

STATEMENT OF THE FACTS

Rodney Stanberry ("Stanberry"), the petitioner, had invited two guests for the 1992 Mardi Gras. The guests, Rene "Ponytail" Whitecloud ("Rene") and Angel "Wish" Melendez ("Angel"), both from the Bronx, a borough of New York City, were formerly childhood friends of Mr. Stanberry's. They rode a bus to Mobile.

After Rene and Angel arrived in Mobile, they were introduced to Donnard Jones ("Taco"), who would be their escort during Mr. Stanberry's working hours. Taco was familiar with nightclubs and friend to many girls, but had no car. Taco arranged for another friend, Terrell Moore to drive the group around town. Rene and Angel paid \$150.00 to Terrell Moore to be available for the week they would be in Mobile.

The next day Rene and Angel met Mike Finley ("Finley"), Mr. Stanberry's hunting partner and fellow gun collector. Mr. Stanberry wanted his guests to see the rack of the last buck he had shot, which was in Finley's freezer. The conversation quickly turned to firearms.

The guests, Rene and Angel, communicated their interest in buying firearms. Mr. Stanberry, cautious by nature, announced that only residents could purchase a firearm in Alabama. Finley, greedy by nature, asked what they would pay if he were to find firearms for them.

Later that night, Mr. Stanberry realized that a change had occurred since he had last seen Rene and Angel. The years had transformed Rene and Angel into hard characters. Mr. Stanberry, distraught over his friends adoption of thuggish mannerisms, telephoned Finley to urge him not to sell any firearms to Rene or Angel, because they were probably going to resell the firearms in New York. However, Finley did not heed that advice. Furthermore,

Finley divulged to Rene and Angel that Mr. Stanberry tried to dissuade him from selling firearms to them. Rene and Angel subsequently berated Mr. Stanberry for what they perceived to be a disloyalty. When Mr. Stanberry suggested Rene and Angel should return to New York since he thought their sole intention was to buy guns, he was thereafter eliminated from the "loop." Meanwhile, Finley forged ahead as an intermediary between a gun dealer and Rene and Angel.

On Friday, February 28, 1992, the firearms sale was consummated. Finley, his wife, Valerie Finley, Mr. Stanberry, and Rene and Angel met gun dealer Charles Hearn at the Semmes Dairy Queen. Rene and Angel gave Finley money; Finley returned with firearms from the gun dealer's truck for Rene and Angel.

On Saturday, February 29, 1992, Finley, his wife, Valerie Finley ("Valerie"), and Mr. Stanberry took Rene and Angel out to shoot at targets. In the many previous target practices, Finley and Mr. Stanberry never carried more than 2 or 3 guns to shoot. But on that occasion, Finley, showing off, brought his entire collection of 18-20 guns, including a few automatic assault rifles. Mr. Stanberry, not wanting to arouse more interest in Rene and Angel, carried only one gun from his immense collection, a small handgun. Not surprisingly, Rene and Angel proposed to buy many of Finley's firearms. Finley had to refuse the offers — the weapons were registered in his name.

Subsequent to their offers being rebuffed and learning that Finley overcharged for the firearms they bought, Rene and Angel planned to take Finley's firearms. Since Terrell Moore was a hired hand, he was told to drive his car and assist with the break-in. The plan was to steal the firearms and have Taco rent a car to carry the firearms to New York. That plan went awry.

According to Terrell Moore, the planned burglary became a

robbery and an attempt to murder. Considering it was a weekday, the Finley house was presumed to be vacant. Terrell Moore, joined by Angel, drove from Motel 6 on the beltline directly to Finley's house. Angel knocked on the front door to see if anyone were home. Valerie put down the telephone and went to the door. Angel told her that he was there to pick up a "package" from Finley. When Valerie turned to go to the telephone, Angel stepped in, placed his recently-bought 9mm Glock against Valerie's head and warned her not to scream. Angel then ordered Valerie to tell him where the guns were.

As soon as Angel entered, Terrell Moore jumped out of his car, pulled a ski mask over his face and ran into the house. Angel was trying to convince Valerie that he would kill her if she did not tell him where the guns were. She produced the key to the gun vault where Finley kept his gun collection. Terrell Moore gathered the entire collection into a pillowcase, and then found a few pieces of jewelry and a .38 pistol in a bedroom before going to the backdoor. A dead-bolt lock on the door prevented Terrell Moore from making an exit. Valerie found the key; Terrell Moore unlocked the dead-bolt lock. But before he could exit, Angel fired a shot into Valerie's head with the Glock 9mm.

Terrell Moore ran back to confront Angel. Valerie was lying on the floor, bleeding from her head. Terrell Moore asked Angel why he shot "that woman." Angel commanded Terrell Moore to shut up or he would "do" him, too. They left the Finley house.

Angel and Terrell Moore ran toward the car, Terrell Moore's blue and gray Mercury Capri. Angel occupied the passenger's seat. Terrell Moore set the bag of weapons and jewelry behind the front seat and got in to drive. When he drove out of the driveway, Terrell Moore almost struck two eyewitnesses. Tyrone Dortch, the

Finley's next-door neighbor, along with Tony Mauldin, was repairing a car in the median. Tony Mauldin also had his brown station wagon parked in the median, near the Finley driveway. The brown station wagon was similar in appearance to Mr. Stanberry's brown Ford Bronco II, as both had luggage racks and had glass stretched all around them. Both Tyrone Dortch and Tony Mauldin watched as Angel and Terrell Moore ran to the Mercury Capri, nearly hit the car they were repairing and drove away.

Terrell Moore and Angel arrived at Motel 6, where Rene and Taco awaited. Terrell Moore, visibly nervous, disclosed to Taco that Angel had shot the woman in her house. Taco, in turn, told Rene. After Rene heard of the shooting, all their other plans were aborted for preparations to leave Mobile.

Angel ordered Terrell Moore to take him and Rene to the bus station. Terrell Moore refused. "You can go ahead and shoot me, now." Terrell Moore was averse to miring himself in deeper. However, in consideration that Mr. Stanberry knew the motel location, Terrell Moore and Taco did transport Rene and Angel to another motel on Airport Boulevard. Terrell Moore and Taco continued with the guns and jewelry, hiding them under a friend's house in the Chrichton area.

Taco wanted to obliterate himself from the possibility of being suspected in the incident. After allowing several hours for Rene and Angel to leave town, Taco telephoned Mr. Stanberry to tell him about the incident. It was revealed that Finley's firearms had been stolen; inferred that Rene and Angel had committed the crime; and, that Rene and Angel had gone to the bus station. Taco had deliberately failed to include that Valerie had been shot; that

Terrell Moore had entangled himself in the crime; or that he (Taco) was in possession of the stolen property from the crime.

During Mr. Stanberry's conversation with Taco, Finley called on the other telephone line. Finley wanted to know where Rene and Angel were. Mr. Stanberry relayed Taco's message about the incident. Finley said, "Meet me at the bus station." Neither Mr. Stanberry nor Finley was aware Valerie had been shot at that time. It was many hours before medical personnel realized Valerie had not "fallen" but was suffering from a gunshot.

The Bronco II could not run faster the 11 miles to the bus station on Government Boulevard. Rene and Angel were not there, and neither was Finley. As Mr. Stanberry was exiting the bus station, Rene and Angel arrived in a taxicab. Mr. Stanberry did a patdown search on the luggage they had. Rene betrayed Taco, pointing out that Taco had the stolen property. Mr. Stanberry curiously asked, "Why would you do some **** like this to my friends while you're visiting?" Rene apologized and said he "had no idea they were going to do that." Mr. Stanberry knew better. The crime would never have happened without Rene's sanction.

Mr. Stanberry left the bus station to find Taco and the stolen guns. When he left, Mr. Stanberry fully expected Finley to show up with the police to arrest Rene and Angel. Finley, for some unknown reason, instead went to the hospital.

Taco was at home. His story was that Rene and Angel had just called to tell him where the guns were hidden. Taco directed Mr. Stanberry to the house in Chrichton, where he reacquired the stolen property. After dropping off Taco, Mr. Stanberry drove straight to Finley's with the stolen property. No one was home.

Mr. Stanberry saw Tyrone Dortch and Tony Mauldin still repairing the car in the median. Mr. Stanberry walked over to show them pictures of Rene and Angel. Tyrone Dortch positively identified only Angel as one of the men he witnessed leaving Finley's house. Tyrone Dortch also furnished a description of the other man, later exposed as Terrell Moore. Moreover, both Tony Mauldin and Tyrone Dortch described the two-tone blue and gray Mercury Capri owned by Terrell Moore as the car used in the crime.

With the stolen property in tow, Mr. Stanberry went home. About four hours later, Finley telephoned. It was discovered that Valerie had been shot during the robbery. Reeling from that revelation, Mr. Stanberry promised Finley he would come to the hospital. But first, an enraged Mr. Stanberry called Taco, who must have known Valerie had been shot hours before they retrieved the stolen property, even before their initial phone conversation. Taco did not try to deny that he knew all along. Yet, when Mr. Stanberry declared that he was obliged to notify Finley and the police about how the stolen property was regained, Taco begged not to be named as the person who was left holding the stolen property. Mr. Stanberry said that he had no choice. Taco, recently released from probation, threatened to tell the police that Mr. Stanberry also knew in advance of the planned burglary. Mr. Stanberry perceived that situation as a stalemate.

Mr. Stanberry took his girlfriend, Tracy Smith, with him to the hospital. Finley leapt from a chair in the waiting room and escorted them away from Valerie's family. According to Finley, members of Valerie's family were angry, armed and held Mr. Stanberry responsible for his friends' actions. Mr. Stanberry all the same wanted to explain his attitude toward what had been done. Finley needed to keep Mr. Stanberry separated from Valerie's family.

Finley had not been truthful with his wife's family. He had led them to believe that he had only been introduced to Rene and Angel, failing to mention the gun sale, or the pretentious display of his gun collection for them at Saturday's target practice. Mr. Stanberry and girlfriend left the hospital unaware of Finley's cunning manipulation or the family's expanding suspicions of collusion between Finley and Mr. Stanberry.

Tuesday, the morning after the crime, on his own volition, Mr. Stanberry visited the Prichard Police Department, where he met Detective Fletcher. The names, New York addresses, and pictures of Rene and Angel were provided, along with the information from Tyrone Dortch and Tony Mauldin. It was explained that Taco had spent the week, including the morning of the crime, with Rene and Angel. Mr. Stanberry further explained that the car used in the crime possibly belonged to a friend of Taco's. Due to the threat from Taco, Mr. Stanberry felt forced to state that he knew nothing about the whereabouts of the stolen guns. However, at some time in the interview, Mr. Stanberry thought of a way to break the impasse with Taco. When he finished the interview, Mr. Stanberry made plans to buy a tape recorder.

Once at home, Mr. Stanberry telephoned the police in the Bronx, New York. A Detective Hardy listened as Mr. Stanberry narrated the events surrounding the crime in Mobile. Mr. Stanberry proposed that Detective Hardy arrest Rene and Angel when their bus arrived in New York, and that she contact Detective Fletcher in Prichard.

After giving her time to talk with Detective Fletcher, Mr. Stanberry again called Detective Hardy. The New York detective had planned to arrest Rene and Angel for interrogation when their bus arrived. Yet, when Detective Hardy offered her help to Detective Fletcher, she was dismissed without ceremony. Detective

Fletcher said he needed to handle it from his end. Fletcher had formed the opinion that an out-of-town perpetrator was a fabricated pretext. He did not believe that Rene and Angel existed, but he did believe that Mr. Stanberry was being too helpful.

The guns and jewelry were returned to Finley that afternoon. Finley notified the police of Mr. Stanberry's efforts to recover the stolen property. Immediately afterward, Finley went to the hospital adorned with the jewelry that had been stolen the day before. Valerie's family noted the jewelry and wondered aloud how Finley had it returned so quickly. It did not help when Finley announced that Mr. Stanberry found the stolen property for him. It was not until they accused Mr. Stanberry, and Finley attempted to justify his friend's actions, that Valerie's family reached their conclusion: Finley must have been in on the crime from the beginning.

On or about March 4, 1992, Detective Fletcher interviewed Taco. Nothing was revealed. Taco denied being at the motel the morning of the crime, and further denied having any knowledge of the crime. Taco's entire initial interview was deliberately false.

Mr. Stanberry was successful in recording one of Taco's threats. The threat was that Taco would implicate Mr. Stanberry in the crime as a conspirator if Taco were named as the one who relinquished the stolen property. The recorded threat was played for Finley after it was explained how Mr. Stanberry actually acquired the stolen property. Finley turned the tape recording over to Detective Fletcher, who summoned back Mr. Stanberry and Taco.

Mr. Stanberry was no longer held hostage by Taco's threat, so

he was open and honest in his responses to Detective Fletcher's questions. Mr. Stanberry explained how he acquired the stolen property and why Taco forced him to lie. Taco was exposed by the tape recording. Also, he noticed Finley had been stalking him, and driving by his house. Finley had rifles with scopes. Taco was scared for his life. He had no choice but to confess that he had returned the stolen property to Mr. Stanberry, and that his friend, Terrell Moore, had participated in the crime. Taco had finally been truthful about the crime. Detective Fletcher was not convinced.

As a result, Terrell Moore was summoned. Terrell Moore, in that first interview, did not own up to having any part in the crime, and stated that he did not know anything about the crime. Nevertheless, something from that interrogation prompted Detective Fletcher to summon Terrell Moore yet again. That occasion provoked Terrell Moore to declare that he had "rented" his car to the two men from New York, but was not personally involved in the crime. Fletcher allowed Terrell Moore to leave it at that.

The gunshot to Valerie's head had caused her to be unconscious. Valerie was comatose for almost two weeks. When she regained consciousness, Detective Fletcher presented pictures of Mr. Stanberry with Rene, and Mr. Stanberry with Angel. The pictures were those provided by Mr. Stanberry. Valerie's sister, Brenda Gay, stated, "She just told me that she couldn't identify the two men who did this to her."

Valerie was extremely confused. Later Valerie reported that Mr. Stanberry and his girlfriend, Tracy Smith, had robbed and shot her. Assistant district attorney Joe C. Jordan and Detective

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Lebarron Smith pursued Valerie's accusations. At West's Building Materials, Tracy Smith's employer, it was determined that she had been at work and could not have been present during the crime. Thereafter, Tracy Smith was never again mentioned as having participated in the crime.

Valerie's story changed. Eugenia Patrick, Valerie's mother, and others under her sphere of influence, picked the two men Valerie named as her attackers and embedded the images in her mind. One month after her confused condition, Valerie was once more interviewed by Detectives Fletcher and Lebarron Smith. The fresh allegations were that Mr. Stanberry and Rene were the ones who robbed and shot Valerie. That was the tale, and Valerie held to it throughout the trial.

The State's investigation narrowed to Mr. Stanberry. There was one interview at Mr. Stanberry's job, B.F.I. Waste Systems. Assistant district attorney Joe C. Jordan and Detective Lebarron Smith did not Mirandize Mr. Stanberry, nor was he made aware that he was a suspect. However, all answers were forthright. There was nothing to conceal. Everything that was known about the crime was discussed by Mr. Stanberry. At the end of the questioning, the assistant district attorney said that he knew Mr. Stanberry was lying, but did not arrest him at that time. On April 19, 1992, about one week later, Mr. Stanberry was arrested at B.F.I.

Ryan Russell, a private investigator, was hired by counsel for the defense. Ryan Russell decided to talk to everyone entangled in the instant case. Every person was stunned that Mr. Stanberry had been arrested. No one guessed that a small variance here and a half-truth there would result in his arrest. They were

all more cooperative, perhaps because Ryan Russell was not the police. Many missing pieces of the puzzle were added by Taco and by Finley.

Taco admitted that he had lied to the police; that he was present during the planning of the crime; that he set up Terrell Moore to do the job for Rene and Angel; that he was at the motel when Angel and Terrell Moore went to do the crime; that he was there when Angel and Terrell Moore returned with the stolen property; that he transported Rene and Angel to a Florida bus station hours after the shooting; and, that he knew Mr. Stanberry had no part in the crime. Taco had wanted to set the facts straight.

Finley admitted that he had been advised by Mr. Stanberry not to sell any guns to Rene and Angel; that he was the go-between who did get guns for Rene and Angel to buy; that he had overcharged them for the guns; that he had hidden his involvement with Rene and Angel from Valerie's family and the police; and, that he had created an atmosphere where Valerie, her family and the police became suspicious of him. Finley felt that he was at fault for Mr. Stanberry's arrest.

On October 6, 1992, seven months after the crime occurred, Ryan Russell finally cornered Terrell Moore in a nightclub. The private investigator approached Terrell Moore with a single-minded purpose: to have him provide truthful evidence about the crime against Valerie. Ryan Russell stressed that when Angel did become arrested, a deal would be made; that Angel would most likely claim Terrell Moore was the shooter; and, that Angel would subsequently testify against him. Terrell Moore was affected with panic. At that point, Terrell Moore had no choice but to protect himself. Furthermore, he knew Mr. Stanberry had been arrested for the crime.

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Ryan Russell recorded Terrell Moore's statement, which included a point-by-point unabridged verbal account of the crime committed against Valerie. That account has been cited earlier in this declaration. Ryan Russell videotaped Terrell Moore a few days later as he repeated his explanation of the acts perpetrated against Valerie. Ryan Russell had solved the crime and assumed Mr. Stanberry would be cleared of all charges.

Assistant district attorney Joe C. Jordan received word that some person had personal knowledge of the crime. Without knowing what the testimony would be, Terrell Moore was offered immunity from prosecution in exchange for thorough disclosure "concerning all knowledge he may have about the attempted murder, the burglary, and the robbery of Valerie Finley which occurred on March 2, 1992."

Terrell Moore retained attorney Robert F. Clark to protect him from prison. Attorney Clark interpreted the agreement for Terrell Moore and instructed him that he had to tell the truth or he would go to jail. Thus, previous to submitting his sworn testimony, Terrell Moore realized there was a singular qualification to the testimonial immunity agreement, to wit: "In the event Mr. Moore willfully makes materially false statements during the interview, the terms of this agreement are null and void."

Under oath and with his attorney present, Terrell Moore delivered his deposition during which both the assistant district attorney and Detective Lebarron Smith subjected him to cross-examination. In that deposition, Terrell Moore set the responsibility for the crime exclusively on himself and Angel. Mr. Stanberry was completely freed from guilt.

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Ryan Russell, to be certain, also investigated Mr. Stanberry and his activities on the day of the crime. It was found that Mr. Stanberry was a dedicated employee. He had worked at B.F.I. Waste Systems since 1989 without taking off for a vacation. As expected, Mr. Stanberry had worked that 2nd day of March, 1992, clocking in before 3:00 am. The work consisted of removing waste from industrial sites. After the scheduled route's duties were fulfilled, additional clients were serviced that day. When Degussa Chemical Plant was serviced at 8:37 am, Mr. Stanberry radioed the B.F.I. dispatcher, Susan Reeves, that his route had been completed and that he need to talk to a mechanic. After informing mechanic Freddy Robinson of a flat tire, Mr. Stanberry was advised to return to base at B.F.I. headquarters on Hall's Mill Road.

The dispatcher entered Mr. Stanberry's arrival at 8:55 am; the nature of the mechanical problem; and, the mechanic assigned to make repairs. Mr. Stanberry was required to make identical entries in his daily route report. Before mechanic Robinson could begin the repairs to the large truck, the time clock had to be stamped. That time was recorded at 9:00 am. Robinson finished the repairs at 9:47 am and the dispatcher logged Mr. Stanberry's departure for the City of Mobile's landfill at Chastang, Alabama at 9:51am. Both Mr. Stanberry and a city employee verified the tonnage and the time by their signatures. The time was 10:40am.

Regardless of the overwhelming evidence that Mr. Stanberry was innocent, Mr. Stanberry was arrested at his work. He was permitted to remain on bond pending state appeals. Mr. Stanberry surrendered to authorities on March 24, 1997.