

VOLUME I - MOTIONS

1 NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
2 GUILFORD COUNTY SUPERIOR COURT DIVISION
3 FILE NO. 97 CrS 23654
FILE NO. 97 CrS 39580
FILE NO. 98 CrS 23485

4 STATE OF NORTH CAROLINA)
5 v.) T R A N S C R I P T
6 RONNIE LEE KIMBLE)

7 Transcript of proceedings taken in the General Court of
8 Justice, Superior Court Division, Guilford County, North
9 Carolina, August 3, 1998 Regular Criminal Session, before
10 the Honorable Preston Cornelius, Judge Presiding.

11

12 A P P E A R A N C E S

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1 THE COURT: What are the charges against the
2 defendant at the present time?

3 MR. PANOSH: The charges are first-degree murder,
4 conspiracy to commit first-degree murder, first-degree
5 arson. And he was also charged with second-degree arson.
6 Now since counsel has agreed to the joinder of the first-
7 degree arson, I think the second-degree arson falls out.
8 It's the same offense.

9 THE COURT: So you're proceeding on first-degree
10 murder, conspiracy to commit murder and first-degree arson;
11 those are the three charges?

12 MR. PANOSH: Yes, sir.

13 THE COURT: The other charge is not for this
14 Court?

15 MR. PANOSH: The other charge originally alleged
16 the same case, on the second-degree basis, and we would
17 submit to the Court that's subsumed by the first-degree
18 arson indictment.

19 THE COURT: All right, sir.

20 MR. PANOSH: Your Honor, we've filed a motion for
21 discovery, and this has to do with a specific tape
22 recording. I can hand that up, if you don't have it handy.
23 (Mr. Panosh handed documents to the Court.)

24 MR. HATFIELD: May I address the Court on that?
25 It might save time.

1 THE COURT: Let me read the motion first, and then
2 I'll hear you.

3 MR. HATFIELD: We don't offer the contents of the
4 tape.

5 THE COURT: Sir?

6 MR. HATFIELD: We've fully complied with
7 discovery.

8 THE COURT: All right.

9 MR. HATFIELD: We're not offering the contents of
10 the tape, just the cassette itself.

11 THE COURT: Okay, sir.

12 MR. HATFIELD: Because of the address that's
13 written on the cassette, and not because of anything that
14 may be contained in an audio recording.

15 MR. PANOSH: Your Honor, we oppose that. If the
16 jury is shown a cassette, with the name of the State's
17 primary witness on it, they're going to wonder what's on it,
18 and they're going to wonder what's on it forever. We ask
19 that that not be admitted, unless the tape and the contents
20 of the tape be admitted. As you see there, Judge Beale
21 ordered this stuff be disclosed, I believe, by July -- June
22 -- June 22, as I recall, and we would ask that it be
23 disclosed at this time.

24 MR. HATFIELD: We are not offering the contents of
25 the audiotape.

1 THE COURT: Well, do you intend to offer the tape?

2 MR. HATFIELD: The tape shows an address, and it
3 is a link between the witness and the defendant. It is only
4 being offered for what is there, plain and simple. We have
5 no intention of even suggesting that the contents of the
6 audio function of the tape have any bearing on this case.
7 We have fully complied with discovery.

8 MR. PANOSH: Your Honor, the State -- let me
9 provide you with a copy of that.

10 THE COURT: Well, am I reading Judge Beale's order
11 here?

12 MR. PANOSH: I can provide you with Judge Beale's
13 order. I don't believe it's --

14 THE COURT: It says that "On July 31, 1998, in the
15 late afternoon, the defendant delivered a photocopy of the
16 exterior of the audio cassette, labeled Mitch Whidden, along
17 with other documentary discovery."

18 MR. PANOSH: That's my motion. That is not the
19 Court's order. May I approach?

20 THE COURT: Yes.

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

22 MR. HATFIELD: And that's all. What you see
23 before you, other than the original of it, is exactly what
24 we intend to offer. We do not offer the contents of the
25 tape.

1 MR. PANOSH: Your Honor, that is hearsay, by any
2 stretch of the imagination. I can see how the contents of
3 the tape might be admissible to corroborate or impeach the
4 witness Whidden, but how --

5 THE COURT: Well, if you're going to offer the
6 label, you're going to have to let them have the tape, to
7 see what's on there. The Court's going to order that you
8 turn the tape over that you intend to offer, even just the
9 cassette with the name on it. They're entitled to that.

10 MR. PANOSH: We would like that done now, so we
11 can -- since the deadline is substantially passed.

12 THE COURT: All right, sir.

13 You need to make that available to counsel. You
14 need to.

15 MR. HATFIELD: I don't have it with me.

16 THE COURT: Who has custody of it?

17 MR. HATFIELD: It's in my office.

18 THE COURT: During the break period, see if you
19 can get it over here.

20 MR. HATFIELD: Can I bring it back this afternoon?

21 MR. PANOSH: Your Honor, we would like to be able
22 to prepare over lunch.

23 MR. HATFIELD: There's nothing to prepare. He
24 just doesn't get it, that we are not offering the contents
25 of the tape. All it is is a commercial tape. We are

1 showing the relationship between the two parties, by virtue
2 of the name printed on the outside of the tape.

3 THE COURT: Well, I think they're entitled to see
4 what's on it. It may be material, it may not. Turn it over
5 to them before the lunch break.

6 All right. Next motion?

7 MR. PANOSH: Your Honor, the next motion for the
8 State is a motion for pretrial determination of competency
9 of the witness Whidden. He's flying in from Florida. He'll
10 be available after lunch. And we ask that be heard right
11 after lunch.

12 THE COURT: All right, sir.

13 MR. PANOSH: There are a number of motions filed
14 by the defense. And I'm going to bring them to Your Honor's
15 attention in the order that the certificate of service lists
16 them, unless counsel feels that it should be done otherwise.

17 MR. LLOYD: Your Honor, I don't know that it
18 should be done otherwise. There are a number of these,
19 Judge Cornelius, that I would characterize as sort of
20 standard death penalty motions, which we will stand on, we
21 won't ask to be heard on.

22 THE COURT: All right, sir.

23 MR. PANOSH: The first of those is the motion to
24 strike the death penalty as unconstitutional.

25 THE COURT: Well, let's go through them and just

1 consent to them or not consent, and then we'll come back to
2 the ones that we're going to have to hear.

3 MR. LLOYD: Thank you, Your Honor.

4 On the -- if Your Honor has a copy of our motions,
5 the first one is Motion to Strike the Death Penalty as
6 Unconstitutional. That's the first one. And that has the
7 certificate of service which lists the motion. They were
8 filed back in January, Your Honor, so it should be back
9 towards the early part of the file, I would imagine.

10 (Mr. Panosh handed documents to the Court.)

11 THE COURT: Thank you.

12 Well, do you wish to be heard on that?

13 MR. LLOYD: We do not, Your Honor.

14 THE COURT: The Court will deny the motion.

15 MR. LLOYD: All right. The next one is --

16 THE COURT: Reserve it for the record, if you wish
17 to take it up later.

18 MR. LLOYD: -- Motion to Prohibit the Prosecution
19 From Death Qualifying the Jury to Determine Innocence or
20 Guilt. We would stand on that one, as well, Your Honor.

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

22 THE COURT: Okay. The Court would grant the
23 motion -- I mean deny the motion.

24 MR. LLOYD: The next one, Judge Cornelius, is
25 Motion to Disclose the Theory Upon Which the State Seeks

1 Conviction for First-Degree Murder.

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

3 MR. LLOYD: I do note that, Your Honor, since we
4 have agreed to joinder on the first-degree arson case, that
5 obviously that would provide a vehicle for felony murder.

6 THE COURT: Yeah.

7 MR. LLOYD: We don't know at this time whether Mr.
8 Panosh's theory of his case, as far as first-degree murder
9 is concerned, rests on felony murder, rests on premeditation
10 and deliberation, or some combination thereof.

11 MR. PANOSH: Your Honor, we're not required to
12 disclose that, but I'll disclose. We submit it's
13 premeditated, deliberated and lying in wait, and that it was
14 in the course of the commission of an arson.

15 THE COURT: He's listed the theory of the State's
16 case for you.

17 MR. LLOYD: Thank you, Your Honor.

18 Thank you, Mr. Panosh.

19 The next one is Motion to Allow Defense Counsel to
20 Question Jurors, Subsequent to Challenge for Cause by the
21 State. I think the case law pretty much supports our
22 position, at least insofar as a blanket ruling by Your Honor
23 is concerned, and we'd simply ask that Your Honor follow the
24 case law on that case.

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

1 MR. PANOSH: We would ask the motion be denied as
2 written. And we agree that Your Honor should follow the
3 case law, and the case law says that it's discretionary, in
4 your -- whatever you determine is appropriate. And that's
5 State v. Warren. And in that case, the court denied the
6 right to -- specifically a motion for blanket permission to
7 rehabilitate, and the court denied that, and Warren affirmed
8 the court's decision.

9 THE COURT: Well, the Court will use its
10 discretion and take them individually. If I feel like
11 there's a real question about a juror's not quite sure, I'll
12 let you rehabilitate. If not, if it's pretty evident that
13 they cannot follow the Court's instructions of the law, then
14 the Court will not allow the rehabilitation.

15 MR. LLOYD: That's all we ask for. Thank you,
16 Your Honor.

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

18 MR. LLOYD: The next motion is a motion to
19 prohibit photos. And specifically, Your Honor, though we
20 didn't detail this, if there are any photographs which are
21 duplicative, we would ask that the photographs be limited to
22 black and white, because these photographs, I think I can
23 fairly characterize, not raised objection for Mr. Panosh at
24 least on this one issue, they are gruesome. This involves a
25 -- the -- an arson case, in which the body was basically

1 burned beyond recognition.

2 THE COURT: Is the --

3 MR. LLOYD: We are not --

4 THE COURT: -- coroner going to use any of those
5 photographs in their testimony --

6 MR. PANOSH: Yes, Your Honor.

7 THE COURT: -- medical examiner?

8 MR. PANOSH: We have black and white and color
9 photographs. The color photographs necessarily show details
10 that are not available in the black and white photographs.
11 And we would ask Your Honor not to -- first of all, the
12 motion to limit the black and whites was never made, that I
13 know of, but we'd ask that be denied. This appears to me to
14 be a blanket motion to limit, to say we can't introduce
15 photographs, and I'm sure you're aware of --

16 THE COURT: The Court's going to allow the
17 introduction of photographs, so long as they illustrate the
18 witness' testimony or are used by the medical examiner or
19 coroner to illustrate their testimony. And the Court will
20 not allow an excessive number of them. As to the color or
21 black or white or in color, the Court will individually look
22 at the photographs and rule on them.

23 MR. LLOYD: Thank you, Your Honor. That's all we
24 would ask for.

25 MR. PANOSH: Your Honor, on that point, we have

1 given counsel copies of most of the photographs, and they've
2 had an opportunity to review the rest of them. There's also
3 some slides, that they were at least given an opportunity to
4 view, I don't know if they did, and some videotapes that
5 they have reviewed.

6 Is that correct?

7 MR. LLOYD: We have not -- I don't think -- I'm
8 not sure about the slides, Mr. Panosh. We may have to get
9 up with you about the slides.

10 MR. PANOSH: The slides are in the possession of
11 the Guilford County Sheriff's Department. If they want to
12 see them, they can see them at any time, Your Honor.

13 THE COURT: The State has made the slides
14 available to counsel.

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

16 MR. LLOYD: Your Honor, the next motion is, motion
17 to permit voir dire examination of potential jurors
18 regarding their conception of parole eligibility and a life
19 sentence. Your Honor, this is a rather long motion. I'll
20 put it in a nutshell.

21 MR. PANOSH: I think I handed up the wrong one, -
22 Your Honor. May I approach?

23 MR. LLOYD: I'll be glad to hand up mine, Your
24 Honor.

25 THE COURT: He's got one here.

1 (Mr. Panosh handed a document to the Court, and the Court
2 handed a document to Mr. Panosh.)

3 MR. LLOYD: Basically, Your Honor, with the change
4 in the law, we're all well aware that the jury will be
5 instructed that life means life. The problem, Judge
6 Cornelius, from a practical standpoint, it has been my
7 experience and most of the other capital trial lawyers that
8 I have talked to, is, jurors still harbor misconceptions
9 concerning what a life sentence means. And for so long, we
10 instructed them with sort of a wink and a promise, you're
11 not to consider that thought, it's not to enter into your
12 jury deliberations. And we all know, Your Honor, that that
13 was not followed, that that was simply not humanly possible
14 for a jury to follow.

15 And the aftermath of all of that, Judge Cornelius,
16 is that a lot of people still harbor these misconceptions
17 that a life sentence means parole in five, six, seven years,
18 maybe nine years, and that's simply not the case. And the
19 law is clear now, as to what the Court must instruct. And
20 all we are asking for in this motion, Your Honor, is simply
21 to ask the jurors a few questions in voir dire, concerning
22 whether or not their conceptions about parole eligibility
23 would interfere with their ability to render a fair and
24 impartial verdict in this case. And that's all we're asking
25 for, Judge Cornelius.

1 THE COURT: The State wish to be heard?

2 MR. PANOSH: Your Honor, in State v. Neal, the
3 court said that could not be done. In State v. Smith, which
4 is a 1998 case, and it passes on the current sentencing life
5 without parole structure, they specifically said it was
6 improper for counsel to inquire as to the jury's conception
7 of life without parole.

8 THE COURT: Unless you have a later case, Mr.
9 Lloyd, I'm going to deny your request.

10 MR. LLOYD: Well, let me ask you this, Your Honor,
11 because I think this would be a different situation. Would
12 we be able to allow -- I would contend we would be able to
13 ask the jury, under current case law, whether or not they
14 could follow the law with respect to Your Honor's
15 instructions.

16 THE COURT: That's a proper question.

17 MR. LLOYD: All right. With respect to Your
18 Honor's instruction that a life sentence means life without
19 parole.

20 MR. PANOSH: Your Honor, I think the instruction
21 should come from the Court.

22 THE COURT: Well, if that's the question, I don't
23 see any problem with it --

24 MR. LLOYD: Okay.

25 THE COURT: -- because that's what the Court will

1 be telling them.

2 MR. LLOYD: Okay. Thank you, Your Honor.

3 THE COURT: If that's the extent of your question.

4 MR. LLOYD: And maybe that's a shorthand way of
5 getting straight to that, Your Honor.

6 THE COURT: The motion is denied, other than what
7 I've just agreed to let you ask the jury.

8 MR. LLOYD: Thank you, Your Honor.

9 Next motion, Judge Cornelius, is, motion for
10 immediate production of statements of State's witnesses.
11 This is basically an early Jencks motion, Your Honor. As
12 everyone here is well aware --

13 THE COURT: Once they testify, I think you're
14 entitled to it.

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

16 MR. LLOYD: Yes, sir. And we just --

17 THE COURT: Not until that time.

18 MR. LLOYD: And this is going to be a long and
19 tedious trial. It's going to be difficult for all of us,
20 Your Honor. It's going to be difficult for the members of
21 the jury. In an effort to speed things up, rather than have -
22 us move for some kind of recess, to obtain the statements
23 right after they've done their direct, we would ask for them
24 at this time.

25 THE COURT: The State wish to comply, or do you

1 wish to follow the usual procedure?

2 MR. PANOSH: Your Honor, there are seven discovery
3 memorandums in there. I've provided, I would guess, 80 to
4 90 percent of the statements. I don't intend to hold this
5 up, but I believe that I have more than complied with the
6 discovery statute.

7 THE COURT: Well, the Court would deny your motion
8 for immediate, other than what the State has complied with
9 voluntarily.

10 While we're on this subject, we need, as best we
11 can, some determination, because it's going to be a real
12 hardship in picking jurors, as to how long they're going to
13 be here on this case. What's the State's projection as to
14 the time frame of this case?

15 MR. PANOSH: Your Honor, if the jury selection
16 takes a week, the State's evidence will take a week to 10
17 days thereafter. I am not in a position to predict the
18 length of defense witnesses.

19 THE COURT: Assuming that the State's going to
20 take two and a half to three weeks, what's the defense
21 projection, Mr. Hatfield, Mr. Lloyd?

22 (Mr. Hatfield and Mr. Lloyd conferred.)

23 MR. LLOYD: Judge Cornelius, after a brief
24 conference with Mr. Hatfield, I don't see any problems with
25 our being able to put our case on in a week or possibly

1 less. I think where we may go into some real time problems
2 is, rebuttal, after we put on our case. And I don't know
3 how we go about predicting that at this point, but I would
4 expect that there would be rebuttal by Mr. Panosh. After
5 that, I don't -- you know, obviously he doesn't know what --
6 exactly what we plan to do, and we won't know what he plans
7 to do.

8 THE COURT: So we're looking maybe five to six
9 weeks outside?

10 MR. PANOSH: My estimation for rebuttal would be
11 one to two days at the very most. I don't think I've ever
12 had more than half a day of rebuttal. I would say four
13 weeks would be closer, but whatever Your Honor feels is
14 appropriate.

15 THE COURT: Four to five, somewhere in that range?

16 MR. LLOYD: I think that's about right.

17 THE COURT: Thank you.

18 MR. LLOYD: The next motion, Your Honor, is a
19 motion for individual voir dire and sequestration of jurors
20 during voir dire. My concern basically, as laid out in the
21 motion, Judge Cornelius, has been --

22 THE COURT: I think that's basically discretionary
23 with the judge.

24 MR. LLOYD: Yes, it is, Your Honor. And I'm not

25 --

1 THE COURT: I've done it both ways, and my
2 experience has been that it seems to move along better when
3 we keep the box full, so to speak, so I'm going to follow
4 that procedure.

5 MR. LLOYD: There may be one thing, one factor
6 that Your Honor should be aware of, before you make your
7 ruling and set it in stone, Judge Cornelius. There was a
8 front-page article on this case in today's Greensboro News
9 and Record. I'm always amazed at how many jurors don't read
10 the papers, but there are substantial number who do. And I
11 think anybody who picked up the paper this morning probably
12 saw the article and probably read the article, especially if
13 they were coming to court. So I --

14 THE COURT: I think our courts have ruled that
15 it's not improper to read about it, if they have knowledge
16 of it, but can they set that aside and follow the law.

17 MR. LLOYD: Well, and you're exactly right, Your
18 Honor. My concern is, I guess one of the big things is,
19 especially when you tell the jury that it's going to be a
20 long case, it's going to be, you know, four to five weeks,
21 you start running into jurors who pick up on the magic words
22 on how to get off.

23 THE COURT: Well --

24 MR. LLOYD: And that's always a problem, Your
25 Honor. So --

1 THE COURT: If --

2 MR. LLOYD: You know, it's easy to say, "Well, I
3 read it in the paper this morning, and yeah, I formed an
4 opinion about it and I can't put it aside," if you want to
5 get off. And I think we've all seen that happen, where you
6 get a -- you go along fine and then you get a string of
7 jurors, and everybody's, you know, cued into the right thing
8 to say to the judge to get off the case.

9 THE COURT: Well, if it gets to be a problem, I'll
10 certainly reconsider that and look at it, as we go along.

11 MR. LLOYD: All right.

12 MR. PANOSH: Your Honor, for the record, there was
13 an article. The State had no comment. It was not by our
14 inception. Almost all of the article came from Mr.
15 Hatfield. And we don't feel that they should benefit from
16 the fact that they chose to release a lot of material which
17 apparently came from discovery to the press.

18 MR. HATFIELD: Your Honor, that statement is so
19 ridiculous that it's unworthy of being said in open court.

20 THE COURT: Well, I haven't read the article, so I
21 don't know anything about it. So assuming the jurors can do
22 their duty and set that aside, we'll proceed on that
23 assumption.

24 MR. LLOYD: Your Honor, our next motion is a
25 motion for a bill of particulars, and we -- I don't ask to

1 be heard on that.

2 THE COURT: All right, sir.

3 MR. LLOYD: Our next motion, Judge Cornelius --

4 MR. PANOSH: Did Your Honor rule on that?

5 THE COURT: He's waiving that right.

6 MR. PANOSH: Thank you.

7 THE COURT: He does not wish to pursue it.

8 The motion is denied for the record.

9 MR. LLOYD: All right. Thank you, Judge.

10 Motion to prohibit the prosecutor from
11 peremptorily challenging Blacks. That just sets out the
12 basis for Batson and the progeny.

13 THE COURT: Is this a Batson case or --

14 MR. PANOSH: No, Your Honor.

15 THE COURT: -- have the potential --

16 MR. LLOYD: Well, it's not Batson, Your Honor, but
17 as Your Honor is well aware of, Batson -- the principle of
18 Batson has been extended to when there is a white defendant,
19 as well. And we simply put that on the record. I don't ask
20 to be heard.

21 MR. PANOSH: Your Honor, we'd ask that be denied.

22 THE COURT: I'm going to deny the motion.

23 MR. LLOYD: All right.

24 And the last one, what I have termed standard
25 death penalty motions, Your Honor, is the motion for

1 disclosure of aggravating and mitigating circumstances. And
2 I don't ask to be heard on that one, except perhaps since
3 Mr. Panosh has been good enough to give us the theory of his
4 case, that perhaps he would give us some insight into what
5 aggravating factors he would contend were involved in the
6 case.

7 MR. PANOSH: Your Honor, I believe I've already
8 done that. I did that at the Rule 24 conference, unless I'm
9 mistaken. Let me go back and I'll see what I can do on
10 that.

11 (Time was allowed for Mr. Panosh.)

12 MR. PANOSH: First of all, as to mitigating
13 circumstances, we know of no mitigating circumstances. As
14 to aggravating circumstances, the State would certainly be
15 submitting that this was done in the course of -- or excuse
16 me, that it was for pecuniary gain. And counsel is aware of
17 our rationale there. And depending upon the evidence in the
18 case in chief, there may be other aggravating circumstances
19 which are appropriate.

20 I believe that's what I've said before. Is that
21 right? Mr. Lloyd, is that correct?

22 MR. LLOYD: I was not present at the Rule 24
23 hearing. I don't know.

24 THE COURT: All right. The Court's going to --

25 MR. LLOYD: But I appreciate Mr. Panosh's efforts.

1 THE COURT: -- deny the motion, other than the
2 fact the State has at the Rule 24 made it a capital case --
3 has indicated what are the aggravating factors. And the one
4 that he's listed will be pecuniary gain at this point. He's
5 not limited, even though -- if the evidence reveals others,
6 he may pursue those.

7 MR. LLOYD: Judge Cornelius, that brings us to a
8 number of motions in limine which I filed. And these were
9 filed more recently, Your Honor, July 14th, and the last
10 two, I believe, on July the 29th. So perhaps they're closer
11 to the top and be easier for Your Honor to find.

12 THE COURT: I see one July 14, 1998.

13 MR. LLOYD: The first one would be titled Motion
14 in Limine.

15 THE COURT: Yeah.

16 MR. LLOYD: All right. Your Honor, with respect
17 to that, basically let me just hit the high spots on this.
18 In discovery materials that Mr. Panosh furnished us, there
19 is an allegation from a woman by the name of Joy Hedgecock
20 Dyer, who says that a number of years ago -- and I'm not
21 exactly positive what her testimony would be in that regard, -
22 but I think some, oh, six to seven years ago, that while she
23 was dating Mr. Ronnie Kimble, our client, she became
24 pregnant, and that at some point -- and when I filed this
25 motion, Your Honor, it was based on the discovery materials

1 that we had at that time. We have since been furnished
2 other discovery materials, and I want to make a fairly
3 significant correction, but I'll come to that.

4 There was -- she maintains in her allegations,
5 Your Honor, that Ted Kimble, the codefendant's brother,
6 older brother of Mr. Ronnie Kimble in this case, at some
7 point came to her or she was brought to him, and he
8 encouraged her very forcefully. The original allegation in
9 the discovery materials was that he had a gun at this time,
10 encouraged her to go get an abortion. We understand now
11 from the latest discovery that that would not be Ms. Dyer's
12 testimony, but perhaps Mr. Panosh can illuminate that for
13 us, that Mr. Ted Kimble did not have a gun at that time.

14 At any rate, the allegation is that Mr. Ted Kimble
15 took Ms. Dyer down to a drugstore, where she got a pregnancy
16 test and -- which indicated that she was pregnant. That
17 even though Ted Kimble very forcefully argued for her to get
18 an abortion for his -- on behalf of his brother, Ronnie, as
19 I understand it, her latest proclamation is that, despite
20 those arguments for Ted, that did not -- from Ted Kimble,
21 that did not sway her, that after she talked with Ronnie
22 Kimble some more, that she agreed to get an abortion, and
23 she did in fact get an abortion. Mr. Ronnie Kimble helped
24 her to get the abortion. But that was made -- that decision
25 was made on her own, after further consultation with Ronnie

1 Kimble, who is alleged to be the father of the unborn child.

2 I think the reasoning that I filed in the original
3 motion still follows, Your Honor. I really -- I think Mr.
4 Panosh's theory -- and I'm sure he will speak to that
5 himself -- is that this is some sort of payback, that this
6 serves as the basis for payback, for Mr. Ronnie Kimble
7 agreeing to kill Patricia Kimble, the victim in this case.

8 I think, Your Honor, that theory is rather
9 farfetched, to put it mildly. And this whole case -- or
10 this whole incident is simply a character smear on Ronnie
11 Kimble. Can you imagine the effect that it would have on
12 the 12 jurors who are ultimately selected and put in the box
13 in this case, when they hear that Ronnie Kimble has been
14 party to an abortion? This is one of the most volatile
15 issues that we have in our society today. And I don't even
16 know that even if Your Honor was willing to open up jury
17 voir dire to include that, so we can uncover any sort of
18 bias or very strong feelings, it's the kind of thing, Your
19 Honor, that is almost worse than if Mr. Panosh were alleging
20 some kind of violent act in Mr. Kimble's past.

21 But it's -- first of all, it has no relevance in
22 this case. And secondly, even if it has some marginal
23 relevance, even if you buy into Mr. Panosh's theory that
24 this serves as the basis for a payback, it certainly fails
25 under a 403 balancing test, where, as Your Honor well knows,

1 the danger of unfair prejudice substantially outweighs any
2 probative value it might have. And I think this is a
3 classic case where that is. It is simply, Judge Cornelius,
4 character evidence, character smear, character
5 assassination, masquerading as some sort of theory to help
6 the prosecution prove its case.

7 I mean, this incident is dynamite, Your Honor.
8 This is the kind of thing that sways juries one way or the
9 other. Now, there may be some people on the panel who don't
10 have these strong feelings about abortion, but there are
11 going to be some people on that panel, Your Honor, that do.
12 And those are the people that I'm concerned about. And I
13 just think that it's just -- it's not admissible in any way,
14 shape or form, Judge Cornelius. And I'd be happy to address
15 any other questions that Your Honor might have.

16 MR. PANOSH: We would agree not to mention it in
17 voir dire, opening statements, or at any time before Your
18 Honor has an opportunity to hear the witness out of the
19 presence of the jury. It was a substantial period of time
20 ago, but Your Honor has to bear in mind that this murder
21 took place three years ago. This is not a payback theory,
22 Your Honor. This is a situation where nobody in this world
23 had a motive to kill Patricia Kimble, except Theodore
24 Kimble. The only reason that Ronnie would do it was because
25 his brother dominated and controlled him. This evidence

1 would be able to show that dominance and control. The
2 evidence would show that they approached this young lady
3 together, took her to a drugstore, told her to get a
4 pregnancy test, approached her thereafter together, that the
5 codefendant, Ted Kimble, was armed with a gun, and that they
6 basically, although it happened four or five days later,
7 they basically required this woman to have an abortion
8 against her will. And she was very young and just didn't
9 have the wherewithal to fight their demands.

10 We agree that it's not appropriate for the case in
11 chief. We agree not to mention it, until Your Honor's heard
12 it in the absence of the jury. But we feel that it's going
13 to show the dominance and control that Ted exercised over
14 Ronnie.

15 Furthermore, Your Honor, if he takes the stand, as
16 he's said in numerous interviews, and talks about his good
17 character, I think then some of this evidence might very
18 well come in as to his character.

19 THE COURT: Well, at this time, the Court's going
20 to withhold ruling on the motion, to the extent that I will
21 instruct counsel for the State not to mention anything of
22 this nature during the jury voir dire, and until the Court's
23 had an opportunity to rule on it at a voir dire hearing.

24 MR. LLOYD: And I assume Your Honor's ruling would
25 cover opening statements, as well.

1 MR. PANOSH: Yes, Your Honor.

2 THE COURT: No mention of it at this point. See
3 whether or not the State does in fact develop a theory of
4 dominance or mind control or whatever it might be.

5 MR. LLOYD: Your Honor -- and I appreciate Your
6 Honor's ruling. I'd just like to make Your Honor clear on
7 one thing. It is our understanding from the latest
8 discovery that we got that, my impression is, it may have
9 come from an interview of Mr. Panosh by this woman, that
10 she's saying that she decided on the abortion, not based on
11 what Ted Kimble, Ronnie's brother, did, but based on her
12 conferences with Ronnie. And I think that has a direct
13 bearing on this. And I just ask Your Honor to maybe keep
14 that in the forefront of your mind, because it goes to
15 counteract Mr. Panosh's theory that we -- what we have here
16 is domination.

17 Judge Cornelius, the next motion I have is a
18 motion in limine, it's entitled Re: Janet Smith. I would
19 ask, if Your Honor doesn't have a copy, if I could just hand
20 my copy up.

21 (Mr. Lloyd handed a document to the Court, and time was
22 allowed for the Court.)

23 THE COURT: Mr. Panosh, do you intend to call
24 Janet Smith as a witness?

25 MR. PANOSH: Your Honor, we would agree to this

1 motion in limine, to the point that we will not offer it
2 unless and until the defendant testifies. The background
3 is, the State alleges that the defendant and a jailer had a
4 sexual relationship while the defendant was in jail, this
5 was a female jailer, that in the course of that, they wrote
6 letters back and forth. I've sent for those letters. I
7 left them upstairs. But in one of those letters, he
8 specifically states that she should not worry, that if their
9 relationship comes to light, he would lie to cover it up.
10 We'd submit that specifically goes to his credibility and
11 would be admissible if he in fact testifies.

12 Furthermore, the defendant, if he gives character
13 evidence, we'd submit the fact that he was a married man at
14 the time that he had this sexual relationship with the
15 jailer, in violation of the state's laws, it would be
16 appropriate for the jury to hear as to his character. Of
17 course, we agree not to mention this in opening statement or
18 voir dire or at any time until Your Honor's heard the
19 evidence and ruled upon it. And I can hand up that letter
20 in a minute, if you need to look at it.

21 MR. HATFIELD: Your Honor, may I address the Court -
22 on this issue?

23 THE COURT: Yes, sir.

24 MR. HATFIELD: Your Honor, this is a very
25 sensitive issue, for a number of reasons that are obvious to

1 everybody that's been working on this case. Ronnie Kimble
2 was married when the alleged crime occurred, and he was
3 married when he was placed in the jail. Whether he is still
4 married may be subject to some doubt, because we have been
5 told that his wife is currently seeking an absolute divorce,
6 based on one-year separation from him.

7 Your Honor, we do not believe that it is possible
8 for an inmate to violate any North Carolina law by the
9 conduct that was involved between these two people. The
10 only people who would have violated North Carolina law was
11 the custodial officer.

12 Your Honor, we are absolutely convinced, beyond
13 any doubt whatever, that no sexual relationship took place.
14 So what we have here is a situation where the prosecution
15 and the officer working for the prosecution have attempted
16 to project an issue into the public arena to hurt the
17 defendant and to hurt his relationship with some of his
18 closest relatives, when they know perfectly well that no
19 sexual relationship took place.

20 Janet Smith is represented by a lawyer, one of the
21 best lawyers in Greensboro, Percy Wall. He has told us
22 unequivocally that no sexual act took place. Our client
23 equally contends that no sexual act took place. All
24 pretrial disclosure militates against a sexual act. A mere
25 kiss is the only thing that they have disclosed, and that's

1 not a sexual act, under North Carolina's definition of the
2 statutes.

3 This is a very troublesome situation. It is
4 probably an entrapment, because the sheriff of this county
5 allowed the custodial officer to violate his operational
6 standards and the law for a period of three to four months,
7 in order to see if something would happen that would break
8 favorable to the prosecution. It is true that eventually
9 these two individuals began an illicit correspondence that
10 was pure fantasy. Nothing ever happened in the real world.
11 And the statement that they want to use against Ronnie
12 Kimble would have to be, if it was shown to the jury placed
13 in context, and the context would have to be all the other
14 correspondence between the parties, including correspondence
15 that took place as early as September 8th of the year in
16 which these events took place, which is last year.

17 So we have this huge scenario that would become a
18 minitrial, much worse than the Monica Lewinsky situation,
19 because in this case, both sides have already stated that no
20 sexual act took place, and there is no other evidence that
21 it did.

22 So we simply say, Your Honor, that under 403, this
23 would be precisely the kind of completely inflammatory and
24 the irrelevant stuff that shouldn't be allowed in a trial of
25 this kind. And we would ask the Court to do the same thing

1 that you've been asked to do in the Mitch Whidden case, and
2 that is, to go ahead and have a voir dire this afternoon on
3 this issue, so that we can know once and for all whether the
4 Court feels that this matter has any bearing whatsoever,
5 rather than to make us wait.

6 It is very likely that the defendant will take the
7 witness stand. He may not elect to put his character into
8 issue, but he certainly will, if he takes the witness stand,
9 put the facts of the case --

10 THE COURT: Well, if this evidence comes, it comes
11 as rebuttal evidence, Mr. Panosh?

12 MR. PANOSH: Yes, sir.

13 THE COURT: All right. Let's reserve a ruling on
14 it until that point. The Court will withhold ruling on this
15 until that point in time.

16 MR. LLOYD: Your Honor, of course, my problem with
17 that -- I respect Your Honor's ruling, but we've got to make
18 the decision on how to advise our client, what to do in this
19 case, whether or not to take the witness stand or not. And
20 I think this is a critical piece of evidence that we have to
21 advise him of. And obviously the decision to take the
22 witness stand or not take the witness stand is our client's
23 and our client's alone. But this is a --

24 THE COURT: Well, when he takes the witness stand,
25 his credibility is at issue. What he testifies to will

1 determine whether or not his character becomes at issue. If
2 it does become at issue, the State very well may be able to
3 show misconduct on his part. I haven't seen the statement,
4 I don't know what's in the statement, about he would be
5 willing to lie. That would certainly be relevant to the
6 case, in a criminal case, that may come in, but I don't know
7 in this -- at this particular point what the evidence is
8 going to be or what context it will be presented to the
9 Court.

10 MR. LLOYD: Well, as Your Honor realizes, our
11 contention would be that would be a collateral matter. I
12 mean, Mr. Panosh -- the rules are clear on how you attack
13 the credibility of the witness, including the defendant.
14 You put up character witnesses to say that, in my opinion,
15 this opinion, whoever it is, is untruthful, whether it be
16 the defendant and other witness or -- and you can -- the
17 rules allow, under 405, to testify as to what his reputation
18 in the community is.

19 But as to specific instances on a completely
20 collateral matter, our position would be that that's not
21 impeachable. I mean, you can't ask the witness, "Mr.
22 Kimble, didn't you in fact tell the store clerk a lie, when
23 you said that you were bringing these pants back because
24 they were too big for you? In fact, they were the wrong
25 color and you didn't want them; isn't that right?" That's

1 not proper credibility attack on a witness, Your Honor.
2 Your Honor certainly wouldn't ask -- allow me to ask that of
3 Mitch Whidden. And Mr. Panosh is no more entitled to ask
4 that of the defendant.

5 So, I guess what I'm asking for, Judge Cornelius,
6 -- and I know it puts you on the spot, because you don't
7 have all the facts in front of you -- but we've got to make
8 a very difficult decision here. We've got to advise our
9 client on whether or not to take the witness stand, and
10 that's why this issue is so critical for us. And perhaps in
11 light of that, if Your Honor might reconsider, that perhaps
12 we could go into this matter at some more length, so we
13 could get some guidance on that issue, as how to advise our
14 client.

15 THE COURT: In any event, it won't come until
16 after the State's completed its evidence -- I mean,
17 completed its presentation of the evidence. So at that
18 point, we can have a voir dire, if we have to, before your
19 client starts presenting evidence, to see whether or not he
20 wants to -- does in fact wish to testify.

21 MR. LLOYD: I understand, Your Honor. Of course, -
22 if Mr. Hatfield or I get up in opening statement and --

23 THE COURT: Well, I --

24 MR. LLOYD: -- basically promise the jury that
25 they're going to hear from our client --

1 THE COURT: The State has already indicated
2 they're not going to mention in opening statement -- the
3 jury will not have any knowledge of it until some point
4 later on in time. When we get to that point, I'll hear from
5 you.

6 MR. LLOYD: I just ask, Your Honor --

7 THE COURT: It just doesn't make sense to have a
8 lengthy, you know, half a day voir dire hearing to hear what
9 may never come to pass anyway.

10 MR. HATFIELD: Your Honor, could I just say one
11 thing about it --

12 THE COURT: Yes, sir.

13 MR. HATFIELD: -- before you finish? Your Honor,
14 the statement -- and I didn't bring my materials on this
15 subject here, but the statement is not that he promises to
16 lie. The statement is that he will deny something which, at
17 the time he said that he would deny it, it had never taken
18 place. And it never did take place.

19 So I think all of us, including the president of
20 the United States, as well as Ronnie Kimble, can promise to
21 deny a thing that we have not done, and that doesn't have
22 any value, in terms of credibility.

23 So what we have here is this three-month
24 relationship, in which this custodial officer pursued Ronnie
25 Kimble, against some of her superior regulations, and

1 apparently with the indulgence of other superiors, and
2 developed this relationship, while the sheriff's department
3 stood back and watched, hoping that a mistake occurred.
4 Finally, they seized these papers from him, before any
5 significant event, physical event, transpired between these
6 two people. So that, the contention that there was a sexual
7 relationship is just false. It just never was. And they
8 know that. And they want to offer the statement out of
9 context, but we could never allow the statement to be
10 offered out of context. We would have to show the jury the
11 entire context. And the entire context includes the
12 destruction of his marriage.

13 And I just think that this is the kind of thing
14 that they have been dangling out there. They sat on this
15 thing from November 19th, when the sheriff's department
16 finally decided to do what they knew they should have done
17 from September of that year, and fire this woman, they
18 didn't indict Ronnie Kimble on that matter until May,
19 waiting until a trial -- firm trial date was set in this
20 case.

21 We think that somehow, that delay had the effect
22 of creating tremendous amount of unfavorable publicity.
23 It's totally misleading. The sheriff of the county got on
24 television and said he had ferreted out sex in the jail and
25 he wasn't going to tolerate it. The fact is, his people had

1 been watching this woman for two to three months and had
2 every mechanism at their disposal to prevent anything from
3 happening.

4 So it's just the classic entrapment of a witness.
5 First he's denied bond. He's kept in the sheriff's
6 confinement facility over here, and the sheriff's agents are
7 preparing the case. They want to use this thing to hurt
8 him, and we ask the Court to give us some kind of a ruling
9 on it in advance. It wouldn't be any more difficult to have
10 a voir dire on this issue than it would on this Mitch
11 Whidden fellow.

12 THE COURT: The Court's going to extend its
13 previous ruling that it will, based upon the assurance of
14 the State that they will not mention this in the voir dire
15 examination of the jury, that the Court will reserve a
16 ruling on it until later, and at that point in time the
17 State has rested its case.

18 Other matters for the Court?

19 MR. LLOYD: Yes, sir, Your Honor. Thank you.

20 The next motion, Your Honor, is entitled Motion in
21 Limine Re: Ted Kimble. There are a number of statements
22 that Mr. Panosh has given us in discovery. He has also
23 given us a motion this morning, Your Honor, where he
24 addresses some of these -- I don't have it in front of me,
25 but I'll go by memory, Your Honor. And Mr. Panosh can

1 correct me if I'm wrong.

2 Basically what they're talking about here, Judge
3 Cornelius, is, Mr. Ted Kimble gave a number of statements
4 which implicate his brother, Ronnie Kimble, our client. And
5 in our motion, Your Honor, we of course -- we specifically
6 set out at least three sets of statements, coming from three
7 different witnesses. There are more, Your Honor. And I
8 would just ask the Court to consider this motion with
9 respect to all of these statements that Mr. Panosh intends
10 to introduce concerning Mr. Ted Kimble.

11 The first statement -- and Mr. Panosh, I don't
12 know if he's intending to introduce this individual in his
13 trial or not, Mr. Dominic Harris, who shared a jail cell
14 with Ted Kimble, and Ted Kimble allegedly told him "I didn't
15 do it, and they are fixing to go and get my brother, and
16 they'll find out who killed my wife."

17 There is another individual by the name of Patrick
18 Pardee, and supposedly, in answer to -- well, he said that
19 he had gotten a part-time job -- Ted Kimble said this, Your
20 Honor -- he had gotten a part-time job in order to have an
21 alibi for Patricia Kimble's death. And in answer to the -
22 question did he kill his wife, he said, "No. Ronnie did."

23 This individual, Patrick Pardee, was charged in a
24 number of felonies, basically breaking or entering and
25 larceny felonies, Your Honor, after the murder. And

1 basically, the -- he went around with Ted Kimble and another
2 individual, Rob Nicholes, who I'll come to in just a second,
3 they stole building materials, which were then later resold
4 through Ted Kimble's business. That's the connection that
5 he had with Ted Kimble. That's not just limited to that. I
6 think his association with Ted Kimble goes back much
7 further. He will be testifying with an agreement from the
8 prosecution. And I just bring that to Your Honor's
9 attention. And in that agreement from -- with the
10 prosecution, I think the State has agreed to recommend a
11 probationary sentence, should it be satisfied with his
12 testimony.

13 The other individual that I speak of directly in
14 the motion is an individual by the name of Robert Nicholes,
15 goes by Rob Nicholes. And in his statement, Your Honor, Mr.
16 Nicholes asked Ted Kimble if he had anything to do with his
17 wife's death. And allegedly, Ted Kimble's response to that
18 was that he had an alibi and his brother, Ronnie, also had
19 an alibi. And then he told Mr. Nicholes, allegedly, Ted
20 Kimble told Mr. Nicholes that he did have something to do
21 with his wife's death, and not to ask him questions about it -
22 anymore.

23 Mr. Nicholes, as I indicated, was also involved in
24 this theft ring with Ted Kimble, stealing building materials
25 and reselling them through Mr. Ted Kimble's business. He is

1 testifying also with an agreement from the State. The
2 agreement is essentially the same, Your Honor. And in that
3 agreement, the State has agreed to make a recommendation for
4 a probationary sentence for Mr. Rob Nicholes, assuming that
5 the State is satisfied with Mr. Rob Nicholes' testimony.

6 Mr. Panosh has indicated in the motion that I got
7 this morning, that I think he will be -- and in my motion,
8 Your Honor, I more or less assume that he would be allowing
9 all -- or proceeding under the theory of the hearsay
10 exception of then existing mental or emotional condition.
11 It's 803, I can't remember whether it's (3) or (5), but --
12 And also, Your Honor, statements of a co-conspirator. I had
13 gotten a motion this morning, where Mr. Panosh indicates
14 that he would contend these statements are admissible under
15 803(24), which is the trustworthiness, sufficient indicia of
16 trustworthiness exception, if I'm not mistaken, Your Honor.
17 I don't -- I didn't even have time to look at my book. But
18 if memory serves me, that's what that one is. And 804(b)(3)
19 and (5). (3) is commonly -- those are both where the
20 declarant is unavailable, and those are both -- well,
21 (b)(3), I believe, is statement against -- shorthand
22 notation for it is statement against penal interest, and (5)
23 is the counterpart to 803(24). So that if the statement has
24 sufficient indicia of reliability or trustworthiness, it's
25 admissible.

1 And Your Honor, since I just got this motion this
2 morning, I haven't had a chance to bring any cases to the
3 Court. I do remember from memory that -- I believe it's
4 State v. Smith, and I'm sure Mr. Panosh has some sort of
5 authority, but there are about five points on the
6 trustworthiness exceptions that the Court needs to look at.

7 I would just say in general, to those -- to these
8 comments, Your Honor, first of all, you've got the first
9 statement that Ted made to this Dominic Harris, Ted alleged
10 to have been made to Dominic Harris, "I didn't do it, and
11 they are fixing to go and get my brother, and they'll find
12 out who killed my wife," well, that's the classic
13 self-serving statement by a codefendant. And there is no
14 indicia of reliability in any case that you'll find in a
15 statement of that sort.

16 And I think you have sort of the same situation
17 with respect to the statements that Patrick Pardee made, in
18 question -- in his basic answer to the question, did he kill
19 his wife, "No. Ronnie did it." Now, there are some -- and
20 I'll be candid with the Court, there are some incriminating
21 parts to that statement. That's not the whole statement. -
22 And Ted Kimble does say at some point, yes, he has -- he
23 basically admits that he had something to do with his wife's
24 death, when he's talking -- allegedly, when he's talking to
25 Patrick Pardee. Rob Nicholes, I think you have basically

1 the same sort of situation.

2 I just -- I don't think any of these statements
3 would pass those five-- that five-test -- five-point test
4 that's set out in Smith and whatever the other case is that
5 covers 804, instead of 803, but it's the same test, Your
6 Honor, when you're talking about a sufficient indicia of
7 reliability. It just strikes me that all of these
8 statements, not only from the declarant, but also from the
9 person who's making -- or who will be testifying in open
10 court, all of these statements are very suspect. There's
11 not -- they're not the kind of statements that we would put
12 sufficient indicia of reliability into. I mean, this is the
13 same problem that you get into where you've got a Bruton
14 situation. You've got a codefendant who brings in somebody
15 else. And that's not the kind of statement that we consider
16 reliable, Your Honor. That's the kind of statement that has
17 to go through the test of cross-examination.

18 And that brings me to the final point I want to
19 make to Your Honor, which is that it is my understanding,
20 Your Honor, that Ted Kimble -- and I've talked to both his
21 lawyers and they're present, and I'm sure they'll correct me
22 if I'm making a misstatement -- Ted Kimble will deny that he
23 ever made these statements to Patrick Pardee, to Rob
24 Nicholes, to whoever Mr. Panosh puts up, that he never made
25 any statements concerning his guilt or concerning -- or

1 admitting his guilt or admitting Ronnie Kimble's guilt. And
2 if that is the case, Judge Cornelius, and Mr. Panosh says
3 that he will -- he's assumed that Ted Kimble is unavailable,
4 because he will assert his Fifth Amendment privilege. I
5 don't know with respect to these statements what Ted Kimble
6 will do, in terms of asserting his Fifth Amendment
7 privilege, but his lawyers tell me that his position is that
8 he never made these statements. And if that is the
9 position, Judge Cornelius, then we have a case that covers
10 that, and that goes back to State v. Hunt, Hunt 1, the
11 Darryl Hunt case that was tried in Forsyth County. And if
12 Your Honor will recall the facts of that case --

13 THE COURT: I tried that case.

14 MR. LLOYD: Well, I'm sure that I'm -- I'm
15 preaching to the choir, Judge Cornelius. I know you're
16 familiar with it, and you're familiar with the situation.
17 You're familiar with the Supreme Court's ruling on that.
18 And I think we have a Hunt situation. There are a couple of
19 cases that follow Hunt on that, as I know Your Honor is well
20 aware of. And I think somewhere in my materials, I made a
21 copy of the applicable part of Hunt and those other cases. -
22 But I think we get directly into that situation, if Mr.
23 Panosh calls Mr. Ted Kimble to the stand, in order to make
24 him unavailable, and Mr. Kimble, instead of blanketly
25 asserting his Fifth Amendment privilege, he says, "No, I

1 never made those statements." And then, you try to impeach
2 him, and it's not -- you know, in Darryl Hunt, it's a little
3 bit different, because you had a statement, a written
4 statement, that the young prostitute had made to the
5 detectives. But there's a case that follows right after
6 Hunt, where they talk about -- not a written statement, but
7 just some sort of oral statement being given by somebody on
8 the witness stand. Directly analogous to our situation.

9 So I think we open up a real can of worms, first
10 of all, if we assume, as Mr. Panosh has done, that Mr. Ted
11 Kimble will assert his Fifth Amendment privilege and thereby
12 be unavailable. And secondly, my indication is, that he's
13 going to deny that he ever made these statements. And if
14 that's the case, then I think Hunt and that progeny control,
15 and Mr. Panosh is not going to be allowed -- should not
16 under those cases be allowed to get these statements in. If
17 you can't get it in through the front door, if you can't put
18 Ted Kimble up there and say, "Isn't a fact, Mr. Kimble, that
19 you said" blah, blah, blah, and Mr. Kimble says -- Ted
20 Kimble says, "Yes, I did say that," then you can't bring it
21 in, because it defeats the whole purpose of what we have the
22 Rules of Evidence for cross-examination for hearsay. And if
23 you can't do it up front about it, you can't go behind the
24 back and through it -- do it through the back door.

25 I'll be happy to hand up those cases following

1 Hunt. I know Your Honor doesn't need to reread Hunt, but
2 I'll find the others while Mr. Panosh is talking.

3 MR. PANOSH: Your Honor, you have to take this
4 case in the light that it came to trial. When it came to
5 trial, the State wanted to join these two defendants for
6 trial. Both counsel filed motions, requesting to sever, the
7 reason being, they don't want their two clients to be in
8 court and you have the statement to use against each other.
9 So now, they want to have the same reason not to allow the
10 State to use the existing hearsay rules.

11 You have to look at this case. A conspiracy was
12 formed on or about October the 9th of 1995, and that
13 conspiracy was to kill Patricia Kimble, to collect her
14 insurance money, and to avoid detection. That conspiracy
15 goes on until April the 1st of 1997, when the two
16 defendants, Ronnie and Ted, are apprehended.

17 Statements of a co-conspirator made in the course
18 of that conspiracy are admissible as an exception to the
19 hearsay rule. We would submit most of Theodore Kimble's
20 statements are under that exception. And of course, Your
21 Honor has to hear the witness, hear what the witness
22 actually says, the circumstances of the conversation, and
23 rule upon that.

24 Secondly, there's exceptions -- and I don't know
25 whether he's going to say he's unavailable or not, but there

1 are exceptions, whether he is available or unavailable, for
2 statements made against penal interest. And in each of
3 these statements, he said, "I took part in the murder of my
4 wife. I caused her to be killed. Ronnie actually shot her
5 and burned her body in the house." Now, that's not in every
6 statement, but those pieces fall into each of them. Those
7 are definitely declarations against penal interest. And if
8 for some reason the co-conspirator exception doesn't apply,
9 then we would say declarations against penal interest would
10 apply. But again, Your Honor has to hear the witness, hear
11 the statements, and the context in which they're offered.

12 And counsel for Ted Kimble is here. Can you come
13 up, please.

14 (Mr. John Bryson and Mr. Robert McClellan came forward.)

15 MR. PANOSH: Your Honor, we did not put Ted Kimble
16 on the witness list, because I think it's inappropriate to
17 list as a witness someone who we know is going to exercise
18 Fifth Amendment privilege. We need to get on the record now
19 if he's going to do it. If he's not going to do it, I'll
20 add him to the witness list.

21 MR. McCLELLAN: If Your Honor please, we're not
22 going to make a declaration today as to what our client will
23 do. Obviously we're not in the context of this particular
24 trial on the question we're asked yet. Until we know what
25 the correct situation is, in terms of what stage of the

1 trial it might be offered or tendered for and what the
2 evidence might be asked for, we're not going to make a
3 statement today as to whether our client will do something
4 now or two weeks from now in response.

5 MR. PANOSH: I respect that, and I would ask Your
6 Honor to defer ruling until we know whether their position
7 is that they'll allow him to testify.

8 THE COURT: The Court will defer ruling, until
9 there is declaration of intent to testify or not to testify.

10 MR. LLOYD: Your Honor, if I could just address
11 one thing that Mr. Panosh said, I don't want there to be any
12 misconception on. I didn't address it very well. The co-
13 conspirator exception requires two things. Mr. Panosh
14 touched on one of them. And that is, that it's in the
15 course of the conspiracy. Now, our contention would be the
16 conspiracy ended with Patricia Kimble's death. But be that
17 as it may, Your Honor, the most important hurdle is the
18 second prong of that, and that is, that the statement has to
19 be in furtherance of the conspiracy. And despite the
20 fertile and very brilliant mind of Mr. Panosh, I challenge
21 him to come up with a reason why any of these statements
22 that he is suggesting are in furtherance of the conspiracy.
23 And that's where it falls, Your Honor. It's not like we've
24 got a situation here where you've got a couple of drug
25 dealers and they're talking about -- and one of them calls

1 up Joe Blow and talks about his next shipment that's coming
2 in. Well, that's during the course of the conspiracy.
3 Okay? And that's in furtherance of the conspiracy, because
4 he's talking to Joe Blow about when the next shipment is
5 coming in. And that's admissible, because that passes the
6 test. That falls under the co-conspirator exception. But
7 specifically, that factor of in furtherance of the
8 conspiracy is what we do not have here, which is what is
9 totally lacking in any of these statements.

10 So I just wish Your Honor would keep that in the
11 forefront of your mind, in making these rulings, Your Honor.
12 I didn't want to let that pass unchallenged, especially
13 since I had not done a good job in addressing it in the
14 first place, Your Honor.

15 THE COURT: Mr. Panosh, wish to respond?

16 MR. PANOSH: Your Honor, you have -- in each of
17 these, you have to understand that during this period of
18 time, Theodore Kimble was conspiring with Pardee and
19 Nicholes, to go out and do these 50 odd breaking and entries
20 that they were charged with, not each one, but separately
21 and sometimes together. And he was keeping Nicholes and
22 Pardee in line, and he was saying things like "I killed my
23 wife. You go to the police, I got away with that one and
24 I'll get away with killing you, too."

25 Now, there are a number of cases that say

1 statements of reassurance by one of the co-conspirators is
2 admissible, and this is in that vein. He's telling these
3 people, "I did it. I got away with it. If you rat on me,
4 I'll kill you, too, and you know I will get away with it."
5 We would submit that it is part of the conspiracy.

6 And some of the statements, he's talking about the
7 difficulties he's encountering in obtaining the proceeds
8 from the life insurance policies. There was a life
9 insurance policy the defendant -- codefendant Ted Kimble
10 took out on the victim within two weeks of her death, for
11 \$200,000, in which he forged her signature. And he
12 discusses that. That's certainly part of the conspiracy to
13 kill her and part of the conspiracy to take her insurance
14 money.

15 And Your Honor, we just submit that you have to
16 hear each witness before you make an appropriate ruling on
17 their competency.

18 THE COURT: Okay. The Court will withhold ruling
19 till that point in time when it becomes necessary to rule.

20 MR. HATFIELD: Your Honor, may I just ask a point
21 of clarification?

22 THE COURT: You may.

23 MR. HATFIELD: Do you intend to have a voir dire
24 of each of these individuals outside the presence of the
25 jury at that time, in order to determine whether we move

1 forward?

2 THE COURT: How many of them are there?

3 MR. HATFIELD: There are three.

4 THE COURT: At some point, I suppose that will be
5 necessary.

6 MR. HATFIELD: Thank you.

7 THE COURT: But I'd like to keep it as brief as we
8 possibly can, and not have the jury sitting and waiting for
9 an unreasonable length of time.

10 MR. LLOYD: Thank you, Your Honor.

11 The last motion, Judge Cornelius, is a motion in
12 limine titled Re: Statements of the Deceased. And if I
13 could, Your Honor, let me just go ahead and hand you up my
14 motion. I have included what Mr. Panosh furnished us with
15 in discovery, in terms of the motion.

16 (Mr. Lloyd handed a document to the Court, and time was
17 allowed for the Court.)

18 THE COURT: All right.

19 MR. LLOYD: Judge Cornelius, I think the motion is
20 basically self-explanatory. There are -- as Your Honor just
21 read, there are a number of statements that come from the
22 deceased in this case, that Mr. Panosh intends to introduce.

23 I would concede to the Court that there is case
24 law supporting admission of those statements that come under
25 the hearsay exception of then existing mental or emotional

1 condition. And specifically, Your Honor, there are
2 statements, I think, that Mr. Panosh has given us, that --
3 where Patricia Kimble says something about being in fear. I
4 think those statements -- I don't have any case law to
5 support the proposition that they are inadmissible. But as
6 Your Honor is aware, having just read those statements,
7 there are a whole bunch of other factual matters that are
8 contained in those statements, as well. And if I could,
9 Judge Cornelius, if I may approach and hand up to the Court
10 State v. Hardy. It's a 1994 case. And I think it is the
11 leading case on victims' statements under then existing
12 mental or emotional condition.

13 (Mr. Lloyd handed a document to Mr. Panosh and to the
14 Court.)

15 MR. LLOYD: And I would direct your attention,
16 Judge Cornelius, down to the last paragraph on the first
17 page, right before it says Page 228. The court says in that
18 case, "We now receive from some prior holdings and take this
19 opportunity to clarify this area of the law." And then it
20 goes on down, without reading verbatim from the case, it
21 simply holds that these statements which are of a factual
22 nature, Judge Cornelius, are not admissible. That's
23 specifically exempted by the rule itself.

24 Now, the rule in my opinion doesn't do a very good
25 job of stating that, in terms, it makes a rather obscure

1 statement, where it says, "but not including statements of
2 memory or belief to prove a fact remembered or believed."
3 That's sort of a law school statement that leaves many
4 general practitioners or actual trial practitioners
5 scratching their heads. But the Supreme Court has
6 interpreted that for us, Your Honor. And down at the middle
7 of the page, the last paragraph, the court states, "The
8 statements in the diary are not statements of Karen's state
9 of mind, but are merely a recitation of facts which describe
10 various events."

11 Then they go on to say, in the last line -- or the
12 last sentence on that page, "Statements of the declarant's
13 state of mind are, for example, 'I'm frightened' or 'I'm
14 angry.'" They cite State v. Locklear. And then they go on
15 to give an exposition on why statements of fact don't have
16 that sufficient indicia of reliability that we put into
17 statements of fear. And they talk about that at some length
18 in the case.

19 Then finally, Your Honor, on the last page of the
20 excerpt that I've handed up, they say, in the middle
21 paragraph, right after the cite to State v. Cummings, "We
22 find in this case that the statements in the diary as they
23 bear on Karen's relationship with the defendant should have
24 been excluded, since any probative value they may have would
25 substantially outweigh the danger of unfair prejudice."

1 And they're just -- they're saying, first of all, they're
2 not admissible under 803, then existing mental or emotional
3 condition, and secondly, they don't pass a 403 balancing
4 test. And so, they're just saying that they were doubly
5 inadmissible there, Your Honor. And that being one of the
6 stronger statements with respect to a 403 balancing test, I
7 wanted to bring that to the Court's attention here.

8 But I think clearly, the bulk of these statements
9 from -- that Mr. Panosh has indicated attributed to Patricia
10 Kimble, the deceased in this case, are simply recitations of
11 facts, and are therefore not admissible under any of the
12 hearsay exceptions, and specifically under then existing
13 mental or emotional conditions. So they're simply not
14 admissible, Your Honor.

15 MR. PANOSH: Your Honor is aware of the Westbrooks
16 case, since you tried it. That occurred -- the case was in
17 '95, went to the Supreme Court in '96. If you'll recall in
18 the Westbrooks case, the deceased was Jimmy Westbrooks. His
19 sister and his father testified. His sister and father
20 testified about the fact that his wife, before she hired
21 someone to have him killed, had been amassing these credit
22 card bills, these unpaid telephone bills, about the fact
23 that he was considering a divorce, about the fact that his
24 marriage was unhappy, about the fact that she was coming
25 home late at night, without explanation, a lot of facts.

1 And Your Honor allowed those facts to come into evidence.
2 And the Supreme Court affirmed you, at 345 -- excuse me, 345
3 N.C. 43. And at Page 58, they distinguished Hardy and they
4 explained Hardy.

5 May I approach?

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

7 MR. PANOSH: And they basically said, we didn't
8 let the stuff in from the diary in Hardy because it just
9 wasn't clear what it meant. They said the State failed to
10 clarify the meanings of the diary. They went on to say the
11 statements -- the victim's statements about the telephone
12 calls, bills from creditors that he knew nothing about, the
13 defendant's role in his financial situation, were
14 admissible. Also, statements about his concern for his
15 marriage, the wife's handling of finances, they tend to
16 corroborate the motive for murder. And the fact that the
17 defendant was in debt and could not repay her obligations
18 was admitted. And they, of course, cite Stager. And Stager
19 was, I'm sure Your Honor's aware of, there was tape
20 recordings of the victim. He voiced his concerns about his
21 marriage on tape recordings, and then he put them in a
22 safety deposit box, and they were found subsequent to his
23 death, and all those were admitted.

24 Your Honor, these statements of the deceased are
25 incredibly predicted. The week before she was killed, she

1 called her friend Cara Dudley and tells about Ted taking out
2 this \$200,000 insurance policy on her and forging her name.
3 And she said, "If anything strange happens to me, I just
4 wanted somebody to know about this." And murder is
5 something strange, Your Honor.

6 This is appropriate. These are the then existing
7 feelings and thoughts of the murder victim, and under Stager
8 and under Westbrooks, they're admissible. And Hardy has
9 been distinguished in Westbrooks.

10 MR. LLOYD: Well, Judge Cornelius, of course, I
11 didn't have the -- I don't have the advantage of having been
12 present for all of Westbrooks, but as Your Honor might
13 remember, I had some familiarity with that case. Mr. Panosh
14 and I on that occasion, Your Honor, were basically on the
15 same side.

16 I would just say, Judge Cornelius, I don't --
17 obviously I don't know the Westbrooks case like you do, like
18 Mr. Panosh does, but I think the situation here is clearly
19 distinguishable. We're not talking about a sort of litany
20 of factual matters that are put forth in the discovery
21 materials that Mr. Panosh has put forth in this case. And I
22 think the rule in 803 clearly -- well, maybe I shouldn't say
23 clearly, but has a prohibition against that, and that's
24 contained, "but not including statements of memory or belief
25 to prove the fact remembered or believed." And the rule

1 itself, while I still contend to the Court inartfully
2 stated, the meaning is clear when you think about it in
3 terms of the way the Hardy court analyzed it. I think Mr.
4 Panosh is entitled to get in statements such as "I am
5 afraid," those kinds of statements, Your Honor. But when
6 you start talking about getting in factual material, through
7 a witness that cannot be cross-examined, I think you clearly
8 run into confrontation problems. I think it's in violation
9 of the rule itself, but obviously it's in violation of
10 confrontation, if it is not allowed by a firmly-rooted
11 hearsay exception. And that's simply not a firmly-rooted
12 hearsay exception.

13 (Time was allowed for the Court.)

14 THE COURT: It's been over five years since I
15 tried the Westbrooks case. I don't remember all that much
16 of it. There's been so many cases. That's one I remember
17 somewhat.

18 There are a number of statements here that the
19 State has indicated that the deceased made shortly before
20 her death. How many different witnesses are going to be
21 testifying to those different statements?

22 MR. PANOSH: Your Honor, these statements are made
23 to her father and her brother, Richard Blakley and Reuben
24 Blakley, and they specifically talked about her concern for
25 a life insurance policy that was taken out by Ted shortly

1 before her death. She made -- she called a witness by the
2 name of Gary Lyles about 10 days before her death and spoke
3 to Gary Lyles and to his wife, Rose Lyles, and she expressed
4 -- was in tears, and she expressed that she was very much
5 afraid, based upon the fact that Ted had taken out this life
6 insurance policy.

7 She spoke to Cara Dudley the week before her death
8 and again went over this life insurance policy, the fact
9 that he had forged her name, and said, "If anything strange
10 happens to me, I just wanted someone to know," and talked
11 about the strains on their marital relationship.

12 In regards to the, not this life insurance policy,
13 but another life insurance policy that Theodore Kimble tried
14 to take out in March of '95, the approach-- she was
15 approached by the insurance agent, she looked at it and
16 said, "I'm not signing anything," in reference to that
17 insurance policy.

18 She made statements to her brother, Reuben
19 Blakley, about the finances, the fact that she doesn't trust
20 Theodore Kimble with her money, that instead of putting
21 money in the bank, she makes extra payments on her mortgage
22 each month, because if Ted gets the money, he'll spend it.

23 She made statements about Ted wanting to buy
24 certain items, specifically a motorcycle that they could not
25 afford, and having bought specific items, a Jeep and

1 accessories, that they could not afford.

2 She made statements to Linda Cherry, that she was
3 concerned about her marriage. Again, this is immediately
4 prior to her death. At one point, she asked him why he had
5 married her, and she said that he said it was to share his
6 -- to have a woman to share his bed, and she was very upset,
7 because she was -- she felt that he was not joking about it.

8 So in answer to your question, it's Cara Dudley,
9 Linda Cherry, Gary and Rose Lyles, her mother, father and
10 her brother.

11 MR. LLOYD: Judge Cornelius, I think one of the
12 things that distinguishes our situation here -- and I don't
13 mean to belabor the obvious -- but we're not -- none of
14 these statements talk about Ronnie Kimble. I haven't heard
15 his name mentioned yet. And that's who's on trial, Judge
16 Cornelius. So now we've got, on top of everything else, all
17 the problems you would have in evaluating these statements,
18 as to whether they're fact or whether they're expression of
19 fear, we've also got the situation in which, what is the
20 relevance to Ronnie Kimble?

21 And on top of it all, it's not our job to defend -
22 Ted Kimble, Your Honor. We obviously have our hands full
23 defending Ronnie Kimble. But statements such as this
24 comment, "Why did you marry me?" and Ted supposedly saying,
25 to share his bed, well, to me, Your Honor, that is character

1 evidence, pure and simple. That just goes to show that --
2 so Mr. Panosh can argue that Ted Kimble is a cad. And it
3 doesn't -- but the overriding principle here is, it doesn't
4 have anything to do with Ronnie Kimble. It's just character
5 assassination to Ted. It's hearsay concerning factual
6 statements. But they don't even concern Ronnie Kimble.
7 It's once again part of the overall plan to get a conviction
8 through, not guilt by association in this case, Your Honor,
9 it's basically guilt by kinship. And I think that's what
10 makes our case special and what makes it distinguishable
11 from the Westbrooks case or any other case. Because you
12 don't have this special relationship. You don't have this
13 stuff coming in about somebody else, not about the defendant
14 in this case.

15 And I think now we're just talking about, it's --
16 all of this evidence, every single bit of evidence still has
17 to pass through the 403 balancing sieve, Your Honor. And
18 certainly this -- even if -- assuming arguendo that it
19 passes under Mr. Panosh's theory on -- by the Westbrooks
20 case or something like that, it still doesn't pass the 403
21 balancing test. It's simply character assassination on
22 Ronnie Kimble's brother, and therefore, Ronnie Kimble must
23 be guilty, because his brother is a cad, Your Honor. And
24 that's what it boils down to.

25 MR. PANOSH: You have to bear in mind, this is a

1 conspiracy. He's also charged with conspiracy with his
2 brother. The motive, if there was a motive, is that of his
3 brother. Now, if they want to withdraw their motion to
4 sever, we'll try the two of them together and there'll be no
5 problem whatsoever. But assuming that they want these cases
6 severed, the State has to be able to allow -- be allowed to
7 put on evidence of conspiracy. If we don't do it, if we
8 don't show that this was not a wonderful marriage and that
9 she was happy in it, I guarantee you the defense will put on
10 evidence that this is a wonderful marriage. We've seen it
11 plastered all over the newspaper this morning.

12 We're entitled to show the motive for the brother.
13 And Your Honor, we'd ask you to allow the statements of the
14 deceased to do that.

15 THE COURT: I think that's under the change of the
16 way the court looks at it at some point, the fact that it is
17 a conspiracy, and some of these things will certainly be
18 prejudicial, had the conspiracy not been at issue in this
19 case. And the balancing test is going to be somewhat
20 difficult, in that they were talking about motive, and I
21 think the State's entitled to show that. -

22 The only thing I know is, I've just got to rule on
23 them as they come in. I can't -- without knowing the
24 context of how it's all going to fit in, it's going to be
25 difficult to rule on voir dire at this particular point,

1 without seeing how it's going to fit together, who's going
2 to testify and what the relationship they have with the
3 different parties. And then at that point, the Court's
4 going to have to make a determination whether or not it is
5 prejudicial or relevant or whether it goes to conspiracy or
6 whether it goes to something else.

7 So I'm going to withhold ruling on it at this
8 particular point. There's no way the Court can do that,
9 without seeing how it's going to fit in together, the
10 context of it.

11 MR. HATFIELD: Your Honor, could I say one more
12 word?

13 THE COURT: Yes, sir.

14 MR. HATFIELD: Your Honor, some of these items
15 really create a problem. For example, if the victim,
16 Patricia, were making double mortgage payments because she
17 felt her husband was a spendthrift, she owned the house
18 exclusively herself. For her to make double mortgage
19 payments would have been for her to apply their joint
20 earnings to her sole benefit, because she was the only owner
21 of record of that property, it was owned prior to the
22 marriage, and he was not obligated on any of those loans.
23 And there are a number of things like this, where you really
24 get into a situation where, to cross-examine Patricia would
25 probably reveal that the meaning of these statements was

1 quite different than what the reporters of these statements
2 believe that they mean now. And that is precisely the kind
3 of thing which shouldn't come in.

4 I don't want to concede my partner's point, but I
5 think if Patricia had reason to believe that an insurance
6 policy was being taken out on her life without her consent
7 and full knowledge and approval by her husband, that that
8 probably is material. And to some extent, probably things
9 she said indicating her concern probably are admissible.
10 But we're going to go beyond that into a gray area, where it
11 really would be prejudicial, and it has no bearing on Ronnie
12 Kimble. There are all kinds of -- that she didn't want him
13 to buy a motorcycle.

14 Let me give you one more example. A few weeks
15 before she died, they went up to Williamsburg, Virginia, and
16 bought a timeshare, and spent some 15 or \$18,000 on this
17 timeshare. This -- you know, we need -- God forbid, I don't
18 mean to be offensive, but to allow Patricia to talk about
19 some of these things, when we can't ask her the rest of the
20 questions and to tell the rest of the story, is really
21 prejudicial. And that doesn't have anything to do with
22 conspiracy. If somehow, these feelings that she had that
23 she related to her friends and relatives had some bearing on
24 Ronnie Kimble or upon some bad relationship between the two
25 brothers that would tend to indicate a conspiracy, yes, it

1 should come in. But we don't know of her ever having said
2 anything about Ronnie Kimble, good or bad. We hope that
3 there simply was nothing ever said.

4 So, at some point, the Court probably should, I
5 respectfully submit, set some kind of time frame, in which
6 statements that were closely in proximity to the day she
7 died might be given more consideration, and statements that
8 had something to do with her present sense -- her
9 apprehension of death or problems stemming from her
10 husband's behavior. But value judgments, after her life has
11 ended, concerning property acquisitions that they made,
12 seems to me to be just highly prejudicial. And I would ask
13 the Court to try to formulate a time frame within which to
14 work.

15 THE COURT: Mr. Panosh -- how -- I noticed that
16 one of the statements to her father was three weeks before
17 her death. Is that as far down as it goes? The others say
18 shortly before her death. I don't know how -- are we
19 talking about a month, three weeks or --

20 MR. PANOSH: I need to --

21 THE COURT: -- six months?

22 MR. PANOSH: -- consult my notes here, and I'll
23 tell you in a minute, Your Honor.

24 THE COURT: What was the date of the day of the
25 death?

1 MR. PANOSH: The date of death was October the 9th
2 of 1995.

3 (Time was allowed for Mr. Panosh.)

4 MR. PANOSH: The date of the insurance application
5 was September the 12th of 1995. I believe all of the
6 statements occurred on or after -- or there was some
7 discussion just prior to that about insurance. So I would
8 say all the statements occurred in September, and the vast
9 majority is after the application on the 12th of September.

10 THE COURT: All right. That gives you some idea,
11 Mr. Panosh -- I mean, Mr. Hatfield, as to where we're
12 talking about, the time span.

13 It's going to be a -- the Court's going to have to
14 take it piece by piece. There's just no way to rule on
15 these matters, without knowing the context of where they're
16 coming in. To just arbitrarily exclude some at this point
17 would be a foolish effort on the part of the Court at this
18 point. I think we'll have to just wait and see what the
19 evidence shows, and then as we get to that point, we may
20 have to take voir dires to clear it up. But at this
21 particular point, the Court's not going to rule, because I
22 think you've got too many statements here, too much -- too
23 many different people making statements, and it's going to
24 be difficult, with the conspiracy theory and the fact that
25 there are two brothers involved, the interrelationships and

1 the -- it's just not an easy case to rule on at this
2 particular point.

3 So the Court's going to withhold ruling on these
4 matters, until they come in in the context of evidence.

5 Any other matters before we --

6 MR. LLOYD: No, Your Honor.

7 MR. PANOSH: Your Honor, there is the motion to
8 join -- sever, rather.

9 MR. LLOYD: Yes, sir. Excuse me. There is a
10 motion to sever, Your Honor. Mr. Panosh has informed me
11 that he will not oppose that motion.

12 THE COURT: Sever what?

13 MR. LLOYD: To sever Mr. Ronnie Kimble's case from
14 Mr. Ted Kimble's case.

15 THE COURT: I thought that had already been taken
16 care of. It has not?

17 MR. LLOYD: It's not been formally ruled on, Your
18 Honor.

19 MR. PANOSH: It has not been ruled on.

20 THE COURT: Okay. The Court will grant your
21 motion to sever.

22 MR. LLOYD: Thank you, Your Honor.

23 MR. PANOSH: And the other motions that we haven't
24 made reference to are abandoned?

25 MR. LLOYD: Well, I'm not so sure that I'd go out

1 that far, Your Honor. I'm not aware of any other motions
2 that I filed, that we haven't taken up. Now, this is a --

3 MR. PANOSH: The motion to dismiss the indictment?

4 MR. LLOYD: Which one does that refer to?

5 MR. PANOSH: Motion to Dismiss the Indictment, for
6 Failure to Allege all the Essential Elements of First-Degree
7 Murder.

8 MR. LLOYD: I would not ask to be heard on that
9 motion, Your Honor.

10 MR. PANOSH: We'd ask it be denied.

11 THE COURT: Denied.

12 MR. PANOSH: I don't believe we've heard the
13 motion for a bill of particulars.

14 MR. LLOYD: We did.

15 MR. PANOSH: Okay.

16 MR. LLOYD: I think Your Honor --

17 THE COURT: I've already ruled on that.

18 MR. LLOYD: -- denied that.

19 MR. PANOSH: Your Honor, as I said, we have one
20 more matter, and that witness is due to arrive about now,
21 but we would ask that we take it up after lunch.

22 THE COURT: All right. 2:00 p.m., sheriff.

23 (A recess was taken at 12:06 p.m.)

24 (Court reconvened at 2:02 p.m. The defendant was present.)

25 (Mr. Hatfield handed a tape to Mr. Panosh.)