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NORTH CAROLINA  
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 97 CrS 23656  
FILE NO. 97 CrS 39581  
FILE NO. 98 CrS 23486

STATE OF NORTH CAROLINA )  
 )  
v. )  
 )  
THEODORE MEAD KIMBLE )

TRANSCRIPT OF PROCEEDINGS

The above-captioned case coming on for hearing at the  
November 30, 1998, Mixed Session of the Superior Court of  
Guilford County, Greensboro, North Carolina, before the  
Honorable Peter M. McHugh, Judge Presiding, the following  
proceedings were held, to wit:

A P P E A R A N C E S

For the State: Richard E. Panosh  
Assistant District Attorney  
Eighteenth Judicial District  
Greensboro, North Carolina 27401

For the Defendant: Robert L. McClellan, Esq.  
121 South Elm Street  
Greensboro, North Carolina 27401  
John D. Bryson, Esq.  
P.O. Drawer 2086  
High Point, North Carolina 27261  
H.W. Zimmerman Jr., David B. Freedman,  
& Fred G. Crumpler Jr., Esqs.  
11 West Fourth Street  
Winston-Salem, North Carolina 27101-3899

Thursday, December 3, 1998

Reported by Marsha M. Garlick, RPR  
Official Superior Court Reporter  
Eighteenth Judicial District  
Greensboro, North Carolina 27402

DATE TRANSCRIPT ORDERED: September 10, 1999  
DATE TRANSCRIPT DELIVERED/MAILED: September 29, 1999

1                                    THURSDAY, DECEMBER 3, 1998

2        (This matter was held in open court, beginning at 3:58 p.m.  
3        The defendant was not present.)

4        (The defendant entered the courtroom at 3:59 p.m.)

5                    THE COURT:    Counsel, are you ready to proceed at  
6        this time?

7                    MR. PANOSH:    Yes, sir.

8                    MR. ZIMMERMAN:    Yes, Your Honor.

9                    THE COURT:    All right.

10                   MR. PANOSH:    Your Honor, these matters are the  
11        matters of Theodore Kimble.    They're before the Court, based  
12        upon a motion of counsel for the defense, Mr. McClellan and  
13        Mr. Bryson, to withdraw, and a request by Mr. Zimmerman and  
14        his firm to become counsel of record.

15                   The State would oppose both of those motions and  
16        like to be heard at the appropriate time.

17                   THE COURT:    All right.    The first order of  
18        business, I would like to hear from Mr. Zimmerman with  
19        regard to the application for an appearance in this matter.

20                   MR. ZIMMERMAN:    Judge McHugh, it's good to be in  
21        Your Honor's court.

22                   THE COURT:    Thank you.

23                   MR. ZIMMERMAN:    After Mr. Panosh sent you that  
24        letter, I forwarded you the information that we had.    The  
25        family has retained this firm only after a telephone

1 conversation that I had with Root Edmonson of the North  
2 Carolina State Bar, who indicated that based on his  
3 interpretation of 1.112 (sic), there wasn't such a personal  
4 and substantial, I believe are the words, interest in it  
5 that would prohibit us from appearing in the case, even  
6 though I had sentenced this defendant. It's the defendant's  
7 wish, and that of his family, that this firm, particularly  
8 Mr. Fred Crumpler and myself, represent this defendant.

9 I have submitted to Your Honor correspondence --  
10 or the opinion of the state bar, and an affidavit by  
11 Theodore Mead Kimble. And he's available for any questions  
12 Your Honor might have for him.

13 THE COURT: All right. Thank you.

14 Let me --

15 MR. ZIMMERMAN: Thank you, sir.

16 THE COURT: -- direct my questions to the district  
17 attorney. What is the basis for the State's objection to  
18 counsel's appearance in this matter?

19 MR. PANOSH: Your Honor, do you have a copy of the  
20 rules?

21 THE COURT: Yes. The revised Rules of  
22 Professional Conduct?

23 MR. PANOSH: Yes, sir.

24 THE COURT: Yes, sir.

25 MR. PANOSH: Your Honor, we would submit that

1 under Rule 1.12, it specifically states that a lawyer shall  
2 not represent anyone in connection with a matter in which  
3 the lawyer participated personally and substantially as a  
4 judge or other adjudicated officer, arbitrator or law clerk.  
5 Your Honor, there's no question that counsel, Mr. Zimmerman,  
6 participated personally and substantially because he was the  
7 judge. We would submit the only question is, was the matter  
8 in which he presided connected to the matter that is before  
9 the Court.

10 I'm aware of the opinion from the state bar, and  
11 in the state bar letter that I received, it says the current  
12 charges are completely unrelated to the breaking and entry  
13 convictions of 1997. And I assume that that is based upon  
14 information provided by Mr. Zimmerman, and I'm sure that Mr.  
15 Zimmerman holds that opinion. However, the State's opinion  
16 is that it is not completely unrelated, that in fact, these  
17 two cases are so intertwined that they cannot be separated.

18 To give you a little bit of history of the case,  
19 Your Honor, this murder for which the defendant stands  
20 charged occurred on October the 9th of 1995. There was no  
21 arrest in this case until April --

22 MR. ZIMMERMAN: Let me just say this, if Your  
23 Honor please, and note an objection for the record, please.  
24 I'm not going to stand here and listen to Mr. Panosh offer  
25 what he says is the recitation of the facts in the case.

1 We're here to make a determination whether or not this law  
2 firm can represent this defendant and give him the  
3 representation that he has requested. I'm not interested in  
4 hearing what Mr. Panosh says the facts are in the case.  
5 That's for the Court to determine. If the Court wants to  
6 have a hearing on what the merits of the case are, what the  
7 facts are, I have no recollection of ever having sentenced  
8 this defendant. Absolutely none. And I'm not interested in  
9 hearing about the State's recitation of the facts. I'm  
10 interested in the Court making a determination as to whether  
11 or not this firm and myself can represent this defendant and  
12 give him the best possible representation that he can get,  
13 if that's what he wishes. That's all.

14 THE COURT: Thank you.

15 MR. CRUMPLER: Your Honor, can I add something?

16 THE COURT: No, sir. Just a minute, please.

17 I have two comments and a response to your  
18 statement, Mr. Zimmerman. It is in fact necessary, I  
19 believe, for this Court to make a determination, if  
20 necessary, based upon an evidentiary presentation, whether  
21 you did have a substantial --

22 MR. ZIMMERMAN: All right.

23 THE COURT: -- and personal involvement in this  
24 matter. In order to do that, you may either stipulate or  
25 you may present evidence. But it will be necessary for me

1 to make a determination as to the involvement that you  
2 yourself, while acting as a Superior Court judge, had in  
3 this matter.

4 MR. ZIMMERMAN: All right.

5 THE COURT: So you and counsel for the State may  
6 determine whether you want to present that by stipulation or  
7 by evidentiary presentation.

8 The next observation I have is this. This is the  
9 last time that this attorney or any attorney in this  
10 courtroom is going to be interrupted by another lawyer  
11 before he finishes his statement. Is that clear?

12 MR. ZIMMERMAN: I understand that, if Your Honor  
13 please.

14 THE COURT: Thank you.

15 Now, do you want to confer, to determine how these  
16 facts are going to be presented to the Court, or do you wish  
17 to present evidence?

18 MR. PANOSH: We'll be happy to confer, Your Honor,  
19 if that's what you would like us to do. I don't -- I would  
20 tell Your Honor that there's a transcript that is not  
21 immediately available, will be shortly available, and in the  
22 event that there can be no stipulation, I would submit that  
23 the best way to submit it to Your Honor is through the  
24 transcript, instead of going through a proceeding in which  
25 evidence is heard again. I can summarize for Your Honor

1 what I believe the evidence on this point will be, and after  
2 I summarize it, perhaps counsel for defense --

3 THE COURT: Mr. Zimmerman, would you consent to  
4 the Court receiving the State's version of the summarization  
5 of the history of this -- your involvement in this  
6 proceeding, and then you may present yours?

7 MR. ZIMMERMAN: One second, if Your Honor please.  
8 (Mr. Zimmerman, Mr. Crumpler and Mr. Freedman conferred.)

9 MR. ZIMMERMAN: That'll be fine, Your Honor.

10 THE COURT: Go ahead, please.

11 MR. PANOSH: Your Honor, as I said, the arrest  
12 occurred on April the 1st of 1997. And I believe that  
13 current counsel, Mr. McClellan and Mr. Bryson, are in a much  
14 better position to relate or talk to Your Honor about the  
15 facts of the breaking and entry case that they handled. But  
16 I would submit that the evidence would show that in late  
17 1996, the defendant began a series of breaking and entries  
18 into residential and commercial places of business that were  
19 under construction, taking building supplies, to take back  
20 to his building supply store, to sell to the general public.

21 There was an investigation into that series of  
22 breaking and entries, which was not directly related to the  
23 murder, but it eventually became related to the murder. And  
24 in the course of those breaking and entries, they received  
25 information that there was some 40 odd homes that had been



1 broken into, homes under construction and a few businesses.

2 On April the 1st of 1997, the sheriff's department  
3 coordinated the two investigations, and they arrested the  
4 defendant on the murder, and they arrested the defendant on  
5 these series of breaking and entries.

6 Now, in the course of the investigation, it was  
7 determined that one Robert Nicholes, who was a part-time  
8 employee of the defendant's from December of 1996 through  
9 approximately April of 1997, was involved in a number of  
10 those breaking and entries. And in the course of those  
11 breaking and entries, he became friends with the defendant.  
12 And the defendant, we submit, admitted to him his  
13 participation in this murder.

14 Now, Mr. Nicholes has testified to that effect in  
15 the trial of the defendant's brother, Ronnie Kimble.

16 After Nicholes' arrest, which was about April the  
17 2nd of 1997, he began to cooperate with the State, and  
18 submitted to the State the information that he had about the  
19 murder. And in return, the State made a promise to him, and  
20 that promise was that he would get a certain sentencing  
21 concession in regard to the breaking and entries that he was  
22 concerned with.

23 It also came to light that one James Ogburn was an  
24 employee of the defendant at the time of the murder and at  
25 the time of the breaking and entries. He has direct

1 knowledge as to the defendant's actions on the day of the  
2 murder, October the 9th of 1995, and will be testifying to  
3 that. He has direct knowledge as to the breaking and  
4 entries, because he took steps to cover up those breaking  
5 and entries. When the lumber and the building materials  
6 were brought to Lyles Building Supply, which was owned and  
7 operated by the defendant, he cut off identifying marks.  
8 And he's admitted to that. And he's prepared to testify to  
9 that. He's also prepared to testify to the fact that he saw  
10 the defendant and the codefendant together talking just  
11 prior to the murder that occurred on October the 9th of  
12 1995.

13 He will testify to his personal involvement of  
14 this defendant. And he'll also testify that part of the  
15 reason that he kept quiet was because he knew that at the  
16 time of the breaking and entries, he was on probation, and  
17 he knew that the defendant could implicate him in those  
18 breaking and entries.

19 Patrick Pardee will testify. Patrick Pardee  
20 worked there, but not as an employee, he was a friend of the  
21 defendant. He worked at Lyles Building Supply, not for pay.  
22 He would go out and commit these breaking and entries. And  
23 he also indicates that in the course of the breaking and  
24 entries, the defendant confessed to him his involvement in  
25 the murder.

1           He also says that he was afraid of being involved  
2 in the breaking and entries, and that is part of the reason  
3 he didn't bring this to the attention of law-enforcement  
4 officers. He also stated that he was afraid of the  
5 defendant.

6           Now, Mr. Nicholes also states that he was afraid  
7 of the defendant. And the evidence is that on April the 1st  
8 of 1997, when the sheriff's department executed a search  
9 warrant at Lyles Building Supply, the same day the defendant  
10 was arrested for the breaking and entries and for the  
11 murder, they seized a number of materials. And those  
12 materials included books on how Big Brother investigates  
13 you, a book on how to beat the lie detector, a book on how  
14 to beat chemical tests, a book on defense tactics, a book on  
15 how to make disposable silencers, how to make homemade  
16 detonators, how to prepare high explosive devices, how to  
17 build silencers, a videotape, which is referred to as "Death  
18 Trap," a book on how to make homemade C-4, which is an  
19 explosive, and a book The Ultimate Sniper. Along with that  
20 was seized a silencer and a rifle and a substantial amount  
21 of ammunition, and also several pistols.

22           Both Mr. Nicholes and Mr. Pardee will testify they  
23 were afraid of the defendant. And the State, in support of  
24 that, intends to introduce these documents, these books that  
25 were seized from the defendant's place of business, showing

1 that he had the means and the opportunity and the knowledge  
2 to commit the crimes that he threatened these two witnesses  
3 with, to assassinate them if in fact they went to the  
4 police.

5           The evidence will be that they were told that if  
6 they revealed this information to the police in regard to  
7 the breaking and entries and also in regard to the murder,  
8 that he would kill them, that he could kill them, shooting  
9 them from a half a mile away. And he showed them this  
10 sniper rifle, and he said that no one would ever know about  
11 it, and they knew that he would not get caught, because up  
12 until that date, which is two years subsequent to the  
13 murder, he had not been caught for the murder.

14           There will also be, as I said, James Ogburn will  
15 testify, Patrick Pardee.

16           There's also a Rodney Woodberry, who was an  
17 employee of the defendant, up until the murder. He left the  
18 place of business right about the time of the murder.  
19 Rodney Woodberry will testify that the defendant came to him  
20 and tried to solicit him to find a hit man in regard to his  
21 wife. And he will testify to his knowledge about the  
22 breaking and entries that were going on subsequent to the  
23 time he left the business, and he'll testify to the fact  
24 that shortly after the murder of Patricia Kimble, the  
25 defendant sought him out, talked to him, told him also about

1 this sniper rifle and threatened him.

2           Your Honor, the evidence that was seized on April  
3 the 1st of 1997, all the evidence from the place of business  
4 that was seized in regard to the breaking and entries is  
5 going to be -- we're going to move to put into evidence in  
6 the murder, to show that these witnesses were credible, to  
7 show that the defendant had the knowledge and the ability  
8 and the -- knew how to make the explosive devices that -- of  
9 the type that were used to destroy the home after she was  
10 killed.

11           So, Your Honor, we submit that these two murders  
12 are connected -- I'm sorry, these two offenses are  
13 connected, the series of breaking and entries and the murder  
14 are connected. The date of arrest is the same. There are  
15 at least four witnesses who are going to be the same. The  
16 same evidence that was seized on April 1st in regard to the  
17 breaking and entries will be used in regard to the murders.  
18 The fact of the breaking and entries is going to come out,  
19 because it's part of the plea negotiations. There's a plea  
20 agreement between Nicholes and Pardee, which undoubtedly  
21 will be introduced into evidence for either the defendant or  
22 the State, probably both, showing that they are testifying  
23 for consideration in the breaking and entries, and  
24 therefore, those breaking and entries are related to the  
25 murder.

1           I cannot imagine a murder case of this type, where  
2 two people take the stand and testify, they're testifying  
3 under an agreement, where there's not going to be extensive  
4 cross-examination about the breaking and entries, about  
5 their motivation, and the motivation is, as we said, the  
6 fact that they were involved with the defendant during these  
7 breaking and entries.

8           Your Honor, we're talking about two words here in  
9 there, they say in connection with a matter. And I looked  
10 up the word "connected" in Black's Dictionary, and basically  
11 it says "united by junction, by intervening substance or  
12 medium." And that's exactly what we have here. All the  
13 facts from the breaking and entries are intervening into  
14 this particular murder case. And it talks about the matter,  
15 and Black's defines "matter" as "a substantial fact to form  
16 the basis for a claim or defense, a fact material to the  
17 issue." And all the facts that go into the breaking and  
18 entries are going to be material to this defendant's  
19 defense.

20           Now, we're opposing this late intervention of  
21 counsel for two reasons. First of all, we feel that if we  
22 don't oppose it, we're going to be giving the defendant a  
23 basis for posttrial relief, and secondly, because it's going  
24 to cause a substantial and unwarranted delay in this  
25 particular case.

1 I have looked, and I have found no cases  
2 whatsoever on this particular point. However, there is a  
3 motion for appropriate relief which is pending at this time,  
4 and this is a death case that comes out of Rowan County.

5 MR. McCLELLAN: We would object to this, Your  
6 Honor.

7 THE COURT: Objection overruled.

8 MR. PANOSH: And in this particular case, Your  
9 Honor, the district attorney that -- the assistant district  
10 attorney was an individual by the name of Dooley. And Mr.  
11 Dooley in the mid 1980s represented the State as an  
12 assistant district attorney, and the defendant's case came  
13 before him -- and this was a rape and kidnapping -- and for  
14 one reason or another, he dismissed that case. Then in  
15 1992, this same defendant committed a murder. And that case  
16 was tried in Rowan County. And Mr. Dooley was not in the  
17 case, but his partner, Mr. Locklear, was in the case.  
18 Eventually he was convicted and received the death penalty.  
19 And the tie is that they used some of the evidence from the  
20 mid 1980s case as 404(b). It sort of bled over into the  
21 murder case. And because of that, there's now a motion for  
22 appropriate relief, saying it was inappropriate for Mr.  
23 Locklear to represent the defendant in that case, because  
24 some years earlier, Mr. Locklear's partner had been an  
25 assistant district attorney.

1           Now, I don't know, I'm not predicting whether that  
2 has merit or what's going to happen in that particular case.  
3 I am telling Your Honor that we strongly feel that Mr.  
4 Zimmerman's intervention in this case is a technical  
5 violation of the rules, and if we allow him to intervene,  
6 that's going to be giving the defendant a post-conviction  
7 basis for relief.

8           Your Honor --

9           THE COURT: Are you basing that on a perceived  
10 conflict of interest claim, Mr. Panosh?

11          MR. PANOSH: Excuse me?

12          THE COURT: Are you basing that position on a  
13 perceived claim of conflict of interest by reason of a  
14 possible --

15          MR. PANOSH: Yes, sir.

16          THE COURT: -- ethical violation?

17          MR. PANOSH: Yes, sir. And it's important to  
18 point out that this matter in this particular case came to  
19 light during the trial, and the Court made inquiry, and the  
20 defendant in this particular case waived it, just as this  
21 defendant is going to waive, or I believe is prepared to  
22 waive any conflict of interest. But it's still going up,  
23 Your Honor.

24          THE COURT: All right.

25          MR. PANOSH: And I think that not only are we



1 basing it on a conflict of interest, but if you read the  
2 rules, what the rules say is, it's not something for the  
3 defendant to waive. It says that the only time he can  
4 participate is with the permission of all parties, and that  
5 would include the State. And because we don't want to cause  
6 a potential issue on appeal, we cannot consent, as is  
7 required by Rule 1.12. It says that unless all parties to  
8 the proceeding consult -- or consent, after consultation.

9           Your Honor, I brought up the breaking and entry  
10 files. Among one of the things that Mr. Zimmerman did of  
11 course was award counsel fees for his other codefendants --  
12 or the -- excuse me, for his co-counsel, or at least the  
13 counsel that preceded him in this particular case.

14           We just feel there's too many areas in which the  
15 Court of Appeals and the Supreme Court can find that there  
16 was a conflict of interest on the part of defendant -- of  
17 Mr. Zimmerman or a conflict based upon the rules, and give  
18 him a posttrial relief.

19           In addition to that, Your Honor, as I said, we  
20 have long scheduled this case for January. We would oppose  
21 any delay. If Your Honor is at some point considering  
22 allowing Mr. Zimmerman to enter the case, we would ask that  
23 present counsel not be allowed to withdraw, so that they're  
24 ready to go forward in January. Thank you.

25           I have all the indictments, if Your Honor wants to

1 look at them, and all the evidence.

2 THE COURT: All right. I'm going to note at this  
3 time that, unlike the matters cited to the Court from the  
4 Rowan County motion for appropriate relief, the  
5 circumstances before us at this time do not include an  
6 instance of prior representation. What we have here is an  
7 issue of Mr. Zimmerman's performance of his duties as a  
8 Superior Court judge. We don't have dual representation.  
9 We don't have prior representation. So I think that's  
10 distinguishable.

11 And I want to remark that I think, as I indicated  
12 earlier to Mr. Zimmerman, that before we approach the issue  
13 as to whether and in fact the State does not consent,  
14 following consultation, this Court must still make prior  
15 determination as to whether the conduct of the Superior  
16 Court judge on the plea adjudication constitutes personal  
17 and substantial participation in this murder case before the  
18 Court at this time. So I'm not going to accept the State's  
19 premise that a mere withholding of consent at this time  
20 precludes counsel from making an appearance in this case.  
21 And I still think it's necessary for me -- for this Court to  
22 make a determination as to the degree and to the nature and  
23 substance of his participation, both in the plea  
24 adjudication and as that case relates to this one.

25 Do you want to make any presentation, Mr.

1 Zimmerman, with regard to that issue at this time?

2 MR. ZIMMERMAN: What issue is that now, if Your  
3 Honor please?

4 THE COURT: The degree of your participation in  
5 the plea, in the breaking and entering pleas, as they relate  
6 to being involved substantially or personally in this trial  
7 that is going to be convened before this Court in January.

8 MR. ZIMMERMAN: Give us a minute, if Your Honor  
9 please.

10 (Mr. Zimmerman and Mr. McClellan conferred.)

11 MR. McCLELLAN: If Your Honor please --

12 MR. ZIMMERMAN: Let co-counsel speak to that  
13 point. He recalls it better than I do. I have absolutely  
14 no recollection of any of it, not even the face of this  
15 defendant.

16 MR. McCLELLAN: If Your Honor please, Bob  
17 McClellan. And I've been representing Mr. Kimble since  
18 April of 1997. I'm going to see if I can go back over some  
19 of the facts that Mr. Panosh has touched on. These charges,  
20 since they were breaking and entering charges, those came by  
21 means of indictment, not in April, but in a later time.  
22 When Mr. Kimble was arrested, he was initially arrested on  
23 charges of a homicide. Shortly after he was arrested for  
24 that, they began the investigation regarding the B&Es, and  
25 they found evidence about that, and presented that to a

1 grand jury several months later. We were actually appointed  
2 and informed by Mr. Panosh I believe in like October,  
3 September or October, in the fall, that he was going to move  
4 forward on those cases. It went to the grand jury about  
5 that time.

6 We were placed on Judge Zimmerman, then at that  
7 time, his arraignment calendar. Because Mr. Panosh had told  
8 us at that time his intention possibly would be to try these  
9 cases before the homicide cases ever come up, we decided it  
10 would be best to extinguish that possibility or to resolve  
11 that without having to have other hearings coincide at the  
12 same time, by doing pleas at arraignment, which we did. At  
13 that time, there was a --

14 THE COURT: Excuse me. The plea was entered at  
15 the arraignment?

16 MR. McCLELLAN: The plea was entered at the  
17 arraignment, Your Honor. On virtually all of these cases,  
18 there was a plea entered on all of them, and they were  
19 consolidated or heard all at that same time. There was  
20 evidence presented about the B&Es, but no evidence presented  
21 about the homicide, because at that time, there was no  
22 conviction, there was no evidentiary hearing about the  
23 homicide. There were no other participants engaged or  
24 charged with the homicide, other than Mr. Kimble himself.  
25 The other two gentlemen were not to have any role, or have

1 not to this date to my knowledge had any role with the  
2 homicide.

3           So, a year and a half after the fact, there are  
4 allegations that he was involved in B&Es, after the  
5 homicide. The homicide was supposed to have occurred in  
6 October the 9th of 1995. The date that he was charged with  
7 the B&Es was in April of 1997, or thereabouts. And they  
8 alleged to have occurred in January, February and March of  
9 1997. So approximately a year and a half separates the date  
10 of the homicide and the date of the charges related to the  
11 B&Es.

12           We were told, Mr. Bryson and I, at the time I  
13 consulted with Mr. Panosh, that there was on his mind the  
14 idea of trying these cases perhaps even first, do the B&Es  
15 before the homicide would even be reached. So obviously  
16 there has been so discussion of joinder at that time. There  
17 were no discussions that that would be one of the -- we  
18 found that to be essential. The cases were not indicted at  
19 the same time.

20           In terms of the evidence that was presented in  
21 front of Judge Zimmerman, that relates to the B&E, and there  
22 was no discussion of the homicide. As a matter of fact, we  
23 had finished the case, the sentence had been entered, the  
24 parties were dismissed, and as a matter of course, we  
25 approached the bench to collect evidence, and at that time,

1 we told the judge the fact that there was a pending homicide  
2 case, but that was sometime to be heard later on. It was  
3 not even before Judge Zimmerman that the homicide was a  
4 pending matter that would have any correlation to this  
5 particular series of B&E cases.

6 In terms of the witnesses that Mr. Panosh  
7 mentioned, he's mentioned three or four witnesses that might  
8 have evidence as to the homicide that might have been  
9 involved with the B&Es. However, that's a huge case, Your  
10 Honor, in which the prior case, which involved the  
11 codefendant, Mr. Kimble's brother, over 100 witnesses were  
12 called. So we're talking about a very small percentage in  
13 the scheme of things. And they themselves are not going to  
14 testify as to substantive issues that occurred at the time  
15 of the homicide. They're only saying, "This is what I  
16 heard. This is what I found out later on," through some  
17 other source, not because they were participants or had  
18 knowledge of anything that occurred at the time of the  
19 homicide.

20 THE COURT: Were those to your knowledge, counsel,  
21 were those codefendants' B&E charges presented before Judge  
22 Zimmerman at that same term of court?

23 MR. McCLELLAN: No, Your Honor. But I think --  
24 they may have been arraigned, but they were not -- they  
25 themselves, I think they may have been seated in the

1 courtroom, but they themselves were not sentenced before --  
2 (Mr. McClellan and Mr. Bryson conferred.)

3 MR. McCLELLAN: Mr. Bryson has corrected me, Your  
4 Honor, that they may have been actually arraigned in front  
5 of Judge Albright at an earlier time, and that their cases  
6 were put off because there was the potential that they would  
7 be called as witnesses against Mr. Kimble at a later time.  
8 So they were not actually on that particular week. I think  
9 they were -- their arraignment had been done about a week or  
10 two earlier, and they were anticipated to be potential  
11 witnesses to -- against Mr. Kimble. And they themselves  
12 were not called as witnesses at that hearing.

13 THE COURT: Have they in fact yet been resolved?

14 MR. PANOSH: No, Your Honor.

15 MR. McCLELLAN: They were not called as witnesses.  
16 Their counsel was not called to intervene or add any  
17 testimony. They themselves offered no testimony about the  
18 homicide, obviously, because they didn't testify. And there  
19 was really no discussion of them, other than as third  
20 parties. They did not have any bearing on the sentencing  
21 hearing themselves.

22 So, with that in mind, Your Honor, this is  
23 actually the first time that we've heard that these cases  
24 would have been considered joinable for trial. Up until  
25 this point, and even as Your Honor may find out, the cases

1 that we had, at one point there were intentions of the State  
2 to join Mr. Kimble with Ronnie Kimble for trial at the  
3 August 3rd session. About a month or several weeks  
4 beforehand, we were informed that they would now sever the  
5 case of Mr. Ronnie Kimble from that of Mr. Ted Kimble and  
6 try Mr. Ronnie Kimble first. When that occurred, there was  
7 no discussion up until that point that there would be any  
8 other cases that had been considered joinable or that the  
9 other defendants would be tried or heard at the same time.  
10 There was no indication that their case was related in time,  
11 place or participants, such that there had to be a hearing  
12 of their case at the same time.

13           Again, the amount of information that was provided  
14 to Judge Zimmerman was very limited as to the homicide  
15 itself, and purposefully so, I think that was correct, in  
16 the sense that that case was not being heard before him, the  
17 evidence was not related, in terms of time, place or  
18 parties. And there was really no inquiry being made by the  
19 Court, and properly so, by Mr. Panosh. I think he limited  
20 his discussions to that of the B&E, and it was not a general  
21 discussion of the homicide.

22           THE COURT: Will you state again, please, what  
23 your recollection of what representation regarding the  
24 homicide was made before Judge Zimmerman. You said it was a  
25 limited --



1 MR. McCLELLAN: None.

2 THE COURT: -- presentation.

3 MR. McCLELLAN: There was none actually made, in  
4 terms of the court hearing itself, Your Honor. And I think  
5 it was properly so, that there was no discussion. Mr.  
6 Kimble, he was at that time a first offender, had no prior  
7 record. There was no discussion of a homicide itself in the  
8 course of the evidence, as I recall. And only as the  
9 attorneys were approaching the bench to collect documents  
10 that had been presented to the Court during that, and after  
11 the sentencing hearing was dismissed, the case was over, and  
12 I think Mr. Kimble may have been leaving the room, and at  
13 that point as we approached the bench, we just informed  
14 Judge Zimmerman that there were other cases that were  
15 pending, they weren't before His Honor, and that they had no  
16 bearing on the case. And they were a homicide case, but I  
17 think both Mr. Panosh and I indicated to the judge it would  
18 not be heard for some months, and that was not to be a  
19 matter that would be considered by the Court, we said as  
20 much, and that was the end of the hearing.

21 THE COURT: Do you concur with that recitation of  
22 the circumstances with regard to the murder case during the  
23 plea hearing?

24 MR. PANOSH: Yes, Your Honor.

25 THE COURT: All right. Thank you.

1           MR. ZIMMERMAN: May I add something, if Your Honor  
2 please?

3           THE COURT: Yes, sir.

4           MR. ZIMMERMAN: I have no recollection at all of  
5 counsel mentioning anything to me about the case. As the  
6 Lord is my witness, I have absolutely no recollection of  
7 absolutely any of it, period, paragraph.

8           Now, I would like to say that -- is Your Honor  
9 going to give counsel further opportunity to be heard on the  
10 matter?

11          THE COURT: Absolutely, yes, sir.

12          MR. ZIMMERMAN: Excuse me?

13          THE COURT: Yes, sir.

14          MR. ZIMMERMAN: Thank you very much. I have  
15 nothing else to say, other than to bring to Your Honor's  
16 attention that in the letter to the bar, which I suppose we  
17 should offer into evidence as D-1, it is mentioned that at  
18 least two of the codefendants will in the breaking and  
19 entering cases, neither of whom is represented by me or is  
20 or has been, will be called to testify at the murder trial.  
21 "May Attorney Zimmerman represent the defendant on the  
22 murder charge?" "Yes." And Your Honor has read that. But  
23 for the record, I would offer it.

24          THE COURT: That's received in evidence.

25          MR. ZIMMERMAN: Thank you very much.

1           THE COURT: Mr. Zimmerman, let me ask you this.  
2 Do you recall whether you conducted any kind of in-camera  
3 review of any portion of any state file in connection with  
4 any charges against Mr. Kimble here?

5           MR. ZIMMERMAN: Not to be facetious, if Your Honor  
6 please, but if they were arraigned and they pled guilty that  
7 day, the State offered the evidence, and the chances are, I  
8 went through the transcript and heard whatever evidence or  
9 recitation on behalf of the State as to what the evidence  
10 would be. I have no recollection.

11           MR. McCLELLAN: I recall the sentencing hearing  
12 being of less than an hour. And that covered I believe  
13 approximately 40 B&Es, Your Honor, that Mr. Panosh either  
14 read evidence about or information to. Most of the time was  
15 consumed by going over individual portions of the cases that  
16 were related to a number of construction sites. And so, I  
17 would say that took the bulk of the time. Obviously, since  
18 my client had no record, and he was pleading guilty to the  
19 charges as they were, there was not a lot of discussion.  
20 There wasn't a plea arrangement as such either. So we were  
21 pleading guilty to the charges straight up. And as a  
22 result, there was not a lot of discussion, wouldn't have  
23 been, about the status of the cases.

24           THE COURT: Is it your representation to the Court  
25 then, Mr. Zimmerman, that your involvement with the breaking

1 and entering case and with Mr. Kimble during your service on  
2 the bench, were those matters presented to you in open court  
3 on the date the guilty plea was presented to you during that  
4 arraignment calendar?

5 MR. ZIMMERMAN: Absolutely, if Your Honor please.

6 THE COURT: All right. Thank you.

7 MR. ZIMMERMAN: Thank you.

8 THE COURT: Yes, sir?

9 MR. PANOSH: One thing I neglected to mention,  
10 there are a number of breaking and entries that are still  
11 pending. And whatever action you take in this case, Mr.  
12 McClellan and Mr. Bryson should remain on those.

13 THE COURT: The breaking and entering against this  
14 defendant?

15 MR. PANOSH: Yes, sir. There are only about -- I  
16 believe two-thirds of them were resolved. The rest of them  
17 are pending.

18 MR. McCLELLAN: At least that, Your Honor. There  
19 were a number of material issues about what was actually  
20 taken, if anything, on some of the occasions. Some of them  
21 were generalized in the indictments. As I said, we pled to  
22 over 40 of them. I can't imagine -- and the exposure list  
23 was well over 100 years. And we -- as a result of the  
24 charges and the pleas, those cases were all heard in some  
25 fashion. As to what might be remaining, Your Honor, there

1 wasn't an objection, some of these actually pled to lesser  
2 offenses, and that certain amounts were not taken. I think  
3 some were as to misdemeanor amounts, that were lesser-  
4 included.

5 In large part, Your Honor, the bulk of the cases  
6 were taken care of. If there are other ones outstanding, in  
7 large part, they are leftovers at best. They are crumbs on  
8 the plate. And for the large part, the exposure was more  
9 than adequate to give any judge a fair level swing without  
10 any limitation.

11 THE COURT: You made reference to an affidavit.  
12 Are you prepared to offer that evidence into evidence as  
13 well, counsel?

14 MR. ZIMMERMAN: Absolutely, if Your Honor please.  
15 I might just, if I can find it right here -- D-2?

16 THE COURT: All right.

17 MR. ZIMMERMAN: And I believe Your Honor has a  
18 copy of that.

19 THE COURT: I do.

20 MR. ZIMMERMAN: Ms. Marsha, if you would make  
21 copies of this, and you can keep the copies for the record.

22 May I approach the court reporter?

23 THE COURT: Yes, sir.

24 (Mr. Zimmerman placed the exhibit on the court reporter's  
25 table.)

1           MR. ZIMMERMAN: And one final thing, if I may be  
2 heard, if Your Honor please. On the comments of counsel for  
3 the State, the solicitor for the State, is to raise some  
4 problem with the appellate procedure. If indeed he is  
5 convicted of anything, it would seem to me, if Your Honor  
6 please, that it would be just as much problem with that,  
7 what the State said, a problem would also be incurred about  
8 whether or not this defendant has a right to have counsel of  
9 his own choosing, as opposed to court-appointed counsel.

10           THE COURT: When you say, "as opposed to court-  
11 appointed counsel," have you conferred with Mr. Kimble with  
12 regard to the status of his present trial counsel?

13           MR. ZIMMERMAN: Yes, we have.

14           THE COURT: What is your client's intent with  
15 regard to that?

16           MR. ZIMMERMAN: What is my client's what?

17           THE COURT: What does he intend to do about these  
18 attorneys who have been appointed to represent him? Is he  
19 moving to discharge them?

20           MR. ZIMMERMAN: No, they are moving to withdraw,  
21 if Your Honor please. Just a minute.

22           Mr. Crumpler -- can Mr. Crumpler speak to that, if  
23 Your Honor please?

24           THE COURT: Yes. I believe the affidavit  
25 indicates that it is in fact your firm which hopes to be

1 employed and retained --

2 MR. ZIMMERMAN: Yes, sir.

3 THE COURT: -- is that correct?

4 Yes, sir, Mr. Crumpler, you may speak on that  
5 issue then.

6 MR. CRUMPLER: Thank you, Your Honor. It would be  
7 helpful, I think, if I could just briefly tell you how it  
8 came to be how we got involved. The defendant's mother and  
9 father sitting back here, they came to me, not to Judge  
10 Zimmerman, to ask me to consider representing the defendant.  
11 I discussed this with him, and it was a first-degree murder  
12 case being tried as a capital case, and I explained that if  
13 they had individual -- if they were parents, trying to get  
14 someone to represent their son, not the defendant himself  
15 coming to me, that it would take two attorneys to do this.  
16 And in setting the fee that we set, I included Judge  
17 Zimmerman to discuss this with him, and he agreed to appear  
18 with me in the case. And at that time -- at some later  
19 time, somebody told him, he still was not aware at that time  
20 that he had ever heard any of these cases.

21 And Your Honor, I say this in reference to the two  
22 attorneys representing that were appointed. Their work  
23 product is good. I have gone through this. I commend both  
24 of them for the way they've handled the case. As far as we  
25 were concerned, we would be very satisfied, in being

1 associated by the parents, to appear with them in the case.  
2 Actually, it would save the State's money, because you have  
3 four lawyers doing what two would have the primary  
4 responsibility of doing. I'm sure this would suit the  
5 defendant also. We're not asking that they have to withdraw  
6 from the case. We simply are asking to appear in the case.

7 THE COURT: You intend to have at least two  
8 attorneys from your firm appear with the defendant, if  
9 you're permitted to make an entry in this case?

10 MR. CRUMPLER: Yes, sir, we will have two  
11 attorneys in the firm. It would be myself and Judge  
12 Zimmerman.

13 THE COURT: And you're asking to have two court-  
14 appointed counsel retained in the matter?

15 MR. CRUMPLER: Not asking, Your Honor. I'm  
16 saying, if the Court saw fit, we would do anything that you  
17 thought was most proper. I would say we'd be very satisfied  
18 and we'd be welcome to work with them. And I think we can  
19 work well together, from what I've heard.

20 THE COURT: Well --

21 MR. ZIMMERMAN: May I add just one caveat to that,  
22 please? It's really not a caveat, if Your Honor pleases.  
23 What Mr. Crumpler says is absolutely correct. But that when  
24 we talked to the family, I had no recollection of him, and  
25 still don't. When I think back, I don't have any



1 recollection of him in the courtroom or appearing in front  
2 of me. And I can't even tell you what courtroom it was in.  
3 But we were over here, I do remember that, because I was  
4 holding court over here. But I didn't know about it. When  
5 I found out about it, before the fee contract was signed and  
6 everything like that, I called the state bar, and that's  
7 when I talked to Root Edmonson and got an oral opinion, and  
8 then later got the written opinion, before we ever got  
9 firmly in the case. That's the reason I know about that. I  
10 checked very carefully about it, before we did anything  
11 about it.

12 Thank you.

13 THE COURT: Did I understand that there was a  
14 motion pending by assigned counsel to withdraw in this  
15 matter at this time?

16 MR. McCLELLAN: If Your Honor please, we think  
17 that that's just a formality that we have to do at this  
18 juncture. We felt like this issue needed to be resolved  
19 early on. We've not had discussions with -- formal  
20 discussions with anybody about remaining in the case.  
21 Presuming that normally when new counsel would appear, when  
22 somebody makes a general appearance, then normally appointed  
23 counsel withdraws. And we haven't made any discussions or  
24 agreements. And actually, this is the first day we've heard  
25 of having joint counsel. And I don't have any further

1 report to the Court. Normally we're making what we believe  
2 to be the considered and appropriate motion before the  
3 Court, for the Court to resolve this issue regarding  
4 conflict of interest, and what our future relegation of the  
5 parties might be. Obviously, Mr. Panosh has already  
6 indicated that he prefers us to remain as appointed counsel,  
7 because he has some intention of doing something in the --  
8 and that's not been my understanding before, but that's a  
9 possibility, I guess, because the cases may be outstanding.

10 THE COURT: If your firm makes an appearance in  
11 this case, Mr. Crumpler, are you going to be prepared to  
12 proceed at the January trial date that's --

13 MR. CRUMPLER: Yes, Your Honor, we can be.

14 THE COURT: -- tentatively set?

15 MR. CRUMPLER: They have done their homework well.

16 And Judge Zimmerman and I have discussed that, and we can  
17 try it by that time. Right now, neither --

18 MR. ZIMMERMAN: Barring any unforeseen  
19 occurrences.

20 MR. CRUMPLER: There is one thing, Your Honor, in  
21 that respect. The transcript of the first trial is long,  
22 and it's absolutely essential for any attorney. These  
23 gentlemen and ourselves, we haven't had a chance to study  
24 it. It's not all completed at this time. I think we'll all  
25 -- any one of the four of us would have --

1           MR. McCLELLAN: Ms. Garlick could probably answer  
2 that better than anyone else in the courtroom, Your Honor.  
3 I understand there are several volumes that have been  
4 produced, but I think the bulk of it is still under work in  
5 progress at this time. I've not been given a timetable as  
6 to completion. I think she's working as diligently as  
7 possible. She's informed me that there are several volumes  
8 that are ready to go. But it was a month -- a five-week-  
9 long trial, so I'm not exactly sure where that leaves the  
10 transcript.

11           MR. ZIMMERMAN: As a follow-up to that, I talked  
12 with Ms. Garlick yesterday or the day before, and Ms.  
13 Garlick informed me that there are a number of volumes in  
14 the judge's office upstairs, ready to be picked up, which I  
15 intended to do today, if we were going to stay in the case,  
16 and get started on that.

17           I do think it would be remiss that we not have the  
18 full transcript of the Ronnie Kimble trial, before -- and  
19 have a chance to digest things, before we start into  
20 thrashing around about Theodore Mead Kimble. But I agree  
21 with Mr. Crumpler, we're ready to proceed. And Your Honor  
22 knows of my reputation as a solicitor and a judge. I like  
23 to move along. And I'd like to be able to try it on January  
24 25th. That's my understanding of when it's set. 26th or  
25 25th. I think Your Honor's the Court.

1           MR. CRUMPLER: Your Honor, the time constraints I  
2 think we all had the same, because any one of the four of us  
3 and all of the four of us will have if we're in the case are  
4 going to have to study that very, very carefully and  
5 consider what was said there, and we're going to have to  
6 consider whether what was what there would be competent, do  
7 research on it in this upcoming case. And I don't think the  
8 time would be different that I can see as to that particular  
9 issue. The other issues, we've had the benefit of some very  
10 good homework that they have done.

11           I may say again, we have not had a chance to  
12 discuss this, because I was prepared, if there -- this had  
13 not been contested, to go to the trial judge and tell the  
14 trial judge what I think they've done, which I speak highly  
15 of them. And if we are brought in the case by the  
16 defendant's parents, we certainly can save the State money,  
17 if they stay in the case, and we would like them to stay in  
18 the case. There is no question then as to time. And  
19 actually, it would be less expensive. The time that they  
20 would have to spend that way would be less than it would the  
21 other way.

22           THE COURT: Less expensive for who, Mr. Crumpler?

23           MR. CRUMPLER: For the State, because they are --  
24 at least the work that we would be doing, they wouldn't have  
25 to duplicate, and we could work together as a team, and

1 their hourly involvement would be less than it would be  
2 otherwise if they were in the case.

3 THE COURT: Well, you are making an appearance, as  
4 I understood, representing the defendant, not the  
5 defendant's parents. That is correct, is it not?

6 MR. CRUMPLER: We represent the defendant, Your  
7 Honor, at his personal request. We were retained. He had  
8 no money to retain us. His parents mortgaged their home to  
9 do that. And when I say his parents, they asked us to  
10 represent him. We've talked with him, and he personally has  
11 requested that we did do this, and he's prepared to tell you  
12 that, if you'd ask him right now, that he wants us to  
13 represent him.

14 THE COURT: Well, I'll tell you what my concern  
15 is. My concern is that the two attorneys who were assigned  
16 to represent Mr. Kimble, apparently in April of 1997, are  
17 two highly-qualified, highly-competent trial attorneys and  
18 the best in this part of the state. They are appointed by  
19 the Court. They are compensated at state expense. You're  
20 telling me that Mr. Kimble has requested and has determined  
21 that he wishes to employ counsel of his own choosing, and  
22 has, either through his family or some other source,  
23 acquired the means to retain a firm of how many? In your  
24 firm, and at least two highly-experienced, highly-qualified  
25 attorneys, and three in the courtroom at this time from that

1 firm.

2 The question that comes to my mind is, how many  
3 attorneys is the state required to provide for him, in the  
4 face of your purported representation?

5 MR. CRUMPLER: Your Honor, I don't care to argue  
6 that. I'm simply saying, whatever you decide, we obviously  
7 would go along with that. I'm not -- I'm making a point, in  
8 that if there's some question about the timing of this, if  
9 it'll take longer if we were in it, it wouldn't take any  
10 longer -- I don't think it would make any difference in  
11 time. I think the problem we're at this time, all four of  
12 us will have, it has to do with that transcript. But we're  
13 all in the same -- starting from the same starting point  
14 there.

15 MR. FREEDMAN: Your Honor, I think the bottom line  
16 is, we're -- our firm is prepared to go forward at this time  
17 and would be prepared to go forward at this time and be  
18 prepared upon the trial date. And our firm in and of itself  
19 will have at least two attorneys representing Mr. Kimble at  
20 trial.

21 MR. ZIMMERMAN: And further, to one of Your  
22 Honor's questions earlier on, the defendant would like to  
23 tell you, and I'm going to tell you first -- if you want to  
24 talk to him, that's fine with us, if Your Honor please --  
25 but he'd tell you he is not happy with his court-appointed

1 counsel. And he told me a minute ago he'd tell you that  
2 himself, if Your Honor asked him. I just bring that to the  
3 Court's attention. We're ready to proceed without court-  
4 appointed counsel. It's their motion to withdraw. And very  
5 frankly, being around as long as I have, I've never quite  
6 heard of a case that had four counsel in it. And if you're  
7 going to have court-appointed counsel, you have court-  
8 appointed counsel. If you're going to have privately-  
9 retained counsel, you're going to have privately-retained  
10 counsel.

11 THE COURT: All right. I'd like to direct some  
12 discussion with the defendant. Would you have him sworn,  
13 please.

14 (The defendant stood.)

15 THE CLERK: Do you swear that the answers you  
16 shall give to the Court shall be the truth, the whole truth,  
17 and nothing but the truth, so help you, God?

18 THE DEFENDANT: I do.

19 THE COURT: Sir, would you please state your full  
20 name for the court record at this time.

21 THE DEFENDANT: Theodore Mead Kimble.

22 THE COURT: And Mr. Kimble, you are the defendant  
23 in these actions, of course. They are 97 CrS 39581, 23486  
24 and 23656. Among the charges against you, Mr. Kimble, as  
25 you are no doubt aware, is a charge of first-degree murder.

1 It's my duty at this time, Mr. Kimble, the question of  
2 whether you are going to be represented by Mr. Zimmerman and  
3 his firm having been called into issue, I need to certify  
4 and make you aware that you must be fully advised of the  
5 facts underlying this potential conflict that the State  
6 contends may exist. And I want to know first of all whether  
7 you've been able to hear everything that Mr. Panosh said to  
8 me with regard to how he thinks there may be a conflict of  
9 interest with regard to Mr. Zimmerman acting in this case.  
10 Have you heard what he said to me?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that the State  
13 believes, and it certainly appears to be likely, that  
14 persons who were codefendants with you in some or all of the  
15 breaking and entering charges for which you were indicted  
16 will be called upon to offer evidence against you in the  
17 first-degree murder and other related cases that will be  
18 called before this Court? Do you understand that?

19 THE DEFENDANT: Yes, sir, I'm well aware of the  
20 deal in which they've cut with the DA.

21 THE COURT: And do you understand that the State  
22 contends that under the rules of professional  
23 responsibility, if a lawyer who was previously a judge had a  
24 substantial and personal involvement in the matter, that he  
25 may not be permitted to represent a person in that



1 particular matter? Do you understand that that is what --  
2 essentially what the rules of professional responsibility  
3 state?

4 THE DEFENDANT: Yes, sir. But I also understand  
5 that I wasn't in front of this man but a few minutes, and I  
6 pled -- what happened is, I was arraigned on Friday, in  
7 front of one judge on television, where we immediately  
8 started pleading guilty to the charges, and due to a lack of  
9 time to be sentenced, I'd have to be brought over on Monday.  
10 I was brought over Monday, put into a holding cell, where I  
11 signed documents, to plead guilty to everything. I was  
12 marched in front of the Court, and -- where I pled guilty to  
13 everything in front of him, and he didn't say hardly but a  
14 few words to me. And I told him I understood my charges and  
15 I pled guilty, and apologized to the Court. He sentenced me  
16 and I walked out. And that was it.

17 THE COURT: Was your recollection of that plea  
18 hearing then essentially what Mr. McClellan here just  
19 related to me, about what transpired at that guilty plea  
20 hearing?

21 THE DEFENDANT: Yes, sir. Exactly the way he said  
22 it was. The homicide charges or anything related was not  
23 mentioned. As far as Patrick Pardee and Rob Nicholes, they  
24 were just sitting on the back row laughing while I was up  
25 there being sentenced.

1           THE COURT: I'm obliged to allow you to have an  
2 opportunity to express your views about this contended  
3 conflict of interest. Do you have views you wish to express  
4 with regard to Mr. Zimmerman's -- what is contended to be a  
5 conflict of interest?

6           THE DEFENDANT: I don't see where there would be  
7 any conflict of interest. I know that I sought -- you know,  
8 we have sought them out. And as far as my present counsel,  
9 I'm just not satisfied as to the fact that I feel that I can  
10 better choose counsel for myself than the court system, you  
11 know. They have persistently tried to get me to cut a deal  
12 with the DA over here, and I have said three times no. And  
13 they've traveled a great distance, hours out of the way, to  
14 come see me, and I have stated this three times. And I feel  
15 that it's not in my best interest for them to represent me,  
16 if they're trying to get me to cut a deal with the DA.  
17 Three times.

18           THE COURT: You've already been advised at least  
19 twice by the Court I'm sure of your right to have counsel  
20 assigned to represent you, in the event that you are  
21 indigent. Do you understand that?

22           THE DEFENDANT: Yes, sir.

23           THE COURT: Are you advising me at this time that  
24 it is your intention to discharge the attorneys who were  
25 appointed to represent you --

1 THE DEFENDANT: Yes, sir.

2 THE COURT: -- if allowed to do that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you telling the Court that you are  
5 prepared to waive your right to be represented by court-  
6 appointed counsel, and you're going to be represented by  
7 privately-employed counsel?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions about that,  
10 that you'd like to ask me at this time?

11 THE DEFENDANT: No, sir.

12 THE COURT: Is it your intention that the firm of  
13 White and Crumpler, specifically Mr. Crumpler, Mr. Zimmerman  
14 and Mr. Freedman, as appropriate, be your attorneys in this  
15 case from this point forward?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you desire the Court to discharge  
18 the court-appointed attorneys who were previously assigned  
19 to represent you; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. I'd like you --

22 (The Court conferred with the clerk.)

23 (Time was allowed for the clerk.)

24 MR. ZIMMERMAN: May he have a seat, if Your Honor  
25 please?

1 THE COURT: Yes. I'm sorry. Have a seat, please.

2 (The defendant was seated.)

3 (Further time was allowed for the clerk.)

4 MR. PANOSH: May I approach?

5 THE COURT: Yes, sir.

6 (Mr. Panosh handed a document to the Court.)

7 THE COURT: I have one.

8 All right. Mr. Kimble, again I'll ask you, if you  
9 will, please, to --

10 MR. FREEDMAN: May I approach?

11 (The Court handed a document to Mr. Freedman.)

12 (The defendant stood.)

13 THE COURT: I want to address you with regard to  
14 the charges against you and make sure and certain that you  
15 understand your rights with regard to these attorneys.

16 You understand that you're charged in indictments  
17 returned against you in this county with first-degree  
18 murder, first-degree arson and conspiracy to commit murder?  
19 Do you understand that, Mr. Kimble?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand if you are found  
22 guilty of first-degree murder, there will be a sentencing  
23 hearing convened, and the possible punishments at that  
24 hearing would be a sentence of death or a sentence of life  
25 imprisonment?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that with regard to  
3 all of these charges, you have the right to be represented  
4 by counsel, and that you have the right to be represented by  
5 legal counsel if you are indigent?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And in fact, you have been represented  
8 by court-appointed counsel from the date of immediately  
9 following your arrest until this time; is that also correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you desire at this time to waive  
12 your right to assigned counsel and choose to be represented  
13 by counsel of your own choosing?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. And have you signed the --

16 THE DEFENDANT: Yes, sir.

17 THE COURT: -- document that was placed before  
18 you? Is that a fact?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Place him under oath,  
21 please.

22 THE CLERK: Do you swear you waive the right to  
23 the assignment of appointed counsel, and desire to represent  
24 yourself or hire your own attorney, so help you, God?

25 THE DEFENDANT: I do.

1           THE COURT: Mr. Kimble, furthermore, on the  
2 affidavit that's been submitted to the Court, you stated  
3 under oath that -- I would quote it, "I understand that H.W.  
4 Zimmerman Jr. was the presiding judge who sentenced me in  
5 December 1997 for certain crimes unrelated to the pending  
6 first-degree murder charges. And I hereby waive any  
7 conflict of interest regarding same, although I believe none  
8 exists." Was that your sworn statement that was given on  
9 November 9, 1998, Mr. Kimble, on the affidavit?

10           THE DEFENDANT: Yes, sir.

11           THE COURT: All right. Is that still your  
12 position in this case?

13           THE DEFENDANT: It is, sir.

14           THE COURT: Do you understand that any future  
15 claim of ineffective assistance of counsel relating to a  
16 conflict of interest, as is contended by the State at this  
17 time, may be waived by you, if you insist on being  
18 represented by Mr. Zimmerman?

19           THE DEFENDANT: I understand completely, sir.

20           THE COURT: And do you continue to insist to be  
21 represented by Mr. Zimmerman and his firm?

22           THE DEFENDANT: Yes, sir.

23           THE COURT: And do you continue to freely and  
24 understandingly and intelligently waive your right to assert  
25 the ineffective assistance of counsel claim which may be

1 predicated upon that contended conflict of interest?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Thank you. Would you be  
4 seated then, please.

5 (The defendant was seated.)

6 THE COURT: All right. Enter the following order.  
7 This matter is before the Court upon the motion to appear,  
8 filed by H.W. Zimmerman Jr. and the law firm of White and  
9 Crumpler, and upon the objection raised by the State to that  
10 appearance. And the Court has conducted a hearing to  
11 inquire as to whether a conflict of interest exists, which  
12 may give rise to a claim of ineffective assistance of  
13 counsel.

14 Present at all times during the conduct of this  
15 hearing were the defendant, attorneys herebefore appointed  
16 by the Court to represent him, Mr. McClellan and Mr. Bryson.  
17 Also present on behalf of the defendant, Mr. Zimmerman, Mr.  
18 Crumpler and Mr. Freedman of the firm of White and Crumpler.  
19 Representing the State was Assistant District Attorney  
20 Richard Panosh.

21 Based upon the representations of counsel, and  
22 upon the Court's review of the records in this action, and  
23 upon the Court's examination of the defendant under oath,  
24 and the receipt of the matters in evidence presented by the  
25 defendant, the Court finds as a fact that the State contends

1 that by reason of his service as a presiding judge at the  
2 hearing in which the defendant, Theodore Mead Kimble,  
3 entered pleas of guilty to certain counts of breaking or  
4 entering or larceny, that said service on the part of Mr.  
5 Zimmerman constitutes personal and substantial participation  
6 in the matters now before the Court, that the matters now  
7 before the Court involve charges of first-degree murder,  
8 first-degree arson and conspiracy to commit murder.

9           The Court finds as a fact, based upon  
10 representation of counsel, that Mr. Zimmerman has no  
11 independent recollection of any kind with regard to the  
12 proceedings at which the defendant appeared before him.

13           The Court finds as a fact, based upon  
14 representation of counsel for the State, that certain  
15 persons who were charged in connection with the breaking or  
16 entering or larceny counts to which the defendant's pled  
17 guilty will probably and in all likelihood be called to  
18 testify as witnesses for the State and against the defendant  
19 in the matters now before the Court.

20           The Court finds as a fact, based upon  
21 representations of counsel for the State and the defendant,  
22 that the murders and conspiracy and arson counts which are  
23 presently before this Court were not a subject of the plea  
24 adjudication hearing conducted before Judge Zimmerman in  
25 this cause.



1           Based upon the foregoing findings of fact, the  
2 Court concludes as a matter of law that H.W. Zimmerman Jr.,  
3 during his service as Superior Court judge, did not  
4 participate personally and substantially in any respect in  
5 the matters which are now presently before the Court. And  
6 the Court further concludes as a matter of law that H.W.  
7 Zimmerman Jr. is not precluded or barred in any respect by  
8 the revised code of professional conduct from representing  
9 the defendant in the matters now before this Court.

10           The Court finds as a fact and concludes as a  
11 matter of law that the defendant has been fully apprised of  
12 the facts underlying the perceived and contended conflict of  
13 interest or ethical violation. The defendant has been given  
14 the opportunity to express his views with regard to that  
15 perceived or contended conflict of interest. The defendant  
16 has presented to the Court that he believes none exists, and  
17 that he freely, voluntarily and understandingly waives any  
18 claim that he may hereafter have with regards to ineffective  
19 assistance of counsel claim relating to the perceived  
20 conflict of interest. The Court concludes as a matter of  
21 law that the defendant has waived any claim that he may have  
22 with regard to this conflict of interest.

23           It is therefore ordered, adjudged and decreed that  
24 no personal and substantial participation was had by H.W.  
25 Zimmerman Jr. in the matters now before the Court. The

1 appearance of the firm of White and Crumpler is hereby noted  
2 of record as a general appearance.

3           You are not limiting your appearance in any way, I  
4 assume, gentlemen; is that correct?

5           MR. CRUMPLER: We are not, Your Honor.

6           THE COURT: And the Court further notes that the  
7 defendant, in open court, under oath, has waived his right  
8 to assigned counsel and has indicated to the Court his  
9 intention to discharge court-appointed counsel.

10           Let the record further show that counsel for the  
11 defendant, the firm of White and Crumpler, have presented to  
12 the Court that they at this time are prepared to proceed to  
13 trial on January 25, 1999, or as soon thereafter as this  
14 case may be called for hearing.

15           Counsel, do you wish to be heard any further at  
16 this time on the motion to withdraw?

17           MR. McCLELLAN: No, Your Honor. I think that  
18 that's adequate.

19           THE COURT: Thank you.

20           Mr. Panosh, anything else?

21           MR. ZIMMERMAN: Your Honor --

22           MR. PANOSH: Your Honor, since there are new  
23 counsel in the case, I'm sure you'll allow further motions,  
24 although pretrial motions have been heard. We'd ask that  
25 any more pretrial motions be filed by January the 4th and be

1 heard in that term.

2 THE COURT: Have pretrial motions in fact been  
3 heard? There's a typical battery of pretrial motions that  
4 I've seen filed in the court file, but I haven't seen any  
5 disposition of note.

6 MR. PANOSH: My recollection is they've all been  
7 heard, Your Honor.

8 (Mr. Panosh and Mr. McClellan conferred.)

9 MR. PANOSH: Some have been reserved for the trial  
10 court, but they've all been addressed to some extent.

11 MR. McCLELLAN: I think there were some motions in  
12 limine, Your Honor, that were extended, that it was decided  
13 that those would probably be better for the trial court, and  
14 they were different from those perhaps of Ronnie Kimble, so  
15 they haven't been heard.

16 THE COURT: Have whatever rulings been issued in  
17 the case been reduced to a transcript? I see no order, is  
18 my question.

19 MR. PANOSH: If it hasn't been done, it's my  
20 fault, because I was supposed to do it.

21 MR. McCLELLAN: There were hearings, Your Honor,  
22 at a couple of occasions. I believe we heard some in like  
23 March or April of this year.

24 THE COURT: In fact, the only order I've been able  
25 to locate was Judge Freeman's Rule 24 order.

1 MR. PANOSH: If it's agreeable with the Court,  
2 before they're out of the case, can we make sure that that's  
3 done, because it -- that there's an appropriate order  
4 entered?

5 MR. McCLELLAN: We can try to go back and  
6 reconstruct what was done up to this point, Your Honor. I  
7 don't think there was anything -- the defendant was present  
8 when all those were done. I think that a large part of what  
9 remains were motions related to the -- we had a motion for  
10 continuance which was resolved, and other matters that were  
11 procedurally related. The ones that are before the Court  
12 then are those motions in limine that were properly left up  
13 to the trial court.

14 THE COURT: All right. Can I assume that the  
15 judge didn't direct either the State or the defendants to  
16 submit a proposed order in conformity with the rule?

17 MR. McCLELLAN: No, Your Honor. We were given a  
18 timetable on some particular items, but obviously we didn't  
19 go to trial. And so, there have been some -- I'm sure some  
20 new information that would be provided in the transcript,  
21 that may need to be addressed. By there are additional  
22 motions in limine with regard to the trial.

23 MR. ZIMMERMAN: We have motions we want to file,  
24 also. And that deadline, if you could move it up to the  
25 8th, I'd appreciate it, January the 8th.

1 THE COURT: January 8th?

2 Do you have any trouble with that, Mr. Panosh?

3 MR. PANOSH: Yes, I do, Your Honor, simply because  
4 we'd like to have the motions heard before Your Honor, and  
5 you're scheduled for criminal court on January 4th, and not  
6 the 8th.

7 THE COURT: And I have a, what, a civil term in --

8 MR. PANOSH: I don't know. I only have criminal  
9 matters noted here.

10 MR. ZIMMERMAN: Your Honor pleases --

11 THE COURT: Well, I know I'm here for the entire

12 --

13 MR. ZIMMERMAN: Six months.

14 THE COURT: -- session. I will see to it that we  
15 set a time certain for hearing of motions during the week of  
16 the 11th or subsequent weeks, but prior to trial. I'll give  
17 you to the 8th, yes.

18 MR. ZIMMERMAN: Thank you very much, if Your Honor  
19 please.

20 THE COURT: Anything else, gentlemen?

21 MR. ZIMMERMAN: Yes, sir. One final thing. I'd  
22 like to have a short -- well, who's going to do the order  
23 for today? Are you going to direct Ms. Garlick to do this  
24 order?

25 THE COURT: She will.

1 MR. ZIMMERMAN: All right. Thank you, sir.

2 The other thing is, could Your Honor enter an  
3 order, sending him directly back to Southern Correctional  
4 Institute today? I understand if you don't enter some kind  
5 of order, they'll keep him for about a week.

6 MR. PANOSH: Your Honor, they'll probably send him  
7 back tomorrow. I've already made those arrangements, unless  
8 you issue a separate order. It's fine if you want to issue  
9 that order.

10 THE COURT: What is your concern, that he not stay  
11 in the local confinement facility for a whole week?

12 MR. ZIMMERMAN: He needs to get back. We have  
13 some people that are going to talk to him.

14 THE COURT: Okay.

15 Sheriff, do you know whether you can make  
16 arrangements to return him this afternoon, or is tomorrow  
17 the earliest possible you can reasonably do it?

18 MR. ZIMMERMAN: Tomorrow will be fine, if Your  
19 Honor please.

20 (Mr. Zimmerman conferred with the bailiff.)

21 MR. ZIMMERMAN: Thank you, sheriff.

22 THE COURT: The latest is tomorrow morning.

23 Thank you, counsel.

24 Sheriff, put us in recess.

25 (This matter was concluded at 5:07 p.m.)

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NORTH CAROLINA  
GUILFORD COUNTY


IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 97 CrS 23656  
FILE NO. 97 CrS 39581  
FILE NO. 98 CrS 23486

STATE OF NORTH CAROLINA )  
  )  
  )  
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  )  
  )  
THEODORE MEAD KIMBLE          )

C E R T I F I C A T E

I, Marsha M. Garlick, Official Superior Court Reporter, Eighteenth Judicial District, do hereby certify that the foregoing said hearing, Pages 1 through 54 inclusive, constitutes the complete and accurate transcript of my stenograph notes of the proceedings in this matter on December 3, 1999, at the November 30, 1998 Mixed Session of Superior Court, Guilford County, North Carolina, and were transcribed by me personally.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney of counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

  
\_\_\_\_\_  
Marsha M. Garlick, RPR  
Official Superior Court Reporter  
Eighteenth Judicial District  
Greensboro, North Carolina