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1 > STATE OF ALABAMA

2 v.

CASES NO. CC-92-2313,

3 RODNEY KARL STANBERRY,

CC-92-2314 AND CC-92-2315

4 Defendant

5 Mobile, Alabama - April 6, 1995

6 (Trial resumed. Jury not present.)

7 THE COURT: Have you read this case?

8 MR. NIXON: Yes, sir. I have some cases for you too, Judge.

9 THE COURT: You better get them.

10 MR. NIXON: Judge, I think you have the Moseley case; is
11 that correct?

12 THE COURT: Mm-hm.

13 MR. NIXON: I'll give it to you.

14 THE COURT: I already have -- already read it.

15 MR. NIXON: You asked me yesterday. That was Judge
16 Kittrell, I believe, I've learned since then that was on the
17 Moseley case. I would also provide the Court with James -- State
18 of Alabama v. James Reeves, Reeves v. State, 463 So. 2d 177.
19 That was also affirmed by the -- or I believe that was a Supreme
20 Court case.

21 MR. JORDAN: May I see it.

22 MR. NIXON: That was a Judge Mashburn case, Judge. The
23 Supreme Court rendered an opinion in that one. Matthews v.
24 State, also Felton Matthews v. State, 611 So. 2d 1207, 1992, and
25 J.D.S. v. State. I'd like for you to look at those, Judge.

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1 > THE COURT: I will, but this is the last one I have? Is
2 this -- do you have any case later than this one?

3 MR. NIXON: No, sir, Judge, but if I may, that case that
4 you're reading right there, the Sanford case, if you'll look at
5 it that provision -- it's one paragraph that says, "Additionally
6 we note that it was improper for defense counsel, knowing Barnett
7 planned to invoke the Fifth, to call him as a witness and
8 question him. Then that case goes on, Judge, if you read the
9 entire --

10 THE COURT: I read that in there and I think you ought to
11 re-read that.

12 MR. NIXON: Yes, sir.

13 THE COURT: What you're talking about is the next page -- I
14 mean the -- where he said, "Although the accused has a right to
15 inquire into the terms of the agreement..." They're talking
16 about two different matters there.

17 MR. NIXON: Yes, sir, Judge, I understand.

18 THE COURT: And they go back and say, "Barnett did not
19 testify against the appellant --"

20 MR. NIXON: No, sir.

21 THE COURT: "-- much less ...," and he gave no testimony of
22 any substance at all.

23 MR. NIXON: That's correct.

24 THE COURT: And that's what somebody would be doing if they
25 say I invoke the Fifth, I invoke the Fifth, I invoke the Fifth.

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1 > MR. NIXON: I understand, Judge.

2 THE COURT: "The reason for the rule allowing the Defense to
3 impeach an accomplice -- an accomplice -- with the terms of his
4 plea bargain is so that the jury may better understand the
5 possible motivation of the accomplice who testified against the
6 defendant."

7 MR. NIXON: Yes, sir.

8 THE COURT: This guy ain't here to testify against his
9 friend.

10 MR. NIXON: No, sir, Judge. You're talking about the
11 Sanford case, the one that Buzz --

12 THE COURT: I'm talking about the gentleman that took the
13 stand yesterday is not here to testify against his friend.

14 MR. NIXON: No, sir, he isn't.

15 THE COURT: And if you read this case, unless I'm misreading
16 it, they're saying if you know he's going to take the Fifth and
17 he has nothing to say, why do you allow an attorney for the
18 defendant -- now, this is not in this case, but allowed to go
19 through this charade?

20 MR. NIXON: Judge --

21 THE COURT: Because the testimony is no testimony. The only
22 thing it would be is the Defendant saying, Isn't it a fact you
23 said so-and-so, so-and-so, so-and-so? I take the Fifth. Isn't
24 it fact that you also said so-and-so, so-and-so? I take the
25 Fifth. So, when you get through, the only thing you've got is

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1 > the attorney for the Defendant in effect giving testimony.

2 MR. NIXON: Judge, if I may respond briefly. The Sanford
3 case that Mr. Jordan provided you, the only issue on appeal in
4 that case, in that case the judge did let the witness take the
5 witness stand because that's what the law suit, Judge, and he did
6 make him take the stand and he made him invoke the Fifth as to
7 every question that was asked him and the only time that it came
8 up was when he asked him about the plea agreement and at that
9 point the judge sustained an objection from the State by ask--
10 when they asked him about his plea agreement, they said that
11 didn't have anything to do because he had not offered any testi-
12 mony and that paragraph that says it's improper, Judge, that's
13 just dictum in this opinion. The opinion, if you read it, talks
14 about the issue of whether they could have been able to ask him
15 that question about -- about plea bargain when he had offered no
16 testimony and the only -- the case that's cited and relied upon
17 on this opinion, Judge, the Sanford case, is the Gardner v. State
18 case which is the only case that I found that said the same thing
19 and that case involved -- this is when one lawyer was represent-
20 ing two co-defendants and --

21 THE COURT: How could he do that?

22 MR. NIXON: He couldn't, but he was, and put one of the co-
23 defendants on the stand and advised him to take his Fifth Amend-
24 ment and then started asking him wasn't that your dope, which was
25 just a ludicrous case from the beginning, Judge, and that's the

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1 > case that they relied on when the Court said that he couldn't do
2 that, which I think everybody knows he couldn't do that.

3 But if you look -- Judge, all I ask you to do is just
4 to take two minutes and read those cases that I gave you that I
5 cited in the Moseley case --

6 MR. JORDAN: Can I have a copy of them?

7 MR. NIXON: I only have one copy.

8 These are the cases that I cited in the Moseley case,
9 and I think when you read those cases, Judge, and that's an
10 Alabama Supreme Court case, the Reeves case is, you'll see that
11 the law is absolutely clear on it.

12 THE COURT: What I have is a Court of Criminal Appeals
13 opinion written by Tyson.

14 MR. NIXON: If you look at the last of it, Judge, it's
15 attached, I think, where the Supreme Court's opinion is attached
16 to the last -- at the end of the Reeves case.

17 MR. JORDAN: Judge, I don't have a copy of any of those
18 cases.

19 THE COURT: The only thing I got in the back is -- year, the
20 second --

21 MR. NIXON: Page 177.

22 THE COURT: The last part is the Supreme Court.

23 MR. NIXON: Page 177.

24 (Pause.)

25 THE COURT: Have you read this case?

1 > MR. JORDAN: I don't have a copy of it.

2 THE COURT: Do you have another copy?

3 MR. NIXON: I have my copy, Judge.

4 THE COURT: Give it to him.

5 MR. NIXON: I would also ask you, Judge, to take a look at

6 Matthews v. State --

7 THE COURT: Well, why don't you just stick with what you
8 got? It's good enough.

9 MR. NIXON: Okay.

10 THE COURT: Of course, I say again for the umpteenth time, I
11 have no idea why Buzz entered into this --

12 (Off the record interruption.)

13 THE COURT: If they want to go any further, they can. The
14 Supreme Court has spoken.

15 MR. JORDAN: Which one is the Supreme Court case, Judge?

16 THE COURT: Reeves. No offense to Mr. Montiel, but I put a
17 little bit more credence on the Supreme Court's opinion in the
18 case of Matthews.

19 MR. JORDAN: Judge, I think the next question is how much
20 can be asked of a witness who takes the Fifth Amendment, and I
21 think that's the specific issue that -- that Solomon -- Sanford
22 has addressed.

23 THE COURT: I don't.

24 MR. JORDAN: Basically, Ken has a right to put the witness
25 up there --

1 > THE COURT: Yes.

2 MR. JORDAN: Identify him. Do you plan on taking the Fifth
3 Amendment to any question that will be asked you? Yes. End of
4 questions.

5 THE COURT: Wrong.

6 MR. JORDAN: Judge --

7 THE COURT: Read the case before you start talking. You
8 have a terrible habit of talking before you read.

9 MR. JORDAN: Judge, I know that Chris Galanos did the exact
10 same thing and it was --

11 THE COURT: How about reading the case.

12 (Pause.)

13 MR. JORDAN: Judge, there are two issues that we need to
14 address before we go any further. The first issue is whether --

15 THE COURT: No, you don't have to worry about that, friend.
16 We're going to address it.

17 MR. JORDAN: I appreciate that. The issue is whether or not
18 Ken has a right to call that witness to the witness and where
19 that witness has to invoke his Fifth Amendment in front of the
20 jury. Fine and dandy. But now the question is this. Ken could
21 stand up here and talk for two hours. Did you do this, did you
22 do that, did you do that? I take the Fifth, I take the Fifth, I
23 take the Fifth, I take the Fifth. Now, that is entirely
24 improper. It's improper. It's either to do it --

25 THE COURT: Show me any case that says it's improper.

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1 > MR. JORDAN: Okay. Let me -- can I go upstairs for a
2 second?

3 THE COURT: Sure.

4 MR. JORDAN: I've got something -- let me see if I've got
5 something in my file.

6 THE COURT: Well, why don't you have it here?

7 MR. JORDAN: Well, because I was relying on this issue
8 initially.

9 THE COURT: Come on, come on.

10 MR. JORDAN: Okay.

11 (Recess.)

12 THE COURT: This is one of the cases where the attorney
13 represents both people. This case is absolutely worthless on our
14 question.

15 MR. NIXON: That's the case I was telling you about, Judge.

16 THE COURT: I don't know who found it, but it -- it has
17 absolutely nothing to do with the facts in this case, and that's
18 Garner v. State, 606 So. 2d 177. In this case I don't know where
19 it was and I don't want to comment on some other county, but up
20 in Madison County, in Huntsville, they allowed some lawyer to
21 represent two defendants in a drug case. Now, how you do that, I
22 don't know.

23 Young man, sit down.

24 How you do that, I don't know, because it's impossible
25 for their interest not to be diametrically opposed. The State

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1 > objected -- wait a minute. "During the Appellant's trial the
2 Defense counsel --" You got to remember he represented both of
3 them and again I don't know how in the world you can ever do
4 that. But "-- the Defense counsel asked Alexander if the drugs
5 in the house that night were his. The State objected, arguing
6 that this question, if answered, would incriminate Alexander in
7 this case." Well, I don't really think they were worried about
8 Alexander, but let's go one step further. "The Trial Court
9 ascertained that Defense counsel also represented Alexander.
10 Defense informed the Court that Alexander was not going to
11 incriminate himself, that he was going to assert his Fifth Amend-
12 ment right against self incrimination." Well, of course, he
13 would do that. I mean that makes perfectly common -- everyday
14 common sense to me. If you allowed that to happen and the
15 Defense represented two people, he would one on the stand and
16 say, Is those drugs yours? Didn't you say they were yours? Oh,
17 I object to answer on the grounds the Fifth Amendment might
18 incriminate me, and then when he got the other one to trial, he
19 would do the same thing, and, you know, that just doesn't make
20 sense.

21 I will let this man, who the attorney has already advised us
22 yesterday is going to take the Fifth, that he has an absolute
23 right to be put on that stand and asked that question. In
24 addition, I rule, but I don't want you going through 39 pages of
25 that deposition -- well, let me change that. If you think you

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1 > have to, you go ahead and do that too. And he has a right to
2 invoke each and every time he's asked one of these questions that
3 I take the Fifth.

4 MR. JORDAN: Judge, then I have the right to do the same
5 thing; is that correct?

6 THE COURT: Of course, you do.

7 MR. JORDAN: Especially -- certainly questions -- okay.

8 THE COURT: Of course, you do.

9 MR. NIXON: Judge, now, I would ask --

10 THE COURT: I think it's very, very remedial, what's good
11 for the goose is good for the gander.

12 MR. JORDAN: Thank you, Your Honor.

13 MR. NIXON: That's correct, Judge, but I would ask that you
14 make sure that he has some basis for the questions that he asks.

15 MR. JORDAN: I've got basis for everything.

16 THE COURT: That's fine.

17 Now, let's go on. Bring this man in.

18 MR. NIXON: Judge, he's not here now.

19 THE COURT: He's what?

20 MR. NIXON: He's not here.

21 Can you go check? He had called and said that he
22 didn't have a ride and he was walking. He's coming, but --

23 THE COURT: Well, why didn't you send that fellow to go ride
24 him in?

25 MR. NIXON: I'll call another witness.

1 > He had already started walking, Judge.

2 I can call some other witnesses, but first, Judge,
3 I think we need to -- we may can do this by stipulation, but I'd
4 like to get in the record the -- my objections into evidence as
5 far as the video tape and the taped statement of this Tyrrell
6 Moore and just brief argument on the immunity issue.

7 THE COURT: I don't know what you're talking about, but I
8 can tell you as plain as I know how to tell you -- I'm going to
9 let you explain that for the record.

10 MR. NIXON; Yes, sir.

11 THE COURT: But I'm not going to let you do something and
12 then say, well, now, I've let you do that, but I'm not going to
13 let the State do that.

14 MR. NIXON: I understand, Judge. I just -- we talked in
15 chambers yesterday about this situation and I just wanted to put
16 in the record, and I can do it by making a proffer, was that
17 Tyrrell Moore initially gave a statement to my investigator, Mr.
18 Ryan Russell, which in that statement he said that he burglarized
19 this house with a person named Wish and that the person named
20 Wish show Mrs. Finley and he described in detail how that was
21 done. That was on a tape-recorded statement given to Mr.
22 Russell. Shortly after that Mr. Russell got him in and got a
23 video statement from him. I think Mr. Jordan had already been
24 informed by several people that Mr. Moore was a participant in
25 this crime. After that Mr. Jordan issued a grand jury subpoena

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1 > to Mr. Moore. Mr. Moore appeared at the grand jury and asserted
2 his Fifth Amendment privileges. Subsequent to that, Mr. Jordan
3 entered into an immunity agreement which I would like made part
4 of the record.

5 THE COURT: Why, I don't know, but he did.

6 MR. NIXON: Sir?

7 THE COURT: I'm saying why, I don't know, but he did.

8 Go ahead.

9 MR. NIXON: Yes, sir. But he did and a court reporter was
10 present and Mr. Jordan and Lebarron -- Detective Lebarron Smith
11 and Attorney Bob Clark and Mr. Tyrrell Moore sat down and Mr.
12 Jordan and Mr. Smith questioned Mr. Moore and he told them that
13 he participated in that crime --

14 THE COURT: By the way, yesterday in referring to the case
15 on qualified immunity or non-statutory immunity, I referred to
16 the case of Ex Parte Graddick. I said yesterday for the record
17 that if the Legislature had passed a statutory enactment it had
18 to have been in the last session of the legislature. Well, that
19 wasn't exactly so, because under the new proposed Rules that is
20 explicitly covered. Now, whether anyone has gone to the trouble
21 to look at that or not, I don't know.

22 Have you, Mr. Jordan?

23 MR. JORDAN: I'm sorry, Your Honor?

24 THE COURT: Under the new Criminal Rules of Court, State of
25 Alabama, immunity is covered in those Rules. Number one, did you

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1 > know that?

2 MR. JORDAN: No, Your Honor.

3 THE COURT: Number two, that was not in any way followed?

4 MR. JORDAN: No, Your Honor.

5 THE COURT: Because the case of Ex Parte Graddick, which was
6 written by my good friend, Oscar Adams, has been superseded to
7 some extent by the new Rules of Criminal Procedure of the State
8 of Alabama, but that's not a question we need to address right
9 now.

10 Go ahead.

11 MR. NIXON: In that statement that Tyrrell Moore gave to Mr.
12 Jordan and Mr. Smith Mr. Jordan and Mr. Smith asked him all the
13 questions that they wanted to ask him. He answered all of those
14 questions that they asked him. And the immunity -- I mean I
15 would like that statement made part of the record also. I think
16 it already is, but I would like it made part of the record.

17 THE COURT: It is a part of the Court's record.

18 MR. NIXON: In that transcript, Judge, Tyrrell Moore is
19 questioned repeatedly by Mr. Jordan and Mr. Smith and he answers
20 those questions and that was after the immunity agreement was
21 given. My understanding is that Mr. Moore's lawyer provided with
22 -- Mr. Jordan with a copy of Tyrrell Moore's video tape statement
23 or confession to Mr. Russell some time either that day or after-
24 wards. I have given it to him since then, Judge, and my basic
25 position is that I think that if Mr. Moore does take the Fifth

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1 > here today, which we know he is going to do --

2 THE COURT: We all know that he is.

3 MR. NIXON: -- then I should be able to admit into evidence
4 the statement that Mr. Moore gave to Mr. Jordan and Mr. Smith --

5 THE COURT: Nix haben. German; means never happen.

6 MR. NIXON: Yes, sir. And I would except to your ruling on
7 that. In the alternative, I would request that I be able to
8 admit the video tape which I would -- that Mr. Russell took and
9 the audio taped statement also and I would proffer those state-
10 ments, Judge, and --

11 THE COURT: I have already put in the record at least three
12 times -- it seems like in this case I have to put everything in
13 there four times -- there was no right of cross examination at
14 that video procedure or cameo procedure that your investigator
15 produced, directed, and whatever else, and in the absence of the
16 right of the State to cross examine, there's no way that it could
17 be admissible, and the same would be absolutely true if it was
18 the other way around.

19 MR. NIXON: Well, Judge, they cross --

20 THE COURT: How would I let somebody introduce a statement
21 opposed to your client when you didn't have the right to cross
22 examine that person?

23 MR. NIXON: Judge, I'm asking you to introduce a statement
24 where they did cross examine that person and I was not there to
25 cross examine him. I'm wanting that admitted into evidence.

1 > That's the statement that I'm wanting admitted into evidence.
2 They did -- Mr. Jordan cross examined Mr. Moore in front of a
3 court reporter with Mr. Smith --

4 THE COURT: Oh, you're not talking about the video that your
5 investigator took?

6 MR. NIXON: No. First I would like the statement. I think
7 that would be the simplest thing, is to get the statement where
8 Mr. Jordan asked Tyrrell Moore all these questions and let the
9 jury read it, read his answers to it, Judge. That would be the
10 simplest thing to do and this whole thing would be over with. I
11 asked about the video tape if you don't let the statement in, and
12 Mr. Jordan did cross examine him in that statement after he gave
13 him immunity.

14 THE COURT: You mean this is where he gave somebody immunity
15 to --

16 MR. JORDAN: Judge, may I be heard? May I just place this
17 on --

18 THE COURT: Go right ahead.

19 MR. JORDAN: When we were initially investigating this case
20 and after Mr. Stanberry had been arrested and had his preliminary
21 hearing, Ryan Russell or somebody tells me that they've got some-
22 body who's confessed to this crime. They don't tell me who or
23 what or anything like that. They don't turn over anything to me.
24 So, I run this person down. Eventually I think they tell me a
25 name and he comes to a preliminary hearing and I ask to talk to

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1 > him and he says, No, I have a lawyer, George Hardesty. So, I
2 say, George, set this up for me. Let's -- I want to talk to your
3 guy; I want to interview him. Is that any problem? That's no
4 problem. You can interview him.

5 So, I keep trying to interview him, interview him; nobody
6 will let me interview him. So, then I subpoena him to the grand
7 jury. So, he comes to the grand jury. Valerie Finley is at the
8 grand jury because she's also a witness, and his girlfriend comes
9 to the grand jury, who I've subpoenaed, because she had informa-
10 tion about this. They're all set for grand jury. He comes in
11 and now he's represented by -- he's represented by either George
12 Hardesty or Bob Clark, but he takes the Fifth Amendment.

13 So, I don't have any -- and nobody will give me the cassette
14 recording of an accomplice or somebody who's confessing. Nobody
15 would give me the video tape of what he says. Valerie Finley
16 says no, that's not -- Tyrrell Moore was not the person that came
17 into my house. I'm sorry. You know, as much as I wish it was
18 either the -- the guy that was with Stanberry, she -- it's not
19 him. Valerie Finley is sure about it. She tells me that. So,
20 then I go -- then I find out he's got a lawyer, Bob Clark. So, I
21 want to find out what this witness knows, if he -- I mean as part
22 of the investigation we want to know what he -- okay, maybe he
23 does -- maybe he's -- maybe he's telling the truth, maybe he
24 really did go in there, and maybe we got the wrong person and I
25 want to know that. So, I write up a specific, very specific,

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1 > limited immunity only as to that one statement, and I drew that
2 up very -- there was never any immunity from prosecution. That
3 wasn't even considered. It was never discussed with Mr. Clark.
4 It was never mentioned in that -- I mean we have to distinguish
5 the two. I would never have given him immunity from this
6 prosecution.

7 But I have no idea what he's going to say. So, then he
8 shows up and we interview him to find out what he knows --

9 THE COURT: I read your immunity agreement.

10 MR. NIXON: Judge, I could over it in detail with you, but I
11 -- I mean I'll do that at some point in time, but I -- but it
12 never states that he is immunized from prosecution, ever, ever,
13 ever. That was not the intent, that was not the agreement. Mr.
14 Clark would be the first one to tell you that. Mr. Clark knew
15 the only thing that immunity covered was that specific interview
16 with him and nothing else.

17 THE COURT: It said "and everything said in that interview."

18 MR. NIXON: And everything derived from anything said in
19 that interview.

20 MR. JORDAN: That he said, yes. In other words, if he told
21 me something, I could go, but -- so, during that interview I come
22 to find out that he -- that he talks to Mr. Ryan Russell and in
23 the interview with Mr. Ryan Russell he's coming clean and he's
24 going to come testify and he's going to tell all he knows, and
25 then at the end of the interview Ryan Russell sends him to a

1 > lawyer. Ryan Russell sends him to a lawyer. After he has gotten
2 him on a cassette and after he's gotten him on video, he sends
3 somebody who has just admitted to a murder to a lawyer so I
4 cannot talk to him. So, I cannot examine him.

5 Now, that's what the Defense -- not Mr. Ken Nixon, but
6 that's what was done in this case.

7 THE COURT: Well, first of all, we don't -- thankfully, we
8 don't have a murder in this case, but --

9 MR. JORDAN: Exactly. The attempted murder. So, then he's
10 -- he's interviewed at that time. That's when I'm provided with
11 a copy of the video tape.

12 THE COURT: You know, I haven't heard anything different
13 today than I heard Monday morning. I heard this same statement
14 Monday morning.

15 MR. JORDAN: Well, I just want to make sure we have it on
16 the record.

17 THE COURT: I think you got it -- like everything else, I
18 think it's in there about three times.

19 MR. JORDAN: Well, Your Honor has asked me one thing. You
20 Honor is like, Why haven't -- I don't know if you've asked me.
21 Why haven't you gone out and arrested Tyrrell Moore.

22 THE COURT: No, I haven't asked that.

23 MR. JORDAN: Okay. I mean I -- I asked my office that
24 today, I said --

25 THE COURT: I'm not going to be the police officer and I'm

1 > not going to be the district attorney, and I don't think you
2 ought to be the police officer either, but that's neither here
3 nor there.

4 MR. JORDAN: Well, I'd like to -- I'd sure like to arrest
5 Tyrrell Moore.

6 THE COURT: We're trying this case.

7 MR. JORDAN: I'd like to be able to call Ryan Russell --

8 THE COURT: Let's get going.

9 MR. JORDAN: I'm sorry.

10 THE COURT: I said we're trying this case. So, let's get
11 going.

12 MR. JORDAN: Okay.

13 THE COURT: Everybody knows exactly what we're going to do.

14 Now, I want -- as far as admitting that statement into
15 evidence--

16 MR. NIXON: Judge, we can do that, I would not -- we don't
17 have to fool with anything else. And that was Mr. Jordan asking
18 the questions and Mr. Jordan getting the answers from him.

19 THE COURT; Not too sure of that.

20 MR. NIXON: And he gave him the immunity and, you know,
21 everything that --

22 MR. JORDAN: I object to that.

23 MR. NIXON: -- that I've ever read about immunity, Judge,
24 says that the Prosecution deal in good faith and when you're --
25 when a -- I don't know whether Mr. Jordan --

1 > THE COURT: I don't want to point the finger at anybody.
2 Okay? But we've got somebody that says, Hey, we got some inform-
3 ation about this case, but we're not going to tell the police.
4 We're not going to tell the district attorney. We're going to
5 get -- take a picture of him, get his audio, video, and then this
6 person goes to the D.A., and I -- I don't know -- I don't want
7 any finger-pointing about dealing in good faith.

8 MR. NIXON: Well, Judge, this interview -- you got to under-
9 stand. Mr. Russell caught him at a nightclub at about three
10 o'clock in the morning and that's when he got the recorded
11 statement and then he made him promise and went and found out
12 where he lived and went the very next day to get a video just to
13 make sure the guy didn't run away, and he hasn't run away.

14 THE COURT: I don't mind telling you, Ken, I have some
15 problem with the D.A. taking this statement, why it's not
16 admissible, but I have no idea what -- why the D.A. went through
17 this. Again, they don't work for me, I don't run their office.

18 MR. NIXON: I would suggest a better course of action,
19 Judge, would be to admit the statement and if Mr. Jordan wants to
20 ask him question and he take the Fifth about it, he can do that.
21 I won't ask him anything. I think the jury is entitled to hear
22 what this man has to say, what the man told Buzz Jordan, and
23 because of his structured immunity, it's excluded testimony --
24 testimonial immunity, then he has prevented me from any valuable
25 -- valuable evidence and testimony for my client. This man says

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1 on the video tape he was going to come in. His conscience was
2 bothering him. He was going to come and testify.

3 And if we let the jury see that statement, Judge, that's all
4 that I need from this end and I think they're entitled to see it.
5 I don't think the District Attorney can -- if not, they -- Judge,
6 they would do that to everybody, and come out and make an
7 immunity agreement and say, look, you tell me something I can
8 use. Then I'll extend it to trial testimony, but if it's some-
9 thing that hurts me, you can't get on the witness stand and
10 testify for the Defendant because I'm going to put you in jail
11 then.

12 And if you think that Tyrrell Moore had told Buzz Jordan
13 that Rodney Stanberry did it that that immunity agreement would
14 not have been modified and he would not have been on that witness
15 stand and testified, then I think you -- you've been on the bench
16 long enough to realize that that -- that certainly would never
17 happen, Judge. He would sitting right up there pointing his
18 finger at Rodney Stanberry and he would have immunity.

19 THE COURT: Well, since you mentioned that, I've been here
20 thirty years and I've never heard anything like this in my life.
21 But you have to deal with, you know, what's fair for both sides
22 and again I say for about the fourth time I don't have any idea
23 why we got this statement in the first place, but -- and I agree
24 with Mr. Jordan to this extent, had he seen what I think he
25 should have been entitled to see, we wouldn't have had any of

v
1 > that.

2 MR. NIXON: I gave it to him, Judge.

3 MR. JORDAN: That is not correct.

4 MR. NIXON: I gave him the video tape. You told me to give
5 -- you ordered me to give it to him, Judge, and the audio tape.

6 THE COURT: It was after the fact, though, wasn't it?

7 MR. NIXON: Well, my understanding is that Mr. Clark gave
8 him a copy of the video tape.

9 MR. JORDAN: After.

10 MR. NIXON: After you took this statement?

11 MR. JORDAN: After the immunity.

12 THE COURT: We're not getting anywhere. Bring this -- what
13 I'm going to do is reserve the -- whether I'll let that be intro-
14 duced or not and I'm going to let you ask this man anything he
15 wants and let him take the Fifth as he wants. But I hope he
16 understands that, because Mr. Clark is not here right now, but
17 Mr. Clark said yesterday that this man was only going to give his
18 name and that was it. He's out there.

19 MR. NIXON: Yes, sir.

20 THE COURT: Don't bring this man in yet.

21 Billy, bring this jury in. This jury is so upset it's
22 unreal. I don't blame them.

23 (Jury present.)

24 THE COURT: Billy advised me -- Billy Clausen is my bailiff
25 and he has been for 18 years. He told me that several jurors

v
1 > asked him this question: Is this case ever going to end? I
2 don't want to add anything to it and I don't want to take any-
3 thing away from it, and I think Billy said, You all need to ask
4 the Judge and he will tell you. Am I correct?

5 (Jurors answer in the affirmative.)

6 THE COURT: You have my word, it will end.

7 Now, let us proceed.

8 MR. NIXON: Call Tyrrell Moore back to the stand, Judge.

9 THE COURT: I swore Tyrrell Moore in yesterday in front of
10 this jury.

11 MR. NIXON: Yes, sir. I promise I'll try to move as fast as
12 I can.

13 MR. TYRRELL MOORE, recalled

14 being still under oath, testified further as follows:

15 DIRECT EXAMINATION

16 BY THE COURT:

17 Q Mr. Moore, I swore you in yesterday in front of this
18 jury. You remember that?

19 A Yes, sir.

20 Q And although this jury was not present, you were
21 present when we had and awful lot of conversation about
22 your testifying or not testifying. Do you remember
23 that?

24 A Yes, sir.

25 Q This Court has been advised by your attorney in open

v

1 > court that you intend to invoke your Fifth Amendment
2 right in this particular case. That is, you are going
3 to refuse to answer questions on the grounds that those
4 answers may incriminate you. Isn't that correct?

5 A Yes, sir.

6 Q Your attorney is not here, but he has advised us of
7 that and I have had a conversation in open court with
8 Mr. Nixon. He's going to ask you some questions. I
9 know that. If you would like for me to call Mr. Clark
10 over here, I'd be happy to do so. At the end of each
11 question, if you choose to do so, you have a right to
12 say I refuse to answer or I take the Fifth. Any way
13 you wish to do it. Do you understand that.

14 A Yes, sir.

15 Q Now, do you wish for me to call Mr. Clark over here?

16 A Sure. Yes, sir.

17 THE COURT: Step down.

18 Call Mr. Clark over here. Put another witness on now.

19 MR. NIXON: Judge, I would call Brenda Gay to the stand,
20 and I would like her to be an adverse witness.

21 THE COURT: You have that right.

22 * * * * *

23 MRS. BRENDA GAY

24 was sworn and testified as follows:

25 DIRECT EXAMINATION

v
1 > BY MR. NIXON:

2 Q State your name, please.

3 A Brenda Gay.

4 Q And, Mrs. Gay, are you related to Valerie Finley?

5 A Yes, she's my sister.

6 Q You're her sister, correct?

7 A Yes.

8 Q And you were talking to her on the telephone on March
9 the 2nd, 1995, when this occurred; were you not?

10 A Yes.

11 Q You talked to her twice on that day?

12 A Yes.

13 Q And the first time you talked to her was what time in
14 the morning?

15 A We started talking at 5:25 a.m.

16 Q And what time did you hang up?

17 A Some time after seven.

18 Q And did you hear her husband in the background when he
19 left for work?

20 A Yes, I did.

21 Q That was approximately seven o'clock?

22 A I don't know what time it was.

23 Q Well, you said you hung up at seven?

24 A I said some time after seven.

25 Q Do you know whether -- well, did you hear him leave?

1 A I heard him. I didn't actually hear him leave, no.

2 THE COURT: Pardon me? Who did you ask her did you hear
3 leave?

4 MR. NIXON: Valerie's husband, Mike Finley.

5 THE COURT: I don't understand your question, but go ahead.

6 Q You hung up around seven?

7 A Somewhere after seven.

8 Q And then you called her back?

9 A I don't know if she called me or I called her.

10 Q You started talking to her again?

11 A Yes.

12 Q And what time was that --

13 A I don't know.

14 Q -- Mrs. Gay?

15 A I don't.

16 Q Well, what time do you think it was, Mrs. Gay?

17 A Some time that morning.

18 Q What time that morning?

19 A I don't know.

20 Q You don't have any recollection of it?

21 A No, I don't.

22 Q Mrs. Gay, you've talked to the police, haven't you,
23 and the district attorney?

24 A Yes, I have, mm-hm.

25 Q And you told them what time it was, didn't you?

1 A Well, maybe I did then. I don't remember now what time
2 it was.

3 Q Pretty specific when you told the detective, weren't
4 you?

5 A I don't know at that time how specific I was. I'm
6 pretty sure I was just guessing on the -- I know the
7 5:25 a.m. was exact, but that's the only time --

8 Q How do you know that?

9 A Because I looked at the clock. I always look at the
10 clock when someone calls me early in the morning or
11 late at night.

12 Q Do you remember giving your statement to the police?

13 A Yes, I do remember giving a statement to the police.

14 MR. NIXON: Judge, may I approach the bench.

15 THE COURT: Certainly.

16 Q Please read your statement and see if that refreshes
17 your recollection.

18 MR. JORDAN: Can I see what you're referring to, please, Mr.
19 Nixon?

20 MR. NIXON: The statement that you gave me.

21 MR. JORDAN: Could I look at it, please?

22 MR. NIXON: You've got a copy of it. You gave me -- this is
23 the copy you gave me of her statement. It's the only
24 one I have.

25 MR. JORDAN: Can I look at it, please. Just so I see what

v

1 > you're --

2 THE COURT: He doesn't remember what he gave you. Let him
3 look at it.

4 (Pause.)

5 Q Did you read that?

6 A Yes.

7 Q Does that refresh your recollection? Read that
8 sentence to the jury, what you told the police officers
9 when they asked you what time it was.

10 A "The next time I talked to Valerie was just after 9:00
11 a.m. We were talking about going to Prichard parade.
12 We had talked about 13 minutes when Valerie said, 'Hold
13 on. Somebody is at the door.'"

14 Q And she never came back to the phone, did she?

15 A No, she didn't.

16 Q And you gave this statement back in April of 1992,
17 didn't you?

18 A Yes. I guess it was April. I'm not sure.

19 Q It was fresh on your mind at that time and the police
20 were questioning you and you knew that she had --

21 A I was guessing the time even then.

22 Q You didn't say you were guessing, did you?

23 A Well, I was.

24 Q You said 13 minutes.

25 A About.

- 1 > Q You said 13 minutes. That's pretty --
- 2 A Well, I didn't time it. I said about. I'm sure was
- 3 about that time --
- 4 Q From 9:00 a.m. to 9:13 and then she told you to hang
- 5 on?
- 6 A Hang on; someone's at the door.
- 7 Q Never came back to the phone?
- 8 A No, she didn't.
- 9 Q And you had talked to her for two hours from 5:26 in
- 10 the morning until --
- 11 A Until after seven.
- 12 Q -- 7:30 that same day?
- 13 A Until after seven.
- 14 Q So, you had one long conversation earlier?
- 15 A Yes.
- 16 Q Two hours?
- 17 A Mm-hm.
- 18 Q Then you had a thirteen minute conversation when she
- 19 told you to hold on and nobody came --
- 20 A I don't know. I was guessing. I didn't time it.
- 21 Q Now, were you present in the hospital when Detective
- 22 Fletcher came to see Valerie?
- 23 A Yes, I was.
- 24 Q And was there a female police officer there also?
- 25 A Yes, it was.

1 > Q And did you hear -- you've been sitting in court here,
2 haven't you?

3 A Yes, I have.

4 Q And did you hear the tape that was played yesterday?

5 A Yes.

6 Q And that's your voice that says on that tape she told
7 me --

8 A I need to hear that tape.

9 Q -- she didn't know.

10 A I can't -- I couldn't hear it good back there.

11 Q Are you -- do you recall saying that --

12 A No, I don't.

13 Q -- she told me she didn't know?

14 A No, I don't.

15 Q If I showed you a copy of that tape that was provided
16 to me by the District Attorney would it --

17 A If you let me hear it, I can see.

18 Q -- refresh your recollection?

19 A I could try to figure out if that's my voice or not.

20 MR. NIXON: May I approach, Judge?

21 THE COURT: Certainly. She said she wants to hear it, not
22 see it. I believe that's what I heard her say.

23 MR. NIXON: Okay.

24 Do you have the tape?

25 MR. JORDAN: You introduced it, I think.

(Off the record discussion.)

1 >
2 Q I'm going to let you follow this transcript of the tape
3 that was given to me by the District Attorney's office.
4 Okay?

(Audio cassette tape played.)

5
6 MR. JORDAN: I think you need to back it up, Ken.

(Audio cassette tape played.)

7
8 Q That's your voice, isn't it?

9 A Yes, sir.

10 Q She told me she didn't know?

11 A Yes.

12 Q That's what Valerie told you, wasn't it?

13 A I don't remember her telling me that.

14 Q Ma'am.

15 A I don't remember her ever telling me that.

16 Q You told the police that Valerie told you --

17 A I said that was my voice, but I do not remember her
18 ever telling me that.

19 Q Why would you tell the police that Valerie told you she
20 didn't know who did it?

21 A Because I --

22 Q Why would you do that?

23 A Because I figured she didn't know. She never --

24 Q You didn't say you figured, did you? You said --

25 A No, I didn't say it --

- 1 > Q -- that she told you she didn't know?
- 2 A -- but she never told me that.
- 3 Q How many days after this happened was it before you --
- 4 before that statement was taken, Mrs. Gay?
- 5 A I don't know.
- 6 Q Was it a week after?
- 7 A Well, she was in the room. She was out of intensive
- 8 care. She was in a hospital room at that point.
- 9 Q Okay. Was it days or a week or do you know?
- 10 A I don't know. She was -- I know she was out of the
- 11 intensive care. She was in the room at that point.
- 12 Q It was after her husband had come to the hospital with
- 13 the jewelry, wearing the jewelry that had been stolen,
- 14 and after he had recovered the guns?
- 15 A Yes, she was still in intensive care when he did that.
- 16 Q You got a little suspicious when you saw him come to
- 17 the hospital with those -- with the jewelry that he
- 18 claimed was stolen, didn't you?
- 19 A No, I didn't get suspicious until his mother told me
- 20 that she was suspicious.
- 21 Q Mm-hm. You were suspicious in the hospital, weren't
- 22 you?
- 23 A When Mike's mother told me that she was suspicious, I
- 24 started --
- 25 Q And your mother was suspicious, too?

1 > A I don't know if she was suspicious or not.

2 MR. NIXON: That's all I have.

3 THE COURT: Any questions?

4 MR. JORDAN: Yes, a few, Your Honor.

5 CROSS EXAMINATION

6 BY MR. JORDAN:

7 Q Brenda, do you recall when you talked to the police
8 officer about this first. Well, let me back up first
9 of all. When you talked to Valerie that morning were
10 you keeping track of the -- now, you said in the very
11 first time you kept track of when. Who called who
12 first?

13 A She called me first.

14 Q And what time was that?

15 A About 5:25.

16 Q Okay, was that unusual?

17 A No.

18 Q Was it unusual for you all to talk on a daily basis --

19 A No, it wasn't.

20 Q -- for a long time?

21 A We talk all the time. We still do.

22 Q And during that time when -- like during all the time
23 you all were talking and at the time when she said
24 somebody was at the door, did you go look at a clock or
25 anything?

- 1 A No, I didn't.
- 2 Q At that time was it important to you?
- 3 A No, it wasn't.
- 4 Q I mean did you have any idea what had happened to Val?
- 5 A No, it wasn't unusual for her to put me on hold.
6 Wasn't unusual for her to tell me to hold on. We did
7 it all the time.
- 8 Q And when she put the -- when she put the phone down and
9 she went to the door, did you stick around and listen
10 for a long time or how did --
- 11 A I waited for a while because sometimes she would put me
12 on hold and forget and then I would call her back or
13 she will call me back later. I waited for a while and
14 so I figured maybe she was talking to somebody and then
15 I hung up.
- 16 Q And did you look a the time that you hung up?
- 17 A No, I didn't.
- 18 Q Was it important to you at that moment in time?
- 19 A It wasn't.
- 20 Q Okay. Did you think anything about it? Anything
21 unusual about Val just leaving you to hang on the phone
22 and going on?
- 23 A No. She still do put me on hold and forget about me
24 sometimes.
- 25 Q Okay. Now, what's the next time you tried to get in

1 > contact with Val?

2 A I don't know exactly what time, but I do know I tried
3 to call her back.

4 Q Did you realize at that time that something had
5 happened to her?

6 A No.

7 Q Did you have any idea?

8 A No, I didn't.

9 Q What time was it, if you even know, that you finally go
10 over to her house that day?

11 A I didn't go over to her house, but it's eleven --
12 around eleven-something and my mother called me and
13 told me that something was wrong over there.

14 Q Okay.

15 A And so, you know, I called back and I talked to the
16 neighbors --

17 Q Where did you go then?

18 A I went to the hospital. I -- the neighbor told me,
19 Clara Malone told me that they had gone to the hospital
20 so I went straight to the hospital from my house.

21 Q Okay. Were you shocked to find Val in the condition
22 she was in?

23 A I was very shocked.

24 Q Now, when is it that you talked to -- first of all, is
25 this your handwriting --

- 1 A No, it's not.
- 2 Q -- that Mr. Nixon referred you to?
- 3 A No, it's not mine.
- 4 Q He called it your statement.
- 5 A It's not my hand--
- 6 Q Is this your handwriting at all?
- 7 A No.
- 8 Q Okay. Who did you actually talk to? Do you remember?
- 9 Who was it that you talked to when you were --
- 10 A Smith.
- 11 Q Okay, Detective Smith, and do you remember when, about
- 12 when that was?
- 13 A No. Wait. Oh, yes, I talked to him when I went up to
- 14 the station.
- 15 Q I'm sorry.
- 16 A When I went to the police station.
- 17 Q And about how long? Was it the same day?
- 18 A No. This was a few days later. I don't know exactly
- 19 when.
- 20 Q Okay. I notice in the thing that Mr. Nixon referred
- 21 you to you said about 6:35, you said about three times,
- 22 you said just after, you said about, you said about,
- 23 you said about some time, you said around.
- 24 A Mm-hm.
- 25 Q You kept talking about and around. Is that because you

v

1 > could not --

2 A Because I wasn't exactly -- the only time I knew
3 precisely was the first call, and because it was early
4 in the morning.

5 Q Would it be fair to say that she put down the phone
6 somewhere between 8:30 and 10:00 in the morning?

7 MR. NIXON: Judge, I'm going to object to that.

8 MR. JORDAN: This cross examination?

9 THE COURT: Restate it. Restate your question.

10 Q Would it be fair to give a range of about the time that she
11 hung up the phone or put you on hold or when she went to
12 door, could it have been in the area between 8:30 and 10:00
13 in the morning?

14 A It could have.

15 Q Is that a round ball park figure?

16 A Yes.

17 Q You know it wasn't 5:30?

18 A I know that.

19 Q And you know it wasn't before her husband went to work?

20 A I know that, right.

21 Q And you know it wasn't at eleven o'clock when your --

22 A Right.

23 Q -- when your mother called you and said something was wrong
24 or around eleven o'clock?

25 A Right.

v

1 > Q Now, Mr. Nixon asked you about the tape recording. Tell the
2 jury the condition that Valerie was in the day that Al
3 Fletcher and Jackie Arnold came out there to see her.

4 A She was very heavily medicated. When they came over there
5 the nurses was just getting her out of bed and putting her
6 in a chair, but she wasn't used to even sitting up and she
7 was in a lot of pain and she couldn't hardly talk and I
8 would talk for her and do a lot of things for her.

9 Q In fact, and didn't -- did she still have the intubate --
10 the --

11 A Her -- I don't know if she still, but she still had a lot of
12 stuff stuck on her body too.

13 Q How long had she been out of intensive care at that time?

14 A I can't say exactly how long.

15 Q But the police come out there?

16 A Yes.

17 Q And on the tape you're actually trying to talk for her?

18 A Right.

19 Q And you actually told the police that she told you --

20 A Yes.

21 Q -- that she didn't know who did it?

22 A Right.

23 Q Well, had she ever talked to you, Brenda?

24 A No, we didn't -- I tried not to even mention this because I
25 didn't want to get her upset and get her crying because she

v

1 > was in bad shape.

2 Q But you were trying to be helpful?

3 A I was trying to be helpful. I talked to her doctors for her
4 and nurses for her, everything.

5 Q Is her voice even on that tape recording?

6 A I didn't hear it at all because you would have -- she just
7 couldn't really communicate.

8 Q When she finally could talk, Brenda, did she tell you who
9 did it?

10 A She didn't tell me. She told somebody else and they told
11 me --

12 MR. NIXON: Object, object, Judge.

13 A -- but that was later.

14 THE COURT: Object to what?

15 MR. NIXON: Hearsay. She starts to say what somebody
16 else -- she told somebody else.

17 THE COURT: He's correct.

18 Q But she's never told you in her own voice, she's never said,
19 Brenda, I don't know who did it?

20 A No, she didn't.

21 Q She's never said, Brenda, it wasn't Stan and Ponytail?

22 A No, she didn't.

23 Q Now, I want to be very clear on that. That has never ever
24 happened --

25 A No.

v

1 Q -- from the time she came out of ICU until this very day?

2 A Not ever.

3 MR. JORDAN: That's all I have.

4 MR. NIXON: Judge, I would -- the tape's in evidence
5 of that interview. I would move to introduce a
6 copy of the transcript of that tape.

7 THE COURT: I'll be happy to introduce whichever one you
8 want introduced; not both.

9 MR. NIXON: The tape's already in.

10 MR. JORDAN: I'd like to introduce the -- that's fine.

11 REDIRECT EXAMINATION

12 BY MR. NIXON:

13 Q Ms. Gay, you -- Mr. Jordan said you were trying to be
14 helpful and you were trying to do the best you could; is
15 that right?

16 A That's right.

17 Q And you were trying to do the best you could when you told
18 them what time it was too; right?

19 A I was guessing, yes.

20 Q And that's when you said, "just after 9:00 a.m. we was
21 talking about going to Prichard parade. We talked about 13
22 minutes when Valerie said hold on." That's pretty specific,
23 isn't it, between nine and thirteen minutes.

24 A I'm sure I was guessing on that. I wasn't taking the time.

25 Q You didn't say you were guessing though, did you?

1 > A I didn't come out and say that I'm guessing, but I was
2 guessing.

3 Q Now, in this statement at the hospital you didn't tell
4 Detective Smith that she couldn't talk, couldn't tell you
5 what had happened to her. You said that she did tell you
6 that she didn't know who did it, didn't it?

7 A The tape say I did. I guess I did tell him, but she never
8 told me that.

9 Q And you wouldn't suggest that Detective -- you said this is
10 not your handwriting. You reviewed this statement, didn't
11 you? This is Detective Smith's handwriting?

12 A I guess I did, but this is my first time looking at it today
13 when you put it up here.

14 Q This Detective Smith took this statement, didn't he?

15 A I told him these things?

16 Q You're not suggesting Detective Smith would write something
17 on here that you didn't say?

18 MR. JORDAN: Judge, she's not suggesting anything like
19 that and I object to that question.

20 THE COURT: Let her answer the question.

21 Q Have you reviewed the statement?

22 A When you brought it up here a few minutes ago I looked at
23 it.

24 Q Do you deny that you told Detective Smith anything that's in
25 your statement?

v
1 A I don't deny anything on there.

2 MR. NIXON: Thank you.

3 That's all I have of that witness, Judge.

4 THE COURT: Anything else?

5 MR. JORDAN: No.

6 Brenda, thank you very much.

7 THE COURT: Thank you very much.

8 Next witness.

9 (Mr. Robert Clark and witness enter.)

10 THE COURT: Come on up here, please, sir.

11 Ladies and gentlemen of the jury, this is Mr. Bob
12 Clark. He's the attorney for Mr. Moore. He has
13 every -- young man, come on up here.

14 MR. CLARK: You want him on the stand?

15 THE COURT: Yes. For the record, I asked him did --
16 that we were fully aware of what his answers would
17 be, but I asked him would he like for you to be
18 here. He said he would. That's the reason you're
19 here.

20 Proceed.

21 TERRELL MOORE, recalled

22 previously sworn, testified further as follows:

23 DIRECT EXAMINATION

24 BY MR. NIXON:

25 Q State your name, please.

v
1 A Terrell Moore.

2 MR. NIXON: Judge, I -- again I would like for him
3 to be a hostile witness.

4 THE COURT: Perfectly all right. Go ahead.

5 Q Where do you live, Mr. Moore?

6 A I plead the Fifth Amendment.

7 Q Did you ever live at Lynwood Court?

8 A Plead the Fifth Amendment.

9 Q Mr. Moore, in March of -- March the 2nd of 1992, did you own
10 own or did you drive a faded Mercury Capri automobile?

11 A I plead the Fifth Amendment.

12 Q Did you meet during March of 1992, two people from New York,
13 one named Wish and one Rene?

14 A I plead the Fifth Amendment.

15 Q And did the one named Wish pay you a sum of money on or
16 about March the 2nd, 1995 (sic) to take him in your car to
17 Valerie Finley's home on Meadow Avenue?

18 A I plead the Fifth Amendment.

19 Q And you went to that home on Meadow Avenue, didn't you?

20 A I plead the Fifth Amendment.

21 Q And you put a mask on and you went in the house through the
22 front door, didn't you?

23 A I plead the Fifth Amendment.

24 Q And the person that was with you was a person from New York
25 named Wish; is that correct?

v

1 > A I plead the Fifth Amendment.

2 Q And you took the guns out of the safe in that house and you
3 were wearing a mask at the time and put them in your car,
4 didn't you?

5 A I plead the Fifth Amendment.

6 Q And you were present at the scene in Valerie Finley's home
7 on March the 2nd, 1995 -- 1992, when the person you knew as
8 Wish fired a gunshot and shot Mrs. Finley, weren't you?

9 A I plead the Fifth Amendment.

10 Q And after the shot was fired you got into your faded gray
11 Mercury Capri and backed out and left the scene and you were
12 driving that car; isn't that correct?

13 A I plead the Fifth Amendment.

14 Q And the guns were placed in that car before you left?

15 A I plead the Fifth Amendment.

16 Q And while you were driving that car when you backed out you
17 almost hit two people in the median that were working on a
18 car. One of them was a Tyrone Dortch. Isn't that true?

19 A I plead the Fifth Amendment.

20 Q And, Mr. Moore, you told the details of what you did that
21 day --

22 MR. JORDAN: Judge, at this time -- we need to see you
23 at sidebar.

24 (Off the record sidebar conference.)

25 Q Mr. Moore, on or about October the 6th, 1992 (sic), at

v

1 > approximately 1:53 in the morning at the parking lot of the
2 Galaxie Club in Prichard, Alabama, you told my investigator,
3 this person sitting right here, Ryan Russell, you confessed
4 that you did that crime and you told him that Wish was with
5 you and that Wish had shot the lady; isn't that true?

6 A I plead the Fifth Amendment.

7 Q You told him the details about it, didn't you?

8 A I plead the Fifth Amendment.

9 Q And you also, Mr. Moore, you also appeared at the grand jury
10 when you were subpoenaed to appear at the grand jury and
11 refused to testify and took the Fifth like you're doing
12 today, didn't you, Mr. Moore?

13 A I plead the Fifth Amendment.

14 Q And after you took the Fifth Amendment at the grand jury,
15 and specifically on April the 2nd, 1993, with a court
16 reporter present and with your attorney, Mr. Clark, present
17 and Mr. Buzz Jordan present and Mr. Lebarron Smith present,
18 you told Mr. Buzz Jordan the same thing, didn't you?

19 A I plead the Fifth Amendment.

20 Q And you told him the details of what you did in that house
21 and who did it with you, didn't you?

22 A I plead the Fifth Amendment.

23 Q You told Mr. Jordan and Mr. Smith and you answered their
24 questions and told them that you were driving a faded gray
25 Mercury Capri that day and that you and Wish went that house

1 > and stole the guns and that Wish shot the lady; isn't that
2 what you told them?

3 A I plead the Fifth Amendment.

4 Q And you told them all the details of how the furniture got
5 turned over and where you looked and where you found the
6 guns and where you went in and when you came out; didn't
7 you?

8 A Plead the Fifth.

9 Q And the only people present that day when you gave that
10 recorded statement was your lawyer, Bob Clark, yourself, Mr.
11 Jordan, and Mr. Smith; isn't that correct.

12 A Plead the Fifth Amendment.

13 MR. NIXON: Judge, I would move to introduce the
14 statement in evidence at this time.

15 THE COURT: No. Do you have any other questions to
16 ask him?

17 MR. NIXON: Not at this time, Your Honor.

18 CROSS EXAMINATION

19 Q And you are friends with Rodney Stanberry, right?

20 A I plead the Fifth Amendment.

21 Q And you met with Lebarron Smith, who was investigating this
22 case, on April the 21st of 1992, didn't you?

23 A I plead the Fifth Amendment.

24 Q And you gave him a complete alibi as to not being anywhere
25 near Mrs. Finley's house; isn't that correct?

v

1 > A I plead the Fifth Amendment.

2 Q And then you had a conversation with your buddy, Rodney
3 Stanberry, at the mall, didn't you?

4 A I plead the Fifth Amendment.

5 Q Rodney Stanberry approached you at the mall about this case,
6 didn't he?

7 A I plead the Fifth Amendment.

8 Q Then Rodney Stanberry's investigator came and interviewed
9 you at night, didn't he?

10 A I plead the Fifth Amendment.

11 Q And you told Rodney Stanberry's investigator, you told him
12 that it was Rene, Rene who did these things, but he
13 corrected you and told you, oh, no. In fact, he told you
14 that it was Wish and you agreed with him, didn't you?

15 A I plead the Fifth Amendment.

16 Q And then Mr. Ryan Russell, after you told him it was Rene
17 who went up to the house, Ryan Russell told you, no, it was
18 With that went to the house, wasn't it?

19 A I plead the Fifth Amendment.

20 Q Mr. Ryan Russell told you everything that happened in this
21 case, didn't he?

22 A I plead the Fifth Amendment.

23 Q He went through all the details of what happened at Mrs.
24 Finley's house, didn't he?

25 A I plead the Fifth Amendment.

v

1 > Q And when you told him the wrong neighbor, the person who was
2 supposedly there, he corrected you, didn't he?

3 A I plead the Fifth Amendment.

4 Q He corrected you on two separate occasions, didn't he?

5 A I plead the Fifth Amendment.

6 Q And after he got through talking to you, he told you to go
7 see a lawyer, didn't he?

8 A I plead the Fifth Amendment.

9 Q And you went and saw a lawyer, didn't you?

10 A I plead the Fifth Amendment.

11 Q And then you wouldn't talk to me, would you, after Mr. Ryan
12 Russell sent you to a lawyer?

13 A I plead the Fifth.

14 MR. NIXON: Judge, I object to that. He did talk to
15 and Mr. Jordan is making a mischaracterization of
16 what happened. He knows he talked to him. We
17 have a transcript of it.

18 THE COURT: Sustained.

19 Q Mr. Ryan Russell sent you to see a lawyer, didn't he?

20 A I plead the Fifth Amendment.

21 Q And then I subpoenaed you to the grand jury so you could
22 come and tell the truth about this event, didn't I?

23 A I plead the Fifth Amendment.

24 Q And after Mr. Ryan Russell sent you to a lawyer, you went to
25 a lawyer and you came to the grand jury and you took the

1 > fifth amendment, did you?

2 A Plead the Fifth Amendment.

3 Q In fact, you and Rodney Stanberry concocted this entire
4 story, didn't you?

5 A Plead the Fifth Amendment.

6 MR. JORDAN; That's all I have.

7 REDIRECT EXAMINATION

8 BY MR. NIXON:

9 Q You did tell him -- you told this man right here the truth,
10 didn't you?

11 A Plead the --

12 Q In front of a court reporter and in front of that police
13 officer right there and in front of your lawyer, didn't you?

14 A I plead the Fifth.

15 Q And when you told him the truth that day you told him that
16 Rodney Stanberry didn't have anything to do with it, that
17 you went in that house and Wish went in that house and Wish
18 shot the girl and you took the guns out, didn't you?

19 A Plead the Fifth Amendment.

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

21 BY MR. JORDAN:

22 Q You told him exactly what Rodney Stanberry and his
23 investigator told you to tell me?

24 A I plead the Fifth Amendment.

25 THE COURT: Anything else?

1 >

MR. NIXON: No, Your Honor.

2

THE COURT: Buzz?

3

MR. JORDAN: No, sir.

4

THE COURT: You may step down.

5

MR. CLARK: Are we excused, Judge.

6

THE COURT: Yes.

7

MR. CLARK: Thank you, sir.

8

THE COURT: Thank you very much.

9

MR. NIXON: Judge, I call Tony Mauldin to the stand.

10

THE COURT: Tony Mauldin.

11

MR. TONY MAULDIN

12

was sworn and testified as follows:

13

DIRECT EXAMINATION

14

BY MR. NIXON:

15

Q State your name, please.

16

A My name is Tony Mauldin.

17

Q How old are you, Mr. Mauldin?

18

A Forty-one.

19

Q Where do you live?

20

A 2436 Denmark Street, Mobile.

21

Q Do you know Tyrone Dortch?

22

A Yes.

23

Q How do you know him?

24

A His daddy stay across the street from me. I used to work

25

for him.