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COURT OF CRIMINAL APPEALS NO. _____

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

CIRCUIT COURT NO. CC92-2313 thru 2315

CIRCUIT JUDGE FERRILL D. McRAE

Type of Conviction / Order Appealed From: ATTEMPTED MURDER, ROBBERY, 1st, BURGLARY, 92-2313 - Pen for 20 yrs, 2314. - Pen for 20 yrs concurrent with 2313 and 2315, 92-2315. -
Sentence Imposed: Pen for 20 yrs concurrent with 2313 and 2314

Defendant Indigent: YES NO

RODNEY KARL STANBERRY

NAME OF APPELLANT

Kenneth A. Nixon (334) 433-1806

(Appellant's Attorney) (Telephone No.)

P.O. Box 2301

(Address)

Mobile, Alabama 36652

(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 THE COURT: What did you say? You didn't have any
2 recorder?

3 THE WITNESS: Well, you have to understand, at
4 this time I was just going into the detective
5 bureau. I didn't have a tape recorder at
6 that time that he came.

7 THE COURT: I understand.

8 Q This statement was taken -- both these statements were
9 taken at the detective bureau office of the Prichard
10 Police Department, were they not?

11 A Yes, they were.

12 Q And is it your testimony that there was not a tape
13 recorder in the detective bureau office of the Prichard
14 Police Department on March the 3rd or March the 7th?

15 A No, there wasn't. If you were familiar with Prichard -
16 - our office, we didn't have a tape recorder.

17 Q I'm familiar with it. I used to work there, probably
18 longer than you did.

19 A Well, that's why you probably would understand, then,
20 wouldn't you?

21 Q Is it your testimony that you had no tape recorder in
22 the detective bureau of Prichard that day?

23 A No, sir, I sure did not.

24 Q Did you ask anybody for one?

25 A I tried to locate one but we didn't have one.

1 Q On March the 7th?

2 A That's right. Most of the detectives or most of the
3 people in that department either had their own tape
4 recorders or they weren't available for me to get one.

5 Q And you remember that, Detective Fletcher? Now you
6 remember going and asking somebody for a tape recorder
7 and looking for one and couldn't find one; is that what
8 you're telling us?

9 A Yeah. Yes, I do, because it's been many times that I
10 have needed one and couldn't find one.

11 Q I'm not asking you about those times. I'm asking you
12 about the 7th. You're telling us you specifically
13 remember looking for a tape recorder?

14 A That's correct.

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

16 FURTHER REDIRECT EXAMINATION

17 BY MR. JORDAN:

18 Q How long were you a police officer at the time you took
19 this --

20 A About three and a half years.

21 Q You had been a police officer for three and a half
22 years at the time?

23 A Yes.

24 Q And did Rodney have a chance to review this?

25 A Yes, he did.

1 Q Did he tell you anything in here was incorrect?

2 A If he did, I either scratched it out or made a new
3 statement but he -- yeah, he did.

4 Q You've got one area scratched out on page three.

5 A Right.

6 Q Would that have been at Rodney's advice or --

7 A No, that would have been at my discretion, something
8 that I went back and asked him or didn't quite hear
9 what he stated.

10 Q And you corrected it right there?

11 A Right.

12 Q And you wrote this in his presence?

13 A Yes, I did.

14 Q And he reviewed it in your presence?

15 A Yes, he did.

16 Q And he signed it in your presence?

17 A Yes, he did.

18 Q Did he tell you anything on here was wrong or
19 incorrect?

20 A After reviewing it, after we finished the statement, I
21 let him read it, and he signed it.

22 MR. JORDAN: That's all.

23 MR. NIXON: Nothing further, Your Honor.

24 THE COURT: Anything --

25 MR. JORDAN: Just one thing.

1' BY MR. JORDAN:

2 Q You said that he was a suspect in your own mind. Why
3 were you suspicious of Rodney?

4 THE COURT: No, that's not what he said. He said
5 I had my own opinion.

6 MR. JORDAN: Oh, I thought that kind of was what
7 Ken was asking.

8 Q What is your opinion as to why you were suspicious of
9 him?

10 MR. NIXON: Judge, I object.

11 THE COURT: Sustained.

12 MR. JORDAN: Well, it might be based on some
13 facts.

14 MR. NIXON: I've already asked him that ten times.
15 He's answered me ten times.

16 MR. JORDAN: Judge, the jury is not here.

17 THE COURT: It might rain, but, you know, I don't
18 know what that's got to do with it, but go
19 ahead and ask him.

20 Q Go ahead.

21 A Well, at this time, like I say, he was the only person
22 I had communication with about it and, you know, to
23 continuously come tell you about this person, that
24 person, you know, he says he's giving me this
25 information, anyone that comes and keep pouring on

1' information all the time, it has to be a suspect in
2 your mind.

3 Q Okay.

4 MR. NIXON: And he kept pouring information on
5 you, didn't he?

6 THE WITNESS: For the time I was there, yes.

7 Q And you didn't know if that information was correct or
8 not, did you?

9 A No.

10 MR. NIXON: Did you try to verify it?

11 THE WITNESS: Well, at one time, yeah, I did. I
12 called New York Police Department and talked
13 to the, like I say, I think Detective Hardy
14 or whomever and spoke with her, and she was
15 somewhat familiar with the person's name.

16 MR. NIXON: She knew him, didn't she?

17 THE WITNESS: She knew of him.

18 MR. NIXON: She called you, didn't she?

19 THE WITNESS: Yes, she did.

20 Q She knew who?

21 A I can't recall the individual's name that he gave me.

22 MR. NIXON: Did you tell her to look for him?

23 THE WITNESS: Yes, I did to try to question him
24 and talk to him or at least give us some
25 information where we could, you know, relay

1 back to her about the incident.

2 MR. NIXON: You never talked to her again, though,
3 did you?

4 THE WITNESS: No.

5 MR. NIXON: You never called her back to see if
6 she found them, did you?

7 THE WITNESS: Well, at that time, I was out sick
8 from -- anyway, from day to day, I was out
9 after then.

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

11 Q One more thing, when did you quit working on this case?

12 A I really don't recall. It probably was, maybe, a
13 couple weeks later or so.

14 Q So that's all?

15 A That's all.

16 Q You were involved for a couple of weeks and that's it?

17 A Uh-huh.

18 THE COURT: Anything else?

19 MR. NIXON: Not at this time on those statements,
20 Judge.

21 MR. JORDAN: That's all on those statements.

22 THE COURT: Officer, you may go. Be back tomorrow
23 morning at 9:15.

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay, Lebaron, raise your right hand

1' for me.

2 LEBARRON SMITH

3 was sworn and testified as follows:

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

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

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

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

13 DIRECT EXAMINATION

14 BY MR. JORDAN:

15 Q Tell us your name for the record, please.

16 A Lebarron Smith.

17 Q Who do you work for?

18 A City of Prichard Police Department.

19 Q And did you take a statement from Rodney Stanberry on
20 4/17/1992?

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

23 MR. NIXON: Yes, sir.

24 Q And --

25 THE COURT: Before you start asking him anything,

1' this former police officer, Fletcher.

2 MR. JORDAN: Yes.

3 THE COURT: He said, Lebaron, that he had a
4 waiver form for the second statement, which I
5 don't have anything in front of me, but I
6 believe it's 3/7/92, 3/3 and 3/7/92, and
7 everybody's looking around like it's gonna
8 rain in here. Is that right, 3/3/92 and
9 3/7/92?

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

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

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

19 THE COURT: Do that tonight. Go ahead.

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

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

1 make that legal argument at the right time.

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

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

6 THE WITNESS: Yes, sir.

7 Q Where did you interview Rodney?

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

10 Q And where specifically at his place of employment?

11 A BFI Waste Management.

12 Q Was it outside or in an office?

13 A It was in an office.

14 Q And was he under arrest at that time?

15 A No, he was not.

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

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

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

21 A Okay. We went to BFI twice. Yes.

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

25 A Yes, on that first occasion.

1 Q And you left Rodney there?

2 A Yes.

3 Q And he was not under arrest, and he was not arrested?

4 A No, he wasn't.

5 Q And then about two weeks later or three weeks, whatever
6 time it was, I can find it in the records, did you come
7 back to BFI?

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

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

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

18 MR. JORDAN: Yeah, the first statement.

19 Q Did you go back later and arrest him at BFI?

20 A Yes.

21 Q And who went with you that time?

22 A I can't recall the officer right off.

23 Q But that happened on two separate days?

24 A That's correct.

25 Q The interview one day and three or four weeks later the

1' arrest?

2 A Yes.

3 Q Both occurred, though, at BFI?

4 A That's correct.

5 Q Was he mirandized when you interviewed him at BFI?

6 A Not on the first one.

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

9 A That's correct.

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

11 CROSS EXAMINATION

12 BY MR. NIXON:

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

15 A He may have been.

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

17 A Yes, I do.

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

20 A He could have been.

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

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

24 Q You don't remember?

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

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

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

5 A Yes.

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

8 A I say he could have been.

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

11 A That's correct.

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

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

15 Q Have you seen the statement?

16 A Yes, I looked at it.

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

18 THE COURT: Ken, can I see it?

19 MR. NIXON: Yes, sir.

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

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

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

24 A The day the statement was taken?

25 Q Yes.

- 1' A He was a suspect.
- 2 Q In fact, you were the case agent on the case at that
3 time, were you not?
- 4 A Yes, I was.
- 5 Q And he was your primary suspect, wasn't he? You had
6 stopped investigating everybody else at that time?
- 7 A No, we hadn't stopped investigating everybody else.
- 8 Q Are you sure about that?
- 9 A Yes, I'm sure.
- 10 Q Had Valerie Finley told you that Rodney Stanberry did
11 it?
- 12 A She told us two people.
- 13 Q Did she tell you?
- 14 A Yes, she did.
- 15 Q And when did she tell you that the first time?
- 16 A Probably at the Rotary Rehabilitation Center, I believe
17 it was.
- 18 Q When was that?
- 19 A I don't know the exact date. I could go back and look
20 through the file.
- 21 Q Was it before or after April the 7th when you took this
22 statement from Rodney?
- 23 A Had to be before.
- 24 Q So before you went out to BFI and took Rodney's
25 statement, you had been told by Valerie Finley that

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

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

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

7 A Yes.

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

9 A No, not on that occasion.

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

12 A I don't believe I did.

13 Q Sir?

14 A No, I didn't.

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

17 THE COURT: No, I didn't.

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

20 THE COURT: Did you Mirandize him?

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

25 A Yes.

1' Q Now, you knew before the statement, right?

2 A Yes.

3 Q Right.

4 A Yes.

5 Q Did you ask his permission to record the statement?

6 A Yes.

7 Q Is that on the statement? Is that recorded?

8 A That he realized it was being recorded?

9 Q Yes, sir.

10 A I believe it is. I would have to look at it and see.

11 Q Do you usually do that?

12 A Yes.

13 Q And Mr. Jordan went with you on this interview and
14 participated in it, didn't he?

15 A Yes, that's correct.

16 Q As the district attorney here in Mobile?

17 A Yes.

18 Q And he asked Mr. Stanberry questions?

19 A Yes.

20 Q And Mr. Jordan knew that Mr. Stanberry was the chief
21 suspect in this case, also, correct?

22 A Yes.

23 Q He knew everything that you knew about this case at the
24 time because you told him; is that right?

25 A That's right.

1 Q And y'all rode out there together?

2 A Yes.

3 Q And the purpose of you going out there that day was to
4 get a statement from Rodney Stanberry, right?

5 A Yes.

6 Q To use against him after you arrested him?

7 A I didn't hear the question.

8 Q You went out there to get a statement from Rodney
9 Stanberry, your chief suspect, so that you could use it
10 against him after you arrested him, at trial here like
11 you're trying to do; is that right?

12 A Yes, I guess so.

13 Q Mr. Jordan didn't read him his Miranda rights, either,
14 did he?

15 A I don't believe so.

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

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

18 THE COURT: You may step down, Lebarron.

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

25 THE COURT: Do you have anything to put in the

1 record, Buzz?

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

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

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

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

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

25 Now, I have also heard from Sergeant

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

8 DETECTIVE SMITH: Yes, sir.

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

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

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

25 THE COURT: You might want to get me more than

1' McElroy's but --


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


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

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

1 >
2 there a federal case, Fifth Circuit Court
3 case.

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

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

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

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

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

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

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

1 morning. Barbara, turn your machine off.

2 (Off the record.)

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

7 THE COURT: Well, I was getting to that.

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

10 THE COURT: Sure.

11 REDIRECT EXAMINATION (CONTINUED)

12 BY MR. NIXON:

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

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

18 Q Yes, sir. And when you went out there on April the
19 17th, 1992 and talked to Mr. Stanberry, at the end of
20 this interview I notice that Mr. Jordan keeps asking
21 Mr. Stanberry about where he lives and that he's not
22 planning to go anywhere. Do you recall that?

23 A Yes.

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

1' that?

2 A Yes.

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

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

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

13 THE COURT: I'm gonna let him answer.

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

15 A I didn't have a warrant then.

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

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

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

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

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

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

6 Q Yes, sir.

7 A No, I probably wouldn't of.

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

9 A Yes, I would have took him into custody.

10 Q To keep him from going off?

11 A Yes, if he had told me that.

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

14 A Yes.

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

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

19 (Whereupon, court adjourned for the
20 evening.)

1 > STATE OF ALABAMA CASE NO. CC-92-2313,
 2 VS. 92-2314 and 92-2315
 3 RODNEY KARL STANBERRY

4 * * * * *

5 (Mobile, Alabama, April 5, 1995)

6 (Trial resumed, jury not present.) ✓

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

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

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

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

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

1 takes this stand and says, oh, yes, he said
2 he was -- you know, being "in custody." You
3 don't have to say the magic words, you're
4 under arrest. When this police officer says,
5 oh, yes, if they had said he was leaving, I'd
6 arrest him immediately.

7 Two, you're gonna take that statement to
8 use against him, aren't you? Oh, yes. And
9 to sit there and tell me boldly for the
10 record, I do this in every case, that does
11 not make any sense to me. And in a 52-page
12 statement, 45 of those pages you're doing the
13 questioning. In line with Walbert v. State,
14 that makes no sense to me.

15 MR. JORDAN: You're saying I'm crazy. ✓

16 THE COURT: I'm saying that practice is crazy. It
17 makes no sense.

18 MR. JORDAN: Judge, this is something we need to
19 discuss in the future for future cases.

20 THE COURT: Oh, I intend to discuss it.

21 MR. JORDAN: Because my advice to every ✓
22 investigator would always be to interview a
23 suspect prior to your concluding your
investigation, always.

25 THE COURT: I don't see a thing wrong with that.

1' You don't have one statement. You've got
2 three.

3 MR. JORDAN: Well, the more the merrier. I mean,
4 that's something we could debate, but if we
5 comply with the Supreme Court's
6 pronouncements, I don't --

7 THE COURT: That's just it. I think a subterfuge
8 to get around the Supreme Court case by
9 saying technically we didn't say you're under
10 arrest is absolutely ludicrous.

11 MR. JORDAN: But he wasn't under arrest. I mean,
12 we left BFI. He went back to work. I mean,
13 how can you even assume he was under arrest?
14 I mean, factually speaking -- and, see, the
15 history of those cases, the history of the
16 cases they used to bring somebody down to the
17 police station and didn't tell him he was
18 under arrest and then they got a statement
19 and then he was not free to go home after
20 they got the statement. So the Supreme Court
21 said, well, even though you didn't say he was
22 under arrest, he really was under arrest
23 because, obviously, he didn't leave the
24 police station. And they always talk about
25 -- There's nothing wrong with a defendant or

1' a suspect giving a statement. I mean --

2 THE COURT: Of course there is.

3 MR. JORDAN: And the question is whether he's
4 under so much intimidation -- the old -- the
5 problem that they used to have, he used to be
6 under so much intimidation because he was
7 under arrest that they brought in the miranda
8 safeguards to protect him. We didn't have
9 any of that here. It wasn't at the police
10 station. He wasn't under arrest. I wasn't
11 even armed with a gun. Lebarron, I don't
12 know --

13 THE COURT: I hope you weren't armed with a gun.

14 MR. NIXON: I know Lebarron was armed with a gun. ✓

15 THE COURT: I tell you what, if they had you armed ✓
16 with a gun, I'm gonna leave town.

17 MR. NIXON: I can guarantee you Lebarron had two ✓
18 guns, at least, Judge.

19 MR. JORDAN: Maybe not in plain sight.

20 THE COURT: Again, this just doesn't make sense to ✓
21 me.

22 MR. JORDAN: Well, I mean, that's something I'd
23 like to talk about with you in the future
24 because it's something that's an
25 investigative tool, and I think it's

1' important.

2 THE COURT: I think it's absolute ignorance. I
3 don't know how I can get any stronger than
4 that. This man here is fully competent to do
5 his job.

6 MR. JORDAN: Oh, as far as me assisting the
7 interview, there's no question about that.

8 MR. NIXON: Judge, for the record, I would also,
9 since I filed that motion in limine regarding
10 those statements, I would object to the
11 statements being used for impeachment
12 purposes, also, if they were obtained in
13 violation of Mr. Stanberry's rights, and Mr.
14 Jordan has represented that he intends to use
15 those as impeachment.

16 MR. JORDAN: Absolutely.

17 MR. NIXON: And I'm going to object to that.

18 MR. JORDAN: And, Judge, the case law, and let's
19 just pretend, for the sake of argument, that
20 all three of those statements were obtained
21 in violation of miranda. The case law in
22 McElroys, once the defendant takes the stand,
23 then there was no problem with using those
24 statements. If he takes the stand, I'm going
25 to cross examine, and I'm gonna use them, and

1 I don't have to go through any Miranda
2 predicate or anything else like that. I
3 mean, that's the law. If Ken can show you
4 some law contrary to that, I'd like to see
5 it, but I know that it doesn't exist.

6 MR. NIXON: Judge, what Mr. Jordan is saying is
7 that if Lebarron Smith had taken Rodney
8 Stanberry at gunpoint down to the police
9 station and beat him over the head with a
10 rubber hose and got him to make a confession,
11 that he could use that confession to cross
12 examine Mr. Stanberry, and I think that's
13 ridiculous. I don't think that is the law.
14 If the statement was obtained in violation of
15 the defendant's constitutional rights, it is
16 not admissible for any purpose. That defeats
17 the whole purpose of miranda and Escobito and
18 all the cases that followed that, Judge.

19 What he says is, if it was taken
20 unconstitutional -- He's saying assume that
21 it was an unconstitutional -- that the
22 statement was taken in violation of Mr.
23 Stanberry's constitutional rights; now I can
24 use it on cross examination; I just can't use
25 it on my direct examination. Now, like I

v

1 said, take that to its logical conclusion.
2 If Mr. Smith had taken a gun and put it to
3 Mr. Stanberry's head and threatened to kill
4 him and made him make a confession or a
5 statement, would Mr. Jordan be able to use
6 that on cross examination? I don't think he
7 would, Judge, and I don't think Your Honor
8 would let that in in a million years.

9 MR. JORDAN: Contrary to Mr. Nixon, in 1975 the
10 United States Supreme Court ruled that a
11 confession which is secured in violation of
12 miranda and inadmissible as substantive
13 evidence can still be used as a prior
14 inconsistent statement to impeach the accused
15 who takes the stand in his own behalf.

16 THE COURT: All right. Fine. Let's go.

17 MR. NIXON: Judge, another preliminary matter,
18 please. As you know, you granted me open-
19 file discovery.

20 THE COURT: That I did.

21 MR. NIXON: And I'm asking for Mr. Jordan to give
22 me any statements that he has that he did not
23 provide me from any of these witnesses when I
24 looked at his file. Mr. Larry Malone, Jr.
25 took the witness stand and testified on the

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first day of this trial. I had never seen a statement from Mr. Malone, Jr. Mr. Rogers, I've never seen a statement from Mr. Rogers. All I saw was his name and address on a handwritten piece of paper.

THE COURT: Well, all that assumes there was a written statement.

MR. NIXON: Yes, sir. And I'm asking that if there were any written statements from any of these witnesses that I have not been provided, that they provide them to me. And you also ordered open-file discovery on the police officer's file, and I would ask that if they're in that file that I be provided with them, too. And Mr. Jordan had represented to me when I went to his office that there were some of his private notes that he was not going to show me and some things that were not discoverable.

THE COURT: I don't think his notes are discoverable. But I think if he has any typed statements, handwritten statements, they're certainly discoverable.

MR. NIXON: Judge, that's normally not a problem, but in this case Mr. Jordan went out and

1 interviewed several of these witnesses. He
2 went to the scene. He went to BFI. He
3 talked to many, many people. Now, if he made
4 notes of those interviews and is not giving
5 them to me, claiming that they're his
6 personal notes, I don't think that's proper,
7 and I want them, and I'm requesting that the
8 Court direct him to give them to me.

9 THE COURT: If he has any narrative of any
10 statements, you're entitled to them. If he
11 just has -- If he's made notes in preparation
12 of this case, you're not entitled to his work
13 product.

14 MR. NIXON: What about notes of his interviews of
15 the witness, Judge, of the witnesses that he
16 went out and interviewed himself, personally,
17 rather than the police officer? You granted
18 open-file discovery.

19 THE COURT: I did.

20 MR. NIXON: Is he able to, through subterfuge,
21 prevent me from getting those interviews by
22 taking them himself, rather than allowing the
23 police officer to take them?

24 THE COURT: Of course not.

25 MR. NIXON: Then I would request that the Court

1 order him to provide those to me if he has
2 any in his possession.

3 THE COURT: Do you have any more statements?

4 MR. JORDAN: Judge, I don't have any. I've given
5 him everything in the file except for my
6 notes, my work product.

7 THE COURT: Well, what do you consider your work
8 product?

9 MR. JORDAN: When somebody comes into my office
10 and talks to me, I take notes of it. If
11 Lebarron and I go out and talk to somebody, I
12 take notes of it for my recollection, for my
13 ability. I mean, that's -- I didn't think I
14 could get Ken's notes and work product. I've
15 always considered that to be work product.
16 That's my work product. As far as whatever,
17 everything that's been put down to
18 transcription and accuracy or any kind of
19 statements that people have reviewed and such
20 -- no witness has reviewed my notes. No
21 witness has reviewed my work product. That's
22 my work product.

23 MR. NIXON: Judge, if I may. Open-file discovery
24 was granted by Your Honor. If Lebarron
25 Smith, the case investigator, goes out and

1 talks to witness X and makes a report of it,
2 that goes in the file. I'm entitled to see
3 that in open-file discovery. Now, if Mr.
4 Jordan goes with Mr. Smith and Mr. Jordan
5 writes down the interview rather than Mr.
6 Smith and they say, hey, I'll write it down;
7 that way it will be my notes and I won't have
8 to give them to the defense lawyer, so you
9 don't write it down, Lebarron, you let me
10 write it down, and then I won't have to give
11 it to Ken Nixon, the defense lawyer, and by
12 subterfuge I can get around this open-file
13 discovery that Judge McRae ordered. And
14 that's not right. It's not fair. It's in
15 violation of the spirit of your order, Judge
16 or the spirit of open-file discovery.

17 MR. JORDAN: And I have not done that. I have not
18 told Lebarron Smith not to take notes, that I
19 would take notes so we can get around the
20 Judge's --

21 THE COURT: You got something you want me to sign?

22 (Off the record interruption.)

23 MR. JORDAN: Been absolutely no subterfuge on
24 this Court. It would be crazy for me not to
25 talk to witnesses before they testify. It

1 would be just insane for me not to interview
2 witnesses, not to prepare, not to try to know
3 the case inside-out myself.

4 THE COURT: Okay. You know, this record is gonna
5 be 15 volumes more than it should be. If he
6 doesn't have any, he doesn't have any. Let's
7 get to all these witnesses.

8 MR. NIXON: I'd just like to renew my objection
9 for that, Judge, and my position is --

10 THE COURT: I told him if he has any statements,
11 he has to give them to you, but if he's got
12 notes of what he's gonna do in here, that's
13 not discoverable.

14 Barbara, see if you can get that jury
15 in.

16 MR. NIXON: Judge, are you ruling on the
17 impeachment, the use of the statement?

18 THE COURT: He can use that for impeachment.
19 Let's go. I'm not too sure it's not
20 admissible, period, but I think it's a
21 practice I would certainly stop.

22 (Jury present.)

23 THE COURT: Who do you want to call, Buzz?

24 MR. JORDAN: I'd call Valerie Finley.

25 Your Honor, is it permissible for her to stay

