

VOLUME NO. 1

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

NAME OF APPELLANT

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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 THE COURT: And in effect she said in that
2 letter that we all knew that her son didn't
3 commit an offense. To that I would say, I wasn't
4 the jury, the jury was. And two: That I knew or
5 insinuated that I knew that somebody named Moore
6 committed this offense and not her son.

7 I do not mind telling her or the world that
8 that letter was thrown in the first garbage can
9 and was not considered by me, because that is
10 ex parte communication. But I wanted y'all to
11 know that.

12 If I was the mother or father of this young
13 man, I'd probably feel the same way. So I'm not
14 knocking her for it, I am just letting y'all know
15 that I did receive that communication; isn't that
16 right, ma'am, didn't you write that letter?

17 UNIDENTIFIED SPEAKER: (Shaking head.)

18 THE COURT: She is saying yes. Proceed.

19 MR. KNIZLEY: We call Mr. Jordan.

20 BUZZ JORDAN

21 was sworn and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. KNIZLEY:

24 Q. State your --

25 THE COURT: I can save you some questions.

1 Buzz was the prosecuting attorney that tried this
2 case.

3 BY MR. KNIZLEY:

4 Q. State your name please?

5 A. Buzz Jordan.

6 Q. And as the Court said, you prosecuted this
7 case?

8 A. Yes, sir.

9 Q. How long had you been at the DA's office at
10 that time?

11 A. About ten years.

12 Q. And had you had significant trial experience?

13 A. Yes, sir.

14 Q. And you certainly was familiar with the rules
15 of disclosing exculpatory evidence as set forth by
16 Brady versus Maryland?

17 A. Yes, sir.

18 Q. And could you briefly explain what that
19 means?

20 A. My understanding is that there is evidence
21 that indicates that somebody's innocent under Brady,
22 you are required to provide that to the defense.

23 Q. This case, how long did the investigation of
24 this case go on before this came to trial; if you
25 recall?

1 A. That, I don't recall.

2 Q. A number of years?

3 A. Whenever it occurred, and then, I think, the
4 Judge said the trial was in 1995.

5 Q. And I believe it occurred in 1992, does that
6 sound right?

7 A. I really don't recall at this time.

8 Q. Okay. Do you recall it being longer than
9 most cases before the time it was able to come to
10 trial?

11 A. I remember Mr. Nixon and I had the case
12 continued a number of times over that three-year
13 period or two-year period, whatever period it is,
14 Mr. Knizley.

15 Q. And during the course of your investigation,
16 you became aware of a number of different potential
17 participants, or people that were associated with it
18 in the week previous to this lady's death?

19 A. Well, I became aware of what the defense
20 strategy or theory was, yes, sir.

21 THE COURT: Excuse me. Let me correct you.
22 The lady didn't die. She died years later.

23 MR. KNIZLEY: Your Honor's correct. The lady
24 did not die as a result of this event, but she
25 eventually died from some other causes.

1 BY MR. KNIZLEY:

2 Q. But before -- the week before the lady was
3 shot, did you become aware that there was a group of
4 people who associated with one another including
5 associated with the, Defendant, Mr. Stanberry?

6 A. I believe there was evidence that there was
7 -- that the victim had met some of Mr. Stanberry's
8 friends prior to this shooting.

9 Q. And those friends -- if you might -- well,
10 tell me if I'm correct, one of them was named Rene
11 Barbosa or Rene Whitecloud. Do you recall that
12 person?

13 A. I remember that name or that reference.

14 Q. And do you remember a person named Terrell
15 Moore who is in the back, back there?

16 A. I don't remember if he was involved in that
17 pre-incident event.

18 Q. And you remember the gentleman named "Wish",
19 with a nickname of "Wish"?

20 A. Is that who is been referred to as
21 "Ponytail".

22 Q. I believe so?

23 A. I remember a "Ponytail".

24 Q. All right. In regards to Mr. Whitecloud,
25 Barbosa, Rene Barbosa, did it come to your knowledge

1 that he was incarcerated in the State of New York?

2 A. Is that "Ponytail"?

3 Q. I'm sorry about the nicknames, but was there
4 a witness that you interviewed in New York?

5 A. I went and talked to the person that
6 killed -- that shot Mrs. Finley in New York. And I
7 only -- I only know him by "Ponytail". I don't know
8 what his --

9 Q. Okay.

10 A. -- as I'm sitting here, I don't remember what
11 his real name was.

12 Q. You understood at least the State's version
13 of the case was that this man that you refer to as
14 "Ponytail" was the quote, trigger man, that shot this
15 lady?

16 A. He was the trigger man, yes.

17 Q. And in the course of investigating this
18 matter, you undertook to go to New York?

19 A. Well, no, I went to New York on vacation.
20 And while I was in New York, I wanted to see if I
21 could get in to see if there was in fact somebody by
22 the name of "Ponytail".

23 Q. Okay.

24 A. His existence and where he was, and if he was
25 the same person that was Mr. Stanberry's acquaintance.

1 Q. And were you successful in doing so?

2 A. I was.

3 Q. And where did you interview the person that
4 they called "Ponytail"?

5 A. I wouldn't say I interviewed him, but I
6 talked to him in I think Ryker's Prison in New York
7 City.

8 Q. Okay. Now, Buzz, could you tell us, did you
9 call the New York City Police Department or the prison
10 system or how did you find this guy?

11 A. Well, I think Mr. Stanberry or Mr. Nixon had
12 told us that he was in New York in prison or something
13 to that affect. I don't know how I knew he was up
14 there.

15 Q. Did Mr. Nixon or Mr. Stanberry deliver
16 information to you where -- about which they suggested
17 he may have some exculpatory information?

18 A. No.

19 Q. They did -- they wanted you to go find and
20 talk to him to get inculpatory information?

21 A. No, they didn't send me on any mission.

22 Q. Okay.

23 A. I just knew he was the trigger man. From
24 what my lady described, "Ponytail" was the trigger
25 man. And "Ponytail" was not in Mobile, and I wanted

1 to --

2 Q. All right.

3 A. And "Ponytail" was not in Mobile. And I
4 wanted to see if there really was a "Ponytail",
5 because that's what Mr. Stanberry, I think, had called
6 him.

7 Q. And apparently they must have given you the
8 true name of the person so you could locate him in the
9 prison system and such?

10 A. Apparently so, yeah.

11 Q. And, again, briefly, how did you locate him
12 in the prison system?

13 A. I think there was a detective somewhere up in
14 New York that I had contacted, and he helped me locate
15 -- I think he might have -- somehow "Ponytail" had
16 murdered somebody in New York in either a drive-by
17 shooting or some kind of -- and that's what I think he
18 was in Ryker's for. I don't know if he had been
19 convicted or if he was awaiting trial.

20 But this detective had some kind of contact with
21 him, because they would run him down, locate him to
22 give him his name and prison number and was able to
23 arrange for me to get in to talk to him.

24 Q. Who was present at the meeting where you
25 spoke with Mr. Whitecloud?

1 A. It might have just been me. I'm not
2 positive. It might have been and/or the detective,
3 and/or could either have been just me and Mr.
4 "Ponytail", or me and the detective and Mr.
5 "Ponytail", I don't recall.

6 Q. Okay. And did you discuss with him the
7 facts of this case?

8 A. No.

9 Q. Did you discuss with him Mrs. Finley's death
10 -- excuse me, Mrs. Finley's shooting?

11 A. I don't recall that, no.

12 Q. Well, did you discuss with him anything
13 remotely connected to the allegations of the
14 State of Alabama versus Rodney Stanberry?

15 A. The only thing I can recall is I confirmed
16 that he was "Ponytail".

17 Q. All right.

18 A. That, that was his nickname, and that he in
19 fact had a "Ponytail" when he was in Mobile.

20 And that he was in fact in Mobile with
21 Mr. Stanberry.

22 Q. Okay.

23 A. And all I recall is when I left there, he
24 said something to the effect of investigating the
25 husband, or something to that affect.

1 Q. And was your theory of this case that this
2 gentleman that you located was in fact the trigger
3 man?

4 A. Yes.

5 Q. And in interviewing this gentleman did he
6 confirm or deny that, or did you ask him?

7 A. I don't recall asking him that, because I --
8 really the sole purpose was to see if that was the
9 "Ponytail" that was in Mobile that knew Stanberry and
10 where he was at that time, Ryker's.

11 Q. Did he confirm that he was the "Ponytail",
12 and he was in Mobile and knew Stanberry?

13 A. Yes.

14 Q. And tell me anything else that may have been
15 remotely connected to Rodney Stanberry that he told
16 you that you might recall?

17 A. I don't recall anything else.

18 Q. So all you gather today that you can recall
19 that you got out of that conversation with him was
20 that, he was in Mobile, and he did know Stanberry and
21 his nickname was "Ponytail"?

22 A. Yes.

23 Q. Okay. And did you disclose any of this
24 information to defense counsel?

25 A. No.

1 Q. Did you even tell defense counsel you had
2 interviewed this man?

3 A. I don't recall -- I don't know.

4 Q. Okay. Did you deliver to the defense counsel
5 any written summation of this interview?

6 A. There was no written summation. I didn't
7 write any notes. I didn't prepare any written
8 summation. It wasn't anything typed, no.

9 Q. Did you make any other disclosures to the
10 defense counsel regarding Mr. Whitecloud's statement
11 in connection with this shooting?

12 A. No. I had anticipated or expected the
13 defense might bring Mr. "Ponytail" to Mobile to
14 testify based on what Mr. Stanberry had said in his
15 statement.

16 So that was basically to confirm that that was
17 "Ponytail" and where he was, and if Mr. Nixon would
18 have brought him down, I wanted to have his record and
19 wrap sheet, and whatever I could use to impeach him.

20 Q. So you didn't make any other disclosures
21 about any representations Mr. Whitecloud made to
22 defense counsel?

23 A. I may have told Mr. Nixon that I knew where
24 he was, or he was in prison at Ryker's or something to
25 that affect, but there was nothing -- there was

1 nothing to disclose.

2 Q. So you made no written disclosure?

3 A. No.

4 Q. Okay. Do you know what year you went on your
5 vacation?

6 A. I don't know. See my family lives up there,
7 so I would usually go up and see them sometimes at
8 Christmas times.

9 Q. Was it in 1993; if you recall?

10 A. I don't remember.

11 Q. Do you recall the name of the police officer?

12 A. I do not.

13 Q. And it was in August of '92 or October of
14 '93?

15 A. It could have been.

16 Q. Okay.

17 A. I really don't -- I really don't know.

18 Q. Okay. Officer Sisco (sic) does that recall
19 -- Sisco, I believe, does that ring any bell to you?

20 A. That is not --

21 Q. Michael Greco?

22 A. I'm sorry?

23 Q. Michael Greco?

24 A. Greco. Now that sounds more familiar than
25 Sisco.

1 Q. Greco?

2 A. That sounds familiar.

3 Q. And do you know which police agency you were
4 working with?

5 A. I believe it would have been middle -- maybe
6 Middletown.

7 Q. Might it be with New York State Police?

8 A. It could have been New York State Police too.

9 Q. Okay. You say Middletown, maybe Town of
10 Monroe; does that sound maybe right?

11 A. That I don't know.

12 Q. Okay. And you spoke with this officer
13 whatever his name might be?

14 A. Oh yes, I met with him personally. He's the
15 one that got me into -- he got me into the system
16 because I didn't know my way around.

17 Q. Certainly you told him who you were and what
18 your purpose of being there was?

19 A. Absolutely.

20 Q. And he knew you were prosecuting a case in
21 Mobile of Rodney Stanberry allegedly shooting
22 Mrs. Finley?

23 A. I suspect that he knew that "Ponytail" was a
24 suspect in a murder case in Mobile as well.

25 Q. Okay. And to your knowledge, "Ponytail" was

1 never prosecuted here in Mobile was he?

2 A. He has never been prosecuted in Mobile at
3 this time.

4 Q. Okay. Now, do you know a gentleman named
5 Terrell Moore?

6 A. Yes.

7 Q. And --

8 A. He represented himself.

9 Q. Yes. And in connection with this case, did
10 you have an opportunity to interview Terrell Moore in
11 your office?

12 A. No, I think, I talked to Mr. Terrell Moore in
13 Bob Clark's office. That was his attorney.

14 Q. Excuse me. And this was subsequent to
15 learning that he had given a statement to Mr. Russell
16 on video; is that right?

17 A. Yes.

18 Q. And in that statement it had basically said
19 that Mr. Moore and the gentleman named "Wish" had
20 actually committed the crime; is that right?

21 A. Well, "Wish" isn't "Ponytail"; is it?

22 Q. No.

23 A. Okay. Terrell Moore said that he and
24 somebody else had been involved in this crime.

25 Q. And that came to your attention, and you then

1 wanted to interview this man or did interview this
2 man?

3 A. Yes.

4 Q. Whether you wanted to or not, you did?

5 A. Right, with Mr. Clark's permission I was able
6 to talk to him. He was not under oath when we talked.

7 Q. And you extended him immunity; is that
8 correct?

9 A. I don't think so, no. I don't know.

10 MR. KNIZLEY: May I approach the witness,
11 Your Honor?

12 THE COURT: (Nodding head.)

13 BY MR. KNIZLEY:

14 Q. Buzz, would you take a look at this? This is
15 a Court record that has been introduced, and this is a
16 copy of it. And just take a quick look at it if you
17 don't mind.

18 A. Of testimony immunity agreement?

19 Q. Who signed it?

20 A. That is my signature.

21 Q. And Mr. Moore and Mr. Clark?

22 A. Yes.

23 Q. So you did in fact extend him immunity when
24 you interviewed him; is that right?

25 A. Testimonial immunity. I'm sorry, I thought

1 you were referring to the other kind of immunity.

2 Q. No, what I meant was that whatever he said to
3 you, you were -- he was immune from being prosecuted
4 for it; right?

5 A. That statement could not be used against him;
6 correct.

7 Q. And in that statement which was recorded and
8 was admitted as Court's Exhibit 2, he related to you
9 that he and "Wish", the other gentleman, not
10 Mr. Stanberry broke into this lady's house, and shot
11 her and took the gun.

12 A. Well, whatever is in his statement,
13 Mr. Knizley, is what he said.

14 Q. Do you recall what he said?

15 A. I don't recall.

16 Q. And do you recall then Mr. Nixon attempting
17 to bring the man in to testify at trial?

18 A. He did bring him in. In fact, I objected to
19 him putting -- I objected to Terrell Moore getting on
20 the stand and taking the Fifth Amendment in front of
21 the jury because I thought that was not the law, but
22 Judge McRae overruled my objection, and Mr. Moore took
23 the stand. Mr. Nixon put him on the stand, and he
24 took the Fifth Amendment.

25 Q. Did you withdraw his immunity?

1 A. He was only granted testimonial immunity.

2 Q. Did you withdraw that testimonial immunity
3 for the purpose of his testifying in this courtroom?

4 A. I never granted him testimonial immunity in
5 the courtroom.

6 Q. Right. So, his immunity only applied to his
7 statement to you but not to come to court to tell that
8 statement?

9 A. That statement only protected what he had
10 told me in Mr. Clark's office. That was a condition
11 that Mr. Clark allowed him to talk to me as his
12 lawyer. And that was the only condition he'd let him
13 talk to me. So I took that condition to --

14 Q. And --

15 A. -- talk to --

16 Q. -- what was your reason for not extending
17 immunity to him at trial?

18 * A. Well, number one: I didn't believe Mr.
19 Moore, had never believed Mr. Moore, will never
20 believe Mr. Moore. I know Mr. Moore was not involved
21 in this crime.

22 Number two: I would not grant him any
23 concessions, whatsoever as far as prosecution or
24 anything otherwise in any circumstance ever.

25 Q. Okay. Do you recall another witness who

1 testified at the trial of the case and was acquainted
2 with Mr. Moore saying that he saw, identified with Mr.
3 Moore leaving the home that day?

4 A. Who would that be?

5 Q. I don't recall his name. If you could give
6 me a moment, I'll let you know?

7 A. Sure.

8 MR. RUSSELL: Tyrone Dortch.

9 BY MR. KNIZLEY:

10 Q. Mr. Tyrone Dortch?

11 A. I don't -- that name, I don't recall. But
12 I'm familiar pretty much with --

13 THE COURT: As I recall, he is the gentleman
14 that had the Barbecue; isn't he?

15 MR. RUSSELL: No, sir. He was the one
16 working in the middle of the median.

17 THE COURT: I remember all of that. Let's go.

18 THE WITNESS: I was probably familiar at that
19 time, because I pretty much had interviewed most
20 of the defense witnesses to what I knew what
21 their testimony was going to be too.

22 BY MR. KNIZLEY:

23 Q. And lastly, Buzz, not only did you interview
24 this man, but previous to your interviewing of him,
25 Mr. Russell had interviewed him, made a videotape from

1 which he gave substantially the same statement he gave
2 to you?

3 A. Tyrone Dortch?

4 Q. No, excuse me. I'm talking about Mr. Moore.

5 A. I wouldn't say substantially the same,
6 because I don't recall how they coincided.

7 Mr. Moore may have said a lot of things factually
8 that I thought were incorrect from what the victim had
9 stated, from what the facts show that showed he was in
10 fact lying.

11 Q. Hold on one second, Buzz?

12 MR. KNIZLEY: Thank you, Buzz.

13 THE COURT: Martha, are there any questions?

14 MS. TIERNEY: Yes, sir, I do have some.

15 CROSS EXAMINATION

16 BY MS. TIERNEY:

17 Q. Buzz, when did you first get involved in the
18 investigation of this shooting?

19 A. It seems like shortly after the shooting
20 because I remember Detective LaBarron Smith may have
21 been one of the key investigators, and it seems as if
22 I was involved shortly after the shooting, but I don't
23 know how so.

24 Q. That would be prior to the arrest of the
25 suspect?

1 A. Yes.

2 Q. Okay. And how much did you participate in
3 this pre-arrest investigation?

4 A. I kind of gave direction to the detectives to
5 make sure they interviewed people, and then I met with
6 Mrs. Finley probably quite a bit to see what had
7 happened. And then I was involved in meeting with
8 Mr. Stanberry when he described his events to the
9 police.

10 Q. All right. And that was a meeting that you
11 had with Mr. Stanberry at his place of business?

12 A. Yes.

13 Q. Okay. First, let me ask you to tell the
14 Court very briefly sort of to place this in context
15 what your meeting with Mrs. Finley revealed to you?

16 A. Mrs. Finley was very, very clear from the
17 very first time I met with her until her death that
18 Mr. Stanberry -- who she knew because that was her
19 husband's best friend, her husband's best friend was
20 Rodney Stanberry. She knew Mr. Rodney Stanberry. She
21 obviously could recognize him. There was no --
22 identification was not a question in this case except
23 for me not knowing who "Ponytail" was.

24 And "Ponytail" -- those two people would come into
25 her house and "Ponytail" --

1 Q. Those two meaning?

2 A. "Ponytail" and Mr. Rodney Stanberry who she
3 knew from her husband, who was her husband's best
4 friend and she knew him very well, he had been over
5 there for dinner, and he'd been to the house a number
6 of times. She considered him her friend as well.

7 And from the time she came out of the comma, she
8 immediately began telling that it was Rodney Stanberry
9 and "Ponytail". That's the name she knew the person
10 by. He has a "Ponytail" and that's how she described
11 him.

12 "Ponytail" stood over her directly, shot her on
13 top of the head, and Mr. Stanberry came in the house
14 with him and was there with him at the time, and after
15 that of course she went into -- she was shot, went
16 into a comma and should have died, but she survived.

17 Q. Do you recall what she said about how
18 "Ponytail" gained entry, and how Rodney gained entry
19 into her home?

20 A. I don't recall at this time if it -- I think
21 she looked outside the front door though, and she saw
22 Rodney Stanberry's Bronco parked in her driveway,
23 which other witnesses also saw parked in her driveway
24 that same day when he was supposedly at work, and that
25 she, I think, they may have come in the back door

1 which I don't recall if that's correct.

2 Q. Do you recall some testimony at the trial
3 about how it was unusual for the back door to be left
4 unlocked and that "Ponytail" had come to the back
5 door?

6 A. Yes, and I believe that that's why I thought
7 her husband was involved as well, because I think he
8 may have deliberately left the back door unlocked so
9 that the -- so that Rodney and "Ponytail" could gain
10 access to the back door.

11 Q. Do you recall her husband telling her that
12 Rodney would come by to pick up a tree stand?

13 A. Yes. That morning she was expecting Rodney
14 Stanberry to be there.

15 Q. Okay. But do you recall from her testimony
16 that Rodney never did ask for a tree stand when he
17 came to the house that day?

18 A. He did not ask for a tree stand.

19 Q. Okay. Now, let's talk just a bit about
20 "Ponytail", because there's been conversation,
21 discussion here about you went to New York to find
22 "Ponytail". You were on vacation, but you were really
23 wanting to confirm Ponytail's existence, and why is
24 that so important?

25 A. My client Mrs. Valerie Finley had always said

1 "Ponytail" was the shooter, "Ponytail". Now, she had
2 not known "Ponytail" for a long time, that was one of
3 Rodney's best friends from New York City. And after
4 this happened when she came out of her comma when
5 Rodney Stanberry learned that she was not going to
6 die, then he started scrambling around, creating all
7 of these names of all of these different people, and
8 "Wish" and Rene Barbosa, and "Ponytail" and all of
9 these different names which I didn't know any of these
10 people, and supposedly these people had gone back to
11 New York City, and one of them was dead, and one of
12 them was in prison and --

13 Q. Okay. Was "Wish" the one that was dead?

14 A. If that's not "Ponytail", that supposedly he
15 died sometime.

16 Q. And in Mr. Stanberry's pleadings I'll
17 represent to you that he identifies "Wish" as Angel
18 Melendez, "Wish" Iho in some kind of order.

19 It's either a guy named Angel Melendez, or Angel
20 Melendez, also known as "Wish", also known as Iho. I
21 represent to you that's what the record shows. Does
22 that ring a bell now?

23 A. No. That rings a bell because that was one
24 of the problems I was having was I had 25 different
25 alias' of names or identification for Rodney

1 Stanberry's friends who came down from New York City
2 in this case.

3 Q. Okay. And so that was one of the names that
4 was coming up during this scramble? And why was there
5 a scramble in your opinion, sir?

6 A. When Rodney Stanberry learned that Valerie
7 Finley -- I mean, she was shot from the top of the
8 head, I mean that gun was pointed down (indicating),
9 she was shot through the top of her head. Mrs. Finley
10 should have died. If Mr. Finley would have died like
11 she should have died, Mr. Stanberry would not be here
12 today. We would have had no witness for this event as
13 to what happen. And then --

14 Q. And when Mr. Finley told you -- I'm sorry.
15 Did I stop you?

16 A. And then when she -- when Mr. Stanberry
17 learned that she did not die, then she and the husband
18 (sic) started scrambling around finding, recovering
19 the stolen guns.

20 Q. You mean he and the husband.

21 A. Mr. Stanberry and the husband started
22 scrambling around, and coming up with all these names
23 and going to bus stations and driving cars, and
24 finding guns, and it was a quite a creative little
25 situation at that point.

1 Q. And meanwhile she has identified "Ponytail"
2 to you. Had you ever seen "Ponytail" in Mobile at the
3 time you're investigating this?

4 A. Have I?

5 Q. Is there a "Ponytail" around --

6 A. (No response.)

7 Q. -- town?

8 A. From my understanding Mr. Stanberry said
9 "Ponytail" had left town -- had left Mobile, had left
10 the jurisdiction.

11 Q. So when you went to New York, what main
12 things did you seek to accomplish by searching for a
13 "Ponytail"?

14 A. I wanted to see if that person that was in
15 Ryker's, because when I saw him, he didn't have a
16 "Ponytail". He didn't have a "Ponytail". And I'm
17 like, are you the person that goes by the name of
18 "Ponytail"? And I think -- and he confirmed, yes, I'm
19 "Ponytail". Did you use to have a "Ponytail"? Yeah,
20 I had a "Ponytail", that's why they called me
21 "Ponytail".

22 And the fact that he was Rodney Stanberry's
23 friend, and that he was in Mobile?

24 Q. So he confirmed being in Mobile and being
25 Rodney's friend?

1 A. Yes.

2 Q. And having the nickname "Ponytail"?

3 A. Yes.

4 Q. And having had a "Ponytail"?

5 A. Had a "Ponytail". So at that time, I felt
6 confident that Valerie Finley had identified to me the
7 shooter, and -- who I knew to be the shooter at that
8 time. The shooter was at Ryker's Prison.

9 Q. Let me ask you something about identifying:
10 Was she able to see these peoples faces?

11 A. Well, she had apparently seen -- because
12 Mr. Knizley brought up, she had apparently seen
13 "Ponytail" before the shooting incident with Rodney
14 Stanberry, and he had introduced "Ponytail" to her,
15 and then on the day that she got shot, yes, she saw
16 "Ponytail" and Rodney Stanberry. They both came into
17 her house, "Ponytail" was the person that had her, I
18 think, told her to sit down on the floor, and
19 "Ponytail" is the one that had the gun, and I think
20 she said Rodney was getting guns out of the closet or
21 he got the keys to get into the safe or something to
22 that affect.

23 Rodney was doing some things that she described,
24 and "Ponytail" was doing some things that she
25 described. So she saw both of them.

Q. Did she tell you that they wore masks or anything to conceal their identities?

3 A. No, I am almost a hundred percent sure, I
4 haven't reviewed the transcript, but I'm almost a
5 hundred percent sure, she's -- there were no masks
6 being worn by the two people who came in, Rodney
7 Stanberry and "Ponytail" that shot her.

8 Q. Do you remember her testimony at the trial
9 about looking at these masks that were at some point
10 recovered with the guns?

11 A. I don't really recall that, but that sounds
12 familiar.

13 Q. All right. If I represent to you that at
14 trial she testified that the masks that were found
15 belonged to her husband; does that refresh your memory
16 at all?

17 A. That would -- sounds familiar.

18 Q. Okay.

19 A. Because I think they knew her husband, so
20 they were his masks or something.

21 Q. Okay. Now, did you ever talk about the
22 interview with Stanberry, sir, please, which was the
23 other thing you discussed as to your pre-arrest
24 investigation? You met him at the bus station you
25 said?

1 A. No at his work place.

2 Q. I mean -- I apologize, at the work place?

3 A. Yes, Mr. Stanberry was at work. I think he
4 was working at BFI at the time.

5 Q. Okay. And what did you learn from your
6 conversation with him?

7 A. Basically Mr. Stanberry gave this -- gave
8 this bizarre story of the guns, and "Wish" and Rene
9 and Iho and "Ponytail" and all of these people, the
10 scramble, I'll call it the scramble, after he learned
11 that Mrs. Finley did not die, he came up with this
12 scramble story, and gave all of that. But, the thing
13 that I -- the biggest thing I learned was that he was
14 in the area of the murder at the time of the murder,
15 and that's what I thought was the most important thing
16 that he stated in his testimony was that he was -- he
17 had gone to some hotel or motel or something right
18 there on the Beltline within a very close proximity to
19 Mrs. Finley's where she was shot at the time that she
20 was shot.

21 Q. Did anybody else corroborate his presence
22 there other than him telling you that he was within
23 several minutes of her home and the victim identifying
24 him, did anybody else corroborate that?

25 A. Well, at the time of the shooting, he was by

1 himself, and he was driving the truck by himself.

2 Q. Okay. What -- did this truck have any
3 unusual features? Didn't it --

4 A. No, I think --

5 Q. -- say one night stand, humping and bumping?

6 A. Oh, his Bronco, yes.

7 Q. Right.

8 A. His Bronco had something distinct on there
9 which one of the witnesses, I think, one of the
10 children witnesses remembered seeing on the Bronco.

11 Q. Okay.

12 A. Either that or another neighbor.

13 Q. Okay. So if I represent to you that two
14 witnesses placed the Bronco at the scene as far as the
15 trial transcript; would that ring a bell to you?

16 A. Oh, yes, I know that, because I know those
17 two witnesses, they both saw Rodney Stanberry's Bronco
18 in the driveway of Valerie Finley's house at the time
19 of the shooting.

20 Q. Okay.

21 A. That's why I've never believed Terrell Moore
22 or any of the scramble witnesses that Mr. Stanberry
23 tried to create from this. Those witnesses had
24 nothing in this, nothing -- no reason to lie, no dog
25 in this fight.

1 Q. Did you ever --

2 A. They were just neighbors.

3 Q. Did you ever have any other suspects in this
4 case?

5 A. Just the two, Rodney Stanberry and whoever
6 "Ponytail" was. Those were the only two suspects.

7 Q. And --

8 A. Now, I did suspect the husband was being
9 involved, but I could never establish enough evidence
10 that the husband was involved because I'm convinced
11 that the husband and Mr. Stanberry corroborated on
12 this.

13 Q. Could you explain why you suspected him, sir?

14 A. The things that his wife told me about Rodney
15 coming over to get the tree stand that day, the back
16 door, perhaps not being locked. The husband
17 immediately after this, Rodney came and told him that
18 he knew where the guns were. And the husband was
19 supposedly all mad at Rodney and was going to go shoot
20 Rodney, but then they go out together and pick up the
21 guns together, don't tell the police, they go and
22 recover the guns, they don't tell the police about it.
23 This is stuff that the husband is doing with Rodney
24 Stanberry.

25 The wife tells the husband that Rodney Stanberry

1 shot her along with "Ponytail", and the husband and
2 Rodney are still just good friends. There was
3 insurance money involved, which I thought the husband
4 was going to be collecting.

5 After the shooting, the husband, I think, was
6 either involve in another relationship with another
7 woman or was not, became very distant from his wife,
8 and basically abandoned her after she was shot and
9 injured.

10 And the things that she told me, the things that
11 the husband was doing to her indicated to me that the
12 husband was involved in this attempted murder.

13 Q. Let me just talk about the Terrell Moore
14 statement. It's quite significant when someone comes
15 in and owns up to a Class "A" felony.

16 A. Well, that depends on the circumstances,
17 Ms. Tierney.

18 Q. All right. Would you tell the Court why you
19 would not give credibility to the confession of
20 Terrell Moore which you were present at Bob Clark's
21 office apart from the other facts that you had that
22 made the case point to Rodney?

23 A. Ms. Tierney, -- and this is very -- this is
24 from my experience with the D.A's office trying many
25 cases where Mr. Ryan Russell was the hired

1 investigator on a number of my cases. It always
2 seemed as if Mr. Russell was able to locate a mystery
3 witness. A witness that the police did not know, had
4 not interviewed, had not talked to, who had either at
5 the time of the trial, or some part in time came
6 forward and either saw that that Defendant was not the
7 one who did the murder, or this Defendant, it was just
8 -- it was happening on too regular of a basis where
9 this happened, and this happened on several occasions.

10 One occasion where I tried a case and Mr. Ryan
11 Russell provided an alibi witness for somebody. The
12 alibi was based on the birth of somebody's birthday,
13 and we ran and got the birth certificate, and the
14 birthday wasn't even the same day.

15 Q. So, are you saying he said, oh, I remember it
16 because it was my birthday; is that what you're
17 saying?

18 A. Oh, yeah. The witness got on the stand that
19 Mr. Russell had located, the witness got on the stand
20 and said -- and this was another murder case, a very
21 bad murder case here in town and said, no, that man
22 couldn't have been there because he was with me at the
23 time of the murder, he was with me. And, sir, how did
24 he was with you? Well, that was my nieces
25 and such date. What's her name? Such

1 and such name.

2 We go get the birth certificate. It's not even
3 the nieces birthday. And that was the alibi what was
4 presented to a jury in a very serious murder case.
5 And so when I saw that this interview, Terrell Moore
6 didn't go to the police with this statement, he wasn't
7 at the scene at the time, he didn't come forward on
8 his own to make any statement or any confession, he
9 didn't come to the DA's office, he didn't go to the
10 police. No he was -- the first time I learned of this
11 was Mr. Stanberry's investigator has a confession of
12 somebody on videotape. So I obviously gave no credit
13 to it.

14 I just thought it was a ruse, and it was a trick,
15 and it was a mystery, and I'm not saying Mr. Russell's
16 the one that did this, because I don't know if Mr.
17 Stanberry is the one that put him in touch with him or
18 who, if he was just going on Mr. Stanberry's
19 direction, which I would suspect or what have you, but
20 the whole thing just smelled very badly to me from
21 both my past experience, from my experience as a
22 prosecutor.

23 And I was horrified really by the whole situation.
24 And this is the Terrell Moore, the star witness what
25 was going to come and take the stand to -- and see

1 Valerie Finley--

2 MR. KNIZLEY: Judge, now, one more question
3 before we get off --

4 THE WITNESS: Valerie Finley --

5 MR. KNIZLEY: Wait a minute, Buzz. Let
6 her question you and then answer it, okay.

7 THE WITNESS: Oh, okay.

8 MR. KNIZLEY: I know you got a story to tell,
9 but hold on until she ask you.

10 THE WITNESS: Yes, Mr. Knizley.

11 BY MS. TIERNEY:

12 Q. Well, let me ask you that, because it really
13 was going to be my next question. When you heard --
14 you must have been curious; nonetheless, as much
15 suspicion as you had about Mr. Moore's statement and
16 maybe the reliability of it, did you nevertheless seek
17 out Valerie to ask her, or in any way ascertain rather
18 Valerie could identify Moore as a participant?

19 A. Well, of course, and if Valerie Finley would
20 have said Terrell Moore was the person that was there,
21 then Terrell Moore would have been arrested and
22 indicted and charged and convicted.

23 But Valerie Finley made it very clear that Terrell
24 Moore was not involved. He was not the shooter. He
25 was not "Ponytail". She sat right there when Mr.

1 Nixon called Terrell Moore in, he got on the stand,
2 took his Fifth Amendment, and I think I asked, Ms.
3 Valerie Finley, is that the man that was involved in
4 shooting you that came into your house and shot you
5 that day? She said no, sir. So, she exculpates
6 Terrell Moore.

7 Q. Well, let me ask you something about this
8 statement by Terrell Moore that was taken after a
9 grant of immunity was given limited to the statement
10 --

11 A. Testimonial immunity, yes.

12 Q. Okay. Now, as to that statement -- and
13 you've seen it; have you not?

14 A. No, not recently.

15 Q. Okay. Let me just point out that at the
16 beginning of the statement it says court reporter, it
17 says Terrell Moore, capital letters, and then after
18 having been first duly sworn to speak the truth the
19 whole truth and nothing but the truth was examined and
20 testifies as follows: Was Mr. Moore sworn at that
21 time?

22 A. No, he was not sworn in. He was absolutely
23 one hundred percent not under oath and not sworn in.
24 That's just standard court reporter language that they
25 put in their transcript, but he was not sworn in.

1 Q. Well, let me ask you. Do you remember the
2 very next statement after that introductory
3 boiler-plate language about the witness being sworn by
4 Mr. Clark when he said -- and you recall him saying,
5 for the record I have discussed the facts with
6 Mr. Moore, this is Mr. Clark representing Terrell, and
7 he tells me that the statements he is making this
8 morning is the truth, and since it's unsworn, there
9 will be no possibility of perjury or anything.

10 But it's my understanding that this is the truth,
11 so let's go from here, ask him whatever you want to
12 ask him. Do you recall that?

13 A. Yes. Because Mr. Clark, that was one of the
14 conditions for me to be able to talk to Terrell Moore
15 was that number one: He'll have testimonial immunity.
16 Number two: That it would not be under oath, because
17 if Mr. Moore lied under oath, then he could be
18 arrested and charged with perjury. So Mr. Clark was
19 protecting his client.

20 Q. Let me ask you something. I'm going to go
21 back to "Ponytail". The allegation has been made in
22 this petition strongly, and goes very centrally to
23 Mr. Rodney's defense, that it was ineffective for
24 attorney, Ken Nixon, to not subpoena "Ponytail".

25 Would you tell the Court in your opinion as a

1 prosecutor what affect it would have had if he had
2 been subpoenaed? Would it have been helpful to you or
3 hurtful to you?

4 A. I would have loved it if Mr. Nixon would have
5 brought "Ponytail" down to this courtroom. That would
6 have played right into my hands. And I think
7 Mr. Nixon strategically decided not to put -- I mean,
8 I would love it. I hope that some day somebody would
9 bring "Ponytail" down to this courtroom on any
10 occasion. Because if you would have brought him in, I
11 would have shown -- Valerie Finley would have
12 identified him as being the trigger man.

13 I'd have him sitting right there beside Rodney
14 Stanberry and showed that he was Rodney Stanberry's
15 friend.

16 I would have shown that he was sitting up in
17 Ryker's and either convicted or on trial or whatever
18 waiting on murder for murdering people up in New York
19 City. I would have had a hay day with "Ponytail" if
20 Mr. Nixon would have brought him down, and Mr. Nixon I
21 know is way too smart for that.

22 Q. Now, when you say strategy, you're talking
23 about the empty chair defense, is that what you are
24 referring to?

25 A. Oh, yeah. It was much better not to have

1 "Ponytail" here, and I would have loved for him to be
2 sitting here in this courtroom. If he would have
3 brought them down, he probably would have been
4 arrested on the spot too if we could have done that.

5 Q. Now, you know the record of this transcript,
6 which the Court of Appeals may get a chance to look at
7 at some point, will not describe as well as first-hand
8 witnesses, your victim's demeanor at trial. Would you
9 please tell the Court about that?

10 A. You could not have had a better victim in a
11 case. Valerie Finley was the sweetest lady, one of
12 the best witnesses absolutely believable, absolutely
13 credible. She never wavered from what she initially
14 said from the first time she came out of the coma that
15 Rodney Stanberry and "Ponytail" were the people that
16 did this to her. Rodney -- I mean "Ponytail" was the
17 trigger man, he was the one that shot her, and Rodney
18 was right there with her.

19 She never wavered on that. She was familiar with
20 her prior history because the defense tried to say,
21 oh, this was -- the defense tried to show, oh, here is
22 this woman who suffered this brain injury from being
23 shot in the head, she don't know what she's talking
24 about.

25 Well, she remembered her childhood, her

1 middle-adolescence, her post-adolescence, her family.
2 She had a big family here in Mobile. They were all
3 here for the Court. They were wonderful people.

4 And she was friends with Rodney Stanberry. That's
5 what was so good about it. I mean, Rodney Stanberry
6 had been to her house. She had no reason to lie, no
7 motive or reason to lie about Rodney Stanberry. No
8 reason whatsoever to make up or say he did it if he
9 was not involved. I mean that would go a million
10 miles of credibility. She absolutely had no -- and
11 ate dinner with him. She cooked dinner for him. He
12 was her friend. He was her husband's best friend.

13 The last person she would want to tie into
14 something if he hadn't done it would be Rodney
15 Stanberry. She had no reason whatsoever.

16 Q. And she was in a wheel chair at the time; was
17 she not?

18 A. Yes, because she was paralyzed from this. As
19 I said, Ms. Tierney, it was a miracle that she
20 survived this shot directly through the top of her
21 head, but she was paralyzed from the -- about
22 mid-waist down. I think she had some limited use of
23 her arms.

24 Q. Let me ask you something: Did you ever
25 interview any witness who by any stretch of the

1 imagination exonerated Rodney Stanberry?

2 A. Well, the defense witnesses that they put on,
3 I mean to me put on, you know, that was their theory,
4 that was their strategy and that was their scrambling,
5 that in my opinion Rodney Stanberry had orchestrated
6 the defense. So the people that he put on at trial
7 were either just talked to or discussed or as to what
8 their testimony is going to be, and Mr. Knizley called
9 those people to the -- I mean, I'm sorry. Mr. Nixon
10 called those people to the stand, and they put on his
11 alibi witness, and they put on his -- all those other
12 witnesses that were on his behalf.

13 Q. But you did not encounter anyone who
14 exonerated him that you felt that you did not give to
15 him.

16 A. Oh, no. Those were his witnesses. Those
17 were his people. The police had interviewed him,
18 taken statements from him, and it was open file
19 discovery, and I had reviewed the statements that they
20 had given, so there was no surprises at trial. I knew
21 who they were going to call, they knew who I was going
22 to call.

23 But I knew Valerie Finley was the best witness of
24 all of them, and her credibility would stand any of
25 the Rodney Stanberry's friends that were called.

1 Q. Now, let me ask you something: There has
2 been an allegation that a plea offer was not discussed
3 with Mr. Stanberry. Did you ever make or consider
4 offering any kind of plea agreement to the Defendant,
5 Rodney Stanberry?

6 A. I don't recall ever making any plea offer in
7 this case. I think I was pretty much determined that
8 this case was going to be tried. I think David
9 Barnett represented Mr. Stanberry earlier on, and I
10 don't think there was ever any offer ever. I can't
11 remember that for sure, but I just don't recall any
12 offer ever being made.

13 Q. Okay. Let me ask you something: From a
14 defense viewpoint, and again does it hurt the
15 prosecution, or does it help the prosecution from
16 those two opposing viewpoints. In your opinion was it
17 ineffective -- and I ask this because it's alleged,
18 was it ineffective to call Terrell Moore to the stand
19 and have him invoke his Fifth Amendment privilege from
20 self-incrimination?

21 A. No, that was very effective. That hurt me.
22 And I had case law that said that you couldn't do
23 that, at least I don't think the State of Alabama
24 could put on somebody and take the Fifth, because I
25 think -- but I think there may also be case law that