for me.

LEBARRON SMITH

was sworn and testified as follows:

MR. NIXON: Judge, just before we get going, I have not subpoenaed Detective Fletcher, I don't believe, but I would request that he be here.

THE COURT: I just got through saying he'll be here at 9:15 in the morning.

MR. NIXON: I just didn't want the district attorney to release him.

THE COURT: Go ahead, take the stand, Lebarron.

DIRECT EXAMINATION

BY MR. JORDAN:

Q Tell us your name for the record, please.

A Lebarron Smith.

Q Who do you work for?

A City of Prichard Police Department.

Q And did you take a statement from Rodney Stanberry on 4/17/1992?

THE COURT: I don't need it. Do you have a copy of this third statement, Ken?

MR. NIXON: Yes, sir.

Q And --

THE COURT: Before you start asking him anything,

this former police officer, Fletcher.

MR. JORDAN: Yes.

THE COURT: He said, Lebarron, that he had a waiver form for the second statement, which I don't have anything in front of me, but I believe it's 3/7/92, 3/3 and 3/7/92, and everybody's looking around like it's gonna rain in here. Is that right, 3/3/92 and 3/7/92?

MR. NIXON: Yes, sir, Judge, 3/3 and 3/7.

THE COURT: On the 3/7/92, he said he distinctly remembers having a waiver form signed, and he further said that all this was left in the file of the Prichard Police Department. Is he correct or incorrect is all I want to know.

THE WITNESS: I haven't seen one, Judge. I could go back and look at the file, but --

THE COURT: Do that tonight. Go ahead.

MR. NIXON: Judge, I will represent that one has never been provided to me.

MR. JORDAN: I'll represent that, too. I'll represent -- I'll even say that we didn't need to mirandize him. So if he was -- I mean, he was not in custody, so. But I'll

make that legal argument at the right time.

Q Lebarron, when you interviewed -- Where did you interview --

THE COURT: When he gets through making that argument, you look tonight. Okay?

THE WITNESS: Yes, sir.

Q Where did you interview Rodney?

A It was at his place of employment on Halls Mill Road at BFI.

Q And where specifically at his place of employment?

A BFI Waste Management.

Q Was it outside or in an office?

A It was in an office.

Q And was he under arrest at that time?

A No, he was not.

Q And when you got through interviewing him, was he under arrest? Did you arrest him there at the scene?

A Yes, I believe we did arrest him at BFI.

Q You think you did. Are you sure about that, or do you think he was arrested about a week or two later?

A Okay. We went to BFI twice. Yes.

Q The first time you went to BFI, when you interviewed him, when you got through talking to him, didn't you, in fact, leave?

A Yes, on that first occasion.

Q And you left Rodney there?
A Yes.
Q And he was not under arrest, and he was not arrested?
A No, he wasn't.
Q And then about two weeks later or three weeks, whatever time it was, I can find it in the records, did you come back to BFI?

MR. NIXON: Judge, respectfully, it's late, and I don't want to prolong this out, but I don't want Mr. Jordan just to testify. He was there. If he wants to testify, just let him testify, but he's asking these long leading questions, and all Mr. Smith is doing is saying, yes, yes, yes.

MR. JORDAN: I wasn't there when he was arrested.

MR. NIXON: You were there when the statement was taken.

MR. JORDAN: Yeah, the first statement.

Q Did you go back later and arrest him at BFI?
A Yes.
Q And who went with you that time?
A I can't recall the officer right off.
Q But that happened on two separate days?
A That's correct.
Q The interview one day and three or four weeks later the

arrest?

A Yes.

Q Both occurred, though, at BFI?

A That's correct.

Q Was he mirandized when you interviewed him at BFI?

A Not on the first one.

Q And the statement we have is the statement, basically, that he gave to you?

A That's correct.

MR. JORDAN: That's all I have.

CROSS EXAMINATION

BY MR. NIXON:

Q Mr. Jordan was with you when he was arrested, too, wasn't he, Mr. Smith, at BFI?

A He may have been.

Q Do you remember arresting Mr. Stanberry, Mr. Smith?

A Yes, I do.

Q And Mr. Jordan was with you when you arrested him out at BFI, wasn't he?

A He could have been.

Q I didn't ask you if he could have been. You remember it, and he was there, wasn't he?

A As I say, he could have been. It's been two years ago.

Q You don't remember?

A I remember Mr. Jordan in the interview with Mr.

Stanberry, but at the actual arrest, he could have been with me or he may have not. I'm not sure.

Q You remember going out to BFI, putting the handcuffs on Rodney and taking him away?

A Yes.

Q And you don't remember Buzz being there with you, Buzz Jordan, D.A., Mobile County?

A I say he could have been.

Q He was with you when you took this statement, though, wasn't he?

A That's correct.

Q And this statement was taken on April the 7th, 1992 at BFI?

A If that's what's on there, that's when it was taken.

Q Have you seen the statement?

A Yes, I looked at it.

Q Okay. Was that the date you took the statement?

THE COURT: Ken, can I see it?

MR. NIXON: Yes, sir.

THE COURT: Do you need it to ask any questions?

MR. NIXON: I've got another copy, Judge, I think.

Q Now, Mr. Smith, he was -- Rodney Smith was your chief suspect on that date, wasn't he, in this case?

A The day the statement was taken?

Q Yes.

A He was a suspect.
Q In fact, you were the case agent on the case at that time, were you not?
A Yes, I was.
Q And he was your primary suspect, wasn't he? You had stopped investigating everybody else at that time?
A No, we hadn't stopped investigating everybody else.
Q Are you sure about that?
A Yes, I'm sure.
Q Had Valerie Finley told you that Rodney Stanberry did it?
A She told us two people.
Q Did she tell you?
A Yes, she did.
Q And when did she tell you that the first time?
A Probably at the Rotary Rehabilitation Center, I believe it was.
Q When was that?
A I don't know the exact date. I could go back and look through the file.
Q Was it before or after April the 7th when you took this statement from Rodney?
A Had to be before.
Q So before you went out to BFI and took Rodney's statement, you had been told by Valerie Finley that

Rodney was the one who broke into her house and did this crime; is that correct?

A I had been told that he was with another person that came in the house.

Q Right. So he and the other person that was with him were your chief suspects at that time; is that right?

A Yes.

Q And you did not read him his Miranda warnings, did you?

A No, not on that occasion.

Q And you did not advise him that he was a suspect in that crime, did you?

A I don't believe I did.

Q Sir?

A No, I didn't.

MR. JORDAN: I'm sorry, I didn't hear the question.

THE COURT: No, I didn't.

MR. JORDAN: I didn't hear the question. I'm sorry.

THE COURT: Did you Mirandize him?

Q So you didn't mirandize him, and you didn't advise him he was a suspect, even though he was a suspect and had been identified by the victim as being the one who came in her house; is that correct?

A Yes.

Q Now, you knew before the statement, right?
A Yes.
Q Right.
A Yes.
Q Did you ask his permission to record the statement?
A Yes.
Q Is that on the statement? Is that recorded?
A That he realized it was being recorded?
Q Yes, sir.
A I believe it is. I would have to look at it and see.
Q Do you usually do that?
A Yes.
Q And Mr. Jordan went with you on this interview and participated in it, didn't he?
A Yes, that's correct.
Q As the district attorney here in Mobile?
A Yes.
Q And he asked Mr. Stanberry questions?
A Yes.
Q And Mr. Jordan knew that Mr. Stanberry was the chief suspect in this case, also, correct?
A Yes.
Q He knew everything that you knew about this case at the time because you told him; is that right?
A That's right.

Q And y'all rode out there together?
A Yes.
Q And the purpose of you going out there that day was to get a statement from Rodney Stanberry, right?
A Yes.
Q To use against him after you arrested him?
A I didn't hear the question.
Q You went out there to get a statement from Rodney Stanberry, your chief suspect, so that you could use it against him after you arrested him, at trial here like you're trying to do; is that right?
A Yes, I guess so.
Q Mr. Jordan didn't read him his Miranda rights, either, did he?
A I don't believe so.

MR. NIXON: That's all I have, Judge.

MR. JORDAN: That's all I have, Judge.

THE COURT: You may step down, Lebarron.

MR. NIXON: Judge, I would proffer that Mr. Stanberry will testify that he did not sign a waiver, written waiver. He's never signed a written waiver. He would also testify that he's never been read his miranda rights before these statements.

THE COURT: Do you have anything to put in the

record, Buzz?

MR. JORDAN: Yes, Your Honor. It's my understanding of the law on Miranda that the only statements that are excluded, number one, you've got to be in custodial -- It's got to be a custodial interrogation before miranda ever applies. If it is not a custodial interrogation, then Miranda absolutely, under the Constitution, under the U. S. Supreme Court rulings for the last 20 to 30 years, does not apply.

The Prichard Police Department, Detective Fletcher was never required to give Rodney Stanberry his Miranda rights on the first interview. They were not required to Mirandize him on the second interview.

THE COURT: For the record, I'm only on page three of what purports to be a joint statement, 52 pages long, of questions and answers, and the questions were, all I've seen so far, were from Mr. Smith, Officer Smith. But at the very first it's Mr. Buzz Jordan, and I quote in part, "We're present today. Today is April 17th, 1992 at about 2:00 in the afternoon at BFI's office on Halls Mill Road.

Present is Mr. Rodney Stanberry." And I'm skipping around, "Sergeant Lebarron Smith, and I am Buzz Jordan with the district attorney's office. We've come out here to meet with you and to talk to you about an incident. You, of course, are not under oath, but we would ask that, being tape recorded. Do you have an objection to this being tape recorded? No."

Further down, it says, I would implore you -- not in those words does it say implore, but -- to tell absolutely nothing but the truth, the whole truth so help you God. Well, let me read that. "However, we would just," and this is Buzz Jordan again talking. "However, we would just emphasize that it's very important that you attempt your best to tell us the truth about what we're gonna talk to you about. Terry (sic), if you have any reason that you may not want to tell us the truth, we would ask that you please try to tell us the truth and nothing but the truth about everything that Sergeant Smith is going to ask you."

Now, I have also heard from Sergeant

Lebarron Smith that the Defendant was more than a "suspect" at this time because he had talked to Mrs. Finley at the Rotary Rehabilitation Center, and she had identified two persons as being a, my terminology, the culprit in this affair. Isn't that what you said, Lebarron?

DETECTIVE SMITH: Yes, sir.

THE COURT: And that, yes, this statement that we were given, in answer to Mr. Ken Nixon's question on cross, yes, it would be used against him.

Now, am I to hear the district attorney's office say that we can go out and take this statement and because he is not "in custody," then we can just -- we're not gonna arrest him today. We're gonna take a statement from him, and we know we're gonna use it against him, but since he's not "in custody," miranda in no way applies? Is that what you're telling me?

MR. JORDAN: Yes, Your Honor. If I could just show you McElroy's so you can, perhaps, see what I'm relying on.

THE COURT: You might want to get me more than

McElroy's but --

MR. JORDAN: I understand, but that may be a starting point. Judge, the old law used to be that if somebody was a suspect, you had to Mirandize them. I think that was changed about 20 years ago when the Supreme Court clarified that and said, no, it doesn't matter how strong a suspect. You can be the number one suspect, the only suspect, the main suspect, the best suspect, but unless you are in custody, you do not have to be Mirandized.

There is no doubt that Mr. Stanberry was a suspect here. Rene Whitecloud was a suspect --

THE COURT: I don't have any problems with a case -- the footnote here under what you've showed me, Sullivan v. State, 351 So.2d 659 when the Alabama Appellate Court said the Miranda safeguards did not apply when the defendant voluntarily appeared at the jail and stated that he had "done something terrible." The safeguards are required only when the confessing person is taken into custody and questioned. And they're citing

there a federal case, Fifth Circuit Court case.

MR. JORDAN: The distinction there is if somebody shows up at the jail voluntarily and makes a confession and then he's arrested --

THE COURT: And then the next one goes even closer to where we're getting. Miranda rules do not compel the police to give warnings where a person, without being subjected to any police interrogation, desires to confess to the crime. Where the person, without being subjected to any police interrogation -- See, we don't have that here because we've got police interrogation. Not only do we have police interrogation, we've got assistant district attorney interrogation.

MR. JORDAN: We've definitely got interviewing, aka, interrogation, however you want to phrase it. This was -- also involved -- This case was still being -- He was a suspect. It was still being investigated, and in any case I always advise our investigators, our check investigators, our D.A. investigators, always, always, always interview the suspect, interview your person prior to -- I mean,

it's just good law enforcement to interview the person beforehand. And under the law, we are allowed to do that, as long as that person is not in custody. Custody being not free to go, under the duress of being in custody, under the duress of the stress of police with guns surrounding you; you're under --

THE COURT: Buzz, I'm hearing you, but I don't mind saying that I'm going to think about this until tomorrow morning, but I have a little question with this, because if what you're saying is, you know, absolutely valid, why would you ever arrest anybody? Why not always go out and, you know, say anything you want to do.

MR. JORDAN: Judge, the best police practice is to always -- It is to always interview them. You know how that happens a lot of times; the police rush to arrest somebody; they go make the arrest, and then they don't have the right to interview that person after that. I mean, they do if they Mirandize them or they do if they, you know -- but, you know --

THE COURT: Get me a case between now and in the

morning. Barbara, turn your machine off.

(Off the record.)

MR. NIXON: Just for the record, Judge, I would like to note that from page seven of that statement until page 52 the interview was conducted by Mr. Jordan.

THE COURT: Well, I was getting to that.

MR. NIXON: And I would like to ask Lebarron Smith just two quick questions again.

THE COURT: Sure.

REDIRECT EXAMINATION (CONTINUED)

BY MR. NIXON:

Q Detective Smith, when you and Mr. Jordan went out and took this statement on April the 17th, 1992, you had full intentions, and you knew that you were going to arrest Mr. Stanberry, didn't you, for this crime?

A Yes, I was planning on getting a warrant for him.

Q Yes, sir. And when you went out there on April the 17th, 1992 and talked to Mr. Stanberry, at the end of this interview I notice that Mr. Jordan keeps asking Mr. Stanberry about where he lives and that he's not planning to go anywhere. Do you recall that?

A Yes.

Q And Mr. Jordan asked, and he's making sure that he's gonna stick around, he's not leaving. Do you remember

that?

A Yes.

Q Now, if Mr. Stanberry had responded to that question by saying, I'm going to Europe and I'm never coming back, and I'm not telling you where I'm going, you would have arrested him right then, wouldn't you?

MR. JORDAN: Judge, I object to that. There's no way he could know hypothetically what he would have done in that situation.

MR. NIXON: I'm asking him what he would have done, Judge. I'm asking what he would have done.

THE COURT: I'm gonna let him answer.

Q You would have arrested him, wouldn't you?

A I didn't have a warrant then.

Q You don't need a warrant to arrest somebody for a felony, attempted murder charge, do you, if you have probable cause?

A After a while I like to get a warrant. If it's something spur of the moment, I'll go ahead and arrest him. After I plan it, I like to have a warrant in hand.

THE COURT: Is there anything else you want to put in the record?

Q Detective Smith, are you telling this Judge that if he

had told -- Mr. Stanberry had told you he was going off and never coming back, at that point, with the evidence that you had, you would have let him go? You wouldn't have arrested him?

A If he told me he was going off and never coming back?

Q Yes, sir.

A No, I probably wouldn't of.

Q You would have arrested him, wouldn't you?

A Yes, I would have took him into custody.

Q To keep him from going off?

A Yes, if he had told me that.

Q And you had probable cause to arrest him in your opinion at that time, didn't you?

A Yes.

MR. NIXON: That's all I have in the record, Judge.

THE COURT: All right, Barbara, turn the record off.

(Whereupon, court adjourned for the evening.)

STATE OF ALABAMA CASE NO. CC-92-2313,
VS. 92-2314 and 92-2315
RODNEY KARL STANBERRY
* *

(Mobile, Alabama, April 5, 1995)

(Trial resumed, jury not present.)

THE COURT: For the record, Mr. Buzz Jordan said that he did not bring a case with him as I requested and he does not intend to introduce that statement, but I'll say this, and I'll say it for the record, this idea that y'all have here of this way we don't have to mirandize somebody absolutely makes no sense to me.

MR. JORDAN: Judge, can you and I debate this at a later time?

THE COURT: No, I want it in the record.

MR. JORDAN: Okay. I mean, for future cases.

THE COURT: I'm just telling you you need to stop that practice because it doesn't make any sense. I mean, it makes no sense at all when you have a directive of the Supreme Court of the United States and you say we're gonna go by way of Memphis, Tennessee to dance around that case. And when this police officer