

THIS IS A RECORDED INTERVIEW REFERENCE
CR NUMBER EIGHTY-ONE FIVE THREE TWO
ZERO SIX. TODAY IS THE TWENTY-EIGHTH
DAY OF OCTOBER NINETEEN EIGHTY-ONE, THE
TIME IS SEVEN TWENTY-SIX P.M. THE
INTERVIEW IS BEING CONDUCTED AT THE
BREVARD COUNTY JAIL BOOKING ROOM BETWEEN
INVESTIGATOR T. M. FAIR OF THE SHERIFF'S
DEPARTMENT AND MR. FRANK BERRY OF
MERRITT ISLAND, FLORIDA.

- Q. Frank, for the purpose of the record would you state your full name and spell your last name please?
- A. Frank Berry, B-e-r-r-y.
- Q. All right Frank, (clears throat) uh, I have before me a form, uh, which is a Brevard County Sheriff's Department Interrogation Preamble, I'm showing you a signature at the bottom, is that your signature?
- A. Yes.
- Q. And did you sign that?
- A. Yes.
- Q. Did you sign it after I read it to you?
- A. Yes.
- Q. And did you understand it?
- A. Yes.
- Q. Okay, I'll ask you to put your initials again for me if you would on the lower right hand corner right there. Okay, and Frank, this was the second time that you had been advised of your rights, at least?
- A. Yes.
- Q. Okay. Frank, for the record I wanta read this to you so would you pay attention with me?
- A. Yes.
- Q. This reads I, Frank Berry, am aware that I am under arrest for sexual battery. I have been advised and have had explained to me that prior to answering any questions or making any statement, either oral or written, that I am entitled to be represented by legal counsel, that is a lawyer. Do you understand that? Would you...
- A. Yes.
- Q. Okay, thank you. I have also been advised that if I am without funds with which to secure counsel the State of Florida will furnish me with an attorney. Do you understand that?
- A. Yes.

Q. It has also been explained to me that any statement I make or question that I answer must be free and voluntary, without threat of punishment or promise of reward. Do you understand that?

A. Yes.

Q. I am aware that I have the right to remain silent and not to bear witness against myself as guaranteed by the Constitution of the United States of America. Do you understand that?

A. Yes.

Q. It has also been explained to me that any statement made by me, either oral or written, can and will be used as evidence... evidence against me in Court. Do you understand that?

A. Yes.

Q. It has also been explained to me that I may have an Attorney present to represent me now or any time during this interview or interrogation. Do you understand that?

A. Yes.

Q. I understand that this interview and interrogation can and will be terminated at any time upon my request. Do you understand that?

A. Yes.

Q. There is a question here, Frank, I'm pointing out and the question is: are you willing to proceed without an attorney being present to represent you? And how did you answer that?

A. Yes.

Q. And how do you answer that now?

A. Yes.

Q. All right. Let me write the time here again, Frank.

A. If I have attorney present would you still help me?

Q. Excuse me.

A. (Inaudible) if...if I have an attorney present are you still gonna help me?

Q. I'll help you in anyway I can, I told that didn't I?

A. Yes.

Q. Do you believe that?

A. Yes.

Q. Okay. Uh, after I read you this form the first time, uh, we...

- Q. (Continued) we've had a number of conversations, is that correct?
- A. Yes.
- Q. And we've talked about a lot of things, uh, regarding this incident?
- A. Yeah.
- Q. Is that correct?
- A. Yes.
- Q. Okay, and I explained to you that any time that you wanted to stop talking to me and, uh, call an attorney that I'd call an attorney for you, is that correct?
- A. Yes.
- Q. And you understand that?
- A. Yes.
- Q. Okay, do we wanta go now and...and have...have a conversation like we've had a couple of minutes ago?
- A. I don't know.
- (TAPE GOES OFF).
- Q. The tape is resumed. Uh, Frank, uh, you turned that tape recorder off, is that correct?
- A. Yes.
- Q. And you had a question for me?
- A. Yes.
- Q. And the question was whether or not I would help you?
- A. Yes.
- Q. Okay, and...and what did I tell you?
- A. "Yes."
- Q. Okay, that we would get to the truth of the matter and we would try and get the situation straightened out, is that correct?
- A. Yes.
- Q. Okay. Frank, we talked a few moments ago, uh, without the tape recorder being on, uh, and I wanta ask you, uh, at this time has anybody threatened you or coerced or promised you anything to get you to, you know, to talk...talk to me?
- A. Nobody haven't threatened me.
- Q. Okay.
- A. Just convinced me I need help.
- Q. There you go. And you wanta get the situation straight and get

- Q. (Continued) help don't you?
- A. Yes.
- Q. Okay. Frank, uh, what we're discussing here, this CR number that I mentioned a little while ago, uh, is regarding a complaint that was made to us and the complaint was made on the Twenty-seventh of, uh, October, which was a Tuesday this Year Nineteen Eighty-one and the complaint was made by a lady who lives over, uh, on Magnolia Street. Do you know the lady that I'm talking about?
- A. Yes.
- Q. Okay, and what she had done was complained of, uh, what we call sexual battery, okay? Uh, she has, since that period of time, picked your photograph out, uh, from a photo line up that we made, uh, and, you know, that's why we have arrested you. You understand that, is that correct?
- A. Yes.
- Q. Okay. Uh, you do know this lady?
- A. Yes.
- Q. Okay, and you had a, uh, uh, sexual contact with her?
- A. Yes.
- Q. And you, uh, entered her apartment by removing a screen, is that correct?
- A. Yes.
- Q. Okay. Let's go in a little bit more detail if...if we may, uh, could you tell me why you were on Magnolia Street and how you ended up at this lady's apartment?
- A. Well, I just walking...I just walking past there with a dude, but he kept going.
- Q. Uh huh.
- A. And so, uh, I just went up walking...walking up the stairs. Well, what I was really doing was doing exercise running up the stairs all the way up, then I walked past the window.
- Q. Okay, so you ran up to what floor?
- A. All of 'em. To the top.
- Q. And what...what is the top floor? That the fourth floor, the third floor or how many floors?
- A. I think it had four on it.

- Q. Okay, but it was at the top, right?
- A. Yes.
- Q. And, uh...
- A. The left...it was the left corner apartment on the top floor.
- Q. Okay, the lady lived on the end?
- A. Yes.
- Q. And what did you do when you were walking by there? What did you see?
- A. She was laying on the couch.
- Q. What was she doing on the couch?
- A. Far as I could see she was sleeping.
- Q. Okay, did you knock on the door, ring the doorbell?
- A. No.
- Q. What did you do?
- A. I pulled the screen out.
- Q. Okay, where was the screen located that you pulled out? Speak a little louder if you would please.
- A. I think it was the second screen from the last one.
- Q. Next to the front door?
- A. Yes.
- Q. Okay.
- A. The left hand side.
- Q. And what did you do (noise) with the screen once you pulled it out?
- A. I threw it down some hole.
- Q. Okay, and what did you do then?
- A. I went in.
- Q. How did you get in? Was the window closed or was it opened or what?
- A. It was opened.
- Q. Didn't you have to open the window?
- A. Window was already open.
- Q. Okay, so you removed the screen and you climbed in the window?
- A. Yes.
- Q. What did you do then?
- A. There was somethin' burning on the stove, I took it off the stove.

Q. Okay, what was on the stove burning?

A. It was just a pan, it had a top on it.

Q. Okay, uh, what did you do then?

A. I went looked in her purse see if she have any money.

Q. Did you take some money?

A. Yes.

Q. Do you know how much money?

A. 'Bout twenty-eight dollars.

Q. About twenty-eight dollars?

A. Yes.

Q. Okay, (noise) what did you do then?

A. She was laying on the couch, I started rubbing on her breast.

Q. Well, did you do anything with a knife before that?

A. (Pause) No.

Q. When did you get the knife?

A. I got the knife while I was in the kitchen.

Q. Okay, why did you get the knife?

A. Scared.

Q. Scared of what?

A. Somebody wake up and try to shoot me or.

Q. Well, did the lady have a gun?

A. Not that I know of.

Q. Did she have a knife?

A. I didn't see any.

Q. Okay, now tell me a story, you know, just a na...what we call a narrative, tell me what happened?

A. I just...

Q. You got the knife from the kitchen and then where'd you go?

A. I got her purse and poured it out and dumped it out in her room.

Q. Uh huh.

A. I got the money and put it my pocket.

Q. Uh huh.

A. Then I walk over to her and I rubbed on her breast.

Q. You say rubbing on her breast, was she still asleep?

A. On her breast. That I know of, yes.

Q. Uh huh.

A. She put her arms around me.

Q. She put her arms around you?

A. Yeah.

Q. And she was asleep?

A. I guess she was.

Q. What was she wearing?

A. A white, short, pink, white wasn't too short...

Q. Uh huh.

A. ... (inaudible) nightie.

Q. Uh huh. Was the television on or was the television off?

A. Uh, it was on.

Q. Okay, was the stereo on or was the stereo off?

A. I don't remember I...I didn't...I didn't hear it, I just heard the TV.

Q. Okay, did you look at the TV, Frank?

A. No, I just went up to her.

Q. You don't know what was on it then?

A. Right.

Q. Okay, were you leaning over the back of the couch when you were rubbing on her breast while she was asleep or were you next to the couch on the other side where you would normally get in a couch?

A. I was on the other side where you would normally get in.

Q. Okay, were you standing or kneeling or what?

A. I was standing at first.

Q. What were you doing with the knife, just holding it in your hand or...or...or what?

A. Just holding it on the side of couch then she start...when she put her arm around me I put it on the floor.

Q. Okay, so you're standing up and she reached up and put her arm around you?

A. Yeah.

Q. And you put it on the floor?

A. I put the knife on the floor.

Q. Okay, is that where you left the knife?

A. No.

Q. Okay, go ahead, tell me what happened? Are her eyes open now, is she awake or what?

- A. When I lay on the couch with her she opened her eyes.
- Q. Well, what kind of couch was it? Was it a big double couch?
- A. All I know it's the long...one of those long couches.
- Q. Uh huh. What color was it?
- A. I don't know. (Inaudible).
- Q. So now you have been touching her on the breast, she's put her arms around you, is she awake or she still look like she's asleep?
- A. She done woke up when I lay down on the couch with her.
- Q. What's the first thing she said?
- A. She say, uh, all right here what happened. I saw her eyes open...
- Q. Okay.
- A. ...right? So I didn't move 'cause she still had her arm around me. I pulled her nightie up, uh, night gown up.
- Q. "Pulled her night gown up"?
- A. Yes.
- Q. Uh huh.
- A. Took off her panties.
- Q. Uh huh. Talk a little louder now.
- A. And then it...it just happened, you know.
- Q. What happened?
- A. We had sexual intercourse.
- Q. Okay, did you place your penis in her vaginal region?
- A. Yeah.
- Q. Okay, did you, uh, uh, achieve a climax?
- A. Yeah.
- Q. Okay, what did she say now while all of this was going on, Frank?
- A. She was just holding me, holding me tight.
- Q. Uh huh, did she say anything?
- A. Then she woke up.
- Q. This...all of this is happening she's not awake yet?
- A. Not that I know of, she could've been awake and just (inaudible) (overtalk)...
- Q. Okay, were her eyes open or closed?
- A. Her eyes had been opened once.
- Q. Okay, and, uh, when all the, uh, sexual activity was occurring Frank, were her eyes opened or closed?
- A. Closed.

- Q. Okay, were the lights on there in the house, in the apartment?
- A. No.
- Q. Just the TV?
- A. Yeah.
- Q. How about the kitchen?
- A. No lights were on, just the TV.
- Q. Okay, how did you know something, uh, was in a pan on the stove besides smelling it?
- A. I heard it...
- Q. Okay, well...
- A. ...it was sizzling.
- Q. ...did you have to turn a light on to go over there and see what you were moving?
- A. No.
- Q. Okay.
- Q. See because lights came on from the street.
- Q. Okay, was it pretty bright in there? I mean you...you could...
- A. (Inaudible) (overtalk).
- Q. ...see your way around?
- A. Yeah.
- Q. Okay.
- A. Then, uh, then she woke up after it was over, you know.
- Q. What'd she say when she woke up, Frank?
- A. She...she say, "what are you doing?"
- Q. And what'd you say?
- A. Said nothing, well, she said, "get out."
- Q. Then what'd you do?
- A. I just left.
- Q. Okay, where'd you leave the knife, next to the couch there?
- A. No, I had went back in the room.
- Q. Which room?
- A. Uh, her room...bedroom.
- Q. Okay, where was she now when you went back there? Did you just walk off and leave her?
- A. Yeah.
- Q. A stranger in her apartment and everything?
- A. Uh.
- Q. You weren't afraid she'd jump up and get a gun that you mentioned

- Q. (Continued) earlier and come after you? Or run out?
- A. See what I done I went...I ran to the room, all right and I got change off the floor and I ran back.
- Q. What change off the floor?
- A. There about three dollar worth of change.
- Q. How'd it get there?
- A. I had (inaudible) dumped the purse out on the floor.
- Q. Is this when you first left the kitchen?
- A. Yeah.
- Q. I see. And what happened then?
- A. I picked up the change (inaudible), she said, "I'm not gonna call the police, but if you come back again I will, I'm gonna get a gun."
- Q. Uh huh.
- A. And that's...I just had ran out, you know.
- Q. Uh huh. Uh, if...the lady said that the sexual activity took place in the bedroom and that you had put the knife up to her throat and walked her back there, would that be correct or not?
- A. No.
- Q. You sure? You know a...a lady wa...uh, waking up with a strange man in her house with a...a knife in his hand and touching her on the breast she's probably gonna get a little startled or a little upset (noise), you know, as opposed to just laying there, you know, putting her arms around you and so forth and, uh.
- A. I tell you she put her arm around me.
- Q. Uh huh. Uh, did you threaten to harm her at any time?
- A. No.
- Q. Did you...did she scream or, uh, anything like that?
- A. She never said anything.
- Q. Didn't say anything? Uh, did you tell her hello it's me again?
- A. No.
- Q. Had you seen this woman before? Now think about that.
- A. No, 'cause I couldn't see her face from the way she was laying.
- Q. Okay.
- A. Well, I couldn't see if...I just couldn't remember seeing her (inaudible).

- Q. Okay, when you, uh, when you left there how'd you leave, by the window again?
- A. No.
- Q. How'd you leave?
- A. Went out the door.
- Q. And what'd you do (clears throat)?
- A. I went down the stairs.
- Q. Did you jump one of the, uh, couple of the stairs down... downstairs on your way down?
- A. I just ran.
- Q. Okay, stairs make a lot of noise in the middle of the night, everything's quite and everything.
- A. I don't know, I wasn't thinking about it, it probably do but I wasn't thinking about it if I had on any shoes.
- Q. Okay, where did you go from there, uh, Frank? Which way did you run?
- A. Tropical Trail.
- Q. So from there you left and did you run, uh, towards Five Twenty?
- A. Yeah.
- Q. And cross Five Twenty? Did you run through the car wash there?
- A. Yes.
- Q. Okay, and up Tropical Trail to your house?
- A. Yes.
- Q. Okay, did you leave anything behind there that you remember?
- A. No.
- Q. Uh, okay. Did this woman at any time, uh, invite you into her apartment, ask you to come in?
- A. (Pause) No.
- Q. No? Speak a little louder for me.
- A. No.
- Q. Okay, you just saw her in there and thought you'd go in, is that right? And you got in by removing the screen and climbing through the window?
- A. Yeah.
- Q. Okay, and you...you took some money from her?
- A. Yes.
- Q. Okay, and she didn't ask you to have, uh, sexual intercourse did she?

- A. Well, she kinda led me on when I rubbin' on her breast.
- Q. Well, I mean, she was asleep then, isn't that what you said?
- A. Yeah, she was asleep.
- Q. So she really didn't invite you or ask you to do that did she?
- I mean you...since we're, you know, trying to tell the truth and everything, right?
- A. Yeah.
- Q. We wanta get everything straight?
- A. Yes.
- Q. Okay. Did she ask you to have sex with her?
- A. No.
- Q. Okay, just somethin' that...that you started and happened, is that right?
- A. Just somethin' that happened.
- Q. Yeah, uh, is there anything else you wanta tell me about, Frank?
- Any...any other things on your mind?
- A. No.
- Q. Okay, is this, uh, this is the best you can remember it then, right?
- A. Yes.
- Q. Is it clear in your mind or could some little things be, uh, forgotten?
- A. I don't know.
- Q. Okay.

WE'LL TERMINATE THE INTERVIEW THEN, THE TIME IS, UH...

- A. Uh, did you say you gonna quit the tape that, uh, I need some help.
- Q. Well, what I told you was that, uh, uh, the best thing that we need to do is tell the truth, right? Isn't that what I told you? Isn't that one...one of the things I told? And that the first way that you could start helping yourself was by tell the truth and from there if you've got a problem, what everybody's interested in is getting you whatever help you need, is that what I said? (Pause) Is that what I told you, Frank? Do you wanta get help?
- A. Yes.
- Q. You want me to try and help you?

A. Yes.

Q. We wanta get this situation straightened out, don't we?

A. Yes.

Q. It's been a mistake?

A. Yes.

Q. Do you believe me when I tell you I wanta try and help you?

A. Yes.

Q. Okay, is that what you wanted me to put on the tape?

A. No, that's not what I want you to put on tape. I want you to tell the truth.

Q. Well, I tell the truth. Do you believe that? Are you telling the truth, Frank?

A. Yeah.

Q. Okay, is there anything you wanta add?

A. (Pause) I just don't know why it happened, it just happened.

Q. Well, some things happen that way, you know, like I was telling you earlier, some things happen we don't know why they happen. Are you sorry it happened?

A. Yes.

Q. You realize it was wrong?

A. Yes.

Q. Okay.

LET'S TERMINATE THE INTERVIEW THEN, THE TIME IS SEVEN FORTY-SIX P.M.
AGAIN IT'S REFERENCE TO SAME CR, SAME DATE.