

COURT OF CRIMINAL APPEALS NO. _____

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

CIRCUIT COURT NO. CC92-2313.60, 92-2314.60 and 92-2315.60

CIRCUIT JUDGE FERRILL D. McRAE

Type of Conviction / Order Appealed From: RULE 32 - DENIED

Sentence Imposed: _____

Defendant Indigent: YES NO

RODNEY KARL STANBERRY

Vader Al Pennington (334) 438-4691
(Appellant's Attorney) (Telephone No.)

NAME OF APPELLANT

P.O. Box 40361
(Address)

Mobile, Alabama 36640
(City) (State) (Zip Code)

V.

STATE OF ALABAMA

NAME OF APPELLEE

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)

1 Moore.

2 THE COURT: Bring him in.

3 TERRELL MOORE

4 was sworn and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. KNIZLEY:

7 Q. State your name, please, sir?

8 A. Terrell Darnell Moore.

9 MS. TIERNEY: Judge, I hate to interrupt Mr.
10 Knizley, because I have the world of respect for
11 him, but if Mr. Moore is going to testify about
12 the things we anticipate he will testify about,
13 and I'm concerned that this is a state forum, and
14 that he would take this stand unrepresented and
15 with no grant of immunity to make statements that
16 could have life consequences for him. I just
17 wish that the Court be apprised of that and our
18 concern about that, sir.

19 MR. KNIZLEY: Judge, from our understanding
20 the State's permission the man -- he's already
21 said this, they know about it, he has no
22 credibility and are they telling us now they are
23 going to prosecute him if he confesses to it?

24 THE COURT: I have no idea. I think what she
25 is saying is, Judge, this man ought to be advised

1 that if he makes a statement contrary to his own
2 well-being that he may be subjecting himself to
3 being charged in a criminal case, and that he has
4 under the Fifth Amendment the right not to
5 answer; am I correct?

6 MS. TIERNEY: Yes, sir, and also the right to
7 consult an attorney, and I understand he has
8 prior convictions, the consequences might be more
9 dire than one even can anticipate at this point,
10 and we're talking about --

11 THE COURT: Do you understand what she's
12 saying, Mr. Moore?

13 THE WITNESS: Yes, sir.

14 MS. TIERNEY: Well, he can get life without
15 parole, but I don't know how many priors he's
16 got, but if he comes in here and says it's me
17 pals, then it's good-bye sunlight for the rest of
18 his living life, and he's young. I don't know if
19 this Court wants to countenance that at least
20 before he has a chance to talk to an attorney.

21 MR. KNIZLEY: Judge, he's already talked to
22 an attorney. He's already made the statement to
23 Mr. Jordan in front of an attorney.

24 MS. TIERNEY: Well, that was five years ago,
25 Your Honor.

1 MR. KNIZLEY: The Court's told him he's got a
2 right. Now, if it needs to be cleared --

3 THE COURT: Proceed.

4 BY MR. KNIZLEY:

5 Q. Mr. Moore, you recall whenever a lady named
6 Mrs. Finley was shot? Do you remember back in those
7 days when you were called as a witness in this case?

8 MS. TIERNEY: Judge, may I just object, sir,
9 for one minute?

10 THE COURT: Certainly.

11 MS. TIERNEY: Could you just, Your Honor, if
12 I may respectfully ask that at least you instruct
13 him that he does have the right under the Fifth
14 Amendment not to make any statements.

15 THE COURT: I thought I just did that. I
16 think I just did that, but I'll do it again.

17 Under the Fifth Amendment of the Constitution
18 you do not have to answer any question which
19 could even possibly incriminate you. Do you
20 understand that?

21 THE WITNESS: Yes, sir, I understand it.

22 THE COURT: Okay. Proceed.

23 MS. TIERNEY: And that the State would
24 use anything he says today, Your Honor, against
25 him.

1 THE COURT: The State can and may.

2 THE WITNESS: Yes, Your Honor I understand
3 and I plead the Fifth Amendment.

4 MS. TIERNEY: Your Honor, he just invoked his
5 Fifth Amendment privilege.

6 MR. KNIZLEY: Your Honor, out of sense of
7 fairness if the prosecution stands up here and
8 puts forth testimony that they don't think he's
9 credible and wouldn't prosecute him and when he's
10 already made the statement, I think it's only
11 fair for him to know that too in making his
12 decision what Mr. Jordan just testified to.

13 MS. TIERNEY: Well, Judge, we have never --

14 THE COURT: Did you tell -- Mr. Moore, did
15 you say that you wish to invoke your Fifth
16 Amendment privilege?

17 THE WITNESS: Yes, I do.

18 THE COURT: I think he has that right.
19 However, this Defendant here has rights to.
20 Under Rule 32 he has a right to bring up any and
21 everything he wishes to bring up. But you know
22 I have another little problem here, these folks
23 over in the metro jail and the penitentiary they
24 become legal scholars overnight. Meaning, they
25 discuss legal matters all day and all night, they

1 THE COURT: Because I have a serious question
2 about that. When a lady takes the stand and says
3 ladies and gentlemen of the jury, and Judge McRae
4 and everybody else that's present at the time,
5 this man shot me. If he later comes in and says
6 yes, I did it, does someone think that exonerates
7 him? I just don't understand that. Maybe I'm
8 missing something.

9 MR. KNIZLEY: I certainly understand your
10 logic, Judge.

11 THE COURT: But -- now, let me ask y'all a
12 question. Buzz, who is the best constitutional
13 lawyer in Mobile that you know of?

14 MR. JORDAN: Champ Lyons.

15 THE COURT: Well, he's on the Supreme Court
16 now. I can't appoint him.

17 MR. JORDAN: Glenn Davidson is pretty good
18 for that stuff, Judge. Jim Byrd is pretty good
19 too, Judge.

20 THE COURT: I think Jim Byrd would be
21 excellent. You know I only go by -- I'm not
22 saying Glenn Davidson wouldn't be, but he hasn't
23 appeared before me in constitutional questions
24 like Jim Byrd has. So I'll appoint Jim Byrd.

25 Didn't I hear testimony earlier that his

1 lawyer at the time was Cowboy Bob Clark.

2 MR. KNIZLEY: Yes, sir.

3 THE COURT: I don't know of anybody that's a
4 better lawyer than Bob Clark. But if Bob has
5 already been involved, I don't think it would be
6 fair for this Defendant for me to appoint that
7 lawyer.

8 If y'all disagree --

9 MR. KNIZLEY: I agree, Judge.

10 THE COURT: Okay. It's done. Take him back.
11 Jim Byrd will be there to see you, Mr. Moore.
12 Let me -- let me continue though. We have
13 witnesses here. We have put this thing over
14 twice. I want to hear every witness y'all have.

15 MR. KNIZLEY: Yes, sir.

16 THE COURT: Let's go.

17 MR. KNIZLEY: Mr. Russell.

18 THE COURT: Ryan, Raise your right hand.

19 RYAN RUSSELL

20 was sworn and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KNIZLEY:

23 Q. State your name --

24 THE COURT: You know I have read all of the
25 quote, motions, filed, and as I expected three of