 A I did.

10 Q What did you tell him?

11 A I informed him that we had had a complainant that had
12 claimed that he had committed a rape and also other charges, the
13 related charges to that rape. I informed him of his Miranda
14 rights and he was unsure of them, so I went through each right
15 individually with him, asked him if he would talk with me about
16 it and if he understood his rights. On two or three occasions
17 during that conversation, he was unsure, he kept saying he was
18 unsure if he wanted to talk to me or not. I, on numerous
19 occasions, informed him he could have an attorney present if
20 he wanted one, but he would have to make that decision, I could
21 not make it for him. He finally said that he would talk to me
22 and that he did understand his rights. And then following that,
23 we spoke about--

24 MR. HUTCHISON: Well, I want to voir dire before we
25 get into the conversation.

1 THE COURT: Are you ready to go into the conversation
2 now?

3 MR. NAMBA: Yes. He may voir dire.

4 THE COURT: Then you can voir dire now.

5 MR. HUTCHISON: Thank you.

6 VOIR DIRE EXAMINATION

7 BY MR. HUTCHISON:

8 Q I think we need to be a little more specific. First
9 of all, did you read him his rights off your Miranda card, or
10 did you give them to him from memory?

11 A I gave them to him from memory, sir.

12 Q All right. Tell the Court what you told him.

13 A I told him: "You have the right to remain silent.
14 If you give up the right to remain silent, anything you say can
15 and will be held against you in a court of law. You have the
16 right to have an attorney, you have the right to have that
17 attorney present with you during questioning. If you cannot
18 afford to hire an attorney, one will be appointed for you by
19 the court, at no cost. Lastly, you can exercise any of these
20 rights to any questions at any time, not answer any questions
21 or make any statements."

22 I then went on to explain to him what that meant, and
23 that meant that he could talk to me, but if he decided that he
24 did not want to make a statement or did not want to answer any
25 specific questions, he did not have to. Following that, I asked

1 him if he had, at that point in time, been under the influence
2 of any drugs or alcohol.

3 Q All right. His response after you gave him the
4 Miranda rights was what?

5 A I don't know if I should talk to you or not.

6 Q All right. He never told you he wouldn't talk to you,
7 he just expressed ambivalence; is that what you're saying?

8 A That's correct.

9 Q And how was this ambivalent mood of his resolved; what
10 did he do next? What did he say after that, after he was in a
11 quandry as to whether or not he would talk to you?

12 A Okay. I then went through each one of the rights
13 individually, one at a time, and re-explained them to him and
14 explained to him that I could not tell him if he should have
15 an attorney there or not, that that was his choice. And he
16 thought about it a little bit and then he said, again, I don't
17 know if I should talk to you. And I repeated myself. I said
18 again, Mr. Lovell, I cannot tell you if you should have an
19 attorney here or not, that is a choice you have to make. And
20 he said, well, I'll talk to you.

21 Q Did you explain to him also that the choice was up to
22 him as to whether or not he talked to you at all?

23 A That's correct.

24 Q All right. Go ahead.

25 A Following that, he said he would talk to me.

1 Q And waived his Miranda rights?

2 A That's correct.

3 Q Did you get a written waiver of any kind?

4 A No. I did not.

5 Q Was there anyone else present besides the two of you
6 during this conversation?

7 A No, sir. There was not.

8 Q Was it taped?

9 A No, it was not. I asked him if I could tape the
10 conversation. He said he would prefer that I did not.

11 Q All right.

12 MR. HUTCHISON: Your witness. Go ahead, Brian.

13 DIRECT EXAMINATION (Continuing)

14 BY MR. NAMBA:

15 Q Any other person come into the area, or the room that
16 you were having your conversation, during the interrogation,
17 that you can recall?

18 A I am not sure. I believe that one of the other
19 officers momentarily walked in. I used another office, let
20 me clarify that, I did not use my own office, I used the
21 lieutenant's office. I believe someone walked in and walked
22 out momentarily during it, but I'm not sure.

23 Q You don't recall what portion of the conversation that
24 may have occurred?

25 A No. We were well into the conversation by that time.

1 Someone came in and got something off the desk, but I don't
2 recollect.

3 Q All right. Not anybody really involved in
4 interrogating the defendant?

5 A No, sir. No one involved in this case.

6 Q All right. What did you ask him, first?

7 A I asked him if he knew Mrs. Yost.

8 Q And what did he reply?

9 A He said he did. He said he remembered the name
10 because he used to go hunting in a place called Yost.

11 Q Then what did you ask him?

12 A I told him that Mrs. Yost had alleged that he had
13 raped her. Following that, he said, is that what she says?
14 I said, yes, it is. He said, that's not what happened. I said,
15 what did happen. I cannot then remember the exact contents of-
16 the conversation, but I can tell you in general terms that he
17 told me that he had met Mrs. Yost in the parking lot at the Pier
18 Three, that she had asked him to follow her home, which he did.
19 That once getting to her home, they then had decided to come back
20 to his home in Clearfield and have sexual intercourse. Following
21 which, he took her back home again.

22 Q All right. Did he say anything else to you with regard
23 to things that occurred during that evening?

24 A Mrs. Yost had told me that he had forced her or asked
25 her to perform fellatio on him. I asked him if that was true,

1 and his answer was yes, she gave me a head job.

2 Q Okay. Anything else?

3 A I then asked him about the cut on his face. He had a
4 cut just off the bridge of his nose, on the left side of his
5 face. I asked him where the cut had come from, he told me that
6 he had received it at work the previous day.

7 Q I'll show you what has been marked as Exhibit "A".
8 Have you seen that before?

9 A Yes. I have. I took it.

10 Q When did you take it?

11 A I took it immediately following this interview.

12 Q Does that--well, what's it a photograph of?

13 A It's a photograph of Mr. Lovell from the front.

14 Q Okay. You indicated that he had a scratch on his
15 face; is that correct?

16 A Yes.

17 Q Is that visible in the photograph?

18 A It is visible, yes.

19 Q Can you point it out to the Court?

20 A It's just to the left of the bridge of his nose,
21 above his moustache.

22 Q Which side of his face is it on?

23 A Left side of his face.

24 Q All right. What--what was the condition of that
25 scratch?

1 A It was a--appeared to be a very fresh scratch. Below
2 the scratch was coagulated blood.

3 Q All right. When you say coagulated blood; can you
4 describe it any further?

5 A It was like--I'm not a medical person--it was like a
6 lip of blood, like it had dripped slightly and then dried below
7 it, and was fresh, and the scratch itself was still red and had
8 not become the brownish color that they normally become after
9 several hours.

10 Q Something that hadn't been wiped?

11 A It looked like it had not been wiped, that's
12 correct.

13 Q Or dressed, or anything in any way?

14 A That's correct.

15 THE COURT: When was that picture taken?

16 THE WITNESS: This picture was taken at approximately
17 9:30 on the 4th.

18 THE COURT: Okay.

19 Q (By Mr. Namba) What else did you do in regard to the
20 investigation of this crime? This situation.

21 A Okay. Following my--at that--at that point in time?
22 Still talking about the 4th?

23 Q Yes.

24 A I informed Mr. Lovell that I was going to place him
25 under arrest, which I did. Placed him under arrest, and I

1 transported him to the Davis County Jail.

2 Q Okay. With regard to the vehicle, what did you do?

3 A We impounded the vehicle.

4 Q Where was it taken?

5 A It was taken to Perk's Auto in Clearfield.

6 Q Did you do an inventory search on it?

7 A Not at that time.

8 Q Okay. Did you ever do a search of the vehicle?

9 A Yes, sir. Subsequent to that, I obtained a search
10 warrant for the vehicle, through your office, and myself and
11 Detective Martin from the same agency went down and did a
12 search of the vehicle.

13 Q And did you take any objects from the vehicle?

14 A Yes. We did.

15 Q What did you take?

16 A We took hairs which we found in the vehicle on the
17 right seat and the right floor board, and we also took a shell
18 earring that we found on the right floor board directly in front
19 of the seat.

20 Q All right. Had you ever seen the matching earring to
21 that one?

22 A Yes. I did.

23 Q And where was that?

24 A I obtained that from Officer Hackworth from the South
25 Ogden Police Department. It was found on the right front seat

1 of Mrs. Yost's vehicle, along with a button from her dress.

2 Q All right. Did you find anything else in the
3 vehicle?

4 A In Mr. Lovell's vehicle?

5 Q Yes.

6 A We also found some--some capsules and some other
7 items; nothing relating to this case.

8 Q All right..

9 MR. NAMBA: No other questions.

10 THE COURT: Mr. Hutchison?

11 MR. HUTCHISON: I'll have questions. Just a sec.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. HUTCHISON:

15 Q Give me a time frame; when did you first stop the
16 defendant?

17 A Approximately 8:30 in the morning.

18 Q So, you have been here during the testimony of the
19 complainant?

20 A Yes. I have.

21 Q So, it was seven or eight hours after she claimed this
22 episode had ended?

23 A Approximately, yes, sir.

24 Q So, obviously if she was the one who put the cut, which
25 you designated as a fresh cut on Mr. Lovell's face, it would have

1 had to have been at least seven or eight hours old at that
2 juncture?

3 A In that vicinity, yes, sir.

4 Q And you're saying that you have the expertise to
5 determine whether a cut is seven or eight hours old, or a day
6 or--or a day old, or 24 hours old?

7 A No, sir. I'm not saying that.

8 Q All right. So, the complainant's version of how that
9 cut got on Mr. Lovell's is correct, that would be at least seven
10 or eight hours old; if he was to be believed, it would have to
11 be at least, when you saw it, at least 15, or 14 or 15 hours old
12 if it had been at work the following day?

13 A I would assume that to be correct, yes.

14 Q And are you saying that you would be able to
15 distinguish a cut that was 15 hours old from one that was seven
16 or eight hours old?

17 A No, sir. I'm saying I am not able to distinguish that.

18 Q All right. You--were you the one that secured the
19 medical examination for Ms. Yost at McKay Dee Hospital?

20 A No, sir. I was not.

21 Q Do you have the results of that particular
22 examination?

23 A We do not have them. They are presently at the crime
24 lab.

25 Q The medical examination?

1 A Is at the crime lab, that's correct.

2 Q She was--what's at the crime lab?

3 A What is at the crime lab, or what's the crime lab?

4 Q Yeah. No, I know what the crime lab is; but what is
5 at the crime lab?

6 A All of the evidence at this time is at the crime lab.

7 Q All right. But the doctor that made the physical
8 examination on Ms. Yost, did he make a report of some type?

9 A Yes. He did.

10 Q All right. And was that report verbal, or was it in
11 writing?

12 A It was as part of the rape kit, the form that is in
13 the rape kit, and was sent with the rape kit up to the lab.

14 Q So the report that he filled out that's in the rape
15 kit, was sent along with the rest of the rape kit to the crime
16 lab?

17 A Yes, sir. It's in the sealed unit.

18 Q All right. What else was sent to the crime lab? The
19 clothes?

20 A The clothes and the hair and fiber evidence obtained
21 in the vehicle.

22 Q Has there been a determination to try to match those
23 up, yet?

24 A Yes. There has.

25 Q Do you know the conclusions reached in that regard?

1 A The conclusion that was reached at this point in time
2 is that it is--

3 Q With the hair?

4 A With the hair, is that it's inconclusive, in and of
5 itself.

6 Q I see. So, in other words, they, at this point in
7 time, they can't say whether the hair belonged to the
8 plaintiff or not?

9 A That's correct.

10 Q All right. And what--do you know what the doctor
11 said, when he filled out the forms in the rape kit, after he
12 conducted the physical examination; did he find any evidence
13 of force or tearing or anything in the vagina area?

14 A Not--no, he did not. No force or tearing, no.

15 Q Other than the abrasions and contusions which you've
16 taken pictures of and we've talked about, did the doctor
17 indicate any demonstrative extrinsic evidence that he could
18 find that would indicate that the matter was one of rape?

19 A No. He did not.

20 Q Could he--did he make the determination that Ms.
21 Yost had in fact had sexual intercourse?

22 A Yes, he had.

23 Q He said she had?

24 A He said that she had.

25 MR. HUTCHISON: That's all I have.

1 THE COURT: Anything further?

2 MR. NAMBA: No, your Honor.

3 We'd ask for admission of the one photograph into
4 evidence.

5 THE COURT: Let me have that.

6 MR. HUTCHISON: I don't have any objection, but let
7 me look at that, first. I never have looked at it.

8 THE COURT: Plaintiff's Exhibit A will be received
9 in evidence.

10 THE WITNESS: May I step down now?

11 THE COURT: Yes. You may step down.

12 MR. NAMBA: I think Count III needs to be dismissed,
13 your Honor.

14 MR. HUTCHISON: Yes, and I've got some motions as to
15 a couple of other counts here, too. And I'll certainly concur
16 in Mr. Namba's motion as to Count III, but we have a couple
17 other counts I want to talk about.

18 THE COURT: All right, now, anything further,
19 Mr. Namba?

20 MR. NAMBA: No.

21 THE COURT: All right. Go ahead, Mr. Hutchison.

22 MR. HUTCHISON: Is Count III dismissed, your Honor,
23 on the County Attorney's motion?

24 THE COURT: I'm just turning that for a second, here.
25 That's the forcible sodomy, felony of the first degree. Count

1 III on motion of the County Attorney, with the concurrence of
2 defense counsel, will be dismissed.

3 MR. HUTCHISON: All right. And I'll go to Count IV,
4 your Honor.

5 There's testimony about that, a rape also occurred in
6 South Ogden that this Court hasn't got any jurisdiction over.
7 That needs to be dismissed, and then I want to talk about Count
8 V.

9 THE COURT: Mr. Namba?

10 MR. NAMBA: It's our position, your Honor, that the
11 statute provides that a--where there's one continuous single
12 criminal episode that occurs, that they can all be charged as--
13 in one Information. And since this is one continuous episode,
14 including the kidnapping that occurs, that it can be charged
15 together, even though it occurs outside the Davis County line.

16 MR. HUTCHISON: You're--

17 THE COURT: Mr. Hutchison?

18 MR. HUTCHISON: But you're talking about two separate
19 crimes in this case, which are alleged as separate entities in
20 themselves. It's one thing if you're--if you have an incident,
21 a crime that takes place in more than one county, like for
22 example, the kidnapping charge. I agree that could be filed
23 here, even though it was initiated, apparently initiated,
24 according to the testimony of the alleged victim, in Weber
25 County; but that is a completed crime in itself, that rape that

1 supposedly happened in South Ogden, and even though--well, even
2 though the complainant claims other crimes were committed after
3 the consummation of that rape, it doesn't give this Court
4 jurisdiction to handle--to hear that.

5 And I want to talk about Count V also.

6 THE COURT: All right. Go ahead, I'll listen--consider
7 the motion on Count IV under advisement.

8 MR. HUTCHISON: There's been testimony for--that to
9 support Count V is separate from Count I. The only testimony
10 is--the testimony is that he raped her, the testimony is he
11 raped her twice, South Ogden and in Clearfield. There's nothing
12 for you to bind over for aggravated sexual assault. It's a
13 duplicitous charge.

14 MR. NAMBA: Your Honor, there was testimony by Ms.
15 Yost that the defendant told her when he grabbed her by the
16 throat, told her if she didn't submit herself, or comply with
17 his demands that he'd tear her throat out, also told her that
18 he had a gun. She heard a clicking sound, we don't know what
19 that was; but there is evidence that he did use threats of
20 bodily harm.

21 MR. HUTCHISON: That's the rape. Rape requires threats
22 and force, that's the rape, that's the subject matter of the
23 rape.

24 THE COURT: Mr. Namba, on this Count IV argument
25 about Weber County, what--what statute are you relying on,

1 specifically?

2 MR. NAMBA: I have--we have a book and show it to you.

3 THE COURT: All right. You can step into my
4 chambers--

5 MR. HUTCHISON: The defendant needs to go to the
6 restroom, your Honor. May he be excused briefly, take us off
7 the record?

8 THE COURT: Well, let's take about a five-minute
9 recess.

10 MR. HUTCHISON: All right.

11 (Recess.)

12 THE COURT: You may proceed.

13 MR. NAMBA: Your Honor, Utah Code, Section 76-1-401
14 defines criminal--same criminal episode as all conduct which is
15 closely related in time and is incident to an attempt or an
16 accomplishment of a single criminal objective.

17 I think that in this case, we do have a single criminal
18 episode occurring from the time that he meets her to the time
19 that he lets her off, and--

20 THE COURT: And if that happens, what can take place?

21 MR. NAMBA: Now, 76-1-402 says that a defendant may
22 be prosecuted in the same criminal action for all separate
23 offenses arising out of a single criminal episode; however,
24 when the same act or defendant, under a single criminal
25 episode, shall establish offenses which may be punished in

1 different ways under different provisions of this Code, the act
2 shall be punishable only under one such provision, an acquittal
3 or conviction sentenced under any such provision barring the
4 prosecution under any other provision.

5 There is one other point that's important to point out
6 in this particular statute, and that is that--Subsection 2
7 indicates whenever a comment may--may establish separate offenses
8 under a single criminal episode, that's what we've got here,
9 separate offenses under a single criminal episode, and unless the
10 Court otherwise orders to promote justice, a defendant shall not
11 be subject to separate trials for multiple offenses, when the
12 offenses are within the jurisdiction of a single court and the
13 offenses are known to the prosecuting attorney at the time the
14 defendant is arraigned for the first Information or indictment.

15 In this case, the prosecution knew of the two rape
16 situations. The offenses are within the jurisdiction of a single
17 court--we're not talking about venue, doesn't say venue of
18 actions, it says jurisdiction, and the offenses are within the
19 jurisdiction of a single court. And so by looking at that
20 statement in the statement, it appears that unless the Court
21 otherwise orders for justice, a defendant shall not be subject
22 to separate trials.

23 In other words, if we'd filed one of the rapes here
24 and one in Ogden, the defense could have sit up and say well,
25 that's in violation of the statute and one of them has to be

1 dismissed. So, our position is we had no alternative but to
2 charge both offenses in this one criminal Information.

3 THE COURT: All right. Anything further?

4 MR. HUTCHISON: I have never heard of an interpretation
5 such as that. Obviously, strenuously object to a South Ogden
6 crime being charged in Clearfield.

7 I don't think the statute even says what Mr. Namba
8 purported to have it say before he read it to you.

9 THE COURT: Well, all right. Any other motions that
10 you have?

11 MR. HUTCHISON: That's it, your Honor.

12 THE COURT: All right. Well, Count III, the sodomy
13 charge was dismissed.

14 I believe that there is sufficient evidence with
15 regards to Count V, there is reasonable cause to believe that
16 the offense was committed, and by the defendant. I am persuaded
17 that on--under the particular circumstances, that this
18 certainly fits into a single criminal episode. There was a
19 single criminal objective in mind, based upon the evidence
20 presented before the Court. You will still have all your
21 argument to present with regards to Count IV, that it should be
22 prosecuted in Weber County, but I'm going to bind that over
23 along with all counts in this matter, Count I, II, IV and V
24 will be bound over for trial--for arraignment and further
25 proceedings in the District Court in Davis County. With Count

1 III being dismissed. You can pursue your arguments there.

2 MR. HUTCHISON: What about my tape?

3 THE COURT: We'll get that to the people just as
4 quick as they can.

5 MR. HUTCHISON: What do I need to do? Do I--do you want
6 me to make a written demand for the tape of the preliminary
7 hearing?

8 THE COURT: Yeah. Just get us a written demand and--
9 why don't you just step to the window, and we'll get it as quick
10 as we can.

11 MR. HUTCHISON: All right. Well, if you don't--

12 THE COURT: Just follow the procedure.

13 MR. HUTCHISON: All right.

14 THE COURT: Okay. We'll continue the bond as posted
15 in this matter, pending the further proceedings.

16 THE COURT: Mr. Namba?

17 MR. NAMBA: Yes.

18 THE COURT: With regards to Plaintiff's Exhibit "A",
19 what would you like done with that?

20 MR. NAMBA: If we just release that to the office.

21 THE COURT: Mr. Hutchison?

22 MR. HUTCHISON: What?

23 THE COURT: Any objection if we just release
24 Plaintiff's Exhibit "A" back to--

25 MR. HUTCHISON: No. No objection.

1 THE COURT: --Mr. Holthouse? All right. We'll do
2 that.

3 All right. We'll be in recess.

4 (Whereupon, this hearing was concluded.)
5
6

7 * * *
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF UTAH

COUNTY OF SALT LAKE

THIS IS TO CERTIFY that State of Utah, vs
Douglas A. Lovell, was electronically recorded by the
Clearfield, Circuit Court, Clearfield
Utah.

That the said witnessess were, before examination, duly sworn to
testify the truth, the whole truth and nothing but the truth in said
cause.

That the said testimony of said witnessess was electronically
recorded, and thereafter caused by me to be transcribed into type
writing, and that a true, and correct transcription of said testimony
so taken and transcribed is set forth in the foregoing pages numbered
from 3 to 58, inclusive and said witnesses testified and
said as in the foregoing annexed testimony.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this
5th day of September 1985.

My commission expires:

June 9, 1986

Viki E. Hatton
VIKI E. HATTON

