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APRIL 2, 1995

(The Defendant being present in court with his attorneys, Mr. Kenneth Nixon and Mr. Stephen Tunstall, and the assistant district attorney, Mr. Joe Carl Jordan, the following occurred before the Hon. Ferrill M. McRae prior to a jury venire being called in:)

THE COURT: All right, for the record, these are the cases of State of Alabama v. Rodney Karl Stanberry. The first, 92-2313 is attempted murder; 2314 is robbery in the first degree, 2315 is burglary in the first degree.

I have been handed a motion in limine which I will go into in a minute, but right now --

MR. JORDAN: Judge, is that --

THE COURT: Briefly --

MR. JORDAN: Do I have a copy of that motion? Is it my motion or is it --

THE COURT: No, it's not your motion. I would hope that you would know what motions you filed.

MR. JORDAN: I don't know what you're referring to then.

THE COURT: One more time. What do you expect the evidence to be in this case, and I would hope that you know. So, don't look at me at that way. What is the evidence in this case?

MR. JORDAN: What do you mean, Your Honor?

1 THE COURT: Well, if I was asked that question, I would say,
2 Judge, I expect the evidence to be in this case that the Defendant
3 allegedly entered the premises of one Valerie Findley and that he
4 attempted to rob her and then he shot her. Is that the facts?

5 MR. JORDAN: Either he or his accomplice. Yes, Your Honor.

6 THE COURT: You see, I have a reason for asking that and my
7 reason for asking that is simply that we have attempted murder, we
8 have burglary, and we have robbery.

9 MR. JORDAN: Yes, Your Honor.

10 THE COURT: And I wanted to hear the facts to support three
11 charges as opposed to two.

12 MR. JORDAN: Your Honor, he --

13 THE COURT: For example, do we have sufficient facts to
14 support both a burglary one and robbery one?

15 MR. JORDAN: In my opinion, yes, we do, Your Honor. We have
16 the Defendant and an accomplice initially entering the house by
17 permission.

18 THE COURT: By permission?

19 MR. JORDAN: Initially by permission. But then as he entered
20 the house his accomplice pulled out a gun which thereupon supports
21 the burglary charge. The statute reads that you enter or remain
22 unlawfully in a residence, a dwelling, and this was a dwelling
23 residence. The initial entry was legal, but then it became with-
24 out authority as a weapon was pulled. The victim was ordered to
25 sit down at gunpoint, was -- her keys were obtained, a vault was

1 > entered in the house where items of property were taken from the
2 house at gunpoint, including weapons, and the victim was subse-
3 quently shot on top of the head with a gun. She spent a long time
4 in the hospital. She survived, but is now --

5 THE COURT: Is that gunshot wound the cause of her being in a
6 wheelchair now?

7 MR. JORDAN: Yes, Your Honor.

8 THE COURT: Okay. I know nothing about the facts in the
9 case, but I just saw all three of these charges and there always
10 is a question when you have three different charges, so I was
11 asking before we get started.

12 I have, for the record, ordered a jury in this case and
13 one should be here as soon as they're impaneled.

14 Next I have been handed a motion in limine which was
15 filed by the Defendant through his attorney and it reads as
16 follows, without me reading it verbatim:

17 "This Court instructed the District Attorney to refrain
18 from making any direct or indirect reference whatsoever,
19 in person, by counsel or through witnesses, to the
20 evidence or testimony hereinafter described.

21 1. Defendant believes and hence alleges that the State
22 will attempt to introduce into evidence or make
23 reference to alleged statements made by him."

24 If he made them, I certainly would expect them to too.

25 "2. The alleged statements were obtained by law

1 > enforcement officers and assistant district attorney Joe
2 C. Jordan."

3 Who's Joe C. Jordan?

4 MR. JORDAN: That's me, Your Honor.

5 THE COURT: Gosh, I thought you were Buzz.

6 MR. JORDAN: My alias.

7 THE COURT: "-- in violation of the constitution of the
8 United States and the State of Alabama.

9 The Defendant moves this Court to conduct a hearing
10 outside the presence of the jury pursuant to
11 Jackson v. Dino."

12 And I will.

13 Do I have my list of witnesses yet?

14 MR. JORDAN: No, Your Honor, I'm almost finished writing them
15 for you.

16 Judge, I had previously filed this motion in limine
17 which, since you're talking that one up, we need to take that one
18 up also.

19 MR. NIXON: Judge, this may help you.

20 THE COURT: Dennard Jones, also known as Tacko (phonetic)?

21 MR. NIXON: Taco, Your Honor.

22 THE COURT: Where is this witness?

23 MR. TUNSTALL: He's been served, Judge. I haven't seen him
24 here.

25 MR. NIXON: I haven't seen him here.

1 THE COURT: You know, usually when a person has an alias
2 there's a reason for that alias. And this is you all's witness?

3 MR. NIXON: Yes, sir, Judge.

4 THE COURT: Fine.

5 MR. NIXON: He's a disc jockey or something, Judge, and I
6 just wanted you to qualify the jury on that name.

7 THE COURT: Fine.

8 The State's motion in limine, and I don't know why we
9 have all these motions in limine, but we'll see, and they also ask
10 for me to, "prohibit the Defendant from mentioning, making
11 reference to any statements or tape recording made by Tyrell Moore
12 unless and until Terry (sic) Moore testifies in open court. Other-
13 wise, such statement would be hearsay."

14 I have no idea what he's talking about, Ken, but is
15 Terry Moore, Tyrell Moore, going to be a witness in this case?

16 MR. NIXON: Yes, Your Honor.

17 THE COURT: I have your word that he's going to be a witness
18 in this case?

19 MR. NIXON: He's out in the hall this morning, Judge. He's
20 been subpoenaed and he's here.

21 THE COURT: Sit down.

22 Now, for the record, Mr. Buzz Jordan wants to speak and
23 I won't let him speak until I get through.

24 "Any statements made by Dennard "Taco" Jones unless
25 and until Taco Jones testifies."

1 And I say is he -- do I have your word he's going to
2 testify?

3 MR. NIXON: Judge, he has been served. I haven't seen him
4 today. He is a hostile witness. He was here the last time this
5 case was set.

6 THE COURT: "Any statements made by Ronald Stanberry."

7 Now, you know, isn't this something. The District
8 Attorney asked me not to let the Defendant say anything about the
9 Defendant's statement and the Defendant asked me not to let the
10 State say anything about his statement. Most unusual.

11 We're going to take care of his statement in just a
12 minute. But I don't know of -- I don't believe this is in any way
13 proper. I'm not going to force them to tell me whether Ronald
14 Stanberry is going to be a witness. Under the Fifth Amendment of
15 the Constitution that's a right he has to invoke, not me, and
16 certainly not the State.

17 "Before any statements made by Rene Whitecloud," and,
18 you know I get the same thing in each one of these, "unless and
19 until" she's going to be a witness. Is she going to be a witness?

20 MR. NIXON: It's a he, Judge, and Mr. Jordan told me Friday--

21 THE COURT: Rene is a he?

22 MR. NIXON: Yes, sir. It's Rennie (phonetic), is the proper
23 pronunciation of that name. Rennie -- I assume you're talking
24 about Rene Barbasa or Rene Whitecloud.

25 THE COURT: That may be the way he pronounces it, but all of

1 > them I've seen like this has been Renay (phonetic). Rene
2 Whitecloud is a he?

3 MR. NIXON: Yes, Your Honor.

4 THE COURT: Well, is he going to testify?

5 MR. NIXON: Your Honor, my understanding from Mr. Jordan
6 Friday is that he is incarcerated in New York and has not been
7 brought down.

8 THE COURT: Well, I believe that would be -- so far as him
9 testifying is concerned, would be, I don't think, very possible.

10 "5. Any statements made by Angel Melindez."

11 And the same thing as -- also known as Wish?

12 MR. NIXON: Yes, Your Honor.

13 THE COURT: Is Angel Melindez going to testify? It's not on
14 your list.

15 MR. NIXON: Not for the Defense, Your Honor.

16 THE COURT: We will take up this motion outside of the
17 presence of the jury or, i.e., in just a few minutes.

18 But as to these others, what did you wish to say now,
19 Mr. Jordan?

20 MR. JORDAN: Judge, specifically with regard to Tyrell Moore,
21 Tyrell Moore has previously taken the Fifth Amendment at grand
22 jury and his attorney has indicated to me that he will take the
23 Fifth Amendment at any trial proceedings. I expect that if Mr.
24 Nixon puts him on the stand that he will take the Fifth Amendment.
25 He has given a cassette recording to the Defense. He has made a

1 > video tape for the Defense, all of which are -- he has given
2 statements outside of court, all of which are hearsay statements,
3 all of which are not admissible. If he takes the stand and
4 testifies without taking his Fifth Amendment, then I'll have the
5 right to cross examine him and we'll proceed from there, but I
6 don't want any reference made to his statement that he's given to
7 investigators by video tape or cassette unless or until he --

8 THE COURT: I agree 100 percent. To do otherwise would be
9 trying -- and, by the way, the same thing applies to you. To do
10 otherwise would be trying this case by he said, she said, we said,
11 I heard this at the beauty parlor, or whatever and, of course, I
12 hope everybody knows that's hearsay.

13 MR. NIXON: Judge, may I be heard?

14 THE COURT: Certainly.

15 MR. NIXON: I don't know how the Court would like to handle
16 this, but I would like to give a little bit of background on the
17 witness, Tyrell Moore, that is out in the hall today.

18 THE COURT: If Tyrell Moore wishes to testify, of course, he
19 has a right to. But the only thing he's saying, Ken, and I know
20 you know that it's proper, that if Tyrell Moore gave a statement
21 earlier to this investigator or to any investigator, I would
22 assume we all know that that wouldn't be subject to cross examina-
23 tion by the State.

24 Go ahead.

25 MR. NIXON: If I may respond, Judge, what happened, a very

1 > brief outline for Your Honor, Tyrell Moore took the Fifth at the
2 grand jury and refused to testify. Subsequently, Mr. Jordan, as
3 assistant district attorney, contacted Mr. Moore, granted him
4 immunity in a written immunity agreement, sat down with Detective
5 Smith and Mr. Jordan and Mr. Moore's lawyer, with a court reporter
6 present, after granting him immunity, and took Mr. Moore's state-
7 ment. It has been transcribed and I have a copy of it, and in
8 that statement Mr. Tyrell Moore gives a detailed outline of --
9 stating that he did this and who did it with him and how he did it
10 and he gave that to Mr. Jordan and it was reported by a court
11 reporter. That was after my investigator had already contacted
12 him and got a video-taped confession from him before he was ever
13 subpoenaed to the grand jury. So, I have, Judge -- the sequence
14 of events, my investigator found this man, got a confession from
15 him before he went to the grand jury --

16 THE COURT: He did?

17 MR. NIXON: Yes, sir, sure did, an audio tape confession and
18 a video tape confession, and he went to the grand jury, he took
19 the Fifth --

20 THE COURT: Are you telling me that your investigator sitting
21 over there -- and he's smiling; I wouldn't be smiling -- knew that
22 someone had committed a crime and did not report it?

23 MR. NIXON: He knew that he had -- he had given testimony,
24 that he had participated in this crime, yes, sir, Judge, and he
25 reported it to me and I reported it to Mr. Jordan.