

After Ms. Gay was finished testifying, Terrell Moore was again called to the stand with his attorney, Bob Clark, present. (R-705) Mr. Moore was treated as a hostile witness. (R-706) Mr. Stanberry's attorney questioned Mr. Moore in detail about his involvement with the shooting of Valerie Finley on March 2, 1992. (R-706-709) Mr. Moore responded to every single question with the response: "I plead the Fifth Amendment." (R-706-709) The substance of the questions asked by Mr. Stanberry's attorney was the information contained in Mr. Moore's statement to the effect that he and a man named "Wish" had gone into Ms. Finley's home, robbed the home, stole guns from the home and that "Wish" shot Ms. Finley. (R-706-709) At the conclusion of his direct examination, defense attorney moved to introduce the statement of Terrell Moore and that motion was denied. (R-709)

TESTIMONY OF MR. TONY MAULDIN

(DIRECT EXAMINATION)

The Defendant's next witness was Mr. Tony Mauldin, a friend of Tyrone Dortch who was assisting Mr. Dortch in the repair of automobiles outside the Finley home on the day in question. (R-713, 714) Mr. Mauldin drove a dark brown Toyota automobile at the time. (R-718) Mr. Mauldin described seeing "a kind of gray faded out brown car, looked like it was a two tone and it was a Capri, mid-sized car." (R-719) He also saw two people get into the car as it was leaving but he never saw their faces. (R-720) The car almost pinned Mr. Mauldin to his car when they backed out of the driveway. (R-721) Mr. Mauldin never did see a brown Bronco that morning. (R-721) Mr. Mauldin's Toyota was a four-door vehicle. (R-721)

Mr. Mauldin denied knowing Rodney Stanberry, Mike Finley, Valerie Finley or Terrell Moore. (R-721) Mr. Mauldin's testimony corroborated the testimony of Tyrone Dortch in regards to the trip to and from Autozone to purchase a water pump and the time spent doing that. (R-722-724)

On redirect examination, Mr. Mauldin was absolutely clear that the vehicle backing out of the driveway was a Mercury Capri and not a Bronco. (R-730)

TESTIMONY OF MR. BRUCE HICKBOTTOM

(DIRECT EXAMINATION)

The Defendant's next witness, Mr. Bruce Hickbottom, was a co-worker at BFI with Mr. Stanberry and had been working there for six (6) years. (R-731) He had worked with Mr. Stanberry since his employment began at BFI. (R-732) Mr. Hickbottom arrived at BFI at approximately 4:00 a.m. and parked right in front of Mr. Stanberry's brown Bronco. Mr. Stanberry's vehicle was parked in the same place that it had been parked for years. (R-733)

During a 10:00 a.m. break, Mr. Hickbottom walked outside and saw Mr. Stanberry's vehicle still parked in the parking lot. (R-733) Mr. Hickbottom also saw Rodney Stanberry at 12:00 noon in the breakroom at the BFI building. (R-734) He struck up a conversation with Mr. Stanberry about taking the CDL license test. (R-734)

TESTIMONY OF MR. HENRY JOHNSON

(DIRECT EXAMINATION)

The Defendant's next witness was Mr. Henry Johnson, the operations manager at BFI in Mobile, Alabama. (R-738) Mr. Johnson testified that Rodney Stanberry drove a front-loader garbage truck for them. (R-738) In March of 1992, Rodney drove the same route everyday. (R-739) Each day he fills out a daily driver's report. He is also required by the Federal Government DOT Regulations to fill out vehicle inspection report of the truck. On that daily driver's report, he puts on it the time he starts, fuel consumption and total miles driven. He also writes information for BFI as far as the tonnage he has disposed of on that day. He also writes down the time he arrives at the first container and the time he picks up the last container, as well as any mechanical breakdown time and any of his time associated with the truck not actually picking up trash. (R-739, 740)

Mr. Johnson was asked to gather the records for March 2, 1992. The records indicate that Rodney was assigned to truck no. 989 and that he started that morning at 2:59 a.m. (R-743) He finished at 11:55 a.m. (R-743) His last stop was at 8:43 a.m. (R-743)

Rodney had down time that morning from 4:41 a.m. to 5:29 a.m. due to a top lid door being stuck on the truck. (R-745) He also had a flat tire from 9:05 a.m. to 9:37 a.m. (R-745, 746)

Rodney was driving a route on the south end of Mobile County, from Dauphin Island and Bayou La Batre to Hamilton Boulevard. (R-746). When Rodney was finished picking up

debris, he had to go dump it at the sanitary landfill in Chestang, Alabama located in Mobile County. It's a thirty-two (32) mile drive. (R-747) With the truck loaded, it would take an hour to an hour and ten (10) minutes to get there. (R-747)

At approximately 6:00 to 6:30 a.m., Mr. Johnson spoke to Rodney personally over the radio in their respective vehicles. (R-745)

MR. JOHN FREDERICK ROBINSON

(DIRECT EXAMINATION)

The Defendant's next witness was Mr. John Frederick Robinson, also a co-employee of Rodney Stanberry's at the time in question. (R-752, 753). He testified that he repaired a flat tire on Mr. Stanberry's vehicle at approximately 9:00 a.m. that morning. (R-756) The repair was finished at 9:32 a.m. (R-756) He also repaired the brakes on Rodney's vehicle. (R-757) Rodney Stanberry was dressed in a normal BFI uniform that day. (R-758) Rodney was found by the witness in the breakroom talking on the telephone when he informed him that his vehicle was repaired and ready to go. (R-758)

MR. FRED BRYANT

(DIRECT EXAMINATION)

The Defendant's next witness was Mr. Fred Bryant who was working at the Chastang landfill in March of 1992. (R-767) Mr. Bryant testified that Rodney Stanberry brought his truck in to the landfill at 10:40 a.m. on March 2, 1992. (R-768) He had the ticket that was signed by himself and Stanberry at that time. (R-768)

MR. PALMER MCDONALD

(DIRECT EXAMINATION)

The Defendant's next witness was Mr. Palmer McDonald, the safety and personnel manager at BFI. (R-774) In March of 1992 he was assistant operations manager. (R-774) This witness offered little additional testimony.

MR. DENNARD EUGENE JONES, a/k/a TACO

(DIRECT EXAMINATION)

The Defendant's next witness was Mr. Dennard Eugene Jones, a/k/a/ Taco. (R-781) Taco testified that he had gone target shooting with Mike and Valerie Finley and a man named

Wish and Rene Whitecloud the Saturday before the shooting. (R-785) Wish had brought a lot of guns of his own to shoot and everyone shot them. (R-786) Terrell Moore was not there, but Taco identified Terrell Moore's car as a blue gray Mercury Capri. (R-786)

In fact, Taco had introduced Terrell Moore to Rodney Stanberry that same week. (R-786) The night before Ms. Finley was shot, Taco spent the night at the Motel 6 on the Beltline Highway in Mobile, Alabama with Wish and Rene Whitecloud. (R-788) He heard them discussing the Finley's that night. (R-789) When Taco woke up on that Monday morning, Wish was already gone. (R-790)

After Taco got out of the shower that morning, he saw Terrell Moore and Wish again at the hotel room at some time before noon. (R-791) He stated that Wish was "acting kinda frank. He looked like he was mad, like he was upset." Terrell Moore was acting nervous. (R-791) After speaking with Terrell and Wish, Taco asked Terrell to take him home and Terrell complied. (R-792) He drove Taco home in a "Capri Mustang". (R-792) When he got in the car, he saw several guns in a big green Army bag. (R-793) On the way home, Terrell Moore dropped Wish and Rene off at the Warren Inn Apartments on Airport Boulevard. (R-794) Mr. Moore then went by his ex-girlfriend's house and he took the green bag out and he placed it underneath the house in the back. (R-794)

After he was dropped off at home, Mr. Moore called Rodney Stanberry and Mr. Stanberry returned his call at approximately 1:00 or 1:30 that afternoon. (R-795) Taco told Rodney Stanberry where the guns were. (R-795)

After talking with Mr. Stanberry, Taco took Rodney Stanberry to where the guns were, showed him where the guns were and Rodney retrieved the guns. (R-796) These were the same guns that were taken from Mr. Finley and were returned to Mr. Finley by Rodney Stanberry. (R-796)

#### RODNEY CARL STANBERRY

#### (DIRECT EXAMINATION)

After Taco testified, the Defendant's next witness was the Defendant himself, Mr. Rodney Carl Stanberry. (R-819) Mr. Stanberry's nickname is Stan. (R-819) In March, 1992, Mr. Stanberry drove a commercial front loader garbage truck for BFI in Mobile, Alabama. (R-

819, 820) Mr. Stanberry testified that prior to the date of the shooting, he had visited Mike Finley and Valerie Finley at their home approximately fifty (50) times or more, eating dinner with them, playing with their children and generally visiting with them. (R-823, 824) Mr. Stanberry testified that he had known Rene Whitecloud and Angel Melendez, otherwise known as Wish, since the age of seventeen (17). (R-824)

In March of 1992, Mr. Stanberry had contacted Rene by telephone and they had discussed coming to Mobile for Mardi Gras to visit Mr. Stanberry. (R-826) They arrived approximately a week before the day of the shooting. (R-826) The day after they all arrived, Mr. Stanberry took them to Mr. Mike Finley's home to show them a deer head that he had gotten from his last hunting session which was being stored in Mr. Finley's deep freezer. (R-830) A few days later, Mr. Stanberry had spoken to Wish and Rene again and he brought them to Mike Finley's house again because Mike had discussed with them finding some guns for them. (R-831) Mr. Finley did not want to sell them any guns. (R-832) Mr. Stanberry advised Mike Finley against selling the guns because it was illegal to own handguns in New York City. (R-832) Wish and Rene had also offered to buy Mr. Stanberry's guns. (R-832) When Mike Finley told Rene and Wish that Mr. Stanberry had advised them not to sell them guns, they got angry. (R-833)

Mike Finley, Valerie Finley, Mr. Stanberry, Rene and Wish had all driven to a Dairy Queen for the purpose of getting Rene and Wish some guns from another individual. (R-833) Mr. Stanberry witnessed Rene buy a several handguns, those being a Glock 9mm pistol, a 380 caliber pistol and a 25 automatic. (R-835)

On Sunday, they had all gone target practicing with their new guns. (R-835, 836) When they went target shooting, Mike Finley brought an AK-47, a Tech-9, a Tech-22, a 380 and an M-11. (R-837) When Rene and Wish saw Mike Finley's guns, they were amazed and spent some time shooting them. (R-837, 838) Later that night, he went to the hotel to say good-bye to Rene and the rest of the crowd before they went back to New York. (R-839, 840)

On the morning in question, Mr. Stanberry arrived at work at approximately 2:00 a.m. to 3:00 a.m. in order to drive his work vehicle. (R-841) Mr. Stanberry drove a route a the south end of Mobile County, and on his last stop, got a flat tire. It was shortly before 9:00 a.m.

(R-842) When that happened, he called the shop and was instructed to bring the truck in for repair. (R-843) That took approximately fifteen (15) minutes to arrive at work. (R-843) He arrived at the main shop at approximately 9:00 and while it was being repaired, he went to the breakroom. (R-844) While in the breakroom, Mr. Stanberry called the hotel room and talked to Taco and then Rene. (R-844) Mr. Stanberry told Taco he had hoped to drop by that morning to say a final good-bye, but that he had to go by the Baldwin County Courthouse to register for his CDL driver's license. (R-846)

When his truck was ready, he discovered he also had to have a brake adjustment. He clocked out of the shop area at 9:37 a.m., turned around and came back for a brake job that lasted approximately ten (10) to fifteen (15) minutes. (R-846, 847) He then proceeded to the landfill and arrived there at approximately 10:40 a.m. (R-847) While traveling up I-65 towards the landfill, he passed by the hotel where Rene and the others were staying and saw the faded out Capri that belonged to Terrell Moore. (R-848) He stayed approximately fifteen (15) minutes at the landfill and returned to BFI headquarters with an empty truck arriving there at approximately 11:55 a.m. (R-849) He then filled the truck up with fuel, parked it and went inside but forgot to clock out. (R-849) Mr. Stanberry left BFI at approximately 12:15 that afternoon. (R-851) When he arrived home, he learned that Taco had called him several times before he had arrived.

Mr. Stanley talked to Taco again on the phone and was informed that his friends had robbed Mike Finley's house whereupon Mr. Stanberry asked where they were. (R-852) While he was on the phone with Taco, Mr. Finley called him as well at approximately 12:30. (R-853) Mr. Stanberry then related to Mr. Finley that Taco thought the others were at the bus station. (R-853) Mr. Stanberry went there as well in hopes of retrieving his friends guns. (R-854)

While he was at the bus station, Rene and Wish pulled up in a cab but did not have the guns with them. (R-854) They told him they were sorry and told him that Taco knew where the guns were. (R-855) Mr. Stanberry then went and found Taco who showed him where the guns were. (R-856) Taco retrieved the guns and placed them in Mr. Stanberry's vehicle. (R-856) Mr. Stanberry then went back to the Finley residence at approximately 2:00 in the afternoon. (R-856) Later that day, he visited Valerie at the hospital, spoke with various

people, and when he arrived home again, received a call from Rene who said that Angel Melendez had shot Valerie. (R-861) Mr. Stanberry was angry with Rene because he did not tell him that Valerie had been shot. (R-861)

The next day, Mr. Stanberry told Mike Finley about how he had retrieved the guns and returned them to Mr. Finley. (R-861, 862) He took Mike Finley with him to go look for the guns. (R-862)

Following that, Mr. Stanberry made a call a police officer in New York by the name of Detective Hardy who was a friend of his. (R-866) He did so for the purposes of assisting in the investigation and apprehension of the individuals who shot Valerie Finley. (R-866, 867) Mr. Stanberry also turned over photographs of Rene Whitecloud and Angel Melendez, a/k/a Wish, to Detective Fletcher. (R-867) He also went in on his own to see Detective Fletcher at the Prichard Police Station and made a statement. (R-868)

Mr. Stanberry explained that he did not initially tell the police about the guns because Taco had threatened to name Mr. Stanberry as a participant if he release Taco's name to the Police Department. (R-871) Mr. Stanberry got a tape recording of Taco threatening to name Stanberry in the case if he went to the police. (R-872)

The defense moved to admit the tape into evidence and the Court reserved ruling on the matter. (R-876)

The Defendant vehemently denied ever being present at the Finley's home on March 2, 1992, the day of the shooting and having any involvement in it. (R-880, 881)

#### (CROSS-EXAMINATION)

On cross-examination, Mr. Stanberry surmised that due to the presence of a mask in the bag where the guns were found, either Ihoe or Wish had been wearing the mask at the time of the robbery and possible would have identified as Mr. Stanberry when Ms. Finley opened the door. (R-885-892)

The defense rested its case at the conclusion of Mr. Stanberry's testimony. (R-924)

#### REBUTTAL TESTIMONY OF MS. VALERIE FINLEY

Ms. Finley was recalled as a rebuttal witness and she testified that after having seen Terrell Moore, the individual who pleaded to Fifth Amendment on the stand, she positively identified him as not being one of the persons who committed the crime against her. (R-925)

The Defendant then again moved for directed verdict of acquittal base on the State's failure to prove a prima facie case as to each and every element of each and every count. (R-927) The Court denied the motion. (R-928)

The Court refused to allow the deposition testimony of Mr. Moore to go to the jury and he refused the taped conversation between Mr. Stanberry and Taco, wherein Taco admitted that he would frame Mr. Stanberry, to go to the jury. (R-931)

The Court's jury charges were lengthy, lasting approximately thirty (30) pages within the transcript. (R-941-956) The defense objected to the Court's refusal to give defense's requested jury charges numbers 1, 6, 7 and 13 and argued that they were all accurate statements of the law and should have been given. (R-957) In addition, the defense objected to the Court instructing the jury on the law of conspiracy and the elements therein for reasons that conspiracy was not a charge or element of any of the offenses charged in the indictments. (R-957)

The Court did in fact charge the jury on conspiracy, and in doing so, stated the following:

"So, again, conspiracy or common purpose to do an unlawful act need not be shown by positive testimony, as I have stated, nor need it be shown that there was any pre-arrangement to do the specific act complained of. So, it being present without pre-concert, two or more persons enter into a common illegal venture and one of them did the deed of violence and the other was present, aiding, abetting, encouraging or giving countenance to the unlawful act or ready with the perpetrator's knowledge of his intent to render assistance if necessary, to lend assistance if it should become necessary, then the other is as guilty as the actor himself. Therefore, in short, ladies and gentlemen of the jury, and accessory or accomplice is an associate in crime, a partner and a partaker in the guilt." (R-947)

The jury deliberated and returned a verdict of guilty to burglary in the first degree, robbery in the first degree and attempted murder as all charged in the indictment. (R-964)

The Court sentenced the Defendant on May 11, 1995 to twenty (20) years in each case, said sentences to run concurrently with one another. (R-980) The Court set an appeal bond of \$20,000.00 in each case. (R-981)

After the sentencing, the defense filed a Motion for New Trial and the Court held a hearing on that motion on July 28, 1995. [Motion for New Trial (R-1) (Court Record or CR-116)]

As grounds for the motion, the defense argued that the Court erred in refusing to allow into evidence the tape-recorded conversation between Donald (Taco) Jones and the Defendant, the video and audio taped confessions of Terrell Moore and the transcript of the interrogation of Terrell Moore by the Assistant District Attorney, Mr. Joe C. Jordan and Detective Labaron Smith. (CR-116) In addition, the defense argued among its several arguments that the State failed to produce to the Defendant a statement indicating that one of the witnesses had changed her testimony in regards to factually significant evidence, i.e. the testimony of Ms. Brenda Gay, the victim's sister wherein she testified at trial that she had placed a phone call to Valerie Finley and spoke to her at 8:00 in the morning instead of 9:00 which was consistent with other factual witnesses' testimony regarding seeing a similar vehicle to that of the Defendant's in the neighborhood of Valerie Finley on the morning in question. (R-9 Motion for New Trial) The defense argued that her written statement indicated that the time of the telephone call was 8:00. (R-5, 6) The defense formulated its alibi defense around the time period of 9:00 to 9:15 a.m. because that was the State's evidence that the crime was committed at that period of time due to the testimony of Ms. Gay having been on the phone when Ms. Finley answered the door and the ensuing events occurred. (R-8, 9)

As an additional ground for the Motion for New Trial, the Defendant claimed that there was a denial of due process for the State to refuse to extend use immunity for the defense witness Terrell Moore for his testimony at trial even though they had extended him the same immunity at Grand Jury and during the District Attorney's own investigation of the witness. (CR-117)

The defense also argued prosecutorial misconduct in failing to comply with the Court's "opened file" discovery order wherein the State District Attorney took the statement of Larry

Johnson Malone, a/k/a Pig, who is the young boy neighbor who testified that saw the Defendant's Bronco in the area at 9:00. (R-13, Motion for New Trial) The defense attorney stated that he was not provided information of this witness or his testimony from the State as he was entitled to receive under open file discovery. (R-13, Motion for New Trial) The State kept the contents of the statement under the guise of the District Attorney's own investigation of the witness, as his own notes and therefore work product rather than the statement of a witness made by the investigating team for the State. (R-15, 18, 19 Motion for New Trial)

On July 28, 1995, the Court denied the Motion for New Trial.

### ISSUE ONE

DID THE TRIAL COURT ERR IN REFUSING TO ADMIT INTO EVIDENCE A CONFESSION OF A THIRD PERSON WHO CONFESSED TO COMMITTING THE CHARGED OFFENSES AND WHICH COMPLETELY EXONERATED THE DEFENDANT WHEN THAT THIRD PERSON EXERCISED HIS 5TH AMENDMENT RIGHT TO REMAIN SILENT AND TO NOT GIVE EVIDENCE AGAINST HIMSELF?

The trial court erred in not allowing the statement(s) of Mr. Moore to be admitted into evidence. The prosecutor unlawfully deprived the defendant of exculpatory evidence by refusing to grant immunity to the witness for the defense, thus allowing his exonerating testimony to be presented to the jury. The statement of another that implicates that declarant and specifically exonerates the defendant for the crime charged should be admissible.

The general rule in Alabama has been that confessions made by third parties of committing the crime for which the defendant is accused have generally been deemed inadmissible. Such a ruling has been seen in Snyder v. State, 1996 WL 275276 (Ala.Crim.App. 1996). However, the Honorable Sue Bell Cobb of the Court of Criminal Appeals rendered a specially interesting concurring opinion calling for a change in the law. She stated the following:

“COBB, Judge, concurring specially.